



Planned smoking regulations under fire

MPs furious at ban on smoking

MPs fume over proposed changes to smoking laws

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That is where they feel comfortable. What happens when these businesses, like Wimpy, start complaining that you are shutting them down by doing this? Let us not pass laws just for the sake of doing so," Dube said.

Under the proposed regulations, business owners could be fined as much as R50 000, and employers up to R100 000 if they did not enforce the law.

Should the regulations be passed, there would be a ban on indoor smoking in public places.

Outdoor smoking in certain public places would also be prohibited, including stadiums,

sports arenas, parking lots and walkways.

On beaches, smokers would have to be at least 50 metres away from the nearest person. Smokers would not be allowed to light up within 10 metres of a window or doorway in a public place.

Employers and the owners of establishments such as restaurants would be allowed to demarcate an outdoor area for smokers subject to stringent conditions, and would not be allowed to serve food or refreshments in this area.

The department is to be summoned again by the committee to discuss outstanding issues.

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Xolani Koyana

MPs SLAMMED the Department of Health yesterday for proposing stricter smoking regulations, saying there was no "rationale" behind the plan.

The amendments to the Tobacco Products Control Act would criminalise smoking in any building, outdoor venue, public or private beach, outdoor drinking or eating area, park, walkway, parking area, or within 10m of any doorway or window.

The director of health promotion at the department, Vimla Moodley, told the committee on health many non-smokers felt that existing laws did not protect them adequately and wanted indoor smoking areas to be banned.

"You find that at many of

these places, mothers go into the smoking areas with young children. We are hoping that with these new regulations, we are going to see less of this," Moodley said.

Public comment on the regulations closed last month. Moodley said the department was reviewing the submissions and hoped to finalise the law before the end of the year. She said many businesses were putting measures in place to comply with the new regulations.

The department would conduct tests on the efficiency of warning labels and pictures on tobacco products, with a focus on the Western Cape and Gauteng.

Moodley said there were about 44 400 smoking-related deaths a year in SA.

Cope MP Papi Kganare questioned the purpose of the regulations and the department's ability to enforce them. "I'm really concerned that smokers are being pushed down here. I get the impression that you want to prohibit smoking completely," Kganare said.

He said the retention of designated smoking areas would be fair to smokers.

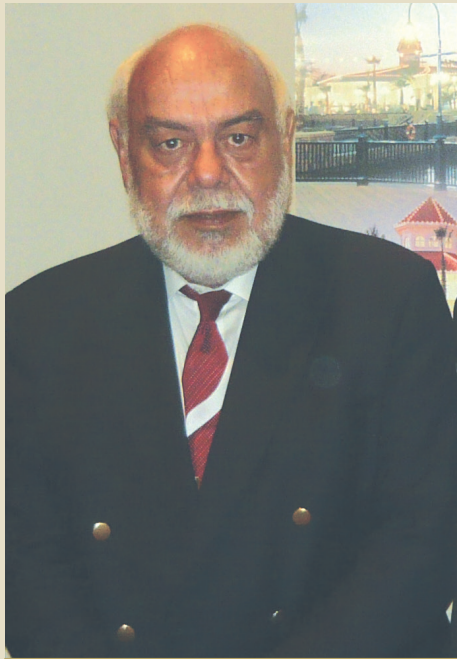
"You want to ban these places - where are they supposed to smoke? I thought it was better to have designated places for them. We just have to ensure that no children be allowed in there."

ANC MP Christina Dube said the regulations were too restrictive.

"You can't say people must not smoke on the pavement."

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Source: Cape Times



Regulations relating to smoking in public places and certain outdoor public places

On 20 September I wrote to the Chairperson of the Portfolio Committee on health regarding the proposed regulations relating to smoking in public places and certain outdoor public places and to express CASA's concerns. The letter below outlines CASA's views and concerns with regard to the proposed regulations and its impact on the gaming industry in South Africa.

