

# Provincial Gazette Extraordinary

# Buitengewone Provinsiale Koerant

5569

5569

Thursday, 24 August 2000

Donderdag, 24 Augustus 2000

*Registered at the Post Office as a Newspaper*

*As 'n Nuusblad by die Poskantoor Geregistreer*

## CONTENTS

### PROVINCIAL NOTICE

P.N. 383 2000

The following Bill is hereby published for general information:—

Western Cape Ninth Gambling and Racing Amendment Bill  
[B12—2000]

Any person or organisation wishing to comment on the said Bill is requested to lodge such comment in writing before or on 31 August 2000:

- (a) by posting it to:  
The Secretary:  
Western Cape  
Provincial Parliament  
P.O. Box 648  
Cape Town  
8000
- (b) by handing it in at:  
Room 4-104  
Provincial Building  
7 Wale Street  
Cape Town

P. J. C. Pretorius  
*Secretary to Parliament*

## INHOUD

### PROVINSIALE KENNISGEWING

P.K. 383 2000

Die volgende Wetsontwerp word hierby vir algemene inligting gepubliseer:—

Negende Wes-Kaapse Wysigingswetsontwerp op Dobbelaar en Wedrenne [W12—2000]

Enige persoon of organisasie wat kommentaar oor die genoemde Wetsontwerp wil lewer, word versoek om sodanige kommentaar skriftelik te lewer voor of op 31 Augustus 2000:

- (a) deur dit te pos aan:  
Die Sekretaris:  
Wes-Kaapse  
Provinsiale Parlement  
Posbus 648  
Kaapstad  
8000
- (b) deur dit in te handig by:  
Kamer 4-104  
Provinsiale-gebou  
Waalstraat 7  
Kaapstad

P. J. C. Pretorius  
*Sekretaris van die Parlement*

**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.

## AMENDMENT BILL

**To amend the Western Cape Gambling and Racing Law, 1996, so as to amend certain definitions and insert others, to dispense with race course and race course premises licences, to create exceptions to the obligation to advertise certain licence applications, to provide for procedures compelling holders of operator licences to disclose cheating and other contraventions of the Law or another similar law to the Board, to regulate methods of operation by licence holders, to provide for forfeiture of items to the Province in cases where an admission of guilt fine is paid and to provide for matters incidental thereto.**

**B**E IT ENACTED by the Provincial Parliament of the Province of the Western Cape, as follows:—

### **Amendment of section 1 of Law 4 of 1996**

1. Section 1 of the Law is hereby amended—

(a) by the substitution for the definition of “Gambling game” of the following definition: 5

“**Gambling game**’ means any game played with or by means of cards or dice or any mechanical, electro-mechanical or electronic device, component or machine or computer hardware or software which, upon payment of money, a token or a similar object, or upon payment, whether 10 directly or indirectly, by or on behalf of a player of any consideration whatsoever that is required, is available to be played or operated and the playing or operation of which, whether by reason of the skill of the player or operator or the application of the element of chance or both, may deliver to the person playing the game or to any other legal or natural 15 person nominated by such person, money, property, cheques, credit, tickets, receipts or tokens to be exchanged for money or merchandise or anything of value whatsoever, other than unredeemable free games, or may entitle such person to receive such money, tokens, merchandise or 20 thing of value, whether the pay-off is made automatically or in any other manner whatsoever and includes, without derogating from the generality of the foregoing, roulette, bingo, twenty-one, blackjack, chemin de fer, baccarat, poker, craps, punto banco and a gambling game played on a slot machine.”;

