

REPUBLIC OF SOUTH AFRICA

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# LOTTERIES AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill published in Government Gazette No. 36600 of 2 July 2013);  
(The English text is the official text of the Bill)*

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(MINISTER OF TRADE AND INDUSTRY)

**[B 21—2013]**

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[ ] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

**To amend the Lotteries Act, 1997, so as to amend certain definitions; to provide for the establishment of a National Lotteries Commission; to provide for the extension of the powers of the board; to provide for the licensing of an organ of state to conduct the National Lottery; to provide for a clear accountability process for the distributing agency; to provide for the professionalisation of the distributing agency; to eliminate overlapping of functions between the Minister and the board; to provide for the removal of the reconstruction and development programme as a category entitled to be allocated money of the fund; and to provide for matters connected therewith.**

### Amendment of section 1 of Act 57 of 1997

(a) by the substitution for the definition of “board” of the following definition:

(b) by the deletion of the definition of “chief executive officer;”;

“ **‘Commission’** means the National Lotteries Commission established by section 2;”;

“ ‘**Constitution**’ means the Constitution of the Republic of South Africa, 1996 [(Act No. 108 of 1996)];”;

“‘**distribute**’, in relation to documents or other objects, includes 20 distribution to persons or places within **[or outside]** the Republic;”;

“ ‘immediate family member’ includes a spouse, parents, children, stepchildren, fostered or adopted children and siblings of either spouse;”

- (g) by the substitution for the definition of “licensee” of the following definition:  
     “**‘licensee’** means **[the]** a person **[to whom the]** or organ of state issued with a licence for the National Lottery **[has been issued]** in terms of section 13 **[(1)]**”; and
- (h) by the insertion after the definition of “newspaper” of the following definition:  
     “**‘organ of state’** means an organ of state as defined in section 239 of the Constitution;”.

#### **Amendment of title of Chapter 1 of Act 57 of 1997**

2. The title of Chapter 1 of the principal Act is hereby substituted for the following title:  
     “**National Lotteries [Board] Commission**”

#### **Substitution of section 2 of Act 57 of 1997**

3. The following section is hereby substituted for section 2 of the principal Act:

##### **“Establishment of National Lotteries [Board] Commission**

2. (1) There is hereby established a **[board] Commission** to be known as the National Lotteries **[Board] Commission**, which shall be a juristic person.

(2) The Commission is governed by a board appointed in accordance with this Act.”.

#### **Insertion of sections 2A, 2B, 2C, 2D, 2E, 2F, 2G in Act 57 of 1997**

4. The principal Act is hereby amended by the insertion after section 2 of the following sections:

##### **“Functions of Commission**

2A. (1) The Commission shall, applying the principles of openness and transparency, exercise the functions assigned to it in terms of this Act by the Minister, board or any other law.

(2) The Commission must ensure that—

- (a) the National Lottery and sports pools are conducted with all due propriety and strictly in accordance with the Constitution, this Act, all other applicable law and the licence for the National Lottery, together with any agreement pertaining to that licence; and
- (b) the interests of every participant in the National Lottery are adequately protected.

(3) The Commission may, upon request by the Minister, board or on its own initiative in consultation with the board, conduct research on worthy good causes that may be funded without lodging an application in terms of this Act.

(4) The Commission may, upon request by the Minister, board or on its own initiative in consultation with the board, solicit applications for grants from worthy good causes.

(5) The Commission shall—

- (a) promote public knowledge and awareness by—
- (i) developing and implementing educational and informational measures to educate the public about the lotteries and provisions of this Act; and
  - (ii) educating the public by explaining the process, requirements and qualifications relating to the application for grants in terms of this Act;
- (b) manage the staff, financial, administrative and clerical functions or any duties of the distributing agency as directed by the Minister or the board, except the function to adjudicate upon applications to the distributing agency for grants in terms of this Act; and

- (c) exercise any other function as delegated or directed by the Minister or the board.

### **Appointment of Commissioner**

- 2B.** (1) The Minister shall, after consultation with the board, appoint a person with suitable qualifications and experience as Commissioner, who— 5
- (a) is accountable to the board for the performance of all financial, administrative and clerical functions, as well as any duties which may be delegated to him or her by the board under this Act; and
  - (b) holds office for an agreed renewable term not exceeding five years. 10
- (2) The Minister shall, after consultation with the board, appoint any person as an Acting Commissioner to perform the functions of the Commission for such determined term not exceeding three years when—
- (a) the Commissioner is unable for any reason to perform the functions of the Commissioner; or
  - (b) the office of the Commissioner is vacant. 15
- (3) The Minister shall, in consultation with the Minister of Finance, determine the Commissioner's and Acting Commissioner's remuneration, allowances, benefits and other special terms and conditions of employment. 20

### **Removal of Commissioner**

- 2C.** (1) The Minister may, after consultation with the board, at any time, remove the Commissioner from office if—
- (a) the Commissioner repeatedly fails, to the satisfaction of the Minister and the board, to perform the duties of the Commission; 25
  - (b) due to any physical or mental illness or disability, the Commissioner becomes incapable of performing the functions of that office or unsatisfactorily performs such functions;
  - (c) he or she contravenes any provision of this Act; or
  - (d) he or she is found guilty of any misconduct. 30

### **Appointment of staff of Commission**

- 2D.** (1) The Commissioner shall—
- (a) in consultation with the board, appoint suitable persons as senior executive officials of the Commission;
  - (b) appoint such staff members as may be necessary to efficiently and effectively perform the functions and duties of the Commission, on such terms and conditions determined by the board and approved by the Minister in consultation with the Minister of Finance. 35
- (2) The Commissioner may, in consultation with the board, request the Minister to authorise or approve transfer or secondment of officials in the department in terms of the applicable legislation, to assist the Commission in the performance of its functions. 40
- (3) The Commissioner may—
- (a) assign management or other duties to employees with appropriate knowledge and skills to assist the Commission in the management or control over the functioning of the Commission; or
  - (b) delegate, with or without conditions, any of the powers or functions of the Commissioner to any suitably qualified employee of the Commission, but any such delegation does not divest the Commissioner of responsibility for the exercise of any power or performance of any duty. 45
- (4) A delegation by the Commissioner of any of the powers entrusted or delegated to it in terms of the Public Finance Management Act shall be in accordance with section 56 of that Act. 50

