

**ATT:
The Director-General,
Department of Trade and Industry,
Private Bag X84,
Pretoria, 0001**

**Submission to the Department of Trade and Industry on the
Lottery Policy Review**

Arterial Network South Africa (ANSA)

3 December 2012



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ACRONYMS

BASA – Business and Arts South Africa

DA – Distributing Agency

DAC – Department of Arts and Culture

dti – Department of Trade and Industry

IDC – Industrial Development Corporation

NAC – National Arts Council

NFVF – National Film and Video Foundation

NHC - National Heritage Council

NLB – National Lotteries Board

NLDTF – National Lotteries Distribution Trust Fund

PACCS – Provincial Arts and Culture Councils

About Arterial Network South Africa: Who Do We Represent?

Arterial Network South Africa (ANSA) is the South African chapter of the Arterial Network, a continental network of arts practitioners, researchers, policymakers, organisations and businesses. ANSA's membership is comprised of both individual artists, researchers, policymakers, arts managers as well as organisations, associations, networks and membership-based organisations that represents the interests of a substantial membership.

These associations and networks include:

- South African Screen Federation (SASFED)
- South African Music Rights Organisation (SAMRO)
- Performing Arts Network of South Africa (PANSAs)
- South African Guild of Actors (SAGA)
- International Association of Theatre for Children and Young People – South Africa Chapter (ASSITEJ-South Africa)
- Visual Arts Network of South Africa (VANSA)
- Academic and Non-Fiction Authors Association of South Africa (ANFASA)
- South African Association of Puppetry and Visual Performance
- Limpopo Arts and Culture Association

The combined membership of these networks and associations, and other member organisations, is in excess of 16 000 individuals and 2000 organisations and businesses working across the cultural and creative industries in South Africa.

Arterial Network South Africa is committed to the development of a vibrant, dynamic and sustainable South African creative civil society sector engaged in the practice of the arts in their own right, as well as in a manner that contributes to development, to human rights and democracy, and to the eradication of poverty in South Africa.

One of the core aims of Arterial Network South Africa involves functioning as a lobby for better governmental policy and practice for the arts and culture in South Africa – whether this be concerned with funding, industry development, international promotion or institutional development. In doing so, the Network seeks to interact with a range of government departments and agencies, and it in this context that the present submission is brought to the attention of the Department of Trade and Industry.

The present document was developed by a technical team mandated by the Steering Committee of Arterial Network to produce a response to the Lottery Policy Review document.

Executive Summary

Arterial Network South Africa welcomes the commitment of the Department of Trade and Industry to addressing a variety of problems associated with the National Lotteries Board's stewardship of the National Lotteries Distribution Trust Fund. The Lottery Policy Review document identifies a number of measures to be taken in order to promote a more effective, responsive and efficient grant management system through the NLB and the Distribution Agencies. We support a number of these measures, including:

- The streamlining of processes of application and adjudication
- The segmentation of proposals according to their financial value
- The relaxation of technical requirements for applicants falling into segments of lower financial value
- The establishment of a review mechanism - though we are concerned that this should have a high degree of independence from the operational structures of the NLB.

We are however substantially concerned that a number of structural problems are not adequately addressed in the proposals contained in the Lottery Policy Review document. These relate principally to the following issues:

- The basic inadequacy of the current structures of the National Lotteries Board and the Distributing Agencies as bodies responsible for the Distribution of Funds in terms of the spread of expertise that they are able to accommodate for decision-making relating to the single largest source of application-based funding for arts, culture and heritage in South Africa
- We also note the substantial **duplication** of functions with a variety of other statutory bodies responsible for the distribution of funding for arts, culture and heritage, which have the expertise to do so, but which operate on a wholly inadequate funding base
- To illustrate this point, we note that the current **eight** expert members of the Distributing Agency for Arts, Culture and Heritage are responsible for making decisions regarding the distribution of more than **85%** of the available application-based public funding for arts, culture and heritage at a national level.
- By contrast, the National Arts Council, the National Heritage Council and the National Film and Video Foundation between them deploy more than **fifty** independent experts in making decisions regarding approximately **10%** of public funding for the arts, culture and heritage at a national level.
- These structures have for the most part established credible and relatively efficient, informed and responsive mechanisms for the timeous distribution of funding. They are however – by international standards – woefully

underfunded, and operate on economies of scale that are most undesirable in terms of the cost of administering grants versus the aggregated value of those grants.

