

PROVINCE OF THE EASTERN CAPE

**GAMBLING AND BETTING AMENDMENT ACT
(EASTERN CAPE)**

Act No 8 of 2002 (EC)

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Gambling and Betting Act, 1997 (Act No. 5 of 1997) (Eastern Cape); to insert and amend certain definitions; to allow the board to impose fines for violation of the Act; to amend certain disqualifications and prohibitions; to amend certain procedures; to extend the period of validity of bookmakers licences; to extend the grounds on which persons can be excluded from gambling premises; to further prohibit certain actions; to amend certain fees and taxes; and to provide for matters incidental thereto.

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

Amendment of section 1 of Act No. 5 of 1997 as amended by Act No. 6 of 1998, Act No. 5 of 1999 and Act No. 3 of 2000.

1. Section 1 of the Gambling and Betting Act, 1997 (Act No. 5 of 1997) (Eastern Cape) (hereinafter “the principal Act”) is hereby amended-

- (a) by the insertion before the definition of “amusement game” of the following definition:

“‘advertisement’ means any written, illustrated, visual, electronic or other descriptive material or oral statement, communication, representation or reference which is distributed among or transmitted to, members of the public or otherwise brought to their notice, which is intended, or purports to be intended, to promote the gambling business of a licence holder or any business which offers gambling to members of the public or to encourage the use of the gambling services offered by such gambling business or to otherwise draw attention thereto where such distribution, transmission or bringing to the notice of members of the public is effected by such licence holder or business or is paid for, whether directly or indirectly by such licence holder or business and ‘advertise’ and ‘advertising’ have corresponding meanings;”

- (b) by the substitution for the definition of “amusement game” of the following definition:

“‘amusement game’ means an amusement game referred to in section 4(3) which is played or activated by the insertion or payment of a coin, token, credit, electronic credit, debit, bill of exchange, or other value instrument whereby the player may win a prize which is not in the form of cash, tokens, cheques, credit, debits, bills of exchange or other value instruments but is limited to-

- (i) one or more non-cash prizes with a combined retail monetary value not exceeding the limit set by the board;

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- (ii) more than one opportunity to play a further game, provided that no more than 10 such opportunities may be won in respect of a single game; or
- (iii) in the case of games which involve a substantial element of skill, one or more tickets which cumulatively entitle or enable the player to receive a **[prize contemplated in paragraph (i)]** non-cash prize on the premises concerned and which are not transferable to any other person: Provided that no accumulation of tickets shall entitle or enable a player to receive a prize **[other than, or]** having a higher retail value than **[that]** 15 times the value contemplated in paragraph (i) and at least 20 tickets shall be required in respect of each Rand of the retail value of such non-cash prize: Provided further than no more than **[10]** 15 tickets may be won in respect of any single such game

but excludes games contemplated in section 61(1)(a)(ii) and (v);”;

- (c) by the substitution for the definition of “financial interest” for the following definition:

“‘financial interest’, in relation to a company or corporation, means:

- (a) having a right or entitlement to share in profits or revenue;
- (b) being the holder of any real right in respect of any property of the company or corporation;
- (c) being the owner or holder of a real or personal right in any property used by the company or corporation in conducting its gambling business; or
- (d) having a direct or indirect interest in the voting shares or voting rights attaching to the shares of the company or having an interest in a close corporation;”;

- (d) by the substitution for the definition of “gambling” for the following definition:

“‘gambling’ or ‘gamble’ means the playing of a gambling game and includes the acceptances of stakes by a totalisator or bookmaker but does not include social gambling or participation in a lawful lottery contemplated in the Lotteries Act, 1997 (Act No. 57 of 1997);”.

- (e) by the substitution for the definition of “horse race” of the following definition:

“‘horse race’ means any horse race over a defined or agreed course held for the entertainment of the public and members of any association or club but does not include-

- (a) any race in the nature of a public trial gallop at which no betting takes place held under the management and control of the holder of a race course licence;
- (b) any race or contest of a private nature at which no betting takes place; and
- (c) any race held for the entertainment of the public where it is not intended that betting takes place and which meets with the prescribed requirements;”;

- (f) by the insertion after the definition of “social gambling” of the following definition:

“‘sporting event’ means any football, rugby, cricket, golf or tennis match, any boxing, wrestling, shooting or swimming contest, any foot, cycle, motor, boat or horse race and any other lawful contest, competition, tournament or game usually attended or viewed by the public;”.

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Amendment of section 4 of Act No. 5 of 1997 as amended by Act No. 6 of 1998

2. Section 4 of the principal Act is hereby amended-

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

“(xxi) to impose penalties for any breach of this Act or any of the **[rules or]** regulations, rules or licence conditions made under this Act by a licence holder or registrant, which may include **[fines]** a fine or the suspension of or the imposition of conditions relating to any licence issued in terms of this Act;”;

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

“(2) The board may, with the approval of the responsible member-

(a) exercise such powers and perform such functions and duties in terms of the law of any other province or area in respect of persons and matters in the said province as the board may in terms of this Act perform and perform in this province; and

(b) enter into an agreement with the National Gambling Board contemplated in section 1 of the National Gambling Act, 1996 (Act No. 33 of 1996) or the gambling regulatory authority of any other province or provinces which provides for the joint monitoring, licensing or regulation of activities having an inter-provincial nature, such as wide area progressive jackpots, monitoring systems or linked bingo systems;”;

(c) by the amendment of subsection (5) as follows:

“(5) The board may delegate its power relating to the award, issue, revocation and suspension of-

(a) licences and registrations contemplated in subsection (1)(c)(xxx);

(b) registrations in terms of sections 61, 65, 68 and 69;

(c) temporary licences contemplated in paragraphs (b)**[and]**, (c) and (d) of section 38(1).”.

