



PROVINCE OF THE EASTERN CAPE
IPHONDO LEMPUMA KOLONI
PROVINSIE OOS-KAAP

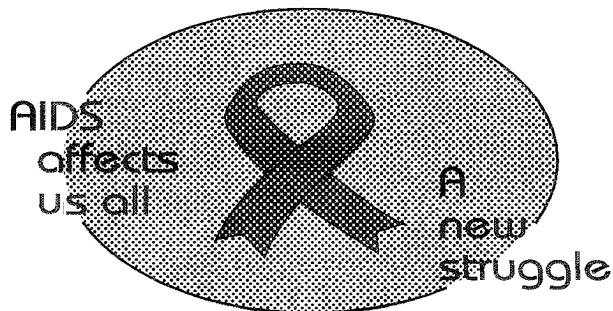
Provincial Gazette Igazethi Yephondo Provinsiale Koerant

Vol. 20

BISHO/
KING WILLIAM'S TOWN, 30 JANUARY 2013

No. 2888
(Extraordinary)

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GENERAL NOTICES

No. 14

WHITE PAPER ON AMENDMENTS TO THE GAMBLING AND BETTING ACT

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**WHITE PAPER
ON
AMENDMENTS TO THE GAMBLING AND
BETTING ACT (EASTERN CAPE)
(ACT 5 OF 1997)**

WHITE PAPER ON AMENDMENTS TO THE GAMBLING AND BETTING ACT

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WHITE PAPER ON AMENDMENTS TO THE GAMBLING AND BETTING ACT

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1 FOREWORD, ABBREVIATIONS AND GLOSSARY**1.1 Foreword by the Member of the Executive Council for Economic Development, Environment and Tourism**

The Province of the Eastern Cape is part of the unitary state of South Africa and, according to section 40 of the Constitution, the three spheres of government are interdependent and interrelated. It is therefore necessary to ensure that our policies and legislation are aligned to those of national government.

Furthermore, the Province of the Eastern Cape is part of a global village with ever changing demands and technological advances. It is therefore also necessary that the policies and legislation reflect those demands and technological advances. Failure to do so will simply result in stagnation.

It thus became necessary to evaluate whether the existing gambling legislation is still aligned with the national legislation and policy and whether it addresses the technological advances, especially in the electronic gambling areas. The evaluation done by the Department of Economic Development, Environment and Tourism as well as the Gambling and Betting Board showed that there are gaps in the current gambling legislation of the Province of the Eastern Cape and that urgent amendments need to be effected.

This White Paper shall identify the policy areas that will inform a Bill that will seek to amend the current Eastern Cape Gambling and Betting Act.

1.2 List of Abbreviations / Acronyms

In this White Paper the following abbreviations or acronyms have the meaning assigned to it:

“Board”: The Eastern Cape Gambling and Betting Board, established in terms of section 3 of the Act;

“Department”: the Department of Economic Development, Environment and Tourism of the Province of the Eastern Cape;

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“MEC”: The Member of the Executive Council of the Province responsible for economic development, environment and tourism;

“National Act”: the National Gambling Act, 2004 (Act No. 7 of 2004) as amended;

“Province”: The Province of the Eastern Cape; and

“Provincial Act”: The Gambling and Betting Act (Eastern Cape) (Act 5 of 1997).

2 BACKGROUND AND LEGAL CONTEXT**2.1 Background**

Amendments to the current Provincial Act are necessary:-

- 2.1.1 To align the Provincial Act with the National Act pertaining to licences, interactive gambling, provincial approval of registered machines and devices, designated areas, disqualifications of members of the Eastern Cape Gambling and Betting Board (the Board), disqualifications of applicants for licences, employees of the holders of licences, and betting on lawful contingencies;
- 2.1.2 To amend the name of the Board and the name of the Provincial Act;
- 2.1.3 To ensure that the Board exercises its powers and duties and spends the funds that it generates to promote, amongst others, the socio-economic objectives of the Provincial Government;
- 2.1.4 To clarify the term of office of members of the Board and to align the disqualifications to serve as a member of the Board with the National Act;
- 2.1.5 To permit employees to seek or accept employment in the gambling industry with the approval of the Board;

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- 2.1.6 To provide for certain technological developments in the financial services sector and for data storage;
- 2.1.7 To simplify the process for the adjustment of licence -, annual - and registration fees by enabling the MEC to determine the various fees by notice in the Provincial Gazette;
- 2.1.8 To extend the period of validity of a casino licence;
- 2.1.9 To streamline certain processes; and
- 2.1.10 To delete certain transitional provisions which have become superfluous and to add new transitional provisions.

2.2 Legislative context

Casinos, racing, gambling and wagering are functional areas identified by Schedule 4 of the Constitution in which both national and provincial legislatures have concurrent competence. Both may therefore promulgate legislation regulating it.

National legislation takes precedence over provincial legislation in circumstances contemplated in section 146(2) and (3) of the Constitution, such as where national legislation creates a norm or standard.

Amendments are necessary to remove conflicts where the National Act had created a norm or standard.

The extension of the validity of a casino licence is necessary to ensure a favourable and sustainable socio-economic, developmental and economic enterprise.

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Amendments are also necessary to address inconsistencies in the Provincial Act which have previously resulted in the Board being exposed to litigation.

3 PROBLEM STATEMENT

In order to ensure that gambling legislation of the Province is aligned to the National Act and that it addresses technological advances, amendments need to be effected, either by amending existing legislation, or by repealing existing legislation and passing new legislation.

4 AIM AND APPROACH**4.1 Aim**

The aim with the amendments is to improve the effectiveness and efficiency of the Board and to ensure proper regulation of gambling activities in the Eastern Cape.

4.2 Approach

The approach is to cause amendments in accordance with the policy content set out in this White Paper.

5 POLICY CONTENT**5.1 Alignment with the National Act**

In November 2004 the National Gambling Act, 2004 came into operation and in 2008 the National Gambling Amendment Act, 2008 was promulgated.

These Acts contain a number of provisions that are at variance with the Provincial Act. These variances include:

- The issuing of national licences by a provincial authority;
- Interactive gambling licences;
- The replacement of gambling areas with designated areas;

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- Disqualifications of members of the Board;
- Disqualifications of applicants for licences;
- The betting on lawful contingencies; and
- The types of employees of licence holders.

The National Act also provides for the national registration of machines and devices, and for the provincial approval of such machines and devices. The Provincial Act, however, makes provision for provincial registration of machines and devices.

5.2 Repeal of the Prohibition of Dog Races Ordinance

The Provincial Act kept the Prohibition of Dog Races Ordinance, 1986 (Ordinance No. 11 of 1986) alive. This is an unsatisfactory situation where legislation passed by the new democratic order kept legislation alive that was passed by an undesirable regime. Amendments are necessary to repeal the Ordinance and to allow for provisions to prohibit dog races in the Province.

5.3 Name of the Board and the Provincial Act

The name of the Provincial Act and the Board is a tautology because "betting" is merely a form of gambling and does not represent an additional industry or sector that needs to be regulated.

The name of the Board and the name of the Provincial Act should be amended to remove the word "betting", resulting in the entity being named the Eastern Cape Gambling Board.

5.4 Editorial amendments and removal of prohibitions

Since the operationalisation of the Board in 1997, several operational constraints have been identified by the Board which simply require clarification (such as the

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term of office of a member serving in a vacant seat, or the mandate of the Board relating to the socio-economic objectives of the Provincial Government) or which require the removal of an outright prohibition (such as employees who may not seek or accept employment in the gambling industry).

5.5 Technological advancements

The Board has been functioning in a vibrant environment and there have been technological advancements during the past 14 years which need to be reflected in the operations of the Board.

Recordings of meetings of the Board should be in any format determined by the Board, including digital recordings.

Payment of gambling debts can, in addition to standard payment, be by credit card and electronic funds transfer.

Electronic records of gambling activities should be allowed in electronic format.

5.6 Fees levied by the Board

In the Provincial Act the various fees which may be levied by the Board are determined by the Legislature by means of an amendment to Schedule II of the Provincial Act that not only requires a legislative process, but may cause delays.

It is standard practise for an MEC, Minister or organ of state to determine fees and to update the fees from time to time. The fees are then published in the Government or Provincial Gazette. Amendments to the existing legislation should be to enable the MEC to adjust the fees by means of notices published in the Provincial Gazette.

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6 Extension of the period of validity of a casino licence

The present period for a casino licence allows for a marginally profitable operation, depending on the location of the casino. Such state of affairs often results in licensees structuring their institutional arrangements in such a manner that the broad based community empowerment component benefit very little from its shareholding in the management company entrusted to operate the casino. In addition thereto the trusts established by the licensees to contribute to socio-economic and developmental benefits are not sufficiently funded to make a sustainable difference in areas surrounding casinos.

A validity period of 20 years would not only ensure viable enterprises, but is in line with best practices elsewhere in South Africa.

7 Streamlining of processes

The Provincial Act requires the Board to hold a public hearing for every application, even if no objections have been received. This requirement creates unnecessary costs for applicants who have to attend the hearings in East London. It is in the interest of applicants if the Board could waive the requirement for public hearings where no objections have been received. If an application is refused, the applicant should be afforded an opportunity to be heard.

8 IMPLEMENTATION STRATEGIES

Several provisions are required to ensure a seamless transition from the present system to the process created by the amendments.

Transitional provisions will have to –

- recognise the validity of licences issued before the amendment;

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- provide that all gambling machines or devices registered by the Board prior to the commencement of the amendment are deemed to have been approved by the Board;
- grant betting intermediaries to have 30 days to apply for a certificate of suitability;
- provide for persons who are disqualified from holding a financial interest, licence or registration to report the disqualification to their employers and the Board; and
- suspend the provisions of section 20 for applicants that are no longer disqualified from applying for a licence.

9 SCENARIOS ON WAY FORWARD

There are only two scenarios on the way forward because there is an imperative to amend the existing legislation.

9.1 Scenario 1:

Scenario 1 entails the amendment of the existing Provincial Act to reflect all the amendments needed to align the Provincial Act with the National Act, to provide for the improved technology in the gambling industry and to streamline the processes of the Board.

9.2 Scenario 2:

Scenario 2 entails the repeal of the existing Provincial Act and the development and introduction of a new Act. However, this would create problems in that the Board is currently listed as a public entity in the Public Finance Management Act. The repeal of the Provincial Act would cause a de-listing as a public entity and the re-application of the entity created by the new Act. This would cause delays and will have a profound negative impact on the funding of the Board.

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10 PREFERRED SOLUTION

The preferred solution for the problems that are currently experienced with the existing legislation is to introduce and pass a Bill amending the Provincial Act to provide for amendments in line with the policy content contained in this White Paper.

11 CONSULTATION

The following parties and/or institutions have been involved in discussions on proposed amendments:

- The Board;
- Management of the Board;
- The National Gambling Board;
- Other provincial gambling boards;
- Attorneys representing the Board in litigation;
- Office of the Chief State Law Advisor;
- Representatives from the Department.

12 LONG TERM OUTCOMES AND CONCLUSION**12.1 Long Term Outcomes**

The improved effectiveness and efficiency of the Board shall have a positive impact on the mandate of the Board relating to the socio-economic objectives of the Provincial Government.

12.2 Conclusion

Amendments to achieve the policy imperatives contained in this White Paper are necessary to ensure that the Board effectively regulates gambling activities in the province in a fair, transparent and responsible way in the best interests of the province and its people.

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13 APPROVAL OF WHITE PAPER

Approved by Executive Council of the Province of the Eastern Cape
on.....