- (b) by the substitution for the definition of “Slot machine” of the following definition:
- “**‘Slot machine’** means any mechanical, electrical, video, electronic or other device, contrivance or machine used in connection with a gambling game which, upon insertion of money, a token or a similar object therein, or upon payment, whether directly or indirectly, by or on behalf of a player of any consideration whatsoever that is required, is available to be played or operated and the playing or operation of which, whether by reason of the skill of the player or operator or the application of the element of chance or both, may deliver to the person playing or operating the machine cash, tickets, receipts or tokens to be exchanged for cash or merchandise or anything of value whatsoever, other than unredeemable free games, or may entitle such person to receive such cash, tokens, merchandise or thing of value, whether the pay-off is made automatically from the machine or in any other manner whatsoever. Notwithstanding the above, a ‘slot machine’ shall include any machine, apparatus or device which—
- (a) has the capacity to provide as a prize, reward or consideration for successfully playing the game concerned, more than one coin, token or other consideration sufficient in value to enable the player, by inserting or in any manner procuring the insertion into such machine or the registration thereby of such coins, tokens or other consideration, to play more than one further game, or the opportunity to play more than ten further games immediately without the insertion of another coin, token or other consideration;
- (b) offers a game, the outcome of which is determined or displayed by way of reels, whether mechanical or video-generated, or is operated on any similar principle;
- (c) is an incomplete machine, device or apparatus which was a slot machine, but has been subsequently modified, or which is, or was intended to be made into a slot machine, including but not limited to any such machine, device or apparatus to which there is affixed an identification plate bearing the manufacturer’s serial number, or
- (d) has been declared by the responsible Member by notice in the *Provincial Gazette*, to be a slot machine.”;
- (c) by the substitution for the definition of “Premises licence” of the following definition:
- “**‘Premises licence’** means any licence referred to in section 27(c), (dA), [(hA),] (j) and (kA).”;
- (d) by the substitution for the definition of “Social gambling” of the following definition:
- “**‘Social gambling’** means—
- (a) the playing of a gambling game, other than the operation of a slot machine and other than any other gambling game involving the use, operation or possession of a gambling device, in a private dwelling, a church, school or community hall, a club house belonging to a genuine sports club or such other place as the Board may from time to time approve, which is not operated or conducted for profit and where no person directly or indirectly receives any form of remuneration or compensation for operating, conducting, carrying on, maintaining or providing such gambling game;
- (b) the playing of [any gambling game other than the operation of a slot machine] bingo, authorised in terms of section 67(1)(c), for the purpose of genuine fund-raising by a church, a school, a sports club or an entity duly registered in terms of the Fund-Raising Act, 1978 (Act 107 of 1978), or such other entity as the Board may from time to time determine, where no person other than a person referred to

in this paragraph directly or indirectly makes any profit or receives any form of remuneration or compensation for operating, conducting, carrying on, maintaining or providing such gambling game, and in accordance with the procedures and subject to the conditions which the Board may from time to time determine, and

- (c) the playing of an amusement game, which, for the purposes of this Law, means a game as prescribed.”; and  
 (e) by the insertion, after the definition of “Totalisator” of the following definition:

“**Unredeemable free game**’ means an opportunity, won by successfully playing a game, to play a further game without the payment of any consideration normally required to play such game, which cannot be redeemed by, distributed or transferred to the person who has won such opportunity or any other person for any other purpose than to use such opportunity without interruption to continue playing the type of game in respect of which the opportunity was won, on the same machine, device or apparatus as that on which the opportunity was won, and which excludes an opportunity which can, in any manner, be converted into money, property, cheques, credit, prizes, eligibility for other prizes or anything of value.”

#### **Amendment of section 27 of Law 4 of 1996**

2. Section 27 of the Law is hereby amended—

- (a) by the deletion of subsection (h); and  
 (b) by the deletion of subsection (hA).

#### **Amendment of section 32 of Law 4 of 1996**

3. Section 32 of the Law is hereby amended, in subsection (2), by the substitution for paragraph (a) of the following paragraph:

“(a) cause a notice of the application to be published in the *Provincial Gazette* and such other printed media as he or she may deem appropriate **[and]; provided** that this requirement may be dispensed with where applications for premises licences have been received in respect of—

- (i) premises to which the general public will not have physical access for the purpose of gambling or betting, or  
 (ii) premises already utilised for gambling or betting under the authority of a licence issued by the Board, and”.

