



**the dti**

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Department:  
Trade and Industry  
**REPUBLIC OF SOUTH AFRICA**

# LOTTERIES POLICY REVIEW:

A discussion document

August 2012

## **Executive Summary**

The document outlines the policy proposals intended to amend the Lotteries Act, Act No. 57 of 1997 (the Act), to ensure the effective governance and management within the lottery industry. The need to amend the Lotteries Act followed an assessment of challenges that impede effectiveness and efficiencies in the distribution of funds.

The challenges identified include: strict requirements set for accessing funds; lack of accountability of Distributing Agencies; the relationship between the National Lotteries Board and the Distributing Agencies; lack of quorum for adjudication in the Distributing Agencies; creation of Oversight Committee by the National Lotteries Board; and allegations of conflict of interest in relation to some members of the Distributing Agencies.

Other issues raised related to the turnaround times for processing applications and for payments, lack of communication with the public and the applicants in general, and lack of capacity in the National Lotteries Board to carry out the mandate effectively.

In the assessment it was clear that most of the challenges identified were a result of inefficiencies in the National Lotteries Board, and specific actions were identified for implementation by the Board. These include the review of the organisational structure of the National Lotteries Board to provide for appropriate capacity to deliver; streamlining internal processes for receiving and processing applications; upgrading the grant management system to enhance efficiencies, improving turnaround times for application processing and payments to beneficiaries; and communicating better with the public and beneficiaries.

There were, however, challenges that were a direct result of the gaps in the legislative framework that necessitated a focused review. The following are recommendations:

- The Distributing Agencies must be professionalised and appointed on a full-time basis. They must also be bound by the provisions relating to conflict of interest in the same manner and extent that the staff of the National Lotteries Board is bound. Distributing Agency members should be appointed based on skills, expertise in adjudication and availability to serve on a full-time basis to curb problems of quorum and conflict of interest.
- The Distributing Agencies should continue being appointed by the Minister. But as they are part of the distribution function, they should conform to rules and regulations, including the policies of the National Lotteries Board as the entity that by law is required to account to Parliament. The amendments to the Act should clarify accountability in a manner that removes any ambiguity.
- An Internal Review Mechanism should be introduced to deal with aggrieved applicants. In this regard, the Board of the National Lotteries Board should serve as a structure to review complaints arising from decisions of the Distributing Agencies and the decision of the review should be made binding. If the applicant is still aggrieved after this process, they may approach the court of law for relief. This will reduce the costs of litigation for applicants.
- The processes for accessing funds in the National Lotteries Board must be simplified to improve service delivery. The adjudication of applications can be guided by the nature and size of grants requested. In this case, the grants must be categorised as small, medium and large grants. Small grants can be adjudicated by a three-member panel, medium grants by a five-

member panel, and large grants by a full panel subject to quorum requirements. Forms for each of these categories should be simplified to require information that is necessary based on the risk that needs to be mitigated. This will go a long way to increase the speed for adjudication and improve turnaround times and access to funds.

- The disbursement of funds includes steps from application to final payment, with adjudication being part of this process. It is, therefore, important to set turnaround times for each category of grant applied for to provide certainty to applicants and to be able to measure the performance of the National Lotteries Board's performance. The Distributing Agencies should not be regarded as independent entities, but rather as a step in the process of disbursing funds for good cause. The Distributing Agencies should thus be bound by the reporting requirements and rules governing the National Lotteries Board.
- The size of the Board, as an oversight structure and accounting authority of the National Lotteries Board, should be increased to 11 members to enable it to perform its mandate adequately.
- The amendments must differentiate clearly between the National Lotteries Board as an entity and the Board of the National Lotteries Board as an oversight structure and accounting authority. This may necessitate a change of the name of the National Lotteries Board to, for example, the National Lotteries Commission or National Lotteries Organisation to minimise confusion.
- The Act must distinguish clearly between the functions of the Minister and those of the Board of the National Lotteries Board to prevent concerns arising from ambiguity in the Act. In this regard, the Board should not be allowed to vary the conditions of a licence issued by the Minister.

- The Act should provide for both application-based funding and proactive funding. In this case, proactive funding should be guided by research that is informed by national priorities. The Minister should be allowed to determine the percentage of allocation that can be given to proactive funding, and review it from time to time. Proactive funding will help support good causes timely, particularly in cases of disasters such as floods or storms.
- The Act must clarify the process and the terms through which conduits can be funded. Conduits pose a risk as they are meant to provide further funding to good cause, but various grants have raised significant concerns.
- The Act should align financial accounting requirements to the Companies Act 2008, as amended, to reduce the burden on smaller organisations to have financial statements audited.
- Education and awareness must be included in the Act as part of the functions of the National Lotteries Board. This will assist entities to understand the requirements to properly apply for and report against funds.
- The Act must be harmonised with the other laws to improve enforcement and monitoring of compliance.
- There are a number of technical amendments that have been identified over the years of implementing the Act. These are articulated in the policy, but are not necessarily exhaustive. The drafting of the Bill will bring more technical errors to the fore and these will be corrected accordingly.

