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GENERAL NOTICE

NOTICE 2479 OF 1995

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 provide for the licensing of persons conducting casinos, bingo games, and totalisators and betting pools, and of gambling machine keepers and bookmakers, and for the registration of persons engaged in bookmaking and in casino occupations and the manufacture and sale of gambling machines and gaming devices; to provide for the restriction, regulation and control of gambling and gaming; to amend the Horse-racing and Betting Ordinance, 1978, so as to repeal the provisions relating to betting and to effect certain amendments necessary in consequence of the introduction of the Constitution and new public holidays; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS gaming and gambling have the potential to make a substantial and lasting contribution to the growth and development of tourism and the economy in the Province of Gauteng and the prosperity of its people;

AND WHEREAS it is recognised that gaming and gambling are privileged activities which should stimulate the creation of employment opportunities and assist in the advancement of deprived communities, and thereby promote the improvement of the quality and standard of living of the people of the Province;

AND WHEREAS gaming and gambling can be a significant source of public revenue for the Province, and so contribute to the well-being of all its people in the general interest;

AND WHEREAS the special risks and dangers entailed by opportunities for gaming and gambling justify the imposing of appropriate restrictions, regulations and controls;

BE IT THEREFORE ENACTED by the Provincial Legislature of Gauteng, as follows:-

ARRANGEMENT OF SECTIONS

Chapter 1

Interpretation and application of Act

1. Definitions
2. Application of Act and other laws

Chapter 2

Gambling and Gaming Board

3. Establishment of board
4. Functions of board
5. Constitution of board
6. Persons disqualified from being members of board
7. Recusal of board member with conflicting interests
8. Vacating of office by members of board
9. Term of office of members of board, and filling of vacancies
10. Remuneration of members of board
11. Meetings and decisions of board
12. Staff of board
13. Involvement in gambling or gaming by members or staff of board
14. Committees to assist board
15. Expert and other assistance
16. Confidentiality
17. Funds of board
18. Accounting responsibility

Chapter 3

Licence applications in general

19. Applications
20. Representations by interested persons
21. Representations by local authority
22. Response by applicant to representations
23. Further information and oral representations
24. Application and representations to be open to public inspection
25. Inspection of premises to which application relates
26. Police report
27. Hearing of application
28. Accessibility of hearings of public
29. Summoning of witnesses
30. Disqualifications for licences
31. Decision on application
32. Conditions of licence
33. Issue of licence

34. Incomplete premises
35. Transfer of licences to another person
36. Removal of licences to other premises
37. Suspension and revocation of licences
38. Financial and controlling interests

Chapter 4

Casino licences

39. Licence required to conduct casino
40. Disqualifications for casino licences
41. Considerations in disposing of application for casino licence
42. Decision on application for casino licence
43. Activities authorised by casino licence
44. Display of prescribed information and rules of games
45. Improper use of word "casino" an offence

Chapter 5

Bingo licences

46. Licence required to conduct bingo games
47. Activities authorised by bingo licence

Chapter 6

Gambling machine licences

48. Licence required to keep gambling machines
49. Activities authorised by gambling machine licence

Chapter 7

Lotteries

50. Licence required to conduct lottery
51. Activities authorised by lottery licence

Chapter 8

Totalizators and pools

52. Licence required to conduct totalizator or pool
53. Totalizator or pool to be conducted according to rules approved by board

Chapter 9

Bookmakers

54. Licence required to conduct business of bookmaker
55. Number of bookmakers at licensed premises
56. Period of validity of bookmaker's licence
57. Interest in bookmaker's business
58. Bookmaker to be member of Highveld Association of Bookmakers
59. Registration of bookmaker's managers and clerks
60. Standup fee to be approved by board

Chapter 10

Fees and taxes

61. Licence holders and gamblers to pay prescribed licence fees and taxes
62. Calculation of fees, taxes and penalties

Chapter 11

Gambling machines and gaming devices in general

63. Gambling machines and gaming devices to be registered
64. Machines and devices to be of approved type
65. Manufacturer or supplier of machines and devices to be authorised
66. Electronic monitoring system for gambling machines

Chapter 12

Registration of certain personnel

67. Persons engaged in casino occupations or manufacture or sale of certain machines or devices to be registered
68. Disqualified persons not to be registered
69. Registration
70. Suspension and revocation of registration

Chapter 13

Provisions relating to gaming and gambling in general

71. Restriction on advertisements of gaming or gambling
72. Prohibition of extending of credit in connection with gaming or gambling
73. Persons under 18 years not to be admitted to gaming or gambling areas
74. Improper modification or use of certain devices and machines
75. Gaming and gambling debts enforceable
76. Events and contingencies on which bets may be made
77. Place for gambling and settling gambling debts
78. No gambling with persons under age of 18 years
79. Restriction on gambling through agent and unlawful inducement to gamble

Chapter 14

Inspections and enquiries

80. Appointment of inspectors
81. Powers of inspectors
82. Duty to produce licence
83. Enquiries by board

Chapter 15

Miscellaneous provisions

84. Regulations
85. Annual report
86. Offences relating to licensable businesses and registrable activities
87. Penalties
88. Vicarious responsibility

89. Evidential matters

Chapter 16

Transitional provisions

90. Amendment of section 1 of Ordinance 24 of 1978
91. Amendment of section 4 of Ordinance 24 of 1978
92. Amendment of section 9 of Ordinance 24 of 1978
93. Amendment of section 9A of Ordinance 24 of 1978
94. Amendment of section 9B of Ordinance 24 of 1978
95. Repeal of sections 10 to 13 of Ordinance 24 of 1978
96. Substitution of section 13A of Ordinance 24 of 1978
97. Repeal of sections 14 to 43 of Ordinance 24 of 1978
98. Amendment of section 44 of Ordinance 24 of 1978
99. Repeal of sections 45 to 49 of Ordinance 24 of 1978
100. Substitution of section 50 of Ordinance 24 of 1978
101. Substitution of section 51 of Ordinance 24 of 1978
102. Substitution of section 51A of Ordinance 24 of 1978
103. Amendment of section 54 of Ordinance 24 of 1978
104. Repeal of section 55A of Ordinance 24 of 1978
105. Amendment of section 57 of Ordinance 24 of 1978
106. Amendment of long title of Ordinance 24 of 1978
107. Substitution of certain expressions in Ordinance 24 of 1978
108. Transfer of business of Totalizator Agency Board to company
109. Transfer of assets and liabilities of Racing Board in Tattersalls to bookmakers
110. Savings
111. Short title

Chapter 1

Interpretation and application of Act

Definitions

1. (1) In this Act, unless the context otherwise indicates -
 - (i) "application" means an application for a licence or for registration as contemplated in this Act, and "applicant" has a corresponding meaning;
 - (ii) "board" means the Gauteng Gambling and Gaming Board established by section 3;
 - (iii) "business" means a business for which a licence is required;
 - (iv) "casino game" means any game played for money or other valuable consideration with playing cards, dice or any other device used to determine win or loss, and includes, without derogating from the generality of the foregoing, blackjack, poker, and roulette;
 - (v) "casino occupation" means -
 - (a) the occupation of croupier, dealer, cashier, counter, change attendant, host, floor attendant, shift or pit boss, security attendant, or casino or floor supervisor or manager;
 - (b) any occupation declared to be a casino occupation under subsection (2);
 - (vi) "chief executive officer" means the chief executive officer of the board appointed in terms of section 12(1)(a);
 - (vii) "controlling interest", in relation to any licensee, applicant or business, means any interest of whatever nature enabling the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the licensee, applicant or business concerned;
 - (viii) "Executive Council" means the Executive Council of the Province;
 - (ix) "family member" or "member of the family", in relation to any person, means his or her spouse, including a person living with the first-mentioned person as if they were married, or a parent or child of the first-mentioned person;
 - (x) "gambling" includes the staking of money or other valuable consideration on the result of any event or contingency the result of which is determined by chance;
 - (xi) "gaming" means the playing of a casino game;
 - (xii) "gambling machine" means, subject to the provisions of subsection (3), any mechanical, electrical or electronic apparatus or device, other than a roulette wheel, which is used for playing, for money or other valuable consideration, a game the outcome of which is determined, within limits fixed by the design of the machine, by chance, and which is operated by means of the insertion of a coin or token or the payment of valuable consideration in any other manner;
 - (xiii) "inspector" means an inspector appointed under section 80;
 - (xiv) "licence" means a licence granted in terms of this Act, and "licensed" and "licensee" have

a corresponding meaning;

- (xv) "local authority" means a transitional council, transitional metropolitan substructure or local government body contemplated in section 1(1) of the Local Government Transition Act, 1993 (Act No. 209 of 1993);
- (xvi) "lottery" includes any scheme in which participants, in return for a stake or other contribution, obtain the possibility of winning or right to a prize on the occurrence of an event determined by chance;
- (xvii) "premises" means -
 - (a) immovable property; and
 - (b) includes -
 - (i) a bookmaker's stand or cubicle;
 - (ii) for the purposes of section 25, any place where a bookmaker's stand or cubicle is or will be located;
- (xviii) "prescribed" means prescribed by regulation;
- (xix) "regulation" means a regulation made under section 84;
- (xx) "responsible Member" means the Member of the Executive Council responsible for finance and economic affairs;
- (xxi) "sporting event" means any ball-game, race (including a race involving vehicles or animals), or other athletic or sporting contest, competition or game, including a beauty contest, usually attended by the public;
- (xxii) "this Act" includes the regulations.

(2) The responsible Member may, on the recommendation of the board, by notice in the *Provincial Gazette* declare any occupation which in his or her opinion is directly connected or closely related to the conducting of a casino game or the operation of a casino to be a casino occupation for the purposes of this Act.

(3) For the purposes of this Act a gambling machine shall not include any machine, apparatus or device which provides, as the only prize, reward or consideration for successfully playing the game concerned -

- (a) a coin or token sufficient in value to enable a player, by inserting such coin or token in the machine, to play the game once again; or
- (b) the opportunity to play the game once again immediately without the insertion of another coin or token.

Application of Act and other laws

2. (1) The provisions of the Gambling Act, 1965 (Act No. 51 of 1965), shall not apply in relation to anything which is authorised in terms of this Act.

(2) No provision of this Act shall be construed as limiting the application of the Abolition of Dog Race Meetings and the Prohibition of Betting on Dog Races Ordinance, 1949 (Ordinance No. 4 of 1949).

(3) This Act shall bind the State.

Chapter 2

Gambling and Gaming Board

Establishment of board

3. There is hereby established a juristic person to be known as the Gauteng Gambling and Gaming Board.

Functions of board

4. The functions of the board are -

- (a) to make recommendations to the Executive Committee and the responsible Member in connection with the licensing and control of gambling and gaming in the Province as provided in the Act;
- (b) to oversee gambling and gaming activities in the Province; and
- (c) to advise the responsible Member on matters concerning gambling, either of its own accord or at the request of the responsible Member.

Constitution of board

5. (1) The board shall consist of -

- (a) ten members appointed by the responsible Member, of whom -
 - (i) one shall be a person who has been an attorney, advocate, holder of judicial office or lecturer in law at any university for a cumulative period of not less than five years in one or more such capacity;
 - (ii) one shall be an accountant and auditor registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), who is engaged in public practice as defined in section 1 of that Act;
 - (iii) one shall be appointed by virtue of his or her knowledge and active involvement in the tourism industry;
 - (iv) one shall be appointed by reason of his or her knowledge and experience in the field of welfare or of community or socio-economic development;
 - (v) one shall be appointed after consultation by the responsible Member with federations of trade unions with substantial numbers of members in the Province; and
 - (vi) five other persons of whom -

- (aa) at least one but not more than two shall be persons with knowledge of the gaming industry;
- (bb) at least two but not more than three shall be persons with knowledge of the horse-racing industry;
- (cc) at least one but not more than three shall be persons who in the opinion of the responsible Member are suitable for appointment as members of the board and who shall not be a person contemplated in subparagraphs (i) to (v) or in items (aa) and (bb) of this subparagraph; and

(b) the chief executive officer *ex officio*.

(2) The responsible Member may appoint an alternate member for every member of the board referred to in subsection (1)(a).

(3) To enable the responsible Member to make the appointments contemplated in subsections (1)(a) and (2), the responsible Member shall cause a notice to be published in the *Provincial Gazette* inviting interested persons to submit within a specified period, which shall not be shorter than one month after such publication, nominations for such appointments.

(4) The responsible Member shall appoint a member of the board as the chairperson and another member as the deputy chairperson of the board.

(5) If the chairperson is absent or is for any reason unable to act as chairperson, the deputy chairperson shall perform the functions of the chairperson.

(6) A member and alternate member of the board shall, before assuming office, make and subscribe an oath or solemn affirmation in the prescribed form before the responsible Member.