This problematic situation gives rise to the core proposals contained in the present application. In summary these are:

- That the NLB should in future work with these existing, parallel agencies as distribution mechanisms for the majority (at least 75%) of its annual funding for arts, culture and heritage
- We note that precedents for such an approach exist internationally
- We propose that the delegation of funding to these agencies be informed on the one hand by the scope of mandate of each, and on the other hand on the basis of the ongoing assessment of the capacity, performance and impact of each of these agencies. We propose three-year cycles of funding, with ongoing annual review of performance against set targets in each of these areas.
- We believe that a similar approach could and should be applied to the way in which the other Distributing Agencies operate.
- We note that such an intervention would have the effect of increasing the efficiency of the National Arts Council as a funding agency by between **four** and **eightfold**.
- All of the above would require amendment to the Act to accommodate this ability to delegate funds to these other agencies under specific conditions.

Furthermore, we do not believe that the proposed 'professionalisation' of the Distributing Agencies – through the full-time appointment of members – presents a viable solution to the identified problems, for the following reasons:

- This proposal does not address the basic structural problem outlined above concerning the extremely limited pool of expertise accommodated on a structure charged with dealing with a large quantity of funding, and a complex and diverse sector.
- We do not believe that this proposal will address the problems of conflict of interest arising in decision-making processes. Indeed, we note that these problems are ones that can only be addressed through the effective and disciplined implementation and observance of protocols, procedures and codes of conduct for the Distributing Agencies. The problems of conflicted interest and corruption are ones that need to be addressed through more effective systems, management and leadership, not through legislative intervention. We additionally note that the concerns regarding conflict of

interest and corruption have not historically been confined to the membership of Distributing agencies, but extend to the full-time staff responsible for the administration of grants.

- Moreover, the proposed intervention would effectively nullify the **independence** of this structure through the conversion of members into employees of the National Lotteries Board. We believe that the DAs should be comprised of people who are actively engaged in the development of their respective sectors, and who bring a diversity of perspectives and interests to bear on decision-making borne out of this active engagement.
- We also note that, here again, the core problems of the NLB and NLDTF have been misdiagnosed. The efficiency and responsiveness of the present structure can in our view only be improved through the development of an effective grant management system and the human resources to support this. This is not a problem that requires address at the level of policy or legislation as the document suggests. It requires better systems, and more and better-equipped staff, to more effectively support the decision-making of the Distributing Agencies. This would in our view introduce a far more satisfactory and appropriate understanding of the concept of 'professionalisation' than the one proposed in the document.

Finally, we register concerns in two ancillary areas:

- the proposed 'proactive funding' approach, which we believe is as yet insufficiently defined, and which will in its current form potentially further exacerbate problems of duplication with the work of other agencies.
- Regulation 644 of 2010 regarding the 'ring-fencing' of 50% of NLDTF funds for particular purposes, which we believe has the potential in its current form to further stymie the effective and timely distribution of funds. We recommend that the priorities noted in the Regulation should be incorporated under the general criteria outlined in Regulation 645 – and translated into programmatic and targeted funding programmes by delegated agencies.

1. Introduction

Arterial Network South Africa welcomes this opportunity to respond to the recently published Lottery Policy Review document issued by the Department of Trade and Industry in August 2012. The Lottery Policy Review was commissioned in response to concerns expressed by a wide cross-section of civil society regarding levels of basic dysfunction that have beset the operation of the National Lotteries Board and the National Lotteries Distribution Trust Fund since their inception and operationalising in the 1999/2000 financial year. These problems largely relate to:

- Extensively documented excessively long turnaround times in responding to applications, processing payments, addressing queries, and responding to reports
- Widespread allegations of corruption, political interference and conflicts of interest in decision-making processes related to the awarding of grants and the administration of applications
- A general lack of transparency in the process of adjudication, application of criteria and accountability both to beneficiaries and the wider public.

The Policy Review Document makes wide-ranging recommendations aimed at addressing these issues. These recommendations relate inter alia to both the operational processes and the policy and legislative framework governing the functions and operation of the National Lotteries Board (NLB), the Distributing Agencies (DAs) and the National Lottery Distribution Trust Fund (NLDTF).

This document proceeds through:

- A consideration of the place of the NLB and the NLDTF in the wider context of funding for arts, culture and heritage in South Africa
- Our core response to the analysis and recommendations outlined in the Lottery Policy Review Report
- A set of specific responses and recommendations related to a range of ancillary issues addressed in the Report.

