

5 August 2013

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 Attention: Mr A Hermans,
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Dear Ms Fubbs and Mr Hermans

**Community Chest of the Western Cape submits comment on the Draft
 Lotteries Amendment Bill 2013**

1. Introduction

The Community Chest of the Western Cape formally submits comment on the *Draft Lotteries Amendment Bill 2013*, in support of commentary in submissions by civil society peers in the Funding Practice Alliance and other Southern Africa Grantmakers and Community Foundations.

This submission focuses on the structures and policies that guide the adjudication, allocation and distribution of funds from the National Lotteries Distribution Trust Fund(NLDTF) by the National Lotteries Board(NLB) and its 'committees'.

2. Comments regarding the draft Lotteries Amendment Bill

2.1 Point 6(c)(m) (pg. 8 of the Bill) referring to Section 10 of the principal Act, allows the NLB to *'conduct or authorise staff of the Board to conduct research on and approve grants to appropriately deserving good causes or recipients that may be funded without application lodged in accordance with this Act'*. **The Community Chest has a stringent, well-recognised and best preferred due diligence benchmark process. Organizations that access our grants have undergone a due diligence assessment, which ensures compliance with all non-profit legislative requirements, adherence to proper accounting processes and good governance practices. Community Chest due diligence process is a popular benchmark for entities such as the Department of Social Development, diversified funders, the corporate South Africa and globally, as first grantees often go on to apply to them successfully. The information retrieved from application forms could serve as the baseline data and research which the NLB could access in partnership with the Community Chest and other responsible grantmakers within civil society, reducing the need for the NLB to research community profiling information or to conduct duplicate research within communities.**

2.2 Point 6(c)(o) (pg. 8 of the Bill) referring to Section 10 of the principal Act, gives the Board *'the power to prohibit, withdraw or reduce any grant made by the distributing agency if the board receives information that such grant is*



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utilised or is likely to be utilized in a manner that does not comply with the purpose or conditions stipulated in the grant or is utilised for an unlawful purpose or purpose distantly unrelated to the purpose of the grant' and Point 6(d)(2) and (3) (pg. 8 of the Bill) that gives the board 'the power to institute legal proceedings in order to properly discharge its functions and responsibilities in terms of this Act' and 'the board may approach any court for any order the board deems appropriate for effective regulation and enforcement of the Act' respectively.

The Community Chest recommends that the bill gives further thought and clarity to identifying and documenting the process of effective regulation and enforcement of the Act in order for grantseekers to clearly understand the implications and consequences of the funding agreement referred to in Section 10 of the principle Act. Guidelines of how the process will be rolled out would be a constructive addition.

2.3 Point 6(c)(p) (pg. 8 of the Bill) referring to Section 10 of the principal Act, the Board *'in consultation with the Minister, determine category of applications for grants that are excluded from funding.'*

The Community Chest recommends that all categories of funding are stipulated, transparent and include categories of funds that the NLF do not consider. This would guarantee the efficiency of good grantmaking practice and promote the access, prevention, acceptance or rejection of the grant application and distribution of responsible grantmaking and due diligence process. Working in partnership with structures like the Community Chest and other community foundations could be a solution to enhance the access to the NLB's diversified funding sources. Smaller grantmakers could be utilised to advocate for the NLB's sources of funding which civil society organisations may not be aware of. Applications to these funds could be fast-tracked and funds distributed quicker if the Community Chest's recognised and highly acclaimed due diligence model was utilised to verify the application process for the various NLB grants.

2.4 Point 7(a)(7) (pg. 9 of the Bill) referring to Section 13 of the principal Act, allows for the Minister to decide *'on justifiable grounds not to issue a licence as contemplated in subsection (1), the Minister may, after consultation with the board, appoint or authorize an Organ of State to conduct the National Lottery*

Point 7(a)(8) (pg. 9 of the Bill), the Minister *'in deciding whether justifiable grounds contemplated in sub section (7) exists, the Minister may take into consideration Government plans and priorities.'*

Point 7(a)(9) (pg. 9 of the Bill), *'In appointing a person or Organ Of State to conduct the National Lottery in terms of subsections (8), the provisions of subsections (2) and (3) shall not apply.'*

Point 7(a)(10) (pg. 9 of the Bill), *' In appointing an Organ of State to conduct the National Lottery, the Minister may exempt such Organ of State from the provisions of subsections (2) and (3).'*

These clauses in the draft Lotteries Amendment Bill will collectively bring about a state Lottery. Not only will the Lotteries be run by the State, but the distribution of funds will be guided by Government plans and priorities – in effect the funds will be distributed as per the national budget, there will be no independent Board to hold the funds in trust or to guide the distribution thereof, which will mean that the money will belong to the state for the state to do with as it pleases. These clauses are incredibly concerning and it may be necessary for the DTI to consider the primary purpose of the funds in the NLDTF. NLDTF funds should not be used as a government tool. The NLB and the NLDTF has been established to distribute funds to the civil society sector whose primary purpose is to improve South African society. The inclusion of the clause to consider Government plans and priorities in determining how and where funds should be distributed also implies that the work of civil society organisations is not aligned to government priorities. The Community Chest supports the Funding Practice Alliance submission that this clause is not

necessary, as civil society organisations are established for the “public good” and all their activities are geared towards improving and uplifting communities.