Persons disqualified from being members of board

6. No person shall be appointed or remain a member or alternate member of the board if such person -

- (a) is not a citizen of the Republic resident in the Province;
- (b) at the relevant time holds, or during the preceding twelve months held, an office of profit under the State;
- (c) at the relevant time is, or during the preceding twelve months was, a member of Parliament or any provincial legislature or local authority, or any council, commission or house of traditional leaders established in terms of the Constitution;
- (d) at the relevant time is, or during the preceding twelve months was, an office-bearer or employee of any party, movement, organisation or body of a party political nature;
- (e) has a controlling interest or any financial or other interest in any gambling, gaming or fund-raising activity;
- (f) or his or her partner or associate holds an office in or with or is employed by any person or company, organisation or other body, whether corporate or unincorporate, which has an interest contemplated in paragraph (e);
- (g) is an unrehabilitated insolvent;

- (h) is of unsound mind, or is subject to an order of a competent court declaring such person to be mentally ill or disordered;
- (i) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), or any offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding R100;
- (j) has at any time been removed from an office of trust on account of misconduct;
- (k) is a member of the family of the responsible Member;
- (l) is a member of the family of a person contemplated in paragraph (b), (c), (d), (e) or (f);
- (m) failed to disclose an interest or was present or participated in the proceedings of the board as contemplated in section 7(3).

Recusal of board member with conflicting interests

7. (1) A member of the board shall not vote, attend or in any other manner participate in the proceedings at any meeting or hearing of the board if, in relation to any matter before the board -

- (a) he or she or his or her family member, partner or business associate is a director, member or partner of or has a controlling interest or any financial or other interest in the business of the applicant or any person who made representations in relation to the application; or
- (b) subject to the provisions of subsection (2), he or she has any interest which precludes him or her from performing his or her functions as a member of the board in a fair, unbiased and proper manner.

(2) If at any stage during the course of any proceedings before the board it appears that a member of the board has or may have any interest contemplated in subsection (1)(b) -

- (a) that member shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members of the board to discuss the matter and determine whether that member is precluded from participating in such meeting by reason of a conflict of interests; and
- (b) such disclosure and the decision taken by the remaining members of the board regarding such determination, shall be recorded in the minutes of the meeting in question.

(3) If any member of the board fails to disclose any interest contemplated in subsection (1) or if, having such an interest, but subject to the provisions of subsection (2), he or she attends or in any manner whatsoever participates in the proceedings at the meeting or hearing concerned, the relevant proceedings shall be null and void.

Vacating of office by members of board

8. (1) A member or alternate member of the board shall vacate his or her office -

(a) if he or she becomes subject to a disqualification contemplated in section 6; or

(b) if, in the case of -

(i) a member, he or she has been absent for more than two consecutive meetings of the board without leave of the chairperson;

(ii) an alternate member, he or she has been so absent during the absence, or vacancy in the office, of the member for whom he or she has been appointed as alternate member.

(2) The provisions of subsection (1)(b) and of sections 9 and 10 shall not apply in relation to the chief executive officer.

Term of office of members of board, and filling of vacancies

9. (1) A member or alternate member of the board shall hold office, subject to the provisions of section 8, for five years.

(2) If a member or alternate member of the board for any reason vacates his or her office, the responsible Member may appoint a person to act in the place of such member or alternate member for the unexpired period of his or her term of office.

(3) Any person whose term of office as a member or alternate member of the board has expired, shall be eligible for reappointment.

Remuneration of members of board

10. A member or an alternate member of the board shall be paid such remuneration and allowances out of the funds of the board as the responsible Member may determine.

Meetings and decisions of board

11. (1) The first meeting of the board shall be held at a time and place determined by the chairperson, and thereafter the board shall meet at such times and places as the board may from time to time determine for the expeditious conduct of its business.

(2) The chairperson may at any time convene an extraordinary meeting of the board to be held at a time and place determined by the chairperson.

(3) The quorum for a meeting of the board shall be a majority of its members.

(4) If both the chairperson and deputy chairperson are absent from any meeting of the board, the members present shall from among themselves elect a person to preside at such meeting.

(5) The decision of a majority of the members present at a meeting of the board shall constitute a decision of the board and, in the event of an equality of votes on a matter other than a licence

application, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote.

(6) No decision taken by or act performed under the authority of the board shall be invalid by reason only of a casual vacancy on the board or, subject to the provisions of section 7(3), of the fact that any person not entitled to sit as a member of the board sat as such a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the majority of the members of the board who were present at the time and entitled to sit as members.

(7) For the purposes of this section a member shall include an alternate member present at a particular meeting of the board during the absence, or vacancy in the office, of the member for whom he or she has been appointed as alternate member.

Staff of board

12. (1) The board shall in the performance of its functions be assisted by -

- (a) a chief executive officer appointed by the responsible Member after consultation with the members of the board referred to in section 5(1)(a);
- (b) persons appointed by the board;
- (c) officers and employees placed at the disposal of the board under section 15(3)(a) of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(2) The chief executive officer shall, subject to supervision by the board, perform the functions entrusted to him or her by or in terms of this Act.

(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 and shall be appointed on such terms and conditions and for such periods as the board, after consultation with the responsible Member, may determine.

(4) A member of the staff of the board shall, before assuming his or her duties as such, make and subscribe an oath or solemn affirmation in the prescribed term before the chairperson of the board.

(5) No person shall be admitted to the staff of the board as contemplated in this section if such person or any member of the family of such person has a controlling interest or any financial or other interest in any gambling, gaming or fund-raising activity.

Involvement in gambling or gaming by member or staff of board

13. (1) No member of the board or of the staff of the board shall -

- (a) participate in any gaming or gambling in the province;
- (b) solicit or accept employment from the holder of or applicant for a licence in terms of this Act within one year after the termination of his or her term of office or service, as the case may be.

(2) The provisions of subsection (1)(a) shall not apply to an inspector in the performance of his or

her duties.

Committees to assist board

14. (1) The board may appoint one or more committees to enquire into any matter referred to it by the board and to report on that matter to the board.

(2) Such a committee shall consist of so many members of the board or so many other persons or so many members and other persons as the board may deem necessary, and the board may from time to time dissolve or reconstitute such a committee.

(3) If a committee consists of more than one member, the board shall designate a member of the committee as chairperson thereof.

(4) A member of a committee who is not a member of the board or in the full-time service of the State shall receive such remuneration and allowances as the board, after consultation with the responsible Member, may determine.

Expert and other assistance

15. (1) The board may appoint or call to its assistance such experts or other persons, including experts or persons from other countries, as it may deem necessary with a view to assisting it in the exercise and performance of its powers, functions and duties and for the performance of any work arising there from.

(2) The terms, conditions, remuneration and allowances applicable to any expert or person appointed or called upon in terms of subsection (1), and the work to be performed or service to be rendered by virtue thereof, shall be as determined in a written agreement entered into for that purpose between the board and the expert or person concerned.

(3) Upon having performed the work or completed the service pursuant to an agreement contemplated in subsection (2), the expert or other person concerned shall submit a report in regard thereto to the board for its consideration.

(4) The board, on receipt of a report referred to in subsection (3), may refer the matter back to the expert or person concerned for such further attention as may be determined by the board, or to perform such further functions as the board may deem necessary or desirable.

Confidentiality

16. Every member of the board and of the staff of the board and every person and expert contemplated in sections 14 and 15 shall aid in preserving secrecy and shall not disclose any information acquired by him or her in the exercise or performance of any powers, functions or duties in terms of this Act, except -

- (a) in so far as may be necessary for the purpose of the due and proper exercise or performance of any power, function or duty in terms of this Act;
- (b) in so far as the provisions of this Act require the publication of or access by the public or any interested persons to information relating to such matter;
- (c) on the order of a court of law.

Funds of board

17. (1) The funds of the board shall consist of -

- (a) money appropriated by the Provincial Legislature in order to enable the board to perform its functions under this Act;
- (b) money accruing to the board from any other source.

(2) The board may accept money or other goods donated or bequeathed to the board, provided no condition is attached to such donation or bequest.

(3) Details of any such donation or bequest shall be specified in the annual report in question of the board.

(4) The board shall utilise its funds for the defrayal of expenses incurred by the board in the performance of its functions under this Act.

(5) The board shall open an account with a registered bank and shall deposit in that account all money referred to in subsection (1) and (2).

(6) The board may invest money deposited in terms of subsection (5) which is not required for immediate use.

(7) Any money standing to the credit of the board in the account referred to in subsection (5) at the close of any financial year of the board, as well as money which has been invested in terms of subsection (6), shall be carried forward to the next financial year.

Accounting responsibility

18. (1) The chief executive officer shall be the accounting officer of the board charged with accounting for all money received and payments made by the board.

(2) The financial year of the board shall end on 31 December in each year.

(3) The accounting officer shall -

- (a) keep full and proper records of all money received or expended by, and of all assets, liabilities and financial transactions of, the board;
- (b) as soon as is practicable, but not later than three months after the end of each financial year referred to in subsection (2), prepare annual financial statements reflecting, with suitable particulars, money received and expenses incurred by the board during, and its assets and liabilities at the end of, the financial year in question.

(4) The records and annual financial statements referred to in subsection (3) shall be audited by the

Auditor-General.

Chapter 3

Licence applications in general

Applications

19. (1) A person desiring to obtain a licence shall apply to the Executive Council therefor by submitting an application in the prescribed form to the chief executive officer.

(2) An application shall be accompanied by such application fee, plans, documents, approvals, and information as may be prescribed.

(3) An applicant may in the application concerned identify any document or information which is included in the application or lodged as contemplated in section 23(1) and which is in the opinion of the applicant confidential or should for any reason not be disclosed to the public, and show cause why such document or information should not be available for public inspection as contemplated in section 24(2)(a).

Representations by interested persons

20. (1) The chief executive officer shall, on lodgment of an application, forthwith cause notice of the application to be published -

(a) in the *Provincial Gazette*, in any official language; and

(b) in a newspaper circulating in the district in which the premises are situated to which such application relates, in any official language in which such newspaper is published.

(2) A notice contemplated in subsection (1) shall -

(a) contain the material particulars of the application;

(b) invite interested persons -

(i) to lodge their written representations in relation thereto with the chief executive officer within one month from the date of such notice;

(ii) to state in any such written representations whether or not they wish to make oral representations at the hearing of the application;

(c) be in the prescribed form.

(3) The chief executive officer shall, on lodgment of any representations pursuant to a notice in terms of subsection (1), forthwith send by registered post or deliver, subject to the provisions of section 24(2)(b), a copy of such representations to the applicant concerned.

Representations by local authority

21. (1) The chief executive officer shall, on lodgment of an application, forthwith forward a copy of the application to the local authority in the area of jurisdiction of which the premises to which the application relates are situated.

(2) The local authority may, within one month from the date of publication of notice of the application in terms of section 20(1) -

- (a) lodge written representations with the chief executive officer in relation to the application;
- (b) state in any such written representations whether or not it wishes to make oral representations at the hearing of the application.

(3) The local authority shall at the time of lodgement furnish proof to the satisfaction of the chief executive officer that it has sent by registered post or delivered a copy of such representations to the applicant concerned.

Response by applicant to representations

22. (1) The applicant shall lodge his or her written response (if any) to any representations lodged in terms of section 20 or 21 with the chief executive officer within two months of the date of the notice contemplated in section 20(1).

(2) The chief executive officer shall, on lodgment on any response as contemplated in subsection (1), forthwith send by registered post or deliver a copy of such response to the person who made the representations concerned.

Further information and oral representations

23. (1) An applicant or any person who or local authority which lodged representations as contemplated in this section may be required in writing by the chief executive officer to lodge with the board, within the period specified by the chief executive officer, with such further information as may be reasonably necessary with a view to enabling the board properly to consider the application, representations or response concerned, as the case may be.

(2) Where any person or the local authority indicated a desire to make oral representations at the hearing of the application as contemplated in sections 20(2)(b)(ii) and 21(2)(b) respectively, the board shall -

- (a) with due regard to whether the making of such oral representations will be in the interest of the consideration of the application, grant or refuse the request; and
- (b) inform the person concerned or local authority in writing of its decision.

(3) No information shall be requested in terms of subsection (1), and no request shall be granted in terms of subsection (2), where if in the opinion of the board the information or representations concerned would amount only to objections regarding gambling or control over gambling in general.

Application and representations to be open to public inspection

24. (1) An application and any representations, response and further information lodged in terms of sections 19 to 23 inclusive shall, subject to the provisions of subsection (2), be open to public inspection by interested persons during the normal office hours of the board for a period of one month after expiry of the period of two months referred to in section 22, and the board shall at the request of any interested person, and on payment of such fee as may be prescribed, furnish him or her with a copy of or extract from any such application, representations or information.

(2) The board may determine that -

- (a) any document or information relating to the financial capacity of any person participating in an application or to the names of prospective employees and business plans of an applicant shall not be open to public inspection, provided that such document or information can be separated from the remainder of the application and is marked confidential;
- (b) the identity of any person who lodged representations in relation to an application shall not be divulged to any other person.

Inspection of premises to which application relates

25. (1) The chief executive officer shall, on lodgment of an application, forthwith -

- (a) cause the premises to which the application relates to be inspected by an inspector with regard to the suitability thereof for the carrying on of the business to which the licence relates;
- (b) give notice of the application to the local authority or other competent authority concerned, with a view to the conducting of an inspection by such authority with regard to compliance by the premises with the requirements relating to town planning and the health and safety of the public of any law which applies to those premises.

(2) The local authority or other competent authority shall, on receipt of notice of the application, forthwith cause the premises to be inspected with regard to the matters contemplated in subsection (1)(b).

(3) The inspector and any authority concerned shall, on completion of an inspection contemplated in subsection (1) or (2), as the case may be, furnish a report of such inspection to the chief executive officer within two months from the date of the notice contemplated in section 20(1).