#### **Amendment of section 42 of Law 4 of 1996**

4. Section 42 of the Law is hereby amended, in subsection (1), by the insertion, after paragraph (m), of the following paragraph:

“(n) the holder of an operator licence wilfully or persistently uses or tolerates methods of operation deemed unsuitable by the Board.”.

#### **Amendment of section 50 of Law 4 of 1996**

5. Section 50 of the Law is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A manufacturer licence shall authorise the importation, acquisition, manufacture, assembly, maintenance, repair, alteration, distribution, leasing or selling of the types **[and models]** of gambling devices set out in the licence.”.

#### **Deletion of section 52 of Law 4 of 1996**

6. Section 52 of the Law is hereby deleted.

#### **Deletion of section 52A of Law 4 of 1996**

7. Section 52A of the Law is hereby deleted.

### Amendment of section 56 of Law 4 of 1996

#### 8. Section 56 of the Law is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection: 5  
 “(2) Notwithstanding the provisions of subsections (1) and (9), persons  
**[Persons]** employed in any of the following or substantially similar positions 5  
by the holders of the licences contemplated in section 27(a), (b), (d) and (f)  
 shall be regarded as key employees for the purposes of this section:  
 (a) managers;  
 (b) supervisors; 10  
 (c) pit bosses; 10  
 (d) inspectors;  
 (e) surveillance personnel, and  
 (f) any other position considered by the Board to be that of a key employee  
 generally or in relation to any gambling business in particular.”, and  
 (b) by the insertion after subsection (8) of the following subsection: 15  
 “(9) For the purposes of this section, direct control over gambling operations  
or the activities authorised by the principal licence shall mean the express,  
implied or reasonably incidental authority to oversee, monitor or otherwise  
control any activity in respect of gambling operations which, in the opinion of  
the Board, may reasonably enable the person on whom such authority is  
conferred— 20  
 (a) to manipulate or alter the selection of criteria which determine the result  
 of any gambling game, event or contingency;  
 (b) to contravene section 70, or  
 (c) to misrepresent to any authority the tax liability of the licence 25  
holder.”.

### Amendment of section 57 of Law 4 of 1996

#### 9. Section 57 of the Law is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection: 30  
 “(2) Notwithstanding the provisions of subsections (1) and (6), persons  
**[Persons]** employed in any of the following or substantially similar positions 30  
by the holders of the licences contemplated in section 27(a), (b), (d) and (f)  
 shall be regarded as gambling employees for the purposes of this section:  
 (a) cashiers and ticket-sellers;  
 (b) counting room personnel; 35  
 (c) dealers and croupiers;  
 (d) machine mechanics[;], and  
 (e) **[bookmaker clerks, and**  
**(f)]** security personnel.”, and  
 (b) by the insertion after subsection (5) of the following subsection: 40  
 “(6) For the purposes of this section, direct involvement in the activities  
performed under the principal licence shall mean the express, implied or  
reasonably incidental authority to perform any activity in respect of the  
gambling operations of the principal licence holder which, in the opinion of  
the Board, may reasonably enable the person on whom such authority is  
conferred— 45  
 (a) to manipulate or alter the selection of criteria which determine the result  
 of any gambling game, event or contingency;  
 (b) to contravene section 70, or  
 (c) to misrepresent to any authority the tax liability of the principal licence 50  
holder.”.

### Amendment of section 67 of Law 4 of 1996

10. Section 67 of the Law is hereby amended, in subsection (1), by the substitution for paragraph (c) of the following paragraph:

“(c) possess a gambling device other than playing cards or dice; provided that the possession of gambling devices without a licence shall not be an offence where the possessor thereof possesses such gambling devices for the sole purpose of demonstration, promotion within the industry, social gambling as contemplated in section 1, or such further similar purpose as the Board may, prior to such possession and upon application by such intended possessor, authorise in writing, and further provided that such gambling devices may be lawfully possessed in terms of this paragraph only for [a] such period and in or on such premises as stipulated by the Board in such authorisation.”.