Amendment of section 6 of Act No. 5 of 1997

3. Section 6 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Subject to section 7(3), [No] no person shall be appointed to or remain as a member of the board if such person-”.

Amendment of section 7 of Act No. 5 of 1997

4. Section 7 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections:

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

- (a) the provisions of subsection (1) are applicable to such person;
- (b) he or she recuses himself or herself in terms of subsection (1); and
- (c) such disqualification may reasonably fall away within 6 months of its coming into existence.

(4) If a disqualification in subsection (3) continues for longer than 6 months, the member of the board concerned shall be disqualified from remaining a member of the board from the date 6 months after the coming into existence of such disqualification.”.

Amendment of section 13 of Act No. 5 of 1997 as amended by Act No. 3 of 2000

5. Section 13 of the principal Act is hereby amended-

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

“(b) solicit or accept employment from, or be employed at the gambling area of, the holder of, or an applicant for, a licence under this Act within [4 years] 1 year after the termination of his or her term of office or service, as the case may be.”;

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

“(2) A member of the board or of the staff of the board, any family member of such member, or any person related to such member within the second degree of consanguinity, shall not accept any donation, reward or other such benefit directly or indirectly from an applicant for, or the holder of, a licence or registration in terms of this Act and no such person shall directly or indirectly give or offer such donation, reward or such benefit to such member, family member or relative: Provided that the provisions of this subsection shall not apply to-

- (a) a reasonable meal with a value of less than the amount determined by the responsible Member given to a board member or member of staff of the board whilst such member is acting in the course and scope of his or her duties;
- (b) a bona fide gambling win by such board member, staff member, family member or relative at premises of such applicant, licence holder or registrant or an affiliate thereof where such person is not prohibited from so gambling in terms of this Act;
- (c) a salary earned by such family member or person related to such member within the second degree of consanguinity from such applicant, licence holder or registrant in so far as the employment of such person by the licence holder will, in the opinion of the board, not compromise the objectivity of the board member or member of staff to whom such person is related;
- (d) any benefit such as discounted accommodation, promotional materials and the like available to all members of the general public;
- (e) any benefit or object with a value not exceeding that determined by the responsible Member.”;

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

“(3) No family member of a member or member of staff of the board shall be employed at or by a gambling business in the province if such employment would, in the opinion of the board, lead to a conflict of interest.”;

(d) by the insertion after subsection (3) of the following subsection:

“[(3)](4) Any person who contravenes a provision of subsection 1 [or], (2) or (3) shall be guilty of an offence.”.

Amendment of section 17 of Act No. 5 of 1997 as amended by Act No. 6 of 1998 and Act No. 3 of 2000

6. Section 17 of the principal Act is hereby amended-

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

“(d) [lump sum payments made in terms of sections 45(2) or (4)] inspection and investigation fees contemplated in section 4(7); and”;

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

“(4) The board shall open an account with a bank determined by the board which is registered in the Republic and approved by the National Treasury as contemplated in section 7(2) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and shall deposit in that account all money referred to in subsection (1).”;

(c) by the insertion after subsection (6) of the following subsection:

“(7) The board may establish such other bank accounts at institutions complying with subsection (4) as the board, in consultation with the responsible Member, may determine.”.

Amendment of section 18 of Act No. 5 of 1997

7. The principal Act is hereby amended by the substitution for section 18 of the following section:

“Accounting responsibility

18.(1) The board members contemplated in section 5 shall collectively be the accounting authority of the board charged with accounting for all money received and payments made by the board: Provided that the Provincial Treasury may in exceptional circumstances approve or instruct that the chief executive officer or another member of staff of the board shall be the accounting authority for the board, which approval or instruction may at any time be withdrawn.

(2) The board may in writing delegate any of the powers delegated or entrusted to it by the Public Finance Management Act, 1999 (Act No. 1 of 1999) to the chief executive officer or a member of the staff of the board or instruct such person to perform a duty assigned to the members of the board in terms of this Act.

(3) A delegation or instruction contemplated in subsection (2)-

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- (a) is subject to such limitations or conditions as the members of the board may impose;
- (b) may either be to a specific individual or the holder of an office; and
- (c) shall not divest the members of the board of responsibility concerning the exercise of the delegated power or performance of the assigned duty.

(4) Subject to any vested rights, the board may revoke a decision taken by a person or a member of a delegation or instruction contemplated in subsection (2).

(5) The financial year of the board shall end on 31 March each year.

(6) The board shall-

- (a) keep full and proper records of all money received or expended by, and of all assets and liabilities and financial transactions of, the board;
- (b) follow the bookkeeping and accounting systems, instructions and requirements of the Provincial Treasury; and
- (c) as soon as is practicable, but not later than 2 months after the end of each financial year referred to in subsection (5), 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.

(7) The record and annual financial statements referred to in subsection (6) shall be audited by the Auditor-General.”.

Amendment of section 19 of Act No. 5 of 1997 as amended by Act No. 6 of 1998 and Act No. 3 of 2000

8. Section 19(3) of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The memorandum of a company referred to in subsection (1) shall exclude the common powers of companies as contained in paragraphs [(f)], (k), (l) and (m) of Schedule 2 of the Companies Act, 1973 (Act No. 61 of 1973).”.