## 1. Background

- 1.1 The Wiehahn Commission, which was established to investigate the feasibility of regulating the lotto and gambling in South Africa post-democracy, made recommendations for the regulation of gambling and the State-run lottery system. Emanating from the Wiehahn recommendations on lotteries, the Lotteries Act, Act No. 57 of 1997, was passed.
- 1.2 The Act governs the operation of lottery within the country by creating the National Lotteries Board and providing for the powers to appoint a national operator for a defined period. The National Lottery commenced operation for the first time in South Africa in 1999. The first lottery operator was Uthingo, followed by Gidani, whose term comes to an end in 2014.
- 1.3 In 2007, **the dti** commissioned a study<sup>1</sup> to assess the performance of the National Lottery and deal with the challenges hampering its effectiveness. The process included research to assess the overall socio-economic impact of the National Lottery since inception in 2000. Consultations took place with the Board and Distributing Agencies, as well as with other departments, such as Sports and Recreation and Arts and Culture. The review identified a number of issues that required improvement, including strained relations between the National Lotteries Board and the Distributing Agencies.
- 1.4 In 2008/09, there was a public outcry regarding accessibility of funds and, importantly, that funds do not reach the intended beneficiaries. The Minister called a Round Table with the relevant stakeholders to

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<sup>1</sup> Review of the National Lottery: 2000 – 2007 by Dr Stephen Louw, Ms Abigail Ronald-Louw and the Institute for Social and Institutional Sustainability for **the dti** (2008)

investigate the causes of this outcry. The Round Table comprised the Minister of Sports, Minister of Arts and Culture, the three Distributing Agencies, the National Lotteries Board and officials of **the dti**. This process identified the causes and proposed interventions to improve the distribution of funds. The assessment revealed, inter alia, that the requirements for accessing funds were too strict and excluded the majority of deserving organisations; that it took on average more than two years for beneficiaries to receive payment from the National Lotteries Board; and that vacancies and conflict of interest in the Distributing Agencies impede quorum for adjudication.

1.5 A Working Group was created by the Minister to devise an action plan to be implemented to correct the challenges identified. The Working Group comprised the National Lotteries Board and the three Distributing Agencies. Due to strained relations between the National Lotteries Board and the Distributing Agencies, the Working Group was chaired by **the dti** through the Deputy Director-General, Ms Zodwa Ntuli. The action plan was developed and agreed for implementation by the National Lotteries Board and the Distributing Agencies. **the dti** proceeded to develop policy interventions for the amendment of the Act to address some of the issues that required legislative intervention.

1.6 Following the Round Table and the Working Group, the Minister issued new regulations to streamline the application process and relaxed some of the requirements for accessing funds, including the requirement for two-year audited financial statements. The Minister also issued a directive in regard to the distribution of funds and provided priority areas in line with broader Government priorities. The regulations and directive<sup>2</sup>

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<sup>2</sup> Gazette Notice No. 33398: The Direction and Procedure for the Distributing Agencies in relation to Distribution of Funds from the National Lottery Distribution Trust Fund

were issued in July 2010, following a focused assessment<sup>3</sup> by **the dti** through the Chief Director of Policy and Legislation, Ms Nomfundo Maseti. The Minister also appointed new members to the Board of the National Lotteries Board in 2010. A draft policy document was produced in June 2010, after consultation with various stakeholders.

1.7 In 2009, the Minister established the Gambling Review Commission after concerns were raised by Parliament regarding the proliferation of gambling and the piecemeal approach to new gambling activities. The Commission was chaired by Ms Astrid Ludin and a report was submitted to the Minister in September 2010<sup>4</sup>. The review of gambling included the lottery as part of gambling activities. In light of the review process, **the dti** made a decision to await the report of the Gambling Review Commission to align the policy proposals with the recommendations of the Commission prior to processing the policy proposals. A Regulatory Impact Assessment<sup>5</sup> was conducted on the draft Lottery Policy in 2010 to determine the appropriateness of the policy interventions proposed.

1.8 To obtain input from affected stakeholders on how to improve efficiencies in the distribution of funds by the National Lotteries Board, **the dti** requested that it have a wide stakeholder engagement. The Lottery Indaba was held at Gallagher Estate in June 2011<sup>6</sup>. The Portfolio Committee on Trade and Industry held public hearings on the Gambling Review Commission and produced a report with recommendations in March 2012<sup>7</sup>.

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<sup>3</sup> Assessment of Needs Report through Countrywide Consultations on the Possible Funding of Community Development Initiatives, 2010

<sup>4</sup> Gambling Review Commission Report, September 2010

<sup>5</sup> Regulatory Impact Assessment: A study prepared by Genesis Analytics for **the dti**, August 2011

<sup>6</sup> National Lotteries Board National Conference (Lottery Indaba), Gallagher Estate, 20 June 2011

<sup>7</sup> Report of the Portfolio Committee of Trade and Industry on the Report of the Gambling Review Commission, 07 March 2012

1.9 The assessment processes outlined above identified a number of challenges in the management of the NLB and gaps in the Act. Issues relating to the organisational management of NLB are being addressed internally and being monitored. This document addresses those challenges that require legislative amendments, but may make reference to certain actions by management that align to a particular policy recommendation. These challenges have hindered the ability of the National Lotteries Board and Distributing Agencies to carry out their mandates and distribute public funds to deserving beneficiaries.

## **2. Purpose**

2.1 The South African Government introduced a regulatory framework that sought to curb proliferation of gambling, while allowing responsible gambling to take place. In relation to the lottery specifically, the fundamental policy principle approved by Government was that the National Lottery will be utilised to generate substantial revenues to fund projects of common national interest to which there was insufficient funding in terms of state expenditure.

2.2 However, this goal is not being optimally achieved as the provisions of the Act are marred with anomalies that need policy and legislative interventions. Such anomalies range from lack of governance and transparency to lack of accountability of certain governance structures established in terms of the Act.

