

Department of Trade and Industry

Via email: [contactus@thedti.gov.za](mailto:contactus@thedti.gov.za) / [loctober@thedti.gov.za](mailto:loctober@thedti.gov.za) / [EMsiza@thedti.gov.za](mailto:EMsiza@thedti.gov.za)

10 October 2018

Dear Recipient

**RE: COMMENTS ON PROPOSED AMENDMENTS TO THE GAMBLING ACT**

We refer to the Proposed Amendments to the Gambling Act 7 of 2004 (“**Gambling Act**”) published for public comment by the Department of Trade and Industry (“**DTI**”) on 31 August 2018 (“**Proposed Amendments**”).

We have set out below the consolidated comments of Ban Animal Trading NPC/NPO (“**BAT**”) and Animal Law Reform South Africa NPC (“**ALRSA**”) for your consideration. Please note that we have only commented on the Proposed Amendments insofar as they relate to animals and have not commented on any other provisions of the Gambling Act or Proposed Amendments.

**1. Proposed Amendments to Section 11**

*“Amendment of section 11 of Act 7 of 2004, as amended by section 10 of Act 10 of 2008*

*4. Section 11 of the principal Act is hereby amended—*

*(a) by the substitution for the heading of the following heading:*

*“Unauthorised interactive gaming [**unlawful**] and betting on dog racing”; and*

*(b) by the addition of the following subsection:*

*“(2) Dog racing, including betting on dog racing and making available of such activities, is unlawful in the Republic of South Africa.”*

a. General

- i. We applaud the Department of Trade and Industry for their proposal to include the recordal in legislation that dog racing, betting on dog racing and related activities are unlawful. Although dog racing has been illegal in South Africa since 1949, it is important to have it properly legislated for.
- ii. Dog racing not only raises major animal welfare concerns, but has a huge impact on people and communities. More and more countries worldwide have taken similar steps, therefore we support the amendments to have dog racing and related activities banned.

b. Definitions

- i. We note that the term “dog racing” has not been defined.
- ii. If the suggestions in paragraph c. below are accepted, a definition of “dog-race meeting” to be included in the definitions section of the Gambling Act.

c. Additional Provisions

- i. The following should also be included in the prohibition in section 11(2):
  1. “the breeding of, keeping and/or training of dogs for the purpose of dog racing”;

2. “the holding, organising, attending, advertising, canvassing or in any other manner inviting persons to attend, or use or make available any land or premises for the purposes of, a dog race meeting;”
  3. “and any related activities”; and
  4. the ambit of the prohibition be broadened to include all animals and animal racing and not just dogs. Should this not be accepted, a carve out/exception should be made for horse racing only (to be regulated in terms of section 44B below).
- ii. We note that reference is made to the Republic of South Africa and no prohibited activities are mentioned in relation to other countries. This means that a person could undertake these activities from South Africa in relation to dog racing in other countries.

## 2. Proposed Amendments to Section 44

### ***“Horseracing and betting***

**44B.** (1) *A self-regulatory body that operates within the horseracing industry must be recognised, accredited and monitored by the National Gambling Regulator, provided that it meets the criteria set and adopted by the Council in terms of subsection (2).*

(2) *The National Gambling Regulator, after consulting with the provincial licensing authorities and stakeholders in the horseracing industry, must design the criteria that must be approved by the Council, which criteria must operate as the minimum standards to guide a self-regulating body within the horseracing industry.*

(3) *Bookmakers must—*

(a) *contribute a reasonable amount towards the development of the horseracing industry and usage of products belonging to totalisator operators, as prescribed by the provincial licensing authorities, in accordance with the criteria contemplated in subsection (2); and*

(b) *when determining the rates of contribution, provincial licensing authorities must consider all other contributions made by bookmakers in the industry.”*

### a. General

- i. According to an article on Forbes Africa on horse racing in South Africa<sup>1</sup> “The horse breeding and racing industries by their very nature are among the most labor-intensive activities in South Africa, and according to a recent audit of the industry by Grant Thornton, it employs in excess of 100,000 people, either directly or in those businesses that provide services to racing and breeding.”
- ii. Accordingly, this industry has a major impact on the country, people and animals. It is therefore crucial that it is properly regulated.
- iii. For purposes of our comments, we have not included the issues associated with the horse racing industry generally, including our numerous concerns with the ethical, animal welfare and human impact issues associated therewith.

### b. Definitions

- i. Horse racing has not been defined.