Amendment of section 20 of Act No. 5 of 1997 as amended by Act No. 6 of 1998 and Act No. 3 of 2000

9. Section 20 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(6) The provisions of subsections (3), (4) and (5) and section 27(1) shall apply *mutatis mutandis* to-

- (a) any application for registration in terms of this Act;
- (b) any application or investigation relating to a licence or registration contemplated in section 4(1)(c)(xxx) **[or 38]**;
- (c) any application or investigation regarding a consent to hold a financial interest contemplated in section 40;
- (d) any application contemplated in sections 35, 36, 37 or 38;
- [(d)](e)** any application or investigation regarding suitability contemplated in section 86; and
- (f) an application for a licence or consent to conduct social gambling.”.

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Amendment of section 25 of Act No. 5 of 1997

10. Section 25 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a)any document or information relating to the financial capacity of any person participating in the application, to the names of prospective employees, to the financial projections of the applicant or to the business plans of the applicant, shall not be open to public inspection, provided such information can be separated from the remainder of the application and is marked confidential; and ”.

Amendment of section 28 of Act No. 5 of 1997 as amended by Act No. 3 of 2000

11. Section 28 of the principal Act is hereby amended by the insertion after subsection (4) of the following subsection:

“(5) Notwithstanding the provisions of subsection (1) the board may hold the public hearing before the elapse of the time period set out therein if it has completed its investigations and-

- (a) no objections have been received; or
- (b) one or more objections have been received and the applicant has responded thereto or has had sufficient opportunity in terms of section 23 to respond thereto.”.

Amendment of section 31 of Act No. 5 of 1997 as amended by Act No. 6 of 1998 and Act No. 3 of 2000

12. Section 31 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) subject to the provisions of section 13 [(1)(f) and 13(1)(fA)] of the National Gambling Act, 1996 (Act No. 33 of 1996) the State, [a provincial government, any organisation with which the State or a provincial government is concerned] any organ of the State, any organisation with which the State is concerned, a political office bearer, a political party or any official of a political party does not hold a financial interest in the gambling business of the applicant apart from taxes or levies: [Provided that the provisions of this paragraph shall not be construed as preventing the board from granting and issuing a provisional licence to an applicant in respect of a gambling business to be located on land owned by the State, an organ of State or any organisation with which the State or such organ of State is concerned if the board is satisfied that the applicant has an option to acquire such land or has purchased such land subject to a suspensive or resolute condition relating to the award of a licence to such applicant and such land may be transferred to the applicant before the commencement of gambling activity by such applicant: Provided further that no temporary casino licence may be granted to the applicant and such provisional licence may not be converted into a casino licence unless and until such land is so transferred] Provided that, for the purposes of this section, “financial interest” does not include an interest arising out of an arms-length commercial transaction in respect of a lease, a sale of property or the granting of the option to purchase where the lessor, seller or granting of the option is the State, an organ of State or any organisation with which the State is concerned and, in the case of

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a lease, the rental payable is not based on the profit or turnover of the applicant or licence holder.”.

Amendment of section 35 of Act No. 5 of 1997

13. Section 35 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Where the application has been granted the chief executive officer shall cause an amended licence to be issued to the licence holder.”.

Substitution of section 37 of Act No. 5 of 1997

14. The following section is hereby substituted for section 37 of the principal Act:

“Removal of business to other premises and addition or deletion of licensed premises

(1) The holder of a licence may at any time make application for-

(a) the removal, whether permanently or temporarily, of the gambling business concerned to other premises;

(b) in the case of the holder of a racecourse licence, totalisator licence or bookmaker licence-

(i) additional premises to be added to the licence; or

(ii) premises to be deleted from the licence.

(2) Subject to subsection (3) the provisions of sections 19 to 26, 28 to 30, 32 and 33 shall *mutatis mutandis* apply in relation to an application contemplated in subsection (1)(a) and (1)(b)(i): Provided that in the case of a casino licence the provisions of sections 41, 42 and 43 shall likewise apply.

(3) Notwithstanding the provisions of subsection (2), the board may grant an application for the addition of premises to a totalisator licence or bookmaker licence or for deletion of any premises from such a licence without application of the provisions of sections 22 to 30 if-

(a) in the case of addition of premises to the licence-

(i) the application is brought by an existing licence holder of a totalisator licence or bookmaker licence; and

(ii) the premises which the applicant seeks to add to its licence are , or in the previous 3 months were, licensed to the holder of a totalisator licence, race course licence or bookmaker licence; and

(iii) the board is of the opinion that the public interest does not require that the procedures contemplated in this Act are necessary in the specific circumstances;

(b) in the case of deletion from the licence, the board so sees fit.

(4) Where the application has been granted the chief executive officer shall cause an amended licence reflecting the amended premises to be issued together with a copy of the licence in respect of each premises added.

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(5) Where a business is removed to other premises or premises are deleted from a licence the licence holder shall, within 14 days of the issue of the amended licence, deliver the original certificates relating to such premises to the chief executive officer.”.

Amendment of section 38 of Act No. 5 of 1997 as amended by Act No. 6 of 1998 and Act No. 3 of 2000

15. Section 38 of the principal Act is hereby amended-

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

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

- (a) the operation of a casino or a limited gambling machine site with 40 gambling machines on temporary premises by the holder of a provisional licence issued in respect of [a] such casino or limited gambling machine site;
- (b) temporary continuation of business in respect of a site licence in the event of death, incapacity, sequestration or liquidation of the licensee by the executor, trustee, liquidator or judicial manager of such site licence holder;
- (c) the temporary operation of a casino, limited gambling machine site, totalisator or bookmaking business on temporary premises by the holder of a casino licence, limited gambling machine site licence, totalisator licence or bookmaker licence respectively where-
 - (i) the licensed premises are destroyed; and
 - (ii) pending the outcome of an application for removal of the licence to other premises or amendment of the licence to include the new premises or the reconstruction of the premises concerned

as the case may be;

[(c)](d) social gambling.”.