SCHEDULE

1. Definitions

In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the same meaning, unless the context otherwise indicates —

"Regulations" means the Gambling and Betting Regulations, published under Provincial Notice No. 34 of 1998 in Provincial Gazette No. 338 of 25 September 1998;and

"the Act" means the Gambling and Betting Act, 1997, Act No. 5 of 1997 (Eastern Cape);

2. Amendment of regulation 43 of the Regulations

Regulation 43 of the Regulations is hereby amended —

(a) by the substitution in subregulation (1) for the words "cameras, monitors, videotape recorders and a video printer" of the words "cameras, monitors, videotape recorders or digital video recorders and a video printer or a device that can print digital images, as the case may be,";

(b) by the substitution in subregulation (2) for the word "videotape" of the words "videotape or digital video";

(c) by the substitution of subregulation (11) for the following subregulation:

"(11) The video printer or the device that prints digital images used in the surveillance system must possess the capability to generate instantaneously upon command, a clear, still black and white or colour copy or photograph of the images depicted on the videotape or digital video recording."; and

(d) by the substitution of subregulation (12) for the following subregulation:

"(12) The licensee must ensure that the surveillance system has the capability of creating first generation copies of video surveillance tapes or digital surveillance recordings that are standard VHS format or new technology file system format, as the case may be, or any other format approved by the board.".

3. Amendment of regulation 44 of the Regulations

Regulation 44 of the Regulations is hereby amended by the substitution of the words "video and audio tapes" for the words "video tapes or digital video recordings and audio tapes".

4. Amendment of regulation 47 of the Regulations

Regulation 47 of the Regulations is hereby amended by the insertion in subregulation (2) after the word "video" of the words "or digital media".

5. Amendment of regulation 49 of the Regulations

Regulation 49 of the Regulations is hereby amended —

- (a) by the insertion in subregulation (1) after the word "videotape" of the words "or digital video";
- (b) by the insertion in subregulation (2) after the word "video" of the words "or digital video";
- (c) by the insertion in subregulation (4) after the word "videotape" of the words "or digital video";
- (d) by the insertion in subregulation (5) after the word "videotape" of the words "or digital video";
- (e) by the insertion in subregulation (6) after the word "videotape" of the words "or digital video"; and
- (f) by the insertion in subregulation (7) after the word "videotape" of the words "or digital video".

6. Amendment of regulation 52 of the Regulations

Regulation 52 of the Regulations is hereby amended by the substitution for the
Draft 2 January 2013

words "R5,00" of the words "an amount which may be determined by the Board.";

7. Amendment of regulation 53 of the Regulations

Regulation 53 of the Regulations is hereby amended by the substitution for the words "The return to players in any game of bingo shall not be less than 65% of the total amount staked by players on that game" of the words "A bingo game shall render a theoretical and demonstrable return to players of not less than 65 percent.";

8. Amendment of regulation 54 of the Regulations

Regulation 54 of the Regulations is hereby amended by the substitution for the words "All stakes and participation fees in respect of a bingo game shall be paid in cash" of the words "All stakes and fees in respect of bingo must be paid by either cash, token, ticket or other form of value, magnetic or smart card or any other method of payment prescribed by the MEC.";

9. Amendment of regulation 55 of the Regulations

Regulation 55 of the Regulations is hereby amended -

by the insertion in subregulation (2) after the word

"recorders" of the words "or digital video recorders";

(a) by the substitution for subregulation (5) of the following subregulation:

"(5) The licensee must ensure that the surveillance system has the capability of creating first generation copies of video surveillance tapes or digital surveillance recordings that are standard VHS format or new technology file system format, as the case may be, or any other format approved by the board."

10. Amendment of regulation 62A of the Regulations

Regulation 62A of the Regulations is hereby amended —

Draft 2 January 2013

(a) by the substitution for subregulation (1) of the following subregulation:

"(1) A limited gambling machine site licence which allows the licence holder to expose for play more than 5 limited gambling machines on such site shall only be awarded and issued if the number of limited gambling machines which shall be exposed for play on such site shall be no less than 6 but no more than 40.";

(b) by the deletion of subregulation (2).

11. Amendment of regulation 67 of the Regulations

Regulation 67 of the Regulations is hereby amended —

(a) by the insertion in subregulation (2) after the word "recorders" of the words "or digital video recorders";

(b) by the substitution for subregulation (4) of the following subregulation:

"(4) The licensee must ensure that the surveillance system has the capability of creating first generation copies of video surveillance tapes or digital surveillance recordings that are standard VHS format or new technology file system format, as the case may be, or any other format approved by the board."

No. 15

PROVINCE OF THE EASTERN CAPE

**EASTERN CAPE GAMBLING AND BETTING
AMENDMENT BILL, 2013**

(As introduced)

**(MEC OF FOR ECONOMIC DEVELOPMENT, ENVIRONMENTAL AFFAIRS AND
TOURISM)**

B /2013(EC)

GENERAL EXPLANATORY NOTE:

[] **Words in bold type in square brackets indicate omissions from existing enactments.**

_____ **Words underlined with a solid line indicate insertions in existing enactments.**

BILL

To amend the Gambling and Betting Act, 1997 (Eastern Cape) (Act 5 of 1997), so as to amend certain definitions and to align with the National Gambling Act, 2004; to amend the name of the board and of the Gambling and Betting Act, 1997 (Eastern Cape); to provide for certain technological developments; to streamline processes where no objections are lodged against an application for a licence; to amend the disqualifications for serving as a member of the board; and for requirements for licences to accord with the National Gambling Act; to provide for the extension of the period of validity of a casino licence; to provide for national licences and other licences contemplated in the National Gambling Act; to provide for betting on any lawful contingency; to delete certain transitional provisions which have expired and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Legislature of the Province of the Eastern Cape, as follows:

20 Amendment of arrangement of sections

1. The Arrangement of Sections of the Gambling and Betting Act, 1997 (Act No. 5 of 1997) (Eastern Cape), hereinafter referred to as the "principal Act", is hereby amended -

(a) by the substitution for the heading of item 8A of the following heading:

25 "8A Termination of term of office of board and taking over administration of board";

(b) by the insertion after item 18A of the following Chapter number, Chapter heading and items:

"CHAPTER 2A";

5 "GAMBLING ACTIVITIES";

"18B Gambling activity";

"18C Placing bet or wager";

"18D Totalisator bet";

"18E Gambling game";

10 "18F Pay out and opportunity to play further game";

(c) by the insertion after item 40 of the following item:

"40A National licences";

(d) by the insertion after item 69 of the following items:

"69A Casual gambling employees";

15 "69B Temporary key person or employee registration";

"69C Interactive gambling employee to be registered".

Amendment of section 1 of Act No. 5 of 1997

2. Section 1 of the principal Act, is hereby amended -

(a) by the substitution for the definition of "amusement game" of the following definition:

20 "amusement game" means [an amusement game referred to in section 4(3),
any game which is played or activated by the insertion or payment of a coin,

token, credit, electronic credit, debit, bill of exchange or other value instrument **[whereby] which enables** the player **[may] to** win a prize which is not in the form of cash, tokens, cheques, credit, debits, bills of exchange or other value instruments, but is limited to—

- 5 (i) one or more non-cash prizes with a **[combined retail monetary]** value and restrictions not exceeding **[the limited set by the board]** the amount prescribed by the Minister in terms of the National Gambling Act;
- 10 (ii) more than one opportunity to play a further game, provided that no more than 10 such opportunities may be won in respect of a single game; or
- 15 (iii) in the case of games which involve a substantial element of skill, one or more tickets which cumulatively entitle or enable the player to receive a non-cash prize on the premises concerned and which are not transferable to any other person: Provided that no accumulation of tickets shall entitle or enable a player to receive a prize having a higher retail value than 15 times the value contemplated in paragraph (i) and at least 20 tickets shall be required in respect of each Rand of the retail value of such non-cash prize: Provided further that no more than 15 tickets may be won in respect of any single such game but excludes games contemplated in section 61(1)(a)(ii) and (v);

Provided further that such game is not similar to or derived from a game normally played in a casino or on a gambling machine other than bingo;"

(b) by the substitution for the definition of "amusement machine " of the following definition:

25 "amusement machine' means **[a] any machine or device, other than a gambling device on or by means of** which an amusement game may be played;"

(c) by the substitution for the definition of "associate " of the following definition:

“associate’ means -

- (a) an employer;
- (b) a co-shareholder of a private company contemplated in section 20 of the Companies Act, 1973 (Act No. 61 of 1973);
- 5 (c) a co-member of a close corporation contemplated in section 2 of the Close Corporations Act, 1984 (Act No. 69 of 1984); and
- (d) a person to whom one has granted or from whom one has received a general power of attorney **[other than in respect of a specific transaction]**;;

10 (d) by the substitution for the definition of "bet" of the following definition:

“bet’ or ‘betting’ means **[to stake any money or thing of value or to stake on behalf of any person, or expressly or impliedly, to undertake, promise or agree to stake on behalf of any person, any money or thing of value on any event or contingency other than the contingency involved in a gambling game] an activity as described in sections 18C and 18D;**”;

(e) by the substitution for the definition of "bingo" of the following definition:

“bingo’ means **[the gambling game known as bingo and any similar gambling game which is played with cards (including electronic screens) on which appear sets of numbers or symbols and in the course of which each player attempts to match for money, property, cheques or anything of value, all or a specified set of numbers or symbols on his or her cards to calls made by the operator and includes any similar gambling game operated in whole or in part by electronic means] a game, including a game**
played in whole or in part by electronic means -

- 25 (a) that is played for consideration, using cards or other devices (whether electronic or otherwise) -

- (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;
- 5
- (b) in which either –
- (i) 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 appearing on the card or device as it is called or displayed; and
- 10
- (ii) an electronic or similar device generates and displays a series of numbers, pictures or symbols and then, on behalf of the players, matches each such number, picture or symbol to the numbers, pictures or symbols appearing on the electronic card or other similar device after such number picture or symbol is generated or displayed; and
- 15
- (c) in which either -
- (i) the player who is first to match all the spaces on the card or other similar device, or who matches a specified set of numbers, pictures or symbols on the card or device, wins a prize, or
- 20
- (ii) the player on whose behalf the electronic or similar device referred to in paragraph (b)(ii) first matched all the spaces on the card or similar device, or matches a specified set of numbers, pictures and symbols on the electronic card or similar device, wins a prize or more than one prize;
- 25
- or any other substantially similar game declared by the Minister or the responsible member to be bingo;"
- (f) by the substitution for the definition of "bookmaker" of the following definition:

“bookmaker’ means [any person who earns or endeavours to earn his or her livelihood wholly or partly by directly or indirectly laying or taking fixed odds or open bets with members of the public or other bookmakers] a person who directly or indirectly lays fixed-odds bets or open bets with members of the public or other bookmakers, or takes such bets with other bookmakers;”;

(g) by the substitution for the definition of "casino" of the following definition:

“casino’ means [any premises in or on which gambling is conducted under a casino licence] premises where gambling games are played, or are available to be played, but does not include premises in which -

- (a) only bingo and no other gambling game is played or available to be played;
- (b) only limited payout machines are available to be played;
- (c) limited payout machines are available to be played and bingo, but no other gambling game is played or available to be played; or
- (d) only social gambling is conducted in terms of a temporary licence or this Act;”;

(h) by the substitution for the definition of "consideration" of the following definition:

“consideration’ means [any thing, undertaking, promise, agreement or assurance, regardless of its apparent or intrinsic value] -

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

(i) by the substitution for the definition of “Constitution” of the following definition:

“‘Constitution’ means the Constitution of the Republic of South Africa, 1996 [(Act 108 of 1996)]”;

(j) by the insertion after the definition of "Constitution" of the following definition:

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

(k) by the insertion after the definition of "controlling interest" of the following definition:

5 "designated area' -

(a) when used in relation to a site, means an area at that site in which any limited payout machine is authorised to be placed; and

(b) when used in any other case, means an area within licensed premises where any gambling game is available to be played;"

10 (l) by the substitution for the definition of "family member" of the following definition:

"family member' means a person's -

15 (a) **[a husband or wife, any partner in a customary union according to indigenous law or any partner in a relationship where the partners live together in a manner resembling a marital partnership or a customary union] spouse; or**

(b) **[any person to whom one is related in the first degree of consanguinity]child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption;"**

(m)by the substitution for the definition of "financial interest" of the following definition:

20 "financial interest' [in relation to a company or corporation] means -

(a) having a right or entitlement to share in profits or revenue;