2.3 In summary, the overall objective of the review was to look holistically at the following areas and propose solutions:

- Assess the relevance of the current regulatory regime and deal with challenges that relate to the structures, roles and functions of the structures established in terms of the Act;
- Assess the overall socio-economic impact of the National Lottery in the past 10 years;
- Review challenges in the Act that hamper optimal distribution of funds for the National Lotteries Board and Distributing Agencies, and to address strained relations between the Board and Distributing Agencies;
- Address problem gambling, by incorporating mechanisms in the legislation to eradicate or minimise its negative impact;
- Assess difficulties experienced in the licensing processes in 2006; and
- Overhaul the Act to address legislative provisions that are open to different interpretations and result in disempowering the National Lotteries Board from enforcing the Act.

2.4 The various assessment stages alluded to in the background above has culminated in various proposals to address challenges identified. For ease of reading with clarity on the problems and proposed solutions, the structure of the document will be as follows:

- Accountability of the Distributing Agencies;
- Lack of Quorum and Conflict of Interest;

- Accountability of Distributing Agencies to the National Lotteries Board;
- Simplification of the Process;
- Categorisation of Grants;
- Disbursement of the Funds;
- Size of the Board;
- Differentiation of the Board of the National Lotteries Board, and the National Lotteries Board;
- Roles of the Board of National Lotteries Board and those of the Minister;
- Proactive Funding;
- Grants through Conduits;
- Internal Review Mechanism of Decisions;
- Auditing of Financial Statements;
- Technical Amendments Required;
- Harmonisation with other Laws;
- Education and Awareness;
- Summary of Recommendations; and
- Conclusions.

2.5 The purpose of the document is to propose policy interventions to address the challenges identified during the implementation of the Act, and as identified by various assessments alluded to in this document.

2.6 This document is a draft that is developed for wider consultation with stakeholders. Once policy interventions are consulted on, a draft Bill will be produced and submitted to Cabinet with final policy for adoption by Cabinet for introduction into Parliament.

### **3. Discussion**

As indicated, various issues were identified and proposed interventions recommended after consideration of a number of options. The issues are discussed in detail as follows:

#### **3.1 Accountability of the Distributing Agencies**

3.1.1 In terms of the Act, the Minister appoints the Distributing Agencies. This is done after the Minister has consulted with relevant Ministers that are related to the described sectors. Legally and in practice, this means that the Distributing Agencies only account to the Minister. If there are backlogs or irregularities in the distribution of funds from the National Lotteries Distribution Trust Fund (NLDTF), the Distributing Agencies legally expect the Minister to be the one that addresses the issue with them despite these matters being purely administrative and operational in nature. Day-to-day operation of Distributing Agencies should be managed and monitored closely and it is inconceivable that the Minister can be expected to perform such a function.

3.1.2 There are also allegations that members of Distributing Agencies are conflicted and, therefore, decisions that should be transparent under rules of corporate governance are compromised. The practice in compliance with governance principles is that a member of the Distributing Agency that is conflicted would declare a conflict of interest and recuse him/herself from adjudicating on the matter that he/she is conflicted in. The concern raised by the public is that the majority of the members of Distributing Agencies are leaders of organisations that benefit directly from the lottery funds and in significant amounts. It is,

therefore, suggested that tighter governance rules should be set to deal with conflict of interest.

3.1.3 Further allegations relate to irregular conduct by some members of Distributing Agencies who bend the rules to accommodate some organisations over others. Also, some Distributing Agency members are alleged to be playing advisory roles to potential applicants, which conflicts seriously with the mandate of Distributing Agencies. The National Lotteries Board as a trustee of the NLDTF should ordinarily be in a position to monitor the distribution process and address matters that fall short of compliance with governance principle. It must be emphasised that adjudication is just one aspect in the process of disbursement of funds, albeit the most important part. As an entity that accounts in terms of the PFMA, the National Lotteries Board has a duty to monitor and report any violation and deviation from governance principles both in the entity and the Distributing Agencies. However, its role in putting in place measures necessary to prevent and identify such deviations of violations are not espoused in the Act.

3.1.4 Part of the challenge identified includes the lack of quorum due to some Distributing Agency members not being available at all times to attend meetings. This impedes delivery of service to the public as the members are currently appointed on a part-time basis and have full-time employment elsewhere. Given the nature of the distribution function in a funding entity such as the National Lotteries Board, the number of applications received by the NLB and the speed with which organisations require to be serviced, it is clear that the part-time nature of this function is inappropriate and compromises service delivery. There is, therefore, a need to professionalise the distribution function to enhance equitable and speedy distribution of funds to intended beneficiaries.

- 3.1.5 Various options were considered, with some clearly requiring legislative amendments to curb these problematic scenarios. It is proposed that the Act be amended to provide for professionalisation of the function of distribution of funds without compromising the independence in the decision-making processes over grants.
- 3.1.6 It is recommended, therefore, that the Minister should continue to appoint members of the Distributions Agencies, but only on a full-time basis. This means that the persons appointed will purely be responsible for the adjudication of applications. Persons should be appointed based on skills, expertise and availability to serve on a full-time basis. Such persons can be employees of the entity and bound by all the rules and regulations relating to conflict of interest, which currently apply to the NLB staff and Board members in terms of Sections 3 and 7 of the Act. These sections in the Act should thus be amended to apply consistently and be clear and unambiguous.
- 3.1.7 The amendments to the Act should clearly spell out the provisions dealing with the roles of Distributing Agencies, and ensure that such apply consistently across the entity. The full-time and professionalised nature of the distribution function will address the concerns around turnaround times, quorum and inefficiencies in the distribution of funds. Dedicated adjudication on a daily basis will make way for applications that are not only conditional to calls for applications being issued, but could be made at any time, based on the needs of the applicant and the timing of the relevant project for good cause.
- 3.1.8 The Distributing Agencies must account operationally to the National Lotteries Board on funds distributed from the NLDTF. The National Lotteries Board must set service delivery standards for the Distributing Agencies to continuously improve efficiency and work ethics in the

distribution of lottery funds. Clear governance and management processes aligned to the business plan of the entity should be developed in line with the requirements under the PFMA and the shareholders' compact. In this way, the entity will be able to agree on targets and measures for such targets.