## Disqualifications

- 2E.** (1) The Minister shall not appoint a person as a Commissioner who—
- (a) is not a South African citizen;
  - (b) or whose spouse, life partner, business partner or associate, holds an office in or is employed by or has any other interest whatsoever, whether direct or indirect, in any company or other entity which supplies goods or renders services to the Commission, unless such an interest is declared to the satisfaction of the Minister; 5
  - (c) is disqualified to act as a director of a company incorporated in terms of the Companies Act, 2008 (Act No. 71 of 2008); 10
  - (d) has been found in any civil or criminal proceedings by a court of law, whether in the Republic or elsewhere, to have acted fraudulently, 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; 15
  - (e) has been removed from a position of trust;
  - (f) has prematurely been removed as member of a board or other accounting authority of a public entity;
  - (g) was at any time found to be in contravention of this Act;
  - (h) has been declared by a court of law to be of an unsound mind; or 20
  - (i) is an unrehabilitated insolvent.
- (2) Nothing in this Act prevents the Minister from subjecting a prospective Commissioner or a Commissioner to a probity test to determine suitability or continued suitability of a candidate for appointment as a Commissioner or continued appointment as a Commissioner. 25

## Conflict and declaration of interest

- 2F.** (1) The Commissioner, or any person appointed by the Commission, may not—
- (a) engage in any activity that may undermine the integrity of the Commission; 30
  - (b) attend, participate in, or influence any investigation, hearing or decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest;
  - (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the Commission; or 35
  - (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions within the Commission.
- (2) The Commissioner and every employee of the Commission must, before being appointed, submit to the Commission a written statement in which he or she declares whether or not that person has any direct or indirect interest, financially or otherwise, whether or not such interest—
- (a) may constitute a conflict of interest in respect of his or her functions as a member of staff of the Commission; or 45
  - (b) could reasonably be expected to compromise the Commission in the performance of its functions.
- (3) Should the Commissioner or any person appointed by the Commissioner become aware of any conflict of interest or perceived conflict of interest or circumstances that may compromise his or her impartiality in executing his or her duties as so appointed, he or she must immediately stop executing such duties and must within seven days of becoming aware of such conflict or perceived conflict or circumstances—
- (a) in the case of the Commissioner, inform the Minister and the board; 50
  - (b) in the case of any person appointed by the Commissioner, inform the Commissioner of any such conflict or circumstance. 55
- (4) The Minister, after consultation with the board or the Commissioner, in consultation with the board in the case of a person appointed by the Commissioner, may consider whether such conflict or circumstance is

likely to compromise the impartiality of such a person in the performance of his or her duties.

(5) Should the Commissioner or any employee of the Commission become aware of any conflict of interest or perceived conflict of interest or circumstances that may compromise his or her impartiality in executing his or her duties, he or she must immediately stop executing such duties and must within seven days of becoming aware of such conflict or perceived conflict or circumstances, inform the Commissioner, Minister or the board, as the case may be, of any such conflict or circumstance. 5

(6) The Commissioner, Minister or board, as the case may be, after consultation with the board or Minister, may consider whether such conflict or circumstance is likely to compromise the impartiality of such a person in the performance of his or her duties. 10

(7) The Commissioner, Minister or board, as the case may be, after consultation with the board or Minister, may institute disciplinary proceedings against any person who fails or refuses to comply with or contravenes this section in accordance with applicable legislation. 15

(8) The Minister, board or Commissioner, as the case may be, may, after considering whether such conflict or circumstance is likely to compromise the impartiality of such a person, inform such a person of his or her decision which may include and is not limited to— 20

- (a) suspending such a person pending any further investigations;
- (b) instituting a disciplinary inquiry to probe such conflict or circumstance; or
- (c) dismissing such a person from his or her employment in accordance with applicable legislation. 25

#### **Confidentiality and restraint of trade**

**2G.** (1) The Commissioner or any employee of the Commission may not use his or her position or privileges, or confidential information obtained as an employee of the Commission, for personal gain or to improperly benefit another person. 30

(2) The Commissioner or any employee or his or her spouse, life partner, immediate family member or business partner or associate, may not during the time of his or her employment at the Commission or for a period of 24 months after the termination or expiry of such membership, take up employment or in any way receive any benefit from any person who intends to apply or has applied in terms of section 13, for a licence to conduct the National Lottery. 35

(3) The Minister shall, after consultation with the board—  
 (a) institute disciplinary proceedings against the Commissioner who fails or refuses to comply with or contravenes this section; or  
 (b) institute disciplinary proceedings against any employee who fails or refuses to comply with or contravenes this section.”. 40

#### **Amendment of section 3 of Act 57 of 1997, as substituted by section 36 of Act 12 of 2004** 45

**5.** Section 3 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (b), the insertion of the word “and” at the end of paragraph (c) and the addition of the following paragraph:  
 “(d) the chairperson of the distributing agency as an *ex-officio* member with no voting rights.”; 50
- (b) by the substitution for subsection (2) of the following subsection:  
 “(2) At least four members of the board referred to in subsection (1) shall be persons who are not in the service of any sphere of government.”; 55

- (c) by the substitution for subsection (4) of the following subsection:  
 “(4) A member of the board shall hold office for such period, not exceeding five years, as the Minister may determine at the time of his or her appointment, and shall be eligible for reappointment at the end of his or her first term of office for a further period not exceeding five years.”; 5
- (d) by the substitution in subsection (5) for paragraph (a) of the following paragraph:  
 “(a) may, as soon as he or she gains knowledge of any possible disqualification, terminate the membership of any member of the board on the grounds of serious misconduct or prolonged inability 10 to perform the functions [of] as a member of the board;”; and
- (e) by the deletion of subsection (7).

### Insertion of sections 3A, 3B, 3C in Act 57 of 1997

6. The following sections are hereby inserted after section 3 of the principal Act:

#### “Disqualification of members of board 15

**3A.** (1) The Minister may not appoint a person to the board who—

- (a) is not a South African citizen;
- (b) is a political office bearer;
- (c) is disqualified to act as a director of a company incorporated in terms of the Companies Act, 2008 (Act No. 71 of 2008); 20
- (d) has been found 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; 25
- (e) has been removed from a position of trust;
- (f) has been subjected to a disciplinary hearing resulting in his or her membership of a board or any other accounting authority of a public entity being prematurely terminated in the past five years;
- (g) was at any time found to be in contravention of this Act or any other Act applicable to the public service in the past five years; 30
- (h) has been declared by a court of law to be of an unsound mind; or
- (i) is an unrehabilitated insolvent.