(b) **[being the holder of any] a real right in respect of any property of a company, [or] corporation or business;**

25 (c) **[being the owner or holder of] a real or personal right in any property used by thecompany,[or] corporation or business[in conducting its**

gambling business]; or

(d) **[having]** a direct or indirect interest in the voting shares, or voting rights attaching to the shares, of the company or having an interest in a close corporation;";

5 (n) by the substitution for the definition of "fixed odds bet" of the following definition:

"fixed odds bet' means a bet **[laid by a bookmaker]** on one or more **[events or contingencies [where] in which [fixed]** odds are agreed **[upon when such] at the time the bet is [laid] placed;**";

(o) by the substitution for the definition of "gambling" with the following definition:

10 "gambling' or 'gamble' or 'gambling activity' means **[the playing of any gambling game and includes the acceptance of stakes by a totalisator or bookmaker but does not include social gambling or participation in a lawful lottery contemplated in the Lotteries Act, 1997 (Act No. 57 of 1997)]** an activity described in section 18B;";

15 (p) by the deletion of the definition of "gambling and betting review tribunal";

(q) by the deletion of the definition of "gambling area";

(r) by the substitution for the definition of "gambling device" of the following definition:

20 "gambling device' means **[any]** equipment or any other thing that is used, or **[designed to be used remotely or directly in connection with gambling or betting including a mechanical, electro-mechanical or electronic device, component or machine or gambling machine]** at the time of its manufacture was designed to be used, in determining the result of a gambling activity;";

(s) by the substitution for the definition of "gambling game" of the following definition:

25 "gambling game' means **[any game with or by means of cards or dice or any mechanical, electro-mechanical or electronic device, component or machine, any computer hardware or software or any gambling device,**

5 which upon payment of money, a token, electronic credit, credit, debit or
electronic chip or similar object, or upon payment, whether directly or
indirectly, by a player of any consideration whatsoever, is available to be
played or operated and the playing or operation of which, whether by
reason of the skill of the player or operator or the element of chance or
both, may entitle or deliver to the person playing the game money,
merchandise, property, cheques, credit, electronic credit, debits, tokens,
tickets or anything of value (other than a single opportunity to play a further
game), whether the pay off is made automatically or in any other manner
10 whatsoever and includes, without derogating from the generality of the
aforegoing, roulette, Chinese roulette, bingo, keno, twenty-one, blackjack,
chermin de fer, and baccarat and excludes any sports pool and, in so far as
it is otherwise regulated in terms of the Act, any amusement game]any
activity described in section 18E;"

15 (t) by the substitution for the definition of "gambling machine" of the following definition:

"'gambling machine' means [any mechanical, electrical, video, electronic,
electro-mechanical or other device, contrivance or machine which, upon
insertion of a coin, bank note, electronic credit, credit card, debit card,
smart card, token or similar object or upon payment of any consideration
20 whatsoever, is available to be played or operated and the playing or
operation of which, whether by reason of the skill of the player or operator
or application of the element of chance, or both, may deliver or entitle the
person playing or operating the machine, or any other person, to receive
cash, property, cheques, merchandise, credit, electronic credits, debits,
25 tokens, tickets or anything of favour but does not include an amusement
machine in so far as it is otherwise regulated in terms of the Act] any
mechanical, electrical, video, electronic, electro-mechanical or other device,
contrivance, machine or software, other than an amusement machine, that -

(a) is available to be played or operated upon payment of a consideration; and

(b) 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;”;

(u) by the insertion after the definition of "horse race" of the following definition:

5 “informal bet’ means a bet, wager, undertaking, promise or agreement between or among two or more persons, if -

(a) none of the parties involved is a bookmaker or derives a significant portion of their livelihood from gambling; and

(b) no person is paid a fee or derives any gain, other than winning the bet itself from the activity;”;

10 (v) by the substitution for the definition of "limited gambling machine" of the following definition:

15 “limited gambling machine’ means a gambling machine [limited as prescribed] outside of a casino in respect of the playing of which the stakes and prizes are limited as prescribed by regulations made in terms of the National Gambling Act;”;

(w) by the insertion after the definition of "local authority" of the following three definitions:

“Minister’ means the Member of the national cabinet responsible for the administration of the National Gambling Act;

20 ‘National Gambling Act’ means the National Gambling Act, 2004 (Act No 7 of 2004);

‘national licence’ means a national licence contemplated in the National Gambling Act;”;

(x) by the substitution for the definition of "open bet" of the following definition:

“open bet’ means **[a bet, laid by a licensed bookmaker on one or more events or contingencies where no fixed odds are agreed upon when such bet is laid]**—

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

 (b) a bet in respect of which the payout is determined after the outcome of the contingency on which such a bet is struck became known, with reference to dividends generated by a totalisator;”;

10 (y) by the substitution for the definition of "opportunity to play a further game" of the following definition:

 “opportunity to play a further game’ means **[an opportunity which cannot be distributed or transferred to the person who has won such opportunity or to any other person, for any purpose other than to use such opportunity without interruption to continue playing the game in respect of which the opportunity was won, and excludes an opportunity which can in any manner, whether directly or indirectly, be converted into money, property, cheques, credit, merchandise, electronic credits, debits, tokens, tickets or anything of value, or be so converted in terms of any scheme, arrangement,**

15 **system, plan or device which the responsible Member may from time to time by notice in the *Provincial Gazette* declare not to be an opportunity to play a further game]** an opportunity as described in section 18F;”;

20

(z) by the insertion after the definition of "Ordinance" of the following definition:

“organ of state’ has the meaning set out in section 239 of the Constitution;”;

25 (aa) by the substitution for the definition of "partner" of the following definition:

 “partner’ means a person with whom one has entered into a partnership agreement **[,whether express or tacit or both,]** with the intention of making a profit **[or saving costs];**”;

(bb) by the insertion after the definition of "partner" of the following definition:

"pay off" means a payout as described by section 18F(a) and (b);";

(cc) by the substitution for the definition of "political office bearer" of the following definition:

5 "political office bearer" means—

(a) **[an Executive Deputy President]** a member of the National Assembly, the National Council of Provinces or the Cabinet;

(b) **[a Minister or Deputy Minister]** a member of a provincial legislature;

10 (c) **[a member of the National Assembly or the National Council of Provinces]** a member of a municipal council;

(d) **[the Premier or a member of the Executive Council of a province]** a diplomatic representative of the Republic who is not a member of the public service;

15 (e) **[a member of the provincial legislature]** a member of a house, or council of traditional leaders; or

(f) **[a diplomatic representative of the Republic who is not a member of the public service]** a national or provincial office bearer of a political party;

[(g) a member of a provincial House of Traditional Leaders;

(h) a member of the Council of Traditional Leaders;

20 **(i) a member of the Volkstaat Council;**

(j) a member of a local government body; and

(k) an office-bearer of any political party;]";

(dd) by the substitution for the definition of "premises" of the following definition:

25 "premises" **[means any site, place or location, regardless of whether it is or forms part of any temporary or permanent structure, building, vessel,**

vehicle or aircraft] includes land and any building, structure, vehicle, ship, boat, vessel, aircraft or container;”;

(ee) by the insertion after the definition of "provisional licence" of the following definition:

5 “public servant’ means -

(a) for the purposes of sections 5 and 6, a person who is a public servant in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994); and

(b) for the purposes of sections 31 and 42, a person employed by an organ of state or by a court or a judicial officer;”;

10 (ff) by the insertion after the definition of "responsible Member" of the following definition:

“route operator’ means a person who is licensed as such in terms of section 49;”;

(gg) by the insertion after the definition of "rules" of the following definition:

15 “site’ means premises licensed for the placement of one or more limited pay out gambling machines contemplated in section 49;”;

(hh) by the insertion after the definition of "sporting event" of the following definition:

“spouse’ means a person's -

(a) partner in a marriage;

20 (b) partner in a customary union according to indigenous law; or

(c) partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union;”;

(ii) by the substitution for the definition of "totalisator" of the following definition:

25 **“totalisator’ means [any instrument, machine, contrivance or apparatus for registering or indicating or registering and indicating the number or amount**

or the number and amount of bets on any event or combination of events and which is operated in accordance with a system of betting in which the aggregate amount staked on such event or combination of events, after deduction from such aggregate amount of any amounts which may in terms of this Act be deducted therefrom, is divided amongst those persons who have made winning bets on any event or combination of events in proportion to the amounts staked by such persons in respect of such winning bets, and includes any scheme, form or system of betting, whether mechanically operated or not, which is operated on similar principles] a totalisator as contemplated in section 18D."

Amendment of section 2 of Act No. 5 of 1997

3. Section 2 of the principal Act is hereby amended - by the substitution for the phrase "National Gambling Act 1996 (Act 33 of 1996)" of the phrase "National Gambling Act" where it appears in subsection (1).

(a) by the substitution for subsection (1) of the following subsection:

"(1) Save for the provisions of the National Gambling Act[, 1996 (Act No. 33 of 1996) and the Prohibition of Dog Races Ordinance, 1986 (Ordinance No. 11 of 1986),] or as may otherwise be provided in this Act, nothing contained in any other law relating to gambling or racing shall apply in respect of any gambling or horse racing conducted in the Province.";

(b) by the deletion of subsection (2); and

(c) by the renumbering of subsection (3) to subsection (2).

Amendment of chapter 2 of Act No. 5 of 1997

4. Chapter 2 of the principal Act is hereby amended by the substitution for the heading "GAMBLING AND BETTING BOARD (secs 3 – 18A)" of the heading "GAMBLING BOARD(secs 3 – 18A)".

5 Amendment of section3 of Act No. 5 of 1997

5. Section 3 of the principal Act is hereby amended by the substitution for section 3 of the following section:

"There is hereby established a juristic person to be known as the Eastern Cape Gambling **[and Betting]** Board."

10 Amendment of section4 of Act No. 5 of 1997

6. Section 4 of the principal Act is hereby amended –

- (a) by the substitution for subparagraph (xiii) of paragraph (c) of subsection (1) of the following subparagraph:

15 "(xiii) to collect and administer in accordance with the provisions of this Act, taxes and fees imposed by and adjusted under this Act;"

- (b) by the substitution for subparagraph (xxvii) of paragraph (c) of subsection (1) of the following subparagraph:

20 "(xxvii)to establish and administer funds for the proper administration of this Act and to achieve the strategic objectives of the board and promote socio-economic development in the Province;"

- (c) by the substitution for subparagraph (xxx) of paragraph (c) of subsection (1) of the following subparagraph:

"(xxx)to make rules, if the board deems it necessary, governing the registration, conduct and operations of amusement machines and amusement games

and the licensing of amusement operators and in consultation with the responsible Member and the Treasury to impose licence and registration fees therefor: Provided that any disqualification provided for in such rules shall not be more onerous than those contained in section 31: Provided further that different rules may be imposed and different categories of licence required and issued in respect of different categories of amusement machines and amusement operators;”;

(d) by the substitution for subparagraph (xxxi) of paragraph (c) of subsection (1) of the following subparagraph:

“(xxxi) **[generally]** to exercise **[the]its** powers and perform **[the]its** functions and duties **[specified in this Act or assigned to it by any other law]in order to achieve the strategic objectives of the board and to promote socio-economic development in the Province.**”;

(e) by the substitution for subparagraph (b) of subsection (2) of the following subparagraph:

“(b) enter into an agreement with the National Gambling Board contemplated in**[section 1 of the National Gambling Act, 1996 (Act 33 of 1996)]section 64 of the National Gambling Act** or the gambling regulatory authority of any other province or provinces which provides for the joint monitoring, licensing or regulation of activities having an inter-provincial nature, such as wide area progressive jackpots, monitoring systems or linked bingo systems;”;

(f) by the substitution for subparagraph (a) of subsection (4) of the following subparagraph:

“(a) the powers set out in subparagraphs (ii)**[,]and(iii)for a casino licence and a route operator licence and the powers set out in paragraphs(iv), (v), (xi) and subject to subsection (5), subparagraph (xxx) of subsection (1)(c);**”.