The statement within the Lotteries Act that explicitly states that the ‘allocation of funds should be informed by national plans and priorities’ fails to take into account that civil society organisations are guided by the needs of communities and society and are strategically placed to respond to these needs. The allocation of funds from the NLDTF strictly according to ‘national plans and priorities’ would change the entire nature of the civil society sector in South Africa as organisations would no longer look to communities to assess the greatest needs of society. In addition, it should be absolutely clear that local, provincial and national government and other state agencies, do not receive funding from the NLDTF, and that NLDTF funding is ring-fenced for supporting the development of a strong civil society rather than serving as budget relief for government.

2.5 Point 7(b) (pg. 10 of the Bill) referring to Section 13 of the principal Act, deletes the following from the principal Act, *‘In considering whether to grant the licence contemplated in subsection (1), the Minister and the board shall not favour an applicant solely because the applicant or a shareholder or partner of that applicant is an organ of the State.’*

The Community Chest is non-negotiable on practice and application of good governance. In recognition of the submission by civil society peers in the Funding Practice Alliance and community foundations, the Community Chest advises that removal of this clause could lead to a conflict of interest on the part of the Minister and the Board when making the decision on whom to award the licence to. We recommend that this clause not be removed from the principal Act as it would allow the Minister or the Board to unfairly favour an entity in which an Organ of State is a shareholder or in cases where the Organ of State is the applicant, when issuing the licence, this would amount to bad governance on the part of the Board and bad practice on the part of the Minister.

2.7 Point 21 (pg. 16 of the Bill) referring to Section 26D of the principal Act, states: *‘A member of the distributing agency his or her spouse, life partner, business partner or associate, may not hold an office in or be employed by or have an interest whatsoever, whether direct or indirect, in any company or other entity which applies for grants or supplies goods or renders services to the board unless such an interest is declared to the satisfaction of the Minister.’*

Good governance is a pillar of the Community Chest’s responsible grantmaking and good stewardship. The Community Chest applauds the NLB’s recognition of ‘conflict of interest’ in the draft Lotteries Amendment Bill. The issue of ‘conflict of interest’ has long been a concern with the Distributing Agencies and the NLB. The Community Chest supports the Funding Practice Alliance submission that the DTI should not limit this clause to spouses, life partners, business partners and associates but should also refer to ‘family members’ to ensure that there are fewer loopholes for those who would choose to abuse the system.

2.8 Point 22(2) (pg. 17 of the Bill) referring to Section 26E of the principal Act, states that: *‘No applications for grants by a juristic person acting as an agent, representative or conduit of any potential beneficiary shall be considered unless good cause is shown as to why such potential beneficiary is unable to make an application on its own.’*

The Community Chest recommends that the term ‘conduit’ be reviewed and/or more clearly defined. Application of the term under current legislation is a risk to civil society where the term ‘conduit’ has been applied arbitrarily. Community Chest has submitted applications for project-based funding to the national lotteries and amended our constitution to remove the term ‘conduit’, the organisation still received negative feedback and a rejection of our proposal based on the response relating to a conduit facility. The fact that organisations like the Community Chest makes grants with other funding that it works hard to mobilise and accumulate should not be

prejudiced and instead be considered a very useful vehicle to funding organisations in (rural) areas who have little access to information and who struggle to meet financial and narrative reporting requirements. A misinterpretation of the term could negatively affect organisations in the sector. This clause also undermines the work the Community Chest offers in building capacity of the sector through a model that offers uninterrupted care and capacity to beneficiaries. The NLDTF should be enabling partnerships and shared value, not undermining it.

3. Appointment of Distributing Agency staff

The Community Chest supports the recommendation in the Funding Practice Alliance submission that the draft Lotteries Amendment Bill should set a limit for the employment term of the Distributing Agency staff. It is our understanding that employment as a Distributing Agency member is not a lifelong appointment and that there will be limited terms of employment. It is noted, with concern, that there is no public nomination (participation) process to the appointment of Distributing Agency staff/members and a recommendation is submitted that the amended Lotteries Act should allow for a nomination process and a period for objections from the sector for those nominated through the publication of the names of those nominated, by whom they were nominated, and their qualifications and relevant experience for the position.