I write to you and to members of your Committee on behalf of the Casino Association of South Africa (CASA) in connection with the above regulations that have been proposed by the Department of Health and which were published in terms of the Tobacco Products Control Act, 1993 (Act No. 83 of 1993) in Government Gazette No. R. 264 dated 30 March 2012.

CASA is a voluntary association of casino operators which represents the 4 major casino operators and 35 of the 37 licensed casino entertainment venues in South Africa. The available facilities at the existing casinos encompass numerous entertainment options such as restaurants, cinemas, other theatres and other entertainment options. Casinos do not only offer gambling.

CASA members have, to date, invested in excess of R20 billion in infrastructure leading to the development of world class entertainment destinations incorporating more than 5000 hotel rooms, roads upgrades, convention centers, tourist attractions, theme parks, sports facilities, restaurant and eventing facilities and have singlehandedly revived the arts through theatres, museums and the development of new cinema complexes as I have alluded to above. Its members have created approximately 52000 jobs, many of which give employment to people with no work experience, in addition to B-BBEE shareholding structures that are the envy of traditional industries struggling to transform. In fact an audit of the entire casino industry

undertaken in 2011 by Empowerdex found that casinos were at level 2 compliance with the Codes of Good Practice. I should add that despite the worst recessionary circumstances for many years, casinos have not retrenched staff. CASA members have a combined market capitalization of approximately R40 billion. They have contributed R50 billion to GDP in terms of economic multipliers, invested in excess of R90 million per annum in community social investment, established an internationally recognized problem gambling programme with a budget of more than R10 million per annum, and in 2009/2010 alone accounted for nearly R1.6 billion in provincial gambling taxes and VAT which, together with Company Tax, contributed more than R4 billion to Government revenue. In fact Government has an effective 39.31% share of the 'value-added' to the economy by the casino sector and as such is the largest de facto shareholder in the industry.

The regulations to which I refer were the subject of a presentation by the Department of Health to your Committee yesterday, 19 March 2012, which I attended, and a very brief discussion by the Committee. The information provided to your Committee by the Department of Health was in fact extremely limited, given the fact that it had already called for public comment and received significant input in connection with the proposed regulations. Because of the potentially serious negative effect that the implementation of the regulations it their

current form will have for casino operators, CASA responded to the call for comment and has interacted with the Department in this regard. I have thought it prudent to bring the concerns that CASA has to your attention and that of your Committee in order that you may appreciate the effect that the regulations will have, if they are implemented in their current form.

None of the benefits to the economy that I have set out above are or will be possible without the continued success of the 'engine room' of the casino business, namely the casino gaming floor itself. While CASA appreciates and supports the broad objectives of the Department of Health in connection with smoking in general, namely the protection of a healthy society and the protection of especially minors, but also others, from exposure to second-hand smoke, it sincerely believes that the proposed smoking regulations will put all the benefits enumerated above at risk and will jeopardize the continued success of the industry; to the detriment of Government, the economy, job retention and job creation and thereby the country as a whole.

CASA's approach in this matter is to seek exemption from the regulations not for entire casino complexes, but only in respect of the casino gaming floor, which is currently split according to a 25/75% smoking/non-smoking formula, in other words the retention of the existing arrangements which allow designated "smoking areas" in indoor

spaces. This approach is predicated on a number of considerations:

- a. In the case of casinos it should be pointed out that only 37 such facilities exist in the entire country and that the total number of available casino licences has, by law, been set at 40. Casino facilities are thus severely restricted as far as numbers are concerned. Moreover they are destination type facilities that require a specific decision to visit.
- b. A further unique characteristic of the casino gaming floor is that, by law, only persons over the age of 18 years of age are permitted to access this area. This in itself creates a barrier to the entry of minors to the gaming floor. This legal stipulation is strictly enforced by casino operators.
- c. Casino operators have incurred considerable expense to create casino gambling facilities for smokers that are separately partitioned from non-smoking areas. These have been created in good faith and at significant cost having regard to existing legislation, and have been effective in providing facilities for smokers that are well ventilated and hygienic with good air quality through the use of sophisticated air conditioning systems. None of this has been detrimental to non-smokers, nor has it risked the health of minors.
- d. Casinos have a significant smoking clientele that are responsible for a significant percentage of casino revenue and therefore the taxes that flow from this revenue.
- e. CASA is not aware of any international precedent for a total ban on smoking in casinos.