Amendment of section 5 of Act No. 5 of 1997

7. Section 5 of the principal Act is hereby amended -

(a) by the substitution for the period at the end of paragraph (h) of subsection (1) of a comma; and

5 (b) by the insertion after paragraph (h) of subsection (1) of the following proviso:

“Provided that no more than 4 members appointed by the responsible Member may be a public servant.”.

Amendment of section 6 of Act No. 5 of 1997

8. Section 6 of the principal Act is hereby amended by the substitution for section 6
10 of the following section:

“(1) Subject to section 7(3), a person may not be a member of the board if
that person-

(a) is a political office bearer;

(b) is listed in the register of excluded persons by order of a court;

15 (c) personally or through a spouse, partner or associate-

(i) has or acquires a direct or indirect financial interest in a licence issued in terms of this Act, or in premises used for an activity that must be licensed in terms of this Act; or

20 (ii) has or acquires an interest in a business or enterprise that may conflict or interfere with the proper performance of the duties of a member of the board;

(d) is an unrehabilitated insolvent, or becomes insolvent and the insolvency results in the sequestration of his or her estate;

- (e) has ever been, or is, removed from an office of trust on account of misconduct;
- (f) is subject to an order of a competent court holding that person to be mentally deranged;
- 5 (g) within the previous ten years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under Chapter 2 or 3 of the Prevention of Organised Crime Act, 1998 (Act
- 10 No. 121 of 1998), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), an offence under the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004) or an offence involving dishonesty; or
- (h) has been convicted of any other offence committed after the
- 15 Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine.

(2) For the purposes of this section and sections 7 and 12(5) a financial interest does not include an indirect interest held in any fund or investment if the

20 person holding that interest has no control over the investment decisions made in respect of that fund or investment.

(3) The disqualifications referred to in subsection (1) do not apply to the chief executive officer despite his or her *ex officio* membership of the board as contemplated in section 5(2)."

25 **Amendment of section 7 of Act No. 5 of 1997**

9. Section 7 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

“(3) Notwithstanding the provisions of paragraph[(e), (f) and (k)](c) of section 6, any person who would be disqualified from remaining a member of the board in terms of [paragraphs (e), (f) and (k)]paragraph (c) of section 6 and who was not so disqualified at the time of his or her appointment may remain a member of the board and act in accordance with the provisions of this section if –”.

Amendment of section 8A in Act No. 5 of 1997

10. The principal Act is amended by the substitution for section 8A of the following section:

“8A Termination of term of office of board and taking over administration of board

(1) The responsible Member may, at any time -

- (a) if he or she considers it to be in the public interest;
- (b) if he or she considers it to be in the interest of the proper administration of this Act;
- (c) the board has failed to perform its functions, exercise its powers or comply with its strategic objectives;
- (d) there is mismanagement of its finances; or
- (e) there is for any other reason, good cause to do so.

simultaneously terminate the terms of office of all members of the board and may, after consultation with the Executive Council, by notice in the *Provincial Gazette*, appoint an administrator to perform the functions and exercise the powers of the board, with the exception of the granting and revocation of licences, on its behalf until such time as a new board is appointed in terms of section 5.

(2) The responsible Member, in the notice referred to in subsection (1) -

- (a) must determine the powers and duties of the administrator appointed in terms of subsection (1); and

(b) must stipulate that the administrator may not grant or revoke any licence.

(3) An administrator appointed by the responsible Member in terms of subsection (1) remains in office until such time as the responsible Member appoints new members to the board in terms of section 5.

(4) The responsible Member may –

(a) withdraw or amend any provision of the notice contemplated in subsection (1) on such conditions as he or she considers appropriate; and

(b) withdraw the appointment of an administrator and appoint another person in his or her place.

(5) The responsible Member may recover from the funds of the board the costs of appointing an administrator to take over the administration of the board.”.

Amendment of section 9 of Act No. 5 of 1997

11. Section 9 of the principal Act is hereby amended -

(a) by the substitution for subsection (2) of the following subsection:

“(2) If a member of the board for any reason ceases to hold office, the responsible Member may with due regard to sections 5 and 6, appoint a person to act in the place of **[such]** the member vacating office for the unexpired period of **[his or her]** the term of office of that member: Provided that the responsible Member may notwithstanding section 5(3)(a) appoint a person who would be eligible for appointment under section 6 of this Act as a member for a period of not more than 3 months pending such appointment.”;

(b) by the insertion after subsection (4) of the following subsection:

“(5) Notwithstanding the provisions of subsection (3), a member of the board who is appointed to a vacant seat in terms of subsection (2) may, in addition to the appointment to the vacant seat, be appointed for two full terms of office.”.

Amendment of section 11 of Act No. 5 of 1997

5 **12.** Section 11 of the principal Act is hereby amended –

(a) by the substitution for subsection (10) of the following subsection:

10 “(10) All deliberations of the board and those of its committees shall be recorded on magnetic tape, in digital format or any other prescribed format and the recordings[which] must be stored in accordance with the law relating to the preservation and the storage of archives.”;

(b) by the insertion after subsection (10) of the following subsection:

15 “(11) Nothing in this section shall be interpreted as preventing a member of the board to attend a meeting of the board by means other than his or her physical presence and the board shall make rules in accordance with section 81 regarding the technology which a member may use to attend a meeting and which may constitute his or her attendance as well as the manner in which the decisions of that member shall be recorded and stored.”.

Amendment of section 12 of Act No. 5 of 1997

20 **13.** Section 12 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

25 “(3) The staff of the board [**who are not in the full-time service of the State**] shall receive such remuneration allowances, and other employment benefits out of the funds of the board, and shall be appointed on such terms and conditions for such periods as the board[, **with the concurrence of the responsible Member**] may determine.”.

Amendment of section 13 of Act No. 5 of 1997

14. Section 13 of the principal Act is hereby amended –

(a) by the substitution for the heading to section 13 of the following heading:

“13. Involvement in gambling **[or betting]** by member or staff of board”;

5 (b) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

“(1) No member of the board or member of the staff of the board shall-“;

(c) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

10 “(a) participate in any gambling **[or betting]** in the Province except in the performance of his or her duties in terms of this Act; or”;

(d) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

15 “(b) solicit or accept employment from, or be employed at the gambling area of, the holder of, or an applicant for, a licence under this Act within 1 year after the termination of this or her term of office or service, as the case may be: Provided that a member of the staff may accept such employment within such period with the prior written approval of the board.”.

Amendment of section 15 of Act No. 5 of 1997

15. Section 15 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

20 “(2) The terms, conditions, remuneration and allowances applicable to any expert or person appointed or called upon under subsection (1), and the work to be performed or service to be rendered by him or her shall be determined by the board **[with the concurrence of the responsible Member,]** and shall be contained in a written agreement entered into for that purpose between the
25 board and the expert or person concerned.”.

Amendment of section 17 of Act No. 5 of 1997

16. Section 17 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

5 “(b) annual board administration fees contemplated in Schedule II, Parts B and
 Das adjusted by the responsible Member in terms of section 57(8);”.

Amendment of section 18 of Act No. 5 of 1997

17. Section 18 of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection:

10 “(7) The records and annual financial statements referred to in subsection (6)
 shall be audited by the Auditor-General or, if so instructed by the Auditor-
 General, a person appointed by the board who is registered in terms of the
 Auditing Profession Act, 2005 (Act No. 26 of 2005) as an accountant and auditor,
 and who engages in public practice as such.”.

Insertion of Chapter 2A in Act No. 5 of 1997

15 18. The principal Act is hereby amended by the insertion after section 18A of the
 following Chapter:

CHAPTER 2A**GAMBLING ACTIVITIES****18B Gambling activity**

20 An activity is a gambling activity if it involves -

- (a) placing or accepting a bet or wager in terms of section 18C;
- (b) placing or accepting a totalisator bet, in terms of subsection 18D; or

- (c) making available for play, or playing bingo or another gambling game as contemplated in section 18E.

18C Placing bet or wager

A person places or accepts a bet or wager when that person –

- 5 (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
- 10 (ii) stakes money or anything of value on a fixed-odds bet, or an open bet, with another bookmaker on any contingency; or
- (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
- 15 contemplated in paragraph (a), (b) or (c).

18D Totalisator bet

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 -

- 20 (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;
- (b) any scheme, form or system of betting, whether mechanically operated or
- 25 not, that is operated on similar principles.

18E Gambling game

(1) An activity is a gambling game if -

(a) it meets the following criteria:

(i) it is played upon payment of any consideration, with the chance that the person playing the game might become entitled to or receive a pay out; and

(ii) the result might be determined by the skill of the player, the element of chance, or both; or

(b) it is a bet or wager in terms of section 18C that is placed in a casino in relation to any activity that meets the criteria in paragraph (a).

(2) Despite subsection (1) for all purposes of this Act, none of the following activities is a gambling game -

(a) a bet or wager in terms of section 18B other than a bet or wager contemplated in subsection 1(b); or

(b) a totalisator bet in terms of section 18B; or

(c) an amusement game.

18F Pay out and opportunity to play further game

(1) (a) Subject to paragraph (b), a pay out is any money, merchandise, property, a cheque, credit, electronic credit, a debit, a token, a ticket or anything else of value won by a player -

(i) whether as a result of the skill of the player or operator, the application of the element of chance, or both; and

(ii) regardless how the pay out is made.

(b) Neither of the following is a pay out-

- (i) an opportunity to play a further game; or
- (ii) a prize given to a participant or team of participants in a sporting event in respect of the participant's or team's performance in that event.
- 5 (c) The result of the gambling game—
- (i) is an opportunity to play a further game if the player is afforded the opportunity to continue without interruption playing the type of game -
- (aa) in respect of which the opportunity was won; and
- 10 (bb) on the machine on which the opportunity was won; but
- (ii) is not an opportunity to play a further game if the opportunity can in any manner, whether directly or indirectly, be -
- (aa) distributed or transferred to the person who has won such an opportunity or to any other person; or
- 15 (bb) converted into money, property, a cheque, credit or any other thing of value; or
- (cc) converted in terms of any scheme, arrangement, system, plan or device prescribed in terms of the National Gambling Act.”.

20 **Amendment of section 19 of Act No. 5 of 1997**

19. Section 19 of the principal Act is hereby amended -

- (a) by the substitution for the phrase “Companies Act, 1973 (Act 61 of 1973)” of the phrase “Companies Act, 2008 (Act 71 of 2008)” where it appears in subsection (1); and

(b) by the substitution for subsection (3) of the following subsection:

“(3) The memorandum of a company referred to in subsection (1) shall exclude the common powers of companies as contained in paragraphs (k), (l) and (m) of Schedule 2 of the Companies Act, 1973 (Act 61 of 1973) prior to its repeal by the Companies Act, 2008.”.

Amendment of section 20 of Act No. 5 of 1997

20. Section 20 of the principal Act is hereby amended –

(a) by the substitution for subsection (1) of the following subsection:

“(1) An application for a licence other than a licence contemplated in section 4(1)(c)(xxx) or 38 or for registration shall be made as provided hereunder:

Provided that-

(a) where an application for a licence or registration has been refused on any ground referred to in section 31, or where a licence has been revoked on any ground referred to in section 39 or 79, no reapplication for a licence or registration shall be made within 12 months from the date of such refusal or revocation, and any prospective licensee or applicant for registration who has a direct or indirect interest of 5 percent or more in the business or premises of such applicant, ~~[or]~~ licensee or registrant may not apply for a licence within 12 months from the date of such refusal or revocation, if such person was the direct or effective cause of such refusal or revocation; and

(b) any applicant whose application for a licence or registration has been refused more than once on any ground referred to in section 31, or whose licence has been revoked more than once on any ground referred to in section 39 or 79, may not reapply for a licence or registration within 3 years from the date of the latest refusal or revocation, and any prospective licensee or applicant for registration

who has a direct or indirect interest of 5 percent or more in the business or premises of such applicant, [or] licensee or registrant, may not apply for a licence or registration within 3 years from the date of the latest refusal or revocation, if such **[prospective licensee]**person was the direct or indirect or effective cause of such refusal or revocation.”;

(b) by the substitution for subparagraph (ii) of paragraph (b) of subsection (3) of the following subparagraph:

“(ii) the fee specified in Schedule II as adjusted by the responsible Member in terms of section 57(8) which fee is not refundable.”.

