

Procedural Document for the Appointment of the Chairperson of the National Lotteries Commission

1. Introduction – Legislative requirements/provisions for the appointment of the Chairperson

- Section 3(1)(a) of the Lotteries Act (No. 57 of 1997), as amended, stipulates that “the Minister shall appoint the members of the board, which shall consist of—
(a) a chairperson, who shall be a person with applicable knowledge or experience with regard to matters connected with the functions of the board ...”
- Section 3(3) of the Act states that “the member contemplated in paragraph (a) of subsection (1) shall be appointed only after the Minister has by notice in the *Gazette* and in not less than two newspapers circulating in every province invited interested parties to nominate persons suitable for appointment as chairperson and the relevant committee of the National Assembly has made recommendations to the Minister in relation thereto after a transparent and open process of considering persons so nominated, having due regard to the functions of the board”.
- Section 35 of the Lotteries Act - Public administration. —Every institution which in any way acts under or in terms of this Act, must comply strictly with section 195 of the Constitution.
- Section 195 of the Constitution provides as follows:

“Basic values and principles governing public administration. —(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
 - (a) A high standard of professional ethics must be promoted and maintained.
 - (b) Efficient, economic and effective use of resources must be promoted.
 - (c) Public administration must be development-oriented.
 - (d) Services must be provided impartially, fairly, equitably and without bias.
 - (e) People’s needs must be responded to, and the public must be encouraged to participate in policy-making.
 - (f) Public administration must be accountable.
 - (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
 - (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
 - (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on

ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

(2) The above principles apply to—

- (a) administration in every sphere of government;
- (b) organs of state; and
- (c) public enterprises.

(3) National legislation must ensure the promotion of the values and principles listed in subsection (1).

(4) The appointment in public administration of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service.

(5) Legislation regulating public administration may differentiate between different sectors, administrations or institutions.

(6) The nature and functions of different sectors, administrations or institutions of public administration are relevant factors to be taken into account in legislation regulating public administration.”

2. Responsibilities of the board

The board of the NLC is responsible for carrying out the following functions as stipulated in section 10(1) of the Act:

- (a) Advising the Minister on the issuing of the licence to conduct the National Lottery and on any lottery and the rules thereof before it can be conducted under this licence, as well as on any matter relating to the National Lottery and other lotteries.
- (b) Ensuring that the National Lottery and sports pools are conducted in compliance with the relevant legislation and the licensing agreement; the interests of every participant in the National Lottery are adequately protected; and the net proceeds of the National Lottery are as large as possible.
- (c) Managing and administering the National Lotteries Distribution Trust Fund and holding it in trust, as well as ensuring the protection of prize monies and sums for distribution.
- (d) Advising the Minister on percentages of money to be allocated in terms of charitable expenditure; the development of sport and recreation; arts, culture and the national historical, natural, cultural and architectural heritage; and other good causes.
- (e) Serving as a review authority against decisions of the distributing agency regarding applications for grants.
- (f) In consultation with the Minister, determining categories of applications for grants that are excluded from funding.
- (g) Taking all reasonable steps to recover any amount in relation to a grant which has been withdrawn, prohibited or reduced in terms of section 33.
- (h) Administering and investing the money paid to the board in accordance with this Act and the licence for the National Lottery.
- (i) Monitoring, regulating and policing lotteries incidental to exempt entertainment, private lotteries, and society lotteries.
- (j) Advising the Minister on the efficacy of legislation pertaining to lotteries and ancillary matters.
- (k) Advising the Minister on establishing and implementing a social responsibility programme in respect of lotteries.

- (l) Ensuring that the Commission performs its functions efficiently and effectively in compliance with this Act and any other applicable legislation.
- (m) Approving, determining, overseeing or revising the Commission's operational strategic framework or policies, corporate governance framework policies, human resources policies and the broad policy framework within which the Commission must perform its functions, as well as approving the appointment of senior executive employees of the Commission.
- (n) Ensuring that the Commission exercises its powers in accordance with the principles of transparency and accountability.