Police report

26. (1) The chief executive officer shall, on receipt of an application in relation to a licence, ask the South African Police Service for a report stating -

- (a) particulars of all convictions (if any) recorded against the applicant and every person who is or will be in actual and effective control of the business;

(b) such matters as may be prescribed;

(c) such other matters which ought, in the opinion of the South African Police Service, to be taken into consideration in respect of the application concerned.

(2) For the purposes of such a report any member of the South African Police Service may require the applicant or person concerned to furnish such information and particulars as that member may consider necessary.

(3) A report contemplated in this section shall be furnished to the chief executive officer within two months of the date of the notice contemplated in section 20(1) in relation to the application concerned.

Hearing of application

27. (1) The board shall, as soon as may be reasonably practicable after the lapse of the period for public inspection contemplated in section 24(1), hold a hearing in respect of every application relating to a licence received by the board, at such date, time and place as shall be determined by the board and made known by notice published *mutatis mutandis* as provided in section 20(1).

(2) At such hearing -

(a) the applicant shall be afforded an opportunity to be heard;

(b) a person and local authority permitted to make oral representations as contemplated in section 23(2) shall be afforded an opportunity to be heard;

(c) the applicant and each such person or authority may be assisted or represented by any person of his or her choice.

(3) Any such hearing may, if the board is of the opinion that circumstances warrant it, be adjourned and resumed at such place and on such date as it may determine.

Accessibility of hearings to public

28. (1) Subject to subsection (2), any hearing of the board contemplated in section 27 shall be accessible to the public.

(2) The person presiding at the hearing may, if in his or her opinion -

(a) the presence of any particular person is not conducive to the good order or conduct of the hearing, direct that such person may not attend or shall leave the hearing;

(b) it is in the interest of the consideration of the matter under consideration, direct that the public or any class thereof may not attend or shall leave the hearing.

Summoning of witnesses

29. (1) For the purposes of a hearing under section 27, the board may -

(a) summon any person who in its opinion may be able to give material information

concerning the application which is the subject of the hearing or who is believed to have in his or her possession or custody or under his or her control any book, document or thing which has any bearing on such application, to appear before it, at a time and place specified in the summons, to be questioned or to produce that book, document or thing, and retain for examination any book, document, thing so produced;

- (b) call and, by the person presiding at the hearing, administer an oath to, or accept an affirmation from, any person present at the hearing who was or could have been summoned in terms of paragraph (a) and question such person and require him or her to produce any book, document or thing in his or her possession or custody or under his or her control.

(2) A summons for the attendance before the board of any person or for the production of any book, document or thing shall be in the prescribed form, shall be signed by the chairperson of the board or a person authorised thereto by him or her, and shall be served by a person in the service of the board.

(3) If any person who has been duly summoned under this section fails without sufficient cause, to attend at the time and place specified in the summons, or to remain in attendance until discharged from further attendance by the person presiding at the hearing, or any person called in terms of subsection (1)(b) refuses to be sworn or to make an affirmation as a witness or fails without sufficient cause to answer fully and satisfactorily to the best of his or her knowledge and belief all questions lawfully put to him or her concerning the application or to produce any book, document or thing in his or her possession or custody or under his or her control which he or she has been required to produce, such person shall be guilty of an offence: Provided that in connection with the interrogation of any such person or the production of any such book, document or thing, the law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce any book, document or thing before a court of law, shall apply.

(4) Any witness who, having been duly sworn or having made an affirmation, gives a false answer to any question lawfully put to him or her or makes a false statement in any matter, knowing such answer or statement to be false, shall be guilty of an offence.

(5) Any person who lawfully hinders the presiding board member or any person in the service of the board in the exercise of any power conferred upon him or her by or under this section shall be guilty of an offence.

Disqualifications for licences

30. (1) No application shall be granted if the applicant or any person in control of the applicant or any manager of the business concerned -

- (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;

- (c) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), or any offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding R100;
 - (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;
 - (f) has a controlling interest or a financial interest of five percent or more in the business or premises which was the subject of an application which was refused, or which related to a licence which was revoked, in terms of this Act within the previous twelve months or more than once within the previous three years;
 - (g) is, in the case of an application in relation to a casino licence, subject to any disqualification contemplated in section 40(1) or (2);
 - (h) is in the opinion of the board not a fit and proper person to be involved in the business concerned;
 - (i) is a family member of a person contemplated in paragraph (f), (g) or (h).
- (2) In order to determine, for the purposes of subsection (1)(h), 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, in the opinion of the board, should be taken into account;
 - (c) whether such person has taken part or been associated with any practice which, in the opinion of the board, is deceitful, prejudicial or otherwise improper or discreditable (whether unlawful or not).
- (3) No licence shall, be granted to the State, a local government or a statutory body or, subject to the provisions of section 108 read with section 110(3), any person in whom the State, a local government or a statutory body has a controlling interest or any financial or other interest.

Decision on application

31. (1) The board shall, subject to the provisions of section 30 and after having duly considered the application, any representations made in relation to the application, the applicant's written response thereto (if any), any further information furnished in terms of section 23(1), the inspection and police reports contemplated in sections 25 and 26, and any other evidence tendered to the board in terms of section 29 or otherwise -

- (a) in the case of a casino licence, comply with the provisions of section 42(1);
- (b) in any other case, grant the application on such conditions as the board may determine, or refuse the application.

(2) The chief executive officer shall, where an application -

- (a) has been refused or has been granted subject to conditions, furnish to the applicant;
 - (b) has been granted, furnish to any person who lodged applications,
- on request the written reasons of the board or the Executive Council, as the case may be, for its decision.

Conditions of licence

32. (1) A licence may be issued on conditions relating to -

- (a) the hours during which the business concerned may be conducted;
- (b) the provision by the applicant to the board of a guarantee in a form acceptable to the board for the liabilities of the applicant in relation to -
 - (i) taxes payable in terms of this Act or any other law;
 - (ii) the salaries and wages of the employees of the applicant;
 - (iii) gambling debts payable by the applicant to punters;
- (c) the keeping by the applicant of liquid assets amounting to not less than the prescribed percentage of any liability contemplated in paragraph (b);
- (d) in the case of a casino licence -
 - (i) the period of validity of the licence;
 - (ii) the number of casino games which may be played;
 - (iii) any matter contemplated in section 41;
 - (iv) the payment by the applicant of a lump sum in return for the exclusive rights to conduct a casino in the area and for the period determined in the licence;
- (e) any other matter which it may be considered necessary or expedient to regulate in the interest of the orderly conducting of the business concerned.

(2) The board may, if any circumstances come to its notice which in its opinion increases the risks relating to the settlement by the holder of a licence of any liability contemplated in subsection (1)(b), require such holder to furnish guarantees other than or additional to any guarantee contemplated in that subsection.

Issue of licence

33. Where an application has been granted as contemplated in section 31, the chief executive officer shall, subject to the provision of section 34, cause a licence to be issued to the applicant in the prescribed form setting out the conditions subject to which the application was granted.

Incomplete premises

34. (1) If an application is granted in respect of premises not yet erected, or premises requiring any structural alteration, addition or reconstruction to be effected so as to make them suitable for the purposes for which they will be used under the licence, the board shall issue a notice to the applicant concerned in which he or she shall be ordered to comply with such conditions or requirements referred to in the notice with regard to those premises as the board may determine, within such period as may likewise be determined and referred to.

(2) The board may at any time after the issue of such a notice, on application by the applicant concerned -

- (a) withdraw or amend any condition or requirement or extend the period determined under subsection (1);
- (b) extend or further extend the period so determined or extended in respect of premises not yet erected at the time of the issue of the notice, if satisfied that a substantial part of the premises has since been erected.

(3) When the board is satisfied that the premises in respect of which a notice has been issued under subsection (1) have been completed to the satisfaction of the board, the conditions and requirements determined by the board have been complied with and the premises are suitable for the purposes for which they will be used under the licence concerned, the board shall issue the licence in accordance with section 33 to the applicant concerned.

Transfer of licences to another person

35. (1) The holder of a licence may at any time make application for the transfer thereof to another person.

(2) The provisions of -

- (a) sections 18(1) and (3), 20, 22 to 24, 26 to 29 and 31 to 33, inclusive, shall *mutatis mutandis* apply in relation to an application contemplated in subsection (1); and
- (b) section 30 shall *mutatis mutandis* apply in relation to the prospective transferee of the licence concerned.

Removal of licences to other premises

36. (1) The holder of a licence may at any time make application for the removal, where the permanently or temporarily, of the licence from the licence to premises concerned to other premises.

(2) The provisions of sections 19 to 25, 27 to 29, and 31 to 34, inclusive, shall *mutatis mutandis* apply in relation to an application contemplated in subsection (1).

Suspension and revocation of licences

37. The board may, after giving the licensee concerned an opportunity to be heard, suspend or revoke a licence if -

- (a) any information contained in the application for such licence was at the time when the information was furnished false in any material respect or was subject to any material omission;
- (b) the holder of the licence has been convicted of an offence under this Act;
- (c) the holder of the licence has become subject to any disqualification contemplated in section 30 or, in the case of a casino licence, section 40(1).

Financial and controlling interests

38. (1) The holder of a licence shall not without the consent of the board permit any other person to procure -

- (a) a controlling interest in the business to which the licence relates; or
- (b) a financial interest of five percent or more in the business to which the licence relates.

(2) The board shall not grant consent under subsection (1) where the other person who is the subject of the application is subject to any disqualification contemplated in section 30.

Chapter 4

Casino licences

Licence required to conduct casino

39. No person shall conduct a casino without a casino licence.

Disqualifications for casino licences

40. (1) No person shall be granted a casino licence if such person -

- (a) at the relevant time holds, or during the preceding twelve months held, an office of profit under the State;
- (b) at the relevant time is, or during the preceding twelve months was, a member of Parliament or any provincial legislature or local authority, or any council, commission or

house of traditional leaders established in terms of the Constitution;

- (c) at the relevant time is, or during the preceding twelve months was, an office-bearer or employee of any party, movement, organisation or body of a party political nature;
- (d) is a family member of a person contemplated in paragraph (a), (b) or (c);
- (e) is subject to any disqualification contemplated in section 30.

(2) No person shall be granted a casino licence if, in the opinion of the board -

- (a) such person will not have access to sufficient experience and knowledge of the operation and management of a casino;
- (b) the granting of such licence will or may create or aggravate a monopoly situation as defined in the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979).

Considerations in disposing of application for casino licence

41. The board shall, in considering whether to recommend the granting of an application for a casino licence, and in considering any conditions and requirements to which any such licence should advisably be made subject, take into consideration -

- (a) the extent to which the casino will promote tourism at the place where the premises will be situated and in the Province in general;
- (b) the extent to which the casino will promote sustainable employment at such place and in the Province in general;
- (c) the extent to which the applicant will provide training and the acquisition of skills to his or her employees;
- (d) the extent to which the applicant will procure labour, goods and services from such place and the Province in general in the construction and conducting of the casino;
- (e) the extent to which the applicant intends to provide for ownership or control of the casino by persons or groups or categories of persons disadvantaged by unfair discrimination;
- (f) any facility, advantage or contribution which the applicant intends to provide or furnish for the benefit of, or for utilisation or enjoyment by, any needy community at or near the place where the premises will be located or any persons or groups or categories of persons contemplated in paragraph (e);
- (g) the extent to which the granting of the licence will promote the attainment of the objects of reconstruction and development projects and programmes referred to in section 3(a) of the Reconstruction and Development Fund Act, 1994 (Act No. 7 of 1994), of the Republic;
- (h) any other factors which, in the opinion of the board, may affect the question whether it is desirable to grant such application or to attach any such condition or requirement.

Decision on application for casino licence

42. (1) The board shall, after consideration as contemplated in section 31(1) -
- (a) prepare a report in which it recommends that the application -
 - (i) be approved either wholly or in part, subject to any condition the board may deem advisable for the Executive Council to impose; or
 - (ii) be refused; and
 - (b) furnish its report and recommendation to the responsible Member for submission to the Executive Council.
- (2) The Executive Council shall -
- (a) subject to the provisions of subsection (3), grant the application, and impose such conditions as the Executive Council may determine; or
 - (b) refuse the application.
- (3) The Executive Council shall not grant an application or impose any condition contrary to the recommendation of the board.
- (4) The responsible Member shall convey the decision of the Executive Council to the board.

Activities authorised by casino licence

43. The granting of a casino licence shall authorise -
- (a) the conducting and carrying on the licensed premises concerned of such casino games as may be authorised by such licence;
 - (b) the keeping of any number of gambling machines; and
 - (c) the carrying on of any other lawful activity on such premises.

Display of prescribed information and rules of games

44. The holder of a casino licence shall -
- (a) display permanently within the licensed premises the prescribed information regarding casino games;
 - (b) make available for examination at the request of any customer a copy of the rules governing the playing of any particular casino game.

Improper use of word "casino" an offence

45. No person shall trade or carry on business under a name or title of which the word "casino" forms a part, unless he or she is the holder of a casino licence granted in terms of this Act.

Bingo licences

Licence required to conduct bingo games

46. No person shall conduct the gambling game of bingo unless he or she is the holder of -
- (a) a casino licence contemplated in Chapter 4; or
 - (b) a bingo licence.

