

Review of the South African gambling industry and its regulation

A report prepared by the Gambling Review Commission

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Table of Contents

Glossary of Terms	6
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Executive summary	8
Chapter 1: Introduction and context	26
1.1 Introduction	26
1.2 <i>The evolution of gambling and gambling policy in South Africa since 1994</i>	26
1.2.1 Introduction	26
1.2.2 The Wiehahn report	27
1.2.3 Balancing competing policy and regulatory objectives	30
1.2.4 The evolution of gambling post-Wiehahn: 1996 -2002	31
1.2.5 The first review of gambling policy	33
1.2.6 Conclusion	34
1.3 <i>The Gambling Review Commission</i>	34
1.4 <i>The Parliamentary Process</i>	36
1.5 <i>Approach of the Commission</i>	37
Chapter 2: Overview of South African gambling industry	39
2.1 <i>Introduction and quick overview of the industry</i>	39
2.2 <i>Economic trends: general overview</i>	39
2.2.1 GGR for Casino's, LPMs, Betting and Bingo: 2001-2009	40
2.2.2 Gambling taxes: Casino's, LPMs, Betting and Bingo	42
2.3 <i>The Casino industry</i>	45
2.3.1 Ownership	45
2.3.2 Casino GGR and tax contributions	46
2.3.3 Size and growth of the casino industry	48
2.3.4 Employment in the casino industry	50
2.3.5 Casino non-gaming revenues	51
2.3.6 Capital expenditure and social infrastructure spend	51
2.3.7 Casinos and CSI	52
2.3.8 Casinos and B-BBEE	52

2.3.9 Conclusion	53
2.4 <i>Bingo</i>	53
2.4.1 The bingo industry	53
2.4.2 Bingo revenues	54
2.4.3 Electronic bingo terminals	55
2.4.4 Black Economic Empowerment	56
2.4.5 Conclusion	56
2.5 <i>Limited Payout Machines (LPMs)</i>	57
2.5.1 Rollout of LPMs	57
2.5.2 Key industry players	58
2.5.3 Economic performance of LPMs	61
2.5.4 Employment creation	62
2.5.5 Viability of LPM industry	62
2.5.6 Corporate social investment	63
2.5.7 Conclusion	63
2.6 <i>Betting: 2001-2009</i>	64
2.6.1 Horseracing and betting	66
2.6.2 Horseracing and employment	66
2.6.3 Horseracing and Community Social Investment	67
2.6.4 Horseracing and B-BBEE	67
2.6.5 Bookmakers and B-BBEE	67
2.6.6 Conclusion	67
2.7 <i>The National Lottery</i>	68
2.7.1 A revenue maximisation mandate	68
2.7.2 Lottery products	68
2.7.3 Economic performance to date	69
2.7.4 Conclusion	72
Chapter 3: The social impact of gambling	73
3.1 <i>Introduction</i>	73
3.2 <i>Who gambles</i>	73
3.2.1 The National Prevalence Studies	74
3.2.2 What is the level of gambling participation in South Africa	74
3.2.3 What games do South African gamblers play	75
3.2.4 Participation by population group	75
3.2.5 Participation in gambling by class/economic status	76
3.2.6 Participation in gambling by gender	78
3.2.7 Participation by age	78
3.2.8 Where do people gamble: Formal and informal venues	79
3.3 <i>Perspectives on problem gambling</i>	79
3.3.1 Defining problem gambling	79
3.3.2 Problem gambling: South African trends	82
3.3.3 South African in perspective: International comparisons	83
3.3.4 Problem gambling and race	84
3.3.5 Problem gambling and type of dwelling	85
3.3.6 Problem gambling and the poor	86
3.3.7 Comorbidity and problem gambling	86
3.3.8 Summary	87
3.4 <i>Underage Gambling</i>	88
3.4.1 Prevalence of gambling among the youth of the country	88
3.4.2 Conclusions	89
3.5 <i>Regulatory measures</i>	90
3.5.1 Introduction	90
3.5.2 Minors	90

3.5.3 Excluded persons	90
3.5.4 Credit	92
3.5.5 Advertising	92
3.5.6 Standards for gambling premises	95
3.5.7 International practice and lessons	95
3.6 <i>Research, education, prevention and treatment</i>	100
3.6.1 Regulators	100
3.6.2 Civil society and private organizations	100
3.6.3 Gambling operators	101
3.7 <i>Conclusions</i>	103
Chapter 4: Adequacy and effectiveness of current regulatory framework	105
4.1 <i>Introduction</i>	105
4.2 <i>The implications of concurrent jurisdiction in gambling regulation</i>	105
4.3 <i>Concurrent jurisdiction and the exercise of co-operative governance</i>	107
4.3.1 The National Gambling Policy Council	108
4.3.2 Conclusion	110
4.4 <i>The regulatory framework</i>	110
4.4.1 The National Lotteries Board	110
4.4.2 The National Gambling Board	114
4.4.3 Provincial gambling regulatory authorities (PGRAs)	118
Chapter 5: The impact of gambling policy	129
5.1 <i>Introduction</i>	129
5.2 <i>Taking stock of gambling policy to date</i>	129
5.2.1 Protection of society from the over-stimulation of latent gambling	129
5.2.2 Strict control and supervision of industry	132
5.2.3 Uniformity and harmonization of policy at all levels of government	132
5.2.4 Revenue generation	133
5.2.5 Economic empowerment of the historically disadvantaged	133
5.2.6 Job creation	133
5.2.7 Conclusion	134
5.3 <i>The managed rollout of licensed gambling activities</i>	134
5.3.1 Casinos	134
5.3.2 Limited Payout Machines	135
5.3.4 Bingo	137
5.3.5 Betting	137
5.3.6 Lottery	138
5.4 <i>Minimising the negative social impact of gambling</i>	138
5.4.1 Expanding research, education and treatment	138
5.4.2 Implementing regulatory measures to protect the vulnerable	139
5.5 <i>Improving uniformity and accountability in the regulatory framework</i>	140
Chapter 6: New forms of gambling	142
6.1 <i>Introduction</i>	142
6.2 <i>Criteria for assessment</i>	142
6.2.1 Demand	143
6.2.2 Proliferation	143
6.2.3 Protection	143
6.2.4 Geographical location	143
6.2.5 Economic viability	143
6.2.6 Economic impact.	143
6.2.7 Competition	144
6.2.8 Enforcement	144
6.2.9 Revenue	144

6.2.10 Animal welfare (where relevant)	144
6.3 <i>Greyhound racing</i>	144
6.3.1 Background	144
6.3.2 The contemporary activity	145
6.3.3 Arguments for legalisation in SA	146
6.3.4 The global greyhound industry	147
6.3.5 Analysis and conclusion	149
6.3.6 Recommendation	150
6.4 <i>Bush racing</i>	151
6.4.1 Introduction	151
6.4.2 International precedent	152
6.4.3 Analysis and conclusion	152
6.4.4 Recommendation	153
6.5 <i>Fahfee</i>	154
6.5.1 Introduction	154
6.5.2 History	154
6.5.3 The contemporary game	155
6.5.4 Analysis and conclusion	156
6.5.5 Recommendation	157
6.6 <i>Bingo and electronic bingo terminals</i>	158
6.6.1 Introduction – the game of bingo	158
6.6.2 What are Electronic Bingo Terminals (EBT's)	158
6.6.3 The evolution of bingo and EBT's internationally	159
6.6.4 Analysis and conclusion	161
6.6.5 Recommendation	162
6.7 <i>Poker</i>	162
6.7.1 Introduction	162
6.7.2 Defining the game	163
6.7.3 Poker in South Africa at present	163
6.7.4 Online poker	163
6.7.5 Analysis and conclusion	164
6.8 <i>Betting exchanges</i>	166
6.8.1 Introduction	166
6.8.2 Person-to-Person Betting	166
6.8.3 What is a betting exchange?	167
6.8.4 Betting exchanges and the existing regulatory framework	167
6.8.5 International precedents	169
6.8.6 Comments from the Western Cape Bookmakers Association	170
6.8.7 Analysis and conclusion	171
6.8.8 Recommendation	173
6.9 <i>Virtual racing</i>	174
6.9.1 Introduction	174
6.9.2 Analysis and conclusion	174
6.10 <i>Online gambling</i>	174
6.10.1 What is Interactive Gambling?	174
6.10.2 The dangers of the current approach	176
6.10.3 International precedents	177
6.10.4 Shortcomings of the existing legislation	179
6.10.5 Analysis and conclusion	180
6.10.6 Recommendations	182
References	185

Glossary of Terms

ATM	Automatic Teller Machine
ACT	Australian Capital Territory
BEE	Black Economic Empowerment
B-BBEE	Broad-Based Black Economic Empowerment
CASA	Casino Association of South Africa
CEMS	Central Electronic Monitoring System
CEO	Chief Executive Officer
CPSI	Canadian Problem Gambling Index
CSI	Corporate Social Investment
DA	Distributing Agency
DSG	Destination Style Gambling
DTI	Department of Trade and Industry
EBT	Electronic Bingo Terminal
FICA	Financial Intelligence Center Act
GA	Gamblers Anonymous
GDP	Gross Domestic Product
GGR	Gross Gaming Revenue
GPI	Grand Parade Investments
GRC	Gambling Review Commission
HCI	Hosken Consolidated Investments
JSE	Johannesburg Securities Exchange
LPM	Limited Payout Machine
NGB	National Gambling Board
NLB	National Lotteries Board
NLDTF	National Lotteries Distribution Trust Fund
NPS	National Prevalence Study
NRGP	National Responsible Gambling Programme
MEC	Minister of Executive Council
MPM	Medium Payout Machine
PDI	Previously Disadvantaged Individual
PGRA	Provincial Gambling Regulatory Authority
PGSI	Problem Gambling Severity Index
RDP	Reconstruction and Development Programme
RIGT	Responsibility in Gambling Trust

SACTWU	South African Clothing and Textiles Workers Union
SAPS	South African Police Service
SARGT	South Africa Responsible Gambling Trust
SOGS	South Oaks Gambling Screen
USA	United States of America
VAT	Value Added Tax
VBT	Video Bingo Terminal

Executive summary

Introduction

Since the legalization of gambling in South Africa in 1996, the gambling industry has grown and evolved substantially. Technological advancements on existing forms of gambling and new forms of gambling have emerged and have created challenges for regulators and policy makers. Furthermore, some forms of illegal gambling have persisted and appear to be growing in popularity.

Concerns about the socio-economic impact of gambling in South Africa, especially on the poor, have been lingering since the legalization of the industry. A substantial body of research has been conducted over the period and enables a better assessment of the impact of current gambling activities on society.

The recent debates about the possible legalization and regulation of interactive gambling have opened up broader questions about the appropriateness of current gambling policy, regulation, and the proliferation of gambling opportunities. To consider these broad questions, as well as specific challenges around the regulation of particular forms of gambling, the Minister of Trade and Industry appointed a five-member Gambling Review Commission (“the Commission”) in December 2009 with a broad remit to “consider if the currently legalised gambling activities can/should be expanded or curtailed considering the number of casinos, limited payout machines and bingo outlets already licensed”, having regard for the “socio-economic consequences attached to gambling, such as problem gambling, youth gambling and other social concerns”.

The Commission was specifically requested to review the evolution of the gambling industry since 1996; to assess its social and economic impact, with specific reference to the demography of gambling participants, the incidence of problem gambling and gambling addiction, youth gambling; and the efficiency and effectiveness of current strategies to mitigate the negative effects of gambling. The Commission was further tasked with an assessment of proliferation in South Africa, considering licensed and unlicensed activities and technological developments and the viability of new gambling activities. Lastly, the Commission was required to consider the extent to which regulatory bodies have met their legislative objectives, to benchmark with international jurisdictions and to make policy recommendations regarding the gambling industry on the basis of its assessment. The Commission’s mandate included a consideration of the national lottery.

The current policy framework

The policy on gambling that has been guided by the 1995 report of the Lotteries and Gambling Board, also known as the Wiehahn Commission. The Board was established in August 1994 by the Minister of Justice with a mandate to advise the government on the establishment of a national policy on gambling for South Africa, given that gambling, other than betting on horseracing was illegal at that time. The report of the Wiehahn Commission has guided the managed rollout of gambling in South Africa since 1996, having identified the following key objectives for gambling policy: -

1. The protection of society from the over-stimulation of latent gambling through the limitation of gambling opportunities;
2. The protection of players and integrity and fairness of the industry through the strict control and supervision of the industry;

3. The uniformity and harmonization of policy and legislation at all levels of government and across provinces through minimum norms and standards, co-operation and co-ordination;
4. The generation of revenue and taxes for provincial government and for good causes;
5. The economic empowerment of the historically disadvantaged;
6. The promotion of economic growth, development and employment.

Pursuant to the report, the policy and regulatory framework was put in place, closely following the recommendations and objectives of the Wiehahn Commission report. The National Gambling Act, 1996 and the National Lotteries Act, 1997 were promulgated and the National Gambling Board and the National Lotteries Board were established. The National Lotteries Board was responsible for the regulation of a state-owned but independently operated national lottery and sports pools, as well as for the administration of the National Lotteries Distribution Trust Fund (NLDTF). The National Gambling Board was not a regulatory body, but rather a body established to provide policy advice and to promote uniformity among provincial gambling regulators, who had the responsibility for the licensing and regulation of gambling activities in their respective provinces. Each province also formulated and promulgated its own gambling legislation. Within this regulatory context, the roll out of gambling activities began, starting with the licensing of casinos within the maximum number of licences that had been set in national legislation. Bingo was also licensed initially, but its rollout was limited to the Gauteng Province. Next the roll out of Limited Payout Machines (LPMs) began.

The first review of gambling policy and legislation occurred in 2002. This review was propelled by three matters, namely the ongoing disputes and contestation between provincial gambling regulatory authorities (“PGRAs”) and the National Gambling Board (“NGB”), the rising concerns about the potentially negative socio-economic impact of gambling, and thirdly, to deal with forms of gambling that had not been dealt with or anticipated in the National Gambling Act, 1996, in particular interactive gambling and horseracing.

What began as a set of amendments resulted in a substantial policy review and new piece of legislation (National Gambling Act 2004). The legislation sought to clarify and review the respective roles of the NGB and the PGRAs and to sought to institutionalize co-operative governance in a statutory body called that National Gambling Policy Council (“Policy Council”). The role of the NGB was changed from being purely advisory to having an oversight function as well. The legislation further introduced new regulatory measures to mitigate the potential social harm of gambling. The current review will consider the impact of those changes and assess their effectiveness.

The South African gambling policy adopted conforms largely to a sumptuary model. This is an approach, which seeks to contain excessive demand for gambling and to satisfy only existing demand and is consistent with restrictions on the advertising of gambling. A revenue maximisation approach on the other hand imposes few restrictions on advertising. This is the approach that has been adopted with respect to the National Lottery.

Overview of the gambling industry

Since its legalisation in 1996, the gambling sector has grown into a small but maturing sector. Gross gaming revenues have doubled in real terms between 2001 and 2009 and now stand at R15.921 billion (R18.129 billion, if the lottery is included). In 2009, the sector generated R1.5 billion in tax revenues for provincial government

and is the second highest generator of “own revenues” for provincial governments. In addition, the national lottery generated R1.4 billion in funds for good causes. The sector accounts for substantial employment, with a total of 56,958 direct jobs created and sustained in the industry. The casino industry alone accounts for 51, 317 jobs (90%), 85% of the GGR and 80% of the tax revenues.

Casinos

The casino industry in South Africa is well run and compares favourably with casinos anywhere else in the world. A limit of 40 casinos in the country has been set in legislation and 37 licences have been issued by PGRAs, of which 36 are operational. While the number of casinos increased from 31 to 36 between 2004 and 2008, there appears to have been considerable organic growth of gambling activities at the respective casinos, with the result that the total number of slots in all SA casinos increasing by 4,725 (27%) between 2004/05 and 2008/9 and the total number of “positions” by 6,125 (22.5%). There appears to be some consolidation among casino operators, with the number of licence holders raising possible issues about increased concentration levels. Casinos have made significant contributions to infrastructure development, with a cumulative capital expenditure of R18.8 billion as at March 2009. Casinos are expecting to have achieved level four compliance with the B-BBEE Codes by the end of 2010.

Bingo

Until 2005-2006, bingo remained a relatively insignificant gambling mode in South Africa. In this period, bingo was played in its traditional format, in bingo halls or casinos with players marking off numbers as the host called them out. With the controversial introduction of electronic bingo terminals (EBTs) in September 2005, and the opening of bingo clubs in shopping malls across Gauteng, bingo revenues have increased considerably. This form of bingo, which is dependent on revenues from electronic gaming devices rather than traditional paper-based bingo games, has become a viable component of the gambling sector.

At present, there are 10 bingo halls in Gauteng, ranging in size from the 720 seats to the 153 seats, and are run by one of the main operators, Galaxy Bingo (3 clubs, 1,620 seats) or the Viva Bingo Group (7 clubs, 1,802 seats). Of the total 3,422 bingo positions available, just over a third is taken up by EBTs, with the current rollout standing at 1,242 in the Gauteng province alone. This must be contrasted with just over 5,000 LPMs nationally. Although three provinces have awarded bingo operator licences, bingo halls currently only exist in Gauteng. KwaZulu-Natal appears poised to roll out bingo and EBTs in their province. Of great concern is the location of bingo halls with large numbers of EBTs in shopping centres with easy access from the centres themselves.

Limited payout machines (“LPMs”)

The LPM industry has not grown in the manner initially anticipated. Although a limit of 50,000 LPMs was set for the country, with an initial maximum rollout of 25,000 by March 2009 across all nine provinces, to date only 5,381 LPMs have been rolled out.

The objective of creating a sector within the gambling industry that has low barriers to entry, which facilitates PDI ownership and control, and which contributes to the sustainability of existing (primary) businesses, has not been achieved. This is partly due to delays, inconsistencies and capacity shortcomings within the regulatory bodies, some of which resulted from caution amongst regulators about making machine gambling conveniently available where fairly poor people live. However, in part the problems encountered are inherent in the design of the LPM sector. The requirement that large number of LPM sites should be PDI owned and should be

geographically spread outside urban centres may be both economically mistaken and socially undesirable. From an economic perspective, the location of LPMs in typically lower-income to poor areas jeopardises the viability of the industry. Route Operators are required to keep these operations going in order not to jeopardise their licences, but it undermines the viability of the sector. From a social perspective this criteria is also questionable. If the intention is to restrict problem gambling and, in particular, to protect the poor, then the insistence that a high percentage of LPMs are located in areas that, by the nature of South Africa's history, are disproportionately poor is inherently counterproductive.

National lottery

The principle of a state lottery concerned exclusively with revenue maximisation appears to have worked. The national lottery has generated significant funds for the government over the past decade, and is the largest source of funding for good causes in the country. In many sectors, i.e. the arts, funding via the National Lotteries Distribution Trust Fund ("NLDTF") exceeds what is provided through traditional government channels. Unfortunately the popularity of the lottery has declined in the past three years. Internationally, there has been a tendency for lottery expenditure to tail off over time, although the evidence suggests that this expenditure spikes dramatically when there are large roll over prizes.

Betting

Horseracing is a well-established and reasonably well-managed industry in South Africa. Although it is clearly facing major challenges, it appears set to ride out the economic downturn as well as declining on-course and off-course betting on horseracing. Horseracing is a major employer in South Africa, and for this reason alone, it is hoped that the industry prospers. In order to survive, the horseracing industry has to modernise itself and become more attractive to new, especially younger, punters. This requires a combination of two things: modernising existing venues and race formats, and developing new business models more closely integrated with other forms of gambling. Both of these changes are in line with world trends.

The social impact of gambling

Gambling participation

South Africa is the only developing country in the world that can claim to have good information about gambling behaviour. The information available indicates that the number of adults who gamble regularly has dropped from 86% in 2005 to 42% in 2008. Overall, the three most popular forms of gambling are casino gambling, the lotto and scratch cards, irrespective of race or income group. It would appear that levels of participation correlate closely with income. Persons in lower income groups are less likely to gamble than persons in higher income groups, with 71% of the lowest income cluster abstaining from gambling, while 58% and 65% in the two highest income clusters do not participate in gambling at all. A worrying trend is the growing significance of informal (and hence illegal) gambling in South Africa.

Problem gambling

There is considerable debate over the nature and cause of problem gambling. Typically, this is understood to involve an uncontrollable urge to gamble, such that the persons involved cause significant harm to themselves and to others. There is considerable debate about the usefulness of the different tests to measure the extent of problem gambling and different measures are used in different countries. As a result, it has been argued that the absolute values of problem gambling are not as important as the longitudinal trend. In South Africa, three categories of gamblers are identified, namely:

1. Recreational gamblers who gamble on social occasions with friends or colleagues.
2. Problem gamblers in the broader sense of gamblers who spend more time and money than they are able to afford on gambling.
3. Problem gamblers in the narrow sense of compulsive or pathological gamblers.

Treatment of compulsive gamblers is especially difficult and has low success rates. Compulsive gamblers invariably have multiple addictions (i.e. to gambling and to alcohol and substance abuse), which contributes to their poor prognosis. Problem gambling in the broader sense is believed to be informed, in part, by particular beliefs about luck, chance, fate and “the odds”. These give the gambler the false confidence that they can “beat the system”, and can be often be challenged and addressed through a range of educational and therapeutic interventions.

In South Africa, we find that the level of problem gambling rose significantly in 2003 due to the novelty factor associated with the introduction of the national lottery, but declined shortly thereafter. Since 2005 it has remained relatively constant. The fact that problem gambling levels have remained relatively constant, despite the significant growth in the size of the gambling industry in this same period, suggests that the regulators as well as the National Responsible Gambling Programme have been relatively successful in their harm minimisation measures. However, there is no room for complacency. Although comparisons between different countries are difficult to make, it appears as if South African problem gambling levels are higher than those encountered in Europe, roughly in line with the United States of America (“USA”), and slightly lower than the levels found in Asian countries.

Furthermore, the relationship between problem gambling and informal gambling is especially problematic, and requires careful attention. South Africa should pay particular attention to new forms of gambling. We simply do not know what the impact of online gambling will be.

Youth gambling

Although it would be wrong to conclude that there is an underage gambling crisis in South Africa, it is clear that this is a troubling and possibly growing trend. The Commission is especially concerned about reports that some youth in impoverished areas claim that they gamble in order to buy basic necessities and pay schools fees.

Regulatory measures

The National Gambling Act, 2004 contains a range of measures to protect the vulnerable and minimise the potential negative socio-economic impact of gambling. These measures include the limitation of entry to gambling premises by minors and by excluded or self-excluded persons, a prohibition on extending credit to punters directly or through a third party, the enforcement of debts by minors or excluded persons, restrictions on advertising and the placement of cash dispensing machines in designated spaces or within a prescribed distance from those spaces.

These measures are currently implemented with mixed success. Of greatest concern is the effectiveness of the self-exclusion measures, as well as the enforcement of some of the advertising restrictions.

Research, education, prevention and treatment

PGRAs generally have limited budgets available and focus their resources on education programmes. The budgets vary substantially, ranging from R500, 000 to R12 million in the case of the Gauteng Gambling Board.

A number of treatment and rehabilitation programmes exist, including programmes registered with the Department of Health and/or other government departments, such as Social Development, coalitions of church fraternities and other concerned individuals like JASA and advocacy and private research bodies such as the Family Policy Institute. Doctors for Life International has a gambling addiction counselling programme and Gamblers Anonymous, a fellowship support group, is fairly well represented in the country, with branches in KwaZulu-Natal, Gauteng and Western Cape. In addition, private centres offering treatment for a range of addictions and dependence are offered, but are expensive and therefore out of reach for most South Africans. None of these programmes or centres receives funding from industry.

Those that cannot afford private treatment for gambling addiction are reliant on the National Responsible Gambling Programme (NRGP) and its network. The NRGP is supervised by the South African Responsible Gambling Trust (SARGT), which was established by the South African Advisory Council on Responsible Gambling under the auspices of the National Gambling Board. The NRGP is funded from voluntary contributions by licensed gambling operators. Some provincial regulators have made contributions to specific programmes. It had a total budget of R15 million in the 2009 financial year.

The NRGP runs a free 24/7 counselling line service manned by professional counsellors and operates through a national network of counsellors. In addition, the NRGP offers a National Schools Education programme, a training programme, and also has a research programme, responsible for the National Prevalence Study and other research. The NGB website reported that 25,740 calls having been received by the toll free programme gambling counselling line, with about 8,795 being referred for treatment since the inception of the NRGP in 2000.

Gidani, the operator of the National Lottery, runs its own Responsible Play Programme. The programme focuses on education, awareness creation and providing support services and self-exclusion programmes for problem gamblers. Although it claims to have a national reach, the scope of the programme limited in comparison with the NRGP and is not widely published and easily accessible. Gidani was reported to be considering a possible partnership with the NRGP.

Adequacy and effectiveness of current regulatory framework

Concurrent jurisdiction

The regulatory framework for gambling is shaped by the fact that gambling, other than lotteries and sports pools, is an area of concurrent legislative competence between national and provincial government. Thus gambling in South Africa is currently regulated by eleven acts of law. Concurrent jurisdiction raises a number of particular challenges for the regulatory framework:

1. The effective resolution of disputes between provincial regulators and the NGB and between provinces.
2. The effective implementation of co-operative governance, requiring a co-operative and consultative approach to policy-making and a relationship between all parties that is based on mutual respect and trust.
3. Ensuring consistency and uniformity in regulation through the development and consistent implementation of national norms and standards.

Co-operative governance

The National Gambling Policy Council, a statutory body established in terms of the National Gambling Act, is charged with providing for consultation between the national and provincial governments on matters of national gambling policy, the promotion of uniform national and provincial laws, norms and standards. In addition the Policy Council is mandated to deal with the management or monitoring of gambling and to deal with the resolution of disputes that may arise between the provincial gambling regulators. The Policy Council has not been effective in settling disputes or in reaching agreement on policy matters, especially where there is a conflict of objectives, usually between national and provincial government. The structure and working of the Policy Council requires review.

The regulatory framework

The regulatory framework consists of two national regulators and nine provincial regulators.

Lotteries and sports pools are an exclusive national competence and the regulatory responsibility of the National Lotteries Board (NLB). The NLB has three main functions, namely to provide advice the Minister on matters relating to the National Lottery and the lotteries legislation; regulating and policing lotteries and sports pools; and administering the National Lottery Distribution Trust Fund (NLDTF). The NLB appears to have considerable capacity problems, and is not always able to exercise its mandate effectively. In particular, the NLB struggles to oversee the operation of the NLDTF and the distribution of monies from the NLDTF remains a serious problem.

The National Gambling Board ("NGB") is responsible for monitoring and investigating the issuing of national licences by the provinces; monitoring compliance by PGRAs with the National Gambling Act, 2004 and entering into agreements with them to rectify any deficiency. It further has responsibility for establishing and maintaining a number of registers and a national central monitoring system. The NGB is also responsible to monitor the socio- economic impact of gambling and the causes of addictive or problem gambling, advising the National Gambling Policy Council on norms and standards, as well as monitoring competition in the industry. The NGB has struggled to fulfill key areas of its mandate, such as exercising oversight over provincial regulators and the establishment of registers. This is largely due to the fact that the organisation depends on co-operation and support from PGRAs, which is often not forthcoming. Furthermore, PGRAs tend to default to provincial legislation, where there is a difference between the national norm or standard and the provincial law, undermining efforts to achieve uniformity. Other ways of ensuring accountability of provinces and promoting uniformity must be found.

Each province has its own gambling regulatory authority. In terms of the National Gambling Act, 2004, PGRAs are responsible for issuing national and provincial licences; monitoring compliance with national and provincial legislation and with licence conditions; and combating illegal gambling. In general PGRAs appear to be effective in monitoring compliance with licence conditions and with legislation. There appears to be a lack of uniformity in the application with licensing criteria and a lack of compliance with the norms and standards set out in the National Gambling Act, 2004. The effectiveness with respect to enforcement of illegal gambling is mixed across provinces – some have been very committed and effective, whereas in other provinces, there has been no capacity and no will to close down illegal operations. Finally, from an efficiency perspective, it appears that resources are not necessarily targeted in the most efficient manner and there may be excess capacity in some regulatory institutions. It is suggested that a more risk-based approach to regulation

would allow for a better targeting of resources, possibly directing more resources towards the eradication of illegal gambling.

Taking stock of gambling policy

Based on the above discussion, the Commission assessed the success of existing gambling policy against the objectives set out in the Wiehahn report.

Protection of society from the over-stimulation of latent gambling

The Commission is of the view that limitations imposed on gambling opportunities in terms of the policy of a managed rollout of gambling, have indeed restricted the size of the gambling sector. At present, South Africa has a total of 22,206 gaming machines, which means that there are presently a gaming machine per 2,193 persons. At maximum LPM rollout, this would come down to a machine per 608 persons. This can be contrasted with Italy, which has a gaming machine per 171 persons, or New South Wales, Australia, which has a machine per 69 people.

Equally important appears to be the distinction between open-access public spaces and dedicated gambling and entertainment spaces. One of the intentions of the destination style gambling approach is to create dedicated gambling-entertainment venues to which punters must travel. This protects the general public from accidental exposure to gambling activities and minimises opportunities for impulse or convenience gambling. The decision to limit LPMs to a maximum of 50,000 licences is in keeping with this sentiment. It places an absolute cap on convenience gambling on gaming machines whilst allowing the public to enjoy gambling entertainment in a restricted number of carefully regulated sites with a very limited number of machines at each site.

In order to preserve this cap on convenience gambling, it is important that large numbers of gaming machines should not be easily accessible from shopping malls. This would apply to bingo halls that can be accessed with ease from shopping centres and contain large numbers of EBTs, as well as casinos that are integrated into and easily accessible from shopping malls. In both cases, it dramatically increases the public's "accidental" exposure to gaming machines leading to a proliferation of convenience gambling.

While this approach has limited the introduction and number of gambling activities, a number of worrying trends can be identified.

1. There appears to be a trend for the distinctions between public spaces and gambling spaces to become eroded, due to the integration of casino complexes with local shopping malls and due to the location of bingo halls in major shopping centres.
2. In those areas where clear limits have not been set, there has been creeping proliferation. The number of slot machines and tables in casinos has increased at a steady rate over the past five years. If bingo is rolled out to other provinces, there is the potential that for a large number of gambling venues with a significant number of positions to be rolled out in addition to the limited number of casinos.
3. The poor appear to be especially vulnerable to problem gambling, in large part because of the proliferation of informal gambling activities in low-income communities.

It can be concluded that the managed rollout of gambling opportunities since 1996 has stood us in relatively good stead. Although levels of problem gambling are higher than those encountered in European jurisdictions, these are roughly in line with levels in the USA and slightly less than those in Asia. More significantly, longitudinal trends in South Africa suggest that levels of problem gambling have remained stable, despite the massive growth in the size of the legal gambling industry and the proliferation of informal gambling. Problem gambling is especially problematic in poorer communities with ready access to informal gambling activities. Other jurisdictions, which have less restricted gambling markets and which have allowed a massive proliferation of slot machines outside of casinos, are experiencing growing problems.

The Commission is concerned that there appears to be pressure building from the gambling industry and from regulators to allow more gambling activities. In the absence of a clear policy and regulatory framework this has the potential to increase dramatically the level of demand for gambling, and may not readily be contained.

Strict control and supervision of industry

Overall, South Africa has a relatively well-regulated gambling environment. We have good legislation in place and a high level of compliance with day-to-day activities, making South Africa an internationally respected jurisdiction.

Uniformity and harmonization of policy at all levels of government

One area of distinct weakness in the current framework is the ability to ensure proper uniformity, consistency, and accountability. It appears that provincial and national laws are sometimes not harmonized and differences exist in the application of the legal framework between provinces, resulting in a lack of uniformity. The inconsistencies and differences impact negatively on the industry, and create weak spots in the regulatory framework that can be exploited by less scrupulous operators.

Current mechanisms to achieve uniformity have not been successful, despite the efforts of the NGB. There appears to be little accountability of provincial regulators in terms of the overall policy, and a fragmentation of gambling policy is occurring because policy decisions are not made with sufficient speed and because of provincial disregard with no effective sanctions. An added concern is what appears to be a conflict in the regulatory objectives of provincial and national government. Provincial government and regulators seem to be largely driven by revenue maximisation, while national government is concerned with the managed rollout of gambling activities and monitoring its social impact. The balance between these objectives must be struck in the national policy framework and there must be provincial participation in the policy formulation process, but also accountability in terms of those policy objectives.

Economic impact

Gambling taxes have raised significant revenues for provinces and are the second largest generator of "own revenue" for provinces. The lottery has generated substantial funding for good causes.

In general, there has been Black Economic Empowerment in all gambling sectors, with the exception of the bookmaking sector. However, there are some inconsistencies between original licence requirements and the current requirements of the Codes of Good Practice. An overarching target of level two compliance with the B-BBEE Codes by 2015 has been set for the sector and it has been left to individual provinces to ensure that their licensees meet the target. It is not clear that

there is accountability and periodic disclosure by provinces on progress towards this target.

In total, the gambling industry (excluding the national lottery) directly employs 59,958 people, or 0.57% of people in formal employment.

On the basis of the above findings, the Commission believes that while gambling policy and regulation has been largely successful, there is a need to strengthen aspects of policy, particularly with respect to the management of potential proliferation, to review some of the regulatory structures and co-ordination mechanisms and possibly to enhance some of the harm mitigating measures. Furthermore, building on the existing foundation, and in cases where there is a clear indication of an existing demand that cannot otherwise be accommodated or curtailed, there is scope for the introduction of a limited number of new forms of gambling. Finally, the Commission sees no reason to depart from the current approaches to gambling, namely a revenue maximisation approach to the lottery and a sumptuary approach to other forms of gambling.

The managed rollout of licensed gambling activities

As part of its mandate, the Commission was requested to consider the potential expansion of existing (licensed) gambling activities in the light of broader concerns regarding proliferation of gambling opportunities. In making its recommendations, the Commission considered each licensed gambling mode, the current state of the industry, international trends and lessons, as well as the possible social impact.

Casinos

The Commission is of the view that the current limit of 40 casinos in the country is appropriate and should be maintained in future. There is a need to monitor the growth of slot machines and tables at casinos. The Commission recommends that limits on the total number and type of slot machines should be set. This would include both casino-based and non casino-based slot machines.

Casino CSI expenditure needs to be benchmarked against other sectors and re-assessed by the casino industry in line with local economic and social realities, as well as commitments made by the casino industry in other jurisdictions. The assessment would also need to consider the industry contribution to the National Responsible Gambling Programme.

The Commission recommends that the New South Wales approach of comprehensive licence reviews every five years be considered. There is a need for a clear and consistent policy on B-BBEE in the gambling industry as a whole to be developed, with particular emphasis on casinos. Currently, there is an overarching target of level two compliance by 2015. It is recommended that a consistent approach should be proposed by the DTI for discussion with and adoption by provinces once agreement has been achieved.

Limited payout machines

In South Africa, we only allow two types of slot machines at present – those in casinos, which tend to be the high-stake slots, and LPMs. There is currently no distinction between LPMs in convenience or non-gambling venues, such as bars and restaurants, and LPMs in clearly defined gambling venues, such as racecourses and tote outlets. One could argue that LPMs in non-gambling venues should be lower stake and payout machines than LPMs in gambling venues that are licensed to allow other modes of gambling as well. This is in keeping with the distinction between convenience and destination-style gambling discussed above.

The Commission therefore recommends that instead of simply allowing for two categories of slot machines in South Africa (casino and LPM), some flexibility in the rules governing LPMs be introduced. LPMs located in convenience venues should retain the current maximum stake and payout limit, whilst LPMs located in dedicated gambling venues should be allowed machines with higher stakes and payouts. These latter might appropriately be described as medium payout machines or MPMs.

The Commission recommends that the maximum number of slots per gambling establishment should remain at the current number of 40 machines. In addition, the Commission offers three recommendations relating to the existing policy framework:

1. The weaknesses and inconsistencies of the provincial regulatory authorities need to be addressed.
2. The rules stipulating that a high percentage (typically 60%) of host sites need to be owned by PDIs needs to be reconsidered carefully.
3. Decisive action against the “illegal slot-casinos” needs to be taken.

Bingo

The Commission appreciates that Bingo, in its traditional form, has not done particularly well in South Africa and that alternative revenue sources for the industry should be considered to make the sector viable. Under the current regulations, bingo operators wishing to install slot machines are free to apply for licences to operate 40-machine LPM sites, but must do so under the same terms and conditions as any other player in the LPM industry. Due to the proliferation of bingo halls and gaming machines currently observed, the Commission believes that a policy on bingo should be developed as a matter of urgency, which should include limits on the number of Bingo licences and seats per province.

Betting

The horseracing sector is a declining sector, which is struggling to modernize and transform itself. The current ownership and funding arrangements do not provide sufficient impetus for modernization. Furthermore, the sector seems constrained in its ability to make commercial decisions by its licensing conditions. The Commission therefore offers the following recommendations:

1. Market forces should be allowed to dictate the number and location of tracks, as well as the number of races. Consideration should be given to separating the ownership of the tracks and the tote. The tracks could be funded through a combination of a levy on the gambling tote, bookmakers and online betting operators, as well as commercial rights, such as broadcasting rights for races.
2. The current funding models for the industry should be reviewed to ensure that the tax rates and levies paid to the industry are standardised across the board to create a level field.
3. The horseracing industry should be enabled to integrate its operations with other forms of gaming, especially slots.
4. Current proposals that the former Jockey Club, now known as the Horseracing Authority, should become a statutory regulator should be considered. What is required is a more complete review of the horseracing sector, particularly the integration of the ownership of the tracks and the

tote, as well as the competitive challenges of the future, and an appropriate industry and regulatory structure should be researched and developed.

Lottery

The national lottery is an important source of funding for good causes, arts and culture and sport development. The Commission therefore sees no reason for the operation of the lottery to be changed, or for a shift in focus away from the revenue maximisation mandate of the NLB.

Minimising the negative social impact of gambling

Expanding research, education and treatment

At present in South Africa, all industry funding goes to the NRGP or, in the case of the lottery, to the Lotteries Responsible Play Programme. The Commission recommends that consideration be given to the following with respect to the NRGP:

1. Provision could be made through the NRGP to fund other independent organizations in a partnership model. This would enable other providers to receive funding and increase the reach of the NRGP.
2. A fund should be established for independent research. The fund could be housed under the auspices of the NRGP, but should have a more independent evaluation panel to adjudicate applications.
3. The NPS studies should receive additional funding to allow them to focus on more than just the three provinces in which most gambling takes place, and to place greater attention on informal gambling outside the major urban centres.
4. The above proposals will probably require the increase of industry funding for the NRGP. The NRGP should be requested to provide an estimated budget and industry contribution in this regard. Another suggestion is to combine the resources allocated to the NPS and the NGB studies.
5. National and provincial government should develop a national strategy for responsible gambling jointly with inputs from the industry, NRGP and other civil society organizations involved in the education and treatment of problem gambling. The implementation of the strategy should be monitored through the National Gambling Policy Council.

Implementing regulatory measures to protect the vulnerable

South Africa has a host of measures in place at present, which would assist with the minimization of the negative impact of gambling. Some of the measures are not effectively implemented at present and some gaps exist. Particular areas of concern relate to the effective exclusion of minors and self-excluded persons from gambling activities. The Commission is of the view that more onerous requirements, such as mandatory identity checking, as is the case in Singapore, should be considered only if the industry cannot find ways to effectively implement current provisions. These measures need to be applied consistently across all modes of gambling

Improving uniformity and accountability in the regulatory framework

Although South Africa is a well-regulated jurisdiction overall, there appears to be overlap and a degree of inefficiency in the regulatory framework. The biggest source

of conflict appears to be the respective roles of national and provincial government. The Commission is of the view that a clearer delineation of the roles of national and provincial government needs to occur. Furthermore, there are currently inconsistencies between provincial gambling regulatory authorities in the implementation and interpretation of laws, as well as in the enforcement of illegal activities. Current mechanisms aimed at ensuring uniformity need are not effective and need to be reconsidered. The Commission offers the following recommendations:

1. The present licensing and regulatory functions of the provinces should remain as they currently are, but there is a greater need for accountability and transparency on the implementation of gambling policy and national norms and standards. The Commission recommends that the oversight role of the NGB should be removed. Instead, the auditors of provincial regulators could be required to audit provincial compliance with national norms and standards on an annual basis and this should be disclosed in annual reports.
2. The DTI, together with the South African Bureau of Standards, should be responsible for developing national norms and standards. These norms and standards should be comprehensively tested and there should be adequate consultation with all gambling regulators about these norms and standards.
3. The role and composition of the Policy Council should be reviewed. Policy Council should not have a decision-making role, but should rather be a body where the Minister and Ministers of Executive Council (“MECs”) discuss policy matters with a view to achieving policy coherence, consistency and consensus.
4. The Commission recommends that a professional grant-making institution should be established with a board to provide strategic direction and oversight for the NLDTF. The grant-making body could be directly accountable to the DTI or to the NLB.
5. In the context of illegal lottery activity, legal certainty must be created about the responsibility for Sports Pools in South Africa.
6. Finally, the roles of the NGB and the NLB will need to be reviewed and consideration should be given to the continued need for two separate bodies, should the recommendations regarding the mandates of the two institutions be adopted. This is explored further in chapter 6 of the report.

New forms of gambling

Several unlicensed and therefore by definition illegal forms of gambling are evident in South Africa. These include technological advancements on existing forms of gambling, as well as forms of gambling that have been in existence for a while and remain unregulated. The range of unlicensed gambling activities extends from fahfee, cards and dice; bush racing; greyhound racing, interactive gambling, to betting exchanges and certain forms of poker. For the most part, very little is known about the size and impact of these gambling activities. As part of its mandate, the Commission considered each of these forms of gambling in terms of set criteria for assessment and also took into consideration international best practice before making a recommendation. The criteria considered include:

1. Demand
2. Proliferation
3. Punter protection
4. Geographical location
5. Economic viability
6. Economic impact
7. Competition
8. *Enforcement*
9. *Revenue*
10. Animal welfare (where relevant)

Greyhound racing

The Commission carefully evaluated the evidence regarding greyhound racing. A majority view and a minority view on the legalisation of the industry were formed. The majority view is that greyhound racing should not be legalised in South Africa. This view was formed on the basis of the following considerations:

1. There is significant popular opposition to greyhound racing and legitimate concerns about animal welfare.
2. The industry is unlikely to generate significant revenues.
3. In order to become successful, greyhound racing would have to stimulate demand for a new gambling product, which is at odds with the philosophy behind the controlled rollout of gambling in South Africa, and is likely to lead to a proliferation of gambling.

The minority view is that more research will need to be conducted, specifically with respect to the over breeding and retirement of racing animals, before a decision can be made with regard to the possible legalisation of greyhound racing in South Africa.

Should a decision be made to legalise dog racing, the Commission recommends that the following points should be kept in mind in creating a regulatory regime:

1. A breeding programme needs to be properly monitored from the outset.
2. A robust licensing system needs to be put into place to ensure that the persons involved are fit and proper people. This is especially important, as racing is predominantly a cash economy, which can attract unsavoury elements.
3. A proper rulebook needs to be developed, and accepted by all parties. This can be adapted from other jurisdictions.
4. An effective drug control/management framework needs to be put into place. This is important from both an animal welfare and gambling integrity perspective. People will only bet on the industry if it is fair.
5. A strong policy framework for animal welfare across the entire lifecycle of the dog needs to be developed and put into place. The framework developed in other jurisdictions, as well as the “duty of care” imposed by the Animal Welfare Act in the UK, should be considered here.

Fahfee

The Commission did not have the time or opportunity to conduct independent research into this inherently illegal component of the gambling sector. On the basis of information supplied by PGRAs and the limited extant studies on fahfee, the Commission raised concerns about the following:

1. Fahfee is an entirely cash-based business that does not pay tax.
2. Significant concerns have been raised about the involvement of fahfee operators in other illicit activities, including rhino and abalone poaching, trading counterfeit goods, and cash-in-transit robberies.
3. Fahfee is particularly appealing to underage gamblers and elder women, and is a high-risk game in terms of its propensity to encourage problem gambling.

Given the significance of various forms of unlicensed and hence illegal gambling in South Africa, particularly games like fahfee (and dice) that target young people and the poor, the commission is of the view that additional research needs to be carried so that appropriate policies regarding these gambling activities can be developed.

Bush racing

Bush racing are informal horse races, which usually take place in rural area, making policing and prohibition difficult. Given the nature of the activity, it seems unlikely to see substantial growth and therefore contribute to proliferation or cannibalization of legal activities. In order to create some regulatory framework for this type of activity, the Commission recommends that consideration be given to establishing a system of occasional licences or notices, issued by or to the local authorities, as is the case in Great Britain. In Great Britain, informal racing activity is allowed for a maximum of eight (8) times per year per venue. These races would have to be properly supervised by the appropriate animal welfare authorities.

Bingo and electronic bingo terminals (“EBTs”)

EBTs, as introduced into South Africa, are gaming machines on which bingo can be played. These machines look, sound and feel like slot machines. Although there are differences between EBTs and slot machines, the spinning wheel symbols of traditional slot machines create a visual similarity with a slot machine. Thus, while EBTs may differ from slot machines, the fact that they look, feel and sound like slot machines serves to confuse punters.

The Commission is of the view that EBT’s in their current form should not be allowed in the country, as it creates a third category of gaming machine with no limit on the stake or payout. At present, bingo operators may apply for LPMs and may qualify for up to 40 LPMs upon application. The Commission sees no need for changing the current policy. Should a decision be made to permit EBTs more widely, the Commission offers the following recommendations:

1. The approach adopted in the United Kingdom with respect to VBTs is instructive and a similar approach would be recommended in South Africa. Should EBTs be retained, they should retain to the look, feel and sound of bingo, implying that the spinning wheels, lights and sounds of slot machines should be removed.
2. Furthermore, clear limits on the number of EBTs should be set.

Poker

The game of Poker like bingo can be delivered in various forms: in the form of poker tournaments, held at casinos; social poker games held in people's homes; online poker, which is played over the internet; and poker offered on gaming machines. There appears to be substantial demand for poker to be played outside of licensed casinos and in particular, online. However, currently, poker may only be played at casinos. The current framework appears to be too restrictive, given the demand, which manifests in illegal games and tournaments.

In order to bring into line the illegal industry and to provide player protection against potentially unfair rules and rakes, the Commission recommends that the regulatory framework should be reviewed and a particular policy on poker should be developed. In particular, the Commission offers the following recommendations for consideration:

1. It is proposed that regulators should license poker tournament operators. Licensed operators would be able to run games at licensed gambling premises (existing licensees) or at places where occasional licences can be obtained through a local government office, such as in restaurants, as determined by the proposed policy. This could provide gambling operators, such as bingo halls, with other forms of revenue.
2. The Commission is of the view that while licences should be issued to host poker events at specified venues, which could include licensed gambling venues and venues that have obtained occasional licences, standalone poker houses and clubs should not be permitted. These clubs will lead to the proliferation of gambling venues, which is undesirable from the destination approach that has been adopted in South Africa.
3. Online poker should also be regulated through online gambling legislation, but should be subject to the same rules regarding the game, as land-based poker. The regulators should ensure that operators put in place measures to check for and prevent as far as possible unfair play, such as collusion.

Betting exchanges

Betting exchanges are a market innovation in the betting area that originated in the United Kingdom, where they were first licensed in 2000. A betting exchange acts as a brokerage by allowing punters to bet against each other in a controlled market place. It is thus similar to a stock exchange, in that it provides a platform to connect gamblers with opposing views on the outcome of a sporting event, in the same way a stock exchange connects buyers and sellers of securities. The betting exchange carries no risk, as punters play against each other not "against" the house, and as such, has no incentive to manipulate the odds or the outcome. Betting exchanges maintain a full evidentiary audit trail of the betting transaction, which helps sports regulators identify corrupters or fraudsters.

The Commission recommends bringing these activities into the regulatory framework explicitly. At present, there is no transparency in the regulatory framework. The criteria of provinces that are licensing operators of similar activities are not clear, there are no standards and it opens the door for proliferation if regulatory standards and limits are not clearly set out upfront.

Bringing these activities into the regulatory net and providing punters with a (limited) choice of licensed operators is likely to provide an outlet for existing demand and will

discourage punters from seeking out unlicensed sites. It would maximise punter protection and generate some tax revenues from these activities.

On the assumption that betting exchanges are unlikely to stimulate much new demand, the Commission is not greatly concerned that it will result in proliferation, provided that betting exchanges are regulated in the context of online gambling. It is recommended that the online regulation makes clear provision for such intermediaries and sets out the requirements for the regulation of betting exchanges.

Virtual racing

The Commission considered virtual racing and concluded that it an interactive gambling game. It is therefore recommended that this game should be regulated accordingly.

Online gambling

While there are still a number of international jurisdictions that prohibit interactive gambling (many of those jurisdictions already allow online betting), the trend is to move towards regulation and licensing. The challenge in this sector is to provide sufficient incentives for operators to become licensed, as the borderless nature of their activity allows them to escape regulation fairly easily. One such incentive is the ability of licensed operators to advertise their services legally.

During the international visits, regulators and operators impressed on the Commission the need to regulate online or remote gambling holistically. At issue are the opportunities that the distribution mechanism, namely the Internet, telephone and cell-phone technology, offer for exploitation and for proliferation. The current distinction in South African law between interactive gambling and other forms of online gambling, such as bookmaking, the tote and the lottery, which offer their services online as well, is artificial and does not provide punters with uniform protection.

The Commission is therefore of the view that a holistic view of online gambling should be taken to its regulation that includes interactive gambling and all forms of remote gambling, such as telephone or cell phone gambling. The online gambling regulation should also provide for intermediaries, such as betting exchanges and include online betting through bookmakers and the totalisator via the Internet. The National Gambling Act would have to be amended to reflect this approach to include all forms of remote gambling rather than limiting this to games played against the "house" as is currently the situation.

It is proposed that a maximum number of licences should be determined for online gambling to allow for the controlled rollout of online gambling and to monitor its socio-economic impact over time. Too little is known at this stage about its impact on problem gambling to be able to allow a free market. In addition, the approach to limit the number of land-based gambling opportunities can be substantially undermined, if online gambling is not strictly controlled and limited. Restrictions on the number of operators and the number of games should be considered. Care should, however, be taken not to make the number of licences too few or restricted, as the intention of a licensing regime would be to attract operators, not to exclude them.

The Commission further recommends that current requirements that a server must be hosted in South Africa should be reviewed and that consideration should be given to adopting mandatory self-limitations by players, restrictions should be imposed in the ability to change those limits and strict requirements regarding identity checks should be introduced.

Finally, the Commission recommends that a single regulator be responsible for the regulation of online gambling in South Africa and that consideration should be given to combining that online regulator with the function to regulate the national lottery and sports pools. This recommendation is based on the synergies between the regulation of lotteries and sports pools with online gambling and betting in particular.

Chapter 1: Introduction and context

1.1 Introduction

Since the legalization of gambling in South Africa in 1996, the gambling industry has grown and evolved substantially. Technological advancements on existing forms of gambling and new forms of gambling have emerged and have created challenges for regulators and policy makers. Furthermore, some forms of illegal gambling have persisted and appear to be growing in popularity.

Concerns about the socio-economic impact of gambling in South Africa, especially on the poor, have been lingering since the legalization of the industry. A substantial body of research has been conducted over the period and enables a better assessment of the impact of current gambling activities on society.

The recent debates about the possible legalization and regulation of interactive gambling have opened up broader questions about the appropriateness of current gambling policy, regulation, and the proliferation of gambling opportunities. To consider these broad questions, as well as specific challenges around the regulation of particular forms of gambling, the Minister of Trade and Industry appointed the Gambling Review Commission in December 2009.

Concurrently with the process of appointing a Gambling Review Commission, Parliament, through the Portfolio Committee on Trade and Industry, conducted public hearings on a range of gambling-related issues between October 2009 and February 2010. A large number of submissions were made to Parliament. The work of the Gambling Review Commission began, as the Parliamentary process drew to a close, giving the Commission the immense advantage of building on the valuable work done by the Portfolio Committee.