The present document will be simultaneously submitted to the Minister and Director-General of the Department of Arts and Culture, as one of the principal adjacent Ministries with a fundamental interest and stake in the effective operation of the NLB and the NLDTF.

2. The NLB and NLDTF in Context

In preparing this submission, we believe it is important to contextualise the NLB and the NLDTF in the wider context of arts and culture development in South Africa. For reasons that are perhaps understandable, the policy review process undertaken by the Department of Trade and Industry has sought to operate on the basis of analysis and recommendations that cut across the three principal areas with which the NLDTF as a fund administered by the NLB and the DAs is concerned:

- Charities
- Sports and Recreation
- Arts, Culture and National Heritage
- Miscellaneous Purposes

We nevertheless feel that it is important to briefly furnish a wider context for the present and future role of the NLB and the NLDTF in the particular context of the development of arts, culture and heritage in South Africa.

Probably the most important point to drive home in this regard is that the NLDTF is the single largest source of funding for arts, culture and heritage development in South Africa:

- In the 2012 financial year, the R459 million was allocated to 257 beneficiary organisations
- In the 2011 financial year, R766 million was allocated to 165 beneficiary organisations
- In the 2010 financial year, R1,2 billion was allocated to 188 beneficiary organisations
- It is understood that the reason for the decline in the overall amount allocated over this period is a function of unspent funds accumulated but not spent during the preceding period (for a variety of reasons which are not the immediate concern of this submission)
- We also note that the 2012 annual report of the NLB and associated audited statements foresee a substantial increase in the availability of funds in the 2012/13 financial year as a result of the revocation of a number of grants allocated in preceding years

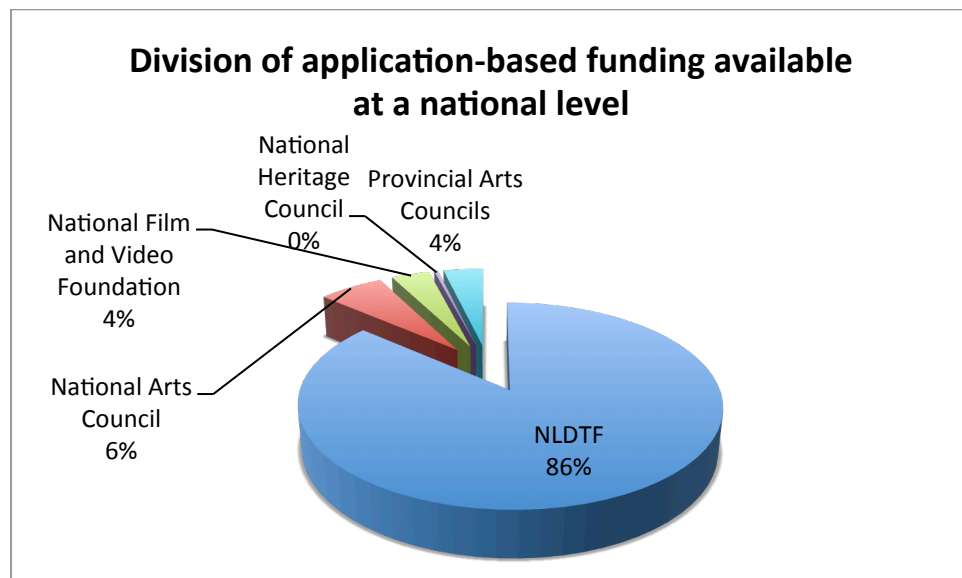
The three other principal **national** sources of funding for arts, culture and heritage in South Africa, falling under the purview of the national Department of Arts and Culture recorded the following pattern of funding for the 2010 and 2011 financial years:

- the National Arts Council disbursed R49 million rand in the 2011 financial year
- the combined investment of Provincial Arts Councils is estimated at no more than R30 million in the 2011 financial year
- the National Film and Video Foundation disbursed R29 million in the 2010 financial year

- the National Heritage Council distributed approximately R3 million of a total allocation of R48 million from the national Department of Arts and Culture in 2010.
- Based on the above analysis, the total available funds from these principal public sources of application-based funding for the arts, culture and heritage at a national level is currently in the region of R110 million