Activities authorised by bingo licence

47. (1) A bingo licence shall, subject to any condition contemplated in section 32, authorise -
- (a) the conducting of the game of bingo on the licensed premises concerned; and
 - (b) the carrying on of any other lawful activity on such premises.
- (2) The maximum -
- (a) amount that may be charged to enable a person to play the game of bingo once shall not exceed the prescribed amount;
 - (b) amount or value of any prizes which may be awarded in respect of a game of bingo shall not exceed the prescribed amount or value.

Chapter 6

Gambling machine licences

Licence required to keep gambling machines

48. No person shall conduct the business of keeping a gambling machine unless he or she is the holder of -
- (a) a casino licence contemplated in Chapter 4; or
 - (b) a gambling machine licence.

Activities authorised by gambling machine licence

49. (1) A gambling machine licence shall, subject to any condition contemplated in section 32, authorise -
- (a) the keeping of a maximum of five gambling machines on the licensed premises concerned;
 - (b) the carrying on of any other lawful activity on such premises.
- (2) The amount or value of any money or other prize which may be paid out in respect of a game

played on or the operation of a gambling machine shall not exceed the prescribed amount or value.

Chapter 7

Lotteries

Licence required to conduct lottery

50. (1) No person shall conduct a lottery without a lottery licence.

(2) The provisions of subsection (1) shall not apply in relation to a lottery conducted by the State or a statutory body or any person at the instance or on behalf of the State.

(3) A lottery licence shall not be granted to any person other than -

- (a) a society, company or other association of persons, including a trust, which is authorised to collect contributions from the public in terms of section 4 of the Fund-raising Act, 1978 (Act No. 107 of 1978), and which has the main object of promoting arts, sciences, education, charity, recreation or any other cultural or social activity or communal or group interests;
- (b) a social or sporting club or similar association of persons;
- (c) a person intending to conduct a lottery, raffle or draw at a school fete, church bazaar, dance or similar social function.

Activities authorised by lottery licence

51. (1) A lottery licence shall, subject to the provisions of this section, authorise the conducting of the lottery specified in the licence.

(2) A society, company or association contemplated in section 50(3)(a) shall -

- (a) apply the proceeds of the lottery concerned, less any amounts expended on prizes or the administration of the lottery, solely towards the promotion of the main object of the society, company or association;
- (b) not expend administration expenses in excess of a determined or determinable amount specified in the licence;
- (c) conduct the lottery concerned in accordance with rules approved by the board.

(3) A club or association contemplated in section 50(3)(b) shall -

- (a) apply the entire proceeds of the lottery concerned, less any amount expended on prizes or the administration of the lottery, for the purposes of the club or association;
- (b) not employ any person for reward in connection with the promotion or conducting of the lottery;
- (c) not publicise or advertise the lottery to any person other than its members.

- (4) The holder of a licence to conduct a lottery contemplated in section 50(3)(c) shall -
 - (a) not apply any portion of the proceeds for the private profit or gain of any person;
 - (b) not award a prize in the form of money or anything redeemable in exchange for money.
- (5) The amount or value of any prize which may be awarded in respect of a lottery shall not exceed the prescribed amount or value.
- (6) Any person who contravenes the provisions of this section shall be guilty of an offence.

Chapter 8

Totalizators and pools

Licence required to conduct totalizator or pool

52. No person shall conduct the business of a totalizator or betting pool without a totalizator licence.

Totalizator or pool to be conducted according to rules approved by board

53. The holder of a totalizator licence shall conduct totalizators or betting pools in accordance with rules made by such holder and which have been approved by the board.

Chapter 9

Bookmakers

Licence required to conduct business of bookmaker

54. No person shall conduct the business of a bookmaker unless he is the holder of a bookmaker's licence.

Number of bookmakers at licensed premises

55. (1) No more than one bookmaker may carry on business at the licensed stand or cubicle concerned.

(2) The provisions of subsection (1) shall not prevent the carrying on of business by more than one

bookmaker -

- (a) each at a separate stand or cubicle at a Tattersalls or betting exchange or other similar premises or a race-course or other premises where sporting events are held;
- (b) in partnership subject to authorisation in terms of section 57(2).

Period of validity of bookmaker's licence

56. (1) The period of validity of a bookmaker's licence shall not exceed one year.

(2) A bookmaker who desires to renew his or her licence shall, not later than three months before the expiry thereof, apply to the board for the renewal of the licence.

(3) The provisions of sections 21 and 25 shall not apply in relation to an application contemplated in subsection (2).

Interest in bookmaker's business

57. (1) No person other than the holder of a bookmaker's licence shall, subject to subsection (2), have a controlling interest or any financial or other interest in the business of a bookmaker.

(2) The board may on application authorise a licensed bookmaker to become a partner in -

- (a) not more than one bookmaker's business on a race-course or other premises where sporting events are held;
- (b) not more than three bookmaker's businesses in a Tattersalls or betting exchange or other similar premises.

(3) The provisions of subsection (2) shall not derogate from the obligation of each bookmaker to provide separate guarantees contemplated in section 32(1)(b).

Bookmaker to be member of Highveld Association of Bookmakers

58. (1) No bookmaker shall carry on business as such unless he is a member of the Highveld Association of Bookmakers.

(2) The provisions of subsection (1) shall not prevent a bookmaker from carrying on business for a period of fourteen days from the issue to him or her of a bookmaker's licence if on expiry of such period he or she has been admitted to membership of the said Association.

(3) Where a bookmaker ceases to be a member of the said Association for any reason, his or her bookmaker's licence shall lapse with effect from the date on which he or she ceases to be such a member.

(4) No amendment to the constitution or rules of the said Association shall have any force or effect until the board has approved such amendment.

Registration of bookmaker's managers and clerks

59. (1) No person other than the holder of a bookmaker's licence shall perform for reward any act connected with the business of a bookmaker unless he or she -

(a) is employed by such a holder; and

(b) is registered as -

(aa) a bookmaker's manager in terms of subsection (2); or

(bb) a bookmaker's clerk by the Highveld Association of Bookmakers.

(2) Any person desiring to be registered as a bookmaker's manager shall make application for such registration to the board.

(3) The provisions of sections 68 to 70 shall *mutatis mutandis* apply in relation to an application contemplated in subsection (2).

(4) A bookmaker shall not employ any person to manage his or her business unless such person is registered as contemplated in subsection (2).

Standup fee to be approved by board

60. Where a bookmaker carries on business on premises where a horse-race or other sporting event is held, the amount charged by the owner or occupier of those premises to a bookmaker for the right to carry on business at such premises shall not exceed the amount prescribed or approved by the board.

Chapter 10

Fees and taxes

Licence holders and gamblers to pay prescribed licence fees and taxes

61. (1) The holder of a licence shall at or before the time prescribed therefor pay for the benefit of the Provincial Revenue Fund -

(a) on the granting of a licence in terms of this Act, the prescribed fee therefor;

(b) the prescribed annual fee in respect of such licence;

(c) in the case of the holder of a casino or totalizator licence, the prescribed annual tax;

(d) on failure to pay any such fee or tax or part thereof on due date, the prescribed penalty.

(2) Every person who has made a bet shall pay the prescribed tax.

(3) A fee or tax contemplated in this section shall be collected by the board in the prescribed manner.

Calculation of fees, taxes and penalties

62. (1) The annual licence fee and tax contemplated in section 61(1)(b) and (c) shall be the prescribed percentage in relation to the preceding year of the amount remaining of the total revenue received by the holder of the licence as gambling winnings from punters (including consideration received to permit any person to play a casino game in which such holder is not a party to a wager, and such undistributed and unclaimed moneys held or retained by the licence holder as may be prescribed), after deducting gambling losses paid out by the holder of the licence to punters and such other prescribed amounts as may be deducted from such total revenue for the purposes of this section.

(2) The penalty contemplated in section 61(1)(d) shall not exceed the amount of the fee or tax in respect of which such penalty is payable.

(3) The tax contemplated in section 61(2) shall be the prescribed percentage of the amount payable in respect of such bet to the person concerned excluding the amount staked.

Chapter 11

Gambling machines and gaming devices in general

Gambling machines and gaming devices to be registered

63. (1) No licensee shall keep or maintain for the purposes of the licensed activity concerned any gambling machine, roulette wheel or other gaming device or apparatus which has not been separately registered by the board.

(2) The provisions of subsection (1) shall not apply to playing cards or dice.

Machines and devices to be of approved type

64. If in terms of an Act of Parliament the make, model or type of any gambling machine, roulette wheel, gaming device or other apparatus is required to be approved or licensed or otherwise authorised in terms of such Act, the board shall not register any machine, wheel device or apparatus in terms of section 61 which is not of a make, model or type which has been so approved, licensed or authorised.

Manufacturer or supplier of machines and devices to be authorised

65. If in terms of an Act of Parliament the manufacture, sale, distribution, import, marketing, maintenance or repair of any machine, wheel, device or apparatus contemplated in section 61 is restricted to persons who are approved, licensed or otherwise authorised in terms of such Act, no person shall, as

the case may be, manufacture, sell, distribute, import, market, maintain or repair any such machine, wheel, device or apparatus unless he or she has been so approved, licensed or otherwise authorised.

Electronic monitoring system for gambling machines

66. (1) The board may impose as a condition of a casino licence, bingo licence, gambling machine licence or lottery licence that the holder of the licence shall link any gambling machine on the licensed premises to an electronic monitoring system approved by the board.

(2) The board may approve any electronic or computer or communications system or device which is designed so that it may be used or adapted to send or receive data relating to the functioning of gambling machines of any type, as a monitoring system for the purposes of this section.

Chapter 12

Registration of certain personnel

Persons engaged in casino occupations or manufacture or sale of certain machines or devices to be registered

67. (1) No person shall for reward -

(a) perform any act pertaining to any casino occupation; or

(b) be engaged in the manufacture, sale, distribution, importing, marketing, maintenance or repair of any gambling machine, roulette wheel or other gaming device,

unless such person is registered with the board.

(2) Any person desiring to be registered as contemplated in subsection (1) shall make application for such registration to the board.

Disqualified persons not to be registered

68. (1) No person shall be registered as contemplated in section 67 if he or she is subject to any disqualification contemplated *mutatis mutandis* in section 30.

(2) The board shall not refuse an application for registration without giving the applicant the opportunity of being heard.

(3) The chief executive officer shall, after the board has decided on an application for registration, furnish the applicant with the reasons for the decision of the board.

Registration

69. (1) Where the board grants an application for registration as contemplated in section 67, the chief executive officer shall issue to the applicant a certificate of registration in the prescribed form.

(2) The chief executive officer shall keep and maintain a register in which he or she shall enter the name and prescribed particulars of each person to whom a certificate of registration has been issued under this section.

Suspension and revocation of registration

70. The board may at any time suspend or revoke the registration of any person in terms of this Chapter after giving the person concerned an opportunity of being heard, if -

- (a) any information contained in the application for registration was false in any material respect or was subject to any material omission;
- (b) the person registered has become subject to a disqualification contemplated in section 30 as applied *mutatis mutandis* by section 68(1);
- (c) the person registered has been convicted of an offence in terms of this Act.

Chapter 13

Provisions relating to gaming and gambling in general

Restriction on advertisements of gaming or gambling

71. No person shall -

- (a) display any advertisement with regard to gaming or gambling within sight of, or within the prescribed distance from -
 - (i) any school; or
 - (ii) any other institution frequented predominantly by persons under the age of 18 years and which has been prescribed for the purposes of this section;
- (b) publish any such advertisement in any newspaper, magazine or other periodical which is published mainly for persons under the age of 18 years;
- (c) broadcast any such advertisement on a radio or television service at any time during which such service presents programmes mainly for persons under the age of 18 years.

Prohibition of extending of credit in connection with gaming or gambling

72. The holder of a casino licence, bingo licence, gambling machine licence or lottery licence shall not extend credit to any person in connection with or for the purpose of gaming or gambling, except to

such extent and subject to such conditions as may be prescribed.

Persons under 18 years not to be admitted to gaming or gambling areas

73. The holder of a licence in terms of this Act shall not allow a person under the age of 18 years to be in any such part of the licence premises as may be defined for the purposes of this section in terms of any condition imposed in terms of this Act.

Improper modification or use of certain devices and machines

74. No person shall -

- (a) alter, mark, tamper with, adjust or otherwise modify in any manner any playing cards, dice, roulette wheel or other gaming device, gambling machine or any other apparatus for the purpose of deceiving the players or improperly altering the normal or random results or chances of the casino game or gambling machine concerned;
- (b) use for that purpose or make available any such playing cards, dice, device, machine or apparatus which has been so altered, marked, tampered with, adjusted or otherwise modified.

Gaming and gambling debts enforceable

75. Notwithstanding the provisions of any law, including the common law, any gambling or gaming debt lawfully incurred after the commencement of this Act shall be enforceable in a court of law.

Events and contingencies on which bets may be made

76. No person may gamble on the result of any event or contingency other than -

- (a) a casino game;
- (b) a bingo game;
- (c) the operation of a gambling machine;
- (d) a lottery;
- (e) a sports event.

Place for gambling and settling gambling debts

77. (1) No person shall gamble or make a bet at any place other than the premises of the holder

of a licence issued in terms of this Act.

(2) No gambling debt may be settled except at -

- (a) the premises of the holder of a licence issued in terms this Act; or
- (b) such other place as the board may authorise on application by the holder of the licence concerned.

