

Submission to the National Gambling Amendment Bill, 2007 Submitted for Public Comment

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Respectfully Submitted

Introduction

I make the following representations in my personal capacity as a concerned member of society.

As a former gambling addict actively involved in a 12-step based recovery fellowship I believe I have some insight into the nature of the dangers of gambling, problem gambling, and gambling addiction. I have been active for many years in helping to combat the effects of gambling addiction in the society in which I live.

I am a nominated representative for Civil Society of the South African Advisory Council on Responsible Gambling (SAACREG) – a body established by the National Gambling Board

With this submission, I hope to contribute in some small way to bringing about the principles established in the preamble to the National Gambling Act of 2004, vis:

“It is desirable to establish certain uniform norms and standards, which will safeguard people participating in gambling and their communities against the adverse effect of gambling, applying generally throughout the Republic with regard to casinos, racing, gambling and wagering, so that—

- * gambling activities are effectively regulated, licenced, controlled and policed;

- * members of the public who participate in any licenced 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;”

Specifically, I hope to further contribute to fulfilling the Purpose of the Act as proposed in the amendment to section 2 A

Preamble

It is well established that gambling is an addictive activity and can cause substantial harm to both the addict and society at large unless it is properly regulated. This understanding is encapsulated in the national policy frameworks surrounding gambling activities.

Our country deems it necessary to legalise gambling in order to properly enable the regulation of gambling for the greater common good. Governments globally earn substantial revenues from gambling activities.

Internationally, we know that gambling addicts, or problem gamblers on their way to becoming full-blown addicts, are not of sane mind whilst in their addictive mode and cannot be relied upon to make reasoned judgments in respect of their financial affairs. Quite the opposite! Problem and compulsive gamblers become deluded into believing that gambling is the panacea for their ills and will bring about their future well-being.

There is a growing body of local and international precedent in law which establishes quite clearly that society is beginning to recognize that for the compulsive gambling addict, knowing when to stop is not sufficient. To all intents and purposes, insanity prevails.

Therefore, as a responsible society, our task as regards the regulation of gambling for the purposes of preventing harms to society because of the nature of gambling must be twofold:

Firstly, we must regulate as effectively as possible to ensure that those who are able to gamble recreationally do not jump the divide and become gambling addicts.

Secondly, we should ensure that those who have developed an addiction or severe gambling related problems are not further encumbered, and specifically that they impact as little as possible on those who depend upon them for care and well-being.

In the first case, it is essential, in my view, that we establish a completely independent research body to provide regulators, society and government with timeous and accurate information regarding the state of problem gambling in society in order that effective and timely policy formulation can be brought about.

Likewise, it is necessary that we formulate the proper accountability chain in order to guard against the inherent human condition of vested interest.

In the second case we should ensure as far as possible that those who have been afflicted by a gambling related disorder are permitted the proper manner to

bring about recovery, not only for their own sakes, but for their dependents as well. Yet that cannot ignore the requirement for accountability on the part of the addict.

Since I am neither lawyer nor policy maker, I respectfully submit the following recommendations in the knowledge that many highly principled individuals and institutions have given much thought to the way in which gambling is regulated at the highest level, and that such people are knowledgeable - in a way that I can never be - about the impact on public policy and society at large.

Proposed Amendment to Section 3 of Act 7 of 2004

State of Affairs

1. In recent years there has been a proliferation of games which might not normally be considered to be gambling – particularly on cellphones. For example, in a recent manifestation, patrons at restaurants are invited to send a message from a cellphone to see if they will win the price of their meal for the evening. Since a fee is charged (over and above the usual cost of the Short Message Service of the cell phone service provider), this constitutes gambling and as such ought to be regulated by the Gambling Act.
2. It appears also that such games are not regulated by the National Lotteries Act.
3. Therefore, in order to recognize that such forms of activity are specifically regarded as gambling for the purposes of this amended act, I recommend that a clause similar to the following be inserted.

Insertion in Section 3 in Act 7 of 2004

(d) Any game in which there is an immediate possibility of winning a prize and for which a consideration has been paid.