In addition to the above sources of grants that are available on an open application basis, the national Department of Arts and Culture invests more than R1 billion in a variety of arts, culture and heritage institutions on an annual and recurrent basis within the framework of the Cultural Institutions Act and other legislation governing, for example, national libraries and special purpose bodies such as the Pan South African Languages Board. This finance is **not** however available on an application basis, and has therefore been excluded from consideration in this analysis. An additional and fundamentally important point to make from a policy point of view about the DAC’s direct investment in statutory institutions (largely museums and theatres) is **that for historical reasons it is almost entirely assigned to cultural institutions located in the major metropolises.**

Based on the above, and if it is assumed that on average in the region of R700 million per annum available from the NLDTF for Arts, Culture and Heritage, **then the NLB/NLDTF would account for roughly 86% of all available grant funding at a national level for the arts, culture and heritage in a given year.** This is graphically represented in the following chart:



In short, the National Lotteries Board is the single largest funder of the arts, culture and heritage in South Africa. Were the NLB and the NLDTF to distribute funding as effectively as the Lottery Operator (Gidani) is able to collect this finance, it would produce a sea change in the overall landscape of arts, culture and heritage in South Africa.

3. Our Response to the Proposals of the Policy Review Document

The Policy Review Document has proposed a number of measures aimed at addressing the present problems in the operation of the NLB and the NLDTF, as outlined in the introduction. In general, we support many of the proposed remedies, in particular those that pertain to:

- The streamlining of processes of application and adjudication
- The segmentation of proposals according to their financial value
- The relaxation of technical requirements for applicants falling into segments of lower financial value
- The establishment of an internal review mechanism - though we are also concerned that such a review mechanism should have a very high degree of independence.

We would note however that **we do not believe that any of the above issues necessarily require legislative amendment** (as the Policy Review document seems to indicate/imply at various moments), but rather the more simple, less cumbersome and less time consuming process of developing policies, procedures and guidelines by the National Lotteries Board on each of these issues. Other than (possibly) the current requirement that all grants (however small) be audited (section 32 (1)c of the Act), we see nothing in the Act that would prevent the NLB, working together with the DAs, from doing so.

However, we believe that the detail of many of the proposals contained in the document are underpinned by a misdiagnosis of the root causes of the problems that the NLB/NLDTF faces as a funder. While, the document proposes a host of remedies at the level of policy and legislation, we believe that many of these are misplaced attempts to solve problems of **leadership** and **management** through intervention at a **policy** and **legislative** level. While we believe that the problems of the NLB and NLDTF **do** require reform at the level of policy and legislation, we do not believe that some of the policy and legislative measures proposed will achieve the intended purposes.

The document proposes that a range of issues will be resolved through the Act being modified to make provision for the **full time-appointment** of members of the Distributing Agencies, the people that adjudicate proposals that are submitted to the NLB. This is intended to address a set of interlocking problems related to the:

- The ability of part-time members of the Distributing Agency panels to process applications timeously
- The associated problem of meetings of the Distribution Agencies being inquorate, and therefore unable to formalise adjudication decisions, as a result of members not being present at scheduled meetings
- It is believed that by appointing panel members on a full-time basis, the problem of conflicts of interest will be resolved, as the NLB will be the

primary employer of the members of the Distribution agency, and they would therefore have a primary duty to that body.

We both believe that these intended results are extremely unlikely to be achieved by the proposed remedy - and are in fact likely to produce a number of unintended and wholly **negative** consequences – for the following reasons:

- The proposal fundamentally violates the principle of the **independence** of members of the Distribution Agencies. By employing these members on a full-time basis, the whole concept of them operating as independent agents that bring a complex of considerations rooted in their professional experience of working in the arts, culture and heritage sector, is diluted and eroded. We are also concerned that such a proposition will have the unintended consequence of attracting the ‘dead wood’ of the sector – we believe that the members of the Distributing Agencies should be comprised of people who are passionately invested in the arts in their working lives and who can bring these commitments, ideas and perspectives to bear on the funding decisions that they make. The idea of ‘full-time adjudicators’ we believe fundamentally undermines the role of independent panels, and confuses the functions of panels with the functions of employed grant management staff. We believe that the existing weaknesses in the system are largely a function of inadequacies in the clear articulation and separation of these functions, and in the lack of capacity in the area of grant management on the part of the existing staff of the NLB that support the work of the Distributing Agencies.
- The proposal appears to be predicated on the assumption that the NLB can in effect ‘buy’ the **loyalty** and **integrity** of members of Distribution Agencies, by appointing the members on a full-time basis. If members of the Distribution Agencies have been abusing their position in this important body – through errors of either omission or commission – we see no reasons why employing them on a full-time basis will alter this scenario. Indeed, the proposal may well have the unhappy consequence of translating what was previously a **part-time** casual or calculated abuse of power and position into a **full-time** endeavour. We see no reason why removing members from their formal employ elsewhere would alter this dynamic. It is our view that it is only likely to deepen and institutionalise a downward spiral in this area. This is particularly so as, from what we understand, many of the allegations of corruption and conflict relate to the activities not just of members of the Distributing Agencies, but also the full-time employed staff supporting their work.
- We do not believe that problems of conflict of interest necessarily require changes to the legislation. Effectively addressing these problems requires the formulation of effective codes and protocols in managing these conflicts, and, critically, **the focused and effective management and observance of these codes and protocols** by the staff of the NLB supporting the work of the