No gambling with persons under age of 18 years

78. No person shall gamble -

- (a) if he or she is under the age of 18 years; or
- (b) with any person under that age.

Restriction on gambling through agent and unlawful inducement to gamble

79. (1) No person shall -

- (a) act as an agent for the holder of a licence for the purpose of gambling, whether or not for gain;
- (b) for gain act as an intermediary between any holder of a licence and any other person for the purpose of gambling.

(2) No person shall, directly or indirectly, give or undertake to give to any other person money or other valuable consideration, other than the amount of a wager won by such other person, to induce that person to gamble.

Chapter 14

Inspections and enquiries

Appointment of inspectors

80. (1) The board may appoint any person in its service or any other suitable person as an inspector for the purposes of this Act.

(2) If in terms of an Act of Parliament no person shall perform any inspection function in relation to gaming or gambling without being registered in terms of that Act, no inspector shall be appointed in terms of subsection (1) unless he or she has been so registered.

(3) An inspector who is not in the full-time service of the State shall be appointed on such conditions and at such remuneration as the responsible Member may determine.

(4) An inspector shall be provided with a certificate of appointment signed by or on behalf of the chairperson of the board in which it is stated that he or she has been appointed as an inspector in terms of this Act.

(5) When an inspector performs any function under this Act, he or she shall have such certificate of appointment in his or her possession and show it at the request of any person affected by the performance of that function.

Powers of inspectors

81. (1) In order to ascertain whether the provisions of this Act are being observed by any person, an inspector may enter any premises on or in which any article, document or other object connected with gaming or gambling is or is suspected to be or which are occupied or used or suspected to be occupied or used for the purposes of any gaming or gambling activity, and may -

- (a) inspect or search those premises;
- (b) examine or make copies of or take extracts from any document found in or upon those premises and which refers or is suspected to refer to any such activity, and request from the owner or person in charge of those premises or from any person in whose possession or charge that document is, an explanation of any entry therein;
- (c) examine any article or other object found in or upon those premises and which refers or is suspected to refer to any such activity, and request from the owner or person in charge of those premises or from any person in whose possession or charge that article or object is, information in regard thereto;
- (d) seize against the issue of a receipt any such article, document or object, if it appears to provide proof of a contravention of a provision of this Act, or if he or she wishes to retain it for further examination or for safe custody: Provided that a person from whose possession or charge any such document has been taken shall, as long as it is in the possession or charge of the inspector concerned, at such person's request be allowed, at his or her own expense and under the supervision of such inspector, to make copies thereof or to take extracts there from at any reasonable time.

(2) Any person who -

- (a) obstructs or hinders an inspector in the performance of his or her functions under this section;
 - (b) when asked by an inspector for an explanation or information relating to a matter within his or her knowledge, refuses or fails to give that explanation or information or gives an explanation or information which is false or misleading, knowing it to be false or misleading; or
 - (c) falsely representing himself or herself to be an inspector,
- shall be guilty of an offence.

Duty to produce licence

82. The holder of a licence issued in terms of this Act shall on demand produce such licence to an inspector or officer of the South African Police Service.

Enquiries by board

83. (1) The board may from time to time conduct an enquiry into any matter falling within the scope of its functions.

(2) The provisions of section 29 shall *mutatis mutandis* apply in relation to any enquiry contemplated in subsection (1).

Chapter 15

Miscellaneous provisions

Regulations

84. (1) The responsible Member may, on the recommendation or with the concurrence of the board, make regulations relating to -

- (a) the manner and form in which any application, representations or response in terms of this Act are to be made;
- (b) the rules according to which any casino game shall be played;
- (c) the stakes for which any casino game shall be played;
- (d) the fees payable in respect of any act of registration in terms of section 59(2) or 67;
- (e) the commission or other charges which the holder of a totalizator licence may charge;
- (f) the books of account and records to be kept and returns to be furnished by holders of licences;
- (g) any matter which in terms of this Act is required or permitted to be prescribed;
- (h) in general, any matter which is considered necessary or expedient to prescribe for achieving the objects of this Act.

(2) Different regulations may be made under this section in respect of different classes and categories of licences, different casino games and different areas.

(3) The responsible Member shall, not less than one month before any regulation is made under this section, cause the text of such regulation to be published in the *Provincial Gazette* together with a notice declaring his or her intention to make that regulation and inviting interested persons to furnish the board with any comments thereon or any representations which they may wish to make in regard thereto.

(4) The provisions of subsection (3) shall not apply in respect of -

- (a) any regulation which, after the provisions of that subsection have been complied with, has been amended by the responsible Member on the recommendation or with the concurrence of the board in consequence of comments or representations received by the board in pursuance of the notice issued thereunder; or
- (b) any regulation in respect of which the responsible Member is, on the recommendation or with the concurrence of the board, of the opinion that the public interest requires it to be made without delay.

(5) Any regulation made under this section may prescribe penalties for any contravention thereof or failure to comply therewith, of a fine, or imprisonment for a period not exceeding two years.

Annual report

85. (1) The board shall as soon as possible after 31 December in each year submit to the responsible Member a report on its functions and finances during the year ending on that date.

(2) The responsible Member shall lay a copy of the annual report furnished to him or her under subsection (1) upon the table in the Provincial Legislature within 14 days after its receipt if the Legislature is then in ordinary session or, if the Legislature is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

Offences relating to licensable businesses and registrable activities

86. (1) A person shall be guilty of an offence who -

- (a) conducts any business for which a licence is required without such a licence;
- (b) performs any act in respect of which registration is required in terms of this Act, without being so registered.

(2) The holder of a licence who contravenes or fails to comply with a condition of the licence shall be guilty of an offence.

Penalties

87. Any person convicted of an offence in terms of this Act shall on conviction be liable to a fine not exceeding R500 000 or imprisonment for a period of not more than ten years.

Vicarious responsibility

88. (1) When the manager of the business to which a licence relates or the agent or employee of

the holder of a licence does or omits to do any act which it would be an offence in terms of this Act for the holder concerned to do or omit to do, that holder shall be deemed himself or herself to have done or omitted to do the act, unless he or she satisfies the court that -

- (a) he or she neither connived at nor permitted the act or omission by the manager, agent or employee concerned;
- (b) he or she took all reasonable steps to prevent the act or omission; and
- (c) an act or omission, whether lawful or unlawful, of the nature charged on no condition or under no circumstances fell within the scope of the authority or employment of the manager, agent or employee concerned,

and the fact that that holder issued instructions whereby an act or omission of that nature is prohibited shall not in itself be sufficient proof that he or she took all reasonable steps to prevent the act or omission.

(2) When the holder of a licence is by virtue of subsection (1) liable for an act or omission by the manager of the business to which the licence relates or the agent or employee of that holder, that manager, agent or employee shall also be liable therefor as if he or she were the holder of the licence concerned.

(3) Subsection (2) shall not release the manager, agent or employee contemplated in that subsection from any other liability which he or she may have incurred apart from the liability which he or she shares with the holder of the licence concerned.

Evidential matters

89. (1) Evidence in any criminal proceedings that any person who is not the holder of a licence was in occupation or control of premises containing a gambling machine or fitted out so as to induce a reasonable suspicion that casino games or bingo was played thereon, shall be *prima facie* proof of the conducting by such person of the business of a keeper of gambling machines, conductor of a casino or conductor of bingo games, as the case may be.

(2) If it is alleged in any prosecution for an offence in terms of this Act that any person is under the age of 18 years or belongs to any other particular category, evidence that the person concerned is apparently under that age or that he or she is regarded as belonging to that other category or by his appearance belongs thereto, as the case may be, shall be *prima facie* proof of that fact.

(3) A document which purports to be a copy of a licence shall on its mere production in any judicial proceedings be *prima facie* proof of the licence, and any condition recorded thereon shall, unless the contrary is proved, be deemed to be a condition imposed under this Act in respect of the licence.

(4) In any prosecution for an offence in terms of this Act, a statement made by a witness that he or she is a holder of a licence or the manager, agent or employee of such a holder, or that a licence had been issued in respect of any relevant business, shall be *prima facie* proof of that fact.

Transitional provisions

Amendment of section 1 of Ordinance 24 of 1978, as amended by section 1 of Ordinance 11 of 1986, section 1 of Proclamation 30 of 1992 and section 1 of Proclamation 117 of 1993 (Transvaal) and Proclamation R37 of 1995 (Republic)

90. Section 1 of the Horse-racing and Betting Ordinance, 1978 in so far as it is of force in the Province (hereinafter referred to as the Ordinance), is hereby amended -

(a) by the deletion in subsection (1) of the definitions of "Account for Provincial Services: Transvaal" and "Administrator";

(b) by the substitution in subsection (1) for the definition of "authorised officer" of the following definition:

"(iii) 'authorised officer' -

[(a) in so far as a provision of this Ordinance is applied in or with reference to the province Eastern Transvaal, Northern Transvaal or North-West, as the case may be, means an authorised officer referred to in section 9C; or

(b) in so far as a provision of this Ordinance is applied in or with reference to the province Pretoria-Witwatersrand-Vereeniging,] means an authorised officer referred to in section 9B(12)(b); (vii)";

(c) by the deletion in subsection (1) of the definitions of "bookmaker's clerk" and "bookmaker's manager";

(d) by the deletion in subsection (1) of the definition of "Board";

(e) by the insertion in subsection (1) before the definition of "Director-General" of the following definition:

"(vAA) 'company' means the totalisator company contemplated in section 108 of the Gambling and Gaming Act, 1995; (ixA)";

(f) by the substitution in subsection (1) for the definition of "Director-General" of the following definition:

"(vB) 'Director-General' -

[(a) in so far as a provision of this Ordinance, excluding sections 9B and 43A, is applied in or with reference to a particular province, means the Director-General of the provincial administration of that province; and

(b) for the purposes of sections 9B and 43A,] means the Director-General of the provincial administration of the [province Pretoria-Witwatersrand-Vereeniging] Province; (ivB)";

(g) by the deletion in subsection (1) of the definition of "licensed bookmaker";

(h) by the substitution in subsection (1) for the definition of "province" of the following definition:

"(xiA) ['province'] 'Province' means the [province Eastern Transvaal, Northern Transvaal, North-West or Pretoria-Witwatersrand-Vereeniging, as the case

- may be,] Province of Gauteng established in terms of section 124 of the Constitution [of the Republic of South Africa, 1993]; (xB)";
- (i) by the substitution in subsection (1) for the definition of "provincial administration" of the following definition:
- "(xiB) 'provincial administration' means the provincial administration established for [a province] the Province by the Public Service Act, 1994 (Proclamation No. 103 of 1994); (xA)";
- (j) by the insertion after the definition of "provincial administration" of the following definition:
- "(xiC) 'Provincial Revenue Fund' means the Provincial Revenue Fund for the Province established by section 159(1) of the Constitution; (xAA)";
- (k) by the substitution in subsection (1) for the definition of "Racing and Betting Board" of the following definition:
- "(xiiiA) 'Racing [and Betting] Board' -
- [(a) in so far as a provision of this Ordinance is applied in or with reference to the province Eastern Transvaal, Northern Transvaal or North-West, as the case may be, means the competent authority within the government of the province concerned to whom the administration of this Ordinance has under section 235(8) of the Constitution of the Republic of South Africa, 1993, been assigned; or
- (b) in so far as a provision of this Ordinance is applied in or with reference to the province Pretoria-Witwatersrand-Vereeniging,] means the [Highveld] Gauteng Horse-racing [and Betting] Board referred to in section 9B(1); (xiA)";
- (l) by the insertion in subsection (1) after the definition of "regulation" of the following definition:
- "(xvA) 'responsible Member' means the member of the Executive Council of the Province responsible for finance and economic affairs; (xviiA)";
- (m) by the deletion in subsection (1) of the definition of "Tattersalls";
- (n) by the deletion in subsection (1) of the definition of "totalizator permit".

Amendment of section 4 of Ordinance 24 of 1978, as amended by section 3 of Proclamation 30 of 1992 (Transvaal)

91. Section 4 of the Ordinance is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

- "(a) that a race-meeting shall not be held on a Sunday, Good Friday, [Ascension Day, Day of the Vow] or Christmas Day;"

Amendment of section 9 of Ordinance 24 of 1978, as amended by section 3 of Proclamation 117 of

1993 (Transvaal)

92. Section 9 of the Ordinance is hereby amended by the substitution for the proviso to paragraph (a) of subsection (1) of the following proviso:

" : Provided that no such licence shall be issued for a Sunday, Good Friday, [Ascension Day, Day of the Vow] or Christmas Day. ".

Amendment of section 9A of Ordinance 24 of 1978, as inserted by section 6 of Proclamation 30 of 1992 and amended by section 4 of Proclamation 117 of 1993 (Transvaal) and Proclamation 37 of 1995 (Republic)

93. Section 9A of the Ordinance is hereby amended -

- (a) by the substitution in subsection (6), for the expression "the province Pretoria-Witwatersrand-Vereeniging", wherever it occurs, of the expression "the Province";
- (b) by the deletion of subparagraph (vii) of paragraph (c) of subsection (8).