3. Procedure as set out in the Lotteries Act

Act requirement	Action to be taken	Status
Call for nomination	Minister must by notice in the <i>Gazette</i> and in not less than two newspapers circulating in every province invite interested parties to nominate persons suitable for appointment as chairperson.	Notice was placed in the Government Gazette on 4 September 2020 (Notice No 432682) and adverts were published in two national newspapers (City Press and Sunday Times) on 6 September 2020. Members of the public were given until 21 September 2020, to submit their nominations. (12 working days/18 calendar days).
Referral to the relevant Committee in the National Assembly for a recommendation	Minister must request the Speaker of the National Assembly to refer the matter to the relevant committee for its recommendation.	The Speaker referred the Minister's request on Monday, 16 November 2020, to the Committee.
Committee consideration and recommendation	Committee must consider persons so nominated by the interested parties and make recommendations to the Minister in relation thereto after a transparent and open process of considering, having due regard to the functions of the board (see section 2).	On receipt of the referral, the Committee may develop its own proceedings and procedures to consider the nominations.

4. Proposed Procedural Process

The proposed Committee process in making recommendations for position of Chairperson of the NLC for the National Assembly's consideration:

Process	Responsibility	Action(s)	Timeline
Shortlisting	Committee	<ul style="list-style-type: none"> Committee to consider and adopt guidelines (see section 5.2) for considering CVs. 	1 or 2 December 2020

Process	Responsibility	Action(s)	Timeline
		<ul style="list-style-type: none"> Committee to determine the duration of shortlisting process. 	
		<ul style="list-style-type: none"> The Committee should proceed to shortlist candidates for an interviewing process. 	26-27 January 2021
Administrative	Secretariat	<ul style="list-style-type: none"> Contact shortlisted candidates to determine whether they accept the nomination. Continue communication to enable interviews. Make logistical arrangements for shortlisted candidates. Make necessary applications to ensure that shortlisted candidates are able to participate in the interviews. 	From 27 January 2021
Pre-screening	HR	<ul style="list-style-type: none"> The verification of the qualifications and references of the nominated/shortlisted candidates to be interviewed should be checked. 	From 2 December 2020
	Protection Services/Ministry of State Security	<ul style="list-style-type: none"> The details of the candidates should be submitted for security clearance to the appropriate government institution (see section 5.1). 	From 2 December 2020
Public participation	Media	<ul style="list-style-type: none"> Place the names and CVs of shortlisted candidates on all Parliament's social media sites calling for public comments. 	27 January-15 February 2021
	Secretariat	<ul style="list-style-type: none"> Summarise concerns raised by the public for the Committee's consideration. 	15-19 February 2021
Interviews	Secretariat	<ul style="list-style-type: none"> A draft interviewing questionnaire should be developed for the consideration and approval of the Committee covering technical knowledge, knowledge of functions of the board and leadership ability. 	Before interviewing date

Process	Responsibility	Action(s)	Timeline
		<ul style="list-style-type: none"> Ensure a secure holding room for shortlisted candidates. 	
	Committee	<ul style="list-style-type: none"> Consider draft interviewing questionnaire prior to the interviews and determine scoring system/weighting of various aspects of the questionnaire (closed meeting). Interview the shortlisted candidates. 	On interviewing date (propose Tuesday, 23 February 2021)
		<ul style="list-style-type: none"> Score interviewed candidates and deliberate. 	Additional day for deliberations (propose Wednesday, 24 February 2021)
	Secretariat	<ul style="list-style-type: none"> Draft a report regarding the Committee's consideration and recommendations for the position of chairperson of the board of the NLC. 	25-26 February 2021
	Committee	<ul style="list-style-type: none"> Consider and adopt its report in terms of its recommendations for the National Assembly's consideration. 	Propose 3 March 2021
	Secretariat	<ul style="list-style-type: none"> ATC the report. 	Propose 3 March 2021
Recommendations	National Assembly	<ul style="list-style-type: none"> Report to be considered by the National Assembly. 	To be determined by Programming Committee

5. Criteria for the shortlisting for the position of Chairperson

5.1 Criteria that would disqualify nominated candidates

The Act broadly outlines the criteria for the Chairperson and lists a number of factors that would disqualify someone as a board member.