Proposed Amendment to Section 5 of Act 7 of 2004

State of Affairs

1. Since the dramatic proliferation of gambling type activities, various Radio & Television stations, in addition to the press and media, have recently taken to offering games in which there is no entry stake, and can thus not be defined as gambling in terms of the Act.
2. However, once the person concerned has won a prize, they are then invited to wager that prize in order to obtain an even larger prize (or alternatively to lose a portion or all of the prize just won). Similarly, in some games of a similar nature the player is given a certain amount of value to start with and then asked to wager that stake in order to win further or lose.

3. To many this may appear to be nit-picking. However, as will be evident to any observer, the advertising of gambling and gambling related activities has reached almost epidemic proportions.
4. Since the express purpose of this act is to protect minors and other vulnerable persons from being harmed and exploited by gambling, in addition to limiting the over-stimulation of gambling, it seems to me that such activities ought rightfully also to fall within the control of the Act

Insertion in Section 5 in Act 7 of 2004

Any game in which there is an immediate possibility of winning something of value by virtue of skill or chance or a combination thereof and for which a wager has been placed if such wager has come about by virtue of a prior win or donation shall be regarded as gambling.

Proposed Amendment to Section 12 of Act 7 of 2004

State of Affairs

Since section 12 of the Act specifically deals with the protection of Minors, and there is no other section of the Act that deals with minors, I shall address my comments and suggestions regarding minors to this section of the Act

1. Harm to minors is a specific and well documented side-effect of the onset of compulsive gambling by the care-givers of such minors. There have been many recently publicized cases of gambling related child abuse and even death.
2. Gambling and other addictions are known in a substantial number of cases to be formulated in childhood.
3. Our constitution specifically gives voice to the rights of children and the necessity to protect children from harm.
4. Section 12 of Act 7 of 2004 seems to place the onus of protection of the child on the child. This seems to me to be contrary to the spirit of the purpose of the Act. At the very least the Act is notably silent on measures that could be enacted effectively (albeit with some measure of difficulty) to protect children. Surely it is our duty, as a responsible society, to do the utmost to protect the heritage of our land – our children. Therefore it is incumbent on the lawmakers to do everything humanly possible for the protection of children, even if this should mean – as it may appear to some – overly harsh and prohibitive legislation.
5. I have personally, on many occasions, observed children in Casinos, late at night, without their parents about, sitting in casino waiting areas while their addicted parents neglect their parental duties because of their gambling addiction.
6. This amendment to the Act is specifically to introduce and legalise interactive gambling. Cellphone SMS'ing, Mixit (a form of interactive cell

phone messaging) and online gaming are almost the exclusive preserve of young people and children are particularly vulnerable. Globally, computer game makers are targeting children increasingly with games that enable winning and are moving towards skill-based games that are becoming increasingly gambling based. Cell phone service providers are already in the process of gearing up towards the exploitation of the newly legalized interactive gambling. There can be no doubt that the methods employed to extract monetary value via cell phones will include the existing payment structures applied to – among others – the Short Message Service. Control of such matters in order to avoid bringing children into the gambling net at an age that is highly inappropriate is difficult at best, dangerous at worst.

7. The complexity of issues surrounding gambling related harms to children is difficult to completely define, especially in relation to interactive gambling, which is as yet a largely uncharted territory. Accordingly, the proper regulation of such matters ought to fall within the scope of a specially constituted sub-committee of the highest gambling policy formulation body in the country – namely the National Gambling Policy Council. This is addressed in Sections 61 and 62

Insertion in Section 12 in Act 7 of 2004

Insert after 12 (4)

(5) The protection of minors affected by gambling related disorders, either directly or by the impact of a parent or third party, whether by their own hand or of others, shall fall within the jurisdiction of a body appointed specifically for the task by the National Gambling policy Council as more fully established in Sections 61 and 62 in the Act.

Comment and Recommendations in respect of Sections 13 and 16 of Act 7 of 2004

1. Credit card transactions form the basis of online gambling transactions and thus revenue and a significant portion of the revenue of other forms of gambling.
2. The obtaining of credit is one of the prime causes of gambling related harms and a key factor in the formation of gambling addiction.
3. In the submission by the Gamblers Anonymous Gauteng Intergroup - SUBMISSION ON THE NATIONAL GAMBLING BILL [B 48 – 2003] - 18 September 2003 – I made reference to a possible method for credit card control. Page 7 of the document (included for reference purposes) states:

” We recognise that the use of credit and charge cards is the common way of doing business these days. However, we also know that one of the chief causes of gambling related harms is when people continue to play

more and more in the hope of winning. We need to recognise that by the time a person has started to experience gambling related problems, that he or she is incapable of recognising the logically obvious - that in the long run there is no chance of winning and the longer one plays, the more one loses.