The Community Chest believes that a relationship with the National Lotteries Board should not be limited to that of beneficiary but also as a partner and a prospective distributing agent with full-time capacity and resource to deliver, within the time-frame and transparency of a public tender process agreement, to deliver where the NLB's distributing agents fall short of capacity to deliver on backlog applications and distribution of funding.

4. Conclusion

Community Chest is one of the biggest agencies in the country, the most stable and the most progressive in its methodologies to review funding – and we have achieved and maintained this without major international funding and without funding from the National Lotteries Fund.

Due Diligence

The Community Chest Due Diligence Process as a vital tool in the process of ensuring quality grant-making and monitored and evaluated service delivery.

Organizations that access our grants have undergone a due diligence assessment, which ensures compliance with all non-profit legislative requirements, adherence to proper accounting processes and good governance practices. Community Chest due diligence process is a popular benchmark for entities such as the Department of Social Develop, National Lottery Fund and other corporates, as first grantees often go on to apply to them successfully.

- **Grant Management Committee:** this is the committee that oversees the due diligence process and it consists of experienced social workers, accountants and the CEO;
- **External oversight:** following the initial internal assessment each file is assessed by external social workers and chartered accountants;
- **Audited financial statements:** this is another way we verify the financial integrity and sustainability of the organizations we fund; and
- **Monitoring visits:** the Community Chest social workers and administration staff visit organizations from time to time. Some of these visits are video recorded and documented in detail.
- **Monthly payments:** This practice mitigates the potential for misuse of funding and ensures that we have regular contact with organizations. Accountability improves all-round and

Community Chest can intervene timely in the event of an organization becoming non-compliant or closing down during funding cycle.

During this process non-compliant organizations are not turned away but are mentored around specific needs and are invited to take advantage of the capacity building training courses.

Diversified approach:

- Our due diligence process, monthly transfers of grants and relationship with grantees ensure that we reduce our risk, while increasing our investment impact
- We fund a cross-sector of services ensuring the social asset base in communities is meaningful
- Our sustainable investment is based on our own diversified income portfolio: Give-as-you-earn, trusts and estates, individual giving, corporate and foundations

Community Chest funds 365 organizations and realizes that meaningful and impactful social change is achieved when cross-sector coordination among organizations is improved.

There are four components to the Community Chest's model of investment:

1. Providing resources to deliver Impact programmes in the most vulnerable communities;
2. Helping Community Partners with capacity building training;
3. A series of Community Conversations to facilitate community engagement; and
4. Donations-in-kind – providing goods and services that can bring immediate relief

This model ensures that organizations have various ways of accessing support while it leverages the Community Chest's impact on the social development, education and health sectors it supports.

Today, Community Chest drives Community Impacts Programmes across the Western Cape by investing in organizations that are delivering Impact Programmes on the Health, Education and Income-generation mandates of South Africa. Together with Donations-in-kind, Community Engagement and Capacity Building Training, the Community Chest presents a comprehensive model of investment.

Community Chest invests in organizations with the aim to strengthen their capacity to maintain operational resilience.

Organizations deliver their programmes through people and the management systems required to do so efficiently. The funding from Community Chest is expressly intended for that purpose. This contribution to their operational costs creates the space for organizations to focus on programme funding and organizational development.

For many organizations, the funding from Community Chest is their first and they often, successfully, go on to obtain funding from the Department of Social Development and Business. Government and Business place a high value on the Community Chest's due diligence process during funding application assessments.

Financial sustainability is not the only requirement for organizational resilience. Sound governance, management capability and leadership ability are also required to run an organization efficiently. This is based on the realization that whilst organizations need more money to survive, they need

even greater efficiency to ensure sustained impact in their communities. Our Capacity Building Training is offered to both urban and rural communities.

The capacity building training is also offered to organizations that do not qualify for funding. Such organizations learn new ways of operating and at the same time improve their chances to receive funding from the Community Chest and others.

Annually the Community Chest trains approximately 400 organizations and a total of 600 individuals.

We offer an opportunity to partner with one of the oldest philanthropic organizations in South Africa; one that shows a high degree of self-accountability and credibility. Community Chest has capability, sound governance and resources that will guarantee growth and potential of this partnership. The Community Chest is a national organisation and a resourceful partnership of mentoring, due diligence, good governance, funding, distributing grants in a monitored and evaluated process is an offer that we hope the Department of Trade and Industry and the National Lotteries Board would consider. It is with integrity and years of experience that the Community makes submission and commentary to the amended National Lotteries Bill.

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