3.1.9 It recommended that the Minister should, under the current provisions of the Act, appoint on a full-time basis some members of the Distributing Agencies to expedite the improvement of efficiencies. Others will continue to operate on a part-time basis until such time as the Act has been amended. In the interim, the Minister may also increase the number of members per Distributing Agency to improve efficiencies. This means there will be full- and part-time members till such time as the Act is fully amended to allow for only full-time membership. In light of the move to full-time membership, the Act must provide for transitional arrangements to address the issue of part-time members whose term would be running upon adoption of such amendments.

### **3.2 Lack of Quorum and Conflict of Interest**

3.2.1 One of the challenges relates to lack of quorum at Distributing Agency meetings, which caused delays in the adjudication of grants. The lack of quorum was due to members not being available for sittings at scheduled dates. Also, where members were available to sit, it was found that as they are drawn from sectors, most of them represent organisations that apply for funds in the National Lotteries Board, and as a result had to recuse themselves in most adjudication sessions due to conflict of interest. A further contributing factor is that Distributing Agency members are appointed on a part-time basis. The rate of resignations is also a concern.

3.2.2 The recommendation made above regarding the appointment of members of Distributing Agencies on a full-time basis will address the issue of quorum. A further recommendation is that the Act be amended to clearly express that the persons to be appointed should have no interest in any organisation that benefits from the lottery funds. This means that persons who agree to be appointed as Distributing Agency members should be beyond reproach and be bound by the same restraints that apply to members of staff of the National Lotteries Board and **the dti** in terms of the Act.

3.2.3 The Act currently does not prescribe whether the Minister can appoint members on a full- or part-time basis. It is, therefore, the Minister's prerogative, which he can exercise anytime. To address the challenges, the Minister may appoint members as full-time members within the existing powers in the Act. The appointment should continue to be for a specified period, with limitations on the number of terms a person can be allowed to serve in the Distributing Agency.

### **3.3 Accountability of Distributing Agencies to the National Lotteries Board**

3.3.1 It has been established that the lines of accountability for Distributing Agencies have in practice raised concern and cause for some of the challenges affecting the effective distribution of funds. The National Lotteries Board as the trustee of the NLDTF has no specific role in the Act to ensure transparency and governance principles are monitored and adhered to. As proposed above, the rules of good governance that will promote transparency and curb conflict of interest should be prescribed clearly in the amendments to ensure consistency across the entity.

3.3.2 The Act must enable the NLB to develop operational service delivery standards to ensure continuous improvement in the efficiencies of the distribution function and have appropriate measures to identify and prevent irregular conduct. The Distributing Agencies should continue to be appointed by the Minister as the Act prescribes, but account operationally to the National Lotteries Board as the entity that administers the fund.

3.3.3 The Act must also be amended to create a review mechanism of the decisions of the Distributing Agencies. Although ordinarily such reviews and/or appeals should be directed to court, in the nature of grants allocated from the NLDTF, a court process has proved to be expensive and prohibitive for beneficiaries of these grants. It is recommended that the Act be amended to provide for the creation of an Internal Review Mechanism, which would be an intermediate step before a person approaches the Court. The intention is to ensure that the public receives adequate support without incurring exorbitant costs of going to court and to allow for the speedy resolution of disputes. The mechanism should have a binding effect on the applicant and the entity. Where the beneficiary is not satisfied with the outcome, they may approach a Court of law.

#### **3.4 Simplification of the Processes**

3.4.1 The application process for funds in the NLDTF has proven to be complex and affects accessibility of funds to most deserving organisations or good causes. It is recommended that the Act be amended to embed simplicity, while enhancing accountability and good governance. Such interventions should be risk-based, looking at the nature, purpose and size of grants, among other things.

3.4.2 The operation of Distributing Agencies must be made more efficiency driven, by determining some grants that may be adjudicated by one member or a panel that does not comprise all members. The same principle is applied in adjudication of cases in the National Consumer Tribunal and the Competition Tribunal and can apply in the area of adjudication of applications. The review mechanism should remain the same as recommended.

3.4.3 The National Lotteries Board should increase its monitoring and impact assessment capacity to conduct inspections and spot checks to ensure funds are used for intended purposes. Also, it should have capability to proactively identify the fraudulent use of funds and deal with this effectively.

### **3.5 Categorisation of Grants**

3.5.1 To improve efficiencies and turnaround times, grants should be categorised according to their nature and size, which can be determined in monetary values and can be reviewed by the Minister from time to time.

3.5.2 All applications for grants – irrespective of size, nature or impact – have been dealt with in a similar manner and there is no specific turnaround time attached to the processing of such applications. This means that a small organisation, such as a old age home, that requires funding of less than R500 000 will be subjected to the same process and requirements as an application for the construction of a local bridge, for example, that requires funds in excess of R10 million. It is recommended that the Act be amended to allow for grants to be categorised, and different application and processing rules to be determined for each category.