On the contrary, this individual is now lulled into a false sense of hope and firmly believes that by simply playing for a little bit longer, the elusive win must eventually come. It is for this reason that problem gamblers draw more and more money from charge and credit cards until they are all saturated – referred to as “maxing out” the cards – something that many gamblers will do with a multiplicity of cards in one sitting. The rationale for the following recommendations is that the gambler has made a conscious rational decision to bet a specific sum of money in a specific time period - consistent with a non-problematic gambling attitude.”

4. Clearly, the prohibition of the use of credit cards for gambling purposes could strike a significant blow to both the gambling and banking industries. The purpose of regulation should be to limit potential harm whilst permitting a legal industry to operate.
5. When there is no responsibility on the part of the credit card companies to ensure that their clients are capable of supporting the debt that they offer, simply because the charge model applicable to credit cards implies a dramatic risk reduction for the bank – even in the event of default by the debtor, then the possibility of credit card debt expansion to fund gambling, and hence an increase in gambling related problems, cannot be too far away. In the 1980’s for example, prior to the enforcement of debt by the National Gambling Act, many credit card companies would allow their clients to withdraw from the obligation to pay a casino provided they did so timeously.
6. Since interactive gambling will soon be legalised, and people can now gamble at all hours of the day from work or home – effectively bringing the casino into the living room as it were, it becomes increasingly evident that a portion of the responsibility for preventing gambling related harms must fall to those who gain substantially from those same harms – notably the banks.
7. In a recent move, the United States of America prohibited the US banking industry from processing any online gambling related transactions. Clearly that would be an overly zealous response to the potential for problem gambling, but it illustrates a point.
8. The banking industry today is so well wired and interconnected that any bank is capable of determining almost instantaneously where and how a transaction is being processed.
9. Consequently, it would be sensible to permit the banks to allow their patrons to use their cards in casinos and in online gambling, provided that such patrons were not problem gamblers.

10. It is entirely possible to enforce the banks to take a measure of responsibility for the problem gambling type of behaviour of some of their clients and to refuse further credit when it becomes apparent that this credit is being extended in the pursuit of a gambling addiction.
11. Section 16 of the Act already permits that in the case of an excluded person, a gambling debt is not enforceable. Presumably this implies that an excluded person who uses a credit card for gambling purposes will not be liable for any debt that may be incurred. This is to be encouraged as it is a certain way to ensure the compliance of the credit card companies helping to combat problem gambling.
12. Likewise, Section 13 prohibits the granting of credit to gamblers in the name of the licensee or a third party, which could be taken to include credit card companies.

Comment and Recommendations in respect of Section 14 of Act 7 of 2004

1. Land based casinos are required by regulation to place the telephone number of the National Responsible Gambling Program Helpline on every slot machine and at every table cluster.
2. The proposed amendment to section 14 (12) b states that online casinos shall have a similar warning on the entry page – or front page.
3. It would be appropriate and certainly not onerous to demand of the online licensees that every page should contain a suitable notice as envisaged for the front page.

Comment and Recommendations in respect of Section 15 of Act 7 of 2004

1. The National Gambling Regulations – 12 Nov 2004 - Chapter 2 – 3(2)a(i) makes reference to the size and font of gambling adverts and sub-section (vi) requires of billboards that 10% of the billboard be devoted to an appropriate responsible gambling message.
2. Likewise, similar regulations govern radio and television advertising
3. The intention of the Act is quite clear. It is to ensure that a responsible gambling message is spread by those who would rather promote the growth of gambling. The casino industry specifically has complied to some extent with the provision of the regulations, and yet it shows its true colours in relation to the intention of the Act and the Minister by among many others, the following acts of deliberate misinterpretation:
 - a. Putting the Responsible Gambling message at 10% of billboard size, but ensuring that the letters are not of the same size as the body copy of the advert.
 - b. Placing the Responsible Gambling message on letters that are of such a similar colour to the background on which they are placed as to be unreadable from anywhere but immediately next to the billboard.