Distributing Agencies on the one hand, and the members of the Distributing Agencies on the other.

- We believe that all members of the Distributing Agencies should be required to declare any prior or current interests, associations, shareholdings, investments in organisations that might be recipients of Lottery funding. Each member of a Distributing Agency should be audited based on their previous professional engagements, and full-time employed staff should ensure that any real or potential conflicts of interest are brought to the attention of the Chairperson of the DA prior to any adjudication process and that the manner in which these real or potential conflicts of interest are addressed are placed on record/minuted. Clear and detailed guidelines should be developed that guide staff and members of the DAs regarding the identification and management of conflicts of interest, and the declaration of conflicts of interest should be a standing item at every sitting of each Distributing Agency.
- We believe that the function of the Distributing Agencies is not to scrutinise the detail of each and every application that is submitted to the NLB/NLDTF, as appears to have been the practice to date. This process of scrutiny and detailed assessment should be the responsibility of competent, full-time grant officers, who should be making recommendations based on detailed criteria and guidelines approved by the members of the given Distribution Agency. We believe that the responsibility of the Distributing Agencies is to exercise proper oversight over the recommendations of the full-time employed staff of the National Lotteries Board, which provide support to the work of the Distributing Agencies. The Distributing Agency should engage with the detail of applications on a random **sampled** basis to ensure that the criteria are being correctly applied by the full-time grant officers that support the work of the given DA, depending on the category (small, medium and large) into which applications fall.
- By way of illustration: Applications that fall into the Large category should arguably be scrutinised on an individual basis by the DA panel, informed by the recommendations of grant officers. In the case of the Medium category, 40% of all submissions could be individually scrutinised against recommendations. In the case of the Small category, 20% of submissions in this category could be subjected to individual scrutiny.
- **However should some of our principle recommendations (outlined in what follows) be adopted, this would largely obviate the need for this kind of complex system. We would also note that such a system would have to be predicated on the recruitment of a substantial cohort of exceptionally competent professional staff able to meaningfully assess applications according to clear and unambiguous criteria provided by the DAs.**

Finally, and perhaps most importantly, we believe that the problems of the Distributing Agencies are related in fundamental ways to a set of quite different issues to those proposed in the Policy Review document. These are, in summary:

- The spread of expertise represented on the DAs is in our view **wholly inadequate** as a basis for addressing the breadth and complexity of the sectors that they are dealing with and the **amount of funding** that they are charged with allocating. This is not a function of the expertise of the individual currently serving members, *but of the structure of the DAs themselves*.
- The National Arts Council, which is concerned primarily with just the “arts” component of the “arts, culture and heritage” triumvirate has **seven** specialist, part-time panels each composed of **five** members to address just the breadth and complexity of the arts sector alone – i.e. a total of **thirty five** independent experts engaged on a regular basis.
- Notably, the funding that these 35 people are adjudicating is approximately 10% of the amount of funding that the Arts, Culture and Heritage Distributing Agency presently adjudicates.
- The National Film and Video Foundation and the National Heritage Council, in turn, have designated decision-making structures in place for the areas of film and heritage respectively. The NFVF convenes specialist panels across four areas, which advise the Council of the NFVF on funding allocations. The NHC has a Heritage Funding Committee comprised of eight members (5 nominated members + 3 NHC staff). Together these three parallel agencies involve the deployment of more than **fifty independent experts** to adjudicate the same scope of activity as the Distributing Agency for Arts, Culture and Heritage. If one includes the Provincial Arts Councils this escalates to more than **100** independent experts.
- By contrast, the Distributing Agency for Arts, Culture and Heritage is currently composed of just **eight** members, who are responsible for making decisions about the allocation of between **five and ten times** the amount of the money that the National Arts Council, the NFVF and the National Heritage Council jointly preside over - between R500 million and R1,1 billion from the NLDTF for arts, culture and heritage between 2010 and 2012, and approximately R110 million for all of the other agencies combined (including Provincial Arts Councils).