(2) Nothing in this Act prevents the Minister from subjecting a prospective member or a member of the board to a probity test to determine suitability or continued suitability of a candidate for appointment as a member of the board or continued membership of the board. 35

#### Conflict of interests

**3B.** (1) A member of the board must, before appointment, submit a declaration made under oath or by affirmation to the Minister, to the effect that he or she is not disqualified from appointment as contemplated in section 3A. 40

(2) A member of the board, including the Commissioner and chairperson of the distributing agency, who at any time during his or her term of office becomes disqualified to be a board member on any one of the grounds contemplated in section 3A— 45

- (a) must immediately in writing inform the Minister and the board of such disqualification, and the Minister must then forthwith remove that member from the board; and
- (b) does not have a right to attend a board meeting from the time he or she has so become disqualified until he or she is removed by the Minister. 50

(3) A member of the board shall, before appointment, submit to the Minister a written statement in which he or she declares whether or not he or she has any direct or indirect interest, financially or otherwise, whether or not such interest— 55

- (a) may constitute a conflict of interest in respect of his or her functions as a member of the board; or

(b) could reasonably be expected to compromise the board in the performance of its functions.

(4) If a member of the board acquires an interest contemplated in subsection (3), he or she shall immediately in writing declare that fact to the Minister and the board.

(5) If a member of the board becomes aware of any conflict of interest or perceived conflict of interest or circumstances that may compromise his or her impartiality in executing his or her duties, he or she shall immediately stop executing such duties and must within seven days of becoming aware of such conflict or perceived conflict or circumstances, inform the Minister and the board of any such conflict or circumstances.

(6) The Minister, after consultation with the board, shall consider whether such conflict or circumstances is likely to compromise the impartiality of such a person in discharging his or her duties.

(7) The Minister, after consultation with the board, may institute disciplinary proceedings against any member who fails or refuses to comply with or contravenes this section in accordance with applicable legislation.

(8) The Minister shall, after consultation with the board and after considering whether such conflict or circumstances is likely to compromise the impartiality of such a person, inform such a person of his or her decision which may include and is not limited to—

(a) suspending such a person pending any further investigations;

(b) instituting a disciplinary enquiry to probe such conflict or circumstances; or

(c) dismissing such a person from being a member of the board.

(9) The Minister and the board must keep a register of the interests of members of the board disclosed in terms of this section and must update that register from time to time.

#### **Confidentiality and restraint of trade**

**3C.** (1) A board member may not use his or her position or privileges, or confidential information obtained as a member of the board, for personal gain or to improperly benefit another person.

(2) A member of the board or his or her spouse, life partner, immediate family member or business partner or associate, may not during the time of his or her membership of the board or for a period of 24 months after the termination or expiry of such membership, take up employment or in any way receive any benefit from any person who intends to apply or has applied in terms of section 13, for a licence to conduct the National Lottery.

(3) The Minister may, after consultation with the board, institute disciplinary proceedings against any board member who fails or refuses to comply with or contravenes this section.”.

#### **Amendment of section 4 of Act 57 of 1997**

7. Section 4 of the principal Act is hereby amended by the addition of the following subsections:

“(7) The board must meet regularly to perform its functions in terms of the Act.

(8) The Minister may, on the advice of the chairperson or the board, terminate the membership of a member who fails to attend two meetings consecutively without prior notification and approval of the chairperson or the board.”.

#### **Substitution of section 5 of Act 57 of 1997**

8. The following section is hereby substituted for section 5 of the principal Act:

#### **“[Executive committee of board] Committees**

**5.** (1) The board may [from time to time appoint an executive committee to perform the functions and exercise the powers delegated



**to it by the board]** appoint committees to assist it in efficiently and effectively performing its functions and exercising its powers.

(2) **[An executive committee]** Committees shall consist of such members of the board as the board may designate.

(3) The board shall designate the chairperson of **[an executive committee]** every committee. 5

(4) (a) **[An executive committee]** Every committee shall perform its functions in accordance with the provisions of this Act and such directives of the board as are not in conflict with such provisions.

(b) Any delegated function so performed shall be deemed to have been performed by the board.”. 10

#### **Repeal of section 7 of Act 57 of 1997**

9. Section 7 of the principal Act is hereby repealed.

#### **Amendment of section 10 of Act 57 of 1997**

10. Section 10 of the principal Act is hereby amended— 15

(a) by the substitution for the words preceding paragraph (a) of the following words:

“(1) The board shall[,]in applying the principles of openness and transparency and in addition to its other functions in terms of this Act—;” 20

(b) by the substitution for paragraph (c) of the following paragraph:

“(c) manage and administer the fund and hold it in trust;”;

(c) by the addition of the following paragraphs:

“(l) ensure that the Commission performs its functions efficiently and effectively in compliance with this Act and any other applicable law; 25

(m) approve, determine, oversee or revise the Commission’s operational strategic framework or policies, corporate governance framework policies, human resources policies and approve the appointment of senior executive employees of the Commission; 30

(n) approve, determine, oversee, or revise the broad policy framework within which the Commission must perform its functions;

(o) ensure that the Commission exercises its powers in accordance with the principles of transparency and accountability;

(p) serve as review or appeal authority against decisions of the distributing agency regarding applications for grants; 35

(q) conduct or authorise the Commission 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; 40

(r) have the power to solicit applications for grants from any appropriate and worthy good causes that it deems fit;

(s) have the power to prohibit, withdraw or reduce any grant made by the distributing agency if the board receives information that such grant is utilised or is likely to be utilised in a manner that does not comply with the purpose or conditions stipulated in the grant or is utilised or is likely to be utilised for an unlawful purpose or purpose 45  
distantly unrelated to the purpose of the grant;

(t) in consultation with the Minister, determine category of applications for grants that are excluded from funding; 50

(u) promote public knowledge and awareness by—

(i) creating and implementing educational and informational measures to educate the public about the lotteries and provisions of this Act; and

(ii) educating and guiding the public by explaining the requirements and qualifications to apply for the grants; 55

(v) take all reasonable steps to recover any amount in relation to a grant which has since been withdrawn in terms of paragraph (s).”; 5

(d) by the addition of the following subsections:

“(2) The board shall have the power to institute legal proceedings in order to properly discharge its functions and responsibilities in terms of this Act.