This report contains a holistic review of the gambling industry, maps its evolution since 1996, assesses the economic and social impact of gambling in South Africa and the efficiency and effectiveness of the regulatory framework and concludes with recommendations regarding the proliferation of gambling opportunities and the regulation of existing and new forms of gambling.

1.2 The evolution of gambling and gambling policy in South Africa since 1994

1.2.1 Introduction

Prior to 1994, all forms of gambling other than horseracing were prohibited in South Africa through the Gambling Act of 1965. Gambling, however, was a fairly popular activity and South Africans travelled to neighbouring countries, such as Zimbabwe, Swaziland and Botswana to gamble at casinos. Once gambling was legalized in the former homelands of apartheid South Africa, it became even more accessible and the gambling enclaves were successful in attracting large numbers of South Africans. The casinos in the former homelands styled themselves not only as casinos, but as entertainment centres, offering a range of other activities, such as musical shows, restaurants etc. A total of 17 casinos were established in the former homelands. These comprised 2 in the areas that would become the Free State, 7 in the North

West, 1 in Limpopo and 7 in the Eastern Cape.¹ In addition, illegal gambling activities flourished in South Africa, as the police had other priorities and did not enforce the prohibition on gambling. As a result, illegal casinos proliferated and, according to some reports, lined the main streets of certain towns in South Africa.

When the former homelands were integrated into a democratic South Africa after 1994, the casinos presented a particular problem, as they became illegal businesses overnight. Through the interim Constitution in 1994, these casinos were given a special dispensation.² However, all other forms of gambling, other than horseracing, remained illegal. In order to deal with the anomalous situation, the Minister of Justice established the Lotteries and Gambling Board in August 1994 with a mandate to advise the government on a national policy on gambling for South Africa.

The Lotteries and Gambling Board was made up of six (6) representatives of the private sector, one (1) representative from the Departments of Justice, Finance and Social Development each, and nine (9) representatives of the provinces. The report by the Board became known as the Wiehahn report, after its chairman, Professor Nic Wiehahn. The Wiehahn report (1995) has been very influential and the gambling policy set out in the report has largely endured in South Africa since the release of the report.

Its recommendations were adopted and implemented by policy makers and regulators. The composition of the Commission, some claim, had a major influence on the outcome of the Commission and the future of gambling policy. Strong provincial representation ensured that revenue generation was one of the main objectives of legalizing gambling, as gambling tax is one of a limited number of taxes that provinces are allowed to collect.

1.2.2 The Wiehahn report

In October 1994, the Lotteries and Gambling Board published an interim report, which expressed a view that “the Gambling Act, 1965 (Act No. 51 of 1965) no longer reflects the true moral viewpoint of the majority of South Africans and that the Government should legalise lotteries and gambling in the Republic of South Africa.” The full report was issued in 1995. The final report contained draft legislation for the regulation of gambling and lotteries.

The interim report argued for the legalization of gambling on the following basis:

- The prohibition on gambling was deemed ineffective due to a lack of enforcement by the South African Police Services, resulting in a large number of illegal gambling activities. It was estimated that around 2,000 casinos were operating illegally in South Africa. The fact that gambling was illegal, but tacitly accepted by the law enforcement agencies, generated significant uncertainty for the industry and for punters. The Wiehahn Commission argued that prohibitions in general are not successful, as people find ways to circumvent them. It recommended that it would be more appropriate to legalize gambling activities, but to ensure that it is strictly controlled through a licensing scheme, dedicated policing and administrative functions.

¹ Astrid Ludin, Interview with Chris Fisser, 7 April, 2010.

² Astrid Ludin, Interview with Chris Fisser, 7 April, 2010.

- The prohibition on gambling in South Africa resulted in an outflow of funds to neighbouring countries, where gambling was legal. The state was foregoing significant tax revenue from the flourishing illegal gambling industry in the country and the gambling activities situated in neighbouring countries, which would accrue to the State if gambling was legalised. Thus the Wiehahn Commission recommended that legalising gambling could generate significant revenue for the state and for social investment.
- It was further held that a “State approved lotteries and gambling system” would contribute to economic development and employment creation, directly and indirectly through its activities, but also through its close links with tourism, leisure, outdoor and free-time activities. The Wiehahn Commission report (1995, pp.3-4) predicted that by 1997, the gambling industry would have created and sustained an estimated 100,000 jobs in South Africa.

The key principles or objectives for the regulation of gambling, as outlined in the full report of the Wiehahn Commission, were as follows:-

- The protection of society from the over-stimulation of latent gambling through the limitation of gambling opportunities;
- The protection of players and integrity and fairness of the industry through the strict control and supervision of the industry;
- The uniformity and harmonization of policy and legislation at all levels of government and across provinces through minimum norms and standards and co-operation and co-ordination;
- The generation of revenue and taxes for provincial government and for good causes;
- The economic empowerment of the historically disadvantaged;
- The promotion of economic growth, development and employment.

The Wiehahn Commission report acknowledged the existence of gambling addiction, but concluded that too little information was available in South Africa and elsewhere to assess the extent of the problem and its impact. It therefore recommended that research should be conducted and that a programme for the treatment and rehabilitation of pathological gamblers should be established (Wiehahn Report 1995, p.107).

The establishment of independent provincial regulatory agencies for the administration and enforcement of provincial gambling legislation was recommended, in accordance with the 1994 Constitution, which provided that provincial governments should have legislative competence over “casinos, racing, gambling and wagering”. It further recommended the establishment of a National Gambling and Wagering Board with the responsibility to:

“investigate and advise the central and provincial governments on all matters pertaining to gaming and wagering; to co-ordinate, facilitate and liaise between central government and the provincial legislatures and the provincial legislatures themselves on these matters; to conduct studies and research into any subject of a gaming and wagering nature and report thereon; to liaise and co-operate with national and international gaming organizations on matters of mutual concern and interest; to approve gaming machines and equipment; to approve various types of games that may be played, and, to perform all such other functions as may be necessary for the proper

performance and exercise of its power and role” (Wiehahn Report 1995, p.98).

In order to maximise co-ordination and co-operation, the Wiehahn Commission recommended that the Board of the national structure should consist of a chairperson, nine (9) provincial representatives and five (5) representatives of national government. Two interesting recommendations were further made in the full report, which were only partially implemented. The first is that the national structure should be funded through provincial revenues, in proportion to the amount of gambling revenue. The second is that each province should provide in its legislation for the “necessary control and regulatory structure in accordance with criteria laid down in national legislation” (Wiehahn Report 1995, p.98).

In anticipation of potential conflicts between different spheres of government, the Wiehahn Commission recommended “the closest liaison and co-operation between central, provincial and local government be sought and maintained so that fairness, frankness and justice in the gambling industry of South Africa can prevail” (Wiehahn Report 1995, p.21).

To address the potential lack of uniformity in gambling norms across provinces, the Commission urged “that legislatures at all levels of government should strive towards as much uniformity as possible in their policy and legislation with regard to gambling in order to establish and develop a uniformly controlled and regulated industry in South Africa” (Wiehahn Report 1995, p.22). It recommended that national legislation should contain minimum principles, which provinces must incorporate in their legislation.

The Wiehahn report envisaged five forms of gambling, namely the lottery, sports pools, casinos, bingo and betting and anticipated that most changes would come from technological changes, rather than from new forms of gambling (Wiehahn Report 1995, p.114). In the report, casino gambling includes licences for large casino operators, licences for small casino operators and licences for a limited number of casino machines to be held by existing businesses. The last category of licence is what is today referred to as the Limited Payout Machine (LPM) industry. It is specifically referred to as a gaming machine licence. The Commission recommended that the stakes and prizes for these licences should be smaller than those at a casino and recommended in particular that the maximum prize should not exceed R2, 000 for a single win (Wiehahn Report 1995, pp.103-04).

Bingo was referred to as paper-based bingo and the report indicated that it was not clear how successful bingo would be in South Africa. It envisaged, however, that Bingo licences would be issued to casinos and to stand alone operators (Wiehahn Report 1995, p.117).

Horseracing was not dealt with in any detail by the Wiehahn Commission. It recommended, however, that the horseracing industry should not be given any special dispensation or preferential treatment and should compete for licences as any other operator would have to. The Wiehahn Commission did not express a view on dog racing, but rather recommended that further research should be conducted (Wiehahn Report 1995, p.123).

The report proposed the establishment of a national, state-owned lottery, to be run and marketed by a private sector company, with the skills and capacity to run a lottery and with a demonstrated commitment to Black Economic Empowerment. The Commission recommended that the lottery should be regulated and controlled by a

control structure that is separate from gambling and dedicated to the lottery, in line with international best practice. The Board of Directors of the regulatory body was to have representation from the public and private sectors and provinces.

Revenue maximization for good causes was identified as the primary objective for the national lottery. No mention was made of a possible negative social impact. It was further recommended that a distribution trust fund should be established for the proceeds of the national lottery, therefore envisaging an arms length relationship between the regulator and the distribution of funds. The mechanisms for distribution were not elaborated on or identified in the report (Wiehahn Report 1995, pp.78-81).

1.2.3 Balancing competing policy and regulatory objectives

There is an inherent tension between some of the objectives set out by the Wiehahn Commission. The primary tension is between objectives relating to revenue maximisation on the one hand, and the minimisation of a negative social impact on the other. This tension has played itself out in the regulatory framework over the 14 years following the legalization of gambling in two ways. Firstly, with respect to the lottery, the Wiehahn Commission report clearly recommended the adoption of a revenue maximization model, with no specific regard for the social impact. This approach did not sit comfortably with the approach taken to other forms of gambling, where there are greater concerns relating to the potential negative social impact of gambling. The second tension has played itself out between different spheres of government, where different objectives have taken priority – at provincial level, the revenue objectives were given primary importance, whereas at the national level, the potential negative social impact was given much attention.

A useful framework to consider different objectives was developed by Charles Clottelter and Philip Cook in their study of State Lotteries in America. The authors identify three models, namely a revenue model, a consumer model, and a sumptuary³ model. The revenue model has at its primary objective the maximization of government revenues, and achieves this through imposing few restrictions on advertising and by allowing any number of different games. The Consumer model seeks to maximize consumer welfare and focuses on ensuring that advertising is accurate and not misleading. There are no restrictions on the product variety that may be offered and the objective is to ensure the highest payout for the consumer. In the sumptuary model, the aim, as the name implies, is to regulate operator behaviour and consumer expenditure. The sumptuary model subordinates market forces to public policy, and seeks to accommodate existing demand whilst discouraging excessive consumption. In line with this mandate, it tends to discourage advertising and requires informational messages and warnings about the potential dangers of gambling. This model provides for a restricted product variety and seeks to impose low payout rates to discourage participation.

³ Sumptuary is defined as regulating behaviour and restricting spending.

Model	Objective	Promotion	Product variety	Payout rate
Revenue model	Maximise government revenues	Few restrictions	Unlimited	Low
Consumer model	Maximise consumer welfare	Truth-in advertising restrictions	Unlimited	High
Sumptuary model	Accommodate existing demand while discouraging excessive involvement	Informational messages and warnings	Limited	Low

Source: Clottelter and Cook (2001, p.242).

These models are supposed to provide a holistic framework for the regulation of the sector in question. Thus, if a revenue model is adopted, then the relevant advertising and product rules should consistently support the objectives of this model. Undue restrictions on advertising or the ability to introduce new games, for example, will restrict the ability for the gambling mode in question to maximize government revenues. Or if a sumptuary model is adopted, then the introduction of new products designed to create new demand rather than to accommodate existing demand undermines this objective.

In South Africa, the Wiehahn Commission recommended the adoption of a revenue model for the National Lottery and a sumptuary model for the remainder of the gambling sector. These recommendations were implemented in the national gambling and lotteries legislation.

In practice, these models are not implemented consistently in South Africa, and there are considerable pressures placed on the relevant regulators to make concessions to political and public pressures. Provincial governments, in particular, are under considerable pressure to maximize revenues, and their approach to gambling regulation invariably reflects this overriding concern. From their perspective, it makes little sense to limit demand or discourage new investment and the expansion of the gambling industry in their provinces. The National government, by contrast, is under greater pressure to protect the public from the expansion of the gambling sector, and is less concerned with maximizing provincial revenues. Thus the sumptuary approach is supported at the national level, but incrementally undermined by provincial revenue maximizing objectives. (The debate over the introduction of electronic gaming machines at bingo halls provides a good example of these competing objectives. This is discussed in some detail below.)

1.2.4 The evolution of gambling post-Wiehahn: 1996 -2002

Between 1995 and 1999, the Department of Trade and Industry (“DTI”), tasked with responsibility for lotteries and gambling, set about implementing the recommendations of the Wiehahn report. The focus was initially on the establishment of the legal and regulatory framework.

Two laws, proposed as part of the report, were adopted and enacted with minimal, if any, changes.

The National Gambling Act of 1996 came into effect in April 1997, and established the National Gambling Board (“NGB”). According to the 1996 Act, the role of the NGB was largely advisory. Their function was to advise the Minister on national norms and standards and the maximum number of licences to be awarded. Their functions further included providing advice to the provincial gambling regulatory authorities, also called the Provincial gambling regulatory authorities (“PGRAs”), to monitor market share and industry concentration, to conduct research and to facilitate the resolution of disputes between provinces. Finally, they also had responsibility for the funding of programmes for the treatment and rehabilitation of problem gamblers.

The National Gambling Act, 1996 (Act No. 33 of 1996) made provision for the granting of a maximum of forty (40) casino licences, and divided this up between the provinces.⁴ This was intended to allow for roughly one (1) casino per million people, a ratio used in other jurisdictions such as the USA.⁵

The allocation per province reflected a political compromise aimed at ensuring a degree of equity in access to gambling revenues, and did not reflect strictly the demographic character of each Province. Thus Gauteng received 6 licences whilst the sparsely populated Northern Cape received 3 licences.⁶

Importantly, §13(3)(j) of the 1996 Act stipulated that the maximum number of casino licences which any company could hold was 16, of which no more than 2 could be held in a particular province (or 3 in the case of persons who held casino licences in that province prior to 1994). The intention, following the Wiehahn Commission recommendations, was to provide for a wide spread of ownership in the sector and to promote competition.

The NGB only became fully operational in 1998, when the CEO took office and the staff was appointed. Between 1996 and 1998, the provinces passed and enacted provincial gambling laws and established the provincial gambling regulatory authorities in the absence of any national guidelines, norms and standards. There is a strong view held by a range of stakeholders that the delay in the establishment of the NGB made it very difficult for the NGB to establish its authority and to effectively fulfill its role and mandate, as outlined in the Act. Many officials in the current provincial gambling regulatory authorities still hold the view that the NGB is a superfluous body.

The National Lotteries Act of 1997 provided for the establishment of a state-owned lottery as an exclusive national competence. The lottery has therefore escaped much of the difficulties that have resulted from concurrent jurisdiction in other areas of gambling.

The National Lotteries Board (“NLB”) was established in 1998. The first licensed operator for the National Lottery, Uthingo, was appointed in 1999, and the first draw of the National Lottery took place in March 2000. The National Lottery experienced

⁴ See §13(1)(j) of the 1996 Act. The 2004 Act abandoned this prescription, although the actual allocation per province remained relatively similar to that envisaged in the 1996 Act. The differences are as follows: Eastern Cape 5 (actual = 4); Free State 4 (4); Gauteng 6 (7); KwaZulu-Natal 5 (5); Mpumalanga 4 (3); Northern Province 3 (2); Northern Cape 3 (3); North West 5 (4); Western Cape 5 (5).

⁵ Astrid Ludin, Interview with Chris Fisser, 7 April, 2010.

⁶ Astrid Ludin, Interview with Chris Fisser, 7 April, 2010.

significant growth in the first three years of operation, but the revenues then leveled off through to the end of the term of Uthingo in 2007. In line with the revenue maximising objectives of the lottery, there was continued pressure to allow new games, and a mid-week draw was introduced in order to maintain the revenues. The six-month delay in the appointment of the second lottery operator, Gidani, has resulted in a significant reduction of lottery revenue. The delay was caused by the legal challenge launched by Uthingo on Gidani's appointment.

While the attention of the regulator was focused on the maximization of the revenue of the National Lottery for the funding for good causes, the public and parliamentary focus on the National Lottery has been on the distribution of funding generated for good causes. Charities in particular have been very vocal in their dissatisfaction with the speed at which funding is distributed and critical about the processes in place.

Despite several parliamentary hearings and internal reviews by the Department of Trade and Industry, the only substantial external review of the National Lottery took place in 2008 (Louw and Ronald-Louw, 2008). The recommendations about the changes to the structure and governance of the Distribution Agencies ("DAs") and the National Lottery Distribution Trust Fund ("NLDTF") have not yet been implemented.

1.2.5 The first review of gambling policy

Three matters propelled a review of gambling policy and legislation in 2002. The first was the ongoing disputes and contestation between the PGRAs and the NGB. The second was the increased concern among parliamentarians and policymakers about the negative socio-economic impact of gambling. The third matter related to forms of gambling that had not been dealt with and anticipated in the National Gambling Act 1996, in particular interactive gambling and horseracing. What began as a set of amendments resulted in a substantial policy review and new piece of legislation that sought to address the concerns outlined and introduced new measures to deal with them.

In response to the difficulties in the relationship between the national and provincial regulators, the new legislation sought to clarify and review the respective roles of the NGB and the PGRA's and to introduce dispute resolution measures to deal with the ongoing conflicts between regulators. Essentially, the legislation set out a division of labour, which required the PGRA's to fulfill the basic regulatory functions such as licensing, compliance and enforcement, especially of illegal gambling activities, while the role of the NGB was changed from being purely advisory to having an oversight function.

While the 1996 legislation provided for the publication of national norms and standards by way of regulation, the 2004 legislation set out a large number of norms and standards in the legislation itself. The NGB remained responsible for ensuring that these norms and standards were observed.

With the revision of the role of the NGB, its governance structure also needed to be reviewed. The 1996 legislation provided for a chairperson, five (5) representatives of national government, nine (9) representatives of provincial government and two (2) independent members deemed to have necessary skills. As the NGB was now to have oversight over the provinces, the Board was reconstituted and no longer included provincial representatives. The NGB has continued with an informal co-operation forum called the CEOs Forum, at which all the provincial regulators are represented. In addition, a statutory body called the National Gambling Policy

Council was introduced to promote co-operative governance between the Minister of Trade and Industry, and nine (9) Ministers of Executive Council (“MECs”).

In response to the concerns about the socio-economic impact of gambling, the National Gambling Act of 2004 introduced a number of new regulatory measures, aimed at improving the protection of vulnerable persons and to further entrench the separation between public spaces and spaces where gambling activity took place.

The 2004 legislation also sought to deal with new and existing forms of gambling. To this end, enabling provisions for the future amendment of the legislation were created in respect of interactive gambling and horseracing. Neither areas of regulation had been sufficiently resolved to include in the 2004 legislation. The area of interactive gambling was contested between national and provincial regulators. Accordingly the legislation set out a requirement for consultation between national and provincial regulators to arrive at a new policy on interactive gambling. It merits mentioning here that when the issue of interactive gambling was first raised in South Africa, it was in response to a study conducted for the NGB in 1999, when the opportunity for South Africa to become a hub for interactive gambling was explored. The study recommended that early entrants had the opportunity to provide services and infrastructure to interactive gambling operators. However, by the time the legislation framework was developed, the opportunity had largely fallen away, as South Africa was no longer an early entrant. A framework for interactive gambling has been created and legislative amendments to allow for its introduction were effected in 2008. The provisions are, however, not implemented, pending the adoption of regulations in this regard.

Finally, the 2004 legislation sought to address a number of other matters, including to provide for enabling provisions to allow provinces to vary and review the licences issued, as it became apparent that provinces had applied different criteria and imposed very different licence conditions on casinos, the largest form of gambling. A key matter for this Gambling Review Commission (“GRC”) to consider is whether these measures have been effective.

1.2.6 Conclusion

The Wiehahn Commission set out a number of objectives for the regulation of gambling in their report, which has informed and largely determined gambling policy since. While the overall objectives have not changed, the relative importance attached to individual objectives has changed over time. Tensions between objectives have also emerged, namely between a revenue generation and maximization objectives, pursued by provincial gambling regulators and the National Lotteries Board, and concerns about the socio-economic impact of gambling by parliamentarians, policy makers and members of the public. The tension between these objectives are playing out in the context of decisions that have to be made about whether new forms of gambling should be allowed and whether the regulation of existing forms of gambling is sufficient.

1.3 The Gambling Review Commission

In December 2009, the Minister of Trade and Industry appointed a five (5)-member Gambling Review Commission with a broad remit to “consider if the currently legalised gambling activities can/ should be expanded or curtailed considering the number of casinos, limited payout machines and bingo outlets already licensed”,

having regard for the “socio-economic consequences attached to gambling, such as problem gambling, youth gambling and other social concerns”.

The Terms of Reference of the Gambling Review Commission included a “review and revisiting of the current legislation on legal gambling activities and determine whether the South African gambling industry conforms to the objectives of the Act”

As part of this mandate, the Commission is tasked with:

1. A review of the industry, holistically since 1996, to assess the impact of the industry on society and the economy, taking into account the demography of participants, problem gambling, addiction to gambling, youth gambling, strategies in place mitigating the negative effects of gambling, and the efficiency and effectiveness of these strategies. In addition, it will focus on ascertaining commercial growth of the gambling industry in South Africa versus the contribution of the industry towards social responsibility, and provide recommendations for the improvement of strategies already in place or new strategies to address the social ills of gambling.
2. An assessment of the proliferation of the gambling in South Africa, taking into account legalised and illegal gambling activities; the relevance of legalised activities to the industry, in light of technological developments; and the viability of the industry to accommodate further roll-outs of new activities (such as animal racing, person-to-person betting, etc.). In addition, it will focus on the expansion of already existing gambling activities, taking cognisance of the efficient and equitable allocation of resources to the provinces.
3. An assessment of the legislative objectives regarding enforcement mechanisms in the gambling industry, and determination if regulatory bodies put in place are effectively achieving these objectives; and recommend intervention measures to best regulate the industry.
4. Benchmarking with other jurisdictions on best-policy approaches in the gambling industry, thereby discussing and deliberating best-practice case models on regulatory aspects.
5. Recommending policy positions in the gambling industry based on the research findings. The recommendations will include, but are not limited to:
 - Further controls or mechanisms to be considered in achieving the intent of current legislation;
 - Transitional mechanisms, prior to the implementation of proposed recommendations; and
 - A manner to implement the recommendations, in respect of existing and operational sectors of the gambling industry.

The Commission’s mandate was extended by discussion with the Minister of Trade and Industry to include the lottery in its scope, as well as to deal with specific issues, such as EBTs. In addition, the Commission has chosen to deal with certain issues that emanated from public hearings and stakeholder interactions, such as bush racing and virtual horseracing.

1.4 The Parliamentary Process

The Commission's work follows and builds upon the parliamentary processes that the Portfolio Committee on Trade and Industry engaged in between August 2009 and February 2010.

The Portfolio Committee initiated its own policy review process when they were invited by the DTI to make inputs into the regulations on interactive gambling. During its deliberations, the Committee arrived at the view that a more holistic review of gambling was required. "The focus of the review was on the vast socio-economic impacts of gambling on local communities and society in general, the impact of misleading advertising, the regulation of cross-border gambling, the efficacy of current regulatory environment and the implementation of the interactive gambling legislation that had been passed in 2008."

The Portfolio Committee initiated a process of public hearings and written submissions, which took place between November 2009 and February 2010. The Committee also undertook a site visit to a Cape Town casino. The Portfolio Committee received a large number of submissions and summarized the main points in their recent report. The key issues highlighted in the Parliamentary report are as follows:

- The socio-economic impact of legalized gambling
- The impact of misleading advertising
- The regulation of cross-border gambling
- The current regulatory environment, including inconsistencies in regulation across provinces, the lack of capacity of regulators and municipalities, Electronic Bingo machine regulation, the ability of the CEMS to monitor an increasing number of LPMs, and the integrity of the NRGF
- Interactive gambling

The Portfolio Committee concluded its report by indicating that it will await the outcome of the Gambling Review Commission, but made some preliminary observations, outlined below:

1. The illegal use of interactive gambling sites, even if regulated in South Africa, will be hard to curb and monitor due to continuous technology development. On the one hand, regulation would provide a legally protected space for South African adults to engage in recreational online gambling activities. This space could allow government to identify problem gamblers. However, regulating the activity will not necessarily inhibit the use of unlicensed foreign sites that could still be accessed by the very individuals that the legislation seeks to protect, such as minors and problem gamblers.
2. The disparity between the rules for the National Lottery and the rules for other land-based gambling activities. In the former case, the emphasis is very much on the promotion and maximization of National Lottery sales. In the latter, the emphasis is on restricting operations through strict licensing criteria and limits on advertising.
3. National and provincial gambling legislation should be reviewed for alignment and recommendations made to the relevant parties for consideration.
4. The requirements for the LPM industry should be reconsidered given varying restrictions across provinces.

1.5 Approach of the Commission

Although the Commission members were appointed for a twelve-month period, the Minister indicated that, due to the urgency of the report, a report was expected from the Commission by the middle of the 2010. The limited timeframe has restricted the ability of the Commission to conduct and commission primary research and has necessitated reliance on desktop research, site visits, stakeholder and public submissions, the parliamentary process, and visits to various international gambling jurisdictions. It has also meant that the Commission has not been able to delve into all relevant issues with the desired depth. The report must therefore be considered with these limitations in mind. Where the Commission believes that further research or examination has merit, it is indicated in the report.

Twenty (20) sessions for public engagement across nine (9) provinces were held to gather initial inputs from stakeholders. The attendance at the public sessions was not overwhelming. This can be attributed in part to a lack of marketing of the sessions, but also possibly to a lack of interest in general matters relating to gambling and fatigue with public hearings so soon after an intensive parliamentary hearing and submission process. These public engagements were followed up with individual stakeholder engagements initiated by the Commission to obtain information and further inputs.

In addition to the public consultations, the Commission requested a spatial mapping of gambling activities, overlaid with socio-economic data, to provide a more comprehensive picture of the social context for gambling opportunities. The study could not be completed in time for the finalisation of the Commission's report to the Minister, but it is hoped that the Department of Trade and Industry will complete the mapping exercise and make it available once completed.

Before finalising its report, the Commission embarked on a study visit to selected jurisdictions. One team visited the United Kingdom and Alderney (the Alderney regulator very kindly interacted with the Commission in the United Kingdom) and Italy, while another team visited Australia, Singapore, Hong Kong and Macau. The jurisdictions were selected on the basis of particular issues the Commission believed it needed to understand better. The selection was informed by an extensive desktop study into international jurisdictions to enable the benchmarking of the South African policy and regulatory framework, which is contained in the Appendix to the report. The Commission is grateful to the regulators, industry and civil society organizations that met with us, shared their experiences and views, and debated South Africa's policy options with us. Before finalizing its report, the Commission had further limited stakeholder engagements, conducted under very tight timeframes, to obtain limited inputs on the accuracy of the report and to obtain feedback on its recommendations. It is expected that the Minister of Trade and Industry will engage in a broader consultation process, once the report has been finalized.

The report examines the development of the gambling industry, including the lottery, since 1996, in Chapter 2. Chapter 3 outlines the social impact, particularly with respect to problem gambling and vulnerable groups, and examines measures in place to minimize the potential negative impact. Chapter 4 examines the regulatory framework, its efficiency, effectiveness and its challenges. Chapter 5 takes stock of the achievements of current gambling policy and makes recommendations about the potential expansion of existing licensed gambling opportunities, while Chapter 6 examines forms gambling, not permitted in terms of the existing policy framework,

considers international evidence and makes recommendations regarding their introduction.

The report contains the collective work of all five (5) members of the Commission, as will be evident from the different writing styles contained between and within chapters.

Chapter 2: Overview of South African gambling industry

2.1 Introduction and quick overview of the industry

The South African gambling industry has shown steady growth since the onset of its legalisation in 1996. Although the downturn in the global economy has placed the industry under some pressure, it remains highly lucrative and has established itself firmly as one of the contributors to the fiscus. The industry is, however, approaching mature status, and it is unlikely that the growth rates of the past decade will be repeated. At the same time, pressure from new gambling modes – especially online gambling – is likely to put pressure on the established sectors of the industry.

Economically, the gambling industry has seen steady growth in the past decade, although this has begun to tail off. In the 2008/09 financial year, gross gambling revenues for casinos, betting, LPMs and bingo increased by 1.94% from R15, 62 billion to R15, 92 billion, although this represents negative real growth when inflation is taken into account. This is in line with world trends, the one exception being casino revenues in Macau, which were up an astonishing 70% in the same period (*Bloomberg Business Week*, May 27, 2010).

Whereas casino revenues appear to have stabilised, the horseracing industry is caught in a far more severe downward trend. With on and off course betting revenues under pressure, both Phumelela and Gold Circle reported a decline in revenue, due in large measure to pressures experienced within their horseracing divisions. This has forced the two companies to reconsider their existing business model, and is likely to precipitate a closer integration of their horse racing and (growing) sports betting divisions.

Sales for National Lottery products (Lotto and LottoPlus, Powerball, WinaManje, and SportsStake) have fluctuated considerably in the past few years, in part due to declining interest in the lottery combined with the negative impact of the world economic recession, but largely, it is also because of the controversy over the appointment of a second licensed operator and the suspension of the National Lottery for several months in 2007.

According to the latest Socio Economic Impact Study commissioned by the NGB (2009, p.71), the initial GDP generated by the gambling sector (excluding the lottery) is R9, 6 billion or 0.46% of GDP. This is matched by a further 0.46% in indirect and induced contributions, producing a total GDP of 0.93%. This has not changed significantly since 2005.

The gambling industry, excluding the national lottery, contributes a total of 59,958 jobs.

2.2 Economic trends: general overview

In this section we provide a broad overview of the economic impact of the four main types of gambling that are regulated by the National Gambling Board and the nine provincial gambling regulatory authorities. We begin with a broad overview of the Gross Gambling Revenues (GGR)⁷ and tax contributions for casinos, LPMs, betting

⁷ Gross Gambling Revenues constitute the amount wagered by players less the amount returned as prizes. They are a more accurate reflection of gambling spend than turnover, which includes the total amount wagered by players, including money returned as prizes.

at the totalisator or bookmaker (which thus includes both horse betting and sports betting), and bingo. Thereafter we discuss each of these gambling modes in more depth.

In the final section we examine the National Lottery, which is overseen by the National Lotteries Board (NLB).

2.2.1 GGR for Casino's, LPMs, Betting and Bingo: 2001-2009

It is important to remember at the outset that most gambling revenues do not necessarily constitute new revenues. As Reith (2003, p.12) points out, "a closer inspection reveals that the overall economic impact of gambling is not as unambiguously positive as it may at first appear. In fact, the net result of gambling expansion is not so much a dramatic *increase* in wealth as a *transfer* of existing wealth." This is particularly true in jurisdictions like South Africa where nearly all gambling revenues are raised locally, and hence diverted from other leisure and household expenditure. In countries like Singapore, foreign tourists are responsible for almost two-thirds of gambling expenditure, which clearly adds new revenue to the fiscus.

That said, regulated gambling has resulted in a phenomenal transfer and thus circulation of wealth, with all the associated multiplier effects, since 2001. In real terms, the combined GGR for casino's, LPMs, betting at the totalisator or bookmaker and bingo is currently around R15.92 billion. This represents a growth of over 250% within the space of a decade.

The trend over the past decade is set out in figure one below.



Figure 1: GGR trends for casinos, LPMs, betting and bingo

Source: NGB, *Annual Report 2009*, verified against 2003-2009 reports.⁸

⁸ Note: NGB *Financial Statistics* for 2006 cites a GGR of R11,510 billion for that year. We have used the lower amount in this and all subsequent calculations. The figures for tax collected are cited consistently.

As the table below shows, casino GGR made up the overwhelming majority of this contribution, followed by betting and the emerging LPM industry. Bingo remains relatively insignificant at present. (Revenues for bingo played in casinos are included under casino GGR.)

Gambling expenditure per capita

Expenditure	2005 survey		2008 survey
	2005 prices	2008 prices	
Per gambler	R97.55	R117.20	R133.70
Per capita (whole adult population)	R45.35	R54.50	R44.70

Source: NGB (2009a, p.24).

As the table above shows, per capita gambling expenditure has decreased in real terms since 2005. This is entirely due to the decline in levels of gambling in this period. Expenditure per gambler has increased by approximately 14% in real terms since 2005.

Propensity to gamble

	2002	2005	2008
Casinos	0.91	1.21	1.02
Bingo	0.002	0.003	0.01
Horse/sports betting	0.20	0.11	0.12
LPMs	n/a	0.003	0.05
Lottery games	0.19	0.38	0.14
Total gambling	1.30	1.70	1.34

Source: NGB (2003a, p.71; 2005a, p.91; 2009a, p.62).

Propensity to gamble is defined as GGR divided by total household expenditure. This is currently 1.34%, which is higher than the propensity in the UK (0.69%), France (0.48%), Netherlands (0.45%), Denmark (0.44%), Germany (0.39%), Luxembourg (0.32%) and Belgium (0.25%) (Goudriaan in Meyer et. al. 2008, p.192). However, it is significantly lower than the 3.1% reported for Australia in 1998 (NGB 2009a, p.63).

Gambling revenues: By gambling mode

Gambling mode (2009)	Percentage	R' million
Casinos	84.8	13,501
Limited Payout Machines (LPMs)	4.2	669
Betting (Totalisator and Bookmakers)	10.3	1,640
Bingo	0.8	127
Total	100%	15,921

Source: NGB, *Annual Report 2009*.⁹

⁹ The NGB *Annual Report* gives percentages with a single decimal point only. Amounts have been calculated accordingly, and are likely to differ slightly from the actual amounts. This disclaimer applies to all subsequent figures taken from the NGB Annual and Financial reports.

Not surprisingly, over three quarters of all gambling spend in 2009 occurred in the three most affluent provinces, Gauteng, Western Cape and KwaZulu-Natal.

Gambling revenues: By province

Province (2009)	Percentage	R' million
Eastern Cape	7	1,114.47
Free State	2	318,42
Gauteng	42	6,686.82
KwaZulu-Natal	19	3,024.99
Limpopo	2	318.42
Mpumalanga	4	636.84
North West	6	955.26
Northern Cape	1	159.21
Western Cape	17	2,706.57
Total	100%	15,921

Source: NGB, *Financial Statistics*, 2009.¹⁰

2.2.2 Gambling taxes: Casino's, LPMs, Betting and Bingo

Gambling taxes and levies are an important source of revenue at the provincial level. (Taxes on the lottery are levied by central government.)

In 2008-09, the provincial gambling regulatory authorities collected over R1.5 billion for their respective provincial governments. The overwhelming majority of this was raised in Gauteng, the Western Cape and KwaZulu-Natal.

The table below summarises the amount of gambling taxes collected per gambling mode.

Gambling taxes: By mode

Gambling mode (2009)	Percentage	R' million
Casinos	81	1,247
Limited Payout Machines (LPMs)	5	77
Betting (Totalisator and Bookkeepers)	13	200
Bingo	1	15
Total	100%	1,539

Source: NGB, *Annual Report* 2009.

The table below summarises the amount of gambling taxes collected by the provincial gambling regulatory authorities (PGRAs).

¹⁰ The Gauteng Gambling Board 2009 *Annual Report* gives gaming revenues of R126 million for Bingo.

Gambling taxes: By province

Province	Percentage	R' million
Eastern Cape	6	87.8
Free State	2	31.08
Gauteng	39	617.19
KwaZulu-Natal	22	338.58*
Limpopo	2	25.69
Mpumalanga	2	38.07
North West	4	63.43
Northern Cape	1	15.39*
Western Cape	22	326.03
Total	100%	R 1,539 billion

* Estimates

Source: Provincial Annual Reports, 2008-09.¹¹

It is worth noting that casino taxes have risen from 12.5% of provincial “own revenues”¹² in 2005/06 to 14.1% in 2008/09. In the same period, horseracing taxes grew from 1.3% to 1.6%, although these are expected to drop again to 1.3% in 2011-12.

Gambling taxes: Contribution to provincial “own revenues”

Provincial Tax Receipts	2005-06 (million)	2008-09 (million)	2011-12* (million)
Casinos (% own revenue)	916 (12.5%)	1,325 (14.1%)	1,649 (15.2%)
Horseracing (% own revenue)	92 (1.3%)	150 (1.6%)	145 (1.3%)
Total “own revenue”	7,321	9,388	10,830

* Projected receipts

Source: National Treasury (2009, pp.10-12).

The enormity of the revenue involved raises the possibility of the gaming industry exerting an undue influence over the provincial regulators, and in turn, of the provincial regulators seeking to promote the industry at all cost in order to preserve this independent source of revenue.

¹¹ The figures for KZN and for the Northern Cape are estimates based on NGB Financial Statistics. All other figures are taken from the respective Provincial Gambling Board *Annual Reports*. This produces a national figure for total tax receipts and levies of R1,547 billion, which is almost R9 million greater than the R1,539 billion reported by the NGB in its *Annual Reports*. To complicate matters further, the NGB study of the socio-economic impact of legalised gambling (NGB 2009a) cites the annual GGR as R15,970 (R 1 million less than the *Annual Report*) and total tax contributions as R1,569 (R 30 million more than the *Annual Report*). For accuracy and consistency we have used the reports cited in the NGB *Annual Report* throughout this study.

¹² The bulk of provincial revenues are derived from national transfers, however around 8.6% is raised by the provinces themselves. Around three-fifths of “provincial own revenues” are derived from tax receipts on motor vehicle licences, casino taxes, horseracing taxes and liquor licences (National Treasury 2009, p.6, p.10). Tax on the national lottery is collected at the national level.

As figure two below shows, provincial tax contributions rose steadily until 2007/08, charting the growth of the emerging gambling industry. The world economic recession that began in 2008, as well as the fact that the gambling industry appears to have reached a mature stage in which existing markets have been fully exploited, help to explain the drop in GGR and taxes collected since 2008.



Figure 2: Tax contributions (Casinos, betting, LPM and bingo) since 2001

Source: NGB, *Annual Report 2009*, verified against 2003-2009 reports.

The gambling industry, excluding the national lottery, contributes a total of 59,958 jobs. If there were 9,916,500 people in formal employment in 2008/09, then the gambling industry excluding the national lottery directly contributes 0.57% of the total workforce.

The NGB economic impact study for 2009 estimates that for every 1 job in the gambling sector, 4.6 additional jobs are created through indirect and induced effects (NGB 2009a, p.70). This means that there is an employment multiplier of 5.6 for the gambling industry (excluding the national lottery). If this is correct – and employment multipliers are notorious for overstating the impact of direct employment – then the gambling industry excluding the lottery is directly and indirectly responsible for a total of 262,007 jobs. This is 2.64% of the workforce.

Job creation: Gambling sector (excluding the lottery)

Gambling mode	Direct employment	Employment Multiplier	Direct, indirect & induced employment	Total
Casinos **	51,317	5.6	236,058	90.1%
Gambling	(34,477)	5.6	(158,594)	(60.5)
Entertainment	(16,840)	5.6	(77,464)	(29.6)
LPMs *	2,499	5.6	11,495	4.4%
Betting *	2,364	5.6	10,874	4.2%
Bingo ***	400	5.6	1,840	0.7%
Regulators ****	378	5.6	1,739	0.7%
Total	56,958	5.6	262,007	100%

Source: * NGB (2009a, p.69); ** CASA (2009); *** BASA (2010, p.4)

Having provided a brief overview of the gambling industry, we now turn to a more detailed review of the five major (legal) gambling modes.

2.3 The Casino industry

2.3.1 Ownership

The National Gambling Act, 1996 (Act No. 33 of 1996) made provision for the granting of a maximum of forty (40) casino licences, and divided this up between the provinces. §13(3)(j) of the 1996 Act stipulated that the maximum number of casino licences which any company could hold was sixteen (16), of which no more than two (2) could be held in a particular province (or 3 in the case of persons who held casino licences in that province prior to 1994). The intention, following the Wiehahn Commission recommendations, was to provide for a wide spread of ownership in the sector and to promote competition.

Since then, a total of thirty-seven (37) casino licences have been granted, and 36 casinos are currently operating. The Eastern Cape, Limpopo and Mpumalanga Gambling Boards are still to allocate the final licence allocated for their respective provinces.

The stipulated maximum of forty (40) casinos nationwide and a maximum number of two (2) licences per province was abandoned in the National Gambling Act, 2004 (Act No. 7 of 2004), which gave the Minister much greater discretion to decide whether to prescribe maximum numbers of casino licences. The Act did not, however, envisage that market forces alone would dictate ownership within the industry. Thus §45(2)(b)(ii) of the Act states that the Minister *must* consider the following criteria before deciding whether it is desirable to increase or reduce the number of available casino licences in order to:

- “promote black economic empowerment; or promote-
 - (aa) new entrants to the gambling industry;
 - (bb) job creation within the gambling industry;
 - (cc) diversity of ownership within the gambling industry;
 - (dd) efficiency of operation of the gambling industry; or

(ee) competition within the gambling industry.”

Importantly, the 2004 Act would allow the Minister to grant additional licences if the current allocation did not allow for a competitive industry in which the objectives outlined above were not achieved.

At present, ownership is concentrated amongst four of the six casino groups and two independent companies that have been awarded licences.

Casino ownership in South Africa

Province	Sun International	Peermont Global	Century Casino	London Clubs International	Tsogo Sun	Akani / Gold Reef	Independents	Total
EC	2				1	1		4
FS	2	1				1		4
GP	2	1		1	1	2		7
KZN	1	1	1		1	1		5
LP	1	1						2
MP		1			2			3
NW	2	2						4
NC	1						2*	3
WC	2		1			2		5
TOTAL (%)	13 (35%)	7 (19%)	2 (5%)	1 (3%)	5 (14%)	7 (19%)	2 (5%)	37 (100%)

Source: CASA Annual Report, 2009, p.16.

The two independently owned casinos are the Desert Palace Hotel and Casino Resort in Upington and the Leitho Resort and Entertainment World in Kuruman, which is not yet operational.

2.3.2 Casino GGR and tax contributions

Casinos are by far the most significant component of the gambling sector, although increasingly they have to compete with both established and new forms of gambling to retain their relative advantage.

The CASA (2009, p.8) survey of the casino industry estimates that, in total, casinos contributed over R20 billion to GDP in South Africa in 2008/09, and that the industry has contributed a cumulative total of R143 billion to GDP since 1996. According to CASA (2009, p.8), government receives around 29% of the casino industries' turnover, whilst 28% goes to procurement of goods and services, 14% on salaries and wages and just under 0.5% on CSI.

Figure 3 below summarises the remarkable growth of the casino gambling sector in terms of the growth in casino GGR and the percentage contribution of casino GGR to total gambling GGR (all modes except the lottery) since 2001/02.

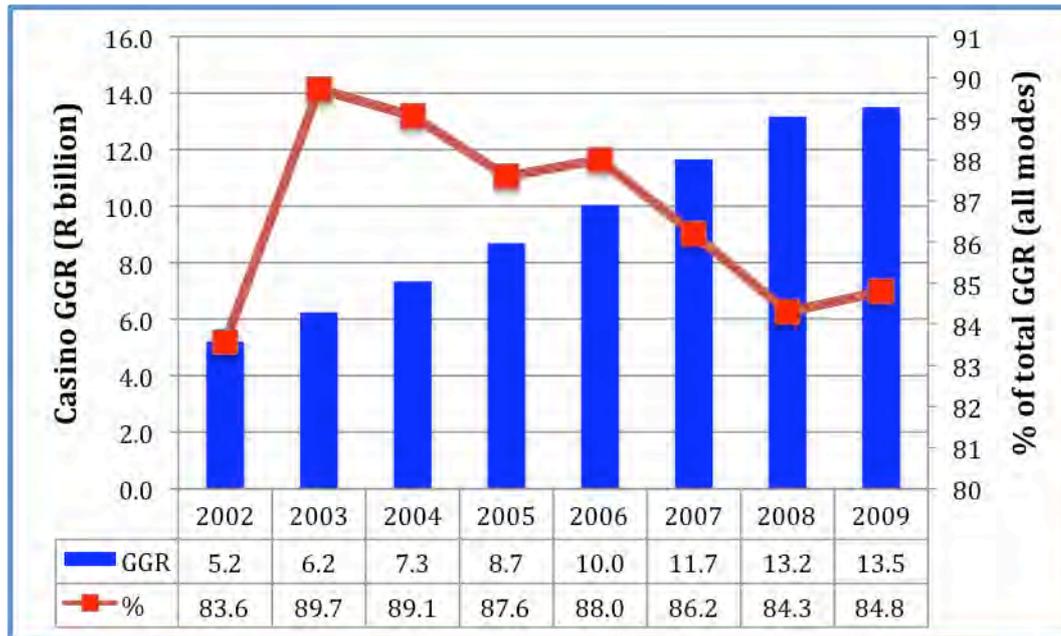


Figure 3: GGR trends: Casinos

Source: NGB - Financial Statistics, 2003-2009.¹³

The steep increase in the relative contribution of casinos to total gambling GGR between the 2002 and 2003 financial years is in part due to the opening of new casinos, and in part due to a 6% fall in betting GGR that year.

The fall in the relative contribution of casinos to total GGR after 2006 is due largely to the increase in significance of LPM GGR, which have grown at around 1% annually since then.

The total GGR for casinos has risen significantly in the past decade: from R5.2 billion in 2001/02 to R13.5 billion in 2008/09. In the same period, casino provincial tax receipts have increased threefold, from under half a billion to R1.2 billion in 2009.

Figure 4 below summarises GGR and tax contributions by the casino industry in the past decade.

¹³ Figures used for these calculations are often rounded off in these reports. The actual amounts are likely to differ slightly from those calculated here.

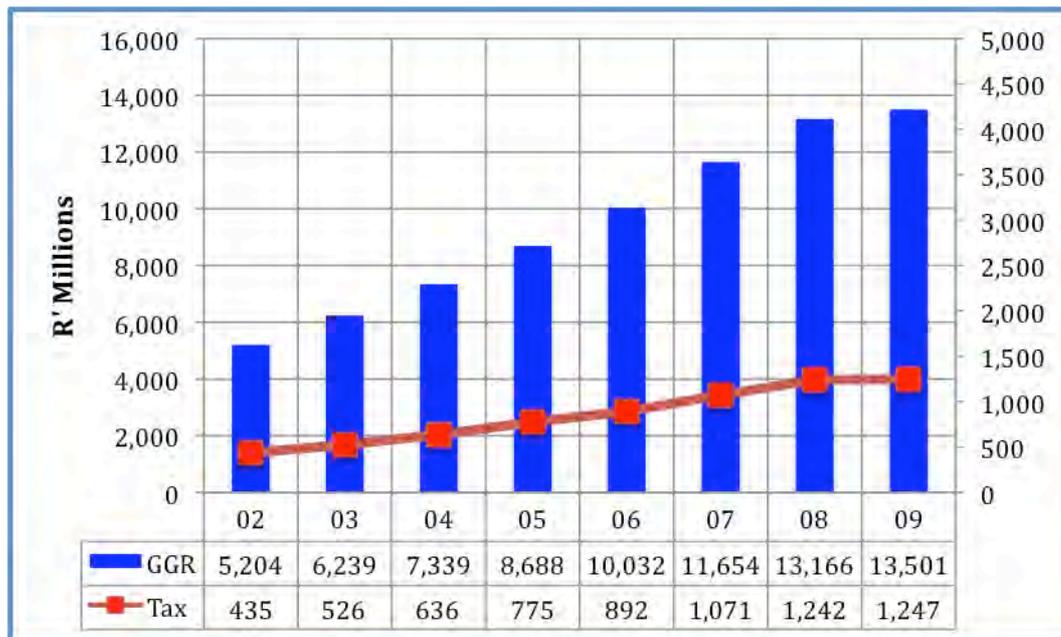


Figure 4: Casino GGR and provincial tax contributions since 2001

Source: NGB, *Financial Statistics*, 2003-2009.

According to CASA (2009, p.8), the total casino tax contribution for 2008/09, which includes both the provincial tax contributions discussed above and other direct and indirect taxes is currently in excess of R6 billion.

2.3.3 Size and growth of the casino industry

The thirty-five (35) CASA affiliated casinos recorded a total of 61,063,490 visits in 2008/09, almost double that of 2004/05 (34,079,208).¹⁴ This represents a remarkable growth, and bears witness to the importance of casino gambling as a form of entertainment and revenue generation in the South African economy.

Although more people are visiting casinos, the average gambling spend per visit has dropped substantially over this period, from around R294 in 2004/05 to only R221 in the thirty-five (35) CASA affiliated casinos in 2008/09.¹⁵ Once again, this reflects the impact of the economic downturn in 2008, which has had a negative impact on consumer expenditure in all industries.

The growth of casino turnover and GGR in the past decade is underpinned by the growth in the size of the industry itself.

Since 2004/05 the number of casinos in operation across the country has increased from thirty-two (32) to thirty-six (36).¹⁶ The total number of tables at all thirty-six (36) casinos has increased from 700 to 800, and the total number of slots has increased from 17,481 to 22,206.

The table below summarises this growth, disaggregated at the provincial level.

¹⁴ We do not have figures for the Desert Palace casino, which is the only functioning casino that is not part of CASA. The Desert Palace has not responded to requests for information.

¹⁵ Defined here as casino GGR/total visits. This does not include non-gambling expenditure.

¹⁶ This is the earliest date for which we have reliable data, drawn from the CASA Annual Survey of their affiliate casinos. There is only one casino in the country that is not a CASA affiliate: the Desert Palace in Upington.

Growth in numbers of all SA casinos: 2005–2009

	No. Casinos		No. Tables		No. Slot machines	
	2004-05	2008-09	2004-05	2008-09	2004-05	2008-09
Eastern Cape	3	4	46	57	1,555	1,766
Free State	3	4	24	34	547	830
Gauteng	5	7	270	323	5,650	8,742
KwaZulu-Natal	5	5	119	124	3,077	3,303
Limpopo	2	2	18	22	397	524
Mpumalanga	3	3	39	44	1,071	1,137
North West	5	4	85	78	2,398	1,730
Northern Cape	1	2	9	15	212	398
Western Cape	4	5	90	103	2,574	3,776
TOTAL	31	36	700	800	17,481	22,206

Source: Casa (2005, 2009); Desert Palace Website.

It has become practice in some circles of the gambling industry (c.f. GGB 2009, p.18) to report on the total number of “positions” in a casino, with each table being counted as fourteen (14) positions and each slot machine as one (1) position. Although not particularly accurate, as any number of people can stand at a table, this allows for a more representative comparison of gambling offerings between different casinos with different slots:table ratios.

Using this approach, it is possible to distinguish three categories of casinos in South Africa:

Breakdown of casinos by size

Province	Small casino	Medium casino	Large casino
	Less than 750 positions (or less than 500 slots)	up to 1,500 positions (or up to 1000 slots)	more than 1501 positions (or more than 1001 slots)
Eastern Cape	3	1	
Free State	4		
Gauteng		3	4
KwaZulu-Natal	3		2
Limpopo	2		
Mpumalanga	3		
North West	2	2	
Northern Cape	2		
Western Cape	4		1
TOTAL	23 (63.9%)	6 (16.7%)	7 (19.4%)

Source: Casa (2009); Desert Palace Website.

The total number of slots in all SA casinos has increased by 4,725 or by 27% since 2004/05; and the total number of “positions” by 6,125 or 22.5%. This is the equivalent, roughly, of four large casinos!

Whilst some of this growth is due to the opening of new casinos (extensive growth), most of it is organic, as casinos increase the number of slots and tables available to their patrons. The GrandWest Casino, for example, has increased the number of slots available from 1,774 to 2,500 (an increase of 41%) (CASA 2005, p.25; CASA 2009, p.31).

It must be acknowledged that the casinos have had to pay a significant amount to increase the number of slots. The expansions at GrandWest were approved on condition that the casino makes 5 annual CSI donations in excess of R4.17 million as well as substantial additional investments in the casino’s “non-gambling” offerings. In Gauteng, the Gauteng Gambling Board will only approve an increase in the number of machines exposed for play if the relevant operator makes a CSI commitment of R1million per gambling position. (CASA 2010c, p.10).

2.3.4 Employment in the casino industry

The total number of persons employed directly (both permanent and outsourced) at the 35 CASA affiliated casinos increased from 32,837 to 34,477 in the last five years. The Commission did not have figures for the non-affiliated casino in Upington.