10 **Amendment of section 22 of Act No. 5 of 1997**

21. Section 22 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection:

“(4) The provisions of this section shall not apply to any premises in respect of which a valid licence to conduct gambling issued by the board is in existence at the time the application is received, unless the board directs otherwise.”.

Amendment of section 26 of Act No. 5 of 1997

22. Section 26 of the principal Act is hereby amended by the insertion after subsection (4) of the following subsection:

“(5) The provisions of this section shall not apply to any premises in respect of which a licence to conduct gambling issued by the board is in existence at the time the application is received by the board unless the board directs otherwise.”.

Amendment of section 28 of Act No. 5 of 1997

23. Section 28 of the principal Act is hereby amended by the insertion after subsection (5) of the following subsection:

"(6) Notwithstanding the provisions of subsection (1), if no comment or objection pertaining to any application is received by the board, the board may -

(a) dispense with the requirement for a public hearing and the requirement for the advertising of such hearing;

5 (b) the board may dispense with the requirement for a hearing if there are no grounds on which the application may be refused: Provided that the board shall not refuse an application under such circumstances without giving the applicant an opportunity to be heard."

Amendment of section 31 of Act No. 5 of 1997

10 **24.** Section 31 of the principal Act is hereby amended –

(a) by the substitution for subsection (1) of the following subsection:

"[(1) No application for a licence shall be granted if any director in the case of a company, any member in the case of a close corporation or any person as contemplated in the proviso to section 19(1)-

- 15 (a) is an unrehabilitated insolvent;
- (b) is of unsound mind, or is subject to an order of a competent court declaring such person to be mentally ill or disordered or a prodigal;
- 20 (c) has in the Republic or elsewhere in the preceding 10 years been convicted of any offence, unless-
- (i) the board is of the opinion that the offence was of such a nature that it does not imply that such a person is unsuitable to hold a licence; or
- 25 (ii) the conviction and sentence have been set aside by a competent court; or
- (iii) such a person has received a grant of amnesty or free pardon for an offence which would otherwise have disqualified that person from holding a licence;

- (d) has at any time been removed from an office of trust on account of misconduct;
- (e) is a family member of a member of the board or of the responsible Member;
- 5 (f) is not a fit and proper person to be involved in the business concerned;
- (g) is a political office-bearer or employee of any party, movement, organisation or body of a party political nature;
- (h) is, in the case of an application in relation to a casino licence, subject to any disqualification contemplated in section 42;
- 10 (i) is a minor on the date of the consideration of the application concerned;
- (j) is a family member of a person contemplated in paragraph (g) ;
or
- 15 (k) is related to a person contemplated in paragraph (a), (c) or (f) in the manner contemplated in paragraph (a) of the definition of "family member" in section 1.]

(1) A person must not hold a licence in terms of this Act or any of the total financial interest in the licensee of such licence if that person -

- 20 (a) is under the age of 18 years;
- (b) is a public servant or political office bearer;
- (c) is listed on the register of excluded persons contemplated in section 14 of the National Gambling Act;
- (d) is a family member, other than a brother or sister, of a person who is a member or employee of a regulatory authority exercising oversight over that licensee;
- 25 (e) is an unrehabilitated insolvent;
- (f) is not a fit and proper person to be involved in the business concerned;
- 30 (g) is subject to an order of a competent court holding that person to be mentally unfit or deranged;

- (h) has ever been removed from an office of trust on account of misconduct relating to fraud or the misappropriation of money;
- (i) has been convicted during the previous ten years, in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004, the Prevention of Organised Crime Act, 1998, the Financial Intelligence Centre Act, 2001, the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004, or an offence in terms of this Act or the National Gambling Act and has been sentenced to imprisonment without the option of a fine, or to a fine exceeding the amount prescribed under the National Gambling Act, unless the person has received a grant of amnesty or free pardon for the offence; or
- (j) has been convicted during the previous ten years of any computer or computer software related crime.”;

(b) by the substitution for subsection (2) of the following subsection:

“[(2) In order to determine, for the purposes of subsection (1)(f) , whether a particular person is not a fit and proper person to be involved in the business concerned, the board shall have regard, in so far as reasonably ascertainable, to-

- (a) the character and general probity of such person;**
- (b) whether such person has at any time been convicted, whether in the Republic or elsewhere, of any offence which should be taken into account; and**
- (c) whether such person has taken part or been associated with any practice which is deceitful, prejudicial or otherwise improper or discreditable, whether unlawful or not.]**

(2) The board must refuse to issue a licence to an applicant -

- (a) who is disqualified from holding an interest in a licence, licence holder, licensed premises or the business to which a licence relates in**

terms of this Act or section 50(2) of the National Gambling Act;

(b) if, after conducting the prescribed investigations, it has reason to believe that the applicant, any person who has a controlling interest in the applicant, any person who holds any of the total financial interest in the applicant or any manager of the business concerned is -

(i) a family member, other than a brother or sister, of a person who is a member of the board; or

(ii) is disqualified from holding an interest in a licence, licence holder or the business to which a licence relates, in terms of subsection (1).";

(c) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

"(a) subject to the provisions of section **[13 of the National Gambling Act, 1996 (Act 33 of 1996)]**55 of the National Gambling Act, the State, any organ of the State, any organisation **[with]**in which the State **[is concerned]**has a financial interest, **[a political office bearer, a political party or any official of a political party]** does not hold a financial interest in the gambling business of the applicant apart from taxes, fees or levies: Provided that, for the purposes of this section, "financial interest" does not include an interest arising out of an arms-length commercial transaction in respect of a lease, a sale of property or the granting of the option to purchase where the lessor, seller or granting of the option is the State, an organ of State or any organisation with which the State is concerned and, in the case of a lease, the rental payable is not **[based on the profit or turnover of the applicant or licence holder]**determined by reference to the turnover of or profit from the gambling activity;";

(d) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

"(b) subject to the provisions of section 54 of the National Gambling Act, the granting of such licence will not **[bring into existence or aggravate any dominant and over-concentrated market-share or any**

restrictive practices, acquisitions and monopoly situations as envisaged in the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979) in the gambling industry or a branch thereof: Provided] result in the applicant either alone or in conjunction with a related entity achieving market power in the gambling industry in the Republic or the Province unless there are overriding public interest reasons for this, including those set out in section 12A(3) of the Competition Act, 1998 (Act No. 89 of 1998): Provided that for purposes of this paragraph the words "market power" and "related person" shall have the meanings granted thereto in the Competition Act, 1998 and the National Gambling Act, respectively: Provided further that in the case of casinos this shall not be construed so as to prevent the acceptance of a lump sum payment as contemplated in section 41(2)(e); and";

(e) by the substitution for the phrase "Gambling Act, 1996 (Act 33 of 1996)" of the phrase "National Gambling Act" where it appears subparagraph (ii) of paragraph (c) of subsection (3);

(f) by the substitution for subsection (4) of the following subsection:

"(4) No licence shall be granted to a prospective licensee where a person who is subject to disqualification in terms of subsection (1) -

- (a) has a direct or indirect financial interest **[of 5 percent or more, or such lesser percentage as may be prescribed in respect of particular types of licences,]** in the prospective licensee;
- (b) is a director, member or manager of the prospective licensee [:]; or
- (c) is a director, member or trustee of such financial interest holder:

Provided that the applicant, prior to disqualification, shall be given a reasonable opportunity to rectify the disqualifying circumstances where this is possible without the substance of the application being changed."

Amendment of section 33 of Act No. 5 of 1997

25. Section 33 of the principal Act is hereby amended –

(a) by the substitution for the full stop at the end of paragraph (j) of subsection (1) of a semi-colon;

5 (b) by the insertion after paragraph (j) of subsection (1) of the following paragraph:

“(k) relating to all matters in the public interest, including –

(i) the extent to which the applicant will procure labour, goods and services from within the Province in general for the conducting of the business to which the application relates;

10 (ii) compliance with bid undertakings;

(iii) the empowerment of historically disadvantaged individuals, including the extent to which the applicant intends to provide for participation in the ownership or profits of the business to which the application relates by historically disadvantaged persons, or groups or categories of historically disadvantaged persons, permanently resident in the Province;

15

(iv) any related conditions.”;

(c) by the substitution for subsection (7) of the following subsection:

20 **“(7) [The period of validity of a licence shall, subject to payment of the appropriate annual fee specified in Schedule II and subject to the provisions of section 45(3) in the case of a casino licence and section 54(2) in the case of a bookmaker licence, be as stipulated by the board and recorded on the face of the licence]**Subject to payment of the applicable annual fee and any other condition which may have an impact on the validity of a licence, the period of validity of –

25 (a) a casino licence is the period referred to in section 45(3);

(b) a bingo licence is determined by the board;

(c) a route operator licence is fifteen years;

- (d) a gambling machine site licence is no longer than the remaining period of validity of the associated route operator licence;
- (e) a race course licence is determined by the board;
- (f) a totalisator licence is determined by the board; and
- 5 (g) a bookmaker licence is the period referred to in section 54(2)

and shall be recorded on the face of the licence.”.

Amendment of section 35 of Act No. 5 of 1997

26. Section 35 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- 10 “(1) The holder of a licence may at any time make application for the amendment of the licence: Provided that no application shall be made for the amendment of the period of validity of a licence.”.

Amendment of section 38 of Act No. 5 of 1997

15 27. Section 38 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The board may, subject to the provisions of this Act, ~~[the]~~on payment of the required fees and on such conditions as it may impose, issue a temporary licence to cover -

- 20 (a) the operation of a casino or limited gambling machine site with **[40]** more than five gambling machines on incomplete or temporary premises by the holder of a provisional licence issued in respect of such casino or limited gambling machine site;
- (b) temporary continuation of business in respect of a site licence in the event of death, incapacity, sequestration or liquidation of the licensee

by the executor, trustee, liquidator or judicial manager of such licence holder;

(c) temporary continuation of business in respect of a site licence where -

- 5
- (i) the licence holder is a natural person, trust or partnership: and
 - (ii) the business to which the licence relates is sold; and
 - (iii) the purchaser has submitted an application for a licence or for the transfer of the existing licence: and
 - (iv) the application referred to in sub-paragraph (iii) has not yet been disposed of:

10 Provided that such temporary licence shall lapse when the board has approved or declined the application contemplated in sub-paragraph (iii);

15 [(c)](d) the temporary operation of a casino, limited gambling machine site, totalisator or bookmaking business on temporary premises by the holder of a casino licence, limited gambling machine site licence, totalisator licence or bookmaker licence respectively where -

- 20
- (i) the licensed premises are destroyed; and
 - (ii) pending the outcome of an application for removal of the licence to other premises or amendment of the licence to include the new premises or the reconstruction of the premises concerned as the case may be;

[(d)](e) social gambling."

Insertion of section 40A into Act No. 5 of 1997

25 **28.** The principal Act is hereby amended by the insertion after section 40 of the following section:

“National licence

40A(1) The board may issue a national licence as contemplated in the National Gambling Act.

(2) Except as otherwise provided in the National Gambling Act, the provisions of this Act shall apply in respect of any national licence issued in terms of the National Gambling Act.

(3) Notwithstanding the provisions of this Act, the holder of a national licence shall be entitled to conduct the activities authorised thereby in the province as if such licence had been issued in terms of this Act.”.

10 Amendment of section 42 of Act No. 5 of 1997

29. Section 42 of the principal Act is hereby amended by the substitution for subparagraph (iv) of paragraph (b) of the following subparagraph:

“(iv) unless such applicant, on application for a casino licence shows proof that the applicant is or will be the owner or principal tenant of the whole of the premises on which the casino is located and sole occupier of the area in which gambling takes place in terms of such casino licence with such security of tenure as the board may deem adequate: Provided that the provisions of this paragraph shall not be construed as preventing a licence holder from letting or subletting any part of such premises, excluding any part in which gambling takes place in terms of such casino licence, to other persons;”.