- 3.5.3 It is recommended that grants that are from R1.00 to R500 000.00 (small grants) can be decided upon by three members of the Distributing Agency. The application form should require only basic information necessary to establish the authenticity of the application, the nature of the project or cause to be funded, the need for the funds, and assessment of risk and reporting mechanism.
- 3.5.4 Grants that are more than R500 000.00 but less than R5 000 000.00 (medium grants) can be considered by five members of the Distributing Agency. The application form should have enhanced requirements linked to the financial risk and the nature of the cause or project.
- 3.5.5 Grants that are more than R5 000 000.00 (large grants) should be considered by the panel of members of Distributing Agency, with necessary quorum to make decisions on such grants. The application form could require more information based on risk associated with such funds and the impact thereof.
- 3.5.6 Measures should be introduced to prevent the small and medium categories from being abused by a single organisation in piecemeal applications to avoid enhanced requirements for medium and/or bigger grants, as the case may be. This can be through prohibiting an organisation from applying in multiple sectors or being barred from applying for a certain period of time after having received a grant in any of the categories. More measures can be explored.
- 3.5.7 Turnaround times should be attached to these categories in the regulations to provide applicants with proper waiting periods after submitting an application. Turnaround times will also enable the National Lotteries Board to be accurately measured on its performance.

3.5.8 The review mechanism for all the grants will be the same as proposed in this document in that a person aggrieved may use the Internal Review Mechanism to be introduced in the Act, failing which the Court of law may be approached.

### **3.6 Disbursement of the funds**

3.6.1 The accountability of Distributing Agencies should be made clear as recommended in this document. The ambiguity in this area affects the seamless distribution of funds. The disbursement of funds must follow a clear and synergised process, with the value chain clearly considered. The process from application to final payment must be articulated in the regulations to the extent necessary in legislation, and further detail in service delivery standards, which can be reviewed from time to time to ensure continuous improvement.

3.6.2 The service delivery standards must articulate clearly the internal processes and systems to support operations, and which systems should be regularly assessed against technological developments. Adequate administrative capacity should be put in place to facilitate effective service delivery. The full-time Distributing Agencies must adjudicate on applications received efficiently and effectively in accordance with the rules of good governance and accountability. The role of Distributing Agencies should be limited to adjudication only.

3.6.3 The full-time Distributing Agencies must also adjudicate proactive grants based on proactive research on needy areas or special circumstances such as natural disasters, research findings of which would have been approved by the National Lotteries Board. Consideration should also be given to Government priorities in determining the needs for proactive funding.

3.6.4 The percent allocated for such proactive funding should be determined by the Minister from time to time. The National Lotteries Board shall ensure that the organisational structure provides for an effective research section to provide support for the proactive identification of good causes for funding.

### **3.7 Size of the Board**

3.7.1 The size of the Board of the National Lotteries Board is small and affects the ability to fulfil all requirements of the corporate governance principles. The Board committees that are required to operate in an entity such as the National Lotteries Board have also increased, and the current Board is overstretched and cannot adequately fulfil its mandate. It is recommended that the size of the Board be increased to 11 members, which will allow for other special skills to be recruited.

3.7.2 As this policy recommends an Internal Review Mechanism, the Board of the National Lotteries Board will play a significant role as the review mechanism. The Act should allow for participation of Distributing Agencies on the Board, to improve interaction between the Board and the Distributing Agencies. This should be introduced to address previous tensions and lack of co-operation between the Board and the Distributing Agencies, which resulted in unnecessary bottlenecks in achieving the mandate of the National Lotteries Board. In this case, it is recommended that the Chairperson of each Distributing Agency becomes an ex-officio (non-voting) member of the Board.

### **3.8 Differentiation of the Board OF National Lotteries Board and the National Lotteries Board**

- 3.8.1 The Act provides that there should be a Board and its function is to exercise an 'oversight' role of the National Lotteries Board. The Act confuses usage of the word 'Board', referring to both the National Lotteries Board and the 'Board' that has an oversight role. The word 'Board' is used interchangeably and this confuses matters.
- 3.8.2 The Act must be amended to clarify the terminology to avoid confusion that affects operational duties and leads to unnecessary confusion of roles that expose the entity to legal challenges from time to time. Consideration should be given to amending the name of the National Lotteries Board to the National Lotteries Commission or National Lotteries Organisation, or any name that may be proposed by the public to distinguish the organisation from its Board of Directors.
- 3.8.3 The National Lotteries Board as an entity accounts to Parliament and the Minister, being the political head through whom it accounts and reports. The Board of the National Lotteries Board is the accounting authority, with obligations flowing in terms of the Public Finance Management Act. The Minister as the Executive Authority has a specified role in relation to both structures. The distinction is important and necessary to remove ambiguity.
- 3.8.4 The Act must be amended to expressly state the functions of the National Lotteries Board as an entity, and the role and functions of the Board as a governing structure and accounting authority.

### **3.9 Roles of the Board of the National Lotteries Board and those of the Minister**

3.9.1 The provisions of the Act give an impression on literal interpretation that both the Board and the Minister have equal powers in relation to varying conditions of the licence, as the Act allows both the Minister and the Board to vary the licence conditions. The Act often refers to the Minister or the Board in various critical sections that clearly should not be the case.

3.9.2 The Minister should consult the Board before the Minister issues the licence. All anomalies in respect of the roles and functions of the Minister and the Board should be identified and clarified. These anomalies have led to decisions by the Board that have an impact on policy without the Minister's involvement, as the Act suggests that the Board or the Minister may do that. This is obviously an unintended consequence from the drafting of the legislation, which requires correction.

3.9.3 In view of the above, it is recommended that the roles and functions of the Board and those of the Minister should be differentiated, with no room for anomalies and ambiguity. The minister should continue to consult the Board before issuing licences or varying licence conditions. The Board, however, should no longer have the powers to vary the licence conditions. The Act should also provide for certain powers that the Minister may delegate to the Board in writing to improve efficiencies, where required.