(3) The board may approach any court for any order the board deems appropriate for effective regulation and enforcement of the Act.”. 5

#### **Insertion of section 10A in Act 57 of 1997**

11. The following section is hereby inserted after section 10 of the principal Act:

##### **“Delegation by board**

**10A.** The board may assign management or other functions or delegate, with or without conditions, any of its powers or functions to the Commissioner or Commission, but any such delegation does not divest the board of any responsibility for the proper exercise of any power or performance of any function.”. 10

#### **Amendment of section 13 of Act 57 of 1997**

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12. Section 13 of the principal Act is hereby amended by the deletion of subsection (6).

#### **Insertion of section 13A in Act 57 of 1997**

13. The following section is hereby inserted after section 13 of the principal Act:

##### **“Appointment of organ of state to conduct National Lottery**

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**13A.** (1) In the event that the Minister decides on justifiable grounds not to issue a licence as contemplated in section 13, the Minister may, after consultation with the board, licence or authorise an organ of state to conduct the National Lottery for a period not exceeding two years, on such terms and conditions as the Minister deems appropriate, including such conditions as stipulated in section 14(1) and (2). 25

(2) In deciding whether justifiable grounds contemplated in subsection (1) exist, the Minister shall take into consideration national government plans or priorities.

(3) The Minister may at any time, after consultation with the board, owing to the fact that— 30

(a) the licensee is for any reason whatsoever unable to conduct the National Lottery in terms of the conditions of the licence or is unable to meet the conditions of the licence to the satisfaction of the Minister; 35

(b) the licence to conduct the National Lottery is suspended for any reason whatsoever;

(c) the licence to conduct the National Lottery is revoked in terms of this Act; or 40

(d) the licence to conduct the National Lottery has expired, appoint or authorise any person or organ of state as the case may be, for a non-renewable period not exceeding 24 months to conduct the National lottery on such terms and conditions as the Minister deems appropriate. 45

(4) The licence issued to an organ of state may allow such organ of state to appoint any other person to conduct certain lotteries of the National Lottery on behalf of such organ of state, subject to the written approval of the Minister.”.

#### **Amendment of section 14 of Act 57 of 1997, as substituted by section 1 of Act 10 of 2000**

14. Section 14 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) A licence granted in terms of section 13 or 13A shall be in writing, shall specify the conditions attached to it and shall be granted for a **[minimum period of five years or a maximum]** period **[of] not exceeding** eight years: Provided that the Minister may, after consultation with the board~~], in a case where the licence has been granted for less than eight years,~~ and at least one year before the expiry of that licence, extend that licence for **[such further period as would, together with the initial period for which that licence was granted, not exceed eight years]** a non-renewable period not exceeding 24 months: Provided further that the licensee shall have no rights or legitimate expectations in respect of an extension of the period of validity of the licence other than the rights afforded by this subsection.”;
- (b) by the substitution in subsection (2) for paragraphs (a), (b) and (c) of the following paragraphs, respectively:
- “(a) to obtain the consent of the Minister after consultation with the board before doing anything specified in the licence;
- (b) to refer specified matters to the board and the board must refer such matters to the Minister **[or to the board, as the case may be,]** for approval;
- (c) to ensure that such requirements as the Minister **[or] after consultation with** the board may from time to time determine or approve in terms of the licence are complied with, including the imposition of penalties as contemplated in section 62 in the event of the licensee not complying with any provision of this Act or the licence.”.

#### Amendment of section 15 of Act 57 of 1997

##### 15. Section 15 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “The Minister **[or the board]** may after consultation with the board vary any condition in the licence granted under section 13 or 13A—;”
- (b) by the substitution in subsection (1) (b) for subparagraph (ii) of the following subparagraph:
- “(ii) the licensee has been given a reasonable opportunity to make representations to the Minister **[or the board, as the case may be,]** in respect of the intended variation.”;
- (c) by the substitution for subsection (2) of the following subsection:
- “(2) If the Minister **[or] after consultation with** the board, and after consideration of the licensee’s representations, decides to vary a condition in the licence in accordance with that licence but without the consent of the licensee, the Minister **[or the board, as the case may be,]** shall cause a notice to be served on the licensee in which the licensee is informed of the variation and the date on which that variation shall take effect, which date shall not be less than 21 days after the date of service of such notice, unless the licensee agrees to a shorter period in writing.”;
- and
- (d) by the substitution for subsection (3) of the following subsection:
- “(3) The provisions of the licence to vary a condition in the licence under subsection (1) may allow the Minister **[or] after consultation with** the board to add a condition to the licence or to omit a condition from the licence.”.

#### Amendment of section 16 of Act 57 of 1997

##### 16. Section 16 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) If the Minister **[or the board]** has reason to believe—
- (a) that a **[person]** licensee is likely to contravene a condition in the licence granted under section 13 or 13A;

- (b) that a **[person]** licensee has contravened such a condition and there is a reasonable likelihood that the contravention will continue or be repeated; or
- (c) that a **[person]** licensee has contravened such a condition and that the contravention can be remedied,
- the Minister **[or the board, as the case may be,]** may, after consultation with the board—
- (i) notify such licensee of such contravention;
  - (ii) instruct such licensee to remedy the contravention within a period stipulated in such a notice; or
  - (iii) apply to a High Court for an order prohibiting the contravention or, as the case may be, requiring the licensee and any other person who appears to the court to have been party to the contravention, to take such steps as the court may direct.”.

#### Amendment of section 17 of Act 57 of 1997

17. Section 17 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“The licence granted under section 13 or 13A may be revoked by the Minister **[or, after consultation with the board,]** on the following grounds.”.

#### Amendment of section 18 of Act 57 of 1997

18. Section 18 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) If the Minister **[or, after consultation with the board,]** is satisfied that grounds exist for the revocation of the licence granted in terms of section 13[, or 13A, the Minister **[he, she or the board, as the case may be,]** shall in writing notify the licensee of the existence of such grounds and call upon the licensee to furnish reasons, within 14 days of service of that notice at the registered physical address of the licensee, as to why the licence should not be revoked, failing which the licence will cease to be valid upon the expiration of the said period of 14 days.”; and
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) If the licence for the National Lottery ceases to be valid in terms of subsection (1), the Minister **[or after consultation with the board [, as the case may be,]** shall forthwith inform the licensee and Parliament in writing of that fact and of the date upon which the licence ceased to be valid, and if Parliament is not then in session, **[it shall be so informed on the first of the next session]** the Minister shall forthwith inform the Speaker of the National Assembly and the Chairperson of the National Council of Provinces of that fact.”.