Amendment of section 40 of Act No. 5 of 1997

16. Section 40 of the principal Act is hereby amended-

(a) by the substitution for subsection (4) of the following subsection-

“(4) The provisions of section 20, [21,] 24, 25, 27 and 32 shall, where applicable, *mutatis mutandis* apply to a person who wishes to procure an interest contemplated in subsection (1); Provided that, in any case in which it believes it is in the public interest to do so, the board may require that the provisions of sections 21, 22, 23, 24, 25, 27, 28, 29, 30 and 32 shall be applied *mutatis mutandis* in respect of a particular application.”;

(b) by the insertion after subsection (5) of the following subsections:

“(6) If the holder of an interest of a kind contemplated in subsection (1) at any time becomes disqualified from holding such interest in terms of section 31, or additionally in the

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case of a casino licence, section 42, the board may, after giving such person an opportunity to be heard, suspend such person's ownership right or order such person to dispose of such interest within the period prescribed or determined by the board and may additionally order that such person may not dispose of such interest for more than he or she paid for it or such greater amount as the board may approve.

(7) From the date the board issues an order contemplated in subsection (3) or (6) on the applicant, licence holder or person concerned, he or she shall not exercise, whether directly or through any trustee or nominee, any voting right conferred by the ownership of his or her interest in the licensee until such suspension is terminated or such interest disposed of, as the case may be.

(8) A contravention of subsection (1), (3), (5) or (7) or an order made by the board in terms of subsection (6) shall constitute an offence.”.

Amendment of section 42 of Act No. 5 of 1997 as amended by Act No. 6 of 1998

17. Section 42 of the principal Act is hereby amended-

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

“(a) no applicant shall be granted a casino licence or a provisional licence in respect of a casino if any person in control of such applicant-;”;

(b) by the substitution for subparagraph (iv) of paragraph (b) of the following subparagraph:

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

Amendment of section 49 of Act No. 5 of 1997

18. Section 49 of the principal Act is hereby amended-

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

“(4) A route operator licence shall authorise, subject to any conditions imposed under section 33, the operation of not more than 5 limited gambling machines on the licensed premises of the holder of a gambling machine site licence, and for such purposes the holder of such a route operator licence may enter into an agreement with the holder of such a gambling machine site licence for the placement of such gambling machines on the premises concerned: Provided that in such special circumstances as determined by the board **[, in consultation with the responsible member]** and subject to such conditions as may be prescribed, the abovementioned number of limited gambling machines may be increased in respect of one or more limited gambling machine sites.”;

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

“(6) The provisions of section 44 shall apply *mutatis mutandis* to a route operator licence.”;

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

“(7) A route operator shall ensure that-

- (a) the maximum charge for playing on any such gambling machine shall not exceed the prescribed amount;
- (b) the prize in respect of any one game played by means of any such gambling machine does not in the aggregate exceed in value the prescribed amount;
- (c) the return to players of any gambling machine shall not be less than the prescribed percentage;
- (d) there shall be displayed on the screen of any such gambling machine the value of the maximum prize prescribed under paragraph (b) which can be won by playing a game once by means of such a gambling machine[.]; and
- (e) fees and taxes in respect of the limited gambling machines operated by it are paid.”.

Amendment of section 54 of Act No. 5 of 1997 as amended by Act No. 6 of 1998

19. Section 54 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A bookmaker licence shall attach to the premises specified in the licence and shall, subject to the provisions of section 39(16) and 79, be valid for [2] 5 years.”.

Amendment of section 60 of Act No. 5 of 1997

20. Section 60 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) No person shall without the approval of the board have a direct or indirect financial interest of 5 percent or more in any gambling business or establishment within the Province: Provided that the provisions of this subsection shall not apply to any person who acquires an interest in a licence holder in the province and-

- (a) the time contemplated in section 40 within which such person must apply to the board for consent to hold such interest has not yet elapsed; or
- (b) such application has been submitted to the board and the board has not granted or refused to grant such consent; or
- (c) the board has refused to grant the consent and the time contemplated in section 40 within which such person must dispose of such interest has not yet elapsed.”.

Amendment of section 63 of Act No. 5 of 1997 as amended by Act No. 3 of 2000

21. Section 63 of the principal Act is hereby amended:

(a) by the substitution for subsection (8) of the following subsection:

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“(8) A person may be included on the list contemplated in subsection (7) if he or she-

- (a) has contravened the gambling laws of any country;
- (b) has contravened or conspired to contravene the provisions of this or any similar Act;
- (c) has failed to pay any gambling debt;
- (d) is prohibited by a court order from entering any or specific licensed premises;
- (e) has been declared a prodigal by a competent court; **[or]**
- (f) has requested the board to place his or her name on such list;
- (g) has had his or her name placed on a similar list contemplated in the similar legislation of another province of the Republic;
- (h) is considered by the board, after application by an interested person, to suffer from a gambling problem, in that he or she regularly-
 - (i) gambles more than he or she can afford to lose; and
 - (ii) uses household funds to gamble to the serious detriment of his or her dependants in that such gambling causes such dependants to be deprived of food or shelter;
- (i) in the opinion of the board, after application by an interested party and consideration of a report by a registered psychiatrist or psychologist, suffers from a pathological gambling addiction in that he or she has a gambling addiction and-
 - (i) is unable to appreciate that he or she has a gambling addiction; or
 - (ii) appreciates that he or she has a gambling addiction but is unable to act in accordance with such appreciation; or
- (j) whilst gambling leaves a child under the age of 10 years unattended for a period which is, in the circumstances, unreasonable taking into account-
 - (i) the age of the child;
 - (ii) the period the child was left unattended;
 - (iii) the weather and time of day;
 - (iv) the location at which the child was left;
 - (v) any provision for the entertainment of the child.”;

(b) by the insertion after subsection 11 of the following subsection:

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

Amendment of section 68 of Act No. 5 of 1997 as amended by Act No. 6 of 1998

22. Section 68 of the principal Act is hereby amended by the insertion after subsection (12) of the following subsections:

“(13) If the board considers that an employee of any licence holder is a key person, it shall serve written notice to that effect on the licence holder by whom such employee is employed.