Amendment of section 9B of Ordinance 24 of 1978, as inserted by section 6 of Proclamation 30 of 1992 and amended by section 4 of Proclamation 117 of 1993 (Transvaal) and Proclamation R37 of 1995 Republic

94. Section 9B of the Ordinance is hereby amended -

- (a) by the substitution for subsection (1) of the following subsection:
 "(1B) There is hereby established a board, to be known as the [Highveld] Gauteng Horse-racing [and Betting] Board. ";
- (b) by the deletion of paragraph (b) of subsection (6);
- (c) by the substitution for paragraph (c) of subsection (6) of the following paragraph:
 "(c) to calculate, to recover and to deposit in the [Account for Provincial Services: Transvaal] Provincial Revenue Fund all taxes levied in terms of the provisions of this Ordinance;";
- (d) by the substitution for paragraph (e) of subsection (6) of the following paragraph:
 "(e) to monitor the functions of [the Board and] the Racing Authority and advise the [Administrator] responsible Member thereon;";
- (e) by the substitution for paragraph (f) of subsection (6) of the following paragraph:
 "(f) to see to it that all laws in connection with horse-racing [and betting] are complied with;";
- (f) by the deletion of paragraph (g) of subsection (6).

Repeal of sections 10 to 13 of Ordinance 24 of 1978

95. Sections 10 to 13 inclusive of the Ordinance are hereby repealed.

Substitution of section 13A of Ordinance 24 of 1978, as inserted by section 11 of Proclamation 30 of 1992 (Transvaal) and amended by Proclamation R37 of 1995 (Republic)

96. (1) The following section is hereby substituted for section 13A of the Ordinance:

"Payment of certain moneys by totalizator company to racing-club

13A. (1) Where the [Board] company conducts a totalizator, it shall, subject to subsection (3), pay to the racing-club which held the race-meeting concerned -

(a) the net takings at such totalizator which are undistributed because -

(i) as is hereby authorised, no fractional part of ten cents was declared by the [Board] company as a dividend payable to punters on such takings; or

(ii) no ticket which would have entitled the holder thereof to a refund of the amount staked by him, was tendered for the refund of such amount; and

(b) all dividends which have not been claimed within a period of two months after such dividends were declared,

less any tax which shall be payable in terms of [section 45] the Gambling and Gaming Act, 1995, by the company on such undistributed net takings or unclaimed dividends.

(2) (a) The undistributed net takings -

(i) contemplated in subsection (1)(a)(i) shall be paid to the racing-club concerned within two working days after the day on which the race-meeting was held; and

(ii) contemplated in subsection (1)(a)(ii) shall be paid to the racing-club concerned within seven working days after the expiry of the period of two months from the date on which the race-meeting was held.

(b) The unclaimed dividends contemplated in subsection (1)(b) shall be paid to the racing-club concerned within seven working days after the expiry of the period referred to in that subsection.

(3) Where the racing-club which held the race-meeting concerned is a racing-club which is not licensed to hold race-meetings in the [province] Province, the [Board] company may retain the moneys contemplate in subsection (1).

(4) Where any undistributed net takings contemplated in subsection (1)(a)(ii) or any unclaimed dividends contemplated in subsection (1)(b)(ii) or any unclaimed dividends contemplated in subsection (1)(b) have been paid to a racing-club, any liability in law of the [Board] company in respect of such net takings or dividends shall pass to the racing-club to which the net takings or unclaimed dividends have been paid."

(2) Notwithstanding the substitution of section 13A of the Ordinance by subsection (1), the provisions of that section as they were immediately before such substitution shall continue to apply to the Board referred to in that section until the date of transfer of the totalizator business of that Board to that

company in terms of section 102 of this Act.

Repeal of sections 14 to 43 of Ordinance 24 of 1978

97. Sections 14 to 43 inclusive of the Ordinance are hereby repealed.

Amendment of section 44 of Ordinance 24 of 1978, as amended by section 32 of Proclamation 77 of 1992 and section 17 of Proclamation 117 of 1993 (Transvaal)

98. Section 44 of the Ordinance is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A racing-club shall pay to the Racing [and Betting] Board for the benefit of the [Account for Provincial Services: Transvaal] Provincial Revenue Fund a tax calculated at the rate of thirty-three and one third per cent of the gross amount received by that racing-club in respect of admission fees to its [licenced] licensed race-course."

Repeal of sections 45 to 49 of Ordinance 24 of 1978

99. Sections 45 to 49 inclusive of the Ordinance are hereby repealed.

Substitution of section 50 of Ordinance 24 of 1978, as substituted by Proclamation R37 of 1995 (Republic)

100. The following section is hereby substituted for section 50 of the Ordinance:

"Recovery of tax

50. Any tax payable in terms of the provisions of this Ordinance shall be a debt due to the provincial administration [concerned] and may be recovered in a competent court by [that] the provincial administration or by the Racing [and Betting] Board on behalf of [that] the provincial administration."

Substitution of section 51 of Ordinance 24 of 1978, as amended by section 20 of Proclamation 117 of 1993 (Transvaal) and Proclamation R37 of 1995 (Republic)

101. The following section is hereby substituted for section 51 of the Ordinance:

"Levy by Highveld Racing Authority

51. (1) (a) [In addition to any tax payable in terms of section 46,] The Racing Authority may impose on every person, including a licensed bookmaker, who has made a bet with a licensed bookmaker, a levy on the amount which is payable to such person by the licensed bookmaker in respect of such bet, excluding the amount staked.

(b) The levy contemplated in paragraph (a) together with the tax payable in terms of [section 46(1)] the Gambling and Gaming Act, 1995, by such person and the levy payable in terms of section [51(A)(1)] 51A(1), shall not exceed the prescribed percentage of the gross amount which is payable to such person.

(c) The Racing Authority may at any time withdraw or alter the imposition of such levy or part thereof.

(d) The imposition of a levy, a subsequent alteration thereof or a withdrawal of such levy or part thereof shall come into operation on a date determined by the Racing [and Betting] Board.

(2) A levy imposed under subsection (1), shall be deducted by the licensed bookmaker from the amount payable to the punter and be paid over to the Racing [and Betting] Board on behalf of the Racing Authority not later than [the] Tuesday in each week or if Tuesday is a public holiday not later than the next working day [referred to in section 46(4)].

(3) The Racing Authority may distribute any levy collected on its behalf in terms of subsection (2) among the racing-clubs in the [province Pretoria-Witwatersrand-Vereeniging] Province on such basis as that Authority may determine.

(4) (a) If the levy which is payable in terms of subsection (1) is not paid to the Racing [and Betting] Board on or before the Tuesday or working day referred to in [section 46(4)] subsection (2), the licensed bookmaker shall pay a penalty on the amount of any outstanding levy at a rate of ten per cent of the levy for each month or part of a month during which the levy remains unpaid.

(b) A penalty contemplated in paragraph (a) shall not exceed the total amount of the levy payable."

Substitution of section 51A of Ordinance 24 of 1978, as amended by section 40 of Proclamation 30 of 1992 (Transvaal)

102. The following section is hereby substituted for section 51A of the Ordinance:

"Levy on certain bets for benefit of Horse-racing Development Fund

51A. (1) In addition to any tax, fee or levy payable in terms of the provisions of this

Ordinance, there shall be paid to the Racing [and Betting] Board for the benefit of the Horse-racing Development Fund established in terms of section 43A -

(a) by the [Board] company on the gross earnings of a totalizator concluded by it in relation to a horse-race;

[(c)] (b) by a person [contemplated in section 46(1)(a)] who has made a bet with a bookmaker on the result of a horse-race on the amount on which the tax referred to in that section is payable; [and]

a levy calculated at such percentage and in respect of such bets as the Administrator may prescribe.

(2) Within 21 days from the date on which a race-meeting was held the [Board] company shall -

(a) in the form and in the manner required by the Racing [and Betting] Board, submit a sworn statement to the [last-mentioned] Board showing the gross takings of the totalizator concerned which the [Board] company conducted; and

(b) simultaneously pay the amount of the levy on those takings as contemplated in subsection (1)(a) to the Racing [and Betting] Board.

(3) A licensed bookmaker who is liable to pay to any person [referred to in section 46(1)(a)] who has made a bet on the result of a horse-race with such bookmaker an amount [on which tax is payable in terms of that section], shall deduct the levy payable thereon in terms of subsection (1)[(c)](b) from the said amount, and shall pay over the levy to the Racing [and Betting] Board not later than the Tuesday or working day referred to in section [46(4)] 51(2).

[(5)] (4) If the levy which is payable in terms of subsection (1) is not paid to the Racing [and Betting] Board before or on the Tuesday or working day referred to in section [46(4)] 51(2), the [Board] company shall pay a penalty on the amount of any outstanding levy at a rate of ten per cent of the levy for each month or part of a month during which the levy remains unpaid: Provided that such a penalty shall not exceed the total amount of the levy payable.

[(6)] (5) Where a licensed bookmaker fails to pay over the levy in accordance with subsection (3), [the bookmaker's licence of such a bookmaker shall be deemed to have been suspended, and] he shall not carry on the business of a bookmaker until that levy and the penalty referred to in subsection (5) have been paid.

[(7)] (6) A licensed bookmaker who contravenes a provision of subsection (3) or [(6)] (5) or fails to comply therewith, shall be guilty of an offence."

Amendment of section 54 of Ordinance 24 of 1978, as substituted by section 2 of Proclamation 117 of 1993 (Transvaal)

103. Section 54 of the Ordinance is hereby amended by the deletion of paragraph (a).

Repeal of section 55A of Ordinance 24 of 1978, as inserted by section 24 of Proclamation 117 of 1993 (Transvaal)

104. Section 55A of the Ordinance is hereby repealed.

Amendment of section 57 of Ordinance 24 of 1978

105. Section 57 of the Ordinance is hereby amended by the deletion of the words "and Betting".

Amendment of long title of Ordinance 24 of 1978

106. The following long title is hereby substituted for the long title of the Ordinance:

"To provide for the restriction, regulation and control of horse-racing [and betting] and for licences, taxes and fees in connection therewith; and to provide for matter incidental thereto."

Substitution of certain expressions in Ordinance 24 of 1978

107. The Ordinance is hereby amended by the substitution, wherever they occur -

- (a) for the expression "Administrator" of the expression "responsible Member";
- (b) for the expression "Racing and Betting Board" of the expression "Racing Board";
- (c) for the expression "Accounts for Provincial Services: Transvaal" of the expression "Provincial Revenue Account".

Transfer of business of Totalizator Agency Board to company

108. (1) The responsible Member shall as soon as possible after the commencement of this Act effect the incorporation in terms of the Companies Act, 1973, (Act No. 61 of 1973) of a company to conduct the business of the Totalizator Agency Board (Transvaal) referred to in section 11 of the Ordinance, which company shall bear a name approved by the responsible Member, and the issue to each company of a certificate to commence business.

(2) The responsible Member shall on behalf of the government of the Province sign all documents that are required to be signed by the promoters of the company.

(3) The Director-General -

- (a) shall be appointed as the first director of the company and shall in that capacity sign the documents which are required to be signed by a director of the company for the purpose of incorporation of the company and the issue to the company of a certificate to commence business;

(b) shall occupy the post of director of the company until the date immediately preceding the transfer date contemplated in subsection (6).

(4) The company -

(a) shall upon incorporation issue one share with a nominal value of one rand to the government of the Province;

(b) shall in its memorandum of association *inter alia* provide that the company -

(i) shall have as its main object and main business to establish and conduct totalizators and betting pools;

(ii) shall not without the approval of the responsible Member -

(aa) alienate or encumber otherwise than in the normal course of its business the assets of the company with a market value of more than ten percent of the market value of all the assets of the company;

(bb) cease to conduct or alter the main object or main business of the company;

(cc) merge with another company or enter into a partnership or joint venture;

(c) shall have articles of association providing *inter alia* that no person, except the government of the Province shall, whether directly or indirectly, hold any shares in the company;

(d) shall, apart from the share referred to in paragraph (a), not issue any shares.

(5) The powers and duties of the government of the Province as a member and shareholder of the company shall be exercised and performed by the responsible Member.

(6) On a date determined by the responsible Member by notice in the *Provincial Gazette* all the assets, liabilities, rights and obligations of the Totalizator Agency Board (Transvaal) shall be transferred to the company.

(7) The registrar of deeds in question shall make the necessary entries and endorsements in respect of his registers and any other relevant documents in order to give effect to such a transfer of land and registered rights and obligations in respect of land.

(8) On the transfer date contemplated in subsection (6) all persons in the service of the Totalizator Agency Board (Transvaal) shall be transferred to the service of the company: Provided that any person who declines such transfer shall be dealt with in terms of the provisions governing his or her conditions of service, remuneration and pension rights.

(9) From such date of transfer the company shall, subject to the provisions of this Act and any other law, conduct totalizators and betting pools.

Transfer of assets and liabilities of Racing Board in Tattersalls to bookmakers

109. (1) The board shall as soon as possible after the commencement of this Act conduct an enquiry into the rights, obligations, assets and liabilities relating to all Tattersalls in the Province which may vest in the Gauteng Racing Board referred to in section 9B of the Ordinance, and shall furnish a report of its findings and, with due regard to the rights of any person, a recommendation to the responsible Member regarding the disposal thereof.

(2) The responsible Member shall, in accordance with the recommendations contemplated in subsection (1) and if he or she is satisfied that the rights of other persons have been accommodated, by notice in the *Provincial Gazette* transfer such rights, obligations, assets and liabilities to the bookmakers occupying each Tattersalls concerned or a company or other association the members of which are such bookmakers, against payment of such consideration as may have been recommended by the board and specified in such notice.