As indicated above, CASA supports the broad aims of the Department of Health in regard to smoking and shares many of the concerns that it has expressed regarding its public health implications. CASA's actions to date in this regard bear testimony to this position. However, casino operators must perforce also consider possible negative consequences that the implementation of the currently proposed regulations, without

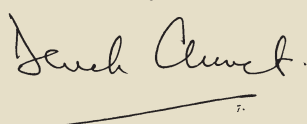
exempting only the casino gaming floor, will have. It is expected that if such an exemption is not granted there will be a sharp decline in the revenue that casinos generate. Under such circumstances, the possible negative consequences include:

- a. The inability of the casino industry to ensure the maintenance of the current number of jobs in the industry which it has up to now been able to do despite adverse economic conditions.
- b. An inability to create new jobs.
- c. A decline in the percentage of profits that will be available for corporate social investment.
- d. A decline in the taxes and levies payable to Government and especially to Provinces, which in most cases form the second largest source of Provincial own income.
- e. The possibility that illegal and unlicensed gambling operations, where no smoking restrictions are enforced, might again proliferate to cater for smoking punters who no longer visit licensed casinos because of a total ban on smoking.

In summary, CASA wishes to stress that in its view there are sufficient compelling grounds to justify the partial exemption for casinos as described above, with the result that the remainder of the casino complexes will be subject to the provisions envisaged in the proposed regulations. CASA therefore proposes that casino operators be permitted to retain the existing 25/75% casino gaming floor split between smoking and non-smoking areas.

CASA is at your disposal to answer any questions that you and the Health Portfolio Committee may have and looks forward to participating in any public hearings that your Committee may schedule.

Yours sincerely



DEREK W AURET
CHIEF EXECUTIVE

CASA CEO RETIRES

The Chairman of the Casino Association of South Africa (CASA), Jabu Mabuza, has announced the retirement of Derek Auret as Chief Executive of the Association on 31 December 2012. He will be succeeded by Themba Ngobese, who is currently the Group Compliance & Legal Services Executive of Peermont Global (Pty) Ltd.

Mr Mabuza paid tribute to Derek Auret, the first Chief Executive of CASA and said that he had established the Organization in 2004 and had developed it into a body that had succeeded in establishing the credibility of the industry through the gathering and dissemination of credible research and information to decision makers, politicians, the media and the public in general and of demystifying the casino gambling sector of industry. CASA had, under his leadership, become the repository of comprehensive information about the industry. He had built CASA into a centre of operational excellence, offering a wide range of services to its members. CASA's annual Survey of Casino Entertainment in South Africa which he had pioneered was, for example, a comprehensive resource document for those whom wish to know more about the reality of the industry. His contribution has been of a significant nature and he wished him well in his future endeavours.

Themba Ngobese brings with him extensive knowledge of the casino industry and will build on the solid foundation that has been laid. His bio-sketch is attached.



JUSTICE DELAYED IS JUSTICE DENIED: THE SORRY STATE OF PAJA

In Issue 18 of this Newsletter, published in 2010, the importance of administrative justice as a hallmark of a constitutional dispensation was highlighted. At its essence, administrative justice requires that organs of state or other bodies exercising public power in terms of legislation should be reasonable, consistent, fair and transparent in their decision-making and should be in a position to provide adequate and rational reasons for decisions taken by them which negatively affect the rights or legitimate expectations of others. At the very heart of this lies the fundamental principle of answerability for the exercise of any public power.

In *Ngxuza v Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government*¹, the High Court stressed the significance of accountable decision-making as a cornerstone of democracy in the following terms²:

"Mention has already been made that the Constitution provides that the courts have a policing role to ensure that public power is exercised in accordance with the principle of legality. It also declares ours to be a democratic state ... One of the foundations of democracy is that those who are chosen to rule must be accountable to those they govern.