### Insertion of section 70A in Law 4 of 1996

11. The following section is hereby inserted after section 70 of the Law:

#### “Reports of cheating and contraventions of Law or similar law 15

**70A.** (1) The holder of an operator licence must, within three days of the date of discovery or the first notification to it thereof, inform the Board in writing of any alleged incidence of cheating or of any alleged contravention in or on its gambling establishment or any other gambling establishment operated wholly or in part by the person operating its gambling business, of—

(a) this Law, or  
(b) any similar law regulating gambling in any jurisdiction.

(2) The written notification contemplated in subsection (1) shall provide details of any action taken, being taken or to be taken by the licence holder in consequence of the alleged cheating or contravention.”.

### Insertion of section 72A in Law 4 of 1996

12. The following section is hereby inserted after section 72 of the Law:

#### “Methods of operation 30

**72A.** (1) The holder of an operator licence is at all times responsible for the development, implementation and maintenance of suitable methods of operation in respect of gambling, racing or betting and activities incidental thereto on all licensed premises on which it conducts any such activity. 35

(2) If, as a result of any hearing, investigation or enquiry or in consequence of information provided to it by an authorised officer, the Board is satisfied that any method of operation employed by the holder of an operator licence is unsuitable, it may transmit to such licence holder in the prescribed manner, written notification setting forth the unsuitable method of operation and calling upon the licence holder to cease or to remedy the unsuitable method of operation. 40

(3) Wilful or persistent use or toleration of methods of operation deemed unsuitable by the Board shall constitute grounds for the revocation or suspension of an operator licence or such other disciplinary action prescribed by or under this Law as the Board may deem fit.”. 45

**Insertion of section 72B in Law 4 of 1996**

13. The following section is hereby inserted after section 72A of the Law:

**“Unsuitable methods of operation**

- 5  
 72B. Any act or omission by the holder of an operator licence or its  
 agents or employees which, in the opinion of the Board, is harmful to the  
 public health, safety, morals, good order and general welfare of the people  
 of the Province, or which may bring discredit to the Province or the  
 gambling industry, may be deemed by the Board to be an unsuitable method  
 of operation, including, but not limited to, the following acts or omissions: 10  
 (a) on licensed premises, permitting persons who appear to be visibly  
 intoxicated to participate in any gambling activity;  
 (b) on licensed premises, serving intoxicating beverages to any person  
 participating in any gambling activity who appears to be visibly  
 intoxicated; 15  
 (c) possessing or permitting to remain in or upon any licensed premises  
 any cards, dice, mechanical device or any other cheating device  
 whatsoever, the use of which is prohibited by law, without the prior  
 written approval of the Board;  
 (d) on licensed premises, operating or otherwise making use of any 20  
 cheating or thieving game or device, which may have in any manner  
 been marked, tampered with or otherwise placed in a condition, or  
 operated in a manner which tends to deceive the public or which tends  
 to alter, manipulate or reverse the normal random selection of criteria  
 determining the results of the game; 25  
 (e) failure by the licence holder to conduct gambling operations in  
 accordance with reasonable standards of custom, decorum and  
 decency;  
 (f) the sale or assignment of any gambling credit instrument by a licence  
 holder, unless the sale is to a publicly-traded or other recognised 30  
 financial institution pursuant to a written contract submitted to the  
 Board for prior approval, except as provided for in this Law, and  
 (g) the issue by a licence holder of credit to a patron to enable the patron  
 to satisfy a debt owed to another licence holder or person.”.