Employment in CASA-affiliated casinos: 2004-05 to 2008-09

	Employees (permanent and outsourced)	
	2004-05	2008-09
Eastern Cape	2,602	3,656
Free State	743	1,488
Gauteng	11,617	11,093
KwaZulu-Natal	3,707	4,119
Limpopo	701	863
Mpumalanga	1,184	1,147
North West	8,717	7,441
Northern Cape	292	310
Western Cape	3,274	4,360
Total	32,837	34,477

Source: CASA (2005, 2009).

In addition to this, a total of 16,840 people are employed currently in other facilities located at the casino complexes (restaurants, hotels, etc.).

This means that the casino industry sustains a total of 51,317 direct jobs. This excludes indirect and induced employment.

Assuming that there were 9,916,500 people in formal employment in 2008/09, the casino industry directly contributes 0.52% of the total workforce.

Assuming that there is an employment multiplier of 5.6 in the gambling industry (NGB 2009a, p.70), then the casino industry is directly and indirectly responsible for a total of 236,058 jobs. Of these, 158,594 are a result of casino operations and 76,728 due

to associated entertainment and leisure activities. This is 2.38% of the total workforce.

2.3.5 Casino non-gaming revenues

Non-gaming revenues from the various entertainment and leisure activities offered at casino complexes are important sources of revenue for the casino industry, and employ almost 17,000 people.

In 2009, the 35 CASA-affiliated casinos had a combined annual turnover of R3 billion (CASA 2009, p.17).¹⁷ This comprises the following expenditure within casino complexes:

- R27 million in theatre tickets
- R58 million at cinemas
- R1 billion at restaurants
- R122 spent at fast food outlets
- R82 million in entertainment areas
- R156 million at retail outlets
- R1 billion spent at casino hotels
- R262 million at conference facilities
- R54 million at spas and other facilities
- R79 million at sports events

These activities separately generated tax revenues for the national fiscus.

2.3.6 Capital expenditure and social infrastructure spend

The licences for casinos were issued on condition that they made extensive capital investments, not just in the construction of the “destination style venues” in which the casinos operated – which typically include theatres, restaurants and shops – but also in community infrastructure in the areas from which patrons were drawn. By imposing this obligation, the regulatory authorities hoped to balance the interests of communities (including people who don’t gamble) with the interests of the gambling industry.

Examples of this expenditure include the construction of the Cape Town International Convention Centre and the Roggebaai canal (CASA 2009). It also included things like the funding of the Apartheid Museum.

According to CASA (2009, p.8), casino capital expenditure until March 2009 amounted to R18.8 billion. This is more than the annual GGR for the entire gambling industry or, as CASA points out, the equivalent of five Green Point stadiums. (This does not include expenditure by the one functioning non-CASA affiliated casino).

Importantly, the casinos believe that this capital spend has contributed to the upgrading of the areas within which they operate, and to the development of the tourist industry in each province. Land values have escalated, and many new developments unrelated to the casinos have occurred as a result. The development of shopping centre complexes around Goldfields in Welkom is a good example of this.

¹⁷ We do not have information on the turnover in previous years.

This is an international phenomenon. The construction of the Crown Casino in Melbourne, for example, turned a run-down docklands area into a centre for local development.

The provincial gambling regulatory authorities are responsible for monitoring compliance with the various expenditure commitments contained in the casino licences.

2.3.7 Casinos and CSI

Casinos contribute approximately 0.5% of GGRs to CSI. This is one of the seven pillars of B-BBEE.

Between 2006 and 2009, this amounted to R286 million – R60 million for the 2008/09 financial year (CASA 2009). This is in addition to the non-recurring capital expenditure discussed above. Details of each casino group's CSI commitments can be found on their respective websites, or in (CASA 2010a).

Casino contributions to the NRGP, currently 0.1% of their GGR, are reported on as CSI expenditure. It is not clear how this amount – 0.5% of GGRs – was decided upon, or how it benchmarks against other sectors of the leisure and entertainment industry.

Each casino group has its own independent CSI policy, which is submitted to the relevant provincial regulator for approval. As is the case with LPM industry (discussed below), casinos complain that the provincial gambling regulatory authorities exceed their mandate and get involved in managing CSI spend instead of simply ensuring that the policy is compliant with licence obligations and in line with provincial and national policies. The Codes of Good Practice allow corporate entities to choose how to structure their B-BBEE commitments, and do not anticipate that the regulator will seek to influence decisions at this level. While the Commission is appreciative of the fact that provinces wish to ensure that CSI spend is allocated to the areas of greatest social need, it is dangerous when regulators become involved in directing the spend and opens up the potential for political interference. A better approach would be to have an overarching policy and to require operators to align with the provincial policy.

2.3.8 Casinos and B-BBEE

In 2007 the casino industry obtained a level-6 rating from the BEE rating and research agency Empowerdex, which compares favourably with the average of level-8 for large companies at the time (CASA 2990, p.11). CASA affiliated casinos are committed to obtaining a level-4 rating by the end of 2010, to be audited by Empowerdex in 2011.

On average, black people hold 46% of ownership and of voting rights in casinos.

Casinos are particularly concerned about variations in B-BBEE requirements. When licences were originally issued, there was no standardised approach to BEE (as it was then known). Applicants made various commitments in their original bids, which were subsequently incorporated into their licences. Now that the B-BBEE Codes of Good Practice have been passed, there is a standard set of criteria that, they believe, should apply equally to all parties, thus levelling the playing field within the industry.

Despite this, CASA argues that provincial regulators do not believe that the Codes supersede the original licence conditions, and “therefore seek to impose B-BBEE-related licence conditions over and above the provisions of the Codes” (CASA presentation to GRC, May 13; CASA 2010, pp.28-30). The NGB has confirmed that they support this latter view that B-BBEE commitments in excess of those imposed by the codes need still to be complied with, as these commitments were one of the reasons why the bids were successful in the first place.

2.3.9 Conclusion

On the whole, the casino industry in South Africa is very well run and compares favourably with casinos anywhere else in the world.

The “approach taken by the SA government, to encourage limited forms of casino-based “destination style gambling”, rather than allow for the proliferation of small and medium sized gambling clubs throughout the country, appears to have worked well. Considerable capital investment has been made, and the tourist and entertainment sectors have profited accordingly. This should be contrasted with the approach taken in Australia, where most slot-machine gambling takes place in clubs located in communities, and where the average urban Australian is reputedly never more than 800m away from a slot machine.

2.4 Bingo

Until 2005-2006, bingo remained a relatively insignificant gambling mode in South Africa. In this period, bingo was played in its traditional format, in bingo halls or casinos with players marking off numbers as the host called them out.

With the controversial introduction of electronic bingo terminals (EBTs) in September 2005, and the opening of bingo clubs in shopping malls across Gauteng, bingo revenues have increased considerably. This form of bingo, which is dependent on revenues from electronic gaming devices rather than traditional paper-based bingo games, has become a viable component of the gambling sector.

2.4.1 The bingo industry

Four provinces have invited applications for bingo licences so far, three of which have awarded bingo operator licences. At present bingo clubs are only operational in Gauteng. These range in size from the 720 seat (positions) Galaxy Bingo at the East Rand Mall to the 153 seat Viva Bingo at Northgate Mall.

At present, 10 bingo halls are operational in Gauteng, all of whom are run by either Galaxy Bingo (3 clubs, 1,620 seats) or the Viva Bingo Group (7 clubs, 1,802 seats).

Silks Gaming and leisure, a subsidiary of Phumelela, the well-known operator of racecourses and the totalisator, used to operate a bingo outlet at the Turffontein racecourse, but this has ceased operations.

Viva, Galaxy and Phumelela all own licences to operate bingo halls in KwaZulu-Natal. These were applied for in the hope that the province would allow them to operate EBTs. (At the time of writing, the KwaZulu-Natal Gambling Board had taken a decision, in principal, to permit EBTs).

The table below summarises the distribution of licensed bingo clubs in Gauteng. Most of these clubs are located in shopping malls. “Manual and semi-electronic seats” refers essentially to variations of traditional paper bingo, whilst “electronic

seats” refers to electronic bingo terminals, which are simply a variant of the traditional slot machines found in casinos.

Bingo clubs in Gauteng

Bingo Club	Total no.	Manual and semi-electronic seats	Electronic seats (EBTs)
Galaxy Bingo			
East Rand Mall	720	600	120
River Square	500	400	100
The Marco Polo	400	100	300
	{1,620}	{1,100}	{520}
Viva Bingo			
Alberton	374	260	114
Kolonnade	219	88	131
Mall @ Reds	355	240	115
Northgate	153	54	99
Centurion	240	152	88
Westgate	307	230	77
Atterbury	154	56	98
	{1,802}	{1,080}	{772}
TOTAL	3,422	2,180	1,242

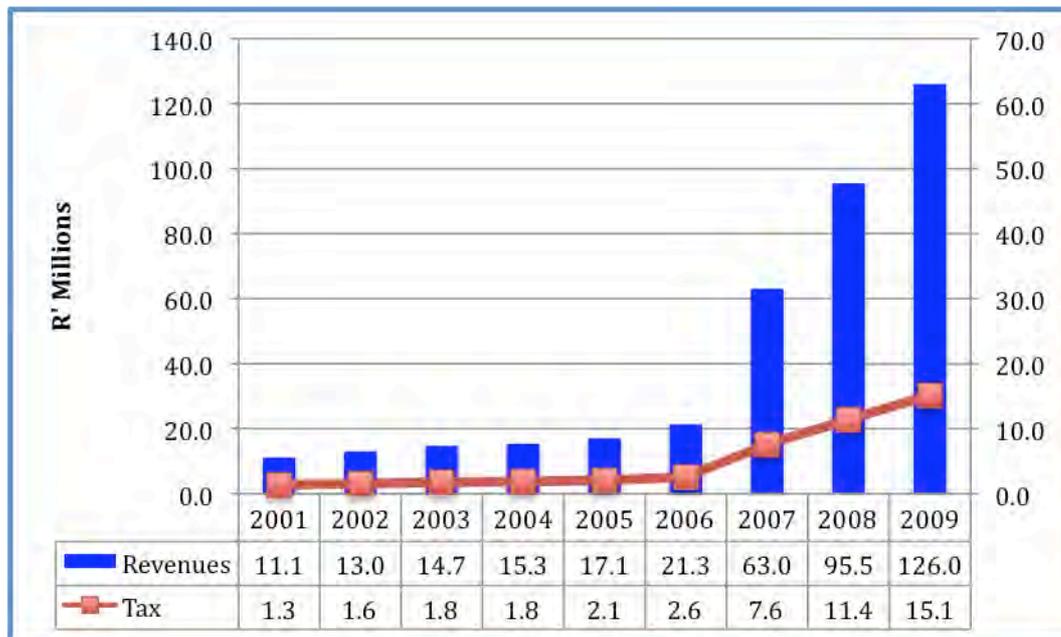
Source: Allan Scott, Director Viva Bingo Group, email correspondence 14 June 2010; Kevin Balbach, Compliance Officer, Galaxy Bingo, email correspondence 22 and 28 June 2010.

Bingo is also offered in the Sibaya, Gold Reef City, Windmill, Wild Coast Sun, Goldfields, Boardwalk and Morula Sun casinos. The Silverstar casino has recently applied for a licence for 800 bingo seats, all of which are for EBTs.¹⁸ From a regulatory point of view, bingo played at a casino is treated as a casino game rather than a distinct gaming mode, and as such, the discussion in this section refers specifically to bingo played outside of traditional casinos.

2.4.2 Bingo revenues

In the 2008-2009 financial year, bingo in Gauteng generated around R126 million, which raised in excess of R15 million in provincial taxes. Although this is considerably less than the amount generated by casinos, this represents a growing revenue source.

¹⁸ Allan Scott, CEO Viva Bingo, email correspondence 14 June 2010.



Source: Gauteng Gambling Board Annual Reports: 2001-2009.

2.4.3 Electronic bingo terminals

The introduction of electronic bingo terminals (EBTs) is a controversial development in the South African bingo industry. In some cases, EBTs supplement paper bingo seats, in other cases these are the primary or even sole attraction at the bingo clubs.

EBTs differ slightly from slot machines found in casinos and the LPM industry in that players are linked to one another. As a recent study summarises, “the bingo game itself is powered by an independent system, with the machines functioning as terminals for bingo play.” That is to say, the game of bingo is played via a linked network, and the electronic bingo terminals display the results both as a bingo card and using the spinning wheel symbols of traditional slot machines (NGB 2007a, p.4). In addition to their visual similarities, EBTs sound like traditional slot machines.

Although EBTs link players together, they are not interactive, at least not in the sense that the actions of any one player can in anyway influence the outcome of the game. In that sense, they are exactly the same as traditional slot machines.

When EBTs were first introduced the casino and the LPM industry objected, claiming that these were a variant of the traditional slot machines that they had bought licences to operate. The casinos took the Gauteng Gambling Board and various other stakeholders in the bingo industry to court, alleging that EBTs were not real bingo terminals, and were indeed nothing more than slot machines.¹⁹ By allowing bingo operators to install EBTs, the casinos alleged, the Gauteng Gambling Board was effectively allowing bingo licence holders to compete unlawfully with licensed casinos.

The bingo clubs responded by claiming that EBTs were simply an evolution of the game of bingo, a modern variant of the traditional game involving multiple players linked via computers. EBTs should thus be permitted, in the same way that

¹⁹ *Akani Egoli (Pty) Ltd & Others v Chairperson Gauteng Gambling Board & Others*, Transvaal Provincial Division, Case no 187891/06.

technological developments in other areas of the gambling industry had been permitted.

The court ruled in favour of the applicant, and held that because EBTs were not interactive (as the game of paper bingo is) they were not simply a technical development in the field of bingo. Indeed, they were not *bingo* terminals at all, and could therefore not be played on bingo premises. The court also ruled that, in allowing bingo licence holders to install EBTs on their premises, the CEO of the Gauteng Gambling Board had “purported to sanction unlawful conduct.” The court ruling is currently under appeal.

Subsequent to the court ruling, the Gauteng Gambling Board changed the definition of bingo in the Gauteng Gambling Act to include the use of non-interactive electronic bingo machines. Although they have not reached agreement on the legality of EBTs, the Gauteng Gambling Board and the Minister have subsequently agreed on a temporary moratorium on the granting of EBT licences.

All bingo halls in Gauteng employ EBTs. The largest of the EBT-based Bingo Halls is the 300 EBT Marco Polo in Mandela Square, Sandton City. The Marco Polo has exactly the same number of EBTs as the Windmill casino in Bloemfontein has slot machines, and considerably more EBTs than licensed slot machines found in 12 of the small casinos (or a third of all licensed casinos in South Africa).²⁰

2.4.4 Black Economic Empowerment

The Bingo industry currently employs 400 permanent staff (BASA 210, p.4). Galaxy and Viva employ roughly half each.

Of these:

- 90% are PDIs
- 60% females
- 70% of junior and senior management are PDIs

The controlling shareholder of Galaxy Bingo is HCI, which is one of the largest BB-BEE companies in South Africa. The largest shareholder in HCI is the SACTWU (Galaxy 2010, p.3).

2.4.5 Conclusion

Bingo, in its traditional form, has not done particularly well in South Africa. This poses an enormous challenge to the industry, and it is difficult to imagine the industry surviving without finding new ways to attract customers. Clearly, EBTs offer one way for the industry to do just this, although this runs the risk of stimulating new demand rather than responding to existing demand.

²⁰ These are (1) the Queens Casino in Queenstown, (2) Frontier Inn and Casino in Bethlehem (130 slots), (3) Naledi Sun in Thaba ‘Nchu (150 slots), (4) Goldfields in Welkom (250 slots), (5) Tusk Umfolozi in Empangeni (261 slots), (6) Century Casino in Newcastle (250 slots), (7) Khoroni Hotel Casino in Thohoyandou (140 slots), (8) Tusk Mmabatho in Mmabatho (155 slots), (9) Rio Casino in Klerksdorp (274 slots), (10) Flamingo Casino in Kimberley (240 slots), (11) Desert Palace in Upington (158 slots), and (12) the Golden Valley Casino in Worcester (230 slots).

2.5 Limited Payout Machines (LPMs)

The Act permits licensed slot machines in casinos and at certain entertainment venues. *No other slot machines are permitted.*

The slots permitted in the latter category are known as limited payout machines (LPMs), and differ in that they are intended to provide additional revenue streams to non-casino venues. For the most part, this means to supplement food and beverage revenues at pubs and taverns, although this category of slots can also be found at certain totalisator outlets and bookmaker premises.

LPMs provide convenience gambling rather than destination-type gambling opportunities. They are intended to promote business development and the licence conditions typically stipulate that a high percentage (this varies from Province to Province and ranges from 50% in some provinces to 80% in North West) have to be PDI owned. LPMs are *explicitly* not intended to become primary businesses,²¹ or to become “mini-casinos”.

LPMs differ further from casino slot machines in that they have a stipulated maximum stake and prize. Since inception these have been set at R5 and R500 respectively – significantly less than the R2, 000 prize recommended in the Wiehahn report (1995).

Ordinarily, LPM venues may only have licences for 5 or fewer machines, although under exceptional circumstances licences may be granted for up to 40 machines.²²

In practice, with the exception of the Eastern Cape Gambling Board, the regulators have been slow to call for applications for licences for 40-machine sites. At one point there were four 40-machine sites in the Eastern Cape, but two have recently been closed down after the operator was liquidated. A 40-machine site opened in Mpumalanga in May 2010.²³

The 40-machine category was introduced to provide gambling entertainment to areas of the country that are too remote to support casino investment. These sites are analogous to the “clubs” found throughout urban Australia and as such have the potential for proliferation of mini-casinos.

2.5.1 Rollout of LPMs

The regulations anticipated a rollout of 50,000 machines across the country. This was supposed to occur in two phases. In the initial phase, site operators would install the first 25,000 machines, after which a socio-economic impact study would be commissioned. The granting of second phase licences was made contingent on the outcome of this study. The initial rollout was supposed to have been completed by March 2009.

²¹ This is set out clearly in Chapter 3 of the Regulations on Limited Payout Machines which states that 41(1) “An application for a site operator licence may only be granted if the operation of the limited payout machines is incidental to the primary business conducted at the premises.” The Regulations go on (41(2) to lay out guidelines that may be used to determine whether the LPMS function as a primary or secondary business. These include the relative floor space devoted to the primary and secondary business, the relative investment in each, time devoted to managing each, and the gross revenues generated by each business.

²² In such cases, the application has to be made by the provincial licensing authority. See s3(2) of the “Regulations on Limited Payout Machines”, No. R. 1425, 21 December 2000.

²³ Information provided by Vuzumzi Nogwebu, Business Development Manager, and Zonke Monitoring Systems. Email correspondence, 15 June 2010. These licences may be awarded to individual operators rather than route operators.

To date, barely a fifth (21.5%) of the initial 25,000 LPMs have been installed in six of the nine provinces. Licences have yet to be issued in the remaining three. For the most part, this is due to lengthy delays in the issuing of licences by the provincial regulatory authorities.²⁴

Distribution of LPM licences

PROVINCE	Site licences available Phase one (Phase two)	Actual rollout of LPMs to-date (June 2010)
Eastern Cape	3,000 (6,000)	577
Free State	2,000 (2,000)	Licensing process underway
Gauteng	5,000 (5,000)	307
KwaZulu-Natal	4,500 (4,500)	1,870
Mpumalanga	2,000 (2,000)	505
Limpopo	1,500 (1,500)	434
North West	1,500 (1,500)	Licensing process underway
Northern Cape	1,000 (1,000)	No licences yet
Western Cape	4,500 (4,500)	1,688
TOTAL	25,000 (50,000)	5,381

Source: Regulations on LPMs, 2000; and adapted from Vukani (2010) and Zonke Monitoring Systems website.

The slow rollout of LPMs should be contrasted with the speed with which Bingo operators have installed 1,242 EBTs machines²⁵ at ten venues in Gauteng. In one venue alone – the Marco Polo at Mandela Square in the Sandton City Shopping Mall – there are 300 EBTs machines. This is effectively the same number of EBTs under one roof as licensed LPMs found in the whole of Gauteng!

2.5.2 Key industry players

There are three main actors in the LPM industry: route operators, site operators, and the company responsible for the central electronic monitoring system. (A fourth category, independent site operators, who own and operate LPMs in their own name, has yet to be developed in a significant way.)

Members of the public are given the chance to object to the granting of route and site operator licences. Objections must relate to either the probity of the persons involved or the suitability of the site at which the LPMs are to be located.²⁶ There are no equivalent opportunities for the public to raise objections about the granting of licences for EBTs.

2.5.2.1 Route operators

Route operators are companies that are licensed to own and operate LPMs. They are also responsible for the maintenance of LPMs as well as all financial matters (collection of money, paying taxes and levies, paying of site operators, etc.).

²⁴ For a detailed account of these delays, and how they affected operators in each province, see the submission by Vukani (2010) to the gambling commission.

²⁵ The Gauteng High Court has ruled that, contrary to the claims of the operator, these are slot machines and not electronic versions of the game of bingo. This is discussed in more detail in §2.5.3 below.

²⁶ See s24 of the “Amendments to Regulations on Limited Payout Machines” No. R. 109 of 2007. The regulations stipulate that provincial regulators must hold a public meeting to adjudicate on any such objections.

Effectively this transfers most of the risk in operating an LPM to the route operator, and lowers the barriers to entry for potential site operators.

Route operators, who cover the majority of costs for LPM operations, retain 60% of the revenue per LPM, whilst the site operator gets 40%. Site licences are thus an attractive option for many small entertainment businesses. The route operators are thus central to the business developmental intentions that originally underpinned the decision to permit LPMs. In many cases this goes well beyond simply assisting potential site operators to apply for an LPM licence and involves helping to set up, refurbish and in the initial phases, helping to run entertainment establishments, especially those with PDI ownership.

In order to satisfy the requirement that 60% of all LPMs are in a PDI area, Vukani, the largest route operator in the country, has taken the decision to identify PDI entrepreneurs and buy pubs on their behalf. They then assist the PDIs to run the business and to pay them back. To date they have done this 11 times in the Western Cape and 7 times in KZN.²⁷

The provincial gambling regulatory authorities that, working within national guidelines, determine their own specific licensing criteria issues route operator licences. In some provinces (e.g. the Eastern Cape) the licences are issued for a period of seven years, whilst in others (e.g. Gauteng), so-called “evergreen” or interminable licences are issued.

According to one route operator, a period of at least 15 years is needed to allow the route and site operators to recuperate their costs and make a decent profit.²⁸ Given the fact that most provinces took around half this time just to issue licences, this does not appear unreasonable, at least not for the initial round of licences. There are various route operators operating in the six provinces for which LPM licences have been issued.

LPM Route Operators

Province	Route Operators
Eastern Cape	Vukani Eastern Cape [Vukani Gaming Corporation]
Gauteng	Vukani Gauteng [Vukani Gaming Corporation]
	Playmeter
	Zico
	Goldrush Gaming
	Hotslots
KwaZulu-Natal	Vukani Kwa-Zulu Natal [Vukani Gaming Corporation]
	Hotslots [Safika Group]
	Kingdom Slots [Thou Gaming]
Mpumalanga*	Vukani Mpumalanga [Vukani Gaming Corporation]
Limpopo	Vukani Limpopo [Vukani Gaming Corporation]
Western Cape	Vukani Western Cape [Vukani Gaming Corporation]
	Grandslots [Thou Gaming]

Source: Zonke Monitoring Systems website.

²⁷ Vukani presentation to the GRC.

²⁸ Vukani presentation to the GRC.

The issuing of provincial licences is contingent on a degree of local ownership. To allow for this, Vukani has established a subsidiary company in each province (Vukani North West (Pty) Ltd, etc.) whilst Thou has established subsidiaries in both of the provinces it operates in – Thou Gaming KwaZulu-Natal (Pty) Ltd, which trades as Kingdom slots, and Thou Gaming Western Cape (Pty) Ltd, which trades as Grandslots.

There is a growing concentration of ownership within the LPM industry – particularly since Vukani bought Luck Holdings (Pty) Ltd and acquired its Route Operator licences for Mpumalanga and KwaZulu-Natal. There is also a significant overlap between ownership of the LPM and the rest of the gambling industry. The implications of this increasing conglomeration and concentration in the sector requires closer scrutiny than we have been able to provide here. To illustrate the extent of the changes in ownership and cross holding, the largest route operator, Vukani, is wholly owned by HCI, a leading JSE listed BEE company with a significant presence in the entertainment and gambling industry. In addition to owning various casinos, HCI is seeking to increase its exposure to the gambling sector, and, with its eye on the lucrative and relatively unregulated Bingo/EBT industry, has recently acquired a 49% stake in Galaxy Bingo. HCI is also positioning itself to acquire a stake in the Internet gambling industry (HCI Annual Report, 1998).

A Western Cape B-BBEE company, Grand Parade Investments (GPI), wholly owns Thou Gaming. GPI has an extensive presence in the leisure and gaming industries, include a significant stake in the GrandWest, Golden Valley, Carnival City, Sibaya, and Boardwalk casinos.²⁹

2.5.2.2 Site operators

Site operators are typically owners of pubs or taverns, but include totalisators and bookmakers. LPMs are intended only to supplement this primary business and in so doing to contribute to the sustainability of small, particularly PDI owned, businesses.

Because LPMs are owned and maintained by route operators, site operators are not placed at financial risk, which makes this model particularly appealing to emerging businesses with limited capital.

Site owners receive a 40% share in LPM revenues. According to Vukani, this amounts to an average profit of 32.8% after the deduction of all “gambling-related operational expenses and taxes.”

2.5.2.3 Central electronic monitoring system

According to section 27 of the Gambling Act of 2004, all LPMs have to be linked to a single central electronic monitoring system (CEMS). The contract to run this system was awarded to Zonke Monitoring Systems in 2001.

Route operators and provincial regulators initially resisted the introduction of this centralised system, and several attempted to set up their own provincial monitoring systems. These systems were scrapped in favour of the single centralised system required by the Act.

²⁹ Information taken from <http://www.thuoslots.co.za/> and <http://www.grandparade.co.za/>. Until May 2010, Thuo was a 90% subsidiary of the Tatts group, which is based in the UK and Australia.

The Zonke-run CEMS monitors every LPM across the country to ensure that the business is run a fair and transparent manner. This includes monitoring payouts, GGRs and machine maintenance.

6% of all LPM GGRs go towards the cost of funding CEMS. The slow rollout of machines and lower than expected GGR per machine mean that this funding is grossly inadequate, and threatens the viability of CEMS.

2.5.3 Economic performance of LPMs

Since inception, LPMs have generated in excess of R2 billion. This is summarised in the table below.

LPM GGR: By province

Year	MP	WC	EC	KZN	LP	GP	Total annual GGR
Tax rate	10%	10% and sliding scale for add R2 m	10%	12%	6%	15%	
2004*	1,806,725						1,806,725
2005	22,697,707	8,985,835					31,683,542
2006	33,338,875	108,620,828					141,959,703
2007	35,900,310	202,567,192	64,769,723	4,026,258	6,831,621		314,095,104
2008	42,838,783	280,559,863	89,874,274	52,115,886	29,936,928		495,325,734
2009	52,178,022	313,115,711	107,172,913	125,247,241	52,609,676		650,323,563
2010	58,281,220	334,862,339	108,652,810	175,521,898	62,998,394	7,988,595	748,305,256
Total	247,041,642	1,248,711,768	370,469,720	356,911,283	152,376,619	7,988,595	<u>2,383,499,627</u>

Source: Email correspondence, Vusumzi Nogwebu, Business Development Manager, Zonke Monitoring Systems. 15 June 2010

*Only includes data for the month of March

Figure 4 below summarises provincial GGRs for the month of May 2010. As can be seen clearly, the bulk of LPM revenue is still generated in the Western Cape and to a lesser extent Kwa-Zulu Natal. Gauteng lags behind considerably, in part because of the extensive delays in granting LPM licences and in part because of competition from the “bingo casinos”.



Figure 5: LPM GGRs – May 2010

Source: <http://www.zonkems.com/industry-info/industry-roll-out/>

2.5.4 Employment creation

According to unpublished NGB statistics (cited in NGB 2009a, p.69), the LPM industry contributes 2,499 jobs. This, it is assumed, includes all CEMS and route operator jobs, as well as additional jobs created at site by the placement of LPMs.

Vukani estimates that 2 jobs are created for every 5 machines at a site. This needs to be treated with some caution and verified independently before the full economic impact of LPMs can be considered. None of the sites visited by the Commission appeared to be this labour intensive.

2.5.5 Viability of LPM industry

The steady rise in LPM GGRs since their introduction in 2003 represents the “take off” phase of an emergent industry. Although it appears likely that early projections for the revenue generating potential of LPMs were overly optimistic, it is too early to tell what the prospects for the LPM industry are.

One study commissioned by Zonke Monitoring Systems adopts a conservative view on the LPM industry’s future. The study points to the fact that, with the possible exception of the Western Cape, a substantial proportion of LPMs have low average GGRs and generate less than the “breakeven threshold”. These are either unsustainable or need to be cross-subsidised (Stacey 2009, p.14). (Stacey does not discuss the Gauteng GGRs.)

Assuming a “breakeven threshold” of between R200 and R250 GGR per machine per day, Stacey’s analysis shows just how marginal many LPM sites are. Stacey summarises the proportion of LPMs with GGRs below the breakeven threshold in the table below.

LPM “breakeven threshold”: By province

Province	R 150	Breakeven: R 200	R 250
Mpumalanga	47.4%	55.9%	63.9%
Eastern Cape	51.4%	61.2%	68.8%
Western Cape	16.1%	23.1%	30.3%
Limpopo	30.6%	38.0%	46.5%
KwaZulu-Natal	42.6%	53.8%	63.0%

Source: Stacey (2009, p.24).

In large measure, the low GGR sites are found in venues in “PDI areas”, which are typically poorer and have less foot traffic. Many route operators continue to support these sites in order to satisfy their licence conditions, which require a stipulated ratio of PDI and non-PDI sites.

Stacey goes on to note that, with the exception of Mpumalanga, GGRs per machine are either remaining static or declining. Moreover, the market appears to be saturated in Mpumalanga, the Eastern Cape and the Western Cape, and approaching saturation in Limpopo. The only province still registering strong growth is Kwa-Zulu Natal (Stacey 2009, p.21).

The Commission shares this concern, and is not convinced that the LPM industry, as it exists presently, is economically viable, or likely to meet even its initial target of 25,000 machines.

2.5.6 Corporate social investment

The provincial gambling regulatory authorities set their own CSI requirements for the awarding of route operator licences. As such, this varies from province to province, although to a large extent these have been superseded by the Codes of Good Practice on B-BBEE.

A criticism encountered frequently, and confirmed by casino operators who claim to face the same problem,³⁰ is that the PGRAs do not exercise a proper regulatory oversight role with regard to CSI spend but, seek to intervene to direct CSI spend. If the PGRAs disagree with details of CSI plans (including where and from whom services are procured) they simply refuse to approve the plans.

This undermines route operator (and casino) CSI strategies, and raises potential questions about the partiality of the PGRAs. A more helpful and appropriate approach would be for PGRAs to help determine broad criteria for CSI spend and allow the operators to work within these parameters.

2.5.7 Conclusion

To date, the LPM industry has not grown in the manner initially anticipated. The objective of creating a sector within the gambling industry that has low barriers to entry, which facilitates PDI ownership and control, and which contributes to the sustainability of existing (primary) businesses, has clearly not been achieved.

In very large measure this is due to delays, inconsistencies and capacity shortcomings within the regulatory bodies. In part, however, the problems

³⁰ Confidential submission to GRC and privately to author of this section.

encountered are inherent in the design of the LPM sector. Although the decision to restrict non-casino slot gambling to smaller sites is a good one, and in keeping with the sumptuary model of gambling regulation adopted in South Africa, the simple distinction between casino-slots (which offer unlimited payouts as well as roll-over jackpots) and all other slots (which offer extremely limited payouts and no roll-over jackpots) may have been too limiting.

Equally, the insistence that large numbers of LPMs be located in PDI areas may be both economically mistaken and socially undesirable. From an economic perspective, the location of LPMs in typically lower-income to poor areas jeopardises the viability of the industry. Route Operators are forced to keep these operations going in order not to jeopardise their licences.

From a social perspective this criteria is also questionable. If the intention is to restrict problem gambling and, in particular, to protect the poor, then the insistence that a high percentage of LPMs are located in areas that by the nature of South Africa's history are disproportionately poor makes little sense at all. This is especially so given the finding in the latest National Prevalence Study that "risk for problem gambling appears to be associated with being poorer than the provincial and national averages but better off than the poorest groups who do not live in permanent dwellings" (p.4, emphasis added)" (NPS 2010, p.4).

2.6 Betting: 2001-2009

Figure 6 summarises the GGR and tax contributions made by the legal/regulated betting industry. This includes fixed-odds and tote betting, on-course and off-course betting, as well as both horse and sports betting.

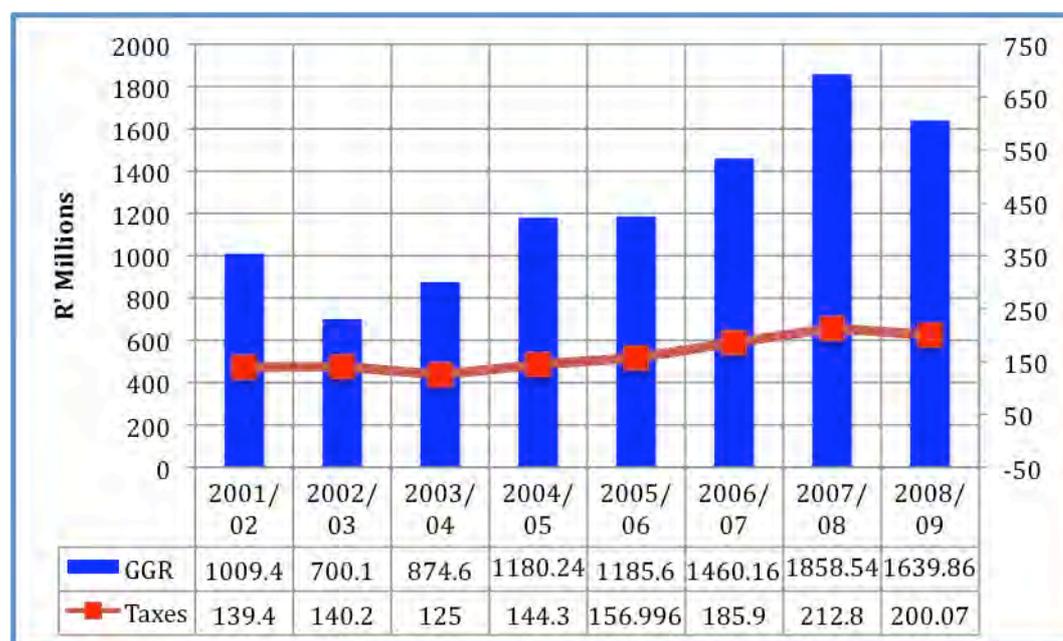


Figure 6: Betting GGR and tax contributions since 2001

Source: NGB, *Financial Statistics*, 2003-2009.

Clearly, the betting industry is not doing as well as it has historically, and is feeling the pinch of the economic downturn. It is not alone in this regard. In the same period, betting revenues in New Zealand decline by 17%, in Western Australia by 4%, in the UK tote by 10.5% and by between 20% and 30% in various USA states (Gold Circle, *Annual Report*, 2009, p.7).

The problem besetting the horseracing industry goes beyond the immediate economic downturn, and betting on horses (both on-track and off-track) has lost much of its appeal to younger generations of punters faced with an array of gambling opportunities. The industry has sought to counter this through the introduction of new betting products offering odds on sports events, especially soccer. This is clearly a potential growth area in South Africa.

The industry has also sought to modernise racetrack venues, and make them more appealing family destinations. Night racing has also been introduced in many venues.³¹

Two companies, who, uniquely, have licences to run both the racecourses and the tote betting operations, control the horseracing industry in South Africa. The cost of maintaining and operating the racetracks is increasingly prohibitive, and Phumelela, in particular, would like to be given permission from the provincial regulatory authorities to close some tracks down and increase the number of races held on the remaining tracks.³²

The largest and most profitable of these is Phumelela Racing, which operates five (5) racetracks in four (4) provinces, and operates the tote in seven (7) provinces.

Gold Circle operates racetracks and the tote in the remaining two (2) provinces.

Ownership of racetracks

Province	Racetrack		Tote
	Owned	Location	
Eastern Cape	Phumelela	Arlington Fairview	Phumelela
Free State	Phumelela	Vaal	Phumelela
Gauteng	Phumelela	Turffontein	Phumelela
KwaZulu-Natal	Gold Circle	Clairwood Scottsville Greville	Gold Circle
Limpopo	-	-	Phumelela
Mpumalanga	-	-	Phumelela
North West	-	-	Phumelela
Northern Cape	Phumelela	Flamingo Park	Phumelela
Western Cape	Gold Circle	Kenilworth Durbanville	Gold Circle

Source: Gold Circle and Phumelela Annual Reports.

The fact that there is only one totalisator licence granted per province, and that these have been granted to only two companies – Phumelela (7 provinces) and Gold Circle (2 provinces) – is controversial, especially as Phumelela – which operates the tote on

³¹ For a critical account of struggles between Phumelela and local residents opposed to the introduction of night racing in their neighbourhood, see Anon (2010).

³² Interview with David Attenborough, CEO, Phumelela SA Operations

behalf of both companies – offers betting on both horse racing and sports events. (Betfair, for example, has branded this anti-competitive, and has called for the legalisation of betting exchanges to allow new entrants into the market).³³

All tote bets placed on South African races are comingled or combined into a single national pool (the TAB), and operated by Phumelela. In addition, Phumelela comingles its pools with various global tote pools.

In 2003 the TAB introduced a soccer pool, which allows punters to bet on both South African and international soccer games. They would like to extend this type of sports betting to include other popular sports.

Both Phumelela and Golden Circle have a shareholding in the company Betting World, which offers fixed-odds, bets on a wide variety of sports including cricket, motorsport, soccer and horseracing. This is a growing section of the betting market in South Africa.

In addition to the tote, there are 300 licensed bookmakers in South Africa.

2.6.1 Horseracing and betting

The NGB highlight another important factor, namely that the horseracing industry, unlike other sports such as soccer or rugby, is wholly dependent on betting for its revenue and derives revenue from the stakes paid to the winning horse and from a levy/tax paid by the bookmakers.

The NGB also raise the lack of transformation in the industry as a concern that requires review. The Commission agrees with the NGB that there is a need to bring the horseracing industry into the legislative framework. This is an industry, which the Commission noted has managed to escape the level of scrutiny that other forms of gambling are subjected to. Indeed the Wiehahn Commission report (1995, p.38) simply stated that horse racing “is a well established industry with a good record; horse racing and wagering do not offer any problems.”

The horseracing industry is paid a 3% levy by the provincial gambling regulators countrywide. The provincial gambling regulators pay 3% of the tax collected from Bookmakers to the holder of the totalisator licence. This is to sustain the horseracing industry, (without which there could be no betting), and is common practice throughout the world.

It should be noted that the bookmakers do not accept bets on horseracing alone, yet 3% of the tax paid by bookmakers goes to the holders of the totalisator licence and is not shared by any of the other sports on which bookmakers accept bets. This is unequitable. If the principle is that the associated betting industry should help sustain the underlying sport, then this should apply equally to all such sports.

2.6.2 Horseracing and employment

According to Phumelela, the entire horseracing industry employs approximately 100,000 people.³⁴ Although we have not been able to verify this figure, it is clear that horseracing is an extremely labour intensive business, with considerable upstream and downstream employment opportunities. The industry provides direct employment to a very wide range of people involved in the breeding, feeding, training and riding of horses, as well as people involved in the staging of races and the betting on races.

³³ Submission to GRC, Public Hearing, *Vereeniging*.

³⁴ Interview with David Attenborough, CEO, Phumelela SA Operations; Phumelela website.

Phumelela employs 1,500 people directly. Gold Circle employs 2,560. The various bookmakers sustain approximately 300 jobs.

2.6.3 Horseracing and Community Social Investment

The Commission does not have details on actual CSI expenditure by the horseracing industry. Most horseracing CSI spend takes the form of voluntary contributions to the NRGP. Currently this is set at 0.1% of GGR.

In addition, Phumelela makes CSI contributions to the Thoroughbred Trust, whose primary mandate is the development of grooms and jockeys; the SOJO Business and Development Forum; the SAPS Mounted Unit; and the Supersport Youth Academy and Supersport Project. Most of these grants, whilst appreciated by the recipients, are relatively small (e.g. R350, 000 to the SAPS Mounted Unit in 2008/9).

Gold Circle makes the same voluntary contribution to the NRGP, as well as numerous smaller grants to selected charities.

2.6.4 Horseracing and B-BBEE

As of July 2009, Gold Circle has an A-rating in terms of the DTI's Codes of Good Practice. Phumelela has a level-4 rating in terms of the Codes of Good Practice.

2.6.5 Bookmakers and B-BBEE

The bookmaking industry is extremely concerned about attempts by provincial regulators to require bookmakers to reach certain B-BBEE levels (as defined by the Codes of Good Practice) within a prescribed time. Their primary concern is that the provincial regulators have not interpreted the Codes in a flexible way, and that they do not recognise the peculiar nature of the bookmaker industry. In particular, small bookmakers (as opposed to corporate bookmakers) are concerned about the fact that their B-BBEE requirements are calculated on the basis of their betting turnover rather than their profitability.

In the nature of the business, where bookmakers take large numbers of bets to "make the book", these businesses usually have a substantial annual turnover. However, according to a submission by the Western Cape Betting Association (2010), they seldom realise a profit (if they do so at all) of more than 6% to 8%,

As such, although they would appear to be small businesses, they are classified as Qualifying Small Enterprises, and are subject to the relevant B-BBEE requirements outlined for this category of enterprise.

The concern is well placed. A one-person business cannot be expected to transform its ownership, management, employment equity, preferential procurement policies, skills development policies, enterprise development policies, and socio-economic development policies (the seven pillars of B-BBEE) in the same way that larger corporate structures can. Indeed, the Codes make this provision in recognition of this limitation.

The Commission believes that an alternative to annual turnover be devised to determine B-BBEE liabilities.

2.6.6 Conclusion

Horseracing is a well-established industry in South Africa. Although it is clearly facing major challenges, it appears set to ride out the economic downturn as well as declining on-course and off-course betting on horseracing.

It is not clear why horseracing is unable to sustain itself like any other sporting activity. The Commission is of the view that this matter warrants further review.

Horseracing is a major employer in South Africa, and for this reason alone, it is hoped that the industry prospers.

In order to survive, the horseracing industry has to modernise itself and become more attractive to new, especially younger, punters. This requires a combination of two things: modernising existing venues and race formats, and developing new business models more closely integrated with other forms of gambling. Both of these changes are in line with world trends.

The industry needs to embrace online technologies. The debate on this is discussed more fully in chapters 3 and 5.

2.7 The National Lottery

Unlike the gambling modes discussed above, the national lottery is state owned (although privately operated) and is governed by national rather than provincial legislation.

2.7.1 A revenue maximisation mandate

Of interest here is the NLBs duty to maximise the profits of the lottery. Their mandate is thus distinctly different from that of the NGB and the provincial gambling regulatory authorities, who are expected to control and where necessary limit gambling opportunities.

This is not to say that the revenue maximisation model has been applied consistently or rigorously.³⁵ The NLB and Gidani complain bitterly about delays in the approval of new games. This would not occur if revenue were the only criteria used to assess applications.

2.7.2 Lottery products

The National Lottery products include the “traditional” lottery products – Lotto, Lotto Plus and Powerball – as well as scratch cards (Wina Manje) and a SportsStake game.³⁶

Scratch cards are a form of “instant lottery”, in which the punter uncovers (scratches) pre-printed Play Symbols on a Ticket, and will receive a prize if the Symbols match a required combination. There are currently 29 variants of the scratch card game, played for between R2 and R10 a game. In the R2 “9’s in a line” variant, for example, the Play Symbols are printed on a grid with three rows and three columns. To win, the player has to uncover three nines in the same row, column or diagonally. The return to player on scratch cards is typically around 52%.

The Sports Stake game is a variant of a football pool, in which players are required to predict the result of twelve predetermined football games. Players are given a list of twelve fixtures, and have to select home wins, draws and away wins for each game. Multiple wagers in which more than one prediction is made are possible. The minimum price for a wager is R1, including VAT.

³⁵ For a detailed discussion of lotteries and the revenue maximisation model of gambling regulation, see Garrett (2001).

³⁶ Information on the Wina Manje and SportsStake games is taken from www.nationallottery.co.za.

The Sports Pool comprises 50% of total net sales.

The licence held by the second national operator, Gidani, stipulates that there must be a minimum of 7,200 terminals at the start of the licence period and 10,626 terminals by the 30th October 2010.³⁷ In keeping with the revenue maximisation model of gambling regulation, the licence holder is encouraged to exceed the target, and required to pay penalties for every terminal short of the required year-end target.

According to the NLB, there were 7,864 licensed lottery outlets in SA in May 2010.³⁸ This is 314 fewer than in March 2009, which may be an effect of the recession and the removal of terminals from debt-struck retailers.³⁹ It appears unlikely that the operator (Gidani) will reach its October 2010 target, and the NLB is presently considering a request that it renegotiate the licence conditions.

Of interest, is that the delays in terminal rollout appear to be hampered by a change in consumer purchasing patterns. In their submission to the NLB, Gidani point to increased sales via supermarket till points, ATMs, cell phones, and the internet, as reasons why fewer terminals are required to reach profit targets.⁴⁰

2.7.3 Economic performance to date

The bulk of all sales are for the Lotto and Lotto Plus lottery tickets, and, in the past year, for Powerball lottery tickets. Ticket sales since the inception of the National Lottery are summarised in the tables below.

The tables below provide details of all forms of ticket sales combined since the inception of the lottery.

National Lottery: 2001-2006

	FINANCIAL YEAR ENDING					
	31 March 2001	31 March 2002	31 March 2003	31 March 2004	31 March 2005	31 March 2006
Lotto, Lotto Plus	3,089	3,708	4,176,000	3,555,000	4,089	4,183
Other games *	0	279	125	539	159	217
TOTAL SALES	3,089	3,987	4,301	4,094	4,248	4,400

³⁷ Information provided by Sershan Naidoo, 22 July 2010. Email correspondence.

³⁸ Submission to the Gambling Review Commission, May 2010.

³⁹ Information provided by Sershan Naidoo, 22 July 2010. Email correspondence.

⁴⁰ Information provided by Sershan Naidoo, 22 July 2010. Email correspondence.

National Lottery: 2007-1010

	FINANCIAL YEAR ENDING				
	31 March 2007 (million)	31 March 2008	31 March 2009	31 March 2010 (million)	TOTAL
Lotto, Lotto Plus	3,972	1,536	3,533	3,500	31,841,304,000
Powerball				800	
Wina Manje	204	72	172	119	447,800,000
SportsStake	122	47	203	241	372,300,000
TOTAL SALES	4,298	1,655	3,908	4,666	34,801,179,000

Source: NLB Annual Reports, 2001-09. 2010 figures: Sershan Naidoo, NLB.

Note * Wina Manje and SportsStake are not reported on separately until 2007

Ticket revenues are split four ways. Around half (depending on the type of ticket) is returned to punters in the form of prizes; 14% is deducted as VAT; a percentage is transferred to the National Lottery Distribution Trust Fund (NLDTF) for distribution to good causes; and the remainder (profits) are shared between the licensed operator and the vendors who sell lottery tickets.

Some sort of comparison with the GGR figures used to report on gambling revenues in other sectors of the gambling industry can be obtained by subtracting prizes – typically 50% – from ticket sales. Figure 7 below summarises the “GGR” for the Lotto, Lotto Plus and Powerball lottery products. (No prize figures are available for the Wina Manje and SportsStake games.)

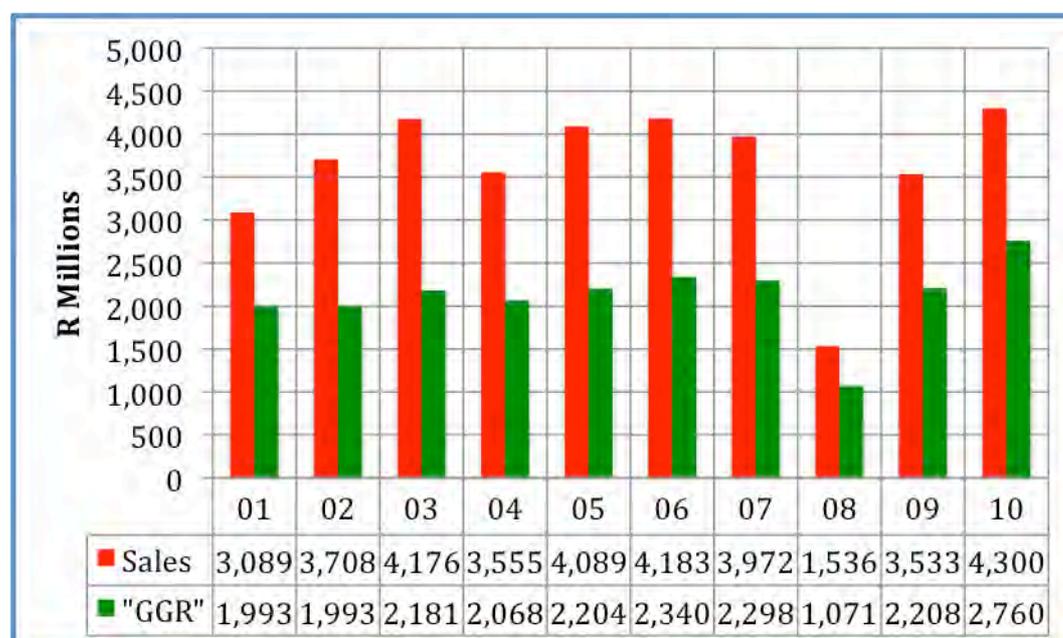


Figure 7: Ticket sales and “GGR”. 2001-2010

Source: NLB Annual Report, 2001-2009. 2010 figures: Sershan Naidoo, NLB.

It is worth mentioning the incredible speed with which the lottery took off, with over R3 billion of sales in the first full year of operation. Given the low cost of tickets, and the fact that, in line with the revenue maximisation model of gambling regulation,

vendors were located in both commercial and residential areas, this was clearly the most direct exposure to gambling faced by the South African public since regulation.

As with casinos, betting, LPMs and bingo, we find that the majority (68%) of ticket sales occur in the three wealthiest provinces, KwaZulu-Natal, Western Cape and Gauteng. The table below summarises the regional distribution for Lotto and Lotto Plus sales in the 2008/08 financial year. (No regional breakdown for the other National Lottery products is available).

National lottery: Performance by province

	R' Million	%
Gauteng	1,347	38.13
Western Cape	539	15.26
KwaZulu-Natal	484	13.70
Mpumalanga	222	6.28
Free State	157	4.45
Eastern Cape	251	7.10
North West	247	6.99
Limpopo	206	5.83
Northern Cape	80	2.26
TOTAL (inc VAT)	3,533	100.00

Source: NLB Annual Reports, 2001-09. 2010 figures: Sershan Naidoo, NLB.

From 2001 until the end of March 2009, the National Lottery generated R4.17 billion in VAT. A further R572 million was raised in the 2010 financial year.

In addition to VAT revenues, the government received a dividend for its 20% shareholding in the licensed operator.

In the same period, an average of R933 million was transferred to the NLDTF each year, or a total of R8.4 billion. A further R1.5 billion was raised in the 2010 financial year.

National lottery: VAT and NLDTF contributions, 2001-2005

	FINANCIAL YEAR ENDING				
	31 March 2001	31 March 2002	31 March 2003	31 March 2004	31 March 2005
	'000	'000	'000	'000	'000
VAT	379,385	489,647	528,187	502,809	521,724
NLDTF	418,307	775,089	961,582	935,128	962,071

National Lottery: 2006-2010

	FINANCIAL YEAR ENDING				
	31 March 2006	31 March 2007	31 March 2008	31 March 2009	31 March 2010
	'000	'000	'000	'000	'000
VAT	540,351	527,825	203,258	479,930	572,281
NLDTF	1,146,765	1,201,029	552,773	1,442,732	1,900,000

Source: NLB *Annual Reports*, 2001-09. 2010 figures: Sershan Naidoo, NLB.