This leads us to what is perhaps the fundamental point that we wish to make in this response:

- a. Noting the contextual considerations outlined in section 2 of this submission, we believe that the Distributing Agency for Arts, Culture and Heritage is presently duplicating the functions of a variety of other statutory sources of

public funding for the arts, culture and heritage. All of these parallel agencies are subject to the same overarching mandates of government with regard to addressing job creation, social cohesion, transformation and the like, and all of them have, in varying degrees, established mechanisms for the adjudication of grant applications in place.

- b. By international standards, all of these parallel agencies are dramatically underfunded. The **Arts Council of England** (on which our Arts Council is in many respects modeled), for example, distributed **£600 million** in the 2011/12 financial year – this is more than **170 times** the value of grants distributed by our own Arts Council in the 2011 financial year at current exchange rates, servicing a population of approximately the same size.
- c. In the 2011/12 financial year, the **Australia Council for the Arts** distributed **A\$164,5 million** in grants to artists and arts organisations – this is **thirty one times** the amount distributed by our own Arts Council at current exchange rates, servicing a population less than half the size of our own.
- d. The Arts Council of England is an instructive example for an additional important reason: a significant portion (33%) of its grant budget comes from the UK Lottery.
- e. One of the signal consequences of the underfunding of the National Arts Council is that it operates on an economy of scale that is most undesirable - in any given financial year the NAC operates at the outer end of what it is allowed under the NAC Act to spend on its own administration (25% of its grant from government). Were it to have a substantially larger pool of funding to work with, the economies of scale in its funding operations would start to make substantially more sense (i.e. proportionately less money spent on its own operations/administration, and more on its core purpose of funding artists and arts organisations).
- f. A further consequence of this situation is the extreme imbalance between the annual and recurrent funding of institutions (as noted earlier, the DAC invests in excess of R1 billion per annum in a variety of heritage institutions, museums and theatres) at a national level, and the availability of mechanisms for artists and arts organisations to access funding from government through a system of merit-based grants. There is presently a 1:10 ratio between the availability of grants to artists and arts organisations, and the investment in state institutions.

Taking all of these considerations into account, we believe that the fundamental policy and legislative intervention that is required is that *in the case of the Distributing Agency for Arts, Culture and Heritage*, the Act should make provision for at least 75% of the allocated funding to be distributed to these and potentially other parallel agencies of the Department of Arts and Culture for them to in turn distribute to the parts of the arts, culture and heritage sector that they are responsible for.

Such an intervention would we believe solve a host of complex and intractable problems through a single and relatively simple measure:

- It would address the host of problems – both those identified in the Policy Review document and the additional issues presented in this document - associated with the DA as an adjudication mechanism by delegating the majority of funding decisions to adjacent agencies of government that have established extensive and generally effective mechanisms in place for the **efficient** and **informed** adjudication of grants.
- It would greatly enhance the ability of these agencies to fulfill their mandates in a manner that enables real impact on the part of agencies that are presently stymied by a lack of available funds to disburse. This is particularly true of the ability of these agencies to achieve impact in a number of key areas that are of common concern to all:
 - The ability to enhance the sustainability of independent arts, cultural and heritage organisations through the provision of multi-year funding within, for example, the ‘company funding’ model of the National Arts Council.
 - The ability to address the needs of more rurally based and historically marginalised formations and organisations
 - The ability to support the infrastructure development needs of independent arts organisations and companies
- It would greatly enhance the performance of these agencies with regard to the ratio between the cost of administering applications and the value of grants issued. Based on our calculations, the efficiency of the National Arts Council would effectively **quadruple** in these terms should it receive 25% of the available NLDTF allocation for arts, culture and heritage. Should it receive 50% of this allocation, its performance would increase **eight fold** in these terms.
- It would greatly reduce the real and/or perceived problems that have historically been associated with the phenomenon of ‘double funding’ through agencies with overlapping mandates.