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(14) The holder of a licence shall within 30 days of receipt of such written notice present to the board an application in the form required by the board for the registration of such employee as a key person or provide proof that such person is no longer employed by him or her.

(15) An employee who is subject to disqualification for registration as a key person in terms of this section may make written representation to the board to reconsider his or her status within the business concerned, and if the board thereupon determines that the employee is not a key person, such employee shall be allowed to withdraw his or her application and, if so, the application fee shall be refunded.”.

Amendment of section 69 of Act No. 5 of 1997

23. Section 69 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Persons employed in any of the following or substantially similar positions shall be regarded as gambling positions for the purposes of this section:

- (a) cashiers and ticket sellers;
- (b) counting room personnel;
- (c) dealers and croupiers;
- (d) machine mechanics;
- (e) bookmaker clerks; **[and]**
- (f) security personnel; and
- (g) any other position considered by the board to be that of a gambling employee generally or in relation to any gambling business in particular:

Provided that if the board is of the opinion that an employee of any licence holder is a gambling employee, it shall serve written notice to that effect upon the licence holder by whom such employee is employed whereupon the **[proviso to section 68(2)]** provisions of section 68(11), (13), (14) and (15) shall *mutatis mutandis* apply.”.

Insertion of section 69B into Act No. 5 of 1997

24. The following section is hereby inserted into the principal Act:

“69B.(1) Notwithstanding the provisions of section 68 and 69 of the Act, the board may issue a temporary gambling employee registration for purposes of section 68 or temporary gambling employee registration for purposes of section 69-

- (a) where a person has applied for permanent registration in terms of section 68 or 69 for temporary registration pending the outcome of such application for permanent registration; or
- (b) where such person is to be employed at a casino on a temporary period of no more than two weeks for training purposes or such other purposes as the board may approve.

(2) The temporary registration contemplated in subsection (1) shall be subject to-

- (a) conditions prescribed or determined by the board; and
- (b) payment of the prescribed application, registration and board administration fees.”.

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Amendment of section 70 of Act No. 5 of 1997

25. The following section is hereby substituted for section 70 of the principal Act:

“Advertising

70(1) A person may only advertise the gambling business of a licence holder in the manner prescribed and in accordance with this Act and the National Gambling Act, 1996.

(2) No person shall within the province advertise the gambling business of any business offering gambling to members of the public or any part thereof unless-

- (a) the gambling business concerned is a licence holder;
- (b) the gambling business concerned is licensed to conduct gambling in terms of the law of another Province of the Republic of South Africa; or
- (c) the gambling business concerned is licensed to conduct gambling in terms of the law of a jurisdiction outside of South Africa and-
 - (i) the advertisement is published, or transmitted, from outside the republic of South Africa and persons resident in South Africa are not the sole or main audience for whom the advertisement is intended; or
 - (ii) the advertisement complies with the prescribed requirements and persons responding to the advertisement will have to travel out of the Eastern Cape to participate in the gambling contemplated in the advertisement.

~~[(2)](3)~~ Any person who contravenes the provisions of **[subsection (2)]** ~~subsections (1) or (2)~~ shall be guilty of an offence.”.

Amendment of section 73 of Act No. 5 of 1997

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

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

“(ii) any agent for the holder of a totalisator licence which takes totalisator bets on behalf of such licence holder on premises specified in such licence if the agent is the holder of a licence issued in terms of the Act or has obtained a certificate of suitability in terms of section 86 and the natural person taking such bet on behalf of that agent is registered in terms of section 68 or 69; and”;

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

“(b) subsection (2) shall not apply to-

- (i) a holder of a licence who gives or undertakes to give accommodation, meals or similar facilities to persons who may gamble on the licensed premises concerned;
- (ii) a junket agent in respect of a junket to a casino.”.

Amendment of section 74 of Act No. 5 of 1997 as amended by Act No. 3 of 2000

27. Section 74 of the principal Act is hereby amended-

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

“(4)(a) No person physically present in the Province shall participate in a gambling game by way of telephone, telefax, interactive television, electronic mail or internet transmission or any such communications medium.

(b) No person shall, in relation to any person who he or she knows to be physically present in the Province or should reasonably suspect is so present, invite such person to participate in a gambling game or enter into a gambling game with such person if the gambling game concerned is conducted wholly or partially by way of telephone, telefax, interactive television, electronic mail or internet transmission or any such communications medium.

(c) The provisions of paragraphs (a) and (b) shall not apply-

- (i) to a bet taken with or by a bookmaker or totalisator licensed in a Province of the Republic who is licensed to accept such bet; or
- (ii) where the person playing the gambling game is physically present on the licensed premises of the licensee offering the game when the game is played.”;

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

[4] (5) Any person who contravenes a provision of subsection (1), (2) [or], (3) or (4) shall be guilty of an offence.”.