### **3.10 Proactive funding**

3.10.1 The Act currently makes access to funding to be purely application-based thus undermining the objective to achieve good cause and making

meaningful impact. For instance, where emergency funding is required in a sector such as charities, for example in a case where a school has been damaged by storms, the application-based process impedes speedy intervention.

3.10.2 There is, therefore, a need to amend the Act to make provision for proactive funding as well within certain specified confines. The proactive funding may be based on emergency or disaster issues or informed by the outcome of proper research to assess needy areas for proactive funding guided by the priorities of the Government. A percentage of allocation that can be used for proactive funding must be determined by the Minister from time to time.

### **3.11 Grants through conduits**

3.11.1 The Act should clarify the limitation of funding that can be provided to conduits that further distribute these funds to good causes. This must be examined within the context of risk involved and the administrative burden placed on the National Lotteries Board to ensure proper governance in the conduits that are granted funds. A number of grants through conduits have raised concerns and there is a need for clarity in the legislation for consistency in the decisions of the Distributing Agencies to be achieved in relation to granting funds to conduits, if at all necessary.

### **3.12 Internal Review Mechanisms of Decisions**

3.12.1 As indicated, there is currently no provision for an Internal Review Mechanism in the Act. As a result, a review committee was set up to try to reduce the costs of approaching courts by applicants. This is, however,

not without challenge as there is no basis for such an Internal Review Mechanism in the Act.

3.12.2 Various options were considered, including introducing an external committee that could review the decision of Distributing Agencies in cases where an applicant that has been declined is not satisfied. However, this was found to be unworkable and could lead to further bureaucracy. Further, it was considered that when an applicant is not happy with an outcome of the Distributing Agency, the matter should be reviewed by the courts. However, access to the courts is impossible as legal costs are astronomical and prohibitive.

3.12.3 Furthermore, it was considered that the decisions of the three- and five-member panels of the Distributing Agencies be reviewed by the full panel of the Distributing Agencies. This was, however, considered undesirable as the decision, irrespective of whether it was made by a three- or five-member panel, is a decision of the Distributing Agency as a whole. Thus the Distributing Agency cannot review its own decision.

3.12.4 It was, therefore, deemed fit that an internal mechanism for the review of the decisions of Distributing Agencies should be provided by the Board of the National Lotteries Board, without the applicant incurring any costs. The Board may allocate a sub-committee specifically for this area so as to be more efficient.

3.12.5 In view of the above, it is recommended that the Distributing Agencies appointed by the Minister on a full-time basis should have their decisions reviewed by the Board as espoused above. This will improve the speed with which matters are adjudicated and reviewed, where necessary, and save organisations the costs of litigation.

### **3.13 Auditing of Financial Statements**

3.13.1 The Act provides for the requirement of an audited financial statement as a requirement after the grant has been provided. While this requirement may have been relevant for proper accounting purposes, there have been developments in the legislative framework that impact on this provision in the Act.

3.13.2 The National Lotteries Board required that the two-year audited financial statement be submitted by each applicant, but this proved to affect access to funds negatively for small and new organisations and compelled those who can to apply through other established entities. Applying through a particular entity carries its risks and in various instances resulted in delays in the reporting on the funds as well as inconsistent application of funds to intended projects. Distinction should be drawn between a first-time applicant and the organisation that has previously received funds from the NLDTF when these requirements are determined.

3.13.3 To accommodate small organisations that do not necessarily have the requisite capabilities to perform auditing on their financials, various methods to ensure accountability were considered. The main reason behind this consideration is the need for relaxation of stringent requirements that bar potential applicants from accessing funds.

3.13.4 It is, therefore, recommended that the Act should be kept in line with the principles of the Companies Act, 2008, which has relaxed auditing requirements for certain types of entities. While bigger and established entities should continue to be required to submit audited financial statements, the smaller entities should be allowed to prepare their financials in the manner acceptable in the Companies Act, with

necessary adjustments taking into consideration that not all organisations are registered as not-for-profit companies in terms of the Companies Act.

3.13.5 Compilations of records should be introduced without defeating the tenets of financial discipline. Auditing *per se* is an involved, costly and burdensome process. Independent review and compilations, if correctly applied, can be best suited to this environment. An option considered was that in the case of small institutions, including new applicants, the verifiable compilation of financial position should be accepted.

3.13.6 Further, it was concluded that financial accountability through auditing or independent reviews or compilation should be required even after the grant has been concluded. This post-grant financial accountability will assist to gauge the success and impact of the lottery on beneficiaries. Various capacity-building interventions to enhance the financial reporting capabilities of smaller entities should be introduced by the National Lotteries Board.

3.13.7 Another option considered that independent review should be accepted in line with the Companies Act. Over and above the considered option, it was recommended that the National Lotteries Board must have an active unit to deal with the financial aspect of the requirements, which will help assess reports against funds received to ensure that funds have been properly utilised and accounted for. Such a unit should be able to verify the financial status of applicants.

3.13.8 Furthermore, if the applicant failed to submit all the necessary information, the National Lotteries Board should, within a reasonable period, inform the applicant that the application is incomplete and therefore rejected. The applicant should be allowed to resubmit a complete application, which should be considered afresh for compliance

purposes. As the requirements will be relaxed in the application forms, based on categories of grants as proposed in this document, it should not be as difficult as it was previously to meet the requirements. It is, therefore, anticipated that the rate of rejection will not be as high as it currently stands.

3.13.9 Further, the education and awareness function of the National Lotteries Board should assist applicants to understand the requirements and mitigate the rate of rejection. The all-year opportunity for organisations to apply will remove the anxiety on organisations that had to wait a long time for a call to be issued to re-apply once rejected.