**Amendment of section 77 of Law 4 of 1996**

35

14. Section 77 of the Law is hereby amended by the insertion after subsection (1) of  
 the following subsection:

- “(2) Upon payment by a person of an admission of guilt fine in terms of  
section 57 of the Criminal Procedure Act in respect of a charge of a  
contravention of section 67(1)(a), 67(1)(c) or 69(1)(a) of this Law, any  
item contemplated in subsection (1), which was seized in terms of this  
Law or the Criminal Procedure Act, shall be forfeited to the Province,  
whereupon the provisions of section 35 of the Criminal Procedure Act  
shall apply to anything forfeited in terms of this section.”. 40

**Short title**

45

15. This Act shall be called the Western Cape Ninth Gambling and Racing  
 Amendment Act, 2000.

## EXPLANATORY MEMORANDUM

### WESTERN CAPE NINTH GAMBLING AND RACING AMENDMENT BILL

#### 1. Proposed amendment of section 1 of Law 4 of 1996

- 1.1 The proposed amendment to the definition of “**gambling game**” is intended to broaden the definition to include games which otherwise fall within the definition, but in respect of which the amount staked is not staked by the player himself or herself. Technically, as the definition currently stands, if the amount is staked by a person other than the actual player, the game thus played will not amount to a “gambling game”. In addition, the proposed amendment widens the definition by including games otherwise falling within the definition, in respect of which the pay-out or winnings are made, not necessarily to the player himself or herself, but also to any other person, whether legal or natural, nominated by the player. This will cover the situation in which a player may escape criminal liability by stipulating, for example, that any winnings should be paid into the account of another person nominated by him or her. It is further proposed to broaden the definition to include tickets and receipts within the range of possible benefits to be delivered to the player, since experience has shown that it is a common practice in the illegal industry to provide a winning player with tickets or receipts which may subsequently be exchanged for cash or items of value.
- 1.2 The proposed amendments to the definition of “**premises licence**” reflect the proposed fewer categories of premises licences. The motivation behind the proposals in respect hereof will be dealt with in paragraph 2.1.
- 1.3 The proposed amendments to the definition of “**slot machine**” have similarly been found to be necessary in view of the manner of operation of the illegal industry. In this instance too, it is necessary to effect the same amendments as have been proposed in respect of the definition of “gambling game”. In addition, the proposed amendment makes provision for the following machines, which are extensively used by the illegal industry for the purpose of conducting unlawful gambling activities, to qualify as “slot machine(s)”:
  - 1.3.1 machines offering games which provide the successful player with coins or tokens of greater value than would be required to play one further game by inserting such coins or tokens into the machine or in any other manner causing the machine to register credits representing such value, or games which allow the successful player the opportunity of playing the game more than ten further times without inserting or providing further payment;
  - 1.3.2 machines offering games of which the outcome is determined by way of mechanical or video-generated reels, or machines operating on any similar principle;
  - 1.3.3 machines which were previously slot machines, but have been modified or which are or were intended to be made into slot machines, including machines bearing the manufacturer’s serial number, or
  - 1.3.4 machines which have been declared by the responsible Member by notice in the *Provincial Gazette* to be slot machines.
- 1.4 The proposed amendment to the definition of “**social gambling**” effectively prohibits the use, operation or possession of a gambling device for the purposes of social gambling, and confines social gambling for the purposes of fundraising to the playing of bingo, which must be authorised by the Board in writing prior to the playing of such, so that the gambling devices required for the conduct of such social gambling may be legitimately possessed. The proposed amendment is crucial to the effective conduct of the criminal prosecutions arising out of unlawful activities, since it will preclude the possibility of defences of social gambling being raised where gambling devices are possessed, unless prior authorisation, in terms of section 67(1)(c) of the Law, has been given by the Board.



- 1.5 It is further proposed to insert a definition of the concept “**unredeemable free game**” so as to close loopholes which have arisen in the interpretation of the concept “slot machine”. This proposed definition makes it clear that an unredeemable free game cannot be transferred to any person other than the person who has won it, cannot be separated from the machine on which it was won, cannot be claimed and used at a later stage by the player who has won it, and cannot be converted into anything of value. It is important that this definition be inserted to clarify these issues, since a machine which delivers no more than an “unredeemable free game” will not qualify as a “slot machine”. The proposed definition will eliminate many practices in the illegal industry in terms of which the above schemes have been employed under the guise of the concept of an “unredeemable free game”.