Amendment of section 76 of Act No. 5 of 1997 as amended by Act No. 6 of 1998 and Act No. 3 of 2000

28. Section 76 of the principal Act is hereby amended:

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

“(1) For the purposes of this Act an inspector may at any time enter any licensed or unlicensed premises, where, in the opinion of the inspector, gambling is taking place, 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 gambling or betting 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) to obtain any information, programme or data which refers to or is suspected to refer to gambling or betting or any activities incidental thereto stored on a computer by-
 - (i) personally operating or instructing a computer; or
 - (ii) requesting a competent person on the premises to operate or instruct the computer to produce a printout or electronic copy of any such information, programme or data;

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[(c)](d) examine any article or other object found in or upon those premises 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)](e) seize, against the issue of a receipt, any document or object referred to in paragraphs (a), (b) **[or]**, (c) **or** (d) if it appears to provide proof of a contravention of this Act, or if he or she wishes to retain it for further custody or for safe custody : Provided that a person from whose possession or charge any such document is 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 supervision of such inspector, to make copies thereof or take extracts therefrom at any reasonable time.”;

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

“(2) An inspector may, if so authorised by a warrant or in the company of an officer of the South African Police Service so authorised or acting in terms of section 22 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and subject to the provisions of any other law—

- (a) enter any premises on or in which any article, document or other object connected with gambling or betting is or is suspected to be or which are occupied or used or suspected to be occupied or used for the purposes of any gambling or betting activity;
- (b) in respect of such premises, do everything set out in subsection (1) (a), (b) **[and]**, (c) **and** (d), which shall apply mutatis mutandis;
- (c) inspect any account of any person at any bank or other financial institution which may afford evidence of the commission of an offence in terms of this Act; and
- (d) seize, against the issue of a receipt, any document or object referred to in subsection (1) (b) **[and]**, (c) **and** (d), 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 therefrom at any reasonable time.”.

Amendment of section 80 of Act No. 5 of 1997

29. Section 80 of the principal Act is hereby amended:

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

“80.(1) The responsible Member may, after consultation with the board, by notice in the *Provincial Gazette* make regulations regarding-

- (a) any matter pertaining to the board;
- (b) any matter pertaining to an application for a licence;
- (c) the management and control of licensed premises;
- (d) the take-out, commissions or other charges which the holder of the licence may charge;
- (e) the stakes for which any gambling game may be played;

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- (f) the management and control of horse racing;
- (g) registration in terms of this Act;
- (h) gambling areas;
- (i) any matter which in terms of this Act is required to or may be prescribed;
- (j) any matter which is requiring to be limited or controlled in terms of the National Gambling Act, 1996;
- (k) the specifications relating to gambling devices including chips and tokens;
- (l) monitoring and surveillance systems and the operation thereof;
- (m) the keeping of records;
- (n) the number, distribution and location of limited gambling machines;
- (o) factors the board must take into account in considering applications for licences;
- (p) in general, any matter in respect of which it is necessary or expedient to make regulations for achieving the objects of this Act;

Provided that any regulation with financial implications shall be made with the concurrence of the member of the Executive Council responsible for finance.”;

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

“(2) A regulation made under this section may for a contravention thereof or failure to comply therewith, prescribe a fine not exceeding one million rand or imprisonment for a period not exceeding 2 years or both such fine and imprisonment.”.

Amendment of section 82 of Act No. 5 of 1997 as amended by Act No. 3 of 2000

30. Section 82 of the principal Act is hereby amended-

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

“(1) The board shall as soon as practicable after 31 March in each year but not later than **[4]** 5 months thereafter submit to the responsible Member and the Provincial Treasury a report on its activities **[and finances]** during the year ending in that date together with the audited financial statements referred to in section 18 and the reports of the Auditor-General on those statements.”;

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

“(2) The responsible Member shall lay a copy of the annual report **[and]**, audited financial statements and the report of the Auditor-General submitted to him or her in terms of subsection (1) upon the table of the Provincial Legislature within **[14 days]** 1 month after its receipt **[if the Legislature is then sitting or, if the Legislature is not then sitting, within 14 days after the commencement of its next ordinary sitting].**”.

Amendment of section 86 of Act No. 5 of 1997 as amended by Act No. 3 of 2000

31. Section 86 of the principal Act is hereby amended-

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

“(1) The board may-

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- (a) prohibit a licensee from contracting with any person for the acquisition by such licensee of any goods or services or for the borrowing or lending of money or the letting or hiring of any movable or immovable property until; or
- (b) require any person acquiring, or holding a financial interest of five percent or more in the holder of a certificate of suitability to alienate such financial interest unless

such supplier, lender, lessor or person has obtained a certificate of suitability from the board and paid the fees and expenses of the board relative thereto.”;

- (b) by the insertion after subsection (3) of the following subsection:

“(4) When considering an application contemplated in subsection (1) or revocation in terms of subsection (2), the board shall have regard to the grounds of disqualification contemplated in section 31.”.