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<sup>1</sup> <https://www.forbesafrica.com/economy/2018/04/10/south-african-horse-industry-potential-billion-rand-market/>

c. Consultation

- i. In terms of paragraph 44(2) above, the National Gambling Regulator must consult with **all relevant stakeholders** – not only in the horse racing industry, but also those that have an interest in horse racing, including animal protection organisations; veterinarians and other stakeholders.

d. Self-regulation

- i. We are concerned with a self-regulating body for the horse racing industry.
- ii. There has been numerous problems worldwide with self-regulating horse racing industries, including in the [United Kingdom](#), [Australia](#), [United States of America](#); [Ireland](#) and various other countries. Unless issues regarding self-regulation are properly addressed, it will be problematic.
- iii. We would advocate for the comprehensive regulation of all horse racing by an independent body with a formal and complete separation between the integrity and regulatory functions from the commercial functions.<sup>2</sup>
- iv. However, if there is a self-regulatory body:
  1. there needs to be a **representative** on the body that takes into account animal welfare and the interests of the animals;
  2. there are also needs to be a **veterinarian** on board;
  3. there needs to be **mandatory reporting** by this body to Government and other stakeholders;
  4. **review** of this self-regulating body (including their rules, procedures, etc.)
  5. there needs to be **transparency** of this self-regulating body and access to information for outside persons.
  6. A model that may be useful is that utilized in the United States of America with respect to animals used in research, namely, the “IACUC” model. The IACUC is responsible for oversight of the animal care and use program for animals used in laboratories, however, it could be applied similarly to animals in the horse racing industry, with the necessary adaption. Further information regarding the IACUC model can be found [here](#).
- v. The following minimum issues would need to be addressed:<sup>3</sup>
  1. The existence of a national racing-club authorised to hold race-meetings on licensed and regulated horse race-courses;
  2. The keeping and training of horses and the conditions and number of horses required to establish an industry;
  3. The registration and updating of information about the horses, including the race records;
  4. The breeding of horses and post-racing career welfare;
  5. The control of the horses at the race track, including the electronic and/or mechanical hare;
  6. Track safety;

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<sup>2</sup> As per the RSPCA in Australia article that can be accessed [here](#)

<sup>3</sup> A suggested by the following article ([Marita Carnelley - Betting On Dog Racing. The Next Legalised Gambling Opportunity In South Africa? A Cautionary Note From The Regulation Of Greyhound Racing In Britain](#)) in relation to the dog racing industry, adapted herein for the horse racing industry.

7. Which officials to include, such as the racing manager, stewards, paddock stewards, weighing clerk, time keeper, starter, hare operator, and veterinarian surgeon; and
  8. The control of doping and other forms of malpractice including the regulation of the procedures at the races as well as the laboratories that test drug samples.
- e. Other suggestions include
- i. Specific welfare provisions relating to horses in addition to the welfare requirements in the Animal Protection Act 61 of 1972 and other legislation that may apply. We believe that the welfare of horses is of the utmost importance from their birth to their training, to their use in the races and after they are “retired” from the industry;
  - ii. Requirement for the names of all race horses who die during racing each month in South Africa to be reported publicly;
  - iii. Race horse owners and breeders being required to pay an initial sum of money and a monthly levy fee during the race horse’s career, which would then be used to fund their future care after racing
  - iv. Others<sup>4</sup> (increasing minimum ages for horses used; requiring medical records to follow the horse; drug testing of every horse every race; registering every horse and ending the practice of nurse mare foals and other cruel practices.)
  - v. There would also need to be semi-uniform legislation between the provinces. Should a province wish to advocate for higher standards, that is acceptable, provided the minimum requirements are met.

Again, we applaud the step towards recording the unlawfulness of dog racing, betting and related activities. Due to the impact the horse racing industry has on both people and animals, we believe that if the self-regulation route is followed, the necessary safeguards would need to be put in place both in terms of the policies and rules; reporting; monitoring and transparency.

We look forward to receiving your response and trust that you take our comments and concerns into account. Kindly confirm receipt at the email addresses below and keep us updated of any progress in this regard.

Yours sincerely,



Smaragda Louw  
Director and Chairperson  
**Ban Animal Trading**  
[smaragda@bananimaltrading.org](mailto:smaragda@bananimaltrading.org)



Amy P. Wilson  
Director  
**Animal Law Reform South Africa**  
[amywilson@animallawreform.org](mailto:amywilson@animallawreform.org)

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<sup>44</sup> <https://www.hanaeleh.org/horse-racing/>