The Chairperson must have applicable knowledge or experience with regard to matters connected with the functions of the board (section 3(1)(a)).

In line with section 3A, the chairperson, as a board member, must:

- (a) Be a South African citizen.
- (b) Not be a political office bearer.
- (c) Be qualified to act as a director of a company incorporated in terms of the Companies Act, 2008 (Act No. 71 of 2008).

- (d) Not have been found guilty in any civil or criminal proceedings by a court of law, whether in the Republic or elsewhere, to have acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty, or of any other offence for which such person has been sentenced to direct imprisonment without the option of a fine.
- (e) Not have been removed from a position of trust.
- (f) Not have his or her membership of a board or any other accounting authority of a public entity being prematurely terminated in the past five years due to misconduct.
- (g) Not have been found to be in contravention of this Act or any other Act applicable to the public service in the past five years.
- (h) Not have been declared by a court of law to be of an unsound mind.
- (i) Be financially solvent.

5.2 Possible criteria for screening of CVs

During the previous Committee process of considering the Chairperson, the Committee had adopted the following criteria as essential for this position:

No.	Criteria	Reason/Motivation
1	Have specific skills and practices and the ability to lead the board in an objective manner. Have the ability to show restraint, be patient and be available. Have knowledge or experience regarding the functions and the principles underlying the role of the board as per the Act and boards generally. Should be impartial.	Act states: "a chairperson who shall be a person with applicable knowledge or experience with regard to matters...of the board" (Section 3(1)(a))
2	Experience in chairing meetings of strong individuals with specific areas of expertise and diverse ideas	Must be able to chair meetings of the board in accordance with generally agreed rules of meetings
3	Ability to lead the development of strategy and give strategic direction	Chairperson must be able to strategise and/or evaluate strategic plans of management and the implementation thereof
4	Knowledge/experience of the principles of corporate governance as contained in King Reports on Corporate Governance and the Companies Act	The board is the governance structure of the NLC, and not involved with the day-to-day running thereof.
5	Person of good standing in the community and with a history of moral/ethical leadership	There are huge interests at stake, and the Chairperson must have a history of impartiality, putting the interests of others before his/hers. The board has enormous powers, and this must be exercised with the greatest of caution and care for proper procedures.
6	Skills to analyse reports critically	Staff will be bringing reports on the performance of the Commission regularly to the board for consideration and decisions.
7	History of promoting openness and transparency and a good understanding of the <i>Batho Pele</i> principles	"due consideration of the principles of openness and transparency." (Section 10(1))

No.	Criteria	Reason/Motivation
8	Experience of working with large funds and budgets and a clear understanding of the Public Finance Management Act	"Administer and invest the money..." (Section 10(1)(h))
9	Experience in the appointment of, and contracting senior staff members, setting of performance criteria and the performance evaluation of senior managers	Must appoint a suitably qualified and experienced person as Commissioner, in consultation with the Minister. (Section 2B(1))
10	Experience of keeping senior managers accountable	The Commissioner will be "accountable to the board". (Section 2B(1)(a))
11	Have a good understanding of delegations and what responsibilities should be delegated to the Commissioner	Any function of the board may be delegated to the Commissioner or Commission. (Section 10A)
12	Experience of policy development and implementation	Advise the Minister on ... (Section 10(1)(e), (f) and (k)) <ul style="list-style-type: none"> percentages of money to be allocated the efficacy of legislation On any matter relating to the National Lottery
13	An understanding of the social impact of gambling and the social responsibilities of the NLC	The Act requires the board to "advise the Minister on the establishing and implementing of a social responsibility programme in respect of lotteries" (section 10(1)(g))
14	Display leadership qualities, in particular self-management and self-motivation	This person will not be working under any other managers and be subjected to performance reviews and therefore has to possess quality attributes of leadership.
15	Person that would be able to effectively act as the "face" of the NLC	Chairperson must be able to confidently interact with the Minister, Parliament and senior government departments.
16	Membership on other boards	The Chairperson should have sufficient time/capacity to ensure that he/she will adequately apply themselves to the NLC