Amendment of section 44 of Act No. 5 of 1997

30. Section 44 of the principal Act is hereby amended by the deletion of subsections (2) to (8).

Amendment of section 45 of Act No. 5 of 1997

25 31. Section 45 of the principal Act is hereby amended -

(a) by the substitution for subsection (3) of the following subsection:

“(3) The period of validity of a casino licence shall, subject to the provisions of sections 33(7) and 39, be[such period, not shorter than 5]20years[, as the board may determine, having regard to the extent of the improvements, facilities and amenities to be developed and provided in conjunction with the establishment of the casino]: Provided that the board may, when there is a delay in issuing a new casino licence, extend the period of validity thereof for such period as the board may determine.”;

(b) by the substitution for subsection (4) of the following subsection:

“(4) Where-

(a) the responsible Member has-

(i) divided the Province into areas; and

(ii) has determined the only one casino licence may be granted in any such area; and

(b) the successful applicant has not tendered a lump sum payment in terms of section 41(2) (e), the board may require the successful applicant to tender a lump sum payment in respect of such exclusivity: Provided that such lump sum payment shall not exceed 5 percent of the [estimated building costs]total project costs of the proposed casino.”.

Insertion of section 55A into Act No. 5 of 1997

32. The principal Act is hereby amended by the insertion after section 55 of the following section:

“Prohibition of dog races

“55A(1) No person shall -

(a) hold, organise, arrange, attend or in any manner take part in or assist at a dog race; or

(b) print, publish, possess, sell or offer for sale or in any manner circulate or distribute a race card.

5 (2) Any person who contravenes subsection (1) shall be guilty of an offence.

(3) In any prosecution for an offence referred to in subsection (2), any person who without lawful reason was present at the dog race course concerned shall be deemed to have attended such dog race.”.

10 **Amendment of section 57 of Act No. 5 of 1997**

33. Section 57 of the principal Act is hereby amended –

(a) by the substitution for subsection (1) of the following subsection:

15 “(1) **[Fees in respect of licences set out in parts A and B of Schedule II shall be paid by the applicant in respect of Part A and by the licensee in respect of Part B thereof]** An applicant for a licence shall pay the licence application fee contemplated in Part A of Schedule II and the licensee shall pay the annual licence fee and the annual board administration fee contemplated in Part B of Schedule II, subject to any adjustment of the fees contemplated in Parts A and B of Schedule II in terms of subsection (8).”;

20 (b) by the substitution for subsection (2) of the following subsection:

25 “(2) **[Fees in respect of the kinds of registration mentioned in Parts C and D of Schedule II shall be paid by the applicant in respect of Part C and by the registrant or licence holder to whom such device or machine is registered in respect of Part D thereof]** An applicant for registration contemplated in this Act shall pay the registration fee contemplated in Part C of Schedule II and the registrant or the licence holder to whom a gambling device, gambling machine or limited gambling machine is registered shall pay the annual registration fee contemplated in Part C of Schedule II subject to any adjustment

of the fees contemplated in Parts C and D of Schedule II in terms of subsection (8).”;

(c) by the substitution for subsection (3) of the following subsection:

5 “(3) All fees set out in Schedule II shall be paid to the board: Provided that the annual licence fees set out in Part B and annual registration fees set out in Part D that are paid to the board by a licensee, registrant or the licence holder to whom a gambling device, gambling machine or limited gambling machine is registered, shall **[thereupon]** be paid to the Provincial Revenue Fund.”;

(d) by the insertion after subsection (7) of the following subsection:

10 “(8) The responsible Member may, by way of notice in the *Provincial Gazette*, adjust the licences and fees in respect of licences set out in Parts A and B of Schedule II provided that:

15 (a) the responsible Member gives 30 days notice of his or her intention to adjust the fees referred to in this section in the *Provincial Gazette* and one newspaper circulated widely within the Province;

(b) the notice of the intention to adjust shall -

(i) indicate the intended adjustment of each fee payable in terms of this section; and

20 (ii) call for inputs and comments within 15 days of publication of the said notice on the intended adjustment of fees.

(c) The responsible Member shall consider inputs and comments received pursuant to the notice of intention to adjust the said fees.”.

Amendment of section 61 of Act No. 5 of 1997

34. Section 61 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

5 “(1) No person shall, without being appropriately registered and having paid the fee set out in Schedule II for such purposeas adjusted by the responsible Member in terms of section 57(8) -“.

Amendment of section 63 of Act No. 5 of 1997

35. Section 63 of the principal Act is hereby amended -

(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

10 “(a) enter any designated area [**where gambling takes place**].“;

(b) by the substitution for subsection (3) of the following subsection:

 “(3) No licence holder or employee of a licence holder shall permit any person who is—

(a) under the age of 18 years; or

15 (b) subject to an order in terms of subsection (4) and which has been served on such licence holder in terms of subsection (5) or included in a list issued in terms of subsection (7) which has been delivered to the licence holder in the manner prescribed;

20 to enter or remain in any designated area [**where gambling takes place**] or to take part in any gambling or betting or to handle or operate a gambling machine.“;

(c) by the substitution for subsection (4) of the following subsection:

25 “(4) Where the court which has convicted a person of any offence is of the opinion that, by reason of the nature of the offence or the circumstances under which it was committed, it is desirable in the interest of public order, public

morals or fair play that such person should not be permitted to enter any or specific premises licensed under this Act or any designated area or to make a bet or wager by way of teletransmission as contemplated in section 74, the court may issue a written order prohibiting him or her from entering any such premises
5 or designated area or making such bet or wager specified in the order for a period to be stated in the order.";

(d) by the substitution for subsection (6) of the following subsection:

"(6) The holder of a licence or an employee of such a licence holder may -

[(a) refuse to admit any person to the licensed premises;

10 **(b) request any person who is in the licensed premises, to leave the premises;**

(c) request proof of age;

15 **(d) request any police officer or inspector to remove or assist in removing from the licensed premises any person contemplated in paragraph (a) or (b) or remove from the licensed premises any person who refuses or fails to comply with a request contemplated in paragraph (a) or (b).]**

20 **(a) request proof of age from any person on a licensed premises or the designated area or who attempts to gain access to the designated area;**

(b) request proof of identity from any person whom he or she reasonably suspects is included in the list contemplated in subsection (7);

25 **(c) refuse to permit access to the designated area to any person unable to provide proof of age or identity contemplated in paragraphs (a) and (b) respectively;**

(d) require any person contemplated in paragraph (a) or (b) to leave the designated area; and

(e) request a police officer or inspector to remove or assist in removing from the designated area or licensed premises any person contemplated in paragraph (a) or (b) who is unable to provide proof contemplated therein.;

5 (e) by the substitution for subsection (7) of the following subsection:

"(7) The board may, in the prescribed manner, compile a list of persons who are to be excluded or ejected from such licensed premises or designated area specified in the list or prohibited from participating in such gambling specified in the list where the board is of the opinion that it is in the public interest or the
10 interest of that person that he or she be included on the list.";

(f) by the substitution for paragraph (d) of subsection (8) of the following paragraph:

"(d) is prohibited by a court order from entering any or specific licensed premises or designated areas;"

(g) by the substitution for paragraph (g) of subsection (8) of the following paragraph:

15 "(g) requests the board to place his or her name on the list, is registered as an excluded person in terms of section 14 of the National Gambling Act in the national register of excluded persons or has had his or her name placed on a similar list contemplated in the similar legislation of another province of the Republic;"

20 (h) by the substitution for subsection (9) of the following subsection:

"(9) A licence holder shall not allow a person whose name is included on the list contemplated in subsection (7) to enter any **[gambling]** designated area or licensed premises from which he or she is excluded or to participated in any gambling from which he or she is excluded.";

25 (i) by the substitution for subsection (10) of the following subsection:

"(10) The holder of a licence or any key person in the employ of such licence holder may, for any justifiable reason—

- (a) refuse to admit any person other than a member of the board, inspector, police officer or person specifically authorised thereto by the board to the licensed premises or designated area;
- 5 (b) request any person other than a member of the board, inspector, police officer or person specifically authorised thereto by the board who is on any part of the licensed premises or designated area to leave that part; and
- 10 (c) request any police officer to remove or assist in removing from the licensed premises or designated area any person other than a member of the board, inspector, police officer, person authorised by the board to be in such premises or designated area.";

(j) by the substitution for subsection 12 of the following subsection:

15 "(12) Any money won by a minor or person whose name has been included on the list contemplated in subsection [8](7) shall be forfeited to the Provincial Revenue Fund."

Amendment of section 65 of Act No. 5 of 1997

36. Section 65 of the principal Act is hereby amended -

(a) by the substitution for the title of the section with the following title:

"Gambling machines and devices to be **[registered]** recorded";

20 (b) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

- "(a) (i) roulette table;
- (ii) roulette wheel;
- (iii) blackjack table;
- (iv) craps table;

- (v) baccarat table;
- (vi) punto banco table;
- (vii) poker table;
- (viii) a table used for playing a gambling game similar to or derived from a game contemplated in paragraphs (i) to (vii);
- (ix) gambling machine; or
- (x) gambling device which the board determines must be **[registered]** recorded,

which has not been separately **[registered]** recorded by the board and, in the case of a gambling machine and a gambling device, which does not comply with the standards determined by section 19 of the National Gambling Act and be certified by a licensed testing agent as contemplated in section 25 of the National Gambling Act, as meeting the applicable standards;"

- (c) by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:

"(2) Any holder of a licence who acquires or intends to obtain possession of a gambling device **[contemplated in subsection (1)(a)]** which is required to be registered in terms of the National Gambling Act shall, before taking delivery of such device – “;

- (d) by the substitution for subsection (3) of the following subsection:

"(3) No person shall expose for play by the public or any part thereof a gambling device contemplated in subsection (1)(a) which has not been separately **[registered]** recorded by the board.";

- (e) by the substitution for subsection (4) of the following subsection:

"(4) An application for **[registration or transfer of registration]** a recording shall be made in the manner determined by the board.";

(f) by the substitution for the words preceding paragraph (a) of subsection (5) of the following words:

5 "(5) No person shall remove a registered gambling device from the licensed premises of the licence holder to whom such device is registered unless the consent of the board has first been obtained and -";

(g) by the substitution for paragraph (g) of subsection (5) of the following paragraph:

"(g) the board has upon application in the manner determined by the board, **[granted approval for]** approved the purpose of such removal.";

(h) by the substitution for paragraph (a) of subsection (6) of the following paragraph:

10 "(a) **[registered]**recorded; or";

(i) by the substitution of the words preceding paragraph (a) of subsection (9) of the following words:

15 "(9) Notwithstanding the provisions of this section, a limited gambling machine shall be **[registered to]** recorded in respect of the route operator concerned and may be removed -";

(j) by the substitution for subsection (10) of the following subsection:

"(10) The holder of a licence shall not alter the games on or programming of any recorded gambling machine without the consent of the board."

(k) by the insertion after subsection (10) of the following subsection:

20 "**[(10)](11)** Any holder of a licence who contravenes a provision of subsection (1) **[or]**, (2) or (3) and any person who contravenes a provision of subsection (3), (5) or (6)(b) shall be guilty of an offence."

Amendment of section 67 of Act No. 5 of 1997

37. Section 67 of the principal Act is hereby amended –

(a) by the substitution for subsection (1) of the following subsection:

5 “(1) (a) The board may in respect of a casino licence require from any such licence holder to link any gambling device to a central electronic monitoring system for purposes of the monitoring and detecting of significant events associated with each gambling device, including a system for continuous on-line real time recording, monitoring and control of any significant game play transaction as may be prescribed or determined by the board.