Amendment of section 88 of Act No. 5 of 1997 as amended by Act No. 3 of 2000

32. Section 88 of the principal Act is hereby amended-

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

“(i) is in possession of-

- (i) a gambling machine;
- (ii) any reel tape designed for use in a gambling machine;
- (iii) any device which would be a gambling machine but for the removal of any of its parts or the reprogramming thereof;
- (iv) any device which is capable of electronically representing the reels used in a gambling machine;
- [(v) any gambling machine or amusement machine capable of playing games such as roulette, bingo, twenty-one, blackjack, chermin de fer, baccarat, poker, Chinese roulette, keno, games of similar type usually played on gambling machines or games of similar type usually played on gambling machines or games derived from such games;]**
- [(vi)](v)** any device which was manufactured as a gambling machine and which has been converted at any time so that is unable to pay out cash or tokens, whether such device enables a player to win a prize or not;
- [(vii)](vi)** any computer software which enables a player to download any credits won on a gambling game to another computer or to an external data storage device; or
- [(viii)](vii)** any computer hardware which is primarily designed or constructed for use in playing of games contemplated in subparagraph (v) on a computer,

without an appropriate licence, without being registered in terms of section 61(1) and without being authorised by the board to transport such device in or through the Province;”;

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

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“(l) exposes a gambling machine for play by members of the public without being the holder of an appropriate licence;”;

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

“(m) is the holder of a route operator licence or limited gambling machine site licence and exposes for play or allows to be exposed for play-

- (i) a gambling machine which does not comply with the provisions of section 49(7); or
- (ii) more limited gambling machines than such licence holder is licensed for;”;

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

“(n) otherwise than in accordance with the provisions of this Act, in the case of a computer-

- (i) uses such computer to play a gambling game; or
- (ii) exposes such computer for play by members of the public or any section thereof and allows such computer to be used for the playing of gambling games,

whether on such premises or by way of internet or intranet transmission;”;

(e) by the substitution for paragraph (q) of subsection (1) of the following words:

“(q) by way of a scheme or arrangement **[which]** directly or indirectly converts into cash, tokens, credit, debits, cheques or other value instruments any-

- (i) object or ticket contemplated in the definition of ‘amusement game’ in section 1 which was received by any person as a prize won on such amusement game;
- (ii) non-cash object or ticket received by a person in return for attending any premises on which any electronic, mechanical or electro-mechanical device, whether a gambling machine, an amusement machine or otherwise is exposed for play by members of the public or any section thereof or in return for playing such device:

Provided that the provisions of this paragraph shall not apply to any family member of any person who received such prize, object or ticket or to any person related to such person within the third degree of consanguinity where the prize[,] or object **[or ticket]** is not a ticket contemplated in subparagraph (i) and is not exchanged for more than its retail value;”;

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

“(v) utilises the results of more than one game played on one or more amusement machines or limited gambling machines to pay a player a prize additional to that which would have been won by that player **[of]** if such player had only played such machines; Provided that this subparagraph shall not apply to a prize provided for in paragraph (iii) of the definition of ‘amusement game’ where all the requirements of that paragraph are complied with;”;

(g) by the substitution for paragraph (w) of subsection (1) of the following paragraph:

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- “(w) possesses or exposes for play by members of the public or any section thereof an amusement machine capable of playing games such as roulette, bingo, twenty-one, blackjack, chermin de fer, baccarat, poker, Chinese roulette, keno and other games of similar type usually played on gambling machines or derived from such games;”;
- (h) by the insertion after paragraph (w) of subsection (1) of the following paragraphs:
- “(x) exposes for play by members of the public or any section thereof a computer and uses such computer as an amusement machine to play amusement games of the kind contemplated in paragraph (w);
- (y) distributes or makes available computer software in the province which is intended to be used by persons in the province to link to gambling businesses located outside the province which offer gambling games on the internet;
- (z) contravenes or fails to observe any provision of this Act which does not provide accordingly;”;
- (i) by the substitution for the words following paragraph (z) of subsection (1) of the following words:
- “... shall be guilty of an offence and on conviction (unless otherwise expressly provided elsewhere in this Act) be liable to a fine not exceeding two million rand or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.”;
- (j) by the substitution for subsection (2) of the following subsection:
- “(2) Any person who contravenes or fails to observe a rule made in terms of section 81 shall be guilty of an offence and liable on conviction to a fine not exceeding **[R25 000]** R500 000 or imprisonment for a period not exceeding 6 months.”;
- (k) by the substitution for the words preceding subparagraph (i) of paragraph (d) of subsection (4) of the following words:
- “(d) any **[gamling]** gambling school licensed or approved by the board or the National Gambling Board contemplated in section 2 of the National Gambling Act, 1996 (Act No. 33 of 1996) which uses such machine or device only for training purposes: Provided that-”;
- (l) by the substitution for subsection (6) of the following subsection:
- “(6) Whenever any person is convicted of an offence in terms of this Act or pays an admission of guilt fine in respect thereof in terms of section 57 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), all costs incurred by the **[boad]** board or the South African Police, including costs of the transport or storage of any gambling device, equipment or other thing by means of which the offence was committed, which was used in the commission of the offence or which was found in the possession of the convicted person, and any testing thereof by the South African Bureau of Standards, shall, in addition to any fine or penalty imposed or paid by such person, be paid by such person.”;
- (m) by the insertion after subsection (6) of the following subsections:
- “(7) If the board finds that a holder of a licence has contravened the provisions of the Act or any Regulation, Rule or licence condition made in terms of the Act, the board may instead of

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referring that matter to the South African Police Service or Office of the Director for Prosecutions for prosecution impose an administrative fine on such licence holder and in doing so may impose any such fine which a court of law could have imposed if it had found such licence holder guilty of an offence in respect of such violation.

(8) A fine shall not be imposed in terms of subsection (7) unless-

- (a) such licence holder has had an opportunity to be heard; or
- (b) such licence holder has stated its case in writing and has agreed that oral argument is not necessary.”.

Repeals

32.(1) The following laws are hereby repealed:

- (a) The Horse Racing and Betting Act, 1986 (Act No. 20 of 1986) of the erstwhile Republic of Ciskei;
- (b) The Orderly Control of Gambling Decree, 1990 (Decree No. 4 of 1990) of the erstwhile Republic of Transkei.