3.13.10 It is recommended that all the proposed options should be accepted on a case-by-case scenario and be aligned appropriately with the Companies Act, which seeks to reduce the burden on small entities.

### **3.14 Technical Amendments Required**

3.14.1 Over the years of implementing the Act, various technical amendments have been identified. The technical amendments listed herein are the most obvious identified at this policy stage. More technical amendments may be identified during the later stages of approval and the drafting of the Bill following public comments. By its very nature, and during the drafting stage, more technical amendments may be necessitated by various other factors that are not conceivable at this stage.

3.14.2 Technical amendments identified currently are as follows:

- The terms 'Board' for oversight should be distinguished from the National Lotteries Board as an entity and their functions and roles should clearly be distinguished in the amending Act.

- “State running a lottery without licensing a third party.” In this regard, the Act should be amended to enable the State to licence a third party (as is the case now) or for the State to run the lottery itself, if considered possible and viable. The rationale is to allow the State to direct national priorities with full steam to needy areas, but also to allow the State to intervene in instances where a licence is revoked or suspended for any reason.
- “Extension of term”. The current provisions of the Act do not empower the Minister to extend the term of the existing licence to a specified period. The suspension of lottery operations in 2007, when there was a legal challenge by Uthingo, exposed this gap. It is proposed that the Act be amended to include a provision empowering the Minister to extend the term of the existing licence for a once-off period of 24 months, where considered appropriate on specific factors, to prevent the element of abuse by the existing operator to invoke an extension. The provision must provide that the licence term will lapse at least after the duration of 24 months or after the dispute is resolved and a new licence is issued.
- “Advertisement”. The Act must empower the Minister to restrict advertising of lottery by Regulations to be issued by the Minister to instil responsible gambling as well as curbing minors from gambling.
- “*Locus standi* of National Lotteries Board in enforcing the Act”. The National Lotteries Board should be empowered expressly to have *locus standi* in enforcing the Act against unlawful promotional competitions and illegal lotteries. Declaratory orders should be obtainable by the National Lotteries Board with ease. This is so since two court cases differed, one saying the National Lotteries Board has

a *locus standi*, while the other held that the National Lotteries Board does not have a *locus standi* as the Act is not express.

- “Enforcement Powers”. Further, the Act should provide for enforcement powers to be exercised by the National Lotteries Board such as inspections, compliance notices and consent agreements, which will enable the NLB to properly regulate the industry.
- “Access to minors”. Access by minors to the National Lottery must be monitored and enforced by the National Lotteries Board. The regulation of minors must be put as a licensing condition with specific terms.
- “Counselling”. Lotto winners, with more focus on winning of more than R1 million, must undergo a mandatory counselling before they receive their winnings. Such counselling should include financial advice to help them manage the winnings.
- “National Priorities”. Allocation of funds should be informed by national priorities and this criterion must be well spelt for potential applicants. Where national priorities no longer exist in a particular area or project, funding should cease. The Act must clearly specify the discretion in adjudicating to ensure that applicants are clear that the fact that formality requirements are met does not mean the applicant is entitled to a grant.
- “Multi-year funding”. The Act must make provision for multi-year grants to be made available for various sectors, with criteria made clear in the Act to avoid inconsistency. The Act must be clear about how much of the NLDTF funds can be utilised for personnel costs.

Recommendations are that preferably not more than 20% of the grant should go to personnel and 80% must be expended to beneficiaries.

- “Categories of Distributing Agencies”. There is a need to broaden the scope of categories and reconsider abolishing the RDP category as it seems to have become redundant. Other stakeholders are of the view that the following categories should be included, namely Education, Health and Disaster Management. Discretionary Fund, which can rest within the miscellaneous category, will cater for the needs that are not covered in other sectors. Therefore, there may not be a need to extend sectors by statute. The ones that the Act embodies may be enough. The Act should accordingly be amended to include a description of grants that can be accessed through miscellaneous funds, as well as to abolish the RDP category.
- “Direction on Funds”. There is a need to empower the Minister to issue criteria through regulations. This can allow the Minister to channel funds to specific areas, instead of distributing the funds to areas that are not in dire need and provinces whose funds can cater for its needs if properly focused. This can be done in accordance with Section 32 of the Act.
- “Responsible Gambling”. The gambling cluster regulated in terms of the National Gambling Act, 2004 have collectively created and contributed to the funding of the National Responsible Gambling Programme (NRGP). The NRGP is created to offer counselling services to people with gambling problems and conduct base studies on the impact of gambling in society. Operators contribute an amount equal to 0,01% of their Gross Gambling Revenue towards the initiative in a voluntary manner. There have been concerns that people with gambling problems emanating from playing the lottery

also get assistance from NRGF, even when lotto does not contribute towards the initiative. Other views are that the lotto already contributes significantly in funding good cause projects, which include rehabilitation programmes for a number of areas including alcohol, gambling, prisoners and, therefore, there is no need to overburden lotto with an added obligation. The Portfolio Committee for Trade and Industry (PC), after considering submissions from the public hearings on the Gambling Review Commission Report, recommended that lotto should contribute towards the NRGF. However, the PC further recommended that the current NRGF should be restructured to allow broader funding to all initiatives involved in addressing the negative social impact of gambling in society. It is recommended that there is a need to enhance the social responsibility interventions in the Act, which can achieve the same result without compromising the policy decision to separate lottery regulation from general gambling. Combining the contribution to a single fund will also blur the roles of the gambling authorities and the National Lotteries Board in the management and oversight of such fund.