With regard to some of the practical implications of such a reform and key considerations that would need to be brought to bear in working out the detail of such a measure:

- a. *A decision would need to be made on which ‘delegated agencies’ the Arts, Culture and Heritage DA would work with.*

Our Recommendation:

We would recommend the following four core agencies:

- the National Arts Council

- the National Film and Video Foundation
- the National Heritage Council
- Business and Arts South Africa

We would recommend that additional consideration be given to the allocation of funding to Provincial Arts and Culture Councils, which are presently either dramatically underfunded or which do not yet exist in certain provinces. This would potentially go a long way towards addressing the present problems of geographical reach in the distribution of NLDTF funding.

- b. A decision would need to be made on what proportions of funding would be assigned to each of these agencies.*

Our Recommendation:

In principle, we believe that the allocation of funding to these agencies should not be fixed in legislation, but be based on their performance, both in terms of the ability to issue funding effectively, and in the external impact of this funding in areas of identified priority, based on clear indicators. These proportions should be subject on the one hand to the submission of detailed motivations from each of these agencies, and the submission of detailed reports on funds spent, to be reviewed by the membership of the Arts, Culture and Heritage Agency. The Distributing Agency would make recommendations to the National Lotteries Board and the Minister of Trade and Industry on the allocation of funding to these agencies on the basis of three-year cycles, with provision made for annual review and adjustment based on reports submitted by these agencies.

In principle, the National Arts Council and the Heritage Council – due to the broadness of their scope – should receive a greater proportion of funding. Due regard should however be given to the fact that the Heritage Council’s mechanisms for adjudicating funding are at this stage are substantially less developed and extensive as those of the Arts Council, and that the NHC is presently distributing a comparatively small proportion of its overall budget through a system of grantmaking. Until such time as these mechanisms are strengthened, the allocation of funding should take this into account.

Considerations regarding capacity and competence would be particularly important in relation to allocations to Provincial Arts and Culture Councils, many of which operate at a sub-optimal level or have not yet been brought into being in particular provinces, or which are not yet constituted as distinct entities. Our view is that the NLB should work together with the National Arts Council in playing a developmental role in relation to the PACCs, in ensuring that they are effective, responsive and meaningful agencies both in relation to their operations and strategic orientation, and in relation to the scale of funding that they distribute.

- c. *A process would need to be put in place to ensure that the extant criteria of the Distributing Agency are adhered to in the allocation of grants by the 'delegated agencies'*

Our Recommendation:

We see no reasons why NLDTF funds cannot be ring-fenced by each of these 'delegated agencies' and their adjudication mechanisms for the address of a set of priorities that are consonant with the extant criteria of the Arts, Culture and Heritage DA. Such funds can fall into distinct funding windows of each of these agencies, and can be separately accounted for by the 'delegated agencies'. These funds can also be made subject to the overall requirements of the NLB with regard to:

- Applicants being restricted to non-profit entities
 - Applicants being required to meet the same technical requirements that presently apply to all recipients of Lottery Funding
- d. *A decision would need to be made on the approach to the allocation of the 25% not distributed to 'delegated agencies'.*

Our Recommendation:

We would propose a two-pronged approach to the allocation of the remaining 25% of funds:

50% of these funds (circa R90 million at current estimates) should continue to be adjudicated by the membership of the Arts, Culture and Heritage Distribution Agency, and should be assigned to areas for intervention which may not be addressed effectively through the mandates and functions of the proposed 'delegated agencies'. These would lie particularly in programmatic funding in, for example, the areas of:

- The operational, infrastructural and programme development needs of community arts centres, both those initiated by independent arts organisations and those initiated by local government (or, ideally, through partnerships between the two).
- The needs of both curricular and extra-curricular arts educational programming – this would apply to programmes initiated by schools or provincial education authorities, or those developed by independent arts organisations and tertiary institutions working with schools and provincial and national education authorities

We would further propose that the remaining 50% (circa R90 million) be allocated to the establishment of a **Creative Industries Development Fund**, potentially administered through existing dti mechanisms/agencies or through an existing structure such as the Industrial Development Corporation (IDC). The Fund would make provision for commercial and for-profit organisations operating in the creative industries to receive low interest loans, micro-financing,

capital development grants and so on, aimed at stimulating growth and sustainability across the creative industries sector. Finance would be available to businesses in all parts of the Value Chain in any area of the creative sector, from publishing and digital gaming through to design and creative services. Substantial work would need to be done around the development of this model and it's appropriate location.

e. There would need to be consideration of the implications for the other Distributing Agencies of the proposed model of 'delegated agencies' outlined here.