4. The tobacco industry is a case in point. For many years, the tobacco industry has been forced to place warning messages on its products and has not been permitted to advertise in the general media at all. According to sources that I have at the top end of the advertising industry, the warning signs at the bottom of adverts have absolutely no impact on the likely prevalence of problem gambling.
5. The National Responsible Gambling Program has an effective national treatment structure paid for by the industry yet does very little to advertise the availability of its services because it lacks the budget to do so.
6. Since the advertising spend in the gaming industry in South Africa is worth R200 Million per annum (AMPS) and since it is known that the responsible gaming message tacked onto each casino advert is virtually useless in terms of preventing problem gambling, it would make far more sense to enforce the contribution by the gaming industry of 10% of that number to a separate body regulated by the National Gambling Board under guidance of the National Gambling Policy Council. Such a body would be charged with independently placing separate adverts about gambling related problems in the media.
7. As an alternative, it could be required of the media that it allocates 10% of all gambling related ad-spend to problem gambling related awareness advertising as regulated by the Board contemplated in the previous paragraph.

Comment and Recommendations in respect of Section 28 of Act 7 of 2004

1. Noting that in respect of gambling other than interactive gambling, the key interface with the public is via the licensee personnel in the form of croupiers, floor managers and the like.
2. An employee trainee program regarding problem gambling is enacted by the National Responsible Gambling Program
3. For example, hospital staff such as nurses are required to be licensed and certified to perform their duties.
4. It should be a requirement of the license conditions of certain classes of gaming employee that they be trained in the recognition of problem gambling and methods to deal with problem gamblers.
5. This should be a certified competency

Comment and Recommendations in respect of Section 53 of Act 7 of 2004

1. There is no reference to a continued commitment on behalf of licensees to combat problem gaming.
2. Since this is a requirement of the issuance of a license, it would appear logical that the continued maintenance of a license would include such a requirement.

Comment and Recommendations in respect of Section 56 of Act 7 of 2004

1. The internet gaming industry is fraught with controversy. It is a rapidly growing and very profitable worldwide industry
2. Recently, some online casinos, in flagrant violation of the existing Act, have advertised their services. Not only is such advertising deemed to be illegal by certain commentators and regulators, but it does not even include a responsible gambling message – as is required of any other casino in terms of the present act.
3. Piggs Peak Casino is a case in point. Even though there is an appeal against a recent decision in the Gauteng Gambling Board vs Piggs Peak, the present ruling seems to indicate that Piggs Peak have been breaking the law.
4. In allocating licenses to interactive gambling providers, it is essential that operators of the highest moral caliber are selected.
5. Any company that has previously shown disdain for the laws of the land relating to gambling or any allied industry should be automatically excluded from the obtaining a license
6. Specifically, if a company has been found to have transgressed any previous law, even if it now becomes a legal activity, it would seem inappropriate to permit such a company from obtaining a license on the grounds that it has not shown appropriate moral standing or respect for authority in the jurisdiction in which it operates
7. As an alternative to outright prohibition, perhaps a moratorium period of rehabilitation of, say, 2 years could be applied to such a company.

Proposed Amendment to Section 61 of Act 7 of 2004

State of Affairs

1. Problem and Compulsive gambling is a mental illness as defined by the Diagnostics and Statistics Manual of the American Psychiatric Association
2. Children are in danger of developing gambling addictions, more so in light of the incumbent interactive gambling regulation.
3. Gambling is a social behaviour affecting all areas of society, from Health to Finance, Education and Social Development
4. Legalised Gambling is a highly contentious issue, especially among members of religious groups.
5. Gambling is a highly profitable industry historically operated by members of the criminal element. Regulation is critical to maintaining order in this industry – as recognized by the Act
6. Regulators are human and can be susceptible to bribes and conflicts of interest. This has been known to occur in other jurisdictions.
7. New Zealand, a country well known for its social enhancement policies, places the responsibility for developing and implementing an integrated problem gambling strategy on the Ministry of Health.

8. The National Gambling Policy Council is the highest policy formulation body with respect to gambling in the land. Given the widespread impact of gambling on society, it is critical that this council be represented by cabinet ministers from the sectors of society on which it most heavily impacts.
9. Despite provision being made for some representations of cabinet ministers from other departments in the membership of the National Gambling Board, the board is subservient to the National Gambling Policy Council. Accordingly this representation on policy formulation should be at the highest level.