10 (b) All limited payout machines operated in the Province shall be linked to a central electronic monitoring system contemplated in section 27 of the National Gambling Act.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) The board may -

15 (a) require from any licence holder referred to in subsection (1), to conduct such electronic monitoring system; or

 (b) on application, approve any other person to conduct, on behalf of such licence holder, such electronic monitoring system, subject to the requirements determined and conditions imposed by the board.”;

(c) by the substitution for subsection (3) of the following subsection:

20 “(3) No person shall link to any central electronic monitoring system a device which has not on application been approved and registered in terms of [subsection (1)]this Act.”;

(d) by the insertion after subsection (4) of the following subsection:

25 “(5) For purposes of this section "electronic monitoring system" means any electronic or computer or communications system or device that is so designed that it may be used, or adapted, to send or receive and store data from gambling devices in relation to the security, accounting or operation of gambling devices.”.

Amendment of section 68 of Act No. 5 of 1997

38. Section 68 of the principal Act is hereby amended –

(a) by the substitution for subsection (1) of the following subsection:

5 “(1) Every executive and agent, including a junket agent associated with a gambling business or any person in the employ of a holder of a licence issued under this Act **[and any licence referred to in the Ordinance]** who may execute control over gambling operations in or on any premises where gambling is conducted in the Province and, in the case of a person registered in terms of section 61, a person contemplated in subsection (2)(f) of this section is required
10 to be registered in terms of this section.”;

(b) by the insertion after paragraph (f) of subsection (2) of the following paragraph:

 “(g) any person who holds a prescribed position; and”;

(c) by renumbering paragraph (g) in subsection (2) to paragraph (h);

(d) by the substitution for subsection (4) of the following subsection:

15 “(4) No application for registration shall be granted if the applicant is subject to any disqualification contemplated in section 31(1)(a), (b), (c), **[(d), (e), (f),]** (g), (h) or (i), **(j) or (k)**.”;

(e) by the substitution for subsection (7) of the following subsection:

20 “(7) Where the board grants an application for registration, the board shall, on payment of the respective fees set out in Schedule II as adjusted by the responsible Member in terms of section 57(8), issue to the applicant a certificate of registration.”;

(f) by the insertion after subsection (15) of the following subsection:

25 “(16) The provisions of section 20 shall apply *mutatis mutandis* to any person who has been disqualified from registration in terms of this section.”.

Amendment of section 69 of Act No. 5 of 1997

39. Section 69 of the principal Act is hereby amended—

(a) by the substitution for paragraph (g) of subsection (2) of the following paragraph:

5 "(g) any other position prescribed or considered by the board to be that of a
gambling employee generally or in relation to any gambling business in
particular:";

(b) by the substitution for the proviso after paragraph (g) of subsection (2) of the
following proviso:

10 "Provided that if the board is of the opinion that an employee of any licence holder
is a gambling employee, it shall serve written notice to that effect upon the licence
holder by whom such employee is employed whereupon the provisions of section
68(11), (13), (14) **[and]**, (15) and (16) shall mutatis mutandis apply."

Amendment of section 69A of Act No. 5 of 1997

15 40. Section 69A of the principal Act is hereby amended by the substitution for
subsection (1) of the following subsection:

20 "(1) Notwithstanding the provisions of section 69 **[no gambling employee
registration shall be required in respect of]** any person performing any activity
contemplated in section 69 in the employ of the holder of a totalisator licence or
bookmaker licence, if that person performs those activities on less than nine days
or part thereof, of which no more than two such days shall be consecutive, per
calendar year, shall be deemed to be registered in terms of section 69 if the
requirements of subsections (2) and (3) are complied with."

Amendment of section 69B of Act No. 5 of 1997

41. Section 69B of the principal Act is hereby amended -

(a) by the insertion of the following heading:

"Temporary key person or employee registration";

5 (b) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

10 "(1) Notwithstanding the provisions of section 68 and 69 of the Act, the board may issue a temporary **[gambling employee]** key person registration for purposes of section 68 or temporary gambling employee registration for purposes of section 69 - ";

(c) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) where such person is to be employed **[at acasino on]** by a licensee for a temporary period of no more than **[two weeks]** one month for training purposes or such other purposes as the board may approve.".

15 **Insertion of section 69C of Act No. 5 of 1997**

42. The principal Act is hereby amended by the insertion of section 69C after section 69B of the following section:

"69C Interactive gambling employee to be registered

20 (1) Every person who, in the Province, is employed by or is a member of the management staff of an interactive gambling provider who is the holder of an interactive gambling licence issued under the National Gambling Act, and who is directly involved in the operation of the business which the licence authorises or the activities performed thereunder, is required to be registered in terms of this section.

(2) A person who is required to be registered in terms of subsection (1) must apply to the board for such registration in the manner and form prescribed under the National Gambling Act and pay the fees prescribed under the National Gambling Act."

5 **Amendment of section 70 of Act No. 5 of 1997**

43. Section 70 of the principal Act is hereby amended by the deletion of the year "1996" in subsection (1).

Amendment of section 72 of Act No. 5 of 1997

10 44. Section 72 of the principal Act is hereby amended by the substitution for paragraph (e) of subsection (1) of the following paragraph:

"(e) a [**lawful sporting event**] lawful contingency."

Amendment of section 73 of Act No. 5 of 1997

45. Section 73 of the principal Act is hereby amended -

(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

15 "(b) for gain act as an intermediary between -

(i) any holder of a licence and any other person [**for the purpose of gambling**]; or

(ii) two members of the public, neither of whom are licensed bookmakers."

20 (b) by the substitution for subsection (3) of the following subsection:

"(3) The provisions of -

(a) subsection (1) shall, subject to the provisions of section 40, not apply to -

- (i) a junket agent registered in terms of section 68 in respect of a particular casino;
- (ii) any agent for the holder of a totalisator licence which takes totalisator bets on behalf of such licence holder on premises specified in such licence if the agent is the holder of a licence issued in terms of the Act or has obtained a certificate of suitability in terms of section 86 and the natural person taking such bet on behalf of that agent is registered in terms of section 68 or 69; **[and]**
- (iii) any holder of a totalisator licence issued in terms of the laws of another province who operates a totalisator on behalf of the holder of a totalisator licence issued by the board where such operator has obtained a certificate of suitability in terms of section 86;
- (iv) the holder of a bookmaker licence issued in terms of this Act or the similar legislation of another province or a certificate of suitability, who for gain acts as an intermediary between -
- (aa) two licensed bookmakers, whether such bookmakers are licensed in terms of this Act or similar legislation of another province; or
- (bb) a licensed bookmaker and a member of the public where the party to the bet wagering that the selection will not be successful is the licensed bookmaker;
- (b) subsection (2) shall not apply to -
- (i) a holder of a licence who gives or undertakes to give accommodation, meals, gambling vouchers or similar facilities to persons who may gamble on the licensed premises concerned;
- (ii) a junket agent in respect of a junket to a casino."

Amendment of section 74 of Act No. 5 of 1997

46. Section 74 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

5 "(1) No person shall gamble or make or place a bet at any place other than on appropriately licensed premises: Provided that gambling by means of the placing of a voice or data telephone bet on a lawful **[sporting event] contingency** where the holder of a bookmaker or totalisator licence issued in terms of this Act or similar legislation of another province accepts and records the bet at the licensed premises shall be deemed to have occurred at the licensed premises.";

10 (b) by the substitution for paragraph (d) of subsection (2) of the following paragraph:

 "(d) in the case of a debt owed by a holder of a totalisator licence or bookmaker licence or a member of the public to the holder of a totalisator licence or bookmaker licence—

 (i) at a place contemplated in paragraph (a), (b) or (c);

15 (ii) by crossed cheque marked not transferable sent by post **[to the holder of the totalisator or bookmaker licence concerned, or by way of electronic funds transfer.]**;

 (iii) by credit card payment; or

 (iv) by electronic funds transfer.";

20 (c) by the deletion of paragraph (e) of subsection (2);

(d) by the substitution for subsection (5) of the following subsection:

"(5) A person resident in the province may place a bet with a bookmaker or totalisator licensed in a jurisdiction other than South Africa and such bookmaker or totalisator may lay the bet of such person, subject to the following:

25 (a) the transaction must comply with the legislation of the Republic

relating to foreign exchange; and

5 (b) the jurisdiction from which the licensed bookmaker or totalisator operates must allow a bookmaker or totalisator licensed in the province to enter into a similar betting transaction with any person resident in that jurisdiction-

(i) on the same basis as a bookmaker or totalisator in that jurisdiction, as the case may be; and

(ii) without the need for separate licensing or approval in that jurisdiction;and

10 (c) the bookmaker in the other jurisdiction must not act as an intermediary to allow the resident of the province to lay or place a bet with a person who is not a licensed bookmaker; and

(d) the betting transaction concerned must not involve a gambling game.;

15 (e) by the insertion after subsection (5) of the following subsection:

“(6) Any person who -

(a) contravenes a provision of subsection (1), (2), (3) or (4); or

(b) enters into, or advertises to enter into, a transaction contemplated in subsection (5) but does not comply with the all the conditions in that section,

20

shall be guilty of an offence.”.

Amendment of section 80 of Act No. 5 of 1997

47. Section 80 of the principal Act is hereby amended –

(a) by the substitution for paragraph (h) in subsection (1) of the following paragraph:

“(h) **[gambling]designated areas;**”;

(b) by the substitution for paragraph (j) in subsection (1) of the following paragraph:

“(j) any matter which is **[requiring]authorised or mandatory to be prescribed, regulated[to be limited]** or controlled by a provincial licensing authority in terms of the National Gambling Act[, 1996];’.

(c) by the insertion after paragraph (o) in subsection (1) of the following paragraph:

“(p) disqualifications and prohibitions in respect of licences and registrations;”;

(d) by renumbering paragraph (p) in subsection (1) to paragraph (q).

10 **Amendment of section 81 of Act No. 5 of 1997**

48. Section 81 of the principal Act is hereby amended –

(a) by the substitution for the words preceding paragraph (a) of the following words:

“The board may,**[in]after** consultation with the responsible Member, and by notice in the *Provincial Gazette*, make rules not inconsistent with the provisions of this Act relating to the exercise of its powers and the performance of its functions including- “;

(b) by the deletion of the word “and” after the semi-colon in paragraph (g);

(c) by the insertion after paragraph (g) of the following paragraphs:

“(h) methods of operation of licensees;

(i) gambling by licensees and their employees;

(j) collection of credit by licensees;

(k) minimum internal control standards of licensees;

(l) organisational structure and jobs compendiums of licensees;

(m) maintenance of machines and devices;

(n) surveillance requirements relating to licensees;

- (o) gambling monitoring and control systems;
- (p) machine and device standards and approvals;
- (q) wide area progressive jackpots; and”;

(d) by renumbering paragraph (h) to paragraph (r).

5 **Amendment of section 86 of Act No. 5 of 1997**

49. Section 86 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The board may-

- 10 (a) prohibit a licensee from contracting with any person for the acquisition by such licensee of any goods or services or for the borrowing or lending of money or the letting or hiring of any movable or immovable property until; or
- 15 (b) require any person acquiring, or holding a financial interest of five percent or more in the holder of a certificate or suitability to alienate such financial interest unless, **[such supplier, lender, lessor or person has obtained a certificate of suitability from the board and paid the fees and expenses of the board relative thereto]**
such supplier, lender, lessor or person has obtained a certificate of suitability from the board and paid the fees and expenses of the board relative thereto.”.

20 **Amendment of section 88 of Act No. 5 of 1997**

50. Section 88 of the principal Act is hereby amended –

(a) by the substitution for paragraph (v) of subsection (1) of the following paragraph:

- 25 “(v) utilises the results of more than one game played on one or more amusement machines or limited gambling machines to pay a player a prize additional to that which would have been won by that player if such player

had only played such machines: Provided that this **[sub]**paragraph shall not apply to **[a prize provided for in paragraphs (iii) of the definition of 'amusement game' where all the requirements of that paragraph are complied with]**games which involve a substantial element of skill, one or more tickets which cumulatively entitle or enable the player to receive a non-cash prize on the premises concerned and which are not transferable to any other person: Provided that no accumulation of tickets shall entitle or enable a player to receive a prize having a higher retail value than 15 times the prescribed maximum prize for an amusement game and at least 20 tickets shall be required in respect of each Rand of the retail value of such non-cash prize: Provided further that no more than 15 tickets may be won in respect of any single such game:";

(b) by the substitution after subparagraph (z) of subsection (1) of the following paragraph:

"shall be guilty of an offence and on conviction (unless otherwise expressly provided elsewhere in this Act) be liable to a fine **[not exceeding two million rand]** determined by the board in rules made in accordance with section 81 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.";

(c) by the substitution for subsection (2) of the following subsection:

"(2) Any person who contravenes or fails to observe a rule made in terms of section 81 shall be guilty of an offence and liable on conviction to a fine **[not exceeding R500 000]** or imprisonment for a period not exceeding 6 months.";

(d) by the deletion of subsection (4).