During the first seven-year licence period the licensed operator, Uthingo, transferred a total of 24.8% (after VAT) of ticket revenues to the NLDTF.⁴¹ This has increased to 34% (after VAT) under the second licensed operator, Gidani.

2.7.4 Conclusion

The principle of a state lottery concerned exclusively with revenue maximisation appears to have worked.

The national lottery has generated significant funds for the government over the past decade, and is the largest source of funding for good causes in the country. In many sectors, i.e. the arts, funding via the NLDTF exceeds that provided through traditional government channels.

Unfortunately the popularity of the lottery has declined in the past three years, although the second operator appears to have arrested this. Internationally, there has been a tendency for lottery expenditure to tail off, although the evidence suggests that this rises dramatically when there are large roll over prizes.

⁴¹ Information provided by Vevek Ram, 20 March 2008. Email correspondence.

Chapter 3: The social impact of gambling

3.1 Introduction

While policy makers are relatively positive about the socio-economic contribution made by the gambling sector, there has always been considerable concern about the potential for the sector to cause harm.

The final report by the Wiehahn Commission (1995) articulated this concern, arguing “legalising gambling will have many advantages, but must be strictly controlled, well-managed, and regulated effectively by the central and provincial governments.” This is the essence of the sumptuary model of gambling regulation. Gambling, in short, cannot be about revenue maximization alone.

In a speech to the National Gambling Conference in April 2008, Rob Davies, the then Deputy Minister of Trade and Industry, endorsed this approach, arguing, “In seeking this balanced approach, the key challenge is to minimise the negative impacts of gambling and to foster and optimise the potential and real positive outcomes.” Davies pointed out that the problem is not the many, perhaps even the majority of punters, who spend their discretionary income on a harmless night out at the casino, and whose losses can be regarded as payment for the entertainment experience. Rather, the problem lies with a small minority of gamblers who, to adapt the NRGP’s slogan, “do not know when to stop.”

It is common cause that policy and regulation needs to take cognizance of the high levels of poverty and inequality in South Africa, and to ensure that gambling does not negatively affect the most vulnerable sectors of our society.

3.2 Who gambles

Thanks to regular National Prevalence Studies (NPS) conducted by independent academics⁴² for the South African Responsible Gambling Foundation (in 2001, 2003, 2005, and 2008), supplemented by studies conducted by the Colleague of Economic and Management Sciences at the University of South Africa for the National Gambling Board (in 2003, 2005 and 2009) we have a reasonably good understanding of gambling behaviour in South Africa. South Africa is the only developing country in the world that can make this claim. In this section we review these findings, focussing on

- Level of gambling participation
- Who gambles
- What do people gamble on, and
- Where do people gamble.

In the section that follows we focus on problem gambling.

⁴² The studies were conducted by independent academics. The latest (NPS 2008) was headed by Professor Don Ross from the Universities of Cape Town and Alabama at Birmingham (UK) and co-authored with various other academics from the Universities of Cape Town, KwaZulu-Natal, Salford (UK), and Houston (USA).

3.2.1 The National Prevalence Studies

Since 2001, four National Prevalence Studies have been conducted which examined patterns of urban gambling behaviour in South Africa. Recently this has been supplemented with a major study of gambling behaviour in rural and peri-urban KwaZulu-Natal (NPS 2010b), which provides invaluable insight into the dynamics of poor communities exposed to a variety of formal and informal gambling opportunities. The 2001 National Prevalence Study (NPS) comprised a national sample of 5,800 urban adults with easy access to commercial gambling and knowledge of household disposable income. The 2003 NPS comprised effectively the same sample (5,816 urban adults).

In 2005, primarily for budgetary reasons, the sample was reduced to 3,003 urban adults with easy access to commercial gambling in KZN, Gauteng and the Western Cape. The 2008 NPS comprised effectively the same sample (3,000 urban adults). Although heavily biased towards Gauteng, the 2008 NPS survey included a more specific focus on intra-provincial socio-demographic regional dynamics.

The 2010 study of rural and peri-urban gamblers comprised an in-depth analysis of 301 adults, most of whom had limited education (m=std 9) and very low income levels (Mdn personal income = R520 pm). Nearly all the rural respondents lived in traditional huts whilst the peri-urban respondents lived mostly in informal shacks or low-cost housing.

The studies conducted for the NGB focus on economic behaviour more generally and provide a useful supplement to the National Prevalence Studies. The 2003 study comprised a sample of 2,050 respondents, half of whom were interviewed telephonically and half face-to-face. This approach allowed the researchers to reach beyond the urban areas, and to include non-urban dwellers in the sample. Both the 2005 and the 2009 surveys comprised 3,100 households, of whom roughly 30% were Telkom subscribers and 70% face-to-face interviews.

3.2.2 What is the level of gambling participation in South Africa

Considerably fewer people are gambling today. After rising steadily since 2001, the number of adults who *gamble regularly* (at least once a month) dropped from 86% in 2005 to 42% in late 2008. This applies to both lottery only and other forms of gambling.

	2001	2003	2005	2008
Gamble regularly (once a month)	72.1%	75.7%	86.1%	41.6%
- At least one game, but not	(37.5%)	(34.3%)	(33.6%)	(18.8%)
- Lottery only	(34.6%)	(41.4%)	(52.5%)	(22.7%)
Gamble occasionally	2.2%	4.3%	5.5%	10.5%
No gambling (past 12 months)	25.6%	20.1%	8.3%	47.9%

Source: NPS (2001-2009).

Since 2001, the number of adults who have *not gambled in the past 12 months* has declined from a quarter to almost half of the adult population in 2008. (The 2009 NGB survey suggests that this trend has continued, and reports that as many as 65.1% of adults claim not to have gambled in the three months prior to the survey.)

Although the decline of lottery play was due largely to the suspension of the National Lottery for several months in 2007, there was no corresponding spike in other forms of gambling as a result. Instead, the major reason for the decline in participation

appears to have been the global recession, which has hit all sectors of the entertainment industry.

Significantly, the authors of the National Prevalence Study commented that “Contrary to popular myth, when times are hard people don’t tend to gamble more in the hope of getting out of financial difficulties: on the contrary they tend to gamble less because they have less to spend generally on entertainment” (NPS 2010a, p.8).

3.2.3 What games do South African gamblers play

The most popular formal gambling activities remain the lottery and casinos. The most popular informal activity is increasingly fahfee.

Popular forms of gambling

	2001	2003	2005	2008
Lottery	67.6%	72.3%	81.5%	Not provided
Scratchcards	12.0%	15.0%	14.0%	Not provided
Slots	19.2%	14.1%	13.9%	3.7%
Roulette	1.5%	1.4%	2.2%	0.5%
Horses	7.8%	5.7%	5.9%	Not provided
Newspaper jackpots	9.5%	3.3%	2.6%	Not provided
Sports betting	2.8%	2.2%	2.3%	Not provided
Bingo	1.5%	1.4%	1.2%	Not provided
Fahfee	4.5%	5.6%	4.0%	5.1%
Dice	1.7%	2.0%	1.6%	1.8%
Cards	3.4%	3.2%	2.7%	2.2%

Source: NPS (2001, 2003, 2006, 2010a).

3.2.4 Participation by population group

The table below is taken from the 2009 NGB survey of gambling behaviour, and shows the propensity to gamble by population group and mode. The African population group is the most active in gambling activities followed by Whites, Asians, and Coloureds.

Participation in gambling by gambling mode and population group

GAMBLING MODE	Asians	Africans	Coloureds	Whites
Lotto	21.3%	31.7%	17.1%	26.7%
Casino gambling	8.5%	5.6%	3.7%	11.5%
Limited Payout Machines	6.4%	0.4%	0.7%	2.6%
Wagering (betting on horses)	1.1%	1.3%	0.7%	0.7%
Sports betting	0.0%	2.1%	1.0%	0.7%
Bingo	1.1%	0.2%	1.0%	0.0%
Scratch cards	5.3%	7.8%	3.7%	1.3%
Interactive Gambling	1.1%	0.2%	0.7%	0.9%
Fahfee	0.0%	3.3%	0.0%	0.0%
Dice	0.0%	1.6%	1.7%	0.0%
Gaming competitions e.g. per SMS	1.1%	3.8%	1.7%	2.6%
Other	0.0%	0.7%	0.7%	0.2%
No gambling participation	74.5	62.7	77.3%	67.4%

Source: NGB (2009a, p.12).

The participation in the different gambling modes indicates the following:

- Coloureds showed the lowest propensity to gamble on the lotto (17.1%), while Africans were the most active participants (31.7%).
- Casino gambling is the most popular among Whites (11.5%) and Asians (8.5%) and the least popular among Africans (5.6%) and Coloureds (3.7%). Among other things, these figures indicate the relative affluence of players.
- Africans (1.3%) and Asians (1.3%) were the most active at horse betting, while Africans (2.1%) and Coloureds (1.0%) were fairly active sports betting participants.
- Scratch cards were the most popular among Africans (7.8%) and Asians (5.3%) while this mode attracted only (1.3%) of the White population.
- Fahfee and dice were played predominantly by Africans (3.3%) and Coloureds (1.6%) while it was totally absent among Asians and Whites. This reflects historic class as well as residential patterns.

The data shows that Africans and Coloureds, representing the highest percentage of low-income people, are primarily affected by the lottery, scratch cards, horse racing, fahfee, dice and gaming competitions (usually illegal lotteries). Thus, illegal forms of gambling, as well as low cost gambling forms are most prevalent among poorer population groups. Overall, however, the three most popular forms of gambling are casino gambling, the lotto and scratch cards, irrespective of race.

3.2.5 Participation in gambling by class/economic status

It is important to understand what forms of gambling are most attractive to different socio-economic classes, and in particular, to understand how and where the poor are most likely to participate in gambling activities.

According to the latest NGB study, the following games are played by adults in each of the various annual personal income categories set out below.

Gambling participation by annual personal income

GAMBLING MODE	<R6,000	R6,001- R12,000	R12,001- R24,000	R24,001- R60,000	R60,001- R120,000	>R120,001
Lotto	23.6%	26.5%	33.8%	34.9%	36.0%	28.6%
Casino gambling	3.3%	2.4%	6.8%	7.1%	15.4%	11.3%
Limited Payout Machines	0.7%	0.0%	0.8%	1.1%	2.3%	1.9%
Wagering (on horses)	0.7%	0.6%	0.8%	2.5%	2.3%	0.4%
Sports betting	1.9%	0.8%	1.0%	2.1%	3.5%	1.5%
Bingo	0.3%	0.2%	0.5%	0.2%	0.3%	0.0%
Scratch cards	4.9%	6.7%	8.8%	8.4%	9.0%	0.8%
Interactive Gambling	0.3%	0.4%	0.5%	0.0%	0.6%	0.4%
Fahfee	1.1%	4.3%	3.5%	1.6%	1.3%	0.4%
Dice	1.3%	1.0%	1.0%	2.3%	1.6%	0.0%
Gaming competitions e.g. per SMS	3.5%	3.2%	2.5%	3.0%	5.5%	3.0%
Other	1.5%	0.0%	0.5%	0.2%	0.3%	0.0%
No gambling participation	70.5%	69.4%	60.8%	59.4%	57.6%	64.5%

Source: NGB (2009a, p.11).

It is important to treat these findings with extreme caution. People are notoriously reluctant to provide accurate information on personal income, and the information they provide is often quite inaccurate. It is for this reason that the National Prevalence Study prefers to use type of housing as a proxy for class, rather than rely on respondent self-assessment of personal or household income.

On the whole, it would appear that levels of participation correlate closely with income. Persons in lower income groups are less likely to gamble than persons in higher income groups – “no gambling participation” drops from 71% in the lowest income cluster to 58% and 65% in the two highest income clusters.

Generally, casinos are not frequented by the poorest sectors of the population. Confirming the general trend reported above, Dellis et. al. report that whilst two thirds (68%) of rural and peri-urban adults in KwaZulu-Natal had gambled at some point in their lives, only 5.5% of rural and 33.5% of peri-urban respondents had ever visited a casino (NPS 2010b, p.5).

In KwaZulu-Natal, the peri-urban and rural communities surveyed were most likely to participate in the lottery (46.8% and 18.6%) and card gambling (19.4% and 4.1%) (NPS 2010b, p.6).

As was expected, the lottery is the most widely played game in poor communities, primarily because of easy access, followed by cards, scratchcards and coin spinning and caps.

Peri-urban and rural gambling prevalence

	Rural	Peri-urban
Ever gambled	51.7%	83.3%
Ever visited a casino	5.5%	33.5%
Regular gambler (all games including lottery)	22.1%	59.0%
Regular gambler (excluding lottery only players)	6.2%	34.0%
Regular Lottery	18.6%	46.8%
Regular Cards	4.1%	19.4%
Regular Scratch cards	2.1%	18.6%
Regular Spinning and Caps	0.7%	8.3%

Source: NPS (2010b, p.5).

3.2.6 Participation in gambling by gender

According to the latest NGB survey, males are consistently more likely to gamble than females. The only gambling modes with higher levels of female participation are fahfee, gaming competitions and, to a minor extent, bingo.

	Male	Female
Lotto	37.4	24.5
Casino gambling	8	5.4
Limited Payout Machines	1.1	0.9
Wagering (betting on horses)	2.7	0.3
Sports betting	4.1	0.4
Bingo	0.2	0.3
Scratch cards	8.1	5.3
Interactive Gambling	0.4	0.3
Fahfee	1.8	2.8
Dice	3	0.4
Gaming competitions e.g. per SMS	3.1	3.5
Other	0.8	0.5
No gambling participation	56.2	70.3

Source NGB (2009, p.11).

There is no significant correlation between gender and problem gambling.

3.2.7 Participation by age

There is no clear relationship between age and participation in different gambling activities. However the Prevalence study noticed a “slight tendency for people to switch from gambling at informal venues to casinos as they reach middle age” (NPS 2010a, p.10).

3.2.8 Where do people gamble: Formal and informal venues

Of great concern is the finding that whilst 7% of the sample gamble only in legal casinos, a full 13% gambled only in informal venues. This is especially stark in the East Rand, where 3% of the sample gambles in casinos as compared to 17% in informal gambling venues (NPS 2010a, p.2).

This points to the growing significance of informal (and hence illegal) gambling in South Africa, which has an especially pernicious impact on problem gambling behaviour. Poor, typically black, communities are especially at risk here. We return to this important point below.

3.3 Perspectives on problem gambling

3.3.1 Defining problem gambling

There is considerable debate over the nature and cause of problem gambling. Typically, this is understood to involve an uncontrollable urge to gamble, such that the persons involved cause significant harm to themselves and to others (Wong 2009, Lesieur and Rosenthal 1991). In the latest British Gambling Prevalence Survey (BGPS 2007, p.72), problem gambling is defined as “gambling to a degree that compromises, disrupts or damages family, personal or recreational pursuits”, whilst the National Gambling Research Programme in Australia characterises problem gambling “by difficulties in limiting money and/or time spent on gambling which leads to adverse consequences for the gambler, others, or for the community” (Neal et. al. 2005, p.1).

Clearly this does not permit very precise measurement, not least of which because of the inherently subjective nature of the definition of uncontrollable behaviour and harm. It does however focus our attention on the potential for gambling to cause harm to both gamblers and their families, and to consider the broad social, economic and deeply personal nature and impact of this harm.

A variety of statistical screens have been developed to identify problem gamblers. At the outset, it must be stated that these are far from accurate. Not only do different screens have different sensitivities for measuring problem gambling, but many persons identified as problem gamblers under one screen are classified as non-problem gamblers under another (BGPS 2007, p.82). Moreover, statistical screens are notorious for producing large numbers of false positives (people who are identified initially as problem gamblers but who after clinical interviews were found not to be problem gamblers) and false negatives (the other way around) (NPS 2006, p.4, pp.32-35).

Although these tests *do not* produce reliable information about the actual number of problem gamblers in society, Collins and Barr argue that, when used longitudinally, in other words, when the same screen is administered over time to similar populations, they reveal trends about the nature and prevalence of particular gambling behaviours that allows us better to understand the motivation for gambling and assists us properly to diagnose and “treat” problem gambling (NPS 2006, p.4).

It is these trends and not individual country scores that need to be considered when examining the impact of various forms of formal and informal gambling in South Africa.

The main clinical diagnostic system used to identify “persistent and recurrent maladaptive gambling behaviour” are the DSM-IV, developed by the American Psychiatric Association, and the South Oaks Gambling Screen (SOGS) developed by Henry Lesieur and Sheila Blume. The SOGS has been adapted for non-clinical usage and was widely used in the earliest prevalence studies including the 2001 and 2003 NPS in South Africa as well as the 1999 Australian Government Productivity Commission Inquiry into gambling behaviour in Australia.

More recently, the 31-question Canadian Problem Gambling Index (CPGI) and the 9-question Problem Gambling Severity Index (PGSI),⁴³ have been widely employed in prevalence studies. The PGSI uses fewer questions than SOGS and is therefore easier (and more accurate) to administer, is less concerned with sources of money – this has proven to be very culturally specific and inappropriate in culturally diverse populations – and allows researchers to identify a far wider spectrum of gambling behaviour than the SOGS screen allowed. Typically, the PGSI is used to cluster gamblers into four key categories, namely persons at “no risk” (0 positives), persons with “low levels of problems with few or no negative consequences” (1-2 positives), persons with “moderate levels of problems leading to some negative consequences” (3-7 positives), and “problem gambling with negative consequences and a possible lack of control” (8 or more positives) (AGPC 2010, p.5.4).

The PGSI has been used as a second screen in the latest National Prevalence Study in South Africa. It was also employed in preference to the SOGS screen in the most recent Australian Government Productivity Commission Inquiry into gambling (AGPC 2010) and alongside the DSM-IV screen in the latest British Prevalence Study (BGPS 2007).

The Gamblers Anonymous (GA) 20-questions screen⁴⁴ was employed as the sole screen in the first three National Prevalence Surveys in South Africa, and alongside

⁴³ The PGSI uses nine of the CPSI questions. These are: Thinking about the last 12 months...., 1. Have you bet more than you could really afford to lose?, 2. Have you needed to gamble with larger amounts of money to get the same feeling of excitement?, 3. When you gambled, did you go back another day to try to win back the money you lost?, 4. Have you borrowed money or sold anything to get money to gamble?, 5. Have you felt that you might have a problem with gambling?, 6. Has gambling caused you any health problems, including stress or anxiety?, 7. Have people criticized your betting or told you that you had a gambling problem, regardless of whether or not you thought it was true?, 8. Has your gambling caused any financial problems for you or your household?, 9. Have you felt guilty about the way you gamble or what happens when you gamble? Respondents are asked to score: Never=0, Sometimes=1, Most of the time=2, Almost always=3 For a largely positive review of the PGSI, see Holtgraves (2008).

⁴⁴ These are: 1. Did you ever lose time from work or school due to gambling? ,2. Has gambling ever made your home life unhappy? 3. Did gambling affect your reputation? 4. Have you ever felt remorse after gambling? 5. Did you ever gamble to get money with which to pay debts or otherwise solve financial difficulties? 6. Did gambling cause a decrease in your ambition or efficiency? 7. After losing did you feel you must return as soon as possible and win back your losses? 8. After a win did you have a strong urge to return and win more? 9. Did you often gamble until your last dollar was gone? 10. Did you ever borrow to finance your gambling? 11. Have you ever sold anything to finance gambling? 12. Were you reluctant to use “gambling money” for normal expenditures? 13. Did gambling make you careless of the welfare of yourself or your family? 14. Did you ever gamble longer than you had planned? 15. Have you ever gambled to escape worry, trouble, boredom or loneliness? 16. Have you ever committed, or considered committing, an illegal act to finance gambling? 17. Did gambling cause you to have difficulty in sleeping? 18. Do arguments, disappointments or frustrations create within you an urge to gamble? 19. Did you ever have an urge to celebrate any good fortune by a few hours of gambling? 20. Have you ever considered self destruction or suicide as a result of your gambling?

the PGSI in the 2008 survey. The GA-20 is the sole screen employed in the various NGB studies of problem gambling. Persons scoring above a determined number of positives are considered “problem” or “pathological” gamblers. This screen is regarded as especially good at distinguishing social from problem gamblers, and is said to produce fewer false positives than the SOGS screen (Ursua and Uribelarrea 1998, p.11).

In addition to the PGSI and the GA-20 screens, uniquely, the National Prevalence study used the Becks Depression Inventory, the Becks Anxiety Inventory, the Barretts Impulsivity Scale and the World Health Organisation’s Alcohol, Smoking and Substance Involvement Screening Test (ASSIST) to screen for alcohol and illicit drug use and dependency. The use of these various screens allows for greater insight into the overlap between gambling and other addictions (co-morbidity), and between problem gambling behaviour and other personality disorders. This is of particular value when considering the impact of gambling on communities suffering from a wide range of social traumas.

A final note on defining problem gamblers. In South Africa, as elsewhere, it is common practice to distinguish three categories of gambler (NGB 2009, p.39), namely:

- Recreational gamblers who gamble on social occasions with friends or colleagues. This constitutes the majority of gamblers who play the lottery or use formal gambling venues.
- Problem gamblers in the broader sense of gamblers who spend more time and money than they are able to afford on gambling. Their behaviour causes harm both to themselves and others and is usually associated with considerable guilt. This is usually seen to be an addiction, and is regarded as a neurobiological problem, analogous to a chemical addiction.
- Problem gamblers in the narrow sense of compulsive or pathological gamblers. These gamblers suffer from an impulse control disorder, which is not classified as an addiction.

Although compulsive/pathological gambling is treatable, few believe it is curable. Like an alcoholic, a compulsive gambler cannot eliminate the desire to gamble completely. Instead, they put it into remission. A compulsive gambler cannot gamble “a little.” There is some evidence that links compulsive/pathological gambling to brain dopaminergic activity associated with the dopamine agonists used to treat Parkinson’s disease (Crockford 2008, p.411).

Treatment of compulsive gamblers is especially difficult and has low success rates. Compulsive gamblers invariably have multiple addictions (i.e. to gambling and to alcohol and substance abuse), which contributes to their poor prognosis.

Problem gambling in the broader (non-compulsive/pathological) sense is believed to be informed (at least in part) by particular beliefs about luck, chance, fate and “the odds”. These give the gambler the false confidence that they can “beat the system”, and can be often be challenged and addressed through a range of educational and therapeutic interventions. According to the NPS (2006, p.8), the results show that “there is indeed a clear correlation between these various forms of ignorance and the propensity to gamble to the point where significant problems are caused to the gambler. In particular, problem gamblers are at least twice as likely to misunderstand how gambling works, to have strong superstitious beliefs and not to set realistic limits to their losses which they then stick to.”

3.3.2 Problem gambling: South African trends

As noted above, there are good reasons to doubt the absolute accuracy of any of the screens used to detect problem gambling. What is important, especially for policy makers, is to understand the long-term trends. If levels of problem gambling remain persistently high or increase considerably over time, then clearly this poses serious challenges.

In South Africa, we find that the level of problem gambling rose significantly in 2003 due to the novelty factor associated with the introduction of the national lottery, but declined shortly thereafter. Since 2005 it has remained relatively constant.

The fact that problem gambling levels have remained relatively constant, despite the massive growth in the size of the gambling industry in this same period, whilst levels of problem gambling have remained relatively stable, suggests that the regulators as well as the National Responsible Gambling Programme have been relatively successful in their harm minimisation measures.

Problem gamblers: National Prevalence Survey trends

	2001	2003	2005	2008
PGSI Screen	n/a	n/a	n/a	3%
GA-20 Screen (NPS study)	4.2%	6.8%	4.8%	4.7%

Source: NPS (2006, p.5; 2009, p.5).

On the basis of answers to the 9-question PGSI screen, the 2008 Prevalence Survey sorted respondents into four categories. Roughly a third (36%) of the entire adult population (including those who do not gamble) were regarded as being at “no risk” at all. These are recreational gamblers who understand fully the discretionary nature of gambling entertainment.

At the other end of the spectrum, 10% of all respondents were considered to be at “low risk”, 8% at “moderate risk”, and 3% were found to be problem gamblers in need of immediate intervention or treatment.

The NGB study does not deal with problem gambling in as comprehensive a fashion as the National Prevalence Studies, but is worth citing here. The 2009 NGB report concluded that 0.16% of the entire adult population and 0.44% of adult gambling participants could be classified as pathological gamblers, on the basis that they answered 14 questions in the affirmative. Significantly, this rises to 1.2% of all gamblers involved in “high-frequency gambling”, defined as persons who purchased lottery tickets twice a week or visiting casinos or other gambling establishments at least once a week (NGB 2009, pp.41-42). This is slightly higher than the findings for 2005.

In terms of problem gamblers in the broader sense, the 2009 NGB report concluded that 4.5% of “high-frequency gamblers” were problem gamblers, on the basis that they identified 7 questions in the affirmative. This is almost a percent higher than in 2005.

Problem gamblers: National Gambling Board Study

	2005	2009
Pathological (entire adult population)		0.16%
Pathological (only adults who gamble)		0.44%
Pathological (“high frequency gamblers”)	1.1%	1.2%
Problem gamblers (“high frequency gamblers”)	3.7%	4.5%

Source: NGB (2005, p.58; 2009, p.42).

3.3.3 South African in perspective: International comparisons

The British Gambling Prevalence Study (2007) provides a useful summary of reported levels of problem gambling across the world. Although we must remain mindful of the different screens used and different ways in which surveys are administered and results interpreted, it appears fair to suggest that South Africa generally has higher levels of problem gambling than most of the European countries, about the same as the USA, and less than the Asian countries.

Summary of international current problem gambling prevalence estimates

Country	Year	Screen	%
Norway	2003	SOGS	0.2
Canada	2003	PGSI	0.5
New Zealand	1999	SOGS	0.5
Great Britain	2007	PGSI/DSM-IV	0.5/0.6
Sweden	2000	SOGS	0.6
Switzerland	2000	SOGS	0.8
Iceland	2005	PGSI	1.1
South Africa ⁴⁵	2008	PGSI/GA-20	3.0/4.7
USA	2000	DIS	3.5
Singapore	2004/05	Chinese DSM-IV	4.1
Macao	2003	Chinese DSM-IV	4.3
Hong Kong	2005	Chinese DSM-IV	5.3

Source: BGPS (2007, table 4.10, p.85).

In large measure, we would argue that these findings are in keeping with the “two worlds” that make up South Africa. The developed affluent component of South Africa is well educated and most closely associated with formal gambling at established venues. As we see below, these have considerably lower levels of associated problem gambling, and most closely resemble the discretionary gambling-leisure industry found in Europe. The underdeveloped component of South Africa, by contrast, is associated with high rates of unemployment and associated poverty, low levels of education, multiple associated community-social problems, disproportionately high rates of alcohol and substance dependencies (comorbidity), and a very high exposure to informal gambling, including illegal slots, fahfee and dice.

⁴⁵ The BGPS cites a GA-20 score of 1.4% for SA in 2008. This is clearly incorrect.

3.3.4 Problem gambling and race

Using the PGSI screen, we find that black South Africans are more likely to be problem gamblers (4%) whilst whites were the least likely to be problem gamblers (1%). The findings here are largely indicative of relative economic affluence, levels of education and place of dwelling.

Problem gambling and race

	No gambling	No Risk	Low risk	Moderate risk	Problem gambling
Black	40%	31%	14%	11%	4%
Coloured	49%	41%	5%	4%	2%
Indian	41%	52%	3%	2%	2%
White	49%	45%	5%	1%	1%
Total	43%	36%	10%	8%	3%

Source: NPS (2010, p.11)

3.3.4 Regional gambling trends

On a regional basis, the level of problem gambling was found to be lowest in Tswane/Pretoria (1%) and highest in the West Rand (8%).

Regional gambling behaviour

	No gambling	No Risk	Low risk	Moderate risk	Problem gambling
Cape Town	53%	35%	7%	3%	3%
Durban	38%	44%	10%	7%	2%
Johannesburg (inc Soweto)	39%	32%	15%	10%	5%
Tshwane	48%	40%	7%	3%	1%
West Rand	27%	38%	19%	8%	8%
East Rand	42%	29%	11%	14%	4%
TOTAL	43%	36%	10%	8%	3%

Source: NPS (2010a, p.1)

The 2008 NPS study provides especially rich data for Gauteng, and points to the prevalence in Johannesburg/Soweto, the East Rand and West Rand of a gambling culture “concentrated amongst people who play dice and card games for money in informal establishments (especially shebeens), and fahfee/iChina.” Although the sample size outside of Gauteng was too small to draw strong conclusions, it appears as if prevalence in Cape Town was more closely associated with the purchase of scratch cards and lucky draw tickets by poor people in Cape Town.

In contrast to both of these “gambling cultures”, the study found that prevalence rates were generally lower and dominated by employed persons in their 20s and 30s in both Durban and Tshwane. This, the authors noted, most closely resembles the type of gambling culture found in Northern countries (NPS 2010a, p.1; NPS 2010b).

Race and gambling locality overlap closely. Thus Black South African's (16%) were significantly more likely to gamble at informal venues than whites (5%) and Indians (4%). For the same reasons, Indians (17%) and whites (13%) were more likely to gamble at casinos than blacks (4%) and coloured (7%).

Significantly, the Prevalence Survey found that patrons of informal gambling venues were much more likely to describe gambling as "very important" or "extremely important" to them than was the case with gamblers who exclusively patronise casinos" (NPS 2010a, p.58-summary). This is suggestive of the different ways in which gambling is often understood in different communities in South Africa. Gamblers in informal venues are more likely to have inflated hopes of winning in order to have a better life than gamblers in formal venues. Thus 12% of people who exclusively frequent casinos "dream about winning large sums of money", compared to 22% of people who frequent informal gambling venues (NPS 2010a, p.65).

One interesting finding that emerges from the discussion of formal and informal gambling is that there is a negative correlation between casino gambling and problem gambling. That is to say, "urban South Africans who exclusively patronise legal casinos are at less risk for problem gambling than the average member of the [gambling] population" (NPS 2010a, p.86). Elsewhere in the report we have attributed some of this success to the policy of destination-style gambling employed in South Africa.

In summary: There is a close correlation between informal gambling establishments (which are frequented by the poorest and most vulnerable sectors of the population) and problem gambling. To reduce incidents of problem gambling it is necessary to pay much closer to these sectors of the gambling industry.

3.3.5 Problem gambling and type of dwelling

In line with the above, the Prevalence Survey found a clear link between living in less expensive dwellings (e.g. shacks, matchbox-type houses, RDP houses) and informal gambling. This in turn translated into much higher vulnerability to problem gambling. The extent to which problem gambling is underpinned by informal gambling is said to be "much stronger in South Africa than in any country in which similar prevalence studies have been carried out" (NPS 2010a, p.86).

Higher income groups with formal housing by contrast are significantly less likely to be at risk of problem gambling. These groups tend to be attracted to more formal, higher-end, higher-cost gambling modes, especially casinos.

This finding is particularly important. Although most gambling spend occurs in the formal sector, the bulk of the South African poor are primarily exposed to the lottery, LPMs and informal gambling. It is here where the greatest potential to cause harm clearly lies.

Type of dwelling and problem gambling⁴⁶

	No gamblin	No Risk	Low risk	Moderate risk	Problem gamblin
RDP house	38%	23%	17%	12%	9%
Matchbox-type house	37%	27%	12%	16%	6%
Improved matchbox-type	42%	31%	12%	9%	5%
Shack, not in backyard	46%	27%	14%	9%	4%
Shack in backyard	43%	29%	15%	11%	2%
Semi-detached or joint house	37%	47%	8%	5%	2%
Unit in a block of flats	39%	47%	7%	5%	2%
Suburban-type house	46%	42%	7%	4%	1%
Townhouse/cluster house	51%	36%	9%	3%	1%
Second house/cottage	38%	29%	29%	4%	0%
Garage/modified garage	31%	38%	14%	17%	0%
TOTAL	43%	36%	10%	8%	3%

Source: NPS (2010a, p.75).

3.3.6 Problem gambling and the poor

Other findings that speak to the relationship between class and problem gambling include the fact that:

- “unemployed and part-time employed people in the sample are slightly more likely (4% against the national average of 3%) to be at risk for problem gambling than the overall sample (NPS 2010a, p.12),
- those reporting “no income” and those reporting that their main income comes from remittances and allowances appear to have slightly higher rates of problem gambling (4%) than the national average (3%). At the same time, those receiving pensions/grants have slightly lower (2%) levels of problem gambling (NPS 2010a, p.14).
- There is a “strong association” between levels of saving and risk for problem gambling (NPS 2010a, p.16). Poor communities typically have high levels of debt and low savings levels.

3.3.7 Comorbidity and problem gambling

One of the strengths of the Prevalence Study is its use of various other screens to examine the overlap between gambling and other addictions (co-morbidity), and between problem gambling behaviour and other personality disorders.

In the 2008 survey it was found that there was a clear relationship between depression (often a symptom of underlying social problems and associated poverty) and being at risk for problem gambling.

⁴⁶ To simplify the table we have excluded all dwelling categories with fewer than 30 respondents (or 1% of the sample).

- “42% of respondents measured as being at high risk for problem gambling are at least mildly depressed, by comparison with 15% of respondents who are measured as being at no risk for problem gambling” (NPS 2010a, p.79).

As elsewhere, the survey confirmed the close relationship between levels of exposure to informal gambling and being at risk for problem gambling.

- “Much higher levels of moderate [22%] and severe [22%] depression are indicated by respondents who gamble exclusively in informal venues than by respondents who gamble exclusively in legal casinos [2% and 1% respectively].” (p.80)

The Prevalence Study identifies a “very strong and clear relationship” between being at risk for alcohol dependence and risk for problem gambling. Using the WHO Alcohol, Smoking and Substance Involvement Screening Test (ASSIST), the survey found that only 18% of those at high risk for alcohol dependence did not gamble, whilst 28% of those at high risk for alcohol dependence were found to be at moderate risk for problem gambling and 18% to be problem gamblers.

Alcohol dependency and problem gambling

	No gambling	No risk	Low risk	Moderate risk	Problem gambling
Population at high risk for alcohol	18%	21%	15%	28%	18%
The general population (all)	42%	36%	10%	8%	3%

Source: NPS (2010a, p.81)

This risk works both ways, and we find that persons with higher levels of exposure to informal gambling venues are substantially more likely to be at risk for alcohol problems.

Alcohol risk and gambling location

	Moderate risk (alcohol problems)	High risk (alcohol problems)
Casino gambling only	8%	5%
Informal gambling only	23%	29%

Source: NPS (2010a, p.82)

3.3.8 Summary

In summary, longitudinal trends suggest that levels of problem gambling have remained relatively constant in South Africa, despite the massive growth in the size of the gambling industry over the past decade.

Although comparisons between different countries are difficult to make, it appears as if South African problem gambling levels are higher than those encountered in Europe, roughly in line with the USA, and slightly lower than the levels found in Asian countries.

South Africa should be wary of complacency. The relationship between problem gambling and informal gambling is especially problematic, and requires careful attention. Regulators need to take effective action against this, and there is no reason why illegal casinos and fahfee operations, both of which operate brazenly, are not closed down.

South Africa should pay particular attention to new forms of gambling. We simply do not know what the impact of online gambling will be.

3.4 Underage Gambling

3.4.1 Prevalence of gambling among the youth of the country

The issue of participation of the youth in gambling activities is increasingly coming under the spotlight. This is especially important, given the fact that today's youth are the first group to grow up in a society where legalized gambling is both widely available and heavily advertised.

Internationally, research shows that the large majority of persons between 15 and 18 already engage in some form of gambling activity, and that a significant number experience gambling related problems (Wiebe and Falkowski-Ham 2003). Studies indicate that the prevalence rate of youth problem gambling range from 3-7 percent, which is higher than the adult prevalence. If we are to prevent this generation from adding further to the existing problem gambling population, well targeted and effective prevention strategies need to be implemented.

A survey undertaken for the NGB (2004a) suggests that underage gambling trends in South Africa are in line with international trends. A total of 13.3 percent of students exhibited what can be described as mild disposition to gambling, whilst 51 percent indicated a strong predisposition to gambling. This is the pool from which potential problem gamblers are drawn.

There is a close correlation between class and underage gambling behaviour. The same study found that students who lived in the poorer areas tended to play dice and other forms of gambling activities that could be organized informally and which offered significantly lower barriers to entry. Their counterparts in the affluent areas were more likely to have access to and engage in formally organized gaming activities, either with their parents or simply by buying a lottery ticket.

In the 2009 Socio-Economic Impact Study, the NGB (2009a, p.33) confirmed this correlation between class and gambling mode. The study found that 45.8% of youth respondents were aware of underage gambling, and that the most popular form of underage gambling was dice, with the Lotto a distant second.

Gambling performed by underage gamblers

Mode	Percentage
Dice	74%
Lotto	20.2%
Other	19.9%
Gaming competitions e.g. per SMS	14.0%
Fahfee	13.2%
Limited Payout Machines	7.0%
Casino gambling	6.4%
Sports betting	5.8%
Wagering (betting on horses)	1.8%
Interactive Gambling	1.5%
Bingo	0.6%

Source: NGB (2009a, p.33).

A study of illegal gambling in the Vaal pointed to the ease of access that underage gamblers have to illegal gambling facilities, particularly unlicensed casinos (Frankel 2006). These casinos were said to operate “on a fairly round-the-clock basis with large numbers of unemployed adolescents and high school learners making up the gambling population during the course of the working day. Adults are the main slots players in the evenings and on the weekends at these fairly obvious sites whose owners are alleged to receive some official protection – but are obviously reluctant to explain its nature and origin” (Frankel 2006, p.25).

3.4.2 Conclusions

Although it would be wrong to conclude that there is an underage gambling crisis in South Africa, it is clear that this is a troubling and possibly growing trend.

The Commission is especially concerned about reports that some youth in impoverished areas claim that they gamble in order to buy basic necessities and pay schools fees (see KZN 2009, pp.30-31).

As with other forms of gambling, there is a close correlation between preferred gambling mode and class. Children living in low-income communities are especially vulnerable to predatory and unscrupulous operators that offer dice, fahfee and other illegal gambling products. Until the authorities take decisive action against illegal operators, this problem is likely to remain unchecked.

The NRGP is currently piloting an educational programme aimed at learners in schools. This focuses on a wide range of life skills, including understanding the meaning of risk, luck and chance as well as money management. This is to be welcomed.

3.5 Regulatory measures

3.5.1 Introduction

§12 to §17 of the National Gambling Act, 2004 introduce a range of measures to protect the vulnerable and minimise the potential negative socio-economic impact of gambling. The sections in question prohibit the following:

- Minors from entering gambling premises and places an onus on gambling operators and their employees to take reasonable steps to establish whether a person is a minor and requires that they may not knowingly give minors access to gambling premises.
- A gambling operator from making credit available to a punters directly or through a third party.
- A gambling operator or employee from knowingly allowing an excluded person from entering the premises and from gambling. Furthermore, the Act provides for self-exclusion as well as third party exclusion by dependents.
- Advertising of gambling activity in manner that is misleading, designed to attract minors, incite an excluded person from removing themselves from the register or that gambling is free or discounted. Furthermore, gambling advertising must contain warning messages.
- Enforcement of a debt incurred by a minor or an excluded person. At the same time, however, winnings may not be paid over to minors or to excluded persons.
- The placement of cash dispensing machines in designated spaces or within a prescribed distance from those spaces;

In addition, §17 requires that warning messages about the dangers of compulsive gambling are displayed on gambling premises and that gambling operators must comply with regulations relating to the use and design of those spaces. There are no similar provisions other than provisions relating to minors in the National Lotteries Act, 1997.

3.5.2 Minors

The detection of minors is based on a staff observation, followed up by a request for identification, where it is suspected that a person is a minor. From the observations of gambling regulators, the operators and the NRGF, there did not appear to be a significant problem with minors accessing licensed gambling premises and activities, other than the lottery. In the latter case, it appears that minors can purchase lottery tickets from retailers with relative ease.

PGRAs monitor compliance with the provisions of the National Gambling Act through site visits and through reviewing surveillance footage. PGRAs indicated that these controls were sufficient. The Commission was not able to verify these observations independently.

3.5.3 Excluded persons

At present there appear to be few mechanisms in place to prevent excluded persons from entering premises. Self-exclusion registers are maintained at casinos. Such registers do not appear to be held at other licensed gambling venues. Thus it would not be difficult for a person who has been excluded by a court or who has self-excluded to gain access to another gambling venue. There appear to be no measures in place for exclusion or self-exclusion in the lottery.

According to an article in the Responsible Gambling Digest (Issue 5/10, May 2010), published by the NRGP, it is more than a decade now that casinos around the world have offered self-exclusion programmes to gamblers seeking help with their gambling behaviour. However, despite the proliferation of these programmes, little is known about the long-term outcomes for gamblers who utilize these programmes. The Australian "Productivity Commission Inquiry Report" states that "Self-exclusion is an extreme form of pre-commitment, in which gamblers can bar themselves from one or more gambling venues to prevent themselves from gambling, with legislation empowering venues to enforce their commitments" (AGPS 2010, 10.2). It states that, although not enough compelling evidence exists, there are however significant benefits. These are listed as;

1. Noticeably reduced spending on gambling. For instance, one assessment found that around 70 per cent of self-excluded parties had more than halved the amount they spent on gambling
2. Better family relationships. A Macquarie University study found that 65 per cent cited significant improvement in their personal relationships
3. Marked changes in the urge to gamble, accompanied by large perceived increases in control over gambling and significant reductions in the negative consequences of gambling for social life, work performance and mental health.

The above is corroborated by the results of a study conducted by the Missouri Voluntary Exclusion Programme wherein self-excluders had enrolled to be part of the Programme. It is stated that, one in eight (13%) of the study participants reported abstaining from all gambling since enrolling in the self-exclusion programme; while four in ten (40%) reported not having gambled during the six months prior to the interview, indicating that the MVEP seemed to have contributed to a positive change in the long term gambling behaviour. The significant aspects as reported is that a large majority (81%) of self-excluders who reported gambling regularly following enrolment reported gambling less frequently than before, and not a single self-excluder reported gambling more than they did pre-enrolment.

However, these benefits are limited by factors such as the number of problem gamblers who do not use such a facility, those who decide to circumvent the procedure, and the fact that some decide on this measure when it is too late after the gambler and the family have suffered severe financial losses and experienced other adverse effects in life.

The National Gambling Act, 2004 does allow for court orders preventing the gambler from gambling. The Eastern Cape is cited for having produced a legislative measure to allow for a cost-free process to facilitate the involvement of a third party, e.g. the wife. Their Act also tries to close loopholes in that the exclusion process is not abused. §8, §9 and §11 deal extensively with the exclusion measure.

It is reported that CASA urges all the affiliates to measure up to the efforts of exclusions both for undesirable persons and those who have to be excluded for their own benefit even with the intervention of a third party such as a family member and/or other significant person in the individual's life.

In fairness to gambling operators, and casinos in particular, the absence of a national exclusion register has not assisted with the implementation of the provisions of the

Act. However, such a register would be of limited value, given the fact that it would still depend on individuals involved in surveillance to identify an excluded person. Another concern about the register that has been raised by stakeholders is that it is flawed by the fact that all exclusions are for life and have to be lifted by the PGRAs. The exclusions are lifted only after the punter has received treatment. Treatment programmes are as a result often providing treatment of punters who are more interested in having their exclusion lifted than in the actual treatment. This is costly for these programmes and can have a negative impact on their success rates. The NRGP has recommended that it would be better to have shorter renewable but unliftable bans and mandatory treatment from the start of exclusion or self-exclusion.

In their inputs to the Commission, the PGRAs have confirmed that provisions regarding exclusions are difficult to enforce and largely seen as the responsibility of the operator. Compliance with the provisions of the national legislation in relation to excluded persons are checked through spot inspections and also through identity verifications before winnings are paid out.

3.5.4 Credit

Money management becomes a crucial aspect in helping the gambler manage his/her gambling behaviour. A recreational gambler decides the limit to be spent in entertainment and would normally not be chasing after losses. While a compulsive gambler is not only attracted by the gambling environment but often chases losses and has an intense desire to win. This will tempt and cause such an individual to tap all resources he/she can lay on his/her on and even go beyond in trying to get more to gamble with.

Casinos now utilize the cashless based system of chips, for example, that allow the casino to monitor the amount of money the gambler outlays at a time. Some of the best practices internationally consist of the following;

1. The banning of cash advances to patrons for the purposes of gambling. In some jurisdictions, this is accompanied by restrictions in the amount of money the gambler can spend in any one-day period.
2. Restrict the sitting the ATM facilities inside the gambling venues.

There is little information available about the extent of credit extension for gambling and about its impact. Credit does not appear to be widely accessible to patrons at legal gambling venues, other than what is currently permissible in terms of Regulation 4 of the National Gambling Regulations.

It is believed that credit is easily accessible at illegal operations, and that this is a huge attraction for many compulsive gamblers.

3.5.5 Advertising

Gambling advertising is currently regulated by two different pieces of legislation: The National Gambling Act, 2004 and the Advertising Code of Practice.

3.5.5.1 The National Gambling Act, 2004

The National Gambling Act, 2004 generally seeks to ensure that advertising and other communication outputs are not false or misleading from a factual point of view.

Furthermore, the Act insists that casinos and other gambling venues must bear notices warning against the dangers of compulsive gambling. And in the event a problem gambler has realized that he/she has a problem and takes the trouble to ask for entry into the casino be barred by the casino, no measures must be entertained to let him/her enjoy exception temporary or otherwise.

The Act also prohibits advertising a gambling activity as being available for free. But casinos find a way around this.⁴⁷ The one obvious example is the advertisement by some casinos of a day when the elderly could come for entertainment that offered a meal at one of the restaurants, and possibly a cinema visit, but they are also given some chips that enticed them to go to the casino floor. Ostensibly they only paid, e.g. a R100 to get there.

This is one of the major concerns regards the enforceability of the Act. There is no dedicated regulatory body to monitor advertising of gambling and casinos. Most, if not all casino venues in South Africa offer family entertainment in full view of the gambling goes on, whilst in New South Wales, Australia even this type of latent temptation and inculcation is prohibited, where passers-by are able to visually and audibly appreciate an activity that passers-by who had not gone to the venue for that purposes are subliminally exposed too.

3.5.5.2 The Advertising Code of Practice

The Advertising Code has provided the following general rules of the advertising in South Africa:

1. All advertisements should be legal, decent, honest and truthful manner.
2. They should be created with a sense of responsibility to the consumer.
3. All advertisements should conform to the principles of fair competition in business.
4. No advertisement should bring advertising into disrepute or reduce confidence in advertising as a service to industry and to the public.

These general principles apply to all sectors of business and all manner of advertising. These are not industry specific; therefore gambling advertising as it stands is governed by legally unenforceable regulations set out by the ASA. The ASA has further divided these principles into specific categories of advertising, currently there is not a specific category to regulate gambling advertising, and the only category that is close to gambling is Betting Tipsters-Sellers of betting tips for online gambling and sport betting.

The ASA is an independent body and there seems that there is not established relationship with the government. In addition, ASA does not have specific stringent rules on gambling advertisement to deal with might appear enticement.

⁴⁷ A statement in the Report on the Impact of Gambling Advertising, December 2009, p4 says “..gambling establishments continue to find loopholes through which they can still market their wares, nullifying lawmakers efforts at keeping the industry in check.

3.5.5.3 The norms and standards for gambling advertising and promotions

It should be noted that Regulation 3 of the Regulations promulgated in terms of the National Gambling Act, 2004, contains what are intended to be nationally uniform standards regarding the advertisement of licensed gambling and prescribes in detail the criteria with which such advertising must comply. However, it should be mentioned that there are differences in respect of provincial gambling acts in respect of advertising. Some jurisdictions require that there should be prior submission and approval in place before advertisement starts operating. In addition, it should also be noted that prior approval is required in respect of promotions and tournaments conducted by casino operators including the advertisement of the proposed activities. Advertisement approvals differ markedly from jurisdiction to jurisdiction in that the approval function might be delegated, in some cases, to a non-executive employee and therefore dependent upon subjective interpretation of the relevant requirements by the employee exercising the approval function. This fractured approach that has come about because there is no acceptable and recognized norms and standards followed and adhered to by all industry players is, according to CASA, undesirable.

CASA members have all subscribed to a formal Code of Conduct (referred to below) regarding advertising, the terms of which are calculated to ensure that all advertising embarked upon by casino operators is consistent with prevailing legal requirements and conforms to the highest standards of accuracy, decency and integrity. In terms of the Code the industry operators conduct self-regulation taking into account that it is to their own interest to adhere to the highest standards of integrity.

However, much still needs to be done in terms of monitoring and enforcement of the regulation relating to advertisement and the following should be noted, that is the;

1. While the legislation does aim to protect minors and vulnerable people through various parts of the Act, advertising is not covered as stringently. Advertising only indicates that it must not promote a gambling activity in a false or misleading manner or promote a gambling activity that is unlawful. This begs for the fact that strict control is required to be exercised over all licensees.
2. Other than the general principles of Advertising Code of Practice, there appears to be no norms and standards to ensure compliance with the law.
3. Gaps in legislation and adequacy of government to challenge content and approval of adverts as well as mechanisms for monitoring and enforcement.

Also at issue, as hinted above, is the fact that there is no regulatory body that is responsible for setting, reviewing and revising standards for broadcasting gambling advertising. What can be implemented to the current legislation is a specialized regulatory body to monitor all gambling and related issues.

One of the major concerns about the Advertising Standards Authority Code is that, it does not deal specifically with gambling. There is limited information on the gambling industry in the code. Another issue is that, the ASA came up with a code of practice but it does not regulate that advertising complies with the code. Its primary role was to establish the code, and it is mainly regulated by complaints. This means that the only time the ASA checks if advertisements comply with the code of practice, is when someone lodges a complaint.

3.5.5.4 Lottery advertising

In the report on the public hearings into gambling, the Portfolio Committee on Trade and Industry expressed a concern about advertising of the lottery. The particular concern appears to be that advertising rules that regulate the gambling sector do not apply to the lottery and that the operator is able to advertise the lottery in a manner that is aimed at maximising sales. This concern indicates a level of discomfort with the revenue model that has been adopted in the case of the lottery.

Advertising and the rules that regulate it are clearly central to the model of gambling that has been adopted. The current advertising rules relating to gambling are consistent with a sumptuary model, which limits the amount of advertising and imposes requirements for warning messages. The rules relating to the lottery are much less restrictive, in line with a revenue model. As indicated, substantial changes to the approach will undermine the revenue model. A matter that must be more deeply examined is whether there is political and policy discomfort with the revenue model adopted for the lottery.

3.5.6 Standards for gambling premises

From the inputs received from PGRAs, it would appear that all the provincial regulators approve the location of cash dispensing machines in casinos, by reviewing and approval gambling floor plans. It does not appear that further standards are applied to gambling premises.

3.5.7 International practice and lessons

3.5.7.1 Advertising

Gambling advertising in two international jurisdictions were examined, namely the United Kingdom and the United States of America.

3.5.7.1.1 The United Kingdom

In the United Kingdom, the 2005 Gambling legislation allows for wider advertisement of betting and gambling services such as broadcast and print media, sponsorship and branding or Internet or mobile phone advertising than was previously the case. The Gambling Commission has been given the responsibility of enforcing the law regarding advertising together with the Advertising Standards Authority and the telecoms industry regulator Ofcom. A code of good practice outlines the standards to which gambling advertising must adhere and includes the protection of children and young people, as well as awareness of responsible gambling.

Over and above the legislative requirements, the gambling sector has also developed a code of good practice aimed at the self-regulation of advertising with additional standards to the existing code of good practice. Some of the matters that the code would not like to see in advertisements generally are the glamorising of gambling or portraying gambling as a solution to financial problems or designing the advertisement in a manner that appeals to young people. The authorities continue to monitor advertising of gambling and betting services because the industry is self-regulating. The Secretary of State can however, make regulations on the form, content, timing and location of advertisements.