The Constitution recognizes that as a founding value of our democracy ... It also recognizes that modern societies need to be run by persons other than those directly elected by the people. Those in the public administration must accordingly also be subject to the foundational values of democracy, otherwise the promise of democracy may become an illusion. So the Constitution states explicitly that public administration must be governed by the democratic values and principles of the Constitution, and states specifically that public administration must be accountable ... The fundamental importance of accountable public power is emphasized in the Bill of Rights chapter of the Constitution by providing that everyone has the right to administrative action that is lawful, reasonable and fair ... And the courts are the final instruments to ensure the accountability of the exercise of public power."

Organs of state and public bodies such as gambling boards therefore have a fundamental duty, and as an integral part of the day-to-day performance of their functions, both to respect and to promote the right to fair administrative action, as set forth in the Bill of Rights, and to embrace – rather than to resist – the fact that they can be held to account for the proper exercise of their decision-making powers.

In keeping with the requirements of the Constitution, national legislation, in the form of the Promotion of Administrative Justice Act, Act 3 of 2000 ("PAJA") has been enacted to give substance to the right to fair administrative action. PAJA sets forth clear standards for the exercise of discretionary decision-making powers granted under the authority of legislation, which must be adhered to in order to ensure that the decisions of public administrators are reached in a manner which is consistent with the right to procedural fairness. The standards themselves are basic in nature, and in effect require little more than proper prior consultation with affected stakeholders, in the form of a clear indication of the nature and purpose of the administrative action to be embarked upon, a reasonable opportunity to make representations in respect thereof and a communication to affected stakeholders of the right to request reasons. These requirements cannot be said to be unduly onerous. Moreover, compliance with them will invariably have the effect of assisting administrators in ensuring, before they take decisions, that such decisions are fair, reasonable and capable of rational justification. Properly utilised, therefore, the requirements of PAJA provide a welcome vehicle

¹ 2000 (12) BCLR 1322 (E)

² At 1328H-1329B

for the avoidance of litigation. Administrators are placed in the ideal position of hearing the views of stakeholders on any proposed course of action prior to taking same, and where objections are raised, of evaluating their merits and either abandoning the proposed action or implementing it in such a manner as to accommodate concerns which are valid.

Recent developments, however, have tended to suggest that public administrators are not alive to these advantages, but rather, in some cases, appear to regard compliance with PAJA either as being optional or as undermining the reach of their authority. As a result, recent months have seen the promulgation of subordinate legislation directly affecting the legitimate interests of the gaming industry as a whole, both on a national and a provincial level, in the absence of any form of prior consultation whatsoever. Similarly, certain provincial licensing authorities have purported to lay down enforceable policies affecting various other gaming industry sectors, without prior notice of any kind.

In all of the above cases, attempts by affected stakeholders to draw the attention of the relevant decision-makers to the failure to comply with PAJA have surprisingly not borne immediate fruit. Instead, in a number of cases, industry stakeholders have been obliged to take legal steps,

at considerable cost, to enforce their constitutional rights, which has ultimately resulted in the withdrawal of the purported administrative action, and in certain cases, the commencement de novo of the process of engagement which should have been embarked upon from the outset. The inevitable result is the needless allocation by regulators of both resources and public funds to correct procedural deficiencies which, in the first instance, were entirely avoidable.

The apparent resistance of administrators to applying the requirements of PAJA is as inexplicable as it is becoming more common. Whatever the reasons may be, however, the interests of the gaming industry as a whole would be well served by giving sustained attention to the applicable requirements of law, monitoring the extent to which these continue to be met in practice and requiring corrective action in instances where this does not occur. The alternative - acquiescence in the gradual erosion of constitutional standards by decision-makers - can be expected to lead the industry down a road from which it may be increasingly difficult to return, and in terms of which administrative justice may not only be delayed, as has recently been the case, but may ultimately be denied altogether.