Amendment of section 90 of Act No. 5 of 1997

Amendment of section 90 of Act No. 5 of 1997

51. Section 90 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

5 "(1) A court may, upon conviction of a person for any offence in terms of subsection 59 **[or]**, 60 or 88. declare to be forfeited to the board - ".

Amendment of section 91 of Act No. 5 of 1997

52. Section 91 of the principal Act is hereby amended—

(a) by the deletion of subsections (1), (4), (5), (6), (7), (8), (9) and (11) thereof; and

10 (b) by the renumbering of subsections (2), (3), (10) and (12) thereof as subsections (1), (2), (3) and (4) respectively.

Amendment of section 93 of Act No. 5 of 1997

53. Section 93 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

15 "(1) This Act shall be called the **[Gambling and Betting]** Eastern Cape Gambling Act [(Eastern Cape)], 1997 and shall come into operation on a date to be fixed by the Premier by proclamation in the *Provincial Gazette*."

Repeal of laws

54. The Prohibition of Dog Races Ordinance, 1986 (Ordinance No.11 of 1986) is hereby repealed.

20 Transitional provisions

55. (1) Any licence issued by the Eastern Cape Gambling and Betting Board prior to the coming into operation of this Act, remain valid for the period determined by this Act or

the Eastern Cape Gambling and Betting Board, as the case may be, and recorded on the face of the licence.

(2) Any gambling machine or device registered by the Eastern Cape Gambling and Betting Board prior to the coming into operation of this Act shall be deemed to have
5 been approved in terms of section 61 of the principal Act.

(3) Any betting intermediary contemplated in section 73 of the principal Act who facilitates bets between bookmakers shall apply to the board for a certificate of suitability within 30 days of the coming into operation of this Act.

(4) Any person who holds a financial interest, licence or registration in terms
10 of this Act who, as a result of the provisions of the National Gambling Act and the provisions of section 31 of the principal Act is no longer qualified to hold such financial interest, licence or registration must report such circumstance to his or her employer and the Eastern Cape Gambling and Betting Board within 30 days of the coming into operation of this Act.

(5) The provisions of section 20 shall not apply to anyone who was
15 disqualified from being issued a licence or registration in terms of the principal Act prior to the coming into operation of this Act and who after the coming into operation of this Act is not so disqualified.

Short title

20 **56.** (1) This Act shall be called the Eastern Cape Gambling Amendment Act, 2013 and comes into operation on a date fixed by the Premier by Proclamation in the Provincial Gazette.

(2) Different dates may be so determined by the Premier in respect of different provisions of this Act.

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EXPLANATORY MEMORANDUM

PART I

(OBJECTS AND PRINCIPLES OF THE BILL)

1. Objects of the Bill

5 The objects of the Bill are

- To align the Provincial Act with the National Act;
- To amend the name of the Board and the name of the Provincial Act;
- To ensure that the Board exercises its powers and duties and spends the funds that it generates to promote the socio-economic objectives of the Provincial Government;
- 10 • To permit employees to seek or accept employment in the gambling industry with the approval of the Board;
- To provide for technological developments in the financial services sector and for data storage;
- 15 • To simplify the process for the adjustment of licence and other fees;
- To extend the period of validity of a casino licence;
- To streamline processes; and
- To delete certain transitional provisions which have become superfluous and to add new transitional provisions.

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2. The Reasons for and effect of the Bill

National legislation takes precedence over provincial legislation in circumstances contemplated in section 146(2) and (3) of the Constitution, such as where national legislation creates a norm or standard.

25 Amendments are necessary to remove conflicts where the National Act had created a norm or standard.

The extension of the validity of a casino licence is necessary to ensure a favourable and sustainable socio-economic, developmental and economic enterprise.

Amendments are also necessary to address inconsistencies in the Provincial Act which have previously resulted in the Board being exposed to litigation.

- 5 The effect of the Bill would therefore be that the Provincial Act conforms to the National Act, sustainable socio-economic, developmental and economic enterprises will be created and that litigation against the Board would be minimised.

3. The Policy Context and how the Bill relates to its policy objectives

10 The Department of Economic Development, Environment and Tourism, as well as the Gambling and Betting Board, evaluated the existing Provincial Act and how it relates to the National Act and the evaluation identified gaps in the current gambling legislation of the Province of the Eastern Cape and that urgent amendments need to be effected.

15 A White Paper was developed to identify measures to fill the gaps and the policy positions are contained in the White Paper. This Bill seeks to address the policy positions identified in the White Paper.

4. The social and economic impact of the Bill

20 This Bill shall ensure that licensees structure their institutional arrangements in such a manner that the broad based community empowerment component benefit maximally from its shareholding in the management company entrusted to operate the casino. In addition thereto the trusts established by the licensees will be able to contribute to socio-economic and developmental benefits to make a sustainable difference in areas surrounding casinos.

5. The process used to solicit comments from stakeholders and the public

25 The following parties and/or institutions have been consulted on the proposed amendments:

- The Board;

- Management of the Board;
- The National Gambling Board;
- Other provincial gambling boards;
- Attorneys representing the Board in litigation;
- 5 • Office of the Chief State Law Advisor;
- Representatives from the Department.

All the stakeholders that were consulted were in favour of the amendments contained in the Bill.

PART II

10 ***(CLAUSE-BY-CLAUSE EXPLANATION OF THE CONTENT OF THE BILL)***

CLAUSE 1 : Amends the arrangement of sections of the Act.

15 **CLAUSE 2** : Amends section 1 of the Act to insert, substitute, and amend definitions in the Act.

CLAUSE 3 : Amends section 2 of the Act rectifying the reference to the National Act and removing reference to the Prohibition of Dog Races Ordinance.

20 **CLAUSE 4** : Amends the heading to Chapter 2 of the Act.

CLAUSE 5 : Amends section 3 of the Act by changing the citation of the Board.

25 **CLAUSE 6** : Amends section 4 of the Act by amending the powers of the Board.

- CLAUSE 7 :** Amends section 5 of the Act providing a proviso for the number of public servants on the Board.
- 5 **CLAUSE 8 :** Substitutes section 6 of the Act with amended qualifications to serve as a member of the Board.
- CLAUSE 9 :** Amends section 7 of the Act to provide for the consequential amendments to referencing.
- 10 **CLAUSE 10 :** Substitutes section 8A of the Act to amend the process of termination of the Board.
- CLAUSE 11 :** Amends section 9 of the Act to provide for the appointment of a member of the Board in case of a vacancy.
- 15 **CLAUSE 12 :** Amends section 11 of the Act to provide for the digital recording of Board meetings.
- CLAUSE 13 :** Amends section 12 of the Act to allow the Board to determine remuneration and allowances of staff.
- 20 **CLAUSE 14 :** Amends section 13 of the Act to remove the reference to "betting" and to allow for employment of staff in the gambling area with the approval of the Board.
- 25 **CLAUSE 15 :** Amends section 15 of the Act to allow the Board to determine the terms, conditions remuneration and allowances of a person

appointed as a staff member.

CLAUSE 16 : Amends section 17 of the Act to provide a consequential amendment to the reference of fees adjusted.

5

CLAUSE 17 : Amends section 18 of the Act to provide for the appointment of an auditor of the Board if so instructed by the Auditor General.

CLAUSE 18 : Inserts a new Chapter 2 A in the Act to provide for gambling activities in line with the National Act.

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CLAUSE 19 : Amends section 19 of the Act to correct the reference to the Companies Act.

15 **CLAUSE 20 :** Amends section 20 of the Act to provide for the term "registration".

CLAUSE 21 : Inserts a new subsection to section 22 of the Act to exclude representations by a local authority if a licence is in existence on the premises.

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CLAUSE 22 : Inserts a new subsection to section 26 of the Act to exclude inspections by a local authority if a licence is in existence on the premises.

25 **CLAUSE 23 :** Inserts a new subsection to section 28 of the Act to allow the Board discretion to dispense with public hearings if no objection to a licence is received.

- CLAUSE 24 :** Substitutes subsection (1) to bring the qualifications of a licence holder in line with the National Act.
- 5 **CLAUSE 25 :** Amends section 33 of the Act to bring the disqualifications for a licence in line with the National Act.
- CLAUSE 26 :** Amends section 35 of the Act to disallow applications for extension of the period of validity of a licence.
- 10 **CLAUSE 27 :** Amends section 38 of the Act to bring the provisions for temporary licences in line with the National Act.
- CLAUSE 28 :** Inserts a section 40A in the Act to provide for a national licence in terms of the National Act.
- 15 **CLAUSE 29 :** Amends section 42 of the Act to clarify this section.
- CLAUSE 30 :** Deletes subsection (2) to (8) of section 44 of the Act to do away with the review tribunal.
- 20 **CLAUSE 31 :** Amends section 45(3) of the Act to extend the period of a casino licence to 20 years.
- CLAUSE 32 :** Inserts section 55A in the Act to prohibit dog races.
- 25 **CLAUSE 33 :** Amends section 57 of the Act to provide for the adjustment of fees by way of notice in the *Provincial Gazette*.

- CLAUSE 34 :** Amends section 61 of the Act to provide for a consequential amendment to the reference to fees.
- 5 **CLAUSE 35 :** Amends section 63 of the Act to provide for a defined “designated area”.
- CLAUSE 36 :** Amends section 65 of the Act to provide for the recording of gambling machines and devices.
- 10 **CLAUSE 37 :** Amends section 67 of the Act to provide for electronic monitoring of any gambling device.
- CLAUSE 38 :** Amends section 68 of the Act to provide for consequential amendments and references.
- 15 **CLAUSE 39 :** Amends section 69 of the Act to provide for consequential amendments and references.
- CLAUSE 40 :** Amends section 69A of the Act to provide for consequential amendments and references.
- 20 **CLAUSE 41 :** Amends section 69B of the Act to provide for a temporary key person or employee registration.
- 25 **CLAUSE 42 :** Inserts section 69C of the Act to provide for the registration of an interactive gambling employee.
- CLAUSE 43 :** Amends section 70 as a consequential amendment to the reference

to the National Act.

CLAUSE 44 : Amends section 72 of the Act to provide for a “lawful contingency”.

5 **CLAUSE 45 :** Amends section 73 of the Act to be in line with the National Act.

CLAUSE 46 : Amends section 74 of the Act to provide for electronic payment of bets.

10 **CLAUSE 47 :** Amends section 80 of the Act to provide for consequential amendments and references.

CLAUSE 48 : Amends section 81 of the Act to allow the Board to make Rules after consultation with the MEC.

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CLAUSE 49 : Amends section 86 of the Act to provide for a suitability certificate for suppliers.

CLAUSE 50 : Amends section 88 of the Act to be in line with the National Act.

20

CLAUSE 51 : Amends section 90 of the Act to provide for consequential amendments and references.

CLAUSE 52 : Amends section 91 of the Act to provide for consequential amendments and references.

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CLAUSE 53 : Amends section 93 of the Act to amend the Short Title of the Act.

CLAUSE 54 : Repeals the Prohibition of Dog Races ordinance 11 of 1986.

CLAUSE 55 : Provides for Transitional Provisions.

5 **CLAUSE 56 :** Provides for the Short Title and commencement of the Amendment Act.

This Bill falls within the ambit of Schedule 4 of the Constitution.

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