Advertising foreign gambling other than a lottery such as Euro-millions is illegal in Great Britain. Foreign gambling refers to remote gambling in a state outside the European Economic Area (EEA). Under Section 331(4) of the Gambling Act 2005,

the Secretary of State of the UK can specify that a country or region is to be considered as if it were an EEA state. This process is known as white listing and means that such operators can advertise in the UK. Currently three areas have made it onto the white list and they are Tasmania, the Isle of Man and Alderney.

To be eligible for white-listing a country or region must demonstrate that they have a system of gambling regulation that the Secretary of State considers similarly robust to that of the UK. In banning foreign advertising and relaxing the UK regime the Government wanted to make UK-regulated sites more appealing to online gamblers. The established industry code suggests that UK-licensed or white-listed operators include a form of words informing the audience that their services are regulated by the Gambling Commission.

Key regulatory requirements that ensure eligibility for white-listing are the licensing and regulatory objectives informing the jurisdiction's gambling regulatory regime, which should in practice broadly achieve the same objectives under which British gambling regulatory regime operates and which include the following:

- To prevent gambling from being a source of crime or disorder or being associated with crime or disorder or being used to support crime;
- To ensure that gambling is conducted in a fair and open way;
- To protect children and other vulnerable persons from being harmed or exploited by gambling.

In addition, the regulatory capacity must be similar. The British Government has established a central body for the regulation of the British-based gambling industry covering both remote and non-remote products and operations, with responsibility for investigating and taking actions against illegal gambling.

Finally, the licensing arrangements must be similar, permitting operators to offer specific gambling activities and setting conditions on the way in which they offer specified gambling activities. Additional criteria include:

- Fair tax criteria by adhering to fair tax principles;
- Openness with tax bases and rates of gambling taxes being clear and properly enforced and applied to all operators;
- Equal availability of the tax regime to all operators whether owned domestically or by offshore interests;
- Equal treatment with tax rates being applied equally to gambling services supplied for both domestic and overseas consumption.

3.5.7.1.2 The United States of America

Gambling advertising in the USA is restricted in many states. Casinos are allowed to advertise their restaurant and entertainment venues but not their gambling activities. Native American Tribes, church bingo nights and state-run lotteries are permitted to advertise gambling. The Federal Communications Act 1934 which provided the statutory basis for restrictions on advertising has been significantly changed and a number of exceptions added although there continue to be federal restrictions on many forms of gambling advertising.

The rationale for existing prohibitions reportedly rests on two assumptions. The first is that casino gambling has a causal relationship with social ills and the second is that advertising increases gambling behaviour both by inciting people to do more gambling than they otherwise would and by recruiting people to gamble who otherwise might not.

Given these assumptions the ban on gambling advertising is being interpreted as an indirect attempt to regulate people's gambling behaviour and in turn minimise gambling's social costs. However a number of exceptions have undercut the original sweeping scope of the Act with exceptions including state lotteries, fishing contests, gambling conducted by and Indian Tribe pursuant to the Indian Gambling Regulatory Act, a lottery, gift enterprise or similar scheme by not-for-profit organization or governmental organization.

Following court rulings (e.g. in *Valley Broadcasting Co. v United States*) gambling advertising is allowed in the Western States and in Nevada (following the ruling in *Players International Inc v United States*) while in other states the restrictions are being upheld.

3.5.7.1.3 Conclusions

The current restrictions on advertising and their enforcement in South Africa are not considered very effective. Part of the problem appears to be the regulatory framework for advertising restrictions. Consideration could be given to a regulatory framework similar to that of the United Kingdom. Of particular interest is the shared responsibility between the different regulators and their cooperation. Ultimately, advertising and the promotion of gambling must be consistent with the overall regulatory model and objectives that are proposed for South Africa. If revenue generation is the primary objective, advertising should be more permissive. If a sumptuary model is preferred, then the current restrictions must be enhanced and properly enforced.

3.5.7.2 Other responsible gambling measures

3.5.7.2.1 The United Kingdom

The promotion of responsible gambling features prominently in the Gambling Act 2005, where it forms part of the licensing requirements. The Gambling Commission is also required to consult persons or bodies with knowledge of the social effects of problems gambling before publishing any guides to the industry. Any guides or codes of practice would therefore have input of those dealing with problem gambling. As part of the licensing conditions and associated codes of practice gambling operators are expected to show how they are tackling problem gambling through inter alia:

- Staff training
- Providing advice and information on problem gambling
- Donating to The Responsibility in Gambling Trust (RIGT) that addresses problem gambling through advice, counselling and education. RIGT is funded through industry contributions and any shortfalls are topped up by bigger gambling firms. RIGT is also responsible to the management of responsible website www.gambleaware.org.uk and gambling charities Gamcare and the Gordon House Association (Regulation and Control of Gambling 2008, 10).

3.5.7.2.2 The Netherlands

Discouraging immoderate gambling was an important consideration from the outset of casino gambling in Holland, with various methods being experimented with that included entrance fees, dress codes, presentation of valid identification and low maximum bet limits. The introduction of slot machines created an increased demand on problem gambling counselling resources, and prompted the authorities to explore a more robust responsible gambling programme (RGP) that included:

1. A mission statement which listed the casino's two main goals as making a profit from gambling and adhering to the goals of the Responsible Gambling Programme. In the event that there was a conflict between the two goals, the RGP goal would prevail over the profit goal.
2. Holland casino (or the National Foundation for the Exploitation of Casino Games in the Netherlands as all 14 branches of the state owned casino are officially known) offers brochures that outline the risks of the games and trains casino staff to identify and deal with suspected problem gamblers.
3. Gambling advertising is limited and low key such as not aiming at youngsters or other risk groups, there can be no mention of big winnings, getting rich, or jackpots and the emphasis must be on entertainment, not gambling.
4. All 14 Holland casinos are linked to an ID based computer registration system which tracks individuals' frequency of play, location of play, hours played, money spent and lists of any incidents or observation reports involving an individual.
5. Upon entry to a casino, players must register by showing ID. Players concerned about an inability to control their gambling may ask to be excluded from the casino or placed in the "limited visit" category, which means no more than 8 visits per month.
6. In addition to voluntary self-exclusion, casinos monitor high risk players i.e. those who averaged 18 visits per month over the past three months; those between the ages of 18-23 who averaged 4 or more visits per month and new clients who have dramatically increased the frequency of their visits.
7. Players may also request loss-limit protection, i.e. once they have reached their session loss-limit they are precluded from further gambling
8. Holland Casino also has a responsible gambling strategy for online gamblers – players must double register both online and at a regular casino. For the first 30 days gamblers pay for points only and not money and when money play is allowed, they must start with minimum stake bet. The maximum online bet that can be made through Holland Casino is \$90 Canadian. An entry ban from a land based casino also applies to online play (Smith and Rubenstein 2009, p.50)

3.5.7.2.3 Australia

Responsible gambling is embedded in legislation in Australia. The gambling industry must operate in conjunction with community standards and expectations and in so doing go beyond mere compliance with laws and regulations. The ACT introduced the Gaming and Racing Control Act in 1999, which specified that the Gambling and Racing Commission is obligated to act in the public interest and must promote consumer protection, minimize the possibility of criminal or unethical activity and reduces the risks and costs of problem gambling to the community and individuals.

Restrictions are placed on electronic gambling machines and depending on the state, restrictions include capping the number of machines in the state, regions and sites, allowing local councils a say in the placement of machines and disallowing ATMs near machines.

Legislation requires any hotel or club applying to increase the number of machines to prepare a social impact assessment detailing for the neighbourhood and community:

1. The current number of machines
2. The demand for gambling
3. The incidence of problem gambling
4. The availability of problem gambling services

5. Proposed harm reduction measures as a result of increasing the number of machines
6. Any likely changes in demand on local infrastructure such as traffic congestion, need for improved public transportation, need for improved social services etc.

Gambling regulations were tightened and made explicit relative to:

1. Providing players with information on how poker machines work, their chances of winning, availability of problem gambling support services, and how much time and money they have spent per gambling session
2. Limiting the amount of cash that can be accessed around gambling venues
3. Placing cash dispensing facilities outside of gambling areas
4. Ensuring advertising and promotions do not encourage problem gambling nor target youth or other vulnerable groups
5. Requiring self-exclusion programmes at all gambling venues and venue-based exclusion programmes for players demonstrating signs of problem gambling or intoxication
6. Developing programmes that use smart card technology to activate EGMs and allow players to pre-commit the amount of time and money and or money they will spend in a gambling sessions (Smith and Rubenstein 2009, p.52)

3.5.7.2.4 Canada

Common approaches used by Canadian jurisdictions to deal with problem gambling include:

1. Voluntary self-exclusion programmes from certain gambling venues;
2. Harm reduction measures on EGMs such as pop-up warnings, clocks, problem gambling hotline referrals and player expenditure data;
3. Restrictions of betting limits minimum age of players, alcohol and or tobacco consumption, hours of operation, cheque cashing and credit granting;
4. Bans on certain gambling formats such as VLT gambling;
5. Constraints on perceived hazardous gambling formats such as capping the number of EGMs in a jurisdiction of gaming venue;
6. Responsible gambling training for gambling industry employees;
7. Problem gambling education and awareness campaigns as in gambling venue player information brochures and posters with information on odds, payback percentages and how games work and problem gambling modules for use in school curricula;
8. Gambling venue information/counselling kiosks that provide facts about the gambling products, tips for gambling prudently, signs of problem gambling and available treatment and in some case crisis intervention;
9. Limits on the amount and type of gambling advertising and promotional activities (Smith and Rubenstein 2009, p.44).

3.5.7.2.5 Singapore

In Singapore the National Council on Problem Gambling (NCPG) which was established in 2005 in anticipation of the launching of two new big casinos has announced plans to work closely with the two casinos to put into place strict responsible gambling measures. The NCGP is made up of individuals with diverse areas of expertise to collaborate with the government to raise awareness of and support effective treatment programmes to help individuals with gambling disorders.

Among the responsible gaming safeguards developed by the NCGO are:

1. A voluntary stop-loss service, which enables patrons to place a limit on how much money they are prepared to spend while gambling. Once patrons reach their limit they are not allowed to continue gambling.
2. Singaporeans and permanent residents will not be allowed to use credit or debits cards at the casinos. Only cash will be accepted and since ATMs will not be accessible at the establishment, patrons who spend their available cash will have to leave to withdraw more money.
3. Both casinos will prominently display responsible gaming signage featuring the city-state's problem gambling help line.
4. The Casinos will also offer on-site counselling services to provide immediate assistance to patrons who may experience problems
5. Both establishments will train tens of thousands of staff members to detect and address problem gambling cases. (Responsible Gaming Quarterly Vol. 8 no. 1, 2010, 14)

3.6 Research, education, prevention and treatment

3.6.1 Regulators

PGRAs appear to have limited budget available for education programmes, ranging from R500,000 to R12 million. The Gauteng Gambling Board is the only PGRA that has set aside significant funds for education and the Western Cape Gambling Board was able to make a contribution in past years to the school education programme. Some provinces have adopted fairly innovative approaches, such as the programme by the Mpumalanga Gambling Board to target high school learners and social pension beneficiaries with responsible gambling awareness and the PGRAs all appear to have publications available. The Gauteng Gambling Board has set aside R9 million for awareness and education in depressed communities, to coincide with the rollout of LPMs.

PGRAs distinguish between education and treatment programmes. Generally, PGRAs did not appear to make any contribution to treatment programmes. It was suggested that this should be the focus of the NRGP, while the role of PGRAs should be on education and awareness. This would seem to be a reasonable suggestion, as treatment requires specialist expertise, while PGRAs may be better placed to deal with general awareness. It would also ensure greater neutrality and independence from industry, if the PGRAs had a greater role in education. Finally, it would allow for specific focus, such as the targeting of social grant beneficiaries.

3.6.2 Civil society and private organizations

There is no gainsaying that the NRGP, discussed in greater detail below, is the biggest programme of its kind in the country and operates directly or through a network of representatives in all nine provinces, albeit fairly well represented in Gauteng, Western Cape and KwaZulu-Natal. In addition, however, there are other facilities or "centres" that offer clinical and rehabilitative treatment programmes.

These programmes include programmes registered with the Department of Health and/or other government departments, such as Social Development, coalitions of church fraternities and other concerned individuals like JASA and advocacy and private research bodies such as the Family Policy Institute. Doctors for Life International has a gambling addiction counselling programme and Gamblers Anonymous, a fellowship support group, is fairly well represented in the country, with branches in KwaZulu-Natal, Gauteng and Western Cape.

In addition, there are organizations that run treatment and rehabilitation centres, some with in and outpatient services. These facilities offer professional treatment and rehabilitation to persons suffering from addiction and dependence that stems from alcohol abuse, drugs, different forms of substance abuse, gambling addiction and symptomatic problems, as well as a variety of stress-related forms of behaviour. It was not possible to obtain statistical information on the number of gambling related cases alone.

Of particular importance are the sources of referrals of problem gamblers who get to these facilities. Referrals are made by medical doctors, psychiatrists, clinical psychologists, independent therapists, social workers mainly in private practice, members of the clergy from their congregation, employers through employee assistance programmes, as well as by individuals or family members. The specialized facilities tend to be expensive, charging up to R12,000 per week, and as such are only accessible to more affluent members of society. Furthermore, these specialised services are restricted to a few areas as well. Generally, state services directed at the treatment of addiction do not extend to gambling addiction, as it is not officially and legally recognized as a form of addiction. Thus, those that cannot afford private treatment for gambling addiction are reliant on the NRGF network and its reach throughout the country. This is discussed in more detail below.

3.6.3 Gambling operators

All gambling operators contribute to voluntary programmes to promote responsible gambling. For the risk of repeating reference is made to the co-operation between the gambling operators and the National council on Problem Gambling already cited above. Currently it does not appear that there is coordinated operation based on national standards that exists and is adhered to by all the operators and this is a necessity.

3.6.3.1 Overview and effectiveness of NRGF

The gambling industry throughout all jurisdictions around the world has the potential, as already indicated above, to cause harm to certain individuals and participants who engage more zealously in the games and products offered therein. Equally, it has always been the determined aim of the legalized gambling industry to minimize the negative effects and maximize the positive effects, of gambling. To achieve this objective, the gambling and betting industries together with the NGB and all Provincial jurisdictions have adopted the National Responsible Gambling Programme, an initiative that is managed by the South African Gambling Foundation. This is a joint initiative of the industry and the regulators, funded by the industry. Included herein, the contributing companies are the casino, horse racing, bingo, and limited payout machine (LPM) industries. It is supervised by a board of trustees. The chairperson is an independent person.

3.6.3.1.1 The focus and approach of the programme

The NGB Industry Survey (2005) reported about there were approximately 500,000 problem gamblers in the broader sense of the term (i.e. including both pathological and problem gamblers). It is also reported that six factors fuel problem gambling:

- Lack of gambling awareness programmes in, for example, schools.
- The ability to gamble on impulse due to accessibility such as having a Lotto outlet or a bookmaker nearby.
- Continuous and rapid action play, like in the casinos.

- High stakes.
- Frequency of winnings.
- High prices.

Prevention of problem gambling is the main focus of the NRGP through its activities like the National Schools Education programme, Training Programme, Treatment and counselling network. The Programme runs a free 24/7 counselling line service manned by professional counsellors and operates around the country. These counsellors also refer callers to a network of treatment services and facilities within reach. There is also a public advertising service through the written media, the radio and TV. In addition the Programme manages gambling participation and problem gambling through prevalence studies, and ensures that training sessions in the industry on responsible gambling issues are also conducted. In addition to public education, a special education programme for school involving both earner and educators in understanding issues relating to risky behaviour. The NGB website reported 25,740 calls having been received by the toll free programme gambling counselling line, with about 8,795 being referred for treatment since the inception of the NRGP in 2000.

3.6.3.1.2 The effectiveness of the programme

South Africa's National Responsible Gambling Programme (NRGP) is reported to be the first to integrate research and monitoring, public education and awareness, training, treatment as well as counselling in order to address the challenges posed by a new legalized gambling environment. It is also still the only programme in the world that is managed jointly by a private-public sector partnership. The NRGP is supervised by the South African Responsible Gambling Trust, which was created by the South African Advisory Council on Responsible Gambling established by the National Gambling Board. At legislative and policy levels there seems to be no doubt that the laws focus adequately on all the pertinent issues and policy direction in so far as the control, regulation of gambling is concerned. The administrative operations on the other hand are another matter.

The National and Provincial Schools programmes as well as Community Outreach initiatives are being implemented, targeting the most vulnerable in both schools and community.

According to the NRGP records, up to 80% of those who seek help and complete the treatment course report being problem gambling free after six months. However, those who do not complete the course do not fare well. Also, those who need help, sometimes identified through a call from a family member, a friend and/or responsible member of the community, may choose not seek professional help. Thus, the impact of the NRGP is also limited by the conduct those that require the assistance.

Continuous research, monitoring and evaluation will elicit any further need for redefinition of the scope of the programme to meet the targeted groups, which are mainly the vulnerable (youth and elderly). Given the current leading role of South Africa in problem gambling, the need appears to be more of improving further the current initiatives as opposed to redefining the scope in order to meet the target market.

3.6.3.2 Overview and effectiveness of Lotteries Responsible Play Programme

Gidani runs its own Responsible Play Programme, which it took over from its

predecessor, Uthingo. According to information supplied by the NLB,⁴⁸ the programme has a national scope and involves a partnership with “like-minded organisations” to support people with gambling problems, although no details of this partnership were provided. Areas of focus include,

1. Proper and adequate information to players,
2. Proper operation of draws and dissemination of draw results
3. Responsible gaming signage in all points of sale
4. Responsible gaming campaigns
5. Supports services and self-exclusion programs for problem gamblers.
6. Responsible gaming signage at our retailers,
7. Responsible advertising codes of practice
8. Avoidance of marketing communications to under-age players
9. Responsible choice of games
10. Responsible codes of practice protecting the players and retailer relations, rights and transactions
11. Responsible advice and counselling to our winners

These are extremely broad areas, and it is disappointing that more information is not available about the programme. This does not compare well with the NRGP developed by the rest of the gambling industry, which is widely published and easily accessible. Neither does it suggest that harm minimization is taken seriously by either the operator or the NLB.

The Commission was informed that Gidani was considering a possible partnership with the NRGP.

3.7 Conclusions

The significance of National Prevalence Study is that it provides a credible and reliable source of information on problem gambling in South Africa. This is supplemented (and to some extent duplicated) by research commissioned by the NGB. It is the Commission's view that the NPS studies should receive additional funding to allow them to focus on more than just the three provinces in which most gambling takes place, and to place greater attention on informal gambling outside the major urban centres. One idea may be to combine the resources allocated to the NPS and the NGB studies.

On the whole, problem gambling levels have remained relatively constant, despite a massive growth in the gambling industry over the past decade. This should be welcomed, although there is no room for complacency, especially in light of the growth of new forms of online gambling. We simply do not know what the effects of this will be.

Of particular importance for South Africa in understanding the issue of problem gambling in correct perspective, and also for the sake of directing effort in using resources where there may be most needed, is the focus on vast illegal gambling component and other forms of gambling that have taken root over decades but that operate outside the law and are therefore not susceptible to regulation and monitoring.

⁴⁸ Email correspondence with Sershan Naidoo, NLB. 29 July 2010.

South Africa is fortunate to have an industry programme such as the NRGP in place. However, a few weaknesses have been identified in the programme, notably its reach, accessibility to poorer communities and the funding provided to independent treatment organizations and researchers. Addressing these issues would strengthen the programme.

Chapter 4: Adequacy and effectiveness of current regulatory framework

4.1 Introduction

The regulatory framework for gambling that has been adopted in South Africa is derived largely from the recommendations of the Wiehahn Commission, with some minor adjustments pursuant to a 2002 policy review and legislative change. The Wiehahn Commission recommended that gambling should be “strictly controlled, well regulated and effectively policed”. It further specified that policy and legislation relating to gambling should be well formulated, detailed, very clear and should cover as much as possible of the gambling spectrum. The Wiehahn report emphasized the need for legislatures on all levels of government to strive towards as much uniformity as possible in their policy and legislation with regard to gambling in order to establish and develop a uniformly controlled and regulated gambling industry in South Africa.

The Gambling Review Commission engaged with the public, as well as with industry stakeholders during public hearings and during stakeholder meetings, where key areas of concerns and divergences within the regulatory framework were highlighted. Substantial input and insight was also gained from submissions from and meetings with the regulators, both on a national and provincial level, to gauge what challenges the existing framework posed and were there was a need for review and improvement.

4.2 The implications of concurrent jurisdiction in gambling regulation

One of the challenges of the legislative framework for gambling is that Schedule 4 of the Constitution of the Republic of South Africa, Act 108 of 1996 (“the Constitution”) lists casinos, racing, gambling and wagering (excluding lotteries and sports pools) as a functional area of national and provincial concurrent legislative competence, granting both provincial and national government the power to legislate and regulate gambling. The lotteries and sports pools are the only two activities that are exclusively within the national legislative competence.

Eleven Acts of law as listed below currently regulate gambling in South Africa:

- National Lotteries Act, 1997
- National Gambling Act, 2004
- Gambling and Betting Act, 1997 (Eastern Cape)
- Free State Gambling and Racing Act, 1996
- Gauteng Gambling Act, 1995
- KwaZulu –Natal Gambling Act, 1996
- Mpumalanga Gambling Act, 1995
- The North West Casino, Gambling and Betting Act, 1994
- Northern Cape Gambling and Racing Act, 1996
- Northern Province Gambling Act, 1996
- Western Cape Gambling and Racing Law, 1996

It should be highlighted that in circumstances such as ours, with eleven different pieces of legislation and even more gambling regulators interpreting these laws there are bound to be differences, conflict or divergent views on policy and regulation.

The Constitution lends some assistance by providing guidance to regulators and policymakers on how to manage the relationship in instances where the Constitution allows for concurrency. These guiding principles are found in Chapter 3 of the Constitution dealing with co-operative governance. In particular the principles of co-operative governance and inter-governmental relations contained in Section 41(1) of the Constitution provide that:

“41(1) All spheres of government and all organs of state within each sphere must-

(g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere and

(h) co-operate with one another in mutual trust and good faith by-

(i) fostering friendly relations;

(ii) assisting and supporting one another;

(iii) informing one another on matters of common interest;

(iv) co-ordinating their actions and legislation with one another;

(v) adhering to agreed procedures; and

(vi) avoiding legal proceedings against one another.”

Adherence and co-operation in line with these key principles are essential to ensuring the workability of the areas such as gambling, where the Constitution has devolved concurrent legislative competence on both the national and provincial tiers of government. As such regular interaction, mutual trust, respect and proper consultation are essential to co-operative governance.

Nevertheless, the drafters of the Constitution envisaged the possibility of conflicts arising between national and provincial legislation and provided mechanisms such as those contained in Section 146(2). Section 146 (2) describes instances when national legislation would prevail over provincial legislation and provides that:

“National legislation that applies uniformly with regard to the country as a whole *prevails over provincial legislation* if any of the following conditions is met-

(a) The national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually;

(b) The national legislation deals with a matter that, to be regulated effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing-

(i) norms and standards;

(ii) frameworks; or

(iii) national policies.”

In addition the Constitution in Section 100 of the Constitution granted the ability for national intervention in provincial administration in certain limited circumstances where it is necessary to :-

- maintain essential national standards or meet established minimum standards for the rendering of a service ;
- maintain economic unity ;
- maintain national security; or
- prevent that province from taking unreasonable action that is prejudicial to the interests of another province or to the country as a whole.

It was generally accepted that in order to effectively regulate gambling in the country, there was a need for the introduction of national legislation, which would provide for

uniform norms and standards, and propose national policy in relation to gambling as envisaged in Section 146(2) of the Constitution. This principle formed the underlying basis for the National Gambling Act which sought to “co-ordinate activities relating to the exercise of that concurrent competence within the national and provincial spheres of government” and the establishment of uniform norms and standards, designed to safeguard the public participating in gambling and their communities against the adverse effect of gambling. Thus the object of the National Gambling Act seeks to ensure that:

- gambling activities are effectively regulated, licensed, controlled and policed;
- members of the public who participate in any licensed gambling activity are protected;
- society and the economy are protected against over-stimulation of the latent demand for gambling; and
- the licensing of gambling activities is transparent, fair and equitable.

It is important to note that while the Constitution speaks of legislation and action that is co-ordinated, this does not imply that it should be the same in all respects. The recent Constitutional Court case of *Weare v Ndebele NO and Others* (CCT 15/08), illustrates this. This particular case was a challenge relating to the current KZN legislation, which, unlike all the other provinces, did not allow a juristic person to be the holder of a bookmaking licence. It should be noted that KZN had published its draft Gambling Bill, which brought this situation in line with the other provinces but this legislation had not yet been passed by the KZN legislature.

The court found in favour of the KZN government and stated that:

“provinces have the right to regulate their own gambling industries. There can be no objection in this case to the KwaZulu-Natal legislative regime simply on the ground that it is different to the other provinces. This is not to say that the situation in other provinces may not be referred to when challenging provincial legislation. But the fact that there are differences between legal regimes in provinces does not in itself constitute a breach of section 9(1)”

It should be noted that the above case before the Constitutional Court did not involve an intergovernmental dispute. However, it did reaffirm the principle that provinces are competent to introduce their own legislation with regard to gambling and that provinces are not expected to have identical legislation.

4.3 Concurrent jurisdiction and the exercise of co-operative governance

Concurrent jurisdiction raises a number of particular challenges for the regulatory framework.

The first challenge relates to dispute resolution. As one might expect, over the years various disputes have arisen between the provinces and the NGB and between and among the various provinces on how gambling is to be regulated. Some of these have been resolved amicably, while others have needed the intervention of the National Gambling Policy Council (Policy Council). One of the enduring disputes has been about the Central Electronic Monitoring System (CEMS). The matter was the subject of court cases, negotiations between national and provincial governments and was eventually resolved by an agreement that the PGRAs would license the Zonke Monitoring System in each province. The matter was resolved through the Policy Council, but only after a mediator was engaged. An effective dispute resolution mechanism is clearly necessary to ensure the speedy resolution of

disputes and conflicts over licences and regulatory matters, as lengthy delays have cost implications for the affected businesses. In the case of the dispute over the CEMS, there were significant cost implications for Zonke, as well as for route operators, such as Vukani.

While there is a need for resolving disputes, it is also necessary to implement measures that would prevent disputes from arising in the first place. The Constitution refers to co-operative governance, while the Wiehahn Commission urged for co-operation at all levels of government. This entails a co-operative and consultative approach to policy-making and a relationship between all parties that is based on mutual respect and trust. It implies that none of the parties will take unilateral action and will not engage in activities that undermine the credibility or effectiveness of other parties.

A third challenge relates to ensuring consistency and uniformity in regulation. To this end, national norms and standards are developed and contained in the National Gambling Act, 2004. The challenge is ensuring that norms and standards are implemented consistently across provinces.

The Policy Council was envisaged as the body that would assist with overseeing the implementation of gambling policy in a uniform manner and a forum for consultation, joint decision-making and dispute resolution. The discussion below assesses the effectiveness of this body.

4.3.1 The National Gambling Policy Council

The National Gambling Policy Council (“Policy Council”) is established in terms of Section 61 of the National Gambling Act and is chaired by the Minister of Trade and Industry. The Policy Council consists of the Member of the Executive Council (MEC), responsible for gambling in each province and the Minister of Trade and Industry, who chairs the Council and has a casting vote. The chairperson of the NGB and the chairperson of each provincial gambling regulator are non-voting members of the Council. A council meeting is quorate when the Minister of Trade and Industry and five (5) MECs are present. The Policy Council, as the name suggests, is not a regulator but a policymaking body empowered with oversight functions over the gambling regulators.

The Policy Council’s role is to provide for consultation between the national and provincial governments, to determine national gambling policy, to promote uniform national and provincial laws, norms and standards. In addition the Policy Council is mandated to deal with the management or monitoring of gambling and to deal with the resolution of disputes that may arise between PGRA’s.

The Act empowers the Policy Council to:

1. have oversight over the NGB and the ability to provide direction to the NGB in the exercise of its duties and performance of its duties;
2. ask the NGB and/or the provincial gambling regulator/s to provide a report or make recommendations;
3. ensure compliance with the National Gambling Act and if it discovers that a provincial gambling regulator has not complied, the Policy Council is able to direct that steps be taken to achieve such compliance.

The National Gambling Act, 2004 requires the National Gambling Policy Council (“NGPC”) to meet twice per annum. The Commission has reviewed the meetings of

the NGPC since 2006. It appears that the Policy Council has met eight (8) times since 2006.

National Gambling Policy Council

Year	No of Meetings	Meeting Quorate? Yes/No	Issues discussed
2006	1	No	Zonke licensing Policy on regulation of interactive gambling BBBEE in the industry National Gambling Act amendment and regulations Public hearings on LPMs National gambling registers Person-to-Person Betting Exchanges
2007	2	Quorum at 1 meeting	Zonke licensing National Gambling Act amendment and regulations BBBEE in the industry Person-to-Person Betting Exchanges Gambling tax regime Greyhound racing EBTs
2008	2	No	Zonke licensing EBTs – judgement obtained Research on Bingo and gamblers perceptions
2009	2	Quorum at 1 meeting	Zonke licensing North West 5 th Casino licence National Gambling Act amendment Gambling Review Commission BBBEE in industry Gambling advertising
2010	1	Yes	Zonke licensing resolved National Gambling Act amendment and regulations Gambling Review Commission Regulation of gambling toys Regulation of EBTs Illegal IG activities Socio-economic research Special gambling licences for World Cup
Total	8	Quorum at 3 meetings	

Source: Information obtained from the DTI

From the table above, it is clear that the NGPC was often not quorate (only 3 out of 8 meetings over the period of 5 years) and decision-making at the Policy Council meetings was very slow. The issue of the licensing of Zonke was only resolved after five (5) years and as a result of a mediated settlement. It also took three (3) years for an agreement to be reached on the matter of EBTs. However, during the period about 1,200 EBTs were rolled out in Gauteng.

4.3.2 Conclusion

The Policy Council does not appear to be effective in settling disputes or in reaching agreement on policy matters, especially where there is a conflict of objectives. Attempts to resolve matters directly between the CEOs of the ten (10) gambling regulators achieve similar results as the Policy Council. In effect this means that it is difficult to obtain agreement on a national policy relating to gambling, and the careful balance that must be struck between revenue maximization, proliferation and social impact can easily be undermined.

However difficult, as long as concurrent jurisdiction is in place and several provincial regulatory authorities exist, there will be a need for a mechanism to ensure co-ordination and consultation on policy matters. The challenge is how to ensure its effectiveness.

4.4 The regulatory framework

South Africa is considered by the industry and regulators alike as having well established laws and regulations pertaining to gambling. Some would even suggest that we risk being known as a country that is over regulated in the sphere of gambling. While it is true that a well-established and written legal framework is critical to ensure that the legal system is adequate and effective, written laws on their own are not enough. Just as essential are the mechanisms, institutions and people that interpret these laws, that ensure compliance and monitor and evaluate the gaps in these laws. The gambling regulators therefore play a critical role in ensuring compliance with our laws, that transgressions are prosecuted and that the laws are upheld.

As indicated, gambling is regulated nationally and provincially. The two national regulators are the National Gambling Board and the National Lotteries Board. In addition, each of the nine (9) provinces has a provincial gambling regulator or authority ("PGRA"), which is governed and appointed in terms of relevant provincial legislation.

This section of the report reviews the work of the various regulators against their mandates and responsibilities and attempts to assess the extent to which those mandates are met, within the overall context of the Wiehahn report objectives.

4.4.1 The National Lotteries Board

As indicated above, lotteries and sports pools are an exclusive national competence. As a result, no provincial regulators exist. The national regulator is the National Lotteries Board (NLB).

The NLB is established in terms of the Lotteries Act (No. 57 of 1997). The object of the Lotteries Act is to regulate lotteries and sports pools. The term "lottery" is defined in the Lotteries Act as "any game, scheme, arrangement, system, plan, promotional competition or device for distributing prizes by lot or chance" and further included "any game, scheme, arrangement, system, plan, competition or device, which the Minister may by notice in the *Gazette* declare to be a lottery". The term "sports pool" is rather strangely defined in the Lotteries Act as it does not explain what a sports pool is but instead what it is not. Thus the definition of "Sports Pool" refers to "any scheme, excluding any scheme or competition in respect of horse racing which is authorised by the board which is conducted in the same format and manner and under the same circumstances as a scheme or competition in respect of horse racing that existed prior to 18 June 1997".

The Board's main functions, as prescribed in the Lotteries Act, include:

1. Acting as an adviser to the Minister of Trade and Industry on matters relating to the National Lottery including the issuing of the licence to conduct the National Lottery, the efficacy of legislation pertaining to lotteries and on establishing and implementing a social responsibility programme in respect of lotteries;
2. Ensuring that the National Lottery and Sports Pools are conducted with all due propriety;
3. Protecting the interests of participants in National Lottery;
4. Ensuring that the net proceeds of the National Lottery are as large as possible;
5. Administering the National Lottery Distribution Trust Fund (NLDTF) and hold it in trust; and
6. Monitoring, regulating and policing lotteries incidental to exempt entertainment, private lotteries, society lotteries and any competition contemplated in section 54.

The Minister of Trade and Industry appointed the NLB in October 1998, with then-National Council of Provinces Member, Mr. Joe Foster, as the first chairperson. In July 1999, the NLB appointed Uthingo as the first licensed operator of the National Lottery. The second licensed operator, Gidani, was appointed after a controversial tender process in September 2007.

The Minister appointed three distributing agencies (DAs) in December 2000, namely for arts, culture and national heritage; sports and recreation; and charities. The RDP DA has never been appointed.

In March 2009, the NLB had 107 staff members (NLB 2009, p.7). Although no organogram is available on the website or the annual report, it can be presumed that most of the staff is in the Central Applications Office, responsible for receiving and administering applications for funding. The operating budget for the NLB in the year ending March 2009 was R47.6 million (NLB 2009, p.27).

The NLB captures its legislative mandate and its achievements against these objectives in their latest annual report, as in the table below.

NLB: Mandate and achievements

Objective	Performance
Ensure that the National Lottery and Sport Pools are conducted with all due propriety	<p>Continuous monitoring of the Operator's control and security environments through regular compliance programmes.</p> <p>To date, the integrity of the National Lottery has not been compromised.</p>
Ensure that the interest of every participant in the National Lottery is adequately protected.	<ul style="list-style-type: none"> • Continuous monitoring of the gaming and prize payment environments and the Operator's call centre. • Compliance visits to the live draw. • Compliance visits to Retailers.
Ensure that the net proceeds of the National Lottery are as large as possible.	<ul style="list-style-type: none"> • Continuous monitoring of Sales and Prize calculations as specified in the Licence. • Continuous monitoring of ancillary revenue. • Continuous monitoring of all categories of expenditure incurred by the Operator.
Administer the National Lottery Distribution Trust Fund (NLDTF) and hold it in trust.	<ul style="list-style-type: none"> • Tight controls on the receipt and investment of monies generated. • Tight controls on the disbursement of monies to beneficiaries.
Monitor, regulate and police lotteries incidental to exempt entertainment, private lotteries, society lotteries and any competition contemplated in Section 54 of the Lotteries Act.	<ul style="list-style-type: none"> • Continuous monitoring of lottery-related activity in the market. • Processes in place for registration of lottery managers, operators and fundraising schemes.
Advise the Minister on percentages of money to be allocated in terms of Section 26(3) of the Lotteries Act.	<ul style="list-style-type: none"> • The Board has since made five proposals regarding the allocation of monies. Four have been approved. The current proposal is under consideration by the Minister.
Advise the Minister on the efficacy of legislation pertaining to lotteries and ancillary matters.	<ul style="list-style-type: none"> • The Board has since made proposals to the Minister regarding amendments to the Lotteries Act on three occasions. Two amendments have been implemented to date.
Advise the Minister on establishing and implementing a social responsibility programme in respect of lotteries.	<ul style="list-style-type: none"> • The Board, in conjunction with the Operator, has a comprehensive social responsibility programme. The Board monitors the programme annually.
Administer and invest the money paid into the National Lottery Distribution Trust Fund in accordance with the Lotteries Act.	<ul style="list-style-type: none"> • The Board has received approval from the Minister of Finance for its investment strategy and currently invests in strict accordance with this policy.
Make such arrangements as may be specified in the licence for the protection of prize monies and sums for distribution.	<ul style="list-style-type: none"> • The Board has, at the start up of the Lottery, approved and authorized the various trusts to hold monies reserved for outstanding prizes. The status of these trusts is monitored continually.
Provide the administrative and management support to the Distributing Agencies for the purposes of grant making.	<ul style="list-style-type: none"> • The Board has set up the Central Applications Office. To date, the Distributing Agencies have allocated in the region of 11 000 grants totaling R7,6 billion. • The current cost to disbursement is 4%. The international average is approximately 11%.

Source: NLB (2009)

The legislative mandate and the operational focus of the NLB are largely focused on the monitoring of the lottery operator on the one hand and the administration of the National Lotteries Distribution Trust Fund on the other. A more detailed discussion follows below.

4.4.1.1 Compliance and enforcement

The NLB has no explicit mandate to investigate illegal lotteries and initially had no capacity to deal with illegal lotteries. The absence of enforcement resulted in an initial proliferation of illegal lottery activity. The NLB has successfully launched two cases, which were upheld by courts. The cases were against the First National "Million a month" account and the Children's Trust "WiniKhaya" competition. These high profile cases have created important precedents for the NLB and given them more credibility as a regulator. SMS competitions now appear to be the big form of illegal lottery activity. (NLB,2009, p.6)

The cases have also tested the law and given an indication of its weaknesses, which largely relate to the wording of section 56 of the National Lotteries Act. In particular, one weakness is the lack of an explicit legal mandate for the NLB to investigate and enforce illegal lotteries. The legislation is similarly not very clear about sports pools and their authorization. According to a 2008 review of the NLB for the DTI, Phumelela has interpreted the wording in section 56 of the National Lotteries Act to entitle them to have sports pools in terms of provincial law (Louw and Ronald-Louw, p.121). The NLB has not yet attempted to enforce its exclusive national jurisdiction over sports pools, allowing the operator to exploit the absence of enforcement and case law.

4.4.1.2 Administration of the NLDTF

The 2008 review of the NLB concludes that the NLB dedicates substantial resources to the administration of the NLDTF, distracting it from its core regulatory functions. Complaints about the speed and efficiency of the distribution process have been a continual refrain, even though the role of the NLB is largely administrative, receiving and processing applications for funding and providing support to the DAs appointed by the Minister. The review recommended that a separate grant-making body should be established, with oversight by the NLB.

4.4.1.3 Responsible gambling programmes

One of the key functions of the Board is to advise the Minister on establishing and implementing a social responsibility policy in respect of the lotteries. This matter was addressed more fully in Chapter 3 of this report.

4.4.1.4 Conclusion

The NLB appears to have considerable capacity problems, and is not always able to exercise its mandate effectively. In particular, the NLB battles to oversee the operation of the NLDTF. In large part, this is because of an anomaly in the Lotteries Act, whereby the NLB is given responsibility for overseeing the NLDTF but has no statutory powers to intervene in or influence the grant-making process (Louw and Ronald-Louw 2008).

Distribution of monies from the NLDTF remains a serious problem for the NLB. The DAs charged with this responsibility operate on an *ad hoc* basis, and are clearly not able to manage the huge volume of work that this involves. The good causes that apply to the NLDTF for funding complain bitterly about the speed and the lack of professionalism with which grant applications are processed (see Frankel 2008 for a review of these problems).

It is worth noting the NLBs responsibility for sports pools. There is considerable uncertainty as to which regulatory authority should have responsibility for sports betting, at least for sports betting on totalisator-based products (Louw and Ronald-Louw 2008, p.123).

4.4.2 The National Gambling Board

The National Gambling Board ("NGB") is a statutory body established by the National Gambling Act, 1996 (Act No.33 of 1996). The role and function of the NGB involves monitoring and investigating the issuing of national licences by the provinces; investigating, monitoring the PGRA's for compliance with the National Gambling Act, 2004 and entering into agreements with them to rectify any deficiency.

It includes establishing and maintaining a number of registers, including a national register of excluded persons (§14); a national register of gambling machines and devices (§ 21); a central register of information on issued licences (§ 35); a national probity register (§ 57) and a national central monitoring system (§27). The NGB is also responsible to monitor the socio- economic impact of gambling and the causes of addictive or problem gambling, as well as advising the National Gambling Policy Council in respect of the maximum number of licences relating to casinos, wagering, racing and gambling that should be awarded in the Republic or a province and on matters of national policy, norms and standards that should apply throughout South Africa and recommending changes to bring to about uniformity. Finally, the NGB may monitor the market share in the industry and make recommendations to the Competition Commission in this regard and may also provide a broad-based public education programme about the risks and socio-economic impact of gambling.

The NGB's operating expenditure for the year ending March 2009 was R18.89 million. It has a staff complement of 30, of which 6 are in the compliance department.

4.4.2.1 Monitoring the issuing of national licences

National licences have been issued to manufacturers and key employees. According to the 2009 annual reports of the relevant PGRAs, the Gauteng Gambling Board has issued 19 national manufacturers licences and the Western Cape has issued 35 national key employee licences. The NGB has developed guidelines for the issuance and renewal of national licences, setting out the processes. These guidelines require that PGRAs intending to issue a national licence must solicit inputs from other PGRAs to ascertain that there are no objections. Concerns, it seems, will be raised with the NGB, which will evaluate the matter internally and make a decision. The NGB receives final notices of licences issued, accompanied by a checklist for the national licence. It is assumed that the NGB keeps a register of such licences.

It can therefore be concluded that there is a process in place to monitor the issuance of national licences. At this stage, it appears to be a process with minimal inputs from the NGB, with the most significant contribution being the central depositing of the licence information.

4.4.2.2 Monitoring compliance by PGRAs with the National Gambling Act, 2004

After the implementation of the National Gambling Act, 2004, which gave the NGB oversight responsibility over PGRAs, the NGB initiated compliance reviews in provinces. The first review in Mpumalanga was very extensive (possibly too extensive, in the words of the Chief Operating Officer of the NGB, Themba

Marashe)⁴⁹ and a detailed report outlining a number of deficiencies was developed. It appears that the report was duly actioned by the Mpumalanga Gambling Board and no further issues arose from the process. As the NGB was about to embark on the second provincial review, the province in question expressed opposition to the review, on the basis that it was already subject to review by the Auditor-General. The matter was referred to the CEOs Forum and agreement was reached at the forum that a self-assessment would be conducted by PGRAs in terms of the NGB oversight requirements. The NGB Compliance Desk Audit Strategy for oversight evaluations of provincial gambling regulatory authorities, prepared in March 2008, outlines the following scope for these audits:

1. Suitability of licensed premises and continuous standing of key members of the licences;
2. Compliance with bid undertakings;
3. Audit report for taxes, levies, RTP, GGR Technical Standard etc;
4. Consistent application of legislation, including circumstances under which discretionary powers of PGRAs are exercised;
5. Compliance with conditions of licences;
6. Assurances over validity of employee and equipment registration;
7. Assurances over licensee compliance with the National Gambling Act;
8. Assurances over licensee compliance with the requirements of the FIC Act, as accountable institutions;
9. Circumstances and processes followed in revolving or suspending any licence.

The strategy provides for the completion of a questionnaire by the PGRAs, which will be evaluated by the NGB and tested if necessary. A detailed questionnaire has been prepared, but no such desktop evaluation had been completed at the time of writing the report. It is therefore not clear how effective this process will be. It can be noted, however, that the process envisaged is fairly detailed, which may explain the reluctance of PGRAs to participate. An independent audit, possibly by the PGRAs auditors may be more reliable and require less effort on the part of the PGRAs.

The NGB furthermore directly assisted the Northern Cape Gambling Board with addressing deficiencies identified during an oversight visit conducted in respect of betting outlets. This would have formed part of a broader review. One of the deficiencies identified was the fact that the PGRA still formed part of a government department and was not independent. By agreement with the MEC, a senior official from the NGB was seconded to the province to assist with rectifying the areas of concern. A number of processes were put in place, but, according to the NGB, due to a change in the reporting line of the PGRA, the processes put in place were reversed. The NGB has cited this as an example of how difficult it is to successfully engage in the oversight function.⁵⁰

In addition to the above, the NGB is responsible for overseeing compliance with the requirements of the FIC Act. Although the NGB was initially responsible for conducting inspections in terms of the FIC Act, it appears that this was a matter of concern to PGRAs and a decision has been made that this responsibility will be devolved to PGRAs, pending amendments to the FIC Act⁵¹.

⁴⁹ Meeting with members of the NGB, 25 June 2010

⁵⁰ *ibid.*

⁵¹ Draft response to the Gambling Review Commission by the National Gambling Board, p.4

The NGB has also assisted with the enforcement of illegal gambling activities in an effort to achieve uniformity. The NGB developed a relationship with the SAPS at a national level and has involved law enforcement agencies in different NGB co-ordinated projects, as well as to assist with enforcement actions in the North West Province.⁵²

The NGB has further engaged in a number of initiatives to promote uniformity across provinces. These efforts have included setting standards for wagering software, a uniform manner to deal with the taxation of multiple bets and fixed odds bets on sporting events and other contingencies.

Overall, it would appear that the NGB has directed a substantial amount of energy towards this objective. However, many of their efforts, especially those that have tended to be more invasive, have been resisted by PGRAs. The question remains whether an oversight function can be exercised effectively, or whether it is just a matter of the approach that was adopted.

4.4.2.3 Establishing registers and central monitoring systems

In terms of the National Gambling Act, 2004, the NGB is responsible for establishing a national register of excluded persons, a national probity register, a national register of gambling machines and devices and a register of licence information. The establishment of the registers provided an opportunity for the NGB to review processes and to promote greater uniformity. For example, the development of the probity register was informed by the standardization of licensing criteria. The NGB maintains that all the necessary registers have been established, but that their implementation has been hampered by the reliance on information from the PGRA. In the case of the probity register, there is no legal requirement for PGRAs to submit the information required to populate the register and that in many cases the information is completed inaccurately by PGRAs. A different problem seems to have been encountered with the implementation of the national exclusion register. It appears that the implementation notice for the exclusion register was not published in the correct format, leading to challenges by operators. As a result, there is currently reliance on provincial legislation, which is diverse and inconsistent. Thus, the exclusion register, though technically in place, has not been populated with data. According to the NGB, the register of machines and devices and the register of licence information are established, but again depend on information from the PGRAs. The NGB has recommended that PGRAs need to be compelled by law to submit the necessary information to the NGB within a specified amount of time.

The National Gambling Act also makes the NGB responsible for a central electronic monitoring system (CEMS), which was developed and implemented by Zonke Monitoring Systems as far back as 2001. The implementation of the system in all provinces has been tortuous, but eventually all provinces have licensed the system and have now allowed it to operate.

In its submission to the Commission, the NGB highlights the fact that it has the legislative responsibility to maintain and monitor the central electronic monitoring system, which the NGB outsourced to Zonke Monitoring Services. Since this is a responsibility, which lies with the NGB, the NGB argues that Zonke need not be licensed as the NGB itself would not have to be licensed to perform this function. As a result, Zonke must maintain ten (10) different relationships to perform its function. To overcome the provincial reluctance to allow Zonke to monitor LPMs, a common

⁵² *ibid*, pp.6-7

approach to the auditing of the CEMS was developed and has been implemented. While monitoring of machines is probably something that can be done at a provincial level, there are cost and other advantages to doing it nationally and there appears to be no compelling reason for individual provincial monitoring systems, given the small number of LPMs that have been rolled out. It is therefore difficult to understand why this matter was so protracted.

The registers and central monitoring system are important to assist with introducing efficiencies into the system (for example, through the central probity register, which would minimize duplication of costly probity investigations) and also to ensure the traceability of gambling equipment. Although not foolproof, the principle of traceability of equipment is important, if one wishes to crack down on the circulation of illegal machines and gambling devices. The fact that these registers are not operational undermines the effectiveness of the regulatory system.

4.4.2.4 Monitoring the socio-economic impact of gambling

One area where the NGB has made a significant impact is in the area of commissioning and publishing research on the social impact of gambling. Through their direct efforts and through the National Responsible Gambling Programme, better information about the social impact of gambling is available in South Africa than in almost any other area of regulation and possibly in many other gambling jurisdictions. In addition, the NGB can also claim credit for the establishment of the South African Responsible Gambling Trust (SARGT). The NGB maintains that it has also successfully implemented responsible gambling awareness campaigns. The Commission did not verify this claim.

4.4.2.5 Advising the Policy Council

The NGB has taken its role of advising the National Gambling Policy Council very seriously and has diligently prepared reports for submission to the Policy Council. From the perspective of the NGB, the relationship with the Policy Council has been disappointing and has not given the NGB the resolutions it would have liked. The Policy Council has replicated and possibly amplified disagreements between the NGB and PGRAs on policy matters. Where there are disagreements, these matters are not resolved at the Policy Council in the NGB's favour and, understandably, the organization feels frustrated by what it perceives to be a lack of decisive decision-making at the most senior level.

It is not clear, however, that an escalation of disputes from a CEO level to a forum consisting of Ministers would necessarily resolve matters in favour of the NGB. The underlying disputes and disagreements would remain and would reflect the different objectives of different tiers of government – namely revenue generation in the case of provinces, versus minimizing the negative social impact in the case of national government.

The issue of the introduction of EBTs, as raised by the NGB, is instructive. In their submission, the NGB points out that there are inconsistencies between casino and bingo licensing criteria and that if the decision is taken to allow EBTs, which are effectively competing for the same market as casinos, then a national policy needs to be formulated to ensure that there is proper regulation and to prevent the proliferation of EBTs. The NGB appears to be awaiting the decision of the Appeal Court prior to taking a view on whether or not such policy should be drafted. The Commission supports the view that the current situation whereby Gauteng Province licensed EBTs and continued to allow them despite opposition from NGB goes to the

heart of the greater challenge facing the NGB, namely the issue of concurrent jurisdiction.

4.4.2.6 Perceptions of PGRAs

Although the National Gambling Act was enacted in 1996, the NGB only became operational in 1998. At that time, all the provinces had already passed provincial gambling legislation and most of the PGRAs were already established. Provinces have jealously guarded their constitutionally allocated roles and have been concerned about the possibility of the NGB duplicating their functions. The provinces have further felt that they had more expertise and experience in dealing with the regulation of gambling than the NGB. This is a view that continues to be expressed.

There was consensus amongst the PGRA's who engaged with the Commission that there was a need for norms and standards to guide gambling policy and legislation.

When asked to submit their views of co-operative governance, one PGRA indicated that in their view provinces are not properly consulted on policy matters and cited as an example the establishment of the Gambling Review Commission, claiming that the terms of reference and composition of the Gambling Review Commission were exclusively dealt with by the DTI and the NGB. A review of the agenda of the Policy Council, however, reveals that the Gambling Review Commission appeared on the agenda of the Council several times. It is therefore very unlikely that there was no consultation. The PGRA further maintained that there is a need to improve consultation between the NGB and the provincial gambling regulatory authorities. This would also improve intergovernmental relations and policy-making. Other PGRA's were generally of the view, however, that current relationship between the NGB and PGRA's was healthy and that in general, there is good co-operation between the CEO's of the various provincial boards and with the NGB.

4.4.2.7 Conclusion

It appears that the NGB has struggled to fulfill key areas of its mandate. This is largely due to the fact that the organisation depends on co-operation and support from PGRAs, which is often not forthcoming. The approach adopted by the NGB in some respects has not been helpful to PGRAs. Furthermore, PGRAs tend to default to provincial legislation, where there is a difference between the national norm or standard and the provincial law, undermining efforts to achieve uniformity.

Although some PGRAs have questioned the need for the NGB in informal meetings, others have indicated that there is a need for co-ordination and co-operation and that this role is ideally played by an institution, such as the NGB. The oversight function of the NGB, while important in the broader scheme, has not been supported by PGRAs. Other ways of achieving accountability of individual provinces must therefore be found and international experience in this regard may be helpful.

4.4.3 Provincial gambling regulatory authorities (PGRAs)

As indicated, each province has its own gambling authority. In terms of the National Gambling Act, 2004, PGRAs have the following responsibilities:

1. Issuing national and provincial licences;
2. monitoring compliance with legislation, both national and provincial, and with licence conditions; and
3. combating illegal gambling.