#### Amendment of section 19 of Act 57 of 1997

19. Section 19 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) The Minister **[or, after consultation with the board,]** may order a suspension of the licence in the notice contemplated in section 18(1) as from the date of service of that notice for a period of not longer than 30 days after the licensee has furnished those reasons[: **Provided that the Minister or the board, whoever acts in terms of this section, shall inform the other of his or her or its actions.]**.”;
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) If the Minister, **[or after consultation with the board,]** decides to suspend the licence in terms of subsection (1), the Minister shall forthwith inform the board and Parliament of that fact and of the grounds for the suspension, and if Parliament is not then in session, **[on the first day of the next session in Parliament]** the Minister shall forthwith inform the Speaker of the National Assembly and the Chairperson of the National Council of Provinces of that fact.”; and

- (c) by the substitution for subsection (4) of the following subsection:

“(4) The Minister shall forthwith inform Parliament if the licence has ceased to be valid in terms of subsection (3), and if Parliament is not then in session, **[on the first day of the next session of Parliament]** the Minister shall forthwith inform the Speaker of the National Assembly and the Chairperson of the National Council of Provinces of that fact.”.

#### Amendment of section 20 of Act 57 of 1997

##### 20. Section 20 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“If reasons are furnished by the licensee as contemplated in section 18(1), the Minister, **[or]** after consultation with the board **[, as the case may be]**, shall after considering such reasons—”;

- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) call upon the licensee to appear before the board on a specified date to make oral representations in support of any written representations made by the licensee or to answer any questions which the Minister **[or the board, as the case may be,]** may have with regard to such written representations, whereafter the Minister, **[or]** after consultation with the board, shall consider the matter and decide whether or not to revoke the licence.”;

- (c) by the substitution for subsection (2) of the following subsection:

“(2) If the Minister, **[or]** after consultation with the board, decides to revoke the licence, **[he or she or it]** the Minister shall by written notice served at the registered head office of the licensee notify the licensee of that fact, of the grounds for that revocation and of the date on which that revocation shall take effect.”; and

- (d) by the substitution for subsection (3) of the following subsection:

“(3) If the Minister, **[or]** after consultation with the board, decides to revoke the licence in terms of subsection (1), the Minister **[or the board, as the case may be,]** shall inform the Minister of Finance and Parliament of that fact and of the grounds for that revocation forthwith, and if Parliament is not then in session **[on the first day of the next session of Parliament]**, the Minister shall forthwith inform the Speaker of the National Assembly and the Chairperson of the National Council of Provinces of that fact.”.

#### Amendment of section 21 of Act 57 of 1997

##### 21. Section 21 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The board shall annually table **[a report]** financial reports in accordance with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), in Parliament in respect of the **[fund]** distributed funds, which **[may]** financial report must form part of the report contemplated in section 12(1)(b).”.

#### Amendment of section 22 of Act 57 of 1997

##### 22. Section 22 of the principal Act is hereby amended—

- (a) by the substitution for the section heading of the following heading:

**“[Fund to vest in and to be administered by board] Administration of the fund”**

- (b) by the substitution for subsection (1) of the following subsection:

“(1) The fund shall **[vest in and]** be administered by the board.”; and

- (c) by the addition of the following subsection:

“(3) The fund shall be held in trust by the board for distribution by the distributing agency of any sum paid into the fund as is allocated for expenditure referred to in section 26(3)(b), (c), (d) and (e).”.

### Amendment of section 26 of Act 57 of 1997

**23.** Section 26 of the principal Act is hereby amended by the deletion in subsection (3) of paragraph (a).”.

### Insertion of sections 26A, 26B, 26C, 26D, 26E and 26F in Act 57 of 1997

**24.** The following sections are hereby inserted after section 26 of the principal Act: 5

#### “Distributing agency

**26A.** The distributing agency contemplated in section 22(3) shall be—

- (a) appointed by the Minister in terms of this Act;
- (b) accountable to the board; and
- (c) responsible for distributing any sum paid into the fund in terms of this Act.

#### Function, composition, appointments and conditions of service of distributing agency

**26B.** (1) The distributing agency shall be responsible for distributing grants to good causes contemplated in sections 28, 29, 30 and 31. 15

(2) The distributing agency shall be composed of nine members appointed on a permanent basis as distributors of the grants, who shall be regarded as staff members of the Commission responsible for adjudicating applications for grants.

(3) The Minister may, after consultation with the board— 20

- (a) appoint nine persons with suitable combination of qualifications, skills and expertise to distribute the grants, on such terms and conditions determined by the Minister in consultation with the Minister of Finance;
- (b) designate one person from amongst the members as a chairperson, for a non-renewable period of five years, on such terms and conditions determined by the Minister in consultation with the Minister of Finance. 25

(4) The member designated as a chairperson shall upon the expiry of such period become an ordinary member entitled only to an ordinary member’s conditions of appointment and remuneration. 30

#### Disqualifications for distributing agency membership

**26C.** (1) The Minister may not appoint a person as a member of the distribution agency if such a person—

- (a) is a political office-bearer; 35
- (b) is or becomes an unrehabilitated insolvent or commits an act of insolvency;
- (c) is disqualified to act as a director of a company incorporated in terms of the Companies Act, 2008 (Act No. 71 of 2008);
- (d) has been found in any civil or criminal proceedings by a court of law, whether in the Republic or elsewhere, to have acted fraudulently, dishonestly, unprofessionally, dishonorably 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 in the past five years; 40
- (e) has been removed from a position of trust in the past five years on account of misconduct; 45
- (f) has been subjected to a disciplinary hearing resulting in his or her membership of a board or any other accounting authority of a public entity, been prematurely terminated in the past five years; 50
- (g) has been at any time found to be in contravention of this Act or any other Act applicable to the public service in the past five years; or
- (h) has been declared to be of unsound mind by a court of law.

(2) Nothing in this Act prevents the Minister from subjecting a prospective member or a member of the board to a probity test to determine suitability or continued suitability of a candidate for appointment as a member of the board or continued membership of the board, as the case may be.

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### **Conflict and declaration of interest**

**26D.** (1) A member of the distributing agency must, before appointment, submit to the Minister, board and the Commission a written statement in which he or she declares whether or not he or she has any direct or indirect interest, financially or otherwise, whether or not such interests—

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- (a) may constitute a conflict of interest in respect of his or her functions as a member of the distributing agency; or
- (b) could reasonably be expected to compromise the distributing agency in the performance of its functions.

(2) If such a member acquires any interest as contemplated in subsection (1), he or she must, within 30 days in writing, declare that fact to the Minister, board and the Commission.

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(3) A member must not be present at, or take part in, the discussion of or the taking of a decision on any matter before the distributing agency in which that member has an interest contemplated in subsection (1).