Insertion in Section 61 in Act 7 of 2004

Insert after Section 61(2)a.i

The Minister of Health; and
The Minister of Social Development; and
The Minister of Finance; and
The Minister of Education

Proposed Amendment to Section 62 of Act 7 of 2004

State of Affairs

1. Presently research on problem gambling is conducted under the auspices of the South African Responsible Gambling Trust which appoints the National Responsible Gambling Program to conduct research into problem gambling.
2. Surveys were conducted by the NRGP at two yearly intervals 2001, 2003 & 2005 into the incidence of problem gambling. Curiously, the report in 2006 concludes that problem gambling is on the decline, based on sample problem gambling incidences of 4.2%; 6.8% and 4.8% for the respective years. This is a false conclusion to draw from only three data points, especially when further analysis of other data concludes precisely the opposite.
3. In addition, a study on the socio economic impact of gambling conducted at the instance of the National Gambling Board in 2005 decided to use a measurement standard that is not internationally accepted when assessing the nature of problem gambling incidence in South Africa.
4. The report on the regulation of Interactive Gambling is seriously deficient in its study of the likely problem gambling impact. It quotes only one (albeit authoritative) source in drawing its conclusions. However, it also happens that that same authoritative source has also been known to be an active proponent of interactive gambling for some years. In fact, the recommendation by that authority some 8 years ago was that South Africa should create the opportunity for itself as an online gambling hub. Clearly

- there is a conflict of interest here, and even if the authority concerned has since had a change of heart, this has the potential to undermine confidence in transparent public policy formulation.
5. Through no particular deliberate ill-will, it would appear that the gambling regulatory authority as a whole might be seen to be falling into a credibility gap.
 6. It seems that unless appropriate steps are taken at this opportune time to rectify the manner in which the data and information used for policy formulation is collected, analysed and presented for policy formulation, that serious consequences could result.
 7. Gross Gambling revenue has increased steadily at 20% per annum from R6billion in financial Year ending 2002 to R12 Billion in FYE 2006 – a pace substantially higher than the overall economic growth rate of the country. It is highly likely that in time an increased prevalence of problem gambling and related effects will be felt.
 8. While I personally believe that an effectively regulated gambling industry – interactive or otherwise – is in the best interests of our country, I believe that it is essential to establish appropriate policy formulation methods as soon as possible.
 9. If the National Gambling Policy Council is broadened in the scope of its cabinet representation as recommended in Section 61 above, then that body should be specifically responsible for appointing its own and distinctly separate research body to conduct reports and surveys to derive its own information. This is quite apart from the ongoing and commendable efforts of the National Gambling Board. In such a way, objectivity of information could be best assured for those responsible for carrying out gambling policy formulation without fear of contamination by vested interests. Such a body should be funded totally independently of the regulators and the gaming industry, although it would make sense to fund it by way of a special tax for the purpose on the gaming industry.

Insertion in Section 62 in Act 7 of 2004

Insert after Section 62(1) d

“The establishment of an independent research authority to conduct annual surveys in the broader population on the impact of gambling and particularly the incidence and impact of problem gambling among the poor, the young, the elderly and the general population with respect to the key gambling areas of Sports Betting, Interactive gambling and Casino gambling”

By virtue of the commentary regarding section 12 of the Act and the protection of children, insert after section 62(1) e

“The establishment of a child protection authority for the purpose of regulating and monitoring the protection of children with regard to gambling and gambling related harms”

Proposed Amendment to Section 63 of Act 7 of 2004

State of Affairs

It seems incongruous in the light of our constitution that any individual would have the right of veto over any process that should be democratic. Although 63(4) exhorts the members of the council to reach decision by consensus, yet clause 63(6)a specifically gives the minister the power of veto. There may be administrative reasons for doing so of which I am unaware, but given the nature of the voting procedure for the National Gambling Board, which is to vote by simple majority, it would seem that a simple majority would be the best in this instance too.

Amendment to Section 63 in Act 7 of 2004

Delete sub-clauses 63(6)a and 63(6)b

Append to the end of Clause 63(6)

At least 6 members of the regular council or a simple majority, whichever is the greater.

Proposed Amendment to Section 67 of Act 7 of 2004

Insertion in Section 67 in Act 7 of 2004

67 (1) b v. Minister of Health

[End]