All the provinces have established independent boards, with the exception of the Northern Cape, where the provincial gambling board resides within the Department

of Economic Affairs. The Free State Gambling Board is currently undergoing a merger with the Liquor Board and will become an independent regulatory body responsible for both areas of licensing and legislation. The Free State is the only province that has opted for this regulatory model at present. An unusual situation exists in KwaZulu-Natal, where gambling regulation is split between the Premier's Office and the PGRA.

The table below outlines the 2009 expenditure, taxes collected and the gross gaming revenue in each province. In the table below, we consider the ratios of taxes to GGR and to the PGRAs annual operating expenditure.

Gross gaming revenue, tax revenue and operating expenditure per province

Province	GGR (Rm)	Provincial gambling tax revenues* (Rm)	Taxes as a % of GGR	Annual expenditure** (Rm)	Expenditure as % of gambling taxes
Gauteng	6,686.82	617.19	9%	55.48	9%
Western Cape	2,706.57	326.03	12%	27.10	8%
Kwazulu-Natal	3,024.99	338.58	11%	51.34	15%
Eastern Cape	1,114.47	87.8	8%	28.34	32%
North West	955.26	63.43	7%	13.00	20%
Free State	318,42	31.08	10%	17.06	55%
Limpopo	318.42	25.69	8%	23.43	91%
Mpumalanga	636.84	38.07	6%	27.94	73%
Northern Cape	159.21	15.39	10%	N/A	N/A
Total	15,921	1,539	10%	243.69***	

Source: Provincial gambling regulatory authorities, Annual Reports, 2009

* Gambling tax revenues include revenues derived from taxes, levies and fees

** Annual expenditure was calculated net of depreciation

*** Excluding Northern Cape

As is clear from the table above, gambling revenues are largely aligned with the GGR in a province, with an average tax of 10% of the GGR. However, there is variation between provinces, with the average tax rate ranging from 7% in North West, to 12% in the Western Cape. The budgets of the PGRAs differ substantially, if considered as a ratio of the taxes collected in each province. For example, in Limpopo, almost all the revenue collected in the financial year ending in 2009 (91%) was spent on running the Board. In other provinces, the amount spent is substantially lower, as a ratio of gambling taxes. For example, in Gauteng, it is only 9%, even though the GGB has the largest budget of the provinces. While this may be reflective of efficiencies within regulatory authorities, it should also be kept in mind that certain fixed costs exist for regulation, irrespective of the GGRs generated in a province. In provinces with lower GGRs, the ratio of expenditure to GGR will tend to be higher than in provinces with higher GGRs.

Key efficiency ratios

Province	GGR Rm	Total staff	Ratio of GGR to staff Rm	Number of regulated institutions	Ratio of staff to regulated institutions
Gauteng	6,686.82	65	102.9	116	0.56
Western Cape	2,706.57	69	39.2	35	1.97
Kwazulu-Natal	3,024.99	37	81.8	10***	3.7
Eastern Cape	1,114.47	34	32.8	15	2.27
North West	955.26	22	43.4	7	3.14
Free State	318,42	42	7.6	11	3.82
Limpopo	318.42	59	5.4	4***	14.75
Mpumalanga	636.84	50	12.7	9	5.56
Northern Cape	159.21	N/A	N/A	N/A	N/A
Total	15,921	378			

Source: Annual reports of PGRAs and websites of PGRAs

* Includes licensing, audit and law enforcement functions

** Includes licensing and audit functions

*** Does not include bookmakers

As is clear from the tables above, the levels of efficiency vary substantially across provinces. Data on bookmakers was not readily available from KwaZulu-Natal and from Limpopo and may have an impact on the above analysis. On the basis of available information, however, some consistencies between the information contained in tables above are emerging. For example, the expenditure of the Limpopo Gambling Board is 91% of the gambling taxes generated in the province and the ratio of staff to regulated entities is very high, especially given the fact that there are only 2 casinos and 1 LPM route operator in the province. Similarly, the expenditure of the Mpumalanga Gambling Board is 73% of gambling taxes generated in the province and the ratio of staff to regulated entities is also quite high at five (5) staff members per regulated entity. This data suggests that in some provinces, the regulatory structure is heavy relative to the size of the industry, undermining the objective of generating revenue for the province. This objective must however also be balanced with the objective of the strict control and supervision of the gambling industry, which arguable is achieved in both the provinces in question.

4.4.3.1 Licensing

Licensing of gambling opportunities forms the cornerstone of the legislative framework relating to gambling. Reviewing the licensing process and the criteria used when licences are granted is a key factor in determining the effectiveness of the existing framework. As gambling is regulated both nationally and provincially, there are two types of gambling licences, national licences and provincial licences.

National licences issued by provinces include gaming manufacturers licences and national employment licences. Provincial licences include casino licences, bookmaker licences, totalisator licences, route operator licences, site operator

licences, bingo licences, provincial employment licences, key persons licences, gaming manufacturer licences and testing agent licences.

Sections 53 and 54 of the National Gambling Act, 2004, list the criteria that are to be considered when evaluating a gambling licence application (other than an employee licence). Section 53 requires that consideration be given to commitments by the applicant in relation to Black Economic Empowerment or in combating the incidence of addictive and compulsive gambling. Further consideration *must* be given to the socio-economic impact on the community of the proposed licence. Section 54 requires that a PGRA should also consider whether approval of the licence is likely to impact on competition in the industry. To summarise, the four key elements to be considered in the licensing process are:

- Commitments towards Black Economic Empowerment (“BEE”);
- Commitments to combating the incidence of addictive and compulsive gambling⁵³
- The socio- economic impact on the community of the proposed licence
- Competition

These are therefore the minimum licensing criteria that the PGRAs are expected to apply when considering licensing of gambling activities. PGRAs consider additional criteria, such as public objections; the suitability of the applicant in terms of corporate governance, personal and business conduct; employment, financial and criminal background of the applicant; suitability of the applicants’ associates in relation to funding; the ownership of the premises; and the suitability of the proposed premises. Further consideration may also be given to job creation and infrastructure development, as well as motivations relating to market demands, entertainment value, tourism impact, staff training and skills transfer, procurement policies, geographic spread in the case of LPMs. The additional factors considered are derived from provincial laws. Although there are many similarities in the criteria considered by PGRAs, there are also differences. For example, only two (2) PGRAs indicated that they consider the impact of the casino on tourism in the area, and another two (2) PGRAs appeared to be explicitly considering the impact on competition in licensing decisions.⁵⁴

It is worth noting that it does not appear that the licensing criteria outlined in provincial laws have been substantially updated or reviewed since their initial promulgation. As a result, differences in the factors considered across provinces remain in place. Gambling operators pointed out that these differences are retained despite conflicts and inconsistencies with national legislation or regulation. An example cited relates to the provisions of section 49(1)(f) of the National Gambling Act, 2004, which bars a person from obtaining a gambling employment licence if they have been convicted during the previous ten (10) years of particular offences. In some provincial laws, entry is barred to employment within the gambling industry if a person has been convicted of any offence at any time. There appears to be a number of inconsistencies between the national LPM regulations and provincial licensing processes. In instances where national regulation was altered, provincial legislation and requirements were not amended.

⁵³ Note: the NGB Act uses the word “or” to separate these two elements, implying that there is a choice, it is not clear whether this is was a deliberate or a drafting error, in any event, the Commission is of the view that this should be a separate in dependant element and would suggest that the NGB Act be amended to reflect this.

⁵⁴ Taken from submissions from the PGRAs to the GRC

For a number of licence categories, PGRAs consider the location of the project, the economic impact and potential community benefits, while in others the socio-economic impact is explicitly required. The Commission is concerned that there appears to be a trend to locate gambling facilities, namely casinos and bingo halls, in major shopping malls or closely linked to shopping malls. This would suggest that the socio-economic impact does not carry sufficient weight in the licensing process. It suggests that other factors may outweigh these considerations and require that a standard for licence reviews needs to be developed, agreed and implemented.

A related concern is the trade off between revenue generation and the social impact of a proliferation of gambling opportunities. One PGRA indicated to the Commission members during a meeting that PGRAs are often under pressure to meet revenue targets for the provincial coffers, which, it was felt, compromises the independence of the PGRAs. This potentially plays itself out in the number of licences that are issued. In certain areas, the overall number of licences, are limited in national legislation. These limits are strictly observed by PGRAs. In other instances such as Bingo halls, bookmakers and totalisators, no maximum number of licences are set. According to inputs from PGRAs, the maximum number of licences in these categories, are set by market forces. Consideration of the social impact is not mentioned in this regard.

In conclusion, therefore, the findings are that there is lack of uniformity in the application of licensing criteria across provinces and the requirements of the National Gambling Act, 2004, in respect of licensing, are not fully complied with. Furthermore, the social impact of gambling does not appear to be considered consistently in licensing decisions, where there is no explicit limit or requirement imposed.

4.4.3.2 Compliance

One of the main functions of the PGRA's is to monitor and ensure compliance with licence conditions and the relevant gambling legislation. PGRA's were asked to explain how often they conduct site visits and inspections as well as what the cost of ensuring compliance is. In response, PGRAs indicated that compliance with licence conditions is reviewed through the submission of compliance reports by the licensed operators, as well as when licences are re-investigated and renewed.

It appears that site visits are conducted very regularly by regulators. The Mpumalanga Gambling Board conducts compliance inspections three (3) times a week per casino, monthly for LPM sites and annually for bookmakers and totalisators. The Gauteng Gambling Board conducts weekly site visits on casinos to check regulatory technical inspections on gaming machines and at least twice per month for routine gaming control inspections. Bingo operators have bi-annual compliance inspections, while betting licensees are visited at least once a year during planned compliance and revenue audits as well as routine compliance inspections. With regard to LPM's, pre-opening inspections are carried out prior to any site opening and each Route Operator will be audited at least once a year. The Limpopo Gambling Board indicated that site visits to casinos are scheduled monthly and LPM Route Operators and LPM sites, bookmakers and totalisators are visited quarterly. In addition, there are also regular unscheduled visits.

From the responses received, the Commission concludes that the major emphasis of the compliance departments of PGRAs is on casinos, even though it appears that the level of compliance by casinos appears to be high. Furthermore, there is a fair amount of attention given to LPM sites, although there is monitoring of machines through Zonke.

There does not seem to be a clear relationship between the risk of non-compliance and the allocation of compliance resources. A more risk-based approach to regulation and enforcement would enhance the overall efficiency of the regulatory system, including the monitoring of problem gambling and the social impact of gambling activities, and may free resources for continued rigorous enforcement of illegal gambling activities.

4.4.3.3 Combating illegal gambling

One of the main arguments in favour of legalisation of gambling was that it would reduce and over time eradicate the illegal gambling industry. PGRA's were asked to indicate the types of illegal gambling that still exists and what challenges they face in relation to policing and enforcement.

In Mpumalanga, the main forms of illegal gambling are Chinese Roulette (a gambling device imported from China and distributed in mostly rural areas, targeting schools and minors), Fahfee and increasingly traditional games such as Morabaraba, as well as dice and cards, are being played for gambling purposes. Poker played outside a casino is also becoming popular. The illegal forms of gambling in the Gauteng Province are interactive gambling, illegal slot machines, illegal bookmakers, lotteries, fahfee, dice and poker. In Limpopo, illegal activities similarly consist of fahfee, illegal slot machines, dice, poker and illegal horse racing. In the Western Cape, the main problems appear to be illegal slot machines, poker evenings and online gambling. According to the KwaZulu-Natal Gambling Board, illegal forms of gambling in KwaZulu-Natal include "slot machines, illegal poker tournaments and server based gaming which is hosted at Internet café's where gambling games are loaded via programs onto computers and are played by patrons who visit these outlets. Bingo games are hosted by numerous pubs and clubs around the Province without the authority of licences". Chinese roulette slots machines are also making appearances in the province. In North West, illegal casinos, interactive gambling and the manufacturing and supply of illegal gambling equipment and machines predominate. Thus, fahfee, dice, poker tournaments, illegal slot machines are gambling activities that are prevalent in all provinces that provided inputs.

PGRA's conduct inspections at previously identified or potential illegal operations and rely on whistleblowers to launch inspections. PGRA's indicated that they report contraventions to the South African Police Services (SAPS) and may confiscate illegal machines with the assistance of the SAPS. From the information provided, it appeared that the provinces that had responded allocate significant resources to the investigation and prosecution of illegal gambling activities. However, illegal gambling activities keep springing up and it requires continued vigilance by PGRA's. Furthermore, PGRA's have indicated that the capacity and skills of the South African Police Services, as well as the courts, have an impact on their effectiveness in bringing illegal operators to book.

The table below presents a summary of enforcement actions in the period ending March 2009. The most significant enforcement activity appears to have taken place in Gauteng and the North West, with serious efforts also in KwaZulu-Natal and in the Free State. These provinces experience the highest incidence of illegal slot machines.

Illegal gambling statistics in the Republic of South Africa (1 April 2008 – 31 March 2009)

	Eastern Cape	Free State	Gauteng	KZN	Limpopo	Mpumalanga	Northern Cape	North West	Western Cape	Total
Number of raids/closures	4	32	92	15	5	3	3	5	7	166
Number of raids (fahfee)	0	0	0	2	387	2	0	0	0	391
Confiscated gambling machines	4	28	270	54	7	6	26	56	14	465
Confiscated gambling tables	0	0	2	3	4	0	0	0	0	9
Confiscated computer devices	0	0	0	0	0	0	0	0	0	0
Case convictions	0	24	0	14	8	0	0	0	0	46
Acquittals	0	0	0	4	3	0	0	0	0	7
Admission of guilt	2	24	92	14	413	0	1	0	3	549
Withdrawals	3	4	0	0	25	0	0	0	2	34
Forfeited gambling machines	46	28	270	54	0	9	10	580	7	1004
Forfeited gambling tables	1	0	2	11	0	0	0	0	0	14
Forfeited computer devices	0	0	0	0	0	0	0	0	0	0
Returned computer devices	0	0	0	0	0	0	0	17	0	17
Returned gambling tables	0	0	0	0	0	0	0	0	0	0
Returned computer devices	0	0	0	0	0	0	0	0	0	0
Destroyed gambling machines	170	40	239	262	3	8	36	669	0	1427
Destroyed gambling tables	0	0	0	0	0	0	0	0	0	0

Source: NGB (2009)

From the table above, it would appear that although there are a significant number of raids and venue closures, there are very few convictions. Instead, there appear to be a relatively large number of admissions of guilt. In some cases, such as the North West province, there were no convictions and no admissions of guilt. This raises a question about the effectiveness of any enforcement action, no matter how rigorous. In a number of provinces, the number of destroyed gambling machines appeared impressive. However, there does not appear to be a clear relationship between the number of machines confiscated, forfeited and destroyed. It is therefore difficult to assess the effectiveness of the enforcement actions on the basis of the statistics.

According to a route operator, enforcement actions are not very effective, as confiscated machines are returned to operators by police officials and there is no prosecution of offenders. As a result, illegal machines are circulated with ease.

Finally, the penalties and sanctions imposed on illegal operators for their activities make a mockery of the efforts of PGRA's. The admission of guilt fine is negligible in comparison to the returns to be made on the illegal activities.

The Commission is of the view that this is the general sentiment expressed across the country and that there needs to be a programme developed which is aimed at providing the law enforcement officers, magistrates and prosecutors with training on how to deal with crimes relating to gambling. The Commission would also like to suggest that since most illegal gambling activities have links to organised crime that a specialised law enforcement unit is established dedicated to dealing with illegal gambling and that legislative changes are made to allow for higher fines and penalties to be imposed.

It must also be pointed out that in some provinces illegal gambling has not been dealt with effectively or decisively. Despite the statistics on enforcement action against illegal slot machines, stakeholder submissions indicate that in the North West and in the Northern Cape, illegal casinos and slot machine operators continue to exist and to operate with impunity. These actions undermine the integrity of gambling regulation and the rule of law. It must be stated in quite strong terms that it is unacceptable for provinces to benefit from the revenue generated by legal gambling, but to fail to prosecute blatant illegal gambling.

4.4.3.4 Industry concerns about current regulation

4.4.3.4.1 Allocation of licences

In written and verbal submissions to the Gambling Review Commission, the members of Casino Association of South Africa (CASA) stated that there were unfair variations in the bid criteria for the initial casino licences, particularly around the required level of investment in infrastructure and BEE commitments. Although subsequent RFPs and the promulgation of the National Gambling Act, 2004 moved away from this *ad hoc* approach and provided minimum bidding requirements, this initial lack of uniformity affected 30 out of the 37 licence holders. This means that the playing field has never been entirely level, and different casinos, sometimes even in the same province, have vastly different obligations and licence criteria (CASA 2010, p.17).

4.4.3.4.2 Approval of gambling devices and equipment

CASA raised the concerns regarding the delays in obtaining approval by the PGRA's for the testing, approval and certification of gambling equipment and devices.

The National Gambling Act sets out what the standard is for compliance in respect of gambling equipment and devices. The process thus requires that such equipment should be tested by licensed testing agents. If the equipment is compliant the testing agent refers the matter to the National Regulator for Compulsory Specifications who issues a Letter of Certification. This should be sufficient to ensure compliance with the National Legislation. Despite this certain provinces require further approval processes to be complied with, which CASA submit is a duplication of cost and effort and causes delays.

4.4.3.4.3 Advertising

CASA raised the point that provinces require that all adverts by casinos be approved by the provincial regulator and that there is a lack of uniformity in the way provinces deal with advertising. This is despite the fact that Regulation 3 of the National

Gambling Act prescribes uniform norms and standards for advertising. PGRAs continue to adopt a fractured approach to dealing with advertising.

4.4.3.4 Licensing of LPMs

Relationships between the route operators and the PGRAs are typically strained, in large part due to delays in the issuing of licences, which has resulted in substantial economic losses for route operators. In 2010, a decade after the decision to issue LPM licences were taken, only six provinces have begun to award licences. Route operators allege that it still takes up to two years for an application for a site licence to be processed. Provincial authorities reputedly ignore their calls and in some cases, even ignore court cases brought against them. No explanation is given for this inactivity, which one route operator describes as “like beating your head against a wall”.

According to Vukani, their LPMs only became operational in Mpumalanga 56 months after their licences were initially awarded, primarily because of a dispute over the central monitoring system. This delay cost them an estimated R207 million in lost revenue (Vukani 2010, p.23).

Other regulatory problems alleged by route operators include the fact that:

1. Some provinces still require public hearings before any site licence can be awarded, despite amendments to the regulations that reduce this burden and only require public hearings in cases where written objections to the award of a site licence are received.
2. Different provinces charge different amounts per site licence.
3. It is time consuming and expensive to have to liaise with all the different municipalities within a metro or district when making applications for site licences. Instead, there should be a single licensing office applying standard criteria across a metro/district.
4. Provincial regulators charge numerous miscellaneous fees to route operators to raise revenue. These are not authorised in terms of the Act.

The first concern cited was the fact that the site licensing criteria employed by the PGRAs is based on a regulation of the repealed National Gambling Act of 1996. The regulation 39(3) provided that “in considering the suitability of premises the Provincial Gambling Regulatory Authority may take into account the proximity of churches and the like, schools and children’s playground”. It appears that in many instances, provinces continue to apply these licensing criteria and are reluctant to permit site licences that are situated in the vicinity of churches, playgrounds or schools. There are further a number of cases where liquor licences or some other form of adult-orientated business already exists at the site, despite their proximity to any church, playground or school. Provincial regulators often require written proof that there are no objections from such organisations.

The repealed regulations further allowed provinces to deem the place or location to be unsuitable for the conduct of gambling activities and require that the location be appropriately zoned, factors deemed unnecessary by the industry. A purely legal analysis confirms that the provincial regulators have disregarded the fact that the National Gambling Act no longer has this provision and that the provinces should likewise review their own provisions in this regard. However, it should be noted that in some provinces, such as the Western Cape, similar requirements are in place for bookmakers, casinos, totalistators and bingo licences. The fact that most provinces have disregarded the repeal of this provision and favour their own criteria raises the question whether there was proper consultation with the provinces and whether it

was appropriate to repeal it in the first instance. However, it also raises serious issues about the regard, or rather disregard, for national legislation by PGRAs.

Another concern cited by the LPM sector is the fact that provinces still require that public hearings be held about 5 LPM sites, despite the fact that this requirement was removed from the national regulations, as long as the application was suitably advertised and no objections were raised. There appears therefore to be a disregard for many of the aspects of the national LPM regulations.

The role of local authorities in the licensing decisions further complicates matters. The LPM industry submitted that in addition to the delays caused by zoning there are often further delays caused by local authorities who are expected to advise on zoning and whether the premises has business rights, but which misconstrue issues and refuse a licence on the grounds of moral objections. They maintain further that in terms of the Business Act, Act 71 of 1991, a business licence is required to be issued by the local authority in respect of all sites, which it is proposed to place more than two LPM's for play by the public. The continued reliance on the Business Act results in a duplication of the regulatory efforts.

It is clear that this industry is plagued by administrative issues. However, it should also be remembered that LPM's are generally located within or close to communities and should therefore as a rule be tightly regulated. Despite this the delays in roll out of licences and various other issues merit a review of the objectives behind LPM's taking into consideration the likely impact the licensing of EBT's to this industry. Further there would appear to be a gap in the manner in which the NGB believes the industry should be regulated and the approach adopted by the PGRA's. It is suggested that this goes to the heart of the problems facing this industry. This situation cannot be allowed to continue and is a reflection of possibly a combination of a lack of consultation, open communication and co-operation between the national and provincial gambling regulators. It is indeed unfortunate and unfair that the effect and impact of this is felt by the industry which is not in a position to address these. This matter merits possible intervention by the DTI and a detailed review of the laws relating to this industry.

4.4.3.4.5 Application of the FIC Act

A submission from a gambling machine manufacturer raised a concern that section 37(2)(b) of the National Gambling Act requires as a condition of the holder of a national licence that there must be compliance with the applicable provisions of the Financial Intelligence Centre Act ("FICA"). However, FICA does not apply to manufacturing businesses.

The manufacturer further highlighted that there are considerable delays in obtaining the approval of gambling equipment and proposed that provision be made in the national legislation for national gambling equipment approval to avoid the delays of lodging applications for approval with nine (9) provinces. The following additional problems when dealing with the provincial gambling regulators were raised:

1. Lack of resources to review the application;
2. Lack of technical competence to understand technical information and test result conclusions published in the test reports;
3. Different interpretations of the same technical requirements that may exist;
4. Non-approval of a product by one board regardless of the fact that the other eight might have approved; and
5. Some boards take months and even years to review an application.

The request for a review of the requirement for FICA compliance with respect to manufacturers appears reasonable. Consideration should be given to amending the National Gambling Act to allow for an exemption to FICA compliance by holders of a manufacturer, supplier or maintenance provider licence. Furthermore, the suggestion of national gambling equipment approval should be explored further. The role of the SABS in such a process could be considered, as should the inclusion of a national gambling equipment approval certificate, which can be used in any province.

4.4.3.5 Enhancing the regulatory framework

In response to questions relating to how they viewed the legislative framework and how it could be improved, PGRA's provided a number of proposals.

One view expressed was that there was a need to cater for new developments and technological advancements. It was suggested that the legislative framework should retain its flexibility but could be improved by simplification and alignment on a national and provincial level. In addition, it was suggested that the timeframe for introduction of changes or amendments to the legislation necessary to cater for technological changes or new gambling equipment needs to be reduced.

Some fairly detailed regulatory changes were proposed by the provinces, which should be reviewed by the DTI. These include suggestions that a national certificate of suitability should be introduced, as well as an application for financial interest in a national licence. Further, it was proposed that the threshold for application for financial interest in respect of a national licence be increased from 1% to 5%.⁵⁵ Finally, it was suggested that a process for the transfer of a national licence be developed and that the fees prescribed in terms of the National Gambling Act, 2004, should be reviewed on an annual basis.

4.4.3.6 Conclusion

The overall conclusion from a review of the efficiency and effectiveness of the PGRAs is that in general the institutions are effective in monitoring compliance with licence conditions and with legislation. There appears to be a lack of uniformity in the application with licensing criteria and a lack of compliance with the norms and standards set out in the National Gambling Act, 2004. The effectiveness with respect to enforcement of illegal gambling is mixed across provinces – some have been very committed and effective, whereas in other provinces, there has been no capacity and no will to close down illegal operations. Finally, from an efficiency perspective, it appears that resources are not necessarily targeted in the most efficient manner and there may be excess capacity in regulatory institutions. It is proposed that a more in-depth review of the cost of regulating the gambling industry be conducted and that this be compared to other jurisdictions. It is suggested that a more risk-based approach to regulation would allow for a better targeting of resources, possibly directing more resources towards the eradication of illegal gambling.

⁵⁵ It may be relevant to consider the debate on this in the Uthingo-Gidani case. There a higher threshold allowed Gidani to fail to disclose the shareholding of numerous well connected politicians, some of whom could potentially have influenced the bid adjudication.

Chapter 5: The impact of gambling policy

5.1 Introduction

Having reviewed the gambling industry and its economic and social impact in some detail in previous chapters, this chapter seeks to draw together the findings and to provide a high-level summary of the overall impact of the gambling sector and gambling policy since 1996. The assessment must begin with the objectives of the gambling policy, as articulated in the Wiehahn Commission report. These objectives were as follows:

1. the protection of society from the over-stimulation of latent gambling through the limitation of gambling opportunities;
2. the protection of players and the integrity and fairness of the industry through the strict control and supervision of the industry;
3. the uniformity and harmonization of policy and legislation at all levels of government and across provinces through norms and standards;
4. co-operation and co-ordination;
5. the generation of revenue and taxes for provincial governments and for good causes;
6. the economic empowerment of the historically disadvantaged;
7. the promotion of economic growth, development and employment.

The chapter begins with an assessment of gambling policy against the policy objectives and on the basis of this assessment makes recommendations with respect to the currently regulated gambling sector.

5.2 Taking stock of gambling policy to date

5.2.1 *Protection of society from the over-stimulation of latent gambling*

The Wiehahn Commission (1995, p.69) was concerned that gambling regulation should protect society against excessive demand, that is from the stimulation of demand that does not already exist.⁵⁶ To this end, it was recommended that various restrictions should be imposed on gambling, notably the imposition of limits on the number of licences and the number of casinos in particular. Further protections for society that were mentioned were restrictions on entry into gambling establishments, based on age, limitation of opening hours etc. This approach is consistent with the sumptuary model, outlined in Chapter 1 and referred to periodically in the report.

In line with this approach to gambling, South African policy makers and regulators have adopted a managed rollout of gambling, and have allowed the controlled and closely regulated introduction of casinos, bingo and LPMs. Limits were imposed on the number of casinos and on the number of LPMs. As bingo was a struggling sector with questionable viability in the South African context no limits were imposed. Limits were also not imposed on the betting sector. A destination style gambling approach was pursued with respect to casinos, encouraging a separation between general public spaces and gambling spaces.

These limitations have indeed restricted the size of the gambling sector. At present, South Africa has a total of 22,206 slots and 800 tables in casinos; and 5,381 slots

⁵⁶ This should be distinguished from the accommodation of *existing* demand. In such cases, accommodation and regulation of existing demand is often preferred as this limits the scope for the expansion of an illicit unregulated market.

outside of casinos. If all 50,000 LPM licences were granted, and if some growth were to occur within the casino industry, this would amount to a maximum of 70,000 to 80,000 slots. This means that there are presently 2,193 persons per slot machine in South Africa. At maximum roll out, this would come down to 608 persons per slot machine.

This can be contrasted with Italy, which has adopted a consumer rather than a sumptuary model. With a population of 60 million people, Italy has 350,000 slot machines, or around 171 persons per slot machine. And it is considerably lower than New South Wales, Australia, which has a population of 6.89 million and 99,723 slot machines, an incredibly machine per 69 people!

Equally important appears to be the distinction between open-access public spaces and dedicated gambling and entertainment spaces. One of the intentions of the destination style gambling approach is to create dedicated gambling-entertainment venues to which punters must travel. This protects the general public from accidental exposure to gambling activities and minimises opportunities for impulse or convenience gambling.

Destination style gambling (DSG) entails a modification of the spatial supply of gambling venues with the deliberate intention of encouraging “pre-determined decisions to gamble, making it less likely that problem gamblers will attend venues on impulse alone” (VGB 2006, p.31). DSG implies that gambling opportunities are concentrated in fewer, larger, dedicated premises that require a deliberate effort to access. DSG makes it easier for consumers to make responsible, reflective choices by making them less vulnerable to the allure of gambling opportunities they chance across in the course of their ordinary lives. DSG, simply put, is an attempt to minimize harm by reducing convenience gambling.

Supporters of DSG point to Western Australia, which has considerably lower levels of problem gambling than the rest of Australia, primarily, it appears, because it has restricted access to electronic gaming machines outside of casinos whereas states like New South Wales and Victoria have encouraged the placement of electronic gaming machines in readily accessible pubs, clubs and hotels (Armytage 2007, p.2).

The inherent risk in DSG lies in its attractiveness to a far wider section of the public than many traditional gambling venues. DSG venues typically offer a wide array of gambling and non-gambling entertainment options. In South Africa, these include restaurants, theatres, movie houses, up-market shopping and hotels. By attracting customers that would not otherwise frequent gambling establishments, DSG runs the risk of increasing the overall market for gambling products.

The most comprehensive review of DSG highlights this point, and concludes that, to avoid inadvertently expanding the market, the introduction of DSG has to be accompanied by a commensurate reduction in convenience gambling. If the market is not restricted through a reduction in convenience gambling then there is likely to be an increase in problem gambling (Armytage 2007, p.9).

The decision to limit LPMs to a maximum of 50,000 licences is in keeping with this sentiment. This places an absolute cap on convenience gambling on electronic gambling machines whilst allowing the public to enjoy gambling entertainment in a restricted number of carefully regulated sites with a very limited number of machines at each site.

In order to preserve this cap on convenience gambling, it is important that large numbers of gaming machines should not be easily accessible from shopping malls.

This would apply to Bingo halls that can be accessed with ease from shopping centers and contain large numbers of EBTs, as well as casinos that are integrated into and easily accessible from shopping malls. In both cases, it dramatically increases the public's "accidental" exposure to electronic gambling machines leading to a proliferation of convenience gambling.

The efforts of policy makers and regulators referred to above have largely insulated society from the potential negative impact of gambling. While gambling as a leisure activity seems to have become more socially acceptable in South Africa (NGB 2009, pp.13-14) it has not become an excessive part of people's lives. Rather, it is seen as a form of discretionary entertainment, possibly as a result of the success of the destination approach.

While this approach has limited the introduction and number of gambling activities, a number of worrying trends can be identified.

Firstly, there appears to be a trend in South Africa more recently for the distinctions between public spaces and gambling spaces to become eroded. In part, this is due to the integration of casino complexes with local shopping malls. Examples of this sort of integration can be found around the casinos in Witbank, Welkom, East London and Port Elizabeth. These malls are for the most part owned and operated by third parties, and are welcomed by the casinos as they involve "minimal capital investment" on their part and "provides substantial footfall" into their casinos (c.f. HCI 2008, p.8). The same trend has been observed with bingo halls, which are all placed in major shopping centres. Many are easily accessible from the main shopping areas. As casinos (and now bingo halls) are allowed to have high-stake machines, we believe it is especially important to maintain a clear distinction between gambling spaces and public spaces.

The second observation is that in those areas where clear limits have not been set, there has been creeping proliferation. As was noted in Chapter 2, the number of slot machines and tables in casinos has increased at a steady rate over the past five years. There are also 10 bingo halls with a total of 3,422 seats in Gauteng. That is in addition to three medium and four large casinos in Gauteng. A small casino is described as a casino with less than 700 positions or 500 slot machines. In terms of that definition, there are currently 23 small casinos in South Africa. If bingo is rolled out to other provinces, there is the potential that for a large number of gambling venues with a significant number of positions to be rolled out in addition to the limited number of casinos.

The third observation is that the poor are especially vulnerable to problem gambling, in large part because of the proliferation of informal gambling activities in low-income communities. These sorts of gambling activities are not only accessible in terms of location but also in terms of access to credit and other promotional activities that entice consumers (Frankel 2006).

This trend is confirmed by a recent study of the rural and peri-urban poor in KwaZulu-Natal (NPS 2010b) and by the latest National Prevalence Study (NPS 2010b, p.4), which found that

"the risk of problem gambling [is] highest among people who live in matchbox-type houses and RDP houses. ... [The] risk for problem gambling appears to be associated with being poorer than the provincial and national averages, but better off than the poorest groups who do not live in permanent dwellings" (NPS 2010a, p.4, emphasis added).

The poor are thus especially vulnerable to problem gambling. In large measure, this appears to be due to or at least greatly stimulated by the proliferation of illegal gambling in their communities. The preferred legal modes of gambling for low-income persons are the lottery and betting. But informal gambling activities in the form of fahfee, cards and dice are becoming increasingly popular.

In conclusion, therefore, the policy of a managed rollout introduced in South Africa in 1996 has stood us in relatively good stead. Although levels of problem gambling are higher than those encountered in European jurisdictions, these are roughly in line with levels in the USA and slightly less than those in Asia. More significantly, longitudinal trends in South Africa suggest that levels of problem gambling have remained stable, despite the massive growth in the size of the legal gambling industry and the proliferation of informal gambling.

Problem gambling is especially problematic in poorer communities with ready access to informal gambling activities. The regulated sectors of the gambling industry have considerably lower associated risks of problem gambling.

In contrast, other jurisdictions, which have less restricted gambling markets and which have allowed a massive proliferation of slot machines outside of casinos, are experiencing growing problems (c.f. AGPC 2010, esp. ch-2). In comparison, South Africa has a small, rapidly maturing gambling industry.

The Commission is concerned that there appears to be pressure building from the gambling industry and from regulators to allow more gambling activities. In the absence of a clear policy and regulatory framework this has the potential to increase dramatically the level of demand for gambling, and may not readily be contained.

5.2.2 Strict control and supervision of industry

South Africa has a well-regulated gambling environment. The legal framework is well developed and there appears to be a high level of compliance with day-to-day activities, resulting from compliance monitoring by regulators. As such, South Africa is a respected jurisdiction internationally. However, the fact that the illegal gambling industry is entrenched in some areas and appears to be growing in others is a concern, and points to significant regulatory capacity challenges.

5.2.3 Uniformity and harmonization of policy at all levels of government

One area of distinct weakness in the current framework is the ability to ensure proper uniformity, consistency, and accountability. It appears that provincial and national laws are sometimes not harmonized and differences exist in the application of the legal framework between provinces, resulting in a lack of uniformity. The inconsistencies and differences impact negatively on the industry, and create weak spots in the regulatory framework that can be exploited by less scrupulous operators.

The current mechanisms to achieve uniformity have not been successful, despite the efforts of the NGB. There appears to be little accountability of provincial regulators in terms of the overall policy, and a fragmentation of gambling policy is occurring because policy decisions are not made with sufficient speed and because of provincial disregard with no effective sanctions. An added concern is what appears to be a conflict in the regulatory objectives of provincial and national government. Provincial government and regulators seem to be largely driven by revenue maximisation, while national government is concerned with the managed rollout of gambling activities and monitoring its social impact. The balance between these

objectives must be struck in the national policy framework and there must be provincial participation in the policy formulation process, but also accountability in terms of those policy objectives.

5.2.4 Revenue generation

In the 2008/09 financial year, the combined GGRs for casinos, LPMs, bingo and betting were R15.92 billion. In the same reporting period, R3.91 billion of National Lottery tickets were sold, which amounted to R2.21 billion once prizes are deducted. This is a total of R18.129 billion. In 2008/09, the industry, excluding the lottery, contributed R1.539 billion in taxes and levies.

Gambling taxes and levies are the second largest contributor to provincial "own revenues", after motor vehicle licences and ahead of liquor licences. In 2008/09, taxes on casinos accounted for 14.1% and taxes on horseracing amounted to 1.6% of these revenues. This helps to explain why provinces are less committed to the sumptuary model of gambling regulation.

In the same year, the various National Lottery products contributed R480 million in Vat, and R1, 443 million to good causes (via the NLDTF).

Overall, the objectives of revenue generation have been achieved, with the caveat that in some provinces, the cost of regulation appears high relative to the taxes generated.

5.2.5 Economic empowerment of the historically disadvantaged

In general, there has been Black Economic Empowerment in all gambling sectors, with the exception of the bookmaking sector. However, there are some inconsistencies between original licence requirements and the current requirements of the Codes of Good Practice. An overarching target for B-BBEE of level 2 compliance with the Codes by 2015 has been set for the sector and it has been left to individual provinces to ensure that their licensees meet the target. It is not clear that there is accountability and periodic disclosure by provinces on progress towards this target.

5.2.6 Job creation

In total, the gambling industry (excluding the national lottery) directly employs 59,958 people, or 0.57% of people in formal employment. If we take indirect and induced employment into account, then this rises to 262,007, or 2.64% of formal employment in South Africa. 90% of this occurs at casinos.

A total of 51,317 are directly employed in the casino industry, 34,377 in the gaming operations and 16,680 in associated entertainment and leisure operations. This includes outsourced employees. The betting industry employs 2,364 people. This includes bookmakers and the tote. It does not take into account the bulk of the estimated 100,000 jobs created by the horseracing industry itself. This includes the entire spectrum of upstream and downstream activities associated with horseracing, from the manufacture of feed through to breeding, training, and racing. The LPM industry is estimated to employ 2,499 people, while the Bingo industry employs approximately 400 people. Finally, 378 people are employed in the various regulatory bodies.

Overall, therefore, the gambling industry is a significant employer in the economy.

5.2.7 Conclusion

It can therefore be concluded that the objectives, as set out in the Wiehahn report, have largely been met, with a few weaknesses highlighted, and gambling policy and regulation in South Africa can be considered successful for the most part, if the test is the implementation against the objectives set. There is a need to strengthen aspects of policy, particularly with respect to the management of potential proliferation, to review some of the regulatory structures and co-ordination mechanisms and possibly to enhance some of the harm mitigating measures.

The Commission believes that building on the existing foundation, and in cases where there is a clear indication of an existing demand that cannot otherwise be accommodated or curtailed, there is scope for the introduction of a limited number of new forms of gambling. To be clear, the argument here is *not* that operators be given carte blanche to stimulate latent demand or to develop new gambling sectors. The point is that there are areas where there is a demonstrable existing demand that is increasingly being accommodated by illegal operators. In such cases, and online gambling is particularly relevant here, it makes more sense to channel this demand into legal, well regulated, gambling operators rather than allow it to proliferate in an unregulated, uncontrollable, manner. This, it must be added, is in keeping with the sumptuary model of gambling regulation.

The Commission sees no reason to depart from the current approaches to gambling, namely a revenue maximisation approach to the lottery and a sumptuary approach to other forms of gambling.

The remainder of this chapter focuses on the policy changes that the Commission believes should be effected in the sector to create a sustainable and responsible gambling industry for the future.

5.3 The managed rollout of licensed gambling activities

As part of its mandate, the Commission was requested to consider the potential expansion of existing (licensed) gambling activities in the light of broader concerns regarding proliferation of gambling opportunities. The Commission has therefore considered each licensed gambling mode, the current state of the industry, international trends and lessons, as well as the possible social impact. After taking into consideration all the available information, the Commission has made recommendations with respect to the possible expansion and future development of the sector.

5.3.1 Casinos

The Commission is of the view that the current limit of 40 casinos in the country is appropriate and should be maintained in future. This recommendation is based on the fact that not all 40 licences have been issued as yet, with 2 unissued licences and 1 issued licence that is not in use. Regulators and policy makers should assess whether the 2 unissued licences are viable in the provinces that they have been allocated and consider reallocating them to other provinces with greater viability or demand. Furthermore, there is pressure from other forms of gambling.

There is a need to monitor the growth of slot machines and tables at casinos. As noted in chapter 2 of the report, there has been a significant organic expansion of the industry. Although this has been approved by the PGRAs it is at odds with the desire to prevent a proliferation of gambling in South Africa. This has taken place without an assessment of the social impact on the communities in which they are located.

The Commission recommends that limits on the total number and type of slot machines should be set. This would include both casino-based and non casino-based slot machines and will be discussed further in the recommendations on Limited Payout Machines below. While these limits would be set nationally, there should be an element of flexibility in the type of machines that provinces may have to accommodate differences between the provinces and the potential viability of gambling activities.

Casino CSI expenditure appears to be lower than other industry commitments. This needs to be benchmarked against other sectors of the entertainment and leisure industry in South Africa, and re-assessed by the casino industry in line with local economic and social realities, as well as commitments made by the casino industry in other jurisdictions. The assessment would also need to consider the industry contribution to the National Responsible Gambling Programme.

Although casino compliance with specific licence conditions is monitored on an almost daily basis, this monitoring is by definition very issue-specific and fragmented. There are no overall evaluations of the casinos broader social and economic impact on the community in which it is located, the effectiveness of its harm minimisation strategies, or its long-term compliance with a wide range of licence and regulatory requirements. This is problematic in a context in which most casino licences have been granted in perpetuity.

The Commission recommends that the New South Wales approach of comprehensive licence reviews every 5 years be considered. These reviews would consider their licensing conditions, the socio-economic impact of the casino, the B-BBEE compliance and the implementation of measures to protect the vulnerable and to minimise the harm of gambling. Importantly, in Australia, consistent failure to meet licence requirements or to rectify areas of concern can result in the revocation of a licence. It is proposed that this principle should be considered in South Africa.

There is a need for a clear and consistent policy on B-BBEE in the gambling industry as a whole to be developed, with particular emphasis on casinos. Currently, there is an overarching target of level 2 compliance by 2015. Each province determines that pace and extent to which this objective is achieved and there appear to be different approaches between provinces. Although it appears that the discussions around B-BBEE have been protracted and that it has been difficult to reach agreement, it is recommended that a consistent approach should be proposed by the DTI for discussion with provinces and adoption once agreement has been achieved.

Our concerns about the tendency for shopping complexes and malls to spring up around casinos were raised above. The Commission recommends that ways be found to preserve the difference between dedicated gambling venues and other public areas (like malls). One possible way to do this is to ensuring that there are separate entrances to both casinos and adjacent developments.

5.3.2 Limited Payout Machines

In order to assist the LPM sector to grow as initially intended, while containing the proliferation of slot machines in the country, a set of policy recommendations are enclosed below.

In all the jurisdictions examined, slot machines appeared to be not only hugely popular, but also crucial for the profitability (and in some instances even the survival) of each of the gambling subsectors. Each sector appeared to want as many slot machines as possible, with the highest possible stake and payout. In some jurisdictions, such as Great Britain, the number, location and stake of these machines is tightly regulated, while in other jurisdictions, such as Australia, the lack of regulation (other than Western Australia) has led to the unconstrained proliferation of such machines. In Great Britain, there is a continuous push and effort to lobby the regulator to increase the number of permissible machines.

In South Africa, we only allow two types of slot machines at present – those in casinos, which tend to be the high-stake slots, and LPMs. The table below provides an overview of the total number and distribution of gaming machines currently in South Africa. As is clear from the table below, the majority of machines are currently located in casinos.

Distribution of SA gaming machines

Gambling mode	No of gaming machines	Percentage
Casinos	22,206	77%
Bingo	1,242	4%
LPMs	5,381	19%
Total	28,829	100%

There is currently no distinction between LPMs in convenience or non-gambling venues, such as bars and restaurants, and LPMs in clearly defined gambling venues, such as racecourses and tote outlets. One could argue that LPMs in non-gambling venues should be lower stake and payout machines than LPMs in gambling venues that are licensed to allow other modes of gambling as well. This is in keeping with the distinction between convenience and destination-style gambling discussed above.

The Commission therefore recommends that instead of simply allowing for two categories of slot machines in South Africa (casino and LPM), some flexibility in the rules governing LPMs be introduced. LPMs located in convenience venues should retain the current maximum stake and payout limit, whilst LPMs located in dedicated gambling venues should be allowed machines with higher stakes and payouts. These latter might appropriately be described as medium payout machines or MPMs.

The Commission recommends that the maximum number of slots per gambling establishment should remain at the current number of 40 machines.

In addition to the above proposal, the Commission offers three further recommendations relating to the existing policy framework:

1. The weaknesses and inconsistencies of the provincial regulatory authorities need to be addressed. These constraints have caused lengthy and costly delays to the industry, and continue to threaten the viability of the industry. However, concerns about the site licensing processes of local authorities need to be carefully evaluated. While we understand the concerns of the industry around the turnaround times, we believe that the integrity of zoning processes and public inputs needs to be maintained. Consideration could be given to adopting licensing guidelines for local authorities, as Great Britain has implemented.

2. The rules stipulating that a high percentage (typically 60%) of host sites need to be owned by PDIs – which in effect means that these sites will be convenience venues in areas that, for historic reasons, are likely to have a lower income demographic profile – needs to be reconsidered carefully. At present, this stipulation threatens the viability of the LPM industry, in that the GGRs in low-income areas are invariably below the break-even threshold, and route operators are forced to maintain these sites simply to retain their provincial licences. This is also socially undesirable, and it makes no sense to increase the number of slot machines found in convenience venues in lower income communities.
3. Decisive action against the “illegal slot-casinos” needs to be taken. The lack of will to do this in certain provinces is as striking as it is alarming. Similarly, the legal status of EBTs needs to be clarified, as this undermines the intention and the spirit of the legislation that brought the LPM industry into being. The Commission strongly recommends that decisive action should be taken against all illegal slot machines and that PGRAs should be held to account for the lack of enforcement action. Consideration should be given to the creation of a specialized enforcement mechanism that can focus on the eradication of the illegal industry, starting with targeting the sources of the machines, as well as closing down sites and effectively dealing with the destruction of illegal machines.

5.3.4 Bingo

The Commission appreciates that Bingo, in its traditional form, has not done particularly well in South Africa and that alternative revenue sources for the industry should be considered to make the sector viable. In the Commission’s view, however, Electronic Bingo Terminals are not a form of bingo. Although they differ slightly from traditional slot machines, in that they link several players together, they do not maintain the “look, feel and sound” of bingo at all. They are a variant of slots and compete directly with the two forms of slots that the post-Wiehahn legislation has introduced, casinos and LPMs.

Under the current regulations, bingo operators wishing to install slot machines are free to apply for licences to operate 40-machine LPM sites, but must do so under the same terms and conditions as any other player in the LPM industry. This includes allowing the public to object to the establishment of gambling venues in shopping malls. Gauteng gambling legislation needs to be brought in line with national gambling legislation.

Finally, due to the proliferation of bingo halls and gaming machines currently observed, the Commission believes that a policy on bingo should be developed as a matter of urgency, which should include limits on the number of Bingo licences and seats per province.

5.3.5 Betting

As indicated in Chapter 2, the horseracing sector is a declining sector, which is struggling to modernize and transform itself. The current ownership and funding arrangements do not provide sufficient impetus for modernization. Furthermore, the sector seems constrained in its ability to make commercial decisions by its licensing conditions. The Commission therefore offers the following recommendations:

1. The horseracing industry currently has too many tracks, many of which are not economically viable. It is recommended that market forces should be allowed to dictate the number and location of tracks, as well as the number of

racers. Consideration should be given to separating the ownership of the tracks and the tote. The tracks could be funded through a combination of a levy on the gambling tote, bookmakers and online betting operators, as well as commercial rights, such as broadcasting rights for races.

2. The current funding models for the industry should be reviewed to ensure that the tax rates and levies paid to the industry are standardised across the board to create a level field. This review will need to consider the substantial variation between contributions of different betting formats, as well as the competition faced by traditional bookmakers from lower cost virtual operators.
3. The horseracing industry should be enabled to integrate its operations with other forms of gaming, especially slots. This is a worldwide trend, and increasingly tracks depend on their ability to offer slot machines to punters. This ties in with the recommendation above about creating a third category of licence specifically for stand-alone gambling venues.
4. Current proposals that the former Jockey Club, now known as the Horseracing Authority, should become a statutory regulator should be considered. What is required is a more complete review of the horseracing sector, particularly the integration of the ownership of the tracks and the tote, as well as the competitive challenges of the future, and an appropriate industry and regulatory structure should be researched and developed.

5.3.6 Lottery

As indicated in Chapter 2, the national lottery is an important source of funding for good causes, arts and culture and sport development. The Commission therefore sees no reason for the operation of the lottery to be changed, or for a shift in focus away from the revenue maximisation mandate of the NLB. However, a number of issues need to be addressed. Recommendations in this regard are enclosed below under the relevant sections.

5.4 Minimising the negative social impact of gambling

5.4.1 Expanding research, education and treatment

At present in South Africa, all industry funding goes to the NRGP or, in the case of the lottery, to the Lotteries Responsible Play Programme. The lottery programme will be dealt with separately below. As discussed in Chapter 3, the NRGP is a model programme in many respects, with a few caveats. There currently appears to be limited funding available for independent treatment programmes, as well as for independent research. The current programme is not based on a widely agreed strategy. Both Australia and Great Britain have developed such strategies. The experience and framework in Great Britain is instructive in this regard, although the Commission does not recommend its wholesale adoption.

In Great Britain, an industry body that covers the whole of the gambling sector, including the national lottery operator, collects industry funding. An independent grant-making body administers this funding. To add to the complexity, an independent strategy board has been created, that is responsible for the strategy and for ensuring that the grant-making body is aligned with the strategy. Gamcare, a charity that is the leading provider of prevention and treatment for problem gambling in Great Britain, receives funding from the grant-making body and in turn funds other providers of problem gambling treatment in a partnership model. While the structure

is too cumbersome and expensive for South Africa (and possibly even for Great Britain), some of the principles of the design could be adopted. Accordingly, the Commission recommends that consideration be given to the following with respect to the NRGF:

1. Provision could be made through the NRGF to fund other independent organizations in a partnership model. This would enable other providers to receive funding and increase the reach of the NRGF.
2. A fund should be established for independent research. The fund could be housed under the auspices of the NRGF, but should have a more independent evaluation panel to adjudicate applications.
3. The NPS studies should receive additional funding to allow them to focus on more than just the three provinces in which most gambling takes place, and to place greater attention on informal gambling outside the major urban centres.
4. The above proposals will probably require the increase of industry funding for the NRGF. The NRGF should be requested to provide an estimated budget and industry contribution in this regard. Another suggestion is to combine the resources allocated to the NPS and the NGB studies.
5. National and provincial government should develop a national strategy for responsible gambling jointly with inputs from the industry, NRGF and other civil society organizations involved in the education and treatment of problem gambling. The implementation of the strategy should be monitored through the National Gambling Policy Council.

As discussed in Chapter 3, the lottery operator has a Responsible Play Programme in place. Although this programme has been in place since the first licence period, no assessment of the effectiveness of this programme has ever been carried out. The Commission recommends that such an assessment should be conducted as a matter of some urgency, and that a decision should be made on the basis of the assessment whether the operator should develop a comprehensive, viable and transparent programme to minimise harm caused by the national lottery, or, alternatively, should join and contribute to the NRGF.

Although lottery only players have a low propensity to problem gambling, the widespread accessibility of the lottery and low cost of tickets means that the lottery is widely played in lower income communities. The NLB and the operator of the National Lottery cannot pass off responsibility for the oversight of this potential problem to the NRGF. They have a duty to either take this seriously themselves or to contribute to the NRGF.

5.4.2 Implementing regulatory measures to protect the vulnerable

South Africa has a host of measures in place at present, which would assist with the minimization of the negative impact of gambling. Some of the measures are not effectively implemented at present and some gaps exist.

Particular areas of concern relate to the effective exclusion of minors and self-excluded persons from gambling activities. The Commission is of the view that more onerous requirements, such as mandatory identity checking, as is the case in

Singapore, should be considered only if the industry cannot find ways to effectively implement current provisions. These measures need to be applied consistently across all modes of gambling

The Commission also wishes to highlight its concern about the fact that there appears to be a relaxation of earlier requirements that gambling activities should be less accessible. This applies primarily to bingo operations, which are located in major shopping centres, but also to casinos that are contiguous with shopping centres. As noted above, the Commission believes that one possibility would be to consider separate entrances to ensure that gambling activities are not directly accessible from the main shopping areas.