## **2. Proposed amendment of section 27 of Law 4 of 1996**

The proposed amendments to section 27 remove race course and race course premises licences from the body of licence types capable of being issued by the Board. In this regard, since the Western Province Racing Club has already been issued a totalisator operator and a series of totalisator premises licences (one of the latter of which specifically pertains to the race course), it is clear that a race course and race course premises licences are superfluous. There is no need to licence the race course and its premises separately, since the suitability of the premises in respect of the gambling activities to be conducted thereon is covered by the totalisator premises licence. There is no prospect that anyone would conduct horse racing without applying for a totalisator operator and totalisator premises licence at the same time. The race course and race course premises licence therefore serve little, if any purpose, and it is proposed to dispense with them.

## **3. Proposed amendment of section 32 of Law 4 of 1996**

This proposed amendment is designed to remove the obligation to advertise licence applications in specific circumstances where advertisement thereof is superfluous or occasions unfair costs to applicants. If a premises licence has already been granted for a particular premises to operate, for example, as a totalisator premises, and the public participation process has therefore been catered for, there can be little justification for again advertising the same premises when an application for a bookmaker premises licence is received by the Board. In respect of premises licences, the rationale behind advertising is to receive feedback from the community relating to gambling activities proposed to be conducted in its area. Once this has been done, and premises are licensed, further advertisements in respect of the same premises, on which gambling or betting or related activities are already being conducted, which are very costly to the applicant, appear unjustified. Similarly, in circumstances where the premises in question are to be used for betting by way of telephonic transactions only, and the public will not have access to such premises for the purpose of gambling or betting, the costly requirement of advertising may reasonably be dispensed with. The proposed amendment relates only to premises licences, and it is proposed that the requirement of advertising only be dispensed with in these instances.

## **4. Proposed amendment of section 42 of Law 4 of 1996**

The proposed amendment to section 42 is formal in character and makes provision for the option of suspension or revocation of a licence in the circumstances outlined in the proposed section 72A(3), which will be discussed under paragraph 6 below.

**5. Proposed amendment of section 50 of Law 4 of 1996**

The proposed amendment to section 50 is intended to streamline the administrative functioning of the Board, in that it is impractical that a manufacturer licence provide the models of gambling devices authorised to be traded in by the licence holder. Models of the same type of gambling device are regularly updated, and, in terms of the current position, the licence will need to be amended on every occasion that new models of the same type of gambling device, authorised by the licence, are released. This will cause a great administrative burden, without in any way contributing to more effective regulation of the industry. However, whenever a manufacturer wishes to trade in a new type of gambling device, an amendment to the licence will still be required.

**6. Proposed deletion of section 52 of Law 4 of 1996**

This proposed amendment effectively deletes the description of the race course licence as being a licence type which the Board may issue.

**7. Proposed deletion of section 52A of Law 4 of 1996**

The proposed amendment effectively deletes the description of the race course premises licence as being a licence type which the Board may issue.

**8. Proposed amendment of section 56 of Law 4 of 1996**

- 8.1 The Board has now been actively regulating the horseracing industry for two years. During this process, it has become familiar with the industry and its nature. It must be stressed that there is an enormous difference between the tasks performed by employees in the casino industry and those employed in the horseracing industry.
- 8.2 The above difference is largely attributable to the nature of work performed by the respective employees and the scope for manipulation of the system created thereby. In the horseracing industry, employees such as supervisors and cashiers have what is essentially a routine role to fulfill. The cashier merely records, on what amounts to a computerised betting and accounting system, the betting preferences of the player, receives payment for the transaction and pays the player an amount calculated by the system should the player win. The cashier can do nothing to influence the outcome of the event or contingency on which the bet is placed. The supervisor merely assists the cashier in an administrative sense, and overviews the operation of a certain section of the totalisator. There is no prospect of any collusion between employees and players or the manipulation of the system to influence the outcome or encourage cheating. If the cashier should steal money, the computerised system would reflect that the cashier was short, in which event the cashier would be responsible for the repayment to the Club of such amount(s). The same applies to a bookmaker's clerk operating on a computerised system. Such systems, the nature and specifications of which have to be approved by the Board before they may be utilised, will become compulsory during the year 2000.
- 8.3 On the other hand, dealers and croupiers working in a casino environment have a number of opportunities (as has happened) to enter into schemes with players in order to manipulate the outcome of the event on which betting takes place. Schemes include the use of marked cards, phantom shuffling by the dealer, and many others. It is obviously in the interests of the industry and the public which relies on its integrity, that these persons be subjected to probity investigations and be licensed. Similarly, the people who oversee these staff may be drawn into such schemes and it is therefore essential that they be investigated and licensed.