(3) Any consideration paid as contemplated in subsection (2) shall be paid into the Provincial Revenue Account of the Province or applied for such other purposes as the responsible Member may specify in the notice concerned.

(4) The registrar of deeds in question shall make the necessary entries and endorsements in respect of his registers and any other relevant documents in order to give effect to such a transfer of land and registered rights and obligations in respect of land.

Savings

110. (1) Notwithstanding the repeal of any provision of the Ordinance by this Act, any application made by virtue of such a provision before the date of commencement of this Act and not disposed of on that date shall be continued and disposed of as if that provision were not so repealed: Provided that the competent authority considering such application may in its discretion refer the application to the board for disposal.

(2) Any rules in respect of totalizators contemplated in section 11(8)(d) of the Ordinance and in force immediately before the repeal of that section by this Act shall be deemed to have been made and approved in terms of section 53 of this Act.

(3) A totalizator permit issued in terms of section 12(1) of the Ordinance and in force immediately before the repeal of that section by this Act shall be deemed to be a totalizator licence issued in terms of this Act, and any licence or other authority granted in terms of the Ordinance and which is capable of being granted in terms of this Act shall be deemed to have been granted in terms of this Act.

(4) Anything done under a provision of the Ordinance which is repealed by this Act and which is capable of being done in terms of a provision of this Act shall be deemed to have been done in terms of the latter provision.

Short title

111. This Act shall be called the Gambling and Gaming Act, 1995.

**MEMORANDUM IN TERMS OF RULE 132 OF THE STANDING RULES
OF THE PROVINCIAL LEGISLATURE
ON THE GAMBLING AND GAMING BILL, 1995**

(i) Introduction and reasons for the Bill

Section 126 and Schedule 6 of the Constitution state that a provincial legislature shall be competent to make laws for the province with regard to all matters which fall within the functional areas of casinos, racing, gambling and wagering.

Section 156(1)(b) of the Constitution states that a provincial legislature shall have exclusive competence within its province to impose taxes, levies and duties (excluding income tax or value-added or other sales tax) on casinos, gambling, wagering and lotteries, and betting.

The intention of the Bill is to provide for the licensing, regulation and control of gaming and gambling in the public interest. The Bill has been compiled within the broad framework which has been established at national level.

(ii) Social impact of the Bill

The major innovation of the Bill is that it provides for the licensing of persons conducting casinos, bingo games and betting pools, and of gambling machine keepers. The Bill also deals with the registration of casino employees, and employees of manufacturers and suppliers of gambling machines and gaming devices.

Beside these innovations, the Bill also provides for the licensing of totalisators and bookmakers and for the registration of bookmakers' employees. The Bill repeals the provisions dealing with these matters which are contained at present in the Horse-racing and Betting Ordinance, 1978. The Bill amends the Ordinance so that in future it will govern horse-racing only. All aspects relating to betting which are contained in the Ordinance will in future be governed in terms of the Bill. The Bill also amends the Ordinance to effect certain amendments which are necessary in consequence of the introduction of the Constitution and new public holidays.

(iii) Financial implications of the Bill

The most important financial implication of the Bill is that it provides for the levying for the benefit of the Provincial Revenue Fund of taxes on casinos, bingo halls, gambling machine keepers and lotteries.

The Bill also provides for the payment of penalties for failure to pay the prescribed taxes on due date.

Provision is also made for the payment of licence application fees, and for the payment of fees for the registration of employees of manufacturers and suppliers of gambling machines and gaming devices.

The Bill also brings forward similar provisions in relation to bookmakers, totalisators and bookmakers' employees.

(iv) Section-by-section explanation**Chapter 1: Interpretation and application of Bill**

s 1: Most of the definitions are self-explanatory.

s 2: This section sets out the application of the Act and other laws.

The Bill provides that the prohibitions in the Gambling Act, 1965, shall not apply in relation to anything authorised by the Bill. This necessary provision follows from the provincial power to make laws on gambling.

This section also makes it clear that the prohibitions against the holding of dog-races and betting thereon in terms of the Abolition of Dog Race Meetings and the Prohibition of Betting on Dog Races Ordinance, 1949, are not affected by the Bill.

Chapter 2: Gambling and Gaming Board

s 3: This section establishes a Gambling and Gaming Board for the province.

s 4: The functions of the board are, among other things, to oversee gambling and gaming in the Province.

s 5: The board consists of eleven members representing different areas of expertise, namely law, accountancy, tourism, welfare, and development, labour, gaming and horse-racing. Provision is also made for board membership from the broad public. Alternate members for each member of the board will also be appointed. The chief executive officer of the board is an ex officio appointee. The Bill requires public notice inviting interested persons to submit nominations for appointment of board members. Members are appointed by the MEC for finance and economic affairs.

s 6: This section sets out various disqualifications which will prevent a person from being appointed or remaining as a member of the board. A person may not be appointed as a board member if he or she, or a close family member as defined, is or was within the previous twelve months a member of a legislature, a public servant or an employee of a political party, or has a interest in gambling. The intention is that the board should be independent and impartial. Conviction for offences involving dishonesty and various other disqualifications are also set out.

s 7: This section provides that a board member with conflicting interests must recuse himself or herself from the board proceedings in question.

s 8: A board member will vacate office if he or she becomes disqualified from remaining a board member, or if he or she is absent without leave of the board.

s 9: This section provides that a member of the board shall hold office for five years. A casual vacancy can be filled for the remainder of this term of office.

s 10: Board members will be paid remuneration determined by the MEC.

- s 11: This section sets out the procedure for meetings and the decisions of the board. The person presiding has a casting vote, on matters other than licence applications.
- s 12: This section provides for the employment of the chief executive officer and other staff of the board. Staff members may not have an interest in gambling.
- s 13: This section provides that no member of the board or its staff may participate in gambling in the province, or accept employment in the gambling industry within one year after leaving service with the board.
- s 14: This section provides that the board may appoint advisory committees.
- s 15: This section provides that the board may engage experts and other persons to assist it.
- s 16: Board members and staff and other persons engaged to assist the board must not disclose information acquired in performing functions in terms of the Bill. This is necessary to protect the privacy of persons affected by the performance of these functions. Other provisions of the Bill referred to below provide for publicity and transparency in relation to licence applications. The aim is to balance the fundamental rights to access to information held by state organs and to be furnished with reasons for administrative action, with the right to privacy.
- s 17: This section deals with the funds of the board. It is intended that the board funds will consist primarily of money appropriated by the provincial legislature.
- s 18: This section states that the chief executive officer of the board shall be its accounting officer, and defines his or her duties.

Chapter 3: Licence applications in general

- s 19: This section deals with the procedure for making application for a licence.
- s 20: This section requires notice of an application to be published in the *Provincial Gazette* and in a newspaper circulating in the district where the premises are situated to which the application relates. The notice must invite interested persons to lodge representations concerning the application.
- s 21: The local authority is given the right to make representations.
- s 22: This section states that the applicant may respond to any such representations.
- s 23: This section states that an applicant or a person or local authority which lodged representations may be required to furnish further information. The board may permit a person or local authority which lodged written representations to make oral representations as well, provided these representations would not amount only to objections regarding gambling in general.
- s 24: The application and all representations will be open for public inspection, but the board may exclude from public inspection the identity of any person who lodged representations or any confidential information of a nature specified in this section.

- s 25: This section provides for an inspection of the premises by the board in relation to their suitability, and by the local authority in relation to health, safety and town planning.
- s 26: This section contemplates the furnishing by the South African Police Service of a report of previous convictions and other matters relating to the applicant and other persons who will be in control of the business to which the application relates.
- s 27: The board must hold a hearing in respect of every application.
- s 28: Hearings must be open to the public. Persons may however be excluded from a hearing in certain circumstances defined in this section.
- s 29: This section provides for the summoning of witnesses to give evidence and produce documents at the hearing.
- s 30: This section sets out disqualifications for the holding of a licence.

No application will be granted if the applicant or person in control or manager of the business is in the opinion of the board not a fit and proper person to be involved in the business concerned. To determine this, the board must have regard to previous convictions, other improper or discreditable practices, and the general probity of the person.

Nor will a licence be issued if the applicant has a controlling interest or financial interest of five percent or more in a business or premises which were the subject of an application which was refused or a licence which was revoked within the previous twelve months or more than once within the previous three years.

In the case of an application for a casino licence there are other disqualifications contained in section 40, which is dealt with later in this memorandum.

A licence will also be refused if a person is a close family member as defined of any person who is not fit and proper, or has a controlling interest or five percent financial interest as just described, or if subject to a casino licence disqualification.

A licence will also be refused if the applicant, manager or person in control has been convicted of an offence involving dishonesty or is subject to certain other disqualifications mentioned in this section.

A licence will not be granted to organs of government or statutory bodies or government-controlled entities.

- s 31: This section requires the board to grant or refuse the application. In the case of an application for a casino licence a different procedure applies in terms of section 42, which is dealt with later in this memorandum.
- s 32: Provision is made for the imposing of licence conditions. These may include conditions relating to hours of business. Conditions may also be imposed requiring the furnishing of guarantees for the payment of taxes, employees' salaries, and gambling debts, and the keeping of liquid assets to cover these liabilities. In the case of a casino licence, the period of validity of the licence will be stated, and

various other conditions may be imposed which impose special obligations of the licensee in relation to matters contemplated in section 41, which is referred to later in this memorandum. An applicant for casino licence may pay a lump sum in return for exclusive rights to conduct a casino in a specified area for a fixed period.

- s 33: This section deals with the issue of a licence.
- s 34: This section deals with incomplete premises, and empowers the board to require structural alterations to premises to which a licence application relates to make them suitable for the purpose of the business concerned.
- s 35: No person may transfer a licence to another person without making application, and the procedure set out in the Bill for licence applications will apply also to such an application for the transfer of a licence.
- s 36: This section provides that application may be made for the removal of the licence to other premises, and the same procedure must be followed as in the case of an application for a licence.
- s 37: A licence may, after the licensee has been given an opportunity to be heard, be suspended or revoked if false information was furnished when the licence was applied for, or if the licensee is convicted of an offence under the Act, or if the licensee becomes subject to any disqualification which would have prevented the granting of the licence.
- s 38: No person may procure a controlling interest as defined in the Bill, or a financial interest of five percent or more in the business, without consent of the board.

Chapter 4: Casino licences

- s 39: No person shall conduct a casino without a casino licence.
- s 40: In addition to the disqualifications which apply to all licences in terms of section 30, an applicant for a casino licence is also subject to further disqualifications. He or she may not be, or during the previous twelve months have been, a member of a legislature or a government servant or an employee of a political party, or be a close family member as defined of such a person. Nor may a casino licence be granted if the applicant will not have access to sufficient experience and knowledge of the operation and management of a casino, or if the granting of the licence may create or aggravate a monopoly situation.
- s 41: In considering an application, the board must take various factors into consideration. These are the extent to which the casino will promote tourism and sustainable employment, the extent to which the applicant will provide training and skills to employees and procure local supplies and labour, any provision by the applicant for ownership or control of the casino by disadvantaged persons, any facilities which the applicant will make available to needy communities or the disadvantaged, and the extent to which granting the licence will promote the Reconstruction and Development Programme. Licence conditions may be imposed in relation to any of these matters, as mentioned above in relation to section 32.
- s 42: As mentioned above in relation to section 31, the procedure for making a decision on a casino licence differs from that for other licences. After the board has considered a casino licence application, it must

prepare and furnish to the MEC for finance and economic affairs its report and recommendation for submission to the Executive Council, which then grants or refuses the application. The Executive Council shall not grant an application or impose any condition contrary to the recommendation of the board.

- s 43: A casino licence authorises the playing of casino games specified in the licence, and the keeping of any number of gambling machines.

The intention is not to restrict the carrying on of any other lawful activity on the premises, and this section also expressly provides that any other lawful activity may be carried on. This does not mean that there will be no control, and the licensee must comply with the conditions of the licence, and with other provisions of the Bill which impose restrictions in relation to gambling, such as access by children to gambling premises. These restrictions are dealt with later in this memorandum.

- s 44: This section states that a casino licensee must display certain information to be prescribed regarding casino games, and make available on request by any customer the rules of the games.

- s 45: No person may carry on business under a name which includes the word "casino" without being a licensee in terms of the Bill.

Chapter 5: Bingo licences

- s 46: This states that no person shall conduct bingo games without holding a casino licence, or a bingo licence.

- s 47: As already mentioned in relation to casino licences, the intention is not to restrict the carrying of other lawful activities on the premises of a bingo licensee. Regulations will be made prescribing the maximum amount which may be charged to enable that person to play bingo, and the maximum value of prizes which may be awarded.

Chapter 6: Gambling machine licences

- s 48: No person may keep gambling machines unless he or she holds a casino licence, or a gambling machine licence.

- s 49: This section states that a gambling machine licence authorises the keeping of up to five gambling machines, and the carrying on of any other lawful activity on the premises. The maximum payout of a gambling machine will be prescribed by regulation.

Chapter 7: Lotteries

- s 50: This section states that a licence is required to conduct a lottery, but that this licensing requirement does not apply to a lottery conducted at the instance of the State.