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(4) A member must not use his or her position or privileges, or confidential information obtained as a member of the distributing agency, for personal gain or to improperly benefit another person.

(5) Should the Minister or the board become aware of any conflict of interest or perceived conflict of interest or circumstances that may compromise the impartiality of a person in executing his or her duties as a member of the distributing agency, the Minister may, after consultation with the board immediately order such person to stop executing any duties related to distributing grants pending any investigation or inquiry.

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(6) Should any member of the distributing agency become aware of any conflict of interest or perceived conflict of interest or circumstances that are likely to compromise his or her impartiality in executing his or her duties, such person must immediately stop executing such duties and must within seven days of becoming aware of such conflict or perceived conflict or circumstances inform the Minister, board and the Commission of any such conflict or circumstances and the Minister must, after consultation with the board consider whether such conflict or circumstances is likely to compromise the impartiality of such person in the performance of his or her duties.

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(7) The Minister may, after consultation with the board, institute disciplinary proceedings against any member of the distributing agency who fails or refuses to comply with or contravenes this section.

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(8) The Minister, board and the Commission must keep a register of the interests of members of the distributing agency disclosed in terms of this section and must update that register from time to time.

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(9) The Minister may, after considering whether such conflict or circumstances is likely to compromise the impartiality of such a person, inform such a person of his or her decision which may include—

- (a) suspending such a person pending any further investigations;
- (b) instituting a disciplinary inquiry to probe such conflict or circumstances;
- (c) dismissal of such a person from executing his or her duties as a distributor of grants on the ground of serious misconduct, where such person has failed to inform the Minister, board and the Commission of the existence of such conflict.

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### **Control and management of affairs of the distributing agency**

**26E.** The distributing agency is accountable to the board and the board may—

- (a) determine the operational policy for the performance of all financial, administrative and clerical functions of the distributing agency;
- (b) in consultation with the Minister, determine the monetary threshold in respect of applications or payment of grants that require automatic review by the board;
- (c) determine the period within which an application for grants should be finalised;
- (d) in consultation with the Minister, determine any other process or monetary threshold that will facilitate effective and efficient distribution of grants, including the processing of applications, internal review or appeal process of the distributing agency;
- (e) determine or direct or order the performance of any other matter or research intended to enhance the optimum functioning of the board and the distribution of grants;
- (f) allocate a seat within the board to the chairperson of the distributing agency or his or her nominee as an ex-officio member without a voting right;
- (g) ensure that the distributing agency performs its distribution function independently and without fear, favour or prejudice;
- (h) ensure that the distributing agency adheres to any policy, directive or code of ethics approved by the board and applicable within the public sector; and
- (i) ensure that a simple and clear process or procedure for the settlement of disputes lodged against the distributing agency is developed.

#### Applications for grants

**26F.** (1) The distributing agency shall consider applications for grants and may distribute such grants to appropriate recipients in accordance with the guidelines or directives issued in terms of this Act.

(2) 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.

(3) A decision of the distributing agency concerning an application for a grant is subject to review or appeal to the board: Provided that such review or appeal shall be adjudicated upon by a board committee set up for such purpose without delay.

(4) If the board overrules the decision of the distributing agency, either during automatic review proceedings or during ordinary review or appeal proceedings, the board may order the distributing agency to re-evaluate the application taking into consideration recommendations, or matters raised by the board.”.

#### Repeal of section 27 of Act 57 of 1997

25. Section 27 of the principal Act is hereby repealed.

#### Amendment of section 28 of Act 57 of 1997

26. Section 28 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) So much of any sum paid into the fund as is allocated for expenditure referred to in section 26(3)(b), shall be held in the fund for distribution by the distributing agency appointed by the Minister **[in consultation with the Minister responsible for welfare and population development in the national sphere of government]** which possesses the required suitable combination of qualifications, skills and expertise to distribute the allocated sum fairly and equitably amongst all persons who meet the prescribed requirements;”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) The distributing agency shall consider applications for grants and may **[, subject to section 33,]** pay such grants to appropriate recipients in



accordance with this Act and subject to the conditions applying to its appointment and to any directions issued by the board in consultation with the Minister **[after consultation with the Minister responsible for welfare and population development in the national sphere of government, or by the Minister of Finance,]** from the sum allocated for charitable purposes.”; 5

(c) by the deletion of subsection (3).

#### Amendment of section 29 of Act 57 of 1997

27. Section 29 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 10

“(1) So much of any sum paid into the fund as is allocated for expenditure referred to in section 26(3)(c), shall be held in the fund for distribution by the distributing agency appointed by the Minister **[in consultation with the Minister responsible for sport and recreation in the national sphere of government]** which possesses the required suitable combination of qualifications, skills and expertise to distribute the allocated sum fairly and equitably amongst all persons who meet the prescribed requirements.”; 15

(b) by the substitution for subsection (2) of the following subsection:

“(2) The distributing agency shall consider applications for grants and may **[, subject to section 33,]** pay such grants to appropriate recipients in accordance with this Act and subject to the conditions applying to its appointment and to any directions issued by the board in consultation with the Minister **[after consultation with the Minister of Sport and Recreation, or by the Minister of Finance,]** from the sum allocated for the development of sport and recreation.”; and 20 25

(c) by the deletion of subsection (3).

#### Amendment of section 30 of Act 57 of 1997

28. Section 30 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 30

“(1) So much of any sum paid into the fund as is allocated for expenditure referred to in section 26(3)(d), shall be held in the fund for distribution by the distributing agency appointed by the Minister **[in consultation with the Ministers responsible for arts, culture, science and technology, and environmental affairs, in the national sphere of government]** which possesses the required suitable combination of qualifications, skills and expertise to distribute the allocated sum fairly and equitably amongst all persons who meet the prescribed requirements.”; 35

(b) by the substitution for subsection (2) of the following subsection: 40

“(2) The distributing agency shall consider applications for grants and may **[, subject to section 33,]** pay such grants to appropriate recipients in accordance with this Act and subject to the conditions applying to its appointment and to any directions issued by the **[Minister after consultation with the Ministers responsible for arts, culture, science and technology, and environmental affairs, in the national sphere of government or by the Minister of Finance]** board, from the sum allocated for arts, culture and the national historical, natural, cultural and architectural heritage.”; and 45

(c) by the deletion of subsection (3). 50

#### Amendment of section 31 of Act 57 of 1997

29. Section 31 of the principal Act is hereby amended—

(a) by the deletion of subsection (2);

(b) by the substitution for subsection (3) of the following subsection:

“(3) The distributing agency shall consider applications for grants and may **[, subject to section 33,]** pay such grants to appropriate recipients in accordance with this Act and subject to the conditions applying to its 55

appointment and to any directions issued by the **[Minister, or by the Minister of Finance,]** board from the sum allocated for specific purposes identified by the Minister after consultation with the board.”; and

(c) by the deletion of subsection (4).”.