(2) The Premier may by proclamation in the *Provincial Gazette* provide for such transitional and savings provisions relating to the repeal of the Act and Decree contemplated in subsection (1) as are necessary and expedient: Provided that the number, date and title of the proclamation and the number and date of the *Provincial Gazette* in which it was published shall be laid upon the table in the Legislature of the Eastern Cape within 21 days of such publication.”.

Transitional provisions relating to certain amusement machines

33.(1) Any person in possession of an amusement machine the possession of which is prohibited in terms of section 88(1)(w) of the principal Act (as amended by this Act) may apply to the board for a permit for the storage of such amusement machine, which application shall be-

- (a) made within 60 days of the coming into operation of this section’
- (b) made in the manner and form determined by the board; and
- (c) accompanied by a non-refundable application fee of R1 000,00 excluding Value Added Tax.

(2) The application shall contain such particulars as the board may require, which shall include-

- (a) the number of such devices or machines;
- (b) a description of each device or machine and its serial number;
- (c) the address of the place where the devices or machines are being or shall be kept;
- (d) whether the applicant is the owner of such devices or machines and, if not the owner-
 - (i) the name and address of the owner;
 - (ii) the details of the arrangement in terms of which the applicant is the possessor thereof;
- (e) whether it is the intention of the applicant or owner to apply for any licence contemplated in the principal Act which would allow the machine to be played, and, if so, which licence; and

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- (f) whether it is the intention of the applicant or owner to dispose of such devices or machines, and, if so, in what manner and to whom.

(3) The board may issue a permit to an applicant subject to any conditions it may deem fit: Provided that it shall be a condition of all such permits that-

- (a) if the applicant intends to apply for any licence contemplated in the principal Act which would allow the machine to be played all such amusement machines or devices contemplated in section 88(1)(w) of the principal Act (as amended by this Act), shall at the cost of the applicant or permit holder be submitted for testing by the South African Bureau of Standards against the set norms and standards for gambling devices within 90 days of the coming into operation of this section;
- (b) all such devices and amusement machines contemplated in subsection (1) shall subject to subsection (7) be stored in such a manner so as not to be available to be played or operated by any person or accessible to any member of the general public or any part thereof;
- (c) inspectors of the board or members of the South African Police Service shall at all reasonable times have free access to the premises on which such devices or machines are located for inspection purposes;
- (d) the person to whom a permit is issued shall apply for the licence indicated in subsection (2)(e) within one month of any applicable notice under the principal Act inviting applications for such licences;
- (e) the holder of a permit and owner of such devices or machines shall, before disposing of the amusement machines in the possession of a permit holder, apply to the board for approval of the manner of such disposal and shall furnish the board with such information regarding the disposal as it may require: Provided that the board shall not be obliged to approve any or any particular disposal thereof;
- (f) that any costs associated with such storage shall be at the cost of the permit holder.

(4) A permit contemplated in this section shall expire-

- (a) in respect of every amusement machine contemplated in section 88(1)(w) and which does not comply with the relevant norms and standards, two months after notification of the permit holder by the board that such device or machine does not comply: Provided that if the permit holder modifies such device or machine before the expiry of the two-month period and such device or machine thereafter complies with the relevant norms and standards, the provisions of paragraph (e) shall apply;
- (b) if the person to whom the permit is granted fails to apply for a licence as contemplated in subsection (3)(d), on expiry of the period contemplated in that subsection;
- (c) in respect of any device or machine not submitted for testing within the period contemplated in subsection (3)(a), upon expiry of the period referred to in that subsection;
- (d) on the granting of a licence contemplated in subsection (3)(d);
- (e) two months after the date of refusal of a licence contemplated in subsection (3)(d); or
- (f) upon disposal by the permit holder of the devices or machines in respect of which a permit has been granted in terms of this section.

(5) The issue of a permit under this section shall not found any expectation of the granting of a licence or registration under the Act.

(6) The provisions of section 61 of the principal Act shall not apply to disposal of a device or machine contemplated in this section where the board has approved such disposal.

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(7) The provisions of section 88(1)(w) of the principal Act (as amended by this Act) shall not apply to the possession of an amusement machine or any device which is contemplated in that section if-

- (a) the period during which the owner or possessor thereof is entitled to apply for a permit in terms of this section has not expired; or
- (b) the owner or possessor thereof has applied for a permit in terms of subsections (1) and (2) within the period contemplated in subsection (1)(a) and such permit has not yet been issued by the board; or
- (c) the amusement machine or other device is being properly stored in terms of a valid permit issued under this Act.

(8) Notwithstanding the provisions of section 88(1)(w) of the principal Act, the holder of an amusement machine licence may expose for play amusement machines contemplated in section 88(1)(w) for a period of 60 days after the coming into operation of this Act, if-

- (a) such person is in possession of a valid amusement arcade licence which has not expired; and
- (b) the machines concerned are registered with the board and such registration has not expired; and
- (c) such licence holder and such machines comply with the rules made by the board in terms of the principal Act; and
- (d) the amusement machines are not used for gambling.

(9) Any holder of a permit who does not comply with a condition contained in such permit or disposes of such device or machine otherwise than in accordance with the manner approved by the board shall be guilty of an offence and liable on conviction to the sentence contemplated in section 88(1) of the principal Act, and, in addition the board may revoke such permit.

(10) This section shall not entitle any person-

- (a) to obtain possession of any devices or machines in policy custody at the time of the coming into operation of this Act; or
- (b) to use such machines for gambling in contravention of the provisions of the principal Act.

Short title and commencement

34.(1) This Act shall be called the Gambling and Betting Amendment Act, 2002 (Eastern Cape) and shall, subject to subsection (2), come into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

(2) Different dates may be so fixed in respect of different sections and subsections of this Act.