- 8.4 The Law requires that both classes of employees discussed above be investigated and licensed, despite the absence of a rationale for licensing employees of this kind in the horseracing industry, who pose no threat to the honesty or credibility of the industry. It is therefore proposed to bring about changes to the Law which reflect these realities. In the case of persons employed in the horseracing industry, most of whom fulfill their functions on a casual basis and enter this employment arena because they are in financial need, an impending probity investigation is highly intimidating and can deter the prospective employee from taking up work at all. This situation is exacerbated when one considers that there is little or no rational explanation as to why probity investigations and licensing are required in respect of such persons.
- 8.5 The sections of the Law which deal with the licensing of the above types of employees are sections 56 and 57.
- 8.6 The proposed amendments to section 56, which deal with the key employee licence type, provide that the categories of person listed in subsection (2) will automatically qualify as key employees only when they are employed by the holders of casino operator, limited gambling machine operator, bingo or manufacturer licences. This amendment has been proposed because each of these categories of persons is correctly classified as a key employee in view of the work that they perform for the holders of these principal licences. By linking these categories to fixed licence types, the Law removes from the automatic ambit of the definition of "key employee" such persons as managers or supervisors in the racing industry whose functions have no impact on the integrity of the betting transactions or their outcome.
- 8.7 However, the proposed subsection (9), when read with subsection (1), makes it clear that anyone employed by any licence holder who may exercise direct control over gambling operations requires a key employee licence. The proposed subsection (9) provides that whenever a person is, in the view of the Board, reasonably capable, by reason of the function which he or she performs, of manipulating the outcome of the gambling game or bet, perpetrating or participating in cheating or misrepresenting the licence holder's tax liability, that person will be required to be licensed as a key employee.
- 8.8 The amendments proposed above have been carefully drafted with a view to retaining the statutory requirements of probity investigations and licensing where they are warranted, but dispensing with them where they serve no purpose. In this way, any person whose job description confers on him or her the ability to defeat any of the core objectives of the Law in the execution of his or her functions would be required to be licensed and probed in terms of the new subsections.
- 8.9 In addition, the categories of persons who automatically require licensing as either key or gambling employees have been expressly retained where such persons are the employees of the holders of casino operator licences, limited gambling machine operator licences, bingo licences and manufacturer licences. All these categories of persons will still be subject to licensing, because each may, by virtue of the activities he or she performs, potentially pose a risk to the core objectives of the Law.
- 8.10 Most importantly, in instances where any class of employee, whether employed in the horseracing or gambling industry is, in the view of the Board, in a position, by virtue of the functions which he or she fulfils, directly, indirectly or by implication, to manipulate or alter the selection of criteria which determine the result of the game, to contravene section 70, which pertains to cheating or to misrepresent the tax liability of the licence holder, such employee will be regarded as a key employee, and will have to be investigated and licensed as such. It is also noteworthy that the proposed amendment gives the Board a discretion in determining whether employees fall into any such category.

- 8.11 It is submitted that the proposed amendments place the emphasis where it belongs, namely on the rational nexus between the kind of work performed by the relevant employee and the risk which this may pose to the honesty and credibility of the industry.