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#### Amendment of section 32 of Act 57 of 1997

30. Section 32 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The **[Minister shall, after consultation with the]** distributing agency in consultation with the board [,] may, in respect of any allocation awarded for a specific good cause which the board pays over to the distributing agency appointed by the Minister or in respect of a grant which a distributing agency pay to a recipient, impose such conditions as **[he or she]** the distributing agency deems fit, in addition to conditions requiring—

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(a) the amount of a grant or an allocation to be repaid forthwith on breach of any condition, in addition to any penalties which the **[Minister,]** distributing agency in consultation with the board **[or the distributing agency, as the case may be,]** may impose;”;

(b) by the deletion in subsection (1) of paragraph (b);

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(c) by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs, respectively:

“(c) that a category of juristic person as prescribed by the Minister after consultation with the board shall in respect of amounts prescribed by the Minister after consultation with the board, granted to it from time to time, provide **[the board or]** the distributing agency with financial statements which are audited or independently reviewed, whatever the case may be, **[audited accounts]** of all amounts distributed; **[and]**

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(d) any recipient of a grant to provide **[the board or]** the distributing agency with any relevant information it may require[.]; and”;

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(d) by the addition in subsection (1) of the following paragraph:

“(e) a directive on the splitting of the grant distributed between administrative costs and the actual cause funded.”;

(e) by the substitution for subsection (2) of the following subsection:

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“(2) In deciding on the juristic persons to whom grants are to be made, **[the Minister or]** the distributing agency **[, as the case may be,]** shall be satisfied that any such juristic person is competent to allocate the amounts equitably among all the members it represents.”;

(f) by the substitution for subsection (3) of the following subsection:

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“(3) (a) In considering any application for a grant in terms of this Chapter, the distributing agency shall comply with any **[directions given to it]** criteria prescribed or issued by the Minister after consultation with the board as to the matters to be taken into account in determining the persons to whom, the purposes for which and the conditions subject to which that distributing agency is to allocate any amount.

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(b) In determining matters to be taken into account in determining the persons to whom, purpose to whom, the purpose for which, and the conditions subject to which the distributing agency is to allocate any amounts, the board in consultation with the Minister, must take into account general development in the Republic and government priorities at the relevant time.”; and

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(g) by the deletion of subsection (4).

#### Repeal of section 33 of Act 57 of 1997

31. Section 33 of the principal Act is hereby repealed.

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**Amendment of section 60 of Act 57 of 1997**

**32.** Section 60 of the principal Act is hereby amended—

- (a) by the insertion in paragraph (a) after subparagraph (vii) of the following subparagraph:
  - “(viiA) the procedures for review and appeal against the decisions of the distributing agency as contemplated in section 10(1)(p);”; and
- (b) by the deletion of the word “and” at the end of subparagraph (viii) and the addition of the following subparagraph:
  - “(x) the limits on the amounts of the grant to be awarded to an applicant in a twelve month period; and”.

**Transitional provisions**

**33.** (1) Upon commencement of the Lotteries Amendment Act, 2013 (in this section referred to as the Amendment Act)—

- (a) every person employed by the board immediately prior to the commencement of the Amendment Act in terms of section 7, 28, 29, 30 or 31, is regarded as having been appointed in terms of section 2D or 26A of this Act; 15
- (b) the remuneration and other terms and conditions of service of any person contemplated in paragraph (a) may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before the commencement of this Act and he or she remains entitled to all rights, benefits and privileges to which he or she was entitled immediately before that date, including— 20
  - (i) employer contribution to a pension fund;
  - (ii) employer contribution to a medical aid scheme;
  - (iii) employer contributions in connection with such membership; 25
  - (iv) accrued pensionable service;
  - (v) accrued leave benefits; and
  - (vi) retirement at a specific age; and
- (c) every person contemplated in paragraphs (a) and (b) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before the commencement of this Act. 30

(2) For purposes of the Income Tax, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when a person is transferred to the service of the Commission in terms of subsection (1).

(3) Upon commencement of the Amendment Act— 35

- (a) save where the Act provides otherwise, all movable and immovable property of the board, including, administrative and other records of board and all documents in the possession of the board, is transferred to the Commission, which then acquires such property; 35
- (b) save where the Act provides otherwise, the rights, duties, liabilities and obligations relating to the board are transferred to the Commission; and 40
- (c) all valid and binding agreements entered into by the board shall be binding on the Commission until termination or upon expiry.”. 45

**Short title and commencement**

**34.** This Act is called the Lotteries Amendment Act, 2013, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 45

## **MEMORANDUM ON THE OBJECTS OF THE LOTTERIES AMENDMENT BILL, 2013**

### **1. BACKGROUND**

- 1.1 Before the dawn of democracy in the Republic of South Africa, the gambling policies and regulatory frameworks were disintegrated and were prohibitive in nature. The democratic government reviewed the prohibitive nature of the gambling policies and introduced a regulatory framework that sought to integrate gambling and thereby doing away with the prohibitive nature. It also sought to curb proliferation of irresponsible and illegal gambling and created a gambling environment that promotes responsible gambling.
- 1.2 The fundamental policy principle approved by government on the National Lottery was that the National Lottery will be utilised as a source of generating substantial revenue that will be used to fund projects of national interest in respect of which there was insufficient funding from the State expenditure.
- 1.3 In line with the fundamental principle approved by the government on the National Lottery, the Lotteries Act, 1997 (Act No. 57 of 1997) (“principal Act”) was promulgated and came into operation in 1997.
- 1.4 The principal Act has not been reviewed with a view to determine its effectiveness or otherwise since it came into operation. In 2007, the Department of Trade and Industry (“the dti”) then embarked on a process to review the Lotteries regulatory framework with a view to assess the performance of the National Lottery, including but not limited to challenges relating to the implementation of the principal Act.
- 1.5 The overall objectives of the review was to—
  - assess the relevance of the current regulatory regime and to deal with challenges that relate to the structures, roles and functions of the board and distribution agencies;
  - assess the overall socio-economic impact of the National Lottery;
  - review challenges in the principal Act, that hampers optimal distribution of funds for the National Lotteries Board and distribution 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 impact;
  - assess difficulties experienced in the licensing processes in 2006; and
  - generally review the principal Act to address legislative provisions that are potentially open to different interpretations which may result in disempowering the National Lotteries Board from enforcing the principal Act.
- 1.6 The review process identified challenges in the principal Act, including obstacles hampering efficiency in the management of the National Lotteries Distribution Trust Fund (“the Trust Fund”), and overlapping and conflicting roles between the board and distributing agencies. These challenges have hindered the ability of the board and distribution agencies to carry out its mandate and distribute public funds to deserving beneficiaries.
- 1.7 The Lotteries Amendment Bill, 2013 (“the Bill”) proposes to address challenges identified and raised following the policy review by the dti as outlined above.