- “Sense of entitlement to lottery funds”. The uproar over unsuccessful applications has created an impression that some organisations hold the view that the lottery funding is meant to sustain their existence in a perpetual manner, even if the need for funding may not be in existence. Lottery funding should be seen as an initiative that is meant to assist where there may be lack of funding, but not as a form of sustaining the existence of such organisations, except perhaps for old age homes and orphanages whose nature is rather different and may require specific intervention from the relevant government departments responsible for them. Lottery funding must reach as many beneficiaries as possible; sustaining the existence of

organisations that do not comply with set criteria, such as achieving national priorities, will limit its reach.

- The provision must outline that the approval for a grant application does not create a legitimate expectation that funding will be approved in the next application, even if the applicant meets all the formalities for applying.

### **3.15 Harmonisation with Other Laws**

3.15.1 There is a need to reconcile the application of the National Lotteries Act with other legislation, in particular those administered by **the dti**: Such legislation includes:

- Companies Act, 2008 requires independent reviews for small companies. Although compilation of records is not a requirement, it can be introduced in this scenario;
- Public Finance Management Act should be complied with by the National Lotteries Board and the Distributing Agencies;
- The National and Provincial Gambling Acts to ensure alignment and streamlining of monitoring of illegal lotteries; and
- Legislation governing not-for-profit organisations and administered by the department responsible for such organisations.

3.15.2 The Act must make provision for co-operation between the National Lotteries Board and other funding institutions and regulators where synergies can be achieved.

### **3.16 Education and Awareness**

3.16.1 Education is one of the national priorities of Government that needs adequate support. It is proposed that education campaigns be funded from the lottery and must comprise a function of the NLB. The Act must thus be amended to include the education and awareness function as a function of the National Lotteries Board.

## **4. Summary of recommendations**

The summary of recommendations is as follows:

- 4.1. The Distributing Agencies must be professionalised and appointed on a full-time basis. They must also be bound by the provisions relating to conflict of interest in the same manner and extent that the staff of the National Lotteries Board is bound. Distributing Agency members should be appointed based on skills, expertise in adjudication and availability to serve on a full-time basis to curb problems of quorum and conflict of interest.
- 4.2. The Distributing Agencies should continue being appointed by the Minister. But as they are part of the distribution function, they should conform to the rules and regulations, including policies of the National Lotteries Board as the entity that by law is required to account to Parliament. The amendments to the Act should clarify accountability in a manner that removes any ambiguity.
- 4.3. An Internal Review Mechanism should be introduced to deal with aggrieved applicants. In this regard, the Board of the National Lotteries Board should serve as a structure to review complaints arising from decisions of the Distributing Agencies and the decision of the review

should be made binding. If applicants are still aggrieved after this process, they may approach the Court of law for relief. This aims to reduce the costs of litigation for applicants.

- 4.4. The processes for accessing funds in the National Lotteries Board must be simplified to improve service delivery. The adjudication of applications can be guided by the nature and size of grants requested. In this case, the grants must be categorised into small, medium and large grants. Small grants can be adjudicated by a three-member panel, medium grants by a five-member panel, and large grants by a full panel subject to quorum requirements. Forms for each of these categories should be simplified to require information that is necessary based on the risk that needs to be mitigated. This will go a long way to increasing the speed of the adjudication process and improve turnaround times and access to funds.
- 4.5. The disbursement of funds includes steps from application to final payment, with adjudication being part of this process. It is, therefore, important to set turnaround times for each category of grant applied for to provide applicants with certainty and to measure the performance of the National Lotteries Board. The Distributing Agencies should not be regarded as independent entities, but as a step in the process of disbursing funds for good cause. The Distributing Agencies should, therefore, be bound by the reporting requirements and rules governing the National Lotteries Board.
- 4.6. The size of the Board of the National Lotteries Board as an oversight structure and accounting authority should be increased to 11 members to enable it to perform its mandate adequately.

- 4.7. The amendments must differentiate clearly between the National Lotteries Board as an entity and the Board of the National Lotteries Board as an oversight structure and accounting authority. This may necessitate a change of the name of the National Lotteries Board to, for example, the National Lotteries Commission or National Lotteries Organisation to minimise confusion.
- 4.8. The Act must distinguish clearly between the functions of the Minister and those of the Board of the National Lotteries Board to prevent concerns arising from the ambiguity in the Act. In this regard, the Board should not be allowed to vary the conditions of a licence issued by the Minister.
- 4.9. The Act should provide for both application-based and proactive funding. In this case, proactive funding should be guided by research that is informed by national priorities. The Minister should be allowed to determine the percentage of allocation that can be given to proactive funding, and review it from time to time. Proactive funding will help support good causes timely, particularly in the case of disasters such as floods or storms.
- 4.10. The Act must clarify the process and the terms through which conduits can be funded. Conduits pose a risk as they are meant to provide further funding to good cause, but various grants have raised significant concerns.
- 4.11. The Act should align financial accounting requirements to the Companies Act 2008, as amended, to reduce the burden on smaller organisations to have financial statements audited.

- 4.12. Education and awareness must be included as part of the functions of the National Lotteries Board in the Act. This will assist entities to understand the requirements to properly apply for report against funds.
- 4.13. The Act must be harmonised with the other laws to improve enforcement and monitoring of compliance.
- 4.14. There are a number of technical amendments that have been identified over the years of implementing the Act. These are articulated in the policy, but are not necessarily exhaustive. The drafting of the Bill will bring more technical errors to the fore and these will be corrected accordingly.

## **5. Conclusions**

- 5.1. It is proposed that the recommendations as outlined in the discussion be accepted and used as a basis for amending the legislation. Functions and roles of structures or bodies should not create anomalies that will make implementation of the Act impossible. It is believed that if the policy recommendations are followed, all problems that previously marred the administration of the lottery will be solved.