The Commission wishes to highlight that it supports the destination gambling venue approach that has been adopted. It is our view that this has assisted with the normalization of gambling in South Africa and helps to account for the relatively manageable and stable levels of problem gambling in South Africa.

One of the challenges in the current framework is that the national norms and standards regarding advertising are not uniformly applied between provinces and gambling modes. Greater efforts need to be made to reach agreement on national norms and standards on advertising and on ensuring that these are uniformly applied.

5.5 Improving uniformity and accountability in the regulatory framework

Although South Africa is a well-regulated jurisdiction overall, there appears to be overlap and a degree of inefficiency in the regulatory framework. The biggest source of conflict appears to be the respective roles of national and provincial government. The Commission is of the view that a clearer delineation of the roles of national and provincial government needs to occur. Furthermore, there are currently inconsistencies between provincial gambling regulatory authorities in the implementation and interpretation of laws, as well as in the enforcement of illegal activities. Current mechanisms aimed at ensuring uniformity need are not effective and need to be reconsidered.

The Commission offers the following recommendations:

1. The present licensing and regulatory functions of the provinces should remain as they currently are, but there is a greater need for accountability and transparency on the implementation of gambling policy and national norms and standards. The Commission recommends that the oversight role of the NGB should be removed. Instead, the auditors of provincial regulators could be required to audit provincial compliance with national norms and standards on an annual basis and this should be disclosed in annual reports. A requirement should be included in the National Gambling Act that these annual reports should be tabled in provincial legislatures and in the National Assembly annually and that PGRAs should be called to account. Further independent audits or reviews could be commissioned and tabled in parliament with respect to the enforcement of illegal gambling, as well as the harmonisation of provincial and national legislation. This recommendation implies that the NGB would no longer have an oversight function, as currently provided for in the National Gambling Act, 2004.
2. The DTI, together with the South African Bureau of Standards, should be responsible for developing national norms and standards. These norms and

standards should be comprehensively tested and there should be adequate consultation with all gambling regulators about these norms and standards. Furthermore, detailed guidelines on particular issues, such as licensing, should be developed to guide provincial regulators and local authorities in licensing decisions. This recommendation would further reduce the mandate of the NGB.

3. The Commission further recommends that the role and composition of the National Gambling Policy Council should be reviewed. At present, the Policy Council appears to be a body through which policy decisions are frustrated, rather than promoted. It is the Commission's considered view that the Policy Council should not have a decision-making role, but should rather be a body where the Minister and MECs discuss policy matters with a view to achieving policy coherence, consistency and consensus, particularly with respect to provincially and nationally regulated modes of gambling, as well as overarching issues, such as a national strategy on responsible gambling. Only persons with political and policy responsibility should be invited to attend the meetings.
4. The enduring problems relating to the distribution of NLDTF funds need to be addressed. The Commission supports the view expressed in the DTI's 2008 review of the national lottery, which concluded that "the entire distribution process needs to be removed from the control of the NLB, and run as a distinct operation with its own staff and budget" (Louw and Ronald-Louw 2008, p.148). A professional grant-making institution should be established with a board to provide strategic direction and oversight. The grant-making body could be directly accountable to the DTI or to the NLB. This recommendation would imply that the NLB would have a reduced mandate and would focus only on the regulatory aspect of its current mandate.
5. In the context of illegal lottery activity, legal certainty must be created about the responsibility for Sports Pools in South Africa. In terms of the constitution and the National Lotteries Act, the NLB has responsibility for Sports pools. The sports betting offering of Phumelela, however, seems to be dangerously close to a Sports Pool as defined in the National Lotteries Act, and could result further in the erosion of the credibility and effectiveness of the regulator. The Commission therefore recommends as a matter of urgency that legislative clarity is created about the definition of Sports Pools and who has responsibility for them. A policy in this regard should be developed.
6. Finally, the roles of the NGB and the NLB will need to be reviewed and consideration should be given to the continued need for two separate bodies, should the recommendations regarding the mandates of the two institutions be adopted. This is explored further in chapter 6 of the report.

Chapter 6: New forms of gambling

6.1. Introduction

As mentioned in the previous chapter, the policy approach adopted by the South Africa has been one of a managed rollout of gambling modes. At present the legally available forms of gambling include the National Lottery, casinos, bookmakers, bingo, LPM's and totalisators. The National Gambling Act indicates that all forms of gambling that are not explicitly permitted and which are not licensed constitute illegal gambling activities.

Several unlicensed and therefore by definition illegal forms of gambling are evident in South Africa. These include technological advancements on existing forms of gambling, as well as forms of gambling that have been in existence for a while and remain unregulated. The range of unlicensed gambling activities extends from fahfee, cards and dice; bush racing; greyhound racing, interactive gambling, to betting exchanges and certain forms of poker. For the most part, very little is known about the size and impact of these gambling activities.

In some cases, the operators seek to become regulated, while in other cases, the operators choose to remain illegal. Several organisations made representations to the Commission with a view to possible legalisation. In some instances, the Commission became aware of the illegal form of gambling through verbal representations and due to their potential impact believed that it was important to review the gambling mode.

In this chapter, the Commission considers the different forms of gambling, taking into account the criteria for assessment outlined below, as well as international best practice. On the basis of this assessment, a recommendation is proposed with respect to whether the legal framework should accommodate the form of gambling.

6.2. Criteria for assessment

The Commission is of the view that a clear framework should exist to guide decisions about the introduction of new forms of gambling, as well as whether technological changes should be permitted. During its deliberations, the Commission heard arguments that implied that technological changes in the delivery of games should be permitted as a matter of course. It is the view of the Commission that each such change should be carefully evaluated on its merits and that the implications and potential impact of the activity or the proposed change should be assessed with a view to ensuring that the public is protected and that it does not provide opportunity for uncontrolled proliferation.

At present, it appears that technological changes are accommodated within existing licences. For example, licensed bookmakers and totalisator operators are able to offer betting through mobile phones within the framework of their existing licences. It is not clear what criteria were considered by PGRAs and whether the risks of proliferation were addressed. This trend could place the public at risk and can lead to inconsistencies in legislation and policy interpretation and implementation.

To ensure that this trend does not continue and that operator practices are in keeping with the existing gambling policy, the Commission is of the view that the decision to allow new forms of gambling, new methods of delivery of such gambling

product, and technological changes to existing forms of gambling should be the prerogative and competence of the responsible national department, i.e. Department of Trade and Industry. This is meant to obviate the consequences and effects of such change impact on society as a whole. In addition the Minister should have the discretion to refer these matters to the National Parliament for public debate.

Whilst the Commission acknowledges that the gambling industry, like any other industry, will be influenced by technology and also that the fact that gambling carries with it certain risks to the public, any changes to the regulation of this industry should be introduced in a responsible manner and within the national policy framework.

In order to facilitate such deliberations now and in future, the Commission sought to develop criteria for evaluating whether a form of gambling should be included in the legislative framework or not. The Commission recommends that the factors below should be considered in making decisions about existing or new gambling activities:

6.2.1 Demand

Whether there is demand for the activity, the extent of the demand, whether it is a new market or whether this constitutes growth of an existing market, the target market and the likely impact of this form of gambling on vulnerable groups in society.

6.2.2 Proliferation

Proliferate means to “grow” or “multiply” rapidly. In the case of gambling, we interpret this to include both the deepening of existing markets (organic proliferation) and the creation and development of new markets (expansive proliferation). The regulators are charged with monitoring and where appropriate restricting both forms of proliferation. Limits placed on the permissible size of gambling sectors (e.g. on the number of casino licences) are intended to ensure that public policy and not market forces limit the expansion of the sector.

In deciding to limit proliferation, the regulators need to consider a variety of factors, including the possible impact on problem gambling as well as the ease and viability of restricting the gambling activity in question. The regulators would also have to consider whether there is an existing / latent demand for market expansion or whether the relevant gambling operators are seeking to stimulate new demand.

6.2.3 Protection

Whether the activity could fit into the existing legal framework or whether there is a need for new regulation and whether legalisation would enable better protection of punters and/or vulnerable groups.

6.2.4 Geographical location

What the likely or actual proximity of the activity to residential areas/communities would be including ease of access and whether community-based objections to the location are likely.

6.2.5 Economic viability

Whether the sector is viable, what the impact is likely to be on other sectors of the gambling industry.

6.2.6 Economic impact

What the likely economic impact of legalisation would be in terms of job creation, investment, B-BBEE, or any similar upliftment policy of government.

6.2.7 Competition

Whether the regulation of the new form is likely to stimulate modernization and innovation in the gambling industry and whether this is an activity that would encourage small business participation and encourage new participants into the industry.

6.2.8 Enforcement

Whether this form of gambling is capable of being effectively regulated, whether the activity is regulated in other jurisdictions and how successful regulation has been.

6.2.9 Revenue

Will licensing create opportunities for revenue generation? What is the potential loss, or is there a loss of potential revenue as a result of not regulating a form of gambling?

6.2.10 Animal welfare (where relevant)

Whether the activity generates significant animal welfare problems, whether those problems can be dealt with adequately in the existing regulatory framework, what the costs of those compensatory measures would be and whether they are likely to be implemented effectively in a developing country such as South Africa.

The remainder of this chapter explores each of the forms of gambling and makes recommendations regarding their inclusion in the legal framework.

6.3 Greyhound racing

6.3.1 Background

The pioneers of greyhound racing in South Africa were immigrant mineworkers in the former Transvaal in the late 1930s and 1940s. The first licences for dog racing and betting were granted in 1932, and tracks were built at the Wanderers, Wembley and Dunswart. Races were held on Friday evenings, timed strategically, as Grundeling (2003, p.176) notes, “to coincide with the payment of working men’s wages.” Racing was especially popular with recently urbanised, often impoverished Afrikaners in Vrededorp, Braamfontein, Fordsburg, Mayfair, and Booyens (Grundeling 2003, p.179, p.181; see also UFS 2009, p.13).

Although it was widely believed to be run by unscrupulous British managers, the industry thrived. Grundeling (2003, p.176) estimates that between 7,000 and 10,000 spectators attended the weekly races at the Wanderers track alone, with weekly on-course betting profits of between £24,503 and £31,252. So profitable was the industry that shares in the Union Greyhound Association rose from £10 in 1932 to £180 in 1940! Although off-course betting was illegal, it is estimated that there were 14,000 “bucket shops” or small betting agencies scattered throughout the Transvaal (Grundeling 2003, p.177).⁵⁷

With few if any independent regulatory controls, the South African greyhound industry was clearly open to abuse, and there appeared to be considerable public scepticism about the legitimacy of race outcomes. Opposition to greyhound racing appears to have been driven by the increasingly politically assertive Afrikaner middle

⁵⁷ The agencies served all South African communities. White punters, for the most part, placed their bets in Greek run café’s, whilst black punters turned to Indian, Chinese and Black run storekeepers.

class, concerned primarily about the negative cultural and economic impact that racing was said to have on the Afrikaner proletariat (Grundeling 2003, pp.186-88). Pressure from this quarter, as well as from an unusual alliance between the *Nederduitse Gereformeerde Kerk* and the English Protestant churches, eventually forced the Transvaal United Party to abolish dog racing in 1949 (Grundeling 2003, pp.186-88). Similar pressures forced the other provinces to follow suit over time.⁵⁸

With the victory of the National Party in 1948, the tide had turned against all forms of gambling, which, with the exception of horseracing, were banned outright in 1965. In the decades that followed, greyhound lobby groups pressed unsuccessfully for the legalisation of the sport, making representations to the Howard Commission (1992) and the Lotteries and Gambling Board (1996), neither of which took an express view on dog racing. More recently, groups like Amatwina Sport (Pty) Ltd have lobbied the Department of Trade and Industry to legalise greyhound racing and to permit the emergence of a properly regulated greyhound racing industry. This included a proposal to form a South African Greyhound Racing Club (SAGRC) to represent the industry, as well as specific proposals relating to trainer regulation, the conduct of races and animal welfare (Amatwina 2010).

6.3.2 *The contemporary activity*

Whereas the initial ban on greyhound racing was prompted by concerns about poor regulation and the socio economic impact of betting on the sport, it is worth noting that the contemporary debate on greyhound racing focuses largely on animal welfare. This focus on animal rights in sport is a global trend, and has placed greyhound racing under the spotlight in most jurisdictions in which it is practised.

Two bodies represent the sport in South Africa, the South African Amateur Greyhound Union (SAAGU) and the United Greyhound Racing and Breeders Society. Despite the fact that greyhound racing is illegal, South Africa is affiliated to the World Greyhound Racing Federation.

Although illegal, greyhounds are raced in South Africa, primarily in the Free State, where enthusiasts have exploited a loophole in the relevant Provincial Ordinance which defines an illegal dog race as one in which spectators are present (www.greyhound-data.com), thus allowing for the highly improbable event of spectator-free amateur racing on which no bets are placed.

Amateur greyhound races are held on both oval and straight tracks, and dogs are trained specifically for either format. Races are held on Saturdays, with both qualifying heats and final races held on the same day. Over the course of a year, dogs compete for various titles, including greyhound of the year, dog of the year, bitch of the year, long distance dog/bitch of the year, middle distance dog/bitch of the year, short distance dog/bitch of the year, fastest greyhound of the year, and trainer of the year (www.greyhound-data.com). In 2008 there were 85 registered breeders, 2,500 registered greyhounds, and a further 500 dogs which were too young to be registered, in South Africa (UFS 2009, p.16).

⁵⁸ The relevant ordinances being the *Abolition of Dog Race Meetings and the Prohibition of Betting on Dog Races Ordinance* No 4 of 1949 in the Transvaal; the *Prohibition of Dog Race-Meetings Ordinance* No 11 of 1976 in the Free State; the *Prohibition of Dog Racing Ordinance* No 11 of 1986 in the Cape; and the *Prohibition of Dog Race Meetings Ordinance* No 23 of 1985 in Natal (UFS 2009, p.14).

Most racing occurs in the Free State, where there are said to be 250 members and 550 active dogs compete at racecourses in Welkom (Goldfields), Soutpan (Elite), Bloemfontein (Central), Deneysville (Vaal) and Potchefstroom (Tokkelos) (UFS 2009, p.16). Although these races are illegal, the authorities have not stopped them, and they sometimes attract local corporate sponsorship.

The Commission was not able to verify these figures. Racing is also popular in Gauteng, although most enthusiasts appear to take their dogs to Free State racecourses to race.⁵⁹ Clearly some betting occurs on greyhound races, although the extent of this is impossible to gauge.

6.3.3 Arguments for legalisation in SA

In their submission to the Gambling Review Commission, Amatwina Sport (2010) claimed that there was strong public support for greyhound racing in South Africa, especially from formally disadvantaged communities. In addition, they pointed to the “immense traditional and historical importance” of hunting dogs in local black culture.

The significance of this latter argument is not clear, as hunting greyhounds are not the same as racing greyhounds; they are bred and used for very different purposes (UFS 2009, p.9). If the industry were to be legalised and regulated properly, Amatwina believes that between 4,000 and 6,000 animals would be bred a year, which would create 15,000 permanent and 15,000 indirect jobs.

No evidence is provided to support these assumptions, which must be treated with considerable caution. It is difficult to imagine how South African greyhound racing would employ three times the number of people currently employed in New South Wales, Australia, for example, which hosts 1,500 meetings on 35 tracks, and has a total betting turnover of approximately \$600 million per annum.⁶⁰ Similarly, the well-established greyhound industry in Victoria, Australia, which holds 800 meetings at 13 tracks annually, and contributes \$178 million to the Victorian economy, employs a total of 19,600 people in both a permanent and a part-time capacity.⁶¹

Amatwina believe that the existing greyhound structures in South Africa are well placed to form a single South African Greyhound Racing Club (SAGRC), which could, along the lines of the self-regulation model adopted in the UK, take responsibility for the regulation of the industry. Amatwina itself hopes to drive the commercial development of the industry, in much the same way that Phumelela and Gold Circle do for horse racing (UFS 2009, pp.19-20).

Interestingly, Amatwina have called for a controlled legalisation of the greyhound industry, calling for a trial of 2 to 3 years in which 2 Free State clubs are licensed. During this period, the financial viability of the industry could be assessed, and the ability of the SAGRC to properly regulate all aspects pertaining to the welfare of animals could be tested.

This would include regular kennel inspections, controls on the number of greyhounds that may be bred in order to reduce the number of surplus animals that have to be

⁵⁹ See UFS (2009, pp.16-19) for a discussion of racing in each province.

⁶⁰ Interview with Brent Hogan, Chief Executive, Greyhound Racing New South Wales, 14 July 2010. NSW employs approximately 10,000 people. This excludes approximately 3,000 trainers.

⁶¹ Interview with John Stephens, CEO, Greyhound Racing Victoria, 12 July 2010.

ethanized, controls over the sale and/or disposal of inactive or retired greyhounds, and drug testing protocols.

6.3.4 The global greyhound industry

The main countries in which professional greyhound races are held as a gambling activity are Ireland, Australia, New Zealand, Great Britain and 7 states in the USA. Small-scale professional racing and amateur/sports racing occurs in many other European, South American and Asian countries.

As with horse racing, live greyhound racing has witnessed a decline in popularity over the past two decades, and declining track attendance and the growing popularity of other forms of gambling threatens the viability of the industry in several jurisdictions.

Pressure from animal rights groups concerned about the breeding, training, racing and ultimate disposal/retirement of greyhounds has added to these pressures, and has resulted in the outright banning of the industry in several states in the USA.

In the USA, track attendances peaked at 3.5 million in 1992, when almost \$3.5 billion was bet on 16,827 races at over 50 tracks. Since then, revenues have declined by 50%, leading to the closure of 13 tracks. According to the Greyhound Racing Association of America, many remaining racetracks subsist primarily on slot machine revenues,⁶² and it appears as if the future of greyhound racing in the United States depends on the granting of expanded gambling rights (especially for slot machines) to live racing venues.

The breeding and training of greyhounds occurs primarily in large farms in the USA. This is different to the smaller-scale, family-based, model found in Australia, where enthusiasts are typically owner-trainers, with no more than five dogs kennelled on their own property.

Public concerns over animal welfare and pressure from animal rights groups have contributed to the decline of the US industry, and has resulted in the banning of greyhound racing in Maine (1993), Virginia (1995), Vermont (1995), Idaho (1996), Washington (1996), Nevada (1997), North Carolina (1998), Pennsylvania (2004), Massachusetts (2008, effective 2010), Rhode Island (2010), New Hampshire (2010), and the United States Territory of Guam (2010).⁶³

In Great Britain, greyhound racing has fared somewhat better. The number of licensed racetracks has plunged from 64 in 1960 to 17 in 2010. In part this is a result of a rationalisation of venues, and the number of licensed race meetings has only declined from 7,687 in 1960 to 5,999 in 2006. Recent reports show on average around 600 spectators being recorded per race meeting or a total of 3.2 million in 2006, compared with 2,000 per meeting and a total of 15 million in 1960 (IRGIGB 2007, pp.9-10).

Despite this, greyhound racing is said to be the third most attended spectator sport in Great Britain, and attracts a considerable off-course following, in part because of widespread television coverage. The positive nature of this coverage reflects changing social attitudes to what is often regarded as a “working class” or “blue

⁶² Greyhound Racing Association of America (www.gra-america.org).

⁶³ Grey2K USA (www.grey2kusa.org)

collar” sport. In the 1950s, by contrast, the BBC was reluctant to broadcast race meetings, and maintained that dog racing “was not a desirable or sociologically useful sport” adding that it had “an antisocial character” which would “lower BBC standards” (cited in Grundeling 2003, p.176).

In 2006 a total of £2.5bn was wagered at on-course, off-course and interactive betting venues.⁶⁴ As a result of public concerns about animal welfare, as well as concerns that the industry was unprepared and ill-equipped to comply with the “duty of care” imposed by the *Animal Welfare Act* of 2006 (effective from 2009), the British Greyhound Racing Board and the National Greyhound Racing Club commissioned an Independent Review of the Greyhound Industry in Great Britain headed by Lord Donoughue.

The report found that the current structures established to oversee the governance, administration, finance and regulation of greyhound racing were “seriously flawed”, and called for establishment of a single independent Greyhound Board of Great Britain which was better enabled to oversee the industry and ensure that the welfare of the animals involved remained paramount (IRGIGB 2007).

The report made numerous recommendations relating to the welfare of greyhounds and, realistically, highlighted the impact of the rising costs associated with welfare regulation. The report concluded that:

“In our view the sport has no alternative other than to raise those standards and regulate accordingly. It must pay the costs of welfare regulation or suffer increasing criticism. The industry might then be initially a little smaller, at least temporarily, with fewer marginal tracks. But it would surely be healthier, economically and morally, in the longer term” (IRGIGB 2009).

This is sage advice. Public attitudes to animal welfare have changed, and the greyhound industry cannot afford to continue to treat animals in the way they have done historically. Neither can they avoid taking on the costs of improved animal welfare and regulation. This needs to be considered when seeking to assess the financial viability of nascent greyhound industries, such as that found in South Africa. The provisions of the *Animal Welfare Act* came into effect in 2009, and it is too soon to gauge their impact on the British greyhound racing industry.

Whereas greyhound racing in the UK and the USA is run as an industry, and dogs are bred and trained in large farms, the Australian greyhound industry is largely dominated by family-hobbyists, who own and train between 1 and 5 dogs each. Each State and Territory has its own governing body, which oversees the regulatory (licensing of dogs, maintaining of stud books, organising of races, etc.) as well as the commercial aspects of the sport (overseeing wagering operators, marketing of the sport, etc.).⁶⁵

The two largest authorities are Greyhound Racing New South Wales and Greyhound Racing Victoria, both of which were visited by the Gambling Review Commission during the course of its research. Greyhound Racing Victoria has pioneered a retired greyhound adoption programme, which seeks to find homes for greyhounds no longer capable of winning races as opposed to euthanizing them.

⁶⁴ Greyhound Board of Great Britain (www.thedogs.co.uk)

⁶⁵ Interview with Brent Hogan, Chief Executive, Greyhound Racing New South Wales, 14 July 2010.

6.3.5 Analysis and conclusion

The Commission has carefully evaluated the submissions, local research and international experience on greyhound racing and wish to conclude as follows:

6.3.5.1 Demand

Based on the available evidence, there does not appear to be significant public demand for the sport or for gambling on dog racing in general. Indeed, the volume of submissions received by the Gambling Review Commission calling for a ban on dog racing suggests exactly the opposite. This corresponds with international trends, where, with the exception of the UK, greyhound racing is clearly in decline, threatened both by growing public concerns about animal welfare and the emergence of new forms of legal gambling (casinos, slots, etc.).

6.3.5.2 Proliferation

A central assumption underpinning the sumptuary model of gambling regulation that has been adopted in South Africa (see §1.2.3 above) is that the *existing* demand for gambling should be accommodated while discouraging excessive involvement. In line with this objective, the regulators are expected to curtail the stimulation of demand for *new gambling products* by limiting the number of gambling products on offer and avoiding the overstimulation of latent demand. If this model continues to apply – and the Commission is of the view that it should – and if it is true that there is limited existing demand for greyhound racing, then clearly the legalisation of greyhound racing would constitute a stimulation of new demand that could very well contribute to a proliferation of gambling in South Africa.

6.3.5.3 Protection

Regulation would promote better protection for punters and animals alike. At present if this activity were to be allowed, new legislation would need to be developed taking into consideration the very real animal rights concerns.

6.3.5.4 Geographical location

The activity is currently operated in the rural areas of the Free State Province, but the location of the sport is likely to depend on where the opportunities for racing existed. The races could therefore be arranged in urban areas or wherever tracks existed.

6.3.5.5 Economic viability and impact

It is not at all clear whether the greyhound industry would be financially viable in South Africa or whether it would make a meaningful contribution to employment or the development of local infrastructure. The claims made on behalf of the industry, to the effect that 30,000 permanent and temporary jobs would be created are difficult to verify, and are certainly not in line with employment trends elsewhere (in the UK employment stands at 10, 261). At the same time, it should be noted that the cost of developing viable and attractive greyhound racetracks is relatively low. In Australia, it is estimated that a track, kennel block and grandstand cost around \$2 million or R13.2 million. This is fraction of the amount required to establish horse racetracks, and is suggestive of an industry with relatively low barriers to entry.

6.3.5.6 Competition

It is unlikely that this form of gambling will stimulate modernisation or innovation in the gambling industry. However it could encourage new participants into the industry, although it is difficult to predict the extent to which the entrance of new participants will impact on businesses of other modes of gambling. It may just compete with the

horseracing sector, however remotely, thereby posing a threat that might incentivise the formal horse racing to re-invent itself.

6.3.5.7 Enforcement

International experience demonstrates that this form of gambling can be effectively regulated.

6.3.5.8 Revenue

In the UK, where the gambling activity has evolved over the years as part of the sporting culture and ranks 3rd in popularity to horse racing and soccer, gross revenue for the period 1 January 2008 to 31 December 2008 was recorded at 53.9 million pounds. Current attendance figures of illegal race meetings in South Africa are unlikely to come anywhere near a small fraction of the British attendance figures. It is doubtful if the revenue figures will in any way be significant enough to make a dent on the South African economy in the form of taxes and payrolls

6.3.5.9 Animal welfare

There is considerable debate as to the ethics of greyhound racing, and clearly the industry needs to adapt to modern sensitivities around animal welfare. Although a well-regulated industry would be able to set standards for breeding, training, racing, and the retirement of animals, there is clearly tremendous possibility for abuse, and there is no escaping the need to euthanize large numbers of animals each year.

Even well regulated jurisdictions, such as Ireland, Great Britain and Australia, battle to get owners and trainers to comply with new welfare provisions, and have not been able to deal effectively with the over-breeding and the retirement of dogs. Much of the backlash against greyhound racing in the USA is attributable to public awareness of the potential for harm to animals in this sport. Lord Donoughue's advice is relevant here: if the industry is to survive, it will have to enforce very strict animal welfare provisions from the start. This is expensive, and not all jurisdictions have either the economic or the regulatory capacity to do this properly.

In one sense, were South Africa to legalise greyhound racing it would have an advantage over the established greyhound industries elsewhere in the world. By starting from scratch, effectively, it would have less of a battle trying to change old ingrained habits and established practices amongst its members, and could implement industry best practice from the outset.⁶⁶

6.3.6 Recommendation

The Commission carefully evaluated the evidence regarding greyhound racing. A majority view and a minority view on the legalisation of the industry were formed. The majority view is that greyhound racing should not be legalised in South Africa. This view was formed on the basis of the following considerations:

- There is significant popular opposition to greyhound racing and legitimate concerns about animal welfare.
- The industry is unlikely to generate significant revenues.
- In order to become successful, greyhound racing would have to stimulate demand for a new gambling product, which is at odds with the philosophy

⁶⁶ Interview with Brent Hogan, Chief Executive, Greyhound Racing New South Wales, 14 July 2010

behind the controlled rollout of gambling in South Africa, and is likely to lead to a proliferation of gambling.

The minority view is that more work needs to be done for greyhound racing to be considered for legalization in South Africa. This view advocates that further work would need to examine issues around the regulation of over breeding, tracking of dogs during their lifetime and retirement/disposal. Further work is considered crucial given the fact that given the strong voice agitating for legalization on the one hand and the fact that there is significant popular opposition to greyhound racing and legitimate concerns about animal welfare, on the other hand.

Should a decision be made to legalise dog racing⁶⁷, the Commission recommends that the following points should be kept in mind in creating a regulatory regime:

1. A breeding programme needs to be properly monitored from the outset.
2. A robust licensing system needs to be put into place to ensure that the persons involved are fit and proper people. This is especially important, as racing is predominantly a cash economy, which can attract unsavoury elements.
3. A proper rulebook needs to be developed, and accepted by all parties. This can be adapted from other jurisdictions.
4. An effective drug control/management framework needs to be put into place. This is important from both an animal welfare and gambling integrity perspective. People will only bet on the industry if it is fair.
5. A strong policy framework for animal welfare across the entire lifecycle of the dog needs to be developed and put into place. The framework developed in other jurisdictions, as well as the “duty of care” imposed by the Animal Welfare Act in the UK, should be considered here.

6.4 Bush racing

6.4.1 Introduction

Bush racing is an unregulated form of racing horses that is prevalent in some regions of the country. The Commission was advised that retired racehorses are generally sold and used in illegal races. This does not appear to be a new or recent activity, but a combination of a traditional form of racing horses, which is part of the cultural heritage of certain South Africans, such as the isiXhosa people, with betting on the outcome of the race.

These races appear to be growing in popularity, but are not properly managed or controlled and there is no protection for punters who choose to bet on this activity. Further, the NSPCA highlighted some of the dangers and harm to both the animals and jockeys.

The Commission was informed during the public hearings that this activity poses a danger to the jockeys who are often young children without the necessary training to ride a racehorse, and that it is not uncommon to find that these children are thrown off the horse and suffer injuries. This is generally not reported to the authorities, as the activity is currently illegal.

⁶⁷ Most of these points were suggested by Brent Hogan, Chief Executive, Greyhound Racing New South Wales. Interview, 14 July 2010

It is unlikely that enforcement agencies will be able to put a stop to these races. They clearly serve a limited demand in more rural areas and are of an informal nature. The animal rights issues that arise relate to the treatment of animals on the day of the races or from their day-to-day treatment by owners and do not relate to broader issues such as the breeding of the animals or their treatment after their retirement from competition.

It can therefore be concluded that these races are unlikely to be discontinued, but are also not likely to show dramatic growth. As such, it would be best to develop an appropriate regulatory scheme to allow limited activity in a more controlled environment. International precedent in this regard may be instructive.

6.4.2 International precedent

During the Commission's visit to the United Kingdom and in discussions with the British Horse Racing Authority it came to light that there is some informal horse racing on what are called "flapping tracks". These are racing tracks that do not conform to the high standards set for the formal horse racing. Private individuals organize race meetings on these tracks after notifying and obtaining permission from the local authority. Only a stipulated number of meetings can be held per annum (e.g. 8 meetings) but at different locations around the country. The National Society for the Prevention of Cruelty to Animals (NSCPCA) is invited to come and observe to ensure that animal welfare requirements are taken into consideration. A fee for holding each race event is charged and paid over to the NSCPCA so that it can recover some of its costs for attending the events and monitoring treatment of animals in accordance with stipulated welfare requirements. Only licensed bookmakers are allowed at such meetings to take bets.

Generally there are requirements that must be complied with for the holding of such events, although the requirements are not as stringent as those for the formal horse racing events. According to the British Horse Racing, the operation of these "flapping tracks" has effectively eliminated the illegal component in the horse racing industry.

6.4.3 Analysis and conclusion

6.4.3.1 Demand

There appears to be existing demand for the activity, especially in rural areas, where people often conduct informal races with their own animals.

6.4.3.2 Proliferation

Given the nature of the activity, it seems unlikely to see substantial growth and therefore contribute to proliferation or cannibalization of legal activities.

6.4.3.3 Protection

Currently, there is very little protection being offered to people/players who take part in this informal mode of gambling. There is an element of self-regulation and operators are more likely to serve their interests in the absence of any enforceable regulation to the detriment of the more vulnerable.

6.4.3.4 Geographic location

The location of the races tends to be in rural areas.

6.4.3.5 Economic viability and impact

The current informal nature of the gambling mode does not lend itself to being successfully run as a profitable business venture that can sustain operations. Informal could mean that participants engage in the activity on an as and when basis, which means that the certainty of regular income to the operators cannot be guaranteed, however little. Lack of certainty in regular income would make it impossible to meet fixed and variable costs that include payroll and goods and services for operating the game.

6.4.3.6 Competition

The gambling mode is operated using horses that are either not fit for the formal horseracing or have been retired from horse racing. It is therefore unlikely that it will pose any form of competition to the formal horse racing or to any other gambling mode given its informal nature and the location where it is normally operated from.

6.4.3.7 Enforcement

The informal nature of the races makes it difficult to enforce the prohibitions.

6.4.3.8 Revenue

The informal nature of the gambling mode and the fact that it is being operated for leisure in rural areas makes it difficult to generate any form of meaningful revenue for the operators, the fiscus or employees. It is therefore unlikely to contribute significantly to revenue-generation.

6.4.3.9 Animal welfare

Any form of illegal gambling activity does not only undermine the law but has various negative consequences for society in general. This includes problem gambling prevalence that occurs outside of established prevention and treatment frameworks, impact on the fiscus from illegal operators that do not pay taxes and the ill-treatment of animals used in the bush racing events. Animal rights organizations continue to express their concerns at the poor treatment of animals at these events. One important point that requires mentioning is that animals that are used in these events are the ones that have been identified as being unsuitable for the formal horse racing or have been retired. This means that there are no problems of over-breeding and that these animals once retired can be put to other uses such as horse-cart drawing and performance of other functions in typical rural and farm settings.

6.4.4 Recommendation

International practice in the UK showed that the informal structure of the bush racing can be retained while formalizing issues around licensing of events and limiting them both in number and in places where they take place. The National Society for the Prevention of Cruelty to Animals can also be brought in when such events are held so that they can monitor to make sure that the welfare of the animals is taken into account. This, it was established during the Commission's international visit, can help with eliminating the illegal gambling activities in general while satisfying the need of certain sections of the community in a protected gambling environment, at affordable costs to those organizing the events.

The Commission suggests that a similar approach to that adopted in the UK merits further investigation and consideration. In order to create a regulatory framework for this type of activity, the Commission recommends that consideration be given to establishing a system of occasional licences or notices, issued by or to the local

authorities, as is the case in Great Britain. In Great Britain, informal racing activity is allowed for a maximum of eight (8) times per year per venue.

It is recommended that a system of notices should be considered. The notices should be to the local authority and also to the NSPCA, so that a representative can attend the race. The holders of the races should give consideration to some cost contribution to the NSPCA, so that adequate resources can be made available. Furthermore, there may also be a requirement that a registered veterinary surgeon should attend the races. Consideration should also be given to limiting the locations where these races may take place. Finally, a critical factor will be educating local authorities about these licences and the possibility of creating training material and guidelines for this should be considered.

The Commission, however, is of the view that this would still require a uniform national policy to be developed dealing with the protection of animals that are involved in racing activities.

6.5 Fahfee

6.5.1 Introduction

Fahfee is a form of a lottery, and is clearly not licensed by either the National Lotteries Act or the National Gambling Act. In their submission to the Commission, the Mpumalanga Gambling Board defined fahfee as “a game that involves thirty six numbers often connected to symbols. A player selects a number, excluding the previous two winning numbers, and upon payment of a consideration and based on a fixed odds bet, registers his/her number with a fahfee runner. The winning number is determined by the operator and communicated to the players. The prize money is based on fixed odds of 1:28, thus for every Rand wagered the winning player gets R28.”⁶⁸ Traditionally, number choice would be based on player analysis of things such as their recent dreams,⁶⁹ although much of the symbolism connected with fahfee appears to have declined in significance in recent years. Players have no direct contact with operators, and the game relies entirely on networks of trust.

6.5.2 History

Fahfee (alternatively spelt fafi) originated amongst Malay slaves in the Cape during the 1870s. Until the late 1880s, slaves were discouraged from converting to Christianity or Islam, and most practised secretly a “creolised mixture of faiths” which included Eastern animism, African traditional beliefs, Catholicism, Hinduism and Islam (Mellet 2009). Mellet argues that:

⁶⁸ Other sources claim that the odds range from 1:26 to 1:28, depending on the area in which the game is conducted.

⁶⁹ The associative dream chart or symbols are as follows: 1: The White Man or a King, 2: Cash, 3: Sea or Lake, 4: Big fish 5: Fighting, or coins 6: A Crook or Confidence trickster or Milk, 7: Eggs or anything oval, 8: Drunk man or Pig, 9: The Moon, 10: Priest, 11: Tiger or Flowers, 12: Car or Carriage, 13: A White Woman or a Party or Celebration, 14: A Dead Man or Policeman, 15. An Old Woman, 16: A Cow, 17: Prostitute or Diamonds, 18: Rain or Pigeons, 19: Tap or trickling water, 20. A Penis, 21: A Vagina or a Knife, 22: A House, 23: A Naked Woman or Hair, 24: Young girls or a Purse, 25: A Ship, 26: A Cat, 27: An Elephant or a Newborn baby, 28: Fire or a Small child, 29. Paper Money or Rain, 30: A Boy/s or the Sun, 31: Excrement, 32: Mouth or a Snake/s, 33: A Spider/s, 34: Small Fish or Meat, 35: Bees or Clothes, 36: A dog or Cigars (Mellet 2009).

“A core part of such belief systems incorporated hope for freedom, a better life and good fortune. Alongside these, ran beliefs in symbolism, dreams, omens, totems, and chance. Chance offered life-altering opportunity. Fahfee parachuted into this environment and both influenced it and were influenced by it. Its influence continues today as people still apply dreams and chance encounters with symbols, to numbers. Fahfee numbers and their meanings are used to choose horses in the races, roulette numbers, raffle numbers and of course the national lottery numbers.”⁷⁰

In this way, fahfee was a game of chance that gave a sense of hope to the most vulnerable sectors of society, and served as an important cultural tool, which cannot easily be replicated outside of the social environment within which it emerged. Very little is known about the social organisation of traditional fahfee games, but it appears that the gulf between the players and operators has widened considerably in the past few decades, and that players attach considerably less cultural value to the game itself.

Commenting on the resurgence of fahfee in many townships in the past few decades, Mellet (2009) concludes that “it is now more and more just another one of the many tentacles of the gaming industry that fleeces the working class of hard earned cash, in the feint hope of striking it lucky.”

6.5.3 *The contemporary game*

Fahfee is widely played in South Africa, particularly in townships in Limpopo and Gauteng. Chinese operators, about who very little is known,⁷¹ control the game. Typically the “Chinaman”, “ju fah gong”, or “Ma China” as he is known colloquially, will pay a small stipend to runners to collect bets on his behalf. Each operator is reputed to have a route with 36 defined areas or places (e.g. shebeens) at which draws are conducted (Geldenhuys 2009). It is not known how these areas are allotted between operators or whether this allocation takes place by consent or through the extraction of rentals by a main operator or syndicate.

Players organise themselves into informal groups of around 50 people called “banks”, and choose a runner from within the group to act as a go-between with the operator (*The Star*, South Africa, Dec 31, 2008). It would appear that some of the attraction for players lies in the opportunity to become a runner, although this is not generously rewarded.

Runners take bets and issue tickets to customers, and place these with the operator on their behalf. When the operator stops at the defined spot, he will draw a lucky number and pay a dividend to winners (Geldenhuis 2009).

As the owners of cash-only illegal businesses, fahfee operators are regularly accused of bribing policemen and women to protect their routes and, according to the Limpopo Gambling Board, are believed to be involved in other illicit activities, including rhino and abalone poaching, trading counterfeit goods, and cash-in-transit robberies (Geldenhuis 2009).

⁷⁰ For a wonderful overview of this tradition amongst the Cape slaves who went on to develop fahfee in District Six, see Mellet (2010).

⁷¹ The Commission made various attempts to interview operators, without success. In one case this included travelling to Welkom, only to be stood up by two operators who had previously agreed to speak to us under conditions of anonymity.

Geldenhuis (2009) suggests that operators have to protect their routes from rivals, many of whom are recent triad-connected immigrants from China. This may explain the propensity for many operators to drive around with armour-plated windows in their vehicles (*The Star*, South Africa, December 31, 2008).

6.5.4 Analysis and conclusion

6.5.4.1 Demand

Fahfee is the most popular of the unlicensed forms of gambling, especially in townships and informal settlements in Gauteng. Nationwide, fahfee is played by 2.4% of all adults who gamble, and is the preferred gambling mode of 1.6%.

Fahfee participation

MODE	Participation (all ages)	Preference (all ages)	Youth participation (18-25 years)	Youth participation (<18 years)
Fahfee	2.4%	1.6%	1.3%	13.5%
Dice	1.3%	1.4%	2.4%	70.7%
Lotto	29.2%	74.9%	23.7%	24.4%

Source: NGB (2009a, p.xi, p.8, p.16)

Fahfee has considerably lower participation rates than the national lottery. Although both are lotteries, the Lotto is clearly more attractive to most gamblers. It is assumed that this is a reflection of the high payouts, transparency and fairness, and ubiquitous presence, of the national lottery. If true, then this bears out the observation above about the declining cultural significance of traditional fahfee.

Fahfee is the most widely played product by underage gamblers (13.5%). This reflects the ease of access and the unscrupulous nature of fahfee operators rather than an inherent attraction to the game. Once young people turn 18, fahfee participation rates plummet to only 1.3%.

The fact that the participation rates for adults under the age of 25 (1.3%) are almost half those for the entire adult population (2.4%) bear out the observation that fahfee is disproportionately played by older persons; and we would add, typically women. It does not have the same appeal with younger gamblers in townships and informal settlements as it once did.

6.5.4.2 Proliferation

Fahfee can be played for relatively small amounts of money, usually less than the cost of a lottery ticket. This makes fahfee especially appealing to poor people. Of the twelve modes of gambling surveyed in the 2009 Prevalence Study, fahfee has the fourth highest number of participants identified as at risk for problem gambling (NPS 2010, p.31). The two most risky games, dice and card games, are usually unlicensed and hence unregulated games, played disproportionately by poorer persons living in townships and informal settlements.

It is certainly no accident that the 2009 Prevalence Study distinguished problem gamblers in Johannesburg, Soweto, the East Rand and West Rand, as

“concentrated amongst people who play dice and card games for money in informal establishments (especially shebeens), and fahfee/iChina” (NPS 2010, p.1).

6.5.4.3 Protection

There is an element of secrecy that surrounds the operation of the fahfee game. This lack of transparency, which appears to be part of the unwritten rules of the game (to players, agents and operators), makes it difficult to protect the players from unscrupulous agents and operators.

6.5.4.4 Geographic location

The game of fahfee is played anywhere, where there is a potential market which consists mainly of the unemployed, the elderly, low skilled employees/blue collar workers, youth and this can be in the urban, peri-urban or rural areas.

6.5.4.5 Economic viability and impact

Almost nothing is known about the economics of modern-day fahfee. The Limpopo Gambling Board believes that there are 15 major operators in the province, each of which makes around R14000 a day each.⁷² There is no way to verify this claim.

6.5.4.6 Competition

Fahfee competes with a well-run, licensed, national lottery. Unlike the Lotto, it operates completely outside of the law.

6.5.4.7 Enforcement

All transactions are in cash, the operators pay no tax, and the industry is characterised by high levels of criminality. The current prohibition has been hard to enforce. However, a regulatory regime will be equally difficult to impose on an industry that has always existed outside of the law.

6.5.4.8 Revenue

Due to the high level of criminality involved in the game, it is unlikely that it will generate much tax revenue.

6.5.5 Recommendation

Although there is proven demand for fahfee, in its current form it appears to be run by particularly unscrupulous operators, who deliberately target the poorest sections of the population. This has contributed to problem gambling in South Africa.

Because of its secretive nature, very little is known about fahfee. We do not know who the operators really are, or understand the nature of their business model. Two attempts by the Commission to meet with “Chinamen” in Welkom failed, as the operators refused at the last moment to meet the Commission.

It is vital that there is better understanding of a game that is at least as popular as LPMs, and considerably more popular than bingo. The Commission is of the view that this form of gambling is not capable of being regulated because of the secrecy and criminality involved. However, allowing it to continue to exist undermines the rule of law, the rights of licensed operators.

⁷² <http://www.gamblingsa.com/stories/gsa-billion-rand-fahfee-industry-highlighted.html>

The Commission therefore recommends that further qualitative work should be undertaken on fahfee, taking into consideration the clear demand for these activities, but also keeping in mind the negative impact on poor communities.

6.6. Bingo and electronic bingo terminals

6.6.1 Introduction – the game of bingo

The game of bingo is one of the four legal forms of gambling allowed in the country. Bingo is defined in the National Gambling Act as, “a game, including a game played in whole or in part by electronic means—

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

In traditional bingo, players purchase bingo cards containing numbers, which are to be matched in various patterns against numbers that are randomly generated and called out. Players mark the called numbers on their cards. The aim is to be the first player to match the pattern on their card and call “bingo”. There is always a winner in this form of the game. The game is fun and requires the player to be attentive thus also requiring a degree of skill in a typically social environment.

6.6.2 What are Electronic Bingo Terminals (EBT's)

The Bingo Association of South Africa (BASA) has argued EBT's should be seen as a technological advancement on the game of bingo. EBTs, as introduced into South Africa, are gaming machines on which bingo can be played. These machines look, sound and feel like slot machines, but according to a study commissioned by the NGB on the Regular Gamblers Perception on Bingo, there are the following differences between EBTs and slot machines:

- With EBT's, players play against each other by means of a linked network whereas with slot machines the players play against the machine.
- The central random number generator (RNG) in the electronic bingo terminal is located on a server and does not form part of the machine. It serves a number of EBT's and supplies each terminal with an identical, randomly selected sequence of numbers and a unique set of bingo cards. In slot machines the RNG, which determines the outcome of the game, is contained in the slot machine itself and determines its outcomes independently of any other slot machines.
- In the case of a slot machine, various combinations of symbols attract various predefined winning amounts stipulated in a pay-table, whilst in EBTs the player wins only one interim prize, which is the highest-ranked interim pattern.

- Unlike in the slot machine, the display on the lower cabinet of the electronic bingo terminal has no effect on the outcome of the game.
- EBT's always feature a progressive jackpot while a slot machine may or may not feature a progressive jackpot.
- EBT's guarantee that at least one player will win by completing the game winning pattern whilst slot machines do not guarantee any wins.

It should be noted that although EBTs link players together, they are not interactive, at least not in the sense that the actions of any one player can in anyway influence the outcome of the game. In that sense, they are exactly the same as traditional slot machines. Furthermore, even though the spinning wheel symbols of traditional slot machines have no impact on the outcome, they create a visual similarity with a slot machine (NGB 2007a, p.4). In addition to their visual similarities EBTs sound like traditional slot machines.

Thus, in conclusion, while EBTs may differ from slot machines, the fact that they look, feel and sound like slot machines serves to confuse punters. Furthermore, EBTs conform to the definition of a gaming machine in the National Gambling Act.

6.6.3 The evolution of bingo and EBT's internationally

The bingo game can be traced as far back as the 16th century. The game involves a number of people competing for a pre-determined prize in a game that lasts approximately 15 minutes.

In some jurisdictions, it was a gaming activity that was used to benefit charities and worthwhile causes. Some US states and Canadian provinces have imposed a prize limit in order to restrict playing to a social level and to obviate the potential for problem gambling. Like all other gambling activities, bingo has evolved and with developments in technology the typical bingo 'card' game has been supplemented with hand held devices, video bingo machines, internet games etc.

Electronic bingo machines first became popular after the passing of the US Indian Gaming Regulatory Act of 1988 (IGRA) which resulted in a number of Native American tribes increasing revenue by building large bingo halls and parlours and offering significantly large prize payouts. Because the IGRA allowed 'maximum flexibility' of technology in the use of bingo – whether or not it was electronic, computer or other technological aids – technology transformed electronic bingo machines into virtual slot machines. When the authorities realized this they took action to prevent what they considered the "exploitation of technology", but were overruled by the courts given the statutory language of the IGRA, which appeared to allow any form of technology.

In Great Britain, bingo is not given a statutory definition in the 2005 Gambling Act other than that it means any version of the game irrespective of by what name it is described. According to the Gambling Commission of Great Britain, the bingo industry sought to introduce Video Bingo Terminals (VBTs) in the United Kingdom several years ago. VBTs are a gaming machine on which bingo is played. The original versions of VBTs that the industry sought to introduce had spinning wheels and made sounds similar to slot machines. The industry and the regulator agreed on key characteristics of bingo and applied these characteristics to VBTs. As a result, VBTs in the United Kingdom do not have associated spinning wheels and may not have any flashing lights. Feedback from the Bingo Association in the United Kingdom is that VBTs are not very successful or attractive to punters.

Instead, in the United Kingdom, slot machines in bingo halls are more successful and desirable from the perspective of the industry. In terms of the UK policy, a single licensed bingo premise is entitled to provide a maximum of eight gaming machines in categories B3 and B4 and an unlimited number of category C and D gaming machines. The table below describes the regulation of the categories of machines that may be used for any gambling activity.

Gaming machines categories

Machine category	Maximum stake	Maximum prize
A	Unlimited	Unlimited
B1	£2	£4000
B2	£100 pounds (in multiples of £10)	£500
B3	£1	£500
B3A	£1	£500
B4	£1	£250
C	£1	£70
D non-money prize	30p	£8
D non-money prize	£1	£50
D combined money and non-money prize	£10p	£5
D combined money and non-money prize	10p	£8
D combined money and non-money prize	10p	£15

Source: Gambling Commission – Industry statistics 2008/9

The regulation of gaming machines further stipulates that bingo must be the primary gambling activity at the licensed bingo premises. Gaming machines may be made available for play only on those days when sufficient facilities for playing bingo are also available for use. In cases where bingo is exclusively offered by means of electronic bingo terminals or video bingo terminals (these are the equivalent of South African EBTs), there must be more individual player positions made available for bingo than there are gaming machines made available for play.

Some other regulatory requirements in the United Kingdom regarding bingo premises may be of interest. These include that bingo premises may not be accessed from casino, adult gaming or betting premises and that ATM facilities must be out of reach of customers, with the desired effect that customers must stop gambling in order to be able to reach the ATM.

6.6.4 Analysis and conclusion

In 2007 the NGB conducted its own research into player perceptions of EBTs. On the basis of detailed focus groups with regular bingo players at Gauteng casinos, the study concluded that “The electronic bingo terminals have, according to the respondents, transformed the bingo halls into some kind of mini-casino look-alikes. The machines, lights and noise, to some extent, resembled the casino environment” (NGB 2007a, p.26).

Although the respondents with experience of both paper-based bingo and EBTs understood that EBTs differed from slots in that they linked various players together, and allowed players to select the cards they wanted to play, this merely reinforced the erroneous belief that they had some control over the outcome over what remained a purely random game.

The Commission visited a bingo outlet in Reede Mall in the Gauteng Province to gain a better understanding of the game by playing the traditional game. During the visit, the Commission also viewed EBT’s on the same premises. These machines had the “look, feel and sound” of a slot machine and had they not been explained to the Commission by the gambling operators, the members would all have mistaken them for ordinary slot machines. Whilst there is no doubt that there are some technical differences between a casino slot machine and an EBT, these do not remove the element of confusion that a player could experience. The Commission formed the opinion that EBT’s looked like casino slot machines and that the public could easily be confused by this.

EBT’s conform to the definition of a gambling machines, which according to the National Gambling Act, 2004 is “any mechanical, electrical, video, electronic, electro-mechanical or other device, contrivance, machine or software, other than an amusement machine, that is available to be played or operated upon payment of a consideration; and may, as a result of playing or operating it, entitle the player or operator to a pay-out, or deliver a pay-out to the player or operator”. At present our gambling legislation provides for two types of gambling machines, those found in licensed casinos and LPM’s. The Commission is concerned that by allowing EBT’s under the auspices of the legislative framework established for bingo, a third category of gambling machines has been introduced, namely EBT’s.

Of further concern is the fact that there is no limit on the number of EBT machines that bingo operators may have. This could lead to a proliferation of gambling machines in the country, and arguably already has. Further, the Commission was cognizant of the fact that where the legislation provided for gaming machines outside the licensed casino premises that this was tightly regulated and limitations placed on both the stakes and maximum payout, which EBT’s are not subject to.

Under the current regulations, bingo operators wishing to install slot machines are free to apply for licences to operate 40-machine LPM sites, but must do so under the same terms and conditions as any other player in the LPM industry. This includes allowing the public to object to the siting of gambling venues in shopping malls.

The introduction of EBTs has resulted in a playing field that is not level. For example, whereas casinos have to make considerable social investments and pay tremendous licensing fees per casino seat, the bingo industry is under no comparable obligation. Bingo halls are typically located in shopping malls, and do not involve the construction of new infrastructure or the type of CSI spend and other social infrastructure investments made by casinos. Considering that EBTs are easily

confused with slot machines, the bingo industry has been able to obtain a significant number of gaming machines without the concomitant obligations.

EBTs are also unfair to the LPM industry, in that they are able to offer much larger prizes than LPMs and are thus more attractive to many punters. Bingo halls are also able to install as many EBTs as they like, limited only by the overall number of licences for bingo seats they can afford to pay, whereas most LPM venues have a maximum of 5 machines. Furthermore, bingo halls do not have to share revenues with a route operator or make contributions to the CEMS.