Lottery licences will not be granted to any persons other than societies which promote good causes, social and sporting clubs, and persons conducting small lotteries or raffles at school fetes or church bazaars or similar functions.

The Bill does not provide for the conducting of lotteries by the provincial government.

- s 51: This section defines certain restrictions which apply to each of the three categories of licence just referred to in relation to section 50, namely society lotteries, club lotteries and small lotteries.

Chapter 8: Totalisators and pools

- s 52: This section states that no person shall conduct a totalisator or betting pool without a totalisator licence. The main forms of totalisator or pool betting are betting on horse-racing and on football results.
- s 53: The holder of a totalisator licence must conduct totalisators or betting pools in accordance with rules approved by the board.

Chapter 9: Bookmakers

This chapter was taken from the Horse-racing and Betting Ordinance, 1978. As already mentioned, the provisions in the Ordinance relating to bookmakers will be repealed by the Bill, in terms of sections of the Bill dealt with later in this memorandum. The Bill brings forward the most important provisions of the Ordinance relating to bookmakers, and leaves matters of detail to be dealt with in regulations under the Bill.

- s 54: No person may conduct business as a bookmaker without a licence.
- s 55: Only one bookmaker may carry on business at a stand or cubicle as a rule.
- s 56: The period of validity of a bookmaker's licence shall not exceed one year.
- s 57: No other person may acquire an interest in a bookmaker's business, but the board may authorise a licensed bookmaker to become a partner in not more than one bookmaker's business on a race-course or other premises where sporting events are held, or in not more than three bookmaker's businesses in a tattersalls or similar premises.
- s 58: A bookmaker must be a member of the Highveld Association of Bookmakers, as already provided in the Ordinance as amended.
- s 59: A bookmaker's manager must be registered with the board, and other employees of a bookmaker must be registered as bookmaker's clerks with the Highveld Association of Bookmakers.
- s 60: The amount charged by the occupier of a racecourse or other sports ground to a bookmaker to carry on business at such course or ground may not exceed the prescribed amount.

Chapter 10: Fees and taxes

- s 61: This section authorises the prescribing of licence application fees, annual licence fees, annual taxes in the case of holders of casino and totalisator licences, and penalties for late payment. Provision is also made for the paying of taxes by persons who place bets. Fees and taxes are to be collected by the board in a manner to be prescribed.

- s 62: This section states that annual licence fees, and casino and totalisator taxes, must be a percentage of total revenue less certain amounts. The penalty cannot exceed the amount of the fee or tax payable. A tax payable by a gambler is calculated on his or her winnings.

Chapter 11: Gambling machines and gaming devices

- s 63: Each separate gambling machine, roulette wheel and other gaming device must be separately registered with the board. This does not apply to cards or dice.
- s 64: If national legislation provides for the approval or licensing of particular types of machines and devices, the board shall not register any machine or device which has not been approved in terms of the national legislation.
- s 65: If national legislation requires manufacturers and suppliers of gambling machines and gaming devices to be authorised in terms of such national legislation, then no person shall manufacture or supply such equipment in the province without being so approved.
- s 66: The board may require machines to be linked to approved electronic monitoring systems.

Chapter 12: Registration of certain personnel

- s 67: This section provides that no person shall for reward be engaged in a casino occupation, or in the manufacture or supply of gambling machines or gaming devices, without being registered with the board.
- s 68: A person shall not be registered if he or she is subject to a disqualification which would prevent him or her from being granted a licence. The board shall not refuse an application for registration without giving the applicant an opportunity to be heard.
- s 69: This section makes provision for certificates of registration, and the keeping of a register of the names and prescribed particulars of each registered person.
- s 70: This makes provision for the suspension and revocation of registration in certain circumstances.

Chapter 13: Provisions relating to gaming and gambling in general

- s 71: This section imposes restrictions on advertisements of gaming and gambling. No such advertisement may be displayed within sight of or the prescribed distance from a school or similar prescribed institution. Nor may an advertisement be published or broadcast in any medium aimed mainly for persons under the age of 18.
- s 72: Gambling operators may not give credit to gamblers, except to such extent and subject to such conditions as may be prescribed.
- s 73: No person under the age of 18 may be admitted to any part of licensed premises which is defined for this purpose in licence conditions.
- s 74: This section prohibits a person from improperly tampering with any playing cards, dice, gaming device

- or gambling machine, or using or making available any such equipment which has been improperly tampered with.
- s 75: This provides that gambling debts shall be enforceable in a court.
- s 76: This section states that no person may gamble except on casino and bingo games, gambling machines, lotteries and sport events.
- s 77: Debts may be placed at licensed premises only, and may be settled at licensed premises only or other places authorised by the board.
- s 78: No person shall gamble if he or she is under 18 years old.
- s 79: This section prohibits a person acting as an agent or intermediary for certain purposes in relation to gambling, or pay inducements to gamble.

Chapter 14: Inspections and enquiries

- s 80: This section provides for the appointment of inspectors by the board. It states that if national legislation requires inspectors to be registered in terms of such national legislation, then board inspectors must be so registered.
- s 81: This section sets out the powers of inspectors in relation to the entry of premises and the examination and seizure of documents and articles.
- s 82: This section states that the holder of a licence must produce the licence to an inspector or police officer.
- s 83: The board may from time to time conduct enquiries into matter falling within its functions.

Chapter 15: Miscellaneous provisions

- s 84: This states that the MEC may, on the recommendation of or with the concurrence of the board, make regulations relating to various matters, including matters which in terms of the Bill are required or permitted to be prescribed. Notice of proposed regulations must be published beforehand with an invitation to interested persons to furnish comments thereon, but this does not apply to regulations which are required to be made without delay.
- s 85: The board must furnish an annual report to the MEC for tabling in the provincial legislature.
- s 86: This section lays down offences.
- s 87: This section lays down a maximum penalty of a R500 000 fine or ten years imprisonment.
- s 88: This section deals with vicarious responsibility for the commission of offences.

- s 89: This section deals with evidential matters, and creates rebuttable presumptions in the interest of the efficient conducting of prosecutions for offences in terms of the Act, but at the same time permitting the accused to destroy these presumptions by the tendering of contrary evidence.

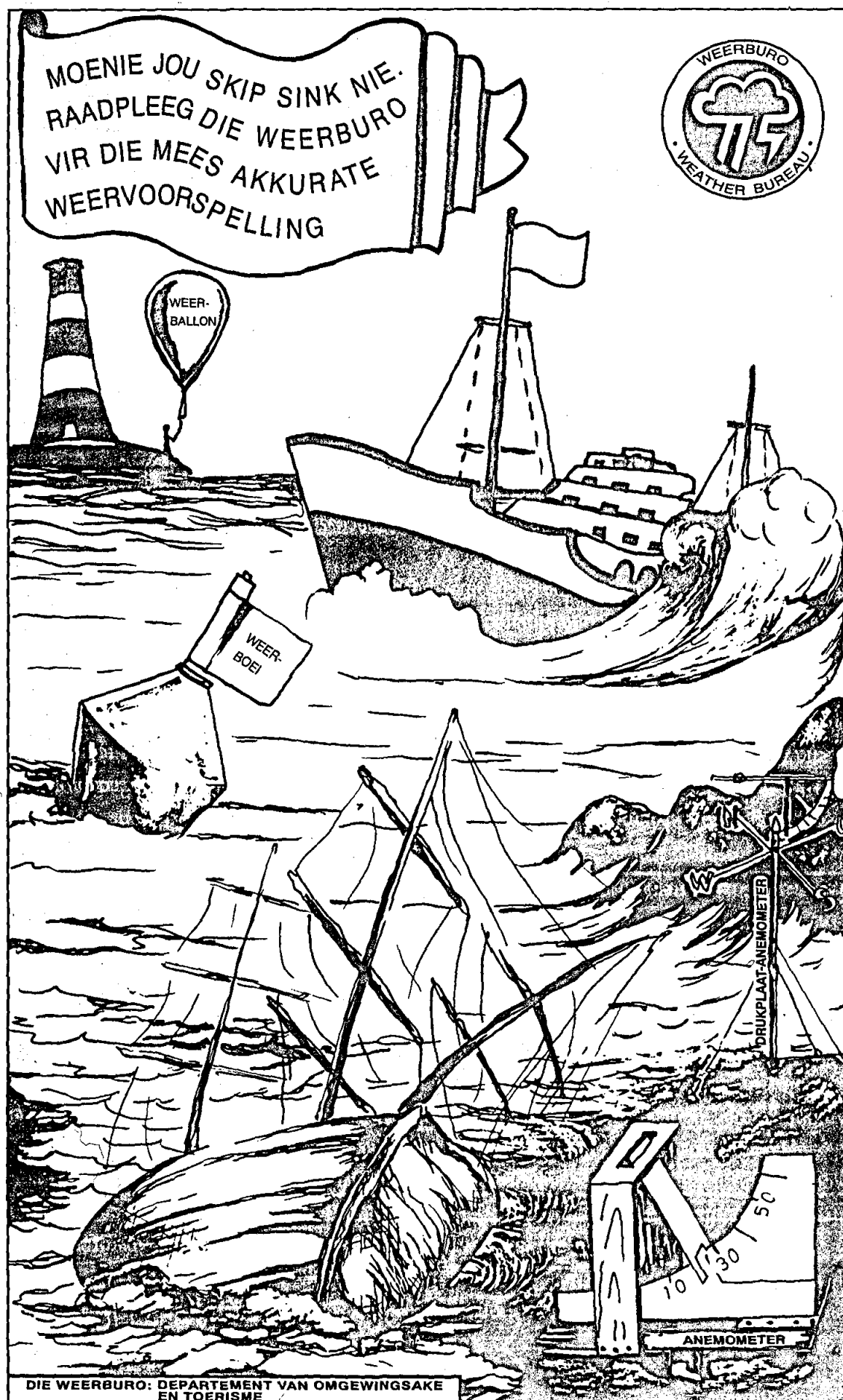
Chapter 16: Transitional provisions

As mentioned, the provisions of the Horse-racing and Betting Ordinance, 1978, which relate to betting are repealed by the Bill. The following sections of the Bill delete the relevant provisions, and effect consequential amendments to the remaining provisions of the Ordinance which deal with horse-racing.

- s 90: This amends the section of the Ordinance which creates definitions. In particular, the name of the Highveld Horse-racing and Betting Board is changed to the Gauteng Horse-racing Board.
- s 91: This amends a section of the Ordinance dealing with public holidays, in consequence of the introduction of new public holidays.
- s 92: This section also deals with public holidays in the Ordinance.
- s 93: This section alters section 9A of the Ordinance so as to delete a subparagraph which gives the Highveld Racing Authority the function of managing and controlling bodies concerned with the fixing of stakes.
- s 94: This section of the Bill makes consequential amendments to section 9B of the Ordinance which establishes the Horse-racing Board, also called the Racing Board.
- s 95: This section of the Bill repeals sections 10 to 13 of the Ordinance, which deal with betting and totalisators.
- s 96: This section of the Bill amends section 13A of the Ordinance, which requires the Totalisator Agency Board to pay certain amounts to the racing-club which held the race-meeting concerned. In terms of section 108 of the Bill dealt with below, the Totalisator Agency Board will no longer be a statutory body and will be replaced by a company owned by the provincial government. This section of the Bill amends the Ordinance so as to provide that this company must pay to the racing-club concerned amounts received in totalisators conducted by the company in relation to horse-races only.
- s 97: This section of the Bill repeals sections 14 to 43 of the Ordinance, which deal with bookmakers, betting offences, general restrictions on betting and the settlement of debts. These matters are now dealt with in terms of the Bill.
- s 98: This section of the Bill effects certain consequential amendments to section 44 of the Ordinance, which relates to the paying of fees by racing clubs to the Horse-racing Board.
- s 99: This section of the Bill repeals sections 45 to 49 of the Ordinance, which deal with the payment of certain taxes on betting transactions, which will now be governed by the Bill.
- s 100: This section of the Bill effects certain consequential amendments to section 50 of the Ordinance.
- s 101: This section of the Bill makes consequential amendments to section 51 of the Ordinance dealing with the imposing of a levy by the Highveld Racing Authority.

- s 102:** Certain consequential amendments are made to section 51A of the Ordinance dealing with levies for the benefit of the Horse-racing Development Fund.
- s 103:** A consequential amendment is made to section 54 of the Ordinance.
- s 104:** Section 55A of the Ordinance, dealing with the making of rules by the Racing Board in relation to bookmakers and other matters dealing with gambling, is repealed.
- s 105:** This replaces the existing short title of the Ordinance, the "Horse-racing and Betting Ordinance, 1978" by the new short title the "Horse-racing Ordinance, 1978".
- s 106:** This substitutes the long title of the Ordinance.
- s 107:** This section replaces various expressions in the Ordinance.
- s 108:** This section provides for the establishment of a company to conduct the business of the Totalisator Agency Board (Transvaal), and for the transfer of its business to this company.
- s 109:** This section provides for the transfer of any assets of the Racing Board in a tattersalls, to the bookmakers who occupy and run the tattersalls premises concerned.
- s 110:** This section states that pending applications in terms of the Ordinance must be completed, and deems various licences issued and other things done in terms of the Ordinance to have been issued or done in terms of the Bill.
- s 111:** This contains the short title of the Bill.
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CONTENTS

<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>
GENERAL NOTICE		
2479 Gambling and Gaming Act, 1995: Bill	1	50