#### **9. Proposed amendment of section 57 of Law 4 of 1996**

- 9.1 The comments made in paragraph 8 above are directly apposite here. It is proposed to amend section 57, which deals with gambling employee licences, in a manner which corresponds to the amendments proposed to be effected to section 56, so that:
- 9.1.1 only the listed categories of employees of the holders of casino operator, limited gambling machine operator, bingo and manufacturer licences will automatically be regarded as requiring licensing for the purposes of the Law;
- 9.1.2 bookmaker clerks are removed from the listed categories (on the basis that a bookmaker clerk performing his or her functions on a computerised betting system will pose no threat to the core objectives of the Law), and
- 9.1.3 in terms of the proposed subsection (6), all employees who are directly involved in the activities performed under the principal licence which is defined to mean having the ability to manipulate the outcome of the gambling game or bet, to perpetrate or participate in cheating, or to misrepresent the tax liability of the principal licence holder, will require to be licensed. Thus, for example, a bookmaker's clerk utilising a manual betting system would, by virtue of the functions fulfilled by him or her, potentially be in a position to manipulate the outcome or misrepresent tax liability (by entering fictitious bets, for example) and would therefore have to be licensed as a gambling employee. On the other hand, a bookmaker's clerk utilising a computerised system approved by the Board would be in the same position as an employee of the totalisator and therefore not require licensing.

#### **10. Proposed amendment of section 67 of Law 4 of 1996**

- 10.1 The proposed amendment to section 67(1)(c) provides for the capacity of the Board to approve, upon application, the unlicensed possession of gambling devices for a specified period in advance, where such gambling devices are to be possessed for the additional purpose of "social gambling". In this context, social gambling refers to the playing of bingo for genuine fundraising purposes. The adoption of this procedure will effectively preclude false defences of "social gambling" being raised in criminal proceedings, since persons in possession of such devices will either be in possession of Board authorisation in respect of such possession, in which case such possession will be unlawful, or will not, in which case no such defence will be available.
- 10.2 In addition, the proposed amendment makes it clear that possession of such devices at times or in places beyond the parameters of an authorisation issued by the Board will be unlawful.

#### **11. Proposed insertion of section 70A in Law 4 of 1996**

This proposed section compels the holder of an operator licence to inform the Board of any cheating or contravention of the Law, or any similar law, detected at its establishment or at any other establishment in any jurisdiction operated wholly or in part by the person operating its gambling business. This will enable the Board to monitor the operational integrity of the licence holder or operator, as well as cheating activities, on a continuous and inclusive basis, and so place it in a position to make an ongoing assessment of the continued suitability (in terms of the qualification criteria contained in the Law) of these parties. Accountability of the licence holder to the Board is also enhanced by

the proposed reporting mechanism, which will require the licence holder to set out the measures taken or to be taken by it to address the alleged instances of cheating or contraventions.

**12. Proposed insertion of section 72A in Law 4 of 1996**

The proposed insertion of section 72A provides for a mechanism by which the Board may, provided it is satisfied that unsuitable methods of operation are being used or allowed by the holder of an operator licence, in writing notify the licence holder of the fact, and call upon the licence holder to cease or remedy the position. The proposed subsection (3) to this section strengthens the regulatory aspect of this function, by providing that wilful or persistent use or toleration by a licence holder of unsuitable methods of operation may result in the suspension or revocation of the licence, or such other disciplinary action, sanctioned by the Law, as the Board may deem appropriate.

**13. Proposed insertion of section 72B in Law 4 of 1996**

This proposed section provides further clarity as to acts or omissions which may be deemed by the Board to constitute unsuitable methods of operation, both in general and in particular terms. The particular acts and omissions cited pertain largely to acts or omissions which have a negative bearing on the protection of the gambling public, the possession or usage of cheating or similar devices, the sale of credit instruments and the abuse of credit facilities.

**14. Proposed amendment of section 77 of Law 4 of 1996**

The proposed amendment to section 77 of the Law is intended to provide for the automatic forfeiture of items seized in terms of the Law or the Criminal Procedure Act, when a person has admitted guilt in respect of certain contraventions of the Law by paying an admission of guilt fine. In such a case the same procedure will be adopted as that followed when a person is found guilty in a court of law.