## **2. OVERVIEW OF BILL**

2.1 The Bill proposes to deal with several challenges identified during the policy review process which started in 2007. There are several proposed amendments which are administrative in nature, intended merely to clarify the functionary and structure that has the legislative competence to execute the mandate. Some proposed amendments will be discussed briefly since they are considered to be noteworthy.

### **2.2 Overlapping powers between Minister and the Board**

2.2.1 Section 13 of the principal Act gives the Minister powers to grant a licence for operation of the lottery. However, the principal Act in section 14(2) subjects the Minister's powers of granting such licence with conditions to the consent that the operator or licensee shall obtain from the board. This anomaly is also found in section 15(1) whereby it is explicitly stipulated that the Minister or the board may vary conditions in the licence granted by Minister in terms of section 13 of the principal Act. This section is in conflict with section 14(2) which correctly assigns such powers to the Minister. In addition, subsequent sections of the principal Act, notably, sections 16, 17, 18, 19 and 20 have assigned powers to enforce, revoke and suspend a licence to the Minister or the board.

2.2.2 This creates unmanageable regulatory enforcement and may undermine the Minister's powers granted in the principal Act for issuing an operating licence. The board may vary licence conditions, suspend or revoke a licence without the knowledge or approval of the Minister. This is clearly unintended.

2.2.3 In order to address the above situation, clauses 7, 8, 9, 10, 11 and 12 propose that powers conferred to the Minister or the board under section 19 and 20 to suspend and revoke a licence, shall be exercised only by the Minister in consultation with the board.

### **2.3. Licensing of an organ of state**

2.3.1 In the principal Act the Minister is not expressly empowered to authorise or appoint or licence an organ of state to conduct the National Lottery where circumstances deems it fit. Clause 6 therefore seeks to empower the Minister to appoint an organ of state to conduct the National Lottery.

2.3.2 In the principal Act provision is not made for the Lottery to continue to run even in instances where the licenced operator would still be interdicted from conducting the Lottery as it happened in 2007 when the awarding of the licence to the licensee was challenged in court. Instead the Lottery ended up not being conducted for a number of months.

2.3.3 Clause 6 of the Bill now allows the Minister to appoint an organ of state or a third party to conduct the National Lottery for not more than 24 months to cater for instances where, for whatever reason, the licenced operator is unable to conduct the Lottery.

### **2.4. Distribution agencies**

2.4.1 In terms of sections 27, 28, 29, 30 and 31 of the principal Act, distribution agency members are appointed by the Minister of Trade and Industry in consultation with Ministers responsible for the relevant line departments in the approved categories, that is charities, sport and recreation, arts and culture, reconstruction and development as well as miscellaneous category.

- 2.4.2 The distribution agencies are mandated to adjudicate on the applications and decide on the allocation of grants to suitable beneficiaries in line with the principal Act.
- 2.4.3 Although the distribution agencies decide on the purpose and who benefits from the Trust Fund, the principal Act did not clearly create accountability mechanisms on the decisions taken or any oversight over the exercise of such decisions. Instead the principal Act vests the management and administration of the Trust Fund on the board, including accountability in respect of the decisions taken by the distribution agencies in line with section 50 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (hereinafter referred to as “the PFMA”).
- 2.4.4 As a result of this anomaly, a number of challenges in the execution of the adjudicative decisions made by distribution agencies resulted in the inefficient distribution of the Trust Fund. In an attempt to close this gap, the board created an Oversight Committee which was intended to oversee the decisions of the distribution agencies so as to realise the fiduciary duty vested in the board in relation to the Trust Fund.
- 2.4.5 The formation of the Oversight Committee, however resulted in further delays with the processing of funds to beneficiaries, as decisions of the distribution agencies were questioned and set aside, by a structure established outside the ambit of the principal Act. The Oversight Committee was later, through the instruction of the Minister, disbanded.
- 2.4.6 Clause 5 of the Bill therefore seeks to address the challenges identified in relation to the accountability and management of the distribution agencies. It seeks to add and bestow upon the board, the oversight and monitoring power over the distributing agencies.
- 2.4.7 Clause 17 of the Bill proposes to address the challenges by empowering the Minister to continue appointing the distributing agencies but more so to make some of those appointed to be full-time officials employed for adjudicating and distributing grants in order to ensure a speedy consideration of applications.
- 2.4.8 Further, the distribution agency members must possess certain skills and must not be conflicted, as such the Minister is empowered in clause 17 to consider ethical conduct and conflict of interest matters relating to those appointed as members of the distributing agency.

## 2.5. Distribution categories

- 2.5.1 Sections 27, 28, 29, 30 and 31 of the principal Act, identified categories for allocation and distribution of funds in the NLDTF. Over the years, no allocation of funds was made in respect of the reconstruction and development programme category. This category will therefore be deleted from the principal Act.
- 2.5.2 Clause 5 of the Bill also gives powers to the board to become pro-active by conducting research in various fields with a view to identifying worthy causes that may require funding into causes that could be funded that do not otherwise form part of the categories that applicants may apply for in terms of the principal Act.

## **2.6. Review mechanism of decisions**

- 2.6.1 The principal Act did not provide for review and appeal mechanisms against decisions of the distribution agency. Clause 19 of the Bill now provides for a review or appeal to the board if an applicant is unhappy about the decision of the distribution agency.

## **3. DEPARTMENTS/BODIES/PERSONS CONSULTED**

National Lotteries Board

## **4. IMPLICATIONS FOR PROVINCES**

None

## **5. FINANCIAL IMPLICATIONS FOR STATE**

To be accommodated within the current financial framework.

## **6. PARLIAMENTARY PROCEDURE**

- 6.1 The State Law Advisers and the Department of Trade and Industry are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.