KHORONI HOTEL APPOINTS NEW MARKETING MANAGER:



Yolanda Bester has been appointed as Marketing Manager for Khoroni Hotel, Casino and Convention Resort. More than 20 years of experience at leading casinos where she learnt all the tricks of the trade will successfully position the resort at the forefront of the hospitality and gaming arena. Bester aims to put it "all on the table" where she will implement and manage a number of promotional and marketing strategies for Peermont's popular Limpopo gem.



Emperors Palace staff gave Olympic gold and silver medalist, Chad le Clos a hero's welcome when the swimming star arrived at the resort and casino's 5-Star D'Oreale Grande Hotel on 13 August. The new golden boy of South African sport, pictured here with thrilled Emperors employee, Wellington Mhlauli of Emdeni in Soweto, was a guest at the Palace of Dreams on Monday evening before joining his SA Olympic teammates on their return to the country.

(Photograph by Yolanda van der Stoep)



The closing tournament of the Tsogo Sun Suncares Sports Academy soccer development programme, hosted by Silverstar Casino, was held on Friday, 7 and Saturday, 8 September at Lusaka Sports Complex in Swaneville, Mogale City.

The Tsogo Sun Suncares Sports Academy utilises soccer as an extra-curricular activity for primary and secondary schools in line with government's aim to bring back afternoon sports to schools. This soccer programme is also used as a medium to deliver life and leadership skills as well as health education to young learners in this community.

Now in its third year, this full year development programme kicked off its current season in March with an opening tournament and consists of weekly training sessions, six months of inter-school league fixtures that culminate at the season's closing tournament in September, as well as a development academy where talented players are invited to be a part of and then selected as a team to participate in the SAFA Rand Central leagues.

"Our development programme consists of a comprehensive schedule and we approach the full school calendar year as an opportunity for development, starting with the opening tournament," says Shanda Paine, group CSI manager for Tsogo Sun.

The programme currently includes 23 primary schools and 12 secondary schools to form a total of 58 teams in the under 12, 14 and 16 age groups from the Munsieville, Kagiso and Swaneville communities of Mogale City.





As Nelson Mandela celebrated his 94th birthday on 18 July and people all over the country supported Mandela Day, employees at Emperors Palace also got involved with the resort and casino's human resources department challenging fellow staff to donate goods (67 counts at least) to HR's care initiative in support of the St Francis Care Centre in Boksburg. Thanks to the excellent response a variety of much needed items, including 500 ARV's - generously donated by Ikhambi Care to Emperors Palace in support of this initiative - were

delivered to the centre on Friday afternoon, July 20. Here some of the delighted staff of the St Francis Care Centre's clinic are pictured after receiving their donation with Peermont Human Resources Executive, Fihliwe Nkomo (middle), the clinic's doctor, Clement Ngcuka (front right), the centre's manager, Tilly Brouwer (middle right) and Ikhambi Care representatives, James Murray (middle third right) and Sedibeng Ngubane (middle second right).

(Photograph by Yolanda van der Stoep)

Mandela Day is an annual celebration of Nelson Mandela's life and a global call to action for people to recognise their individual power, to make an imprint and change the world around them. Sibaya Casino & Entertainment Kingdom did just this by painting classrooms at Waterloo Primary School and assisted in providing an environment conducive to learning. With t-shirts, hard hats and paint brushes in hand, Sibaya's staff thoroughly enjoyed the 67 minutes of painting. We trust that the coat of paint and personal touch will not only brighten up the minds of both the Waterloo Primary School children and the committed staff who guide our future leaders, but assist in expanding the reach of Mr Mandela's values of 'fighting injustice, helping people in need and practicing reconciliation.'



Edenvale resident and Peermont Manager, Surveillance and Corporate Security, Greg Harker had the pleasure of meeting and having his photograph taken with Her Serene Highness Princess Charlène of Monaco at Emperors Palace's D'Oreale Grande hotel on 12 August. The Princess was a guest at the Palace of Dreams during a brief visit to South Africa to see her family.

(Photograph by Yolanda van der Stoep)