6.6.5 Recommendation

The Commission is of the view that EBT's in their current form should not be allowed in the country, as it creates a third category of gaming machine with no limit on the stake or payout.

At present, bingo operators may apply for LPMs and may qualify for up to 40 LPMs upon application. The Commission sees no need for changing the current policy.

However, should a decision be made to retain EBTs, the Commission offers the following recommendations:

- The approach adopted in the United Kingdom with respect to VBTs is instructive and a similar approach would be recommended in South Africa. Should EBTs be retained, then they should revert to the look, feel and sound of bingo, implying that the spinning wheels, lights and sounds should be removed.
- Furthermore, clear limits on the number of VBTs should be provided.

The Commission is also of the view that the trend set by the Gauteng Province whereby the Province has decided to introduce a new type of gaming machine in the absence of a national framework and legislation has created a dangerous precedent and undermines the spirit of co-operative governance and the policy of a managed rollout of gambling activities. Gauteng gambling legislation needs to be brought in line with national gambling legislation.

6.7 Poker

6.7.1 Introduction

The game of Poker like bingo can be delivered in various forms: in the form of poker tournaments, held at casinos; social poker games held in people's homes; online poker, which is played over the internet; and poker offered on gaming machines. The Commission was advised that smaller poker tournaments are being held in public places such as restaurants. The current legislative framework does not cater for all forms of delivery of this game. However, the Commission had requests from both poker tournament operators and those that would like to offer online poker to consider whether these forms of the game could be accommodated within the regulatory framework.

6.7.2 Defining the game

Although the term “poker” is not specifically defined in our legislation, reference is made to “poker” in the definition of a “Casino Game” in our provincial legislation. To illustrate this, the Gauteng Gambling Act, defines a “casino game” as:

“any game, irrespective of whether or not the result thereof is determined by chance or a measure of skill, played with playing cards, dice, a gaming machine or any other device used to determine win or loss in the outcome of a wager for money or other valuable consideration, and includes, without derogating from the generality of the foregoing, blackjack, *chemin de fer*, baccarat, bingo, keno, twenty-one, poker and roulette, or any other game whose rules closely resemble that of the foregoing”

As a result the holder of a valid casino licence is able to legally offer the game of poker within a licensed casino premises. This is either on a gaming machine or via tournaments that are held in the casino.

6.7.3 Poker in South Africa at present

Casino poker is played in casinos, both on gaming machines, in which case it is played “against the house” and in poker tournaments (live poker) in which players compete with each other and the casino takes a percentage for hosting the game. These tournaments are a form of person-to-person gaming. Both of these forms of poker are legal when played within the licensed casino environment.

The Commission was advised by a poker tournament operator that there is a lack of transparency around the rules of these legal poker tournaments and that these could differ from casino to casino. Whilst the Commission is not in a position and would not want to prescribe what the rules of a poker game should be the Commission is of the view that there is a need for more clarity, uniformity and transparency in the rules to ensure that punters are satisfied that the game being offered is fair and that there are adequate protection mechanisms in place to protect punters against collusion and cheating which could occur. Further poker tournaments played in a casino require regulation with regard to the rake amount,⁷³ which often varies from casino to casino. It was suggested that the gambling boards should specify the maximum and minimum rake and that a limit be placed on the extension of credit to players.

In addition, the Commission was advised both by poker operators and provincial regulatory authorities that there are cash poker games, which are often run by restaurants with the buy in ranging from R150 to R500 per player and is becoming extremely popular. This form of poker played outside a licensed casino is currently illegal. The Commission did not have the opportunity to actually view such a game. However, there is a danger that if not controlled that this could lead to the proliferation of this form of the game.

6.7.4 Online poker

The online game of poker is similar to live game of poker in some ways but it is highly regulated, more transparent, and it often involves more money. This form of poker is the most popular interactive gambling activity. As explained by the industry,

⁷³ The rake is the percentage of the pot retained by the house in return for hosting the game.

the game of poker involves players playing against each other, making this one of the most popular forms of online person-to-person gambling.

The existing gambling legislation allows the holder of a Casino licence to offer the game of poker either on machines or in the form of poker tournaments. However it does not provide a legal framework for this form of gambling when played outside the casino. The recent amendments to the National Gambling Act, in so far as they deal with interactive gambling, did not include poker in the ambit of the interactive gambling legislation, despite its popularity. The implication therefore is that poker would continue to be played illegally online, given its popularity, should the status quo be maintained.

6.7.5 Analysis and conclusion

6.7.5.1 Demand

There appears to be a growing demand for poker, both at tournaments and online. This is consistent with a growing global demand for online poker, which is likely to continue. If the Internet is to be effectively regulated, the exclusion of online poker from the regulatory framework will only encourage players to seek illegal alternatives. Thus accommodating this existing demand would appear to be necessary if ways are to be found to regulate this gambling activity.

6.7.5.2 Proliferation

Online poker is the fastest growing online gambling activity and thus could lead to proliferation, if this is not regulated and a limit placed on the number of licensees able to offer this activity. The same applies to illegal poker tournaments offered in restaurants. These activities are hard to control, but if no legal framework is developed or alternatively if enforcement is not stepped up, this form of activity is likely to proliferate.

6.7.5.3 Protection

Online poker can be accommodated in the existing framework in the same way as betting exchanges, as it is a form of person-to-person betting. However, in order to provide better protection to punters, existing legislation and regulation would need to be amended.

6.7.5.4 Geographical location

Online poker can be played anywhere. Poker tournaments do not appear to be geographically limited either.

6.7.5.5 Economic viability

The cost of making online poker available to punters in South Africa would be driven by the tax structure and other regulatory requirements. Poker tournaments are viable for tournament organisers, provided their costs are covered by the rake.

6.7.5.6 Economic impact

Online poker operators like betting exchange operators would be expected to pay taxes and thus contribute towards the fiscus. Like any other online gambling business, this sector does not employ a large number of people. Some opportunity exists for call centres to be established in South Africa and for technology and skills transfer.

6.7.5.7 Competition

Both online and tournament poker played outside of casinos offer competition to the poker tournaments that are currently played at casinos. It is unlikely to offer much innovation in the market, as they are effectively only a different delivery mechanism for an existing game.

6.7.5.8 Enforcement

Tournament poker in restaurants will be difficult to eliminate, unless a licensing regime for tournament organisers is introduced. Online poker would be most effectively regulated as part of an online gambling regime.

6.7.6 Recommendations

There appears to be substantial existing demand for poker to be played outside of licensed casinos and in particular, online. However, currently, poker may only be played at casinos. The current framework appears to be too restrictive, given the demand, which manifests in illegal games and tournaments, as well given the fact that poker is largely viewed as a game of skill.

In order to bring into line the illegal industry and to provide player protection against potentially unfair rules and rakes, the Commission recommends that the regulatory framework should be reviewed and a particular policy on poker should be developed. In particular, the Commission offers the following recommendations for consideration:

1. It is proposed that regulators should license poker tournament operators. Licensed operators would be able to run games at licensed gambling premises (existing licensees) or at places where occasional licences can be obtained through a local government office, such as in restaurants, as determined by the proposed policy. This could provide gambling operators, such as bingo halls, with other forms of revenue.
2. The Commission is of the view that while licences should be issued to host poker events at venues, including licensed gambling venues and venues that have obtained occasional licences, standalone poker houses and clubs should not be permitted. These clubs will lead to the proliferation of gambling venues, which is undesirable from the destination approach that has been adopted in South Africa.
3. Online poker should also be regulated through online gambling legislation, but should be subject to the same rules regarding the game, as land-based poker. The regulators should ensure that operators put in place measures to check for and prevent as far as possible unfair play, such as collusion.

6.8 Betting exchanges

6.8.1 Introduction

Betting exchanges are a market innovation in the betting area that originated in the United Kingdom, where they were first licensed in 2000. In South Africa, betting exchanges are often conflated with and referred to as person-to-person betting. Although a betting exchange is a form of person-to-person betting it is not the only form of person-to-person betting. This section of the report defines person-to-person betting, describes betting exchanges, and evaluates the case for their regulation in South Africa.

6.8.2 Person-to-Person Betting

In the South African gambling environment, the term person-to-person gambling implies an online gambling activity that allows players to bet against each other. Although the term person-to-person betting is not defined in any existing legislation, in *Grundlingh v Phumelela Gaming and Leisure Ltd* 2005 6 SA 502 (SCA), a totalisator is referred to as a form of person-to-person betting.

“[7] As the definition indicates, the totalisator operates on principles different from those described in the preceding paragraph. All the bets (tote bets) on a particular race (e.g. all the bets for a win in race no 1) are pooled. From the resulting (gross) pool or total, tax and administration expenses (which include the profit of the tote operator) are deducted.

The net pool is divided equally between all the successful punters in proportion to their respective stakes. *There is no betting risk to the totalisator or its operator.* Subject to lawful deductions, the tote pays out in winnings (or dividends) what it has received in bets. As it was succinctly put in the papers (in lay terms) *punters on the tote bet against each other*, (whether that is the correct legal position is unnecessary to decide – c.f. *Tote Investors Ltd v Smoker* (supra); whereas a punter placing a bet with a bookmaker bets against that bookmaker. It is also clear that the odds on a tote bet are not fixed when the bet is laid because no odds are agreed. On the contrary, everything depends on how much money is wagered on the race, via the tote, and on how many winning tickets there are. The dividend can only be calculated after the race has been run.”

The above would suggest that a tote bet is characterised by the fact that punters on a totalisator bet against each other and that the tote takes no risk. Bets are not against an operator but against other punters, and the operator does not have any interest in the outcome and does not take any betting risk. The totalisator, which is an already licensed form of gambling, will therefore fall into the category of person-to-person gambling. In addition bingo involves players playing against each other and so does the game of poker (which is licensed in casinos).

Thus person-to-person gambling is not a new form of gambling and already exists and is licensed in the form of totalisator betting, bingo and poker played within a casino. Betting exchanges are an online form of person-to-person betting.

6.8.3 What is a betting exchange?

In their submission to the Commission, Betfair Limited, a major UK based and licensed sports betting and gaming company, described a betting exchange as a model that uses advanced computer software to ensure that every stake risked by one punter is exactly matched by the stake of another punter.

A betting exchange, they explained, acts as a brokerage by allowing punters to bet against each other in a controlled market place. It is thus similar to a stock exchange, in that it provides a platform to connect gamblers with opposing views on the outcome of a sporting event, in the same way a stock exchange connects buyers and sellers of securities. It allows a punter to back or lay bets at odds that the punter is willing to offer, however the bet will only be accepted by the betting exchange if another punter or punters with the opposing view successfully offset the bet.

The role of the betting exchange is thus to create a betting platform and, using sophisticated technology, to match the bets and manage the manner in which the payments and betting is conducted. The betting exchange carries no risk, as punters play against each other not “against” the house, and as such, has no incentive to manipulate the odds or the outcome. Betting exchanges maintain a full evidentiary audit trail of the betting transaction, which helps sports regulators identify corrupters or fraudsters.

6.8.4 Betting exchanges and the existing regulatory framework

Betting exchanges are not explicitly provided for in the legislation at present. However, it can be argued that they can currently be accommodated in the legislation, depending on the interpretation.

Section 4 of the National Gambling Act, which deals with Bets and Wagers, provides that:

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

Section 4 should be read with Section 3, which states that any activity falling under Section 4 (1) or Section 4 (2) is considered a gambling activity.

In addition, it is also important to note that Section 5 of the National Gambling Act, which deals with gambling games, excludes all bets or wagers that fall into Section 4 as gambling games, apart from Section 4(1)(b). Thus betting exchanges would clearly be captured by the ambit of Section 4(1)(c), which envisages a situation where a person places or accepts a bet or a wager when that person stakes or accepts a stake of money or anything of value with one or more persons on any contingency. The activity of betting on a betting exchange would constitute a bet or wager in terms of Section 4(1)(c). Although betting on the platform of a betting exchange takes place entirely online, our interactive gambling legislation does not make provision for this form of gambling. This interpretation is affirmed by the draft regulations published by the National Gambling Board in the government gazette of 27 February 2009, which provided that

“interactive gambling transactions between two or more persons that are facilitated by a third party would not be regarded as specified games, for the purposes of these regulations.”

Thus an interactive provider would not be able to offer person-to-person products.

Another approach would be to suggest that betting exchanges could also be a bet or wager in terms of Section 4(2)(b), which is “any scheme, form or system of betting, whether mechanically operated or not, that is operated on similar principles to a totalisator.” The current gambling laws do not provide a regulatory structure for a bet or wager that falls under Section 4(1)(c). Thus, if betting exchanges are included in our legal framework the provincial gambling regulatory authorities would be competent by virtue of Schedule 4 of the Constitution to introduce legislation to accommodate betting exchanges.

If it were accepted that a betting exchange could fall under Section 4(2)(b), betting exchanges could be accommodated by amending provincial legislation relating to totalisators. It appears that at present, PRGAs are in fact licensing online person-to-person betting and forms of betting exchanges. The Commission is aware of two examples of such activities that have been licensed already by provincial regulators.

The first relates to Soccer 6, which is a sports-betting product offered online (www.soccer6.co.za) by Phumelela Gaming and Leisure (Pty) Ltd and Gold Circle (Pty) Ltd since 2003. According to the website, the product allows punters to bet on three options, team A to win, team B to win, or a draw. All bets, i.e. the tote and pari-mutuel bets (including soccer6) are comingled into a single national pool under the TAB banner. In addition the website explains that the various ways to play are online, via telephone, at the TAB, via cell phone using cell phone banking from First National Bank, any FNB ATM, or via FNB online banking. Whilst the holders of the two totalisator licences do not refer to this product offering as a sports betting exchange, the fact that the operator is taking no risk and the payout is done on the tote platform makes this a form of person to person betting which is not too far removed from the betting exchange offered by well known international betting exchanges such as Betfair Limited.

The second example identified by the Commission is the offering of a SA bookmaker, Interbet International (Pty) Ltd, which is licensed by the Western Cape Gambling Board. Their website www.interbet.co.za describes Interbet “as a web based trading system that allows the public to bet online with all South Africa’s licensed

bookmakers.” A punter can bet on local and international sports including horse racing. This is a vastly different system to traditional bookmaking, where a punter places a bet with a bookmaker and if necessary the bookmaker takes back the bet with another bookmaker. This according to the submission from the Western Cape Bookmakers Association is a betting exchange product that is catering for this demand.

Thus, while there is no explicit provision for betting exchanges or other intermediaries, provincial regulators are currently licensing similar institutions. In order to accommodate this form of gambling, the existing legislation would need to be amended to allow for this. If permissible, provision for betting exchanges would best be done with the framework of national policy.

6.8.5 International precedents

Betting exchanges are a market innovation that was pioneered by Betfair, who remains the market leaders in this field. Betfair was first licensed in 2000 in the UK and also hold licences in Australia, Malta, Italy, Austria and Germany.

Betting exchanges are a phenomenon that is still growing, even in Europe where they have made significant inroads into the sports betting market during the past five years. According to Niall O’Connor (2009, p.1)

“the internet has revolutionized the nature of traditional betting markets. And at the forefront of that revolution has been the betting exchanges - trading systems that facilitate person to person betting through allowing traders to either back or lay on a wide range of sports betting markets. The ability to back and lay, alongside low transaction and information costs, conspires to attract a heavier concentration of informed, financially focused bettors onto the betting exchanges in that these informed bettors seek out opportunities where they can identify misperceptions of probability, so as to benefit by removing or mitigating it, their presence goes some way towards erasing the favourite long-shot bias. Moreover, the absence of risk-averse bookmakers from the equation, leads to the development of 100% books on almost every sporting event.”

Given the fact that betting exchanges are a recently developed gambling activity, many jurisdictions around the world are still establishing how to treat betting exchanges. In the UK, according to O’Connor (2009, p.3), “a policy paper issued by the Department of Culture Media and Sport (DCMS) in April 2003, revealed, for the first time, that the UK Government was prepared to embrace the concept of betting exchanges.”

The paper stated that betting exchanges would be bound by the general conditions of an ordinary betting licence, but that they would also be subjected to specific duties:

1. They would not be able to initiate bets in any way on the exchange - in that they merely construct a controlled market; and are not a party to the bet.
2. They may not permit their customers to identify themselves to each other, either through personal contact or otherwise.
3. They must display and disseminate their betting rules.
4. They must consent to having their play and payment systems checked by someone authorized by the Gambling Commission.

5. They must at all time separate money belonging to punters and their own operating resources.

On matters of public policy, the exchanges will be subjected to the same level of regulation as any other gambling product operating through the Internet. The paper also stated that, pursuant to the steps which will be taken to achieve the Government's regulatory objectives there will be no need for individual layers on the betting exchanges to be licensed" (O'Connor, 2009, p.3)

In the United Kingdom, betting exchanges fall into the definition of a bookmaker. Betfair, for example, holds an online bookmaker licence in the UK, which allows for a wider definition of bookmaking than in South Africa.

6.8.6 Comments from the Western Cape Bookmakers Association

The Commission received a submission from the Western Cape Bookmakers Association, which is a voluntary association promoting the interests of licensed bookmakers in the Western Cape. The Association holds a strong view that betting exchanges should not be permitted as an additional form of licensed gambling. The following arguments to substantiate their position were offered:

1. The betting exchange has no interest in the outcome of any transaction between the parties and while a betting exchange can monitor and report upon transactions it cannot prevent them from taking place. It cannot proactively monitor suspicious transactions in the same manner a traditional bookmaker can.
2. A betting exchange facilitates betting transactions between two anonymous parties, neither of whom are licensed. There is no personal probity on any individual partaking in these transactions. In each case, at least one of the parties to the wager is playing the part of a bookmaker who would ordinarily required to submit to probity and licensing as a means of upholding the integrity and trustworthiness of the industry.
3. Customers on a betting exchange are able to bet on a losing outcome, which in the case of horseracing could lead to manipulation of the outcome.
4. There is already a homegrown system in place called Interbet, which allows bookmakers to trade with each other anonymously. In this instance, both parties to the transaction are bookmakers and therefore licensed. While the system does allow the betting public to place bets and thus to participate in the relevant market, the other party to the bet is a licensed bookmaker.
5. Betting exchanges if allowed should be required to comply with the provisions of the Financial Intelligence Center Act (FICA).

The Commission considered the above objection and accepts that a betting exchange is not the same as a traditional bookmaker. In fact the business model of a betting exchange is more similar to a totalisator than to a bookmaker. Furthermore, if betting exchanges were licensed, it could address the concern raised that neither party to the wager is licensed. The concerns can therefore be addressed through regulation. The Commission visited Betfair Limited in the United Kingdom. Betfair have a team of people dedicated to monitoring transactions and reporting on suspicious transactions. In fact the systems in place are highly sophisticated and give some assurance that fraudulent and illegal transactions can be identified.

A major concern expressed by both the Western Cape Bookmakers Association and international stakeholders opposed to betting exchanges revolves around the

integrity of sport and the potential for corruption in sport. The Commission considered this aspect and was satisfied that firstly the parties to a wager on a betting exchange are not known to each other but they are known to the betting exchange. Each punter is required to go through an extensive registration process, which is verified and recorded. Further if there is any suspicious activity these bets are voided by the betting exchange. Betting exchanges are incentivised to do so as they have no interest in the outcome of the wager.

In response to the argument that betting exchanges permit punters to bet on a losing outcome, the Commission wishes to point out that in a tennis match or a soccer match, if a punter bets that side A or Player A will win, this implies that the punter is taking the view that Player B or Side B will lose. Whether the bet is placed on a betting exchange or with a bookmaker, the words “win” or “lose” do not remove the risk of manipulation of the game or sport. Similarly in a horse race, long before the introduction of betting exchanges, there existed the possibility of cheating and manipulation. In fact, there have been various high profile cases of sports people using bookmakers to cheat. Unfortunately, it is not the punters but rather the participants in a sporting event that are corruptors of the sport. Further it is not the ambit of the gambling policymakers and regulators to maintain the integrity of sport but rather the sporting bodies who are responsible for this. The most that can be done is to ensure that there are risk mitigation mechanisms in place and that there is good cooperation between the sporting bodies and the betting operators to prevent this.

6.8.7 Analysis and conclusion

The Commission as part of its consideration in determining whether or not to recommend the licensing of betting exchange applied the evaluation criteria referred to in 6.2 of this chapter.

6.8.7.1 Demand

There is an existing local demand for this product despite international operators such as Betfair not advertising in SA. This product is particularly and rather ironically popular with licensed South African bookmakers to guide their pricing or to hedge their bets. The target market is not the poor as one needs to have access to the internet, the betting exchange platform is fairly sophisticated and those who favour this form of betting the players are generally people who are knowledgeable on sports and have an understanding of sports-betting and are price sensitive

6.8.7.2 Proliferation

Betting exchanges use very advanced software systems and thus worldwide there are no more than a handful (about 5 big companies) of betting exchanges in existence. Thus there are unlikely to be several operators offering this form of gambling. An issue that could however lead to proliferation if not regulated and properly controlled is the ability to deliver this product on mobile phones, currently this is not the case however existing licensed bookmakers and totalisators are already doing so thus if regulated and controlled under the interactive gambling framework this can be monitored. Further measures need to be in place to mitigate against this risk of access to the Internet via mobiles, this could for instance be achieved by requiring that every time a punter logs on that the punter is required to enter their pin number and for security reasons the user should be required to identify themselves. Further it should be a requirement that punters can only transact over the Internet via either a credit or debit card or a verified bank account or funding mechanism that satisfies the FICA requirements.

6.8.7.3 Protection

As explained above betting exchanges are capable of being accommodated within the existing regulatory framework however it would be more suitable to amend the existing interactive gambling framework to cater for and incorporate betting exchanges. In instances where punters have been excluded, the operators if licensed in South Africa would be able to exclude them as well. In addition it would be expected that licensed operators would contribute to the NRGF programme as well. The value of having licensed South African operators is that these operators can be trusted and accountable to South African regulators which ensures that the punter is better protected.

6.8.7.4 Geographical location

As betting exchanges are entirely online, they can be accessed from any I facility. If regulated international operators should be expected despite being online to have a physical presence in South Africa, this does not necessarily mean that the server would need to be located in SA, however it would be necessary that South African regulators would be able to evaluate, test and the software and server.

6.8.7.5 Economic viability

Betting exchanges are a financially viable business model. The existing bookmaking industry could however lose market share to betting exchanges, and perhaps this would encourage bookmakers to perhaps modernise their business and to offer more competitive prices to the players.

6.8.7.6 Economic impact

Betting exchanges should like other forms of gambling be expected to comply with B-BBEE and any other applicable upliftment policy of government. In terms of job creation, like other online gambling activities a betting exchange will not be a major job creator. A betting exchange the size of Betfair for instance creates 2,300 direct employment opportunities. Further like any other online gambling business, this sector does not employ a large number of people however opportunity does exist for call centres to be established here and for technology and skills transfer. At present the fact that this activity is not regulated does not encourage the establishment of call centers as this would be illegal and operators are thus not encouraged to make investments for fear that this could be illegal.

6.8.7.7 Revenue

Betting exchanges like any other online bookmaker, totalisator or interactive gambling operator would be expected to pay taxes and thus contribute towards the fiscus. The consequence of *not* regulating this activity is that the demand will remain, however the potential to capture this revenue would be lost as players will simply play on other, unregulated, betting exchanges.

6.8.7.8 Competition

International experience suggests that betting exchanges offer competition to existing sports betting operators, both bookmakers and totalisators. Betting exchanges have been a driver of innovation in this market. The licensing of betting exchanges in South Africa would allow for new entry, but presumably there would not be many betting exchanges seeking to be licensed. Betting exchanges are likely to put pressure on existing forms of betting.

6.8.7.9 Enforcement

Betting exchanges can be regulated and properly monitored if they are licensed.

6.8.8 Recommendation

As with other forms of online gambling, there is existing demand for betting exchanges. It is a technological innovation in online betting that is currently growing in popularity internationally and is likely to grow in South Africa as more punters shift to online betting and gambling.

The Commission recommends bringing these activities into the regulatory framework explicitly. At present, there is no transparency in the regulatory framework. The criteria of provinces that are licensing operators of similar activities are not clear, there are no standards and it opens the door for proliferation if regulatory standards and limits are not clearly set out upfront.

Bringing these activities into the regulatory net and providing punters with a (limited) choice of licensed operators is likely to provide an outlet for existing demand, will discourage punters from seeking out unlicensed sites, will maximise punter protection and generate some tax revenues from these activities.

Betting exchanges are unlikely to stimulate much new demand, as they likely to appeal to existing clients of either betting or online gambling operators. Much of the opposition to betting exchanges appears to be derived from concerns by existing operators that their markets will be put under pressure from competition by betting exchanges. The Commission is of the view that the fact that betting exchanges would present competition to existing forms of gambling is not a good reason to oppose their introduction. The Commission has taken cognisance of the arguments raised by the horseracing industry in other jurisdictions that the lower contributions by betting exchanges to levies supporting the industry has a negative impact on the survival of the industry. The industry must, however, accept that the innovation exists and that they will need to find new ways to ensure their sustainability.

On the assumption that betting exchanges are unlikely to stimulate much new demand, the Commission is not greatly concerned that it will result in proliferation, provided that betting exchanges are regulated in the context of online gambling. It is recommended that the online regulation makes clear provision for such intermediaries and sets out the requirements for betting exchanges. The policy document developed in the United Kingdom, referred to above, could provide guidance to policymakers and legislators. The particular recommendations of interest in the policy paper issued by the UK Department of Culture Media and Sport (DCMS) in April 2003 are outlined below:

1. Betting exchanges would not be able to initiate bets in any way on the exchange - in that they merely construct a controlled market; and are not a party to the bet.
2. They may not permit their customers to identify themselves to each other, either through personal contact or otherwise.
3. They must display and disseminate their betting rules.
4. They must consent to having their play and payment systems checked by someone authorized by the regulator.
5. They must at all times separate money belonging to punters and their own operating resources.

It is recommended that these requirements be considered for inclusion in the legislative framework.

6.9 Virtual racing

6.9.1 Introduction

The gambling industry like all other facets of human endeavour is influenced by technological advancements and changes. Today modern software technology makes it possible for a bookmaker to offer bets on racing, be it horseracing, dog racing or any other form of racing, which is virtually taking place entirely in cyberspace. There is no need for a live event, as the entire race is a virtual representation created by a computer programme using a random number generator to determine the outcome or winner.

It is also possible to bet on a strategy game that involves breeding, training, buying, selling and racing online horses or dogs against each other. The National Gambling Board has suggested that there is a need to determine whether this activity can be accommodated in the legislative framework, and added that the existing legislation does not specify that a bet or wager taken by a bookmaker via the Internet needs to be on a real or actual event. The NGB suggests that it is important to determine where this would best be regulated, if it were an interactive game. Phumelela Gaming and Leisure also asked the Commission, during a visit to their offices to consider including this in the legislative framework.

Whilst it may be argued by the holders of a tote licence that this is simply a form of racing that takes place online rather than on a racetrack, i.e., as nothing more than a technological advancement of the real form of the game, the Commission is not convinced that this is actually true.

6.9.2 Analysis and conclusion

The Commission compared virtual horse racing to a real horse race and found that in a real horse race, the outcome of the race is not determined by a random number generator but by the ability of the animal, its trainer and its jockey. A virtual horse race is in the Commission's opinion apart from using the graphic representation of horses could use any other characterisation, a dog or a pigeon, for example. This does not make the activity dog or pigeon racing. Thus, the Commission does not deem this to be a technological advancement on horse racing but rather an interactive gambling game. This activity would be captured as such by the legislation dealing with interactive gambling discussed below. Thus if the holders of a totalisator licence wished to offer this form of racing, an interactive gambling licence would be necessary. It should be however be noted that if this form gaming is offered via a gaming machine, either in a casino or on a licensed LPM, this would not require an interactive gambling licence as it would be covered by the legislation relating to gaming machines. The relevant approvals for these games would have to be derived from the relevant regulatory framework for interactive gambling or for gambling machines.

6.10 Online gambling

6.10.1 What is Interactive Gambling?

In terms of our existing legislation there is no definition of "interactive gambling". However the term an "interactive game" is defined and "means a gambling game

played or available to be played through the mechanism of an electronic agent accessed over the Internet other than a game that can be played only in a licensed premises and only if the licensee of any such premises is authorised to make such game available for play”.

The 2001 Budd Report by the UK Department of Culture, Media and Sport (DCMS), 2001, distinguished two forms of online gambling, where this was understood to be gambling through a medium that required a telephone connection, namely online betting and on-line gaming.

- Online betting: interactive services, where the bet occurs online, but the event occurs off-line. The event gambled on takes place separately from the platform and the result is independently verifiable. The online system does not generate the result: it is a conduit for communicating information. Thus wagering on sports, racing and lotteries will fall into this category;
- Online gaming: gaming services, which involve the use of random number generator or other device, which is used to determine the outcome. Thus an online casino would fall into this category.

The National Gambling Amendment Act 2008, which dealt with interactive gambling, was crafted to cater primarily for games played over the Internet, which were considered to be entirely interactive and against the “house”. This is what the Budd Report referred to as “online gaming”. The current legislation was intended to exclude what the Budd Report referred to as “online betting”. This position was reaffirmed in the draft regulations, where Regulation 3 provides that “*Electronic betting and wagering on horse racing and sports will not be regarded as a form of electronic communication, for the purposes of these regulations*”. This formulation confirms that there was a specific carve out for bookmakers and totalisators in terms of this legislation.

As a result of the limited definition of “interactive gambling” adopted, online poker and betting exchanges are not covered in the ambit of the legislation. This interpretation is confirmed by the draft regulations published by the National Gambling Board, which provided in Regulation 2 that, “*Interactive gambling transactions between two or more persons that are facilitated by a third party would not be regarded as specified games, for the purposes of these regulations*”, thus excluding both online poker and betting exchanges from the ambit of this legislation.

Furthermore, the draft regulations provide in Regulation 2 that “*electronic data transfer devices, that are not connected to the internet, such as interactive television, telephone, text messaging service (SMS), will not be regarded as a form of electronic communication, for the purposes of these regulations*.” The implications of both the intended exclusion of betting exchanges and online poker as well as the carve out for bookmakers and totes contained in Regulation 3 of the draft regulations will be discussed in more detail below.

Other jurisdictions, such as the United Kingdom, have cast the net wider than in South Africa. The UK Gambling Act, 2005 adopts the concept of “remote gambling” to cover gambling where the participants are not face to face on the same premises. The UK law thus provide for two categories of gambling licences, remote and non-remote. “Remote gambling” means gambling in which persons participate by the use of remote communication, which in turn means communication using the internet, telephone, television, radio, or any other kind of electronic or other technology for facilitating communication. Thus, a bookmaker in the UK could have a non-remote

licence if it is purely a land-based operator. However, if the operator accepts bets via their website such an operator would need a remote betting licence. The UK also provides for the licensing of betting intermediaries (these are operators who bring two or more parties together, but do not have liability for their bets). Similarly betting intermediaries can be remote or non-remote.

The consequences of the more limited definition adopted by us is discussed below.

6.10.2 The dangers of the current approach

Although the National Gambling Act, 2004 did not contain provisions relating to online or interactive gambling, it made explicit provision for such regulation. The Act contained a transitional provision that required the National Gambling Board to establish a committee to consider and report on national policy to regulate interactive gambling. It further required that this committee must within one year after the effective date present its report to the NGB and within two years after the effective date the Minister after considering the report must introduce legislation in Parliament to regulate interactive gambling.

In 2007, legislation providing for the regulation of interactive gambling was introduced and passed by the National Assembly and the National Council of Provinces. The objective of this legislation was amongst others to provide for the regulation of interactive gambling so as to protect society against the stimulation of the demand for gambling; to provide for the registration of players and opening of player accounts and to provide for the further protection of minors and other persons vulnerable to the negative effects of gambling.

This legislation was later passed and signed into law by the President of the Republic of South Africa. The current status of the interactive gambling law is that whilst Cabinet and Parliament approved and passed the law, which allows for the licensing of interactive gambling, no licences have been issued as the Regulations relating to this legislation which were promulgated for comment in 2009 were not supported by the Portfolio Committee of Trade and Industry in the National Assembly. At present, therefore, interactive gambling is not permitted in South Africa and is illegal.

In the absence of licences, various unscrupulous interactive gambling operators have been offering and advertising their gambling products to the South African public. These services are widely advertised on the National Television Broadcaster, the SABC, on satellite television, and even in national magazines.

In addition, because of the carve out provided for in the legislation, certain licensed bookmakers and totalisators, are offering betting and wagering via their Internet websites. More recently there has been a trend for licensed bookmakers and totalisators such as, Interbet International (Pty) Ltd, which is licensed by the Western Cape Gambling Board and, Phumelela Gaming and Leisure to offer punters the ability to bet via their cell phone or via FNB internet banking. The use of cell phones to bet is not any different to using the Internet. However, bookmakers and totalisators are not subject to the same restrictions or protection mechanisms that interactive gambling operators are expected to comply with. Due to the accessibility of mobile phones, this can be expected to lead to the proliferation of licensed online betting by these operators, without proper assessment of the risks.

The fragmented approach to dealing with interactive gambling and the fact that some licensed operators are allowed to offer betting over the Internet has encouraged

confusion about the status of interactive gambling in South Africa. This issue was highlighted at a number of public hearings held by the Commission. The South African public was confused about the status of online gambling, since the illegal operators are advertising freely on national and satellite television leading the general public to assume that this is now legal.

In addition, the passing of the 2007 Amendments to the National Gambling Act in relation to interactive gambling was widely covered by the media, which has also led the public to assume that the operators advertising and promoting themselves to the South African public must be legal.

The current “grey” status of interactive gambling requires *immediate attention*. The danger of not taking decisive action is that, the government and gambling regulators are exposing themselves to possible legal challenge by the members of the Public for allowing the illegal interactive gambling operators to dupe the public into believing that they are legal. The Government is urged to take urgent action, to inform the public using the television and newspapers that these operators are illegal. Further, the fact that these illegal operators are allowed to freely advertise and offer their services to the South African public undermines the very objectives stated above that the legislation was designed to achieve.

6.10.3 *International precedents*

Online gambling is the modern face of gambling and undoubtedly a fast growing market segment, with more punters expected to shift from traditional forms of gambling to online gambling in future. Online gambling is now permitted in a number of jurisdictions around the globe. It is reported that the “first case of money being wagered over the internet by the general public appeared to be online purchase of lottery tickets from International Lottery in Liechtenstein for a manual drawing that occurred on October 7, 1995”. Rapid expansion of online wagering apparently followed, with most of the new online gambling sites being sport/race books and casinos, basing their operations in Caribbean and Central American countries. Betting exchanges and skills game sites were later added on. In 2007, there were an estimated 2069 Internet gambling websites owned by 436 companies operating in 45 different jurisdictions.

Although online gambling is a rapidly growing market and has been in existence for 10 years, a surprising number of jurisdictions are still struggling with whether to permit it.

Several smaller jurisdictions, such as Alderney, Gibraltar, Malta, Curacao and Antigua, have seen an opportunity in generating tax revenues and have created regulatory regimes, designed to attract operators. Alderney, for example, has styled itself as a strict, reputable regulator and tends to attract operators who wish to implement high standards.

A significant number of jurisdictions are still prohibiting online gambling, such as the USA, Australia (prohibit Australian citizens from gambling online), the Netherlands, Germany and other European countries. However, increasingly, jurisdictions are coming to the conclusion that the prohibitions are difficult to enforce and that they are not offering their citizens any player protection. France and Italy have recently introduced a licensing regime. Denmark is on the point of introducing its regime. Other European countries are closely observing the experiences in these countries, while they wait to make a decision. Several states in the USA appear to be

reconsidering their position. The reasons for the current prohibitions vary. In Europe, much of it is driven by the protection of state monopolies. In a number of cases, the state monopolies are able to take online bets, so the prohibitions on online gambling are not absolute. In the USA and in Australia, it appears to be driven by concerns around the potential for money laundering, a strong lobby from the land-based industry concerns about the proliferation of gambling, based largely on the experiences of uncontrolled growth of land-based operations, as well as the as yet unknown impact on problem gambling.

The status of online gambling in some of the jurisdictions follows below.

6.10.3.1 Great Britain

The Gambling Act of 2005 allowed fully legal, governmentally regulated online gambling sites within its borders with three objectives in mind: keeping gambling crime free; making sure that gambling is fair and open and protecting children and the vulnerable adults.

In order to protect children and the vulnerable, companies are not allowed to seek out children and are responsible for keeping customers aware of their spending. The UK is not only interested in allowing legalized internet gambling within its own borders, but is also encouraging other countries to match their policies with those of the UK.

Great Britain currently allows online operators, who are licensed in a white listed jurisdiction to operate in Great Britain and even to advertise their services. The Gambling Commission of Great Britain has indicated that a review of this approach is imminent and that a licensing requirement will be introduced. Thus online operators may have their primary registration in an offshore jurisdiction, but will be required by jurisdictions to hold local licences in order to be able to advertise their services.

It is important in this area that regulators recognize the global nature of the business and the fact that different elements of an online gambling enterprise can be held in different parts of the world. Given the global nature of the business, the tax regime has to strike a balance to make it worthwhile for businesses to become licensed. In fact, the challenge will be increasingly not to disadvantage land-based businesses with tax rates that are too high.

6.10.3.2 United States of America (USA)

The USA has adopted a prohibitionist approach to online gambling and one major method used is to pressure banks and companies which specialize in online money transfers to stop wiring money to off-shore online gambling accounts. Many individual states have taken the same approach. However not all forms of online gambling are illegal because the Interstate Horseracing Act of 1978 allows bets across state lines by both telephone and other electronic media.

6.10.3.3 Australia

In 2001 the Commonwealth introduced the Interactive Gambling Act 2001, which provided for the federal framework for the regulation of the online gambling industry in Australia. The Act sought to impede the continued expansion of gambling in Australia, whilst minimising the impact of problem gambling for families and communities. However the Act does not affect the operation of online sports betting

services as these are considered to involve an element of skill rather than game of chance. A number of states have also legislated for online gambling although this is nullified by federal legislation which operates 'over the top' of the state schemes. The present position is that online gambling service providers may operate in Australia, but may not provide their services to Australian consumers. However Australian consumers wishing to engage in online gambling may do so using the services of an offshore operation. The Productivity Commission recommended in 2009 that the Government should lift the ban on interactive gambling as prohibited by the Interactive Gambling Act 2001, subject to a strict consumer regime, but the Australian Government has turned down the recommendation.

6.10.3.4 Alderney

The Alderney Gambling Control Commission has re-modeled the regulatory framework, restructuring it as a mix of licences and certificates. Under the new regime, licences would be used to authorize activities split by function viz: gambling operations that would include player registration, management of player funds and the gambling offering. These would be classified as category 1 licences; and gambling platform for effecting the provision of approved games run from approved hosting services. These would be classified as category 2 licences.

The fee structure is such that the jurisdiction remains financially attractive compared to others and there are player protection measures. The jurisdiction continues to work with global industry to keep itself up to date and fully informed with legislative developments and on a continuous basis the Commission liaises with other international regulatory bodies, enforcement bodies regarding probity, due diligence investigations and common international practices. It also plays a key role in other bodies such as the Gaming Regulators European Forum and the International Association of Gaming Regulators.

6.10.3.5 Italy

Online gambling in Italy is a monopoly and is operated through a concession to a private sector company. A batch of 200 concessionaires is being considered for awarding of online gambling licences. Legalization of online gambling appears to have attracted more customers with 30% of online betting coming from sport betting. The regulatory framework requires that the head quarters and or the server of the operating company be located in the EEA and allows for a non-gaming company to apply for licenses. Consumer protection has improved and is stringently enforced. Operators are required to have a dedicated bank account for players' deposits, to have a maximum time for winnings and withdrawals and to provide for a mandatory self-limitation by players. On an on-going basis the regulator identifies illegal online operators and alerts players to be on the lookout for these illegal sites. Illegal operators are not allowed to advertise in Italy.

6.10.4 Shortcomings of the existing legislation

During the various public engagements, the Commission received verbal and written submissions, as well as further information, from a number of parties. bwin Interactive Entertainment SA (Pty) Limited ("bwin"), an affiliate of the international operator of online gaming and betting services, highlighted a number of the shortcomings of the existing legislation as it relates to interactive gambling:

1. That the *registration requirements* are highly inconvenient for the potential South African consumer compared to the international alternatives (licensed or unlicensed), that generally perform identity checks but perform the entire registration process online. The draft regulations require affidavits sworn in front of a commissioner of oaths and specific written instruction delivered by the consumer to their bank. bwin submit that users will because of the inconvenience of not being able to register entirely online, be less likely to choose the South African licensed operator.
2. Further the limitation that a consumer may only transact through a *single nominated account* and further that the player's account balance held with the online gambling operator may never exceed a statutory limit has the very practical implication that it will create 'compelled' transfers between the player's online account and his bank account each and every time the statutory limit is exceeded; even by just a few Rands.
3. Each transfer would attract unnecessary bank transfer charges. bwin also highlighted the failure to cater for online poker, which is one of the most popular and fastest growing online products as a major shortcoming.

During the Commission's visit to international jurisdictions, Virgin Games raised the concern about the provision in the interactive gambling legislation, which requires the server to be based within South Africa as not being practical. Their view was that established and credible operators would ordinarily have already located their servers in the jurisdictions where they were initially licensed. Since most global operators seek licenses in more than one jurisdiction, there has been a move away from the server location requirement, which was popular in the early days of interactive gambling. This view was supported by Betfair and bwin. In addition, the Alderney gambling regulator also supported this perspective, but advised that the approach taken in Alderney is that the regulator still tests, licenses and has access to the sever and that the location of the server is irrelevant.

In its submission to the Commission, the NGB further highlighted that the currently regulatory framework does not provide for betting exchanges and specifically excludes person-to-person gambling. The implication of the latter exclusion is that online poker, one of the most popular forms of interactive gambling, would be excluded. The Commission considered the issues of poker and betting exchanges in more detail above.

6.10.5 Analysis and conclusion

The regulation of gambling via the Internet has posed a challenge to regulators and policymakers across the world. However, governments in most international jurisdictions recognize that gambling online is an existing and future mode of gambling that is here to stay. Some jurisdictions such as Australia and the USA have decided to prohibit online gambling by its citizens. However it is widely recognized that the borderless nature of the Internet makes effective prohibition difficult to achieve. In determining its recommendation in relation to interactive gambling the Commission applied and tested this form of gambling against its criteria below:

6.10.5.1 Demand

There is an existing demand for gambling the various forms of gambling offered over the internet, which includes, online poker, online casino games, online betting and wagering by using the online websites of land-based licensed bookmakers and

totalisators as well as via the medium of a online betting exchange. The exact extent of the demand has not been accurately established. However, eGaming Review Magazine reported that in 2009, an estimated total gross win of approximately R320m was generated online (onshore and offshore) in South Africa. It further reported that 3% of homes in South Africa have broadband connections and 5% of mobile phones provide EDGE/3G Internet access, an important development in the growth of online gaming.

It is not clear whether this is an entirely new market or not. It is more likely to attract the existing part of society that has already had an exposure to some form of land-based gambling. In particular online poker for instance is seen as a game of skill and therefore attracts more sophisticated punters. Similarly, betting exchanges such as Betfair generally attract punters who are sports enthusiasts and are able to understand how to navigate these sites. Interactive gambling requires access and use of either a computer or an Internet enabled mobile phone. Thus this form of gambling is unlikely to impact or target the poor on a large scale.

6.10.5.2 Proliferation

At the moment bookmakers and totalisators are able to offer betting and wagering via mobile phones. Punters can also access international sites with ease. If not properly monitored, regulated and controlled, this could result in proliferation. Thus, it would appear that in the case of online betting and interactive gambling, a regulatory regime will be necessary to prevent limit proliferation.

6.10.5.3 Protection

Interactive gambling is already catered for in the existing legal framework however to ensure uniform and more effective protection it would be appropriate and necessary to expand the ambit of the existing legislation to cover all forms of internet gambling under the umbrella of one piece of legislation. Thus the existing legislation would need to be amended to include intermediaries, such as sites offering online poker and betting exchanges, as well as online betting and wagering offered by bookmakers and totalisators.

Thus any player using the internet or mobile phone to gamble should be subjected to the same requirements for the registration, opening of player accounts and similarly there should be uniform protection of minors and other vulnerable persons such as excluded persons or those who wish to self exclude. The best way to achieve such protection is by proper effective and uniform regulation of this industry.

The international regulators of online gambling, visited by the Commission, have confirmed industry claims that measures relating to minors and self-exclusion can be more easily implemented and monitored in online gambling than in land-based activities, as the exclusions are systems based and identity of punters is checked by various means in contrast to almost all land-based gambling activities. Gamcare, a civil society organization, also supported this view.

6.10.5.4 Geographical location

This is an activity, which can be accessed anywhere where there is an online connection.

6.10.5.5 Economic viability

This sector is economically viable. However, in order to ensure that credible operators apply to be licensed in our jurisdiction, the level of taxation would need to be carefully considered. Internet gambling is already available in the various forms

explained above and while the existing industry might lose some market share to this form of gambling, the terrestrial forms of gambling will for a long time still be more easily accessible to the majority of South Africans, to whom a visit to the casino or a horse race is not just a form of gambling but destination where one can enjoy various other forms of entertainment as well.

6.10.5.6 Economic impact

License holders of online gambling sometimes do have a preference in terms of where they would wish their server to be located and this can be different from where their head office or operating company is located. However regardless of where the server is located, the online company still requires a license to operate in specific markets and for which license fees, taxes and various other levies are payable. Although it is not expected that online gambling would contribute significantly to employment creation, there is the possibility that operators may locate their call centre in South Africa.

6.10.5.7 Competition

Online gambling is driven by innovation and cutting edge technology and thus is likely to stimulate modernization and innovation in the gambling industry and allow for new entrants into the gambling sector.

6.10.5.8 Enforcement

Regulation of this activity will ensure that licensed operators can be held accountable to South African gambling regulators and that their operations and activities can be monitored and compliance checked.

6.10.5.9 Revenue

Due to the ability of online operators to base themselves in low tax jurisdictions and to attract punters from those locations, online gambling operations tend to be taxed at lower rates than normal land-based activities. However, unless the activities are licensed, countries are unlikely to receive any revenue benefits from the sector.

6.10.6 Recommendations

The Commission is cognizant of the concerns expressed by Parliament regarding underage and compulsive gambling, the risks of fraud and money laundering and the need for proper protection and carefully evaluated the possibility of a continued prohibition against the benefits of legalisation.

In a world driven by technology, online gambling is unlikely to disappear. Internationally, jurisdictions that prohibit interactive gambling often appear to have different forms of online gambling available, which are linked with land-based gambling activities. In addition, it is very resource intensive to enforce prohibitions in such an easily expanded area of gambling. Unlike land-based activities, online gambling operations can be relaunched within minutes.

As a result, jurisdictions such as the USA and Australia, which have chosen to prohibit online gambling, have already begun reviewing this stance. Our own experience has shown that prohibition does not extinguish demand, but simply creates the platform for illegal operators to thrive and establish themselves and their brands. On the other hand, however, uncontrolled legalisation also has the potential for stimulating latent demand on a large scale.

During the international visits, regulators and operators impressed on the Commission the need to regulate online or remote gambling holistically. At issue are the opportunities that the distribution mechanism, namely the Internet, telephone and cell-phone technology, offer for exploitation and for proliferation. The current distinction in South African law between interactive gambling and other forms of online gambling, such as bookmaking, the tote and the lottery, which offer their services online as well, is artificial and does not provide punters with uniform protection. The same testing, verification and probity that would occur for any other online gambling activity, needs to be conducted here as well.

The Commission is therefore of the view that a holistic view of online gambling should be taken to its regulation that includes interactive gambling and all forms of remote gambling, such as telephone or cell phone gambling. The online gambling regulation should also provide for intermediaries, such as betting exchanges and include online betting through bookmakers and the totalisator via the Internet. The National Gambling Act would have to be amended to reflect this approach to include all forms of remote gambling rather than limiting this to games played against the "house" as is currently the situation.

It is proposed that a maximum number of licences should be determined for online gambling to allow for the controlled rollout of online gambling and to monitor its socio-economic impact over time. Too little is known at this stage about its impact on problem gambling to be able to allow a free market for online gambling. In addition, the approach to limit the number of land-based gambling opportunities can be substantially undermined, if online gambling is not strictly controlled and limited. Restrictions on the number of operators and the number of games should be considered.

Care should, however, be taken not to make the number of licences too few or restricted, as the intention of a licensing regime would be to attract operators, not to exclude them. The current regulations proposed 10 licences for interactive gambling. This number does not take into account the licensed totes and bookmakers who are already in existence and offering online gambling. Thus, since the Commission is recommending that the online component of these licensed operators be regulated within the framework of the online gambling legislation, the current limit of 10 should be increased to cater for this. In addition, the Commission recommends that there should not be a requirement for the server to be hosted in South Africa in line with the latest international best practice. The concern of the regulator should, however, be with ensuring the integrity of the system and its ability to be audited at any given point in time.

The international visits and interactions with regulators highlighted that a major challenge in the online gambling is the ability of regulators to encourage licensing. There are few incentives for online operators to become licensed, as the tax implications are usually substantial and as it is difficult to prevent their access to local punters. One of the incentives is the ability of licensed operators to advertise their services. This implies that there needs to be strict enforcement of illegal advertising by unlicensed operators. The approach taken in Italy was instructive. The regulators would send messages to punters accessing illegal sites, highlighting to them that they were about to access an unlicensed site and would therefore not have any protection from the state. In most instances, punters prefer to gamble on licensed sites.

Consideration should be given to adopting the pending Italian requirement of mandatory self-limitations by players, as well as the requirement that upward

changes to those limits can only be effected after 7 days. In addition, strict requirements regarding identity checks should be introduced.

Another important consideration is the question of who regulates online gambling. Given the opportunities for proliferation and the dangers of uneven regulation in this area, the Commission is of the view that a single national regulator should have responsibility for online regulation. That does not mean that provinces should not have some benefit of the revenues, especially considering the potential for online gambling to challenge their existing licensees. The Commission therefore recommends that a revenue-sharing formula is developed and that the revenues are shared between provincial and national regulators.

The Commission further evaluated where the regulator for online gambling should be located. A number of options exist.

It is currently proposed that the NGB should be the regulator for interactive gambling, in addition to the oversight functions over provincial regulators that it currently exercises. The Commission is of the view that the regulation of online gambling should be separated from the oversight function over land-based gambling forms. Online gambling and more traditional land-based forms of gambling will be competing for market-share over time. Conflicts of interest could arise if one regulator is responsible for regulating one of the forms of gambling and for exercising oversight over regulators responsible for competing forms of gambling. Furthermore, if both functions reside in one organisation, it is likely that one of the functions will receive less attention and resources. This has already been apparent in the NLB, where the administration of the NLDTF overshadows the regulation of the lottery (and the enforcement of illegal lottery activities). The Commission is therefore of the view that the NGB should be responsible either for online gambling regulation or for the oversight function, if that is to be maintained.

As the regulation of the lottery operator is largely systems-based, and the NLB is responsible for sports pools, the Commission is of the view that the regulation of online gambling and the regulation of the lottery and sports pools should be combined in one national regulator. This would create greater efficiency in the regulatory framework, and allow for the pooling of scarce resources. The NGB highlighted that the gambling models applied to the lottery and other forms of gambling are different, in the sense that in the case of the lottery a revenue maximising approach has been adopted, whereas in the case of other forms of gambling, a sumptuary approach has been adopted.

The NGB expressed the view that due to these differences, the forms of regulation should not be combined in one regulator. However, sports pools are currently regulated by the NLB and should probably not be subject to a revenue maximising approach. The Commission is of the view that combining the different areas of regulation will not only promote efficiencies, but also great consistency in the regulatory framework. Furthermore, sports betting is an area of gambling that is likely to experience significant growth in future. It has close synergies with online gambling and sports pools. For this reason, it is imperative that the different areas of regulation should be combined to prevent potential arbitrage and differences in approach. Finally, the Commission is of the view that provision would need to be made for effective enforcement mechanisms, which should include a bigger role for banks.

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