Our recommendation:

We believe that while the approach outlined above should be considered for the other Distributing Agencies, although it's assimilation into the Act – or into the policies and procedures of the NLB – does not require all of the Distributing Agencies to operate in precisely the same way. The Act should make provision for flexibility/differentiation in the manner in which the different DAs are able to both fund directly and delegate elements of their mandate to existing agencies.

f. The Act would need to be amended to make provision for the NLB to delegate funding in this way.

Our Recommendation:

A legislative amendment to support such a process of delegation would need to be crafted in such a way as to give substantial latitude regarding the question of precise percentages of available funds to particular agencies, and make provision for an approach to allocation based on capacity and performance, as noted above. We do not however see why the absence of a legislative amendment should at this stage necessarily impede the more or less immediate introduction of a system along these lines.

4. Ancillary Issues and Recommendations

While our main concerns regarding the limitations of the proposals contained in the Policy Review document are captured in the preceding section, there are a number of ancillary and additional issues and associated recommendations that we would wish to bring to the attention of the Department of Trade and Industry.

Proactive Funding

The Review Document conflates two very different issues or needs under the rubric of 'proactive funding', and inappropriately proposes (but does not define) a single instrument or channel to address both. The first is the need to be able to dispense money rapidly to address situations of disaster or emergency. We believe this is an entirely valid need, though are also concerned that it may duplicate mandates of particular governmental departments or agencies, and that this possible duplication should be investigated before establishing an elaborate parallel process. Again, the option of delegation to such agencies of government should be considered. Should it be found that there is indeed an important gap to be addressed in this area, the Act or Regulations would need to define in very clear and unambiguous terms what is understood by an 'emergency' so as to avoid the abuse of this provision. We are not however in principle opposed to the assignment of funds to emergency situations.

The second need that the document seeks to address is the commissioning of research to inform funding priorities on a proactive basis. Here, again, *there is direct duplication with the mandates and functions of all of the agencies (NAC, NFVF, NHC, BASA, etc) noted in the preceding section.* All of these agencies have both a mandate and capacity in the area of research concerned with the determination of funding priorities. We propose that this need should again be primarily addressed through the proposed framework for delegation and effective reporting and sharing of research between these structures and Distributing Agency. Among other things, these agencies should be required to present evidence-based cases for their priorities in relation to the scope for which each is responsible.

The document is also finally somewhat opaque and what precisely is meant by 'proactive funding' from a process and decision-making point of view, and what the practical implications of such an approach would be. If it involves the establishment of new organisations and agencies, we would counsel strongly against such an approach. We would propose that an appropriate interpretation of 'proactive funding' would perhaps be addressed through an overall shift toward a more 'programmatic' approach to funding across all of the agencies discussed in this document (including the Arts, Culture and Heritage DA), rather than funding on the basis of a set of very generalised (and sometimes conflicting and contradictory) criteria. By a programmatic approach to funding we mean an approach which enables agencies, based on research into needs and priorities, to establish distinct funding programmes which are very precise about the impacts that they intend to achieve in particular areas. We believe that the NLB and the DAs have a potentially important role to play in leading this inter-agency discussion.

Regulations 644 of 645 (2010)

ANSA additionally notes that under *Regulation 644 of 2010: Direction and Procedure for the Distribution Agencies in relation to the distribution of funds from the National Lottery Distribution Trust Fund*, 50% of the available funds for disbursement from the NLDTF through the Distributing Agencies would need to be assigned to a variety of particular ends. Those which would be relevant for the arts, culture and national heritage Distributing Agency include:

- (a) support for causes designed to protect and promote traditional knowledge and cultural expressions
- (b) promotional work of arts and crafts produced by groups of disabled people and women
- (c) development and preservation of cultural heritage sites for revenue generation including tourism attraction, and economic viability for the community;

While we substantively support all of the above as national priorities, we wish to note a number of concerns relating to these provisions:

1. that there was a wholly inadequate process of systematic and proactive consultation with stakeholders in the arts and cultural sector on these provisions, their precise meaning, and their implications
2. that it is not clear precisely how these provisions are to be interpreted and applied by the Distributing Agency
3. that there has to date been no accounting by the NLB against the requirements of the Regulations in this regard, which suggests that they are presently not being applied in a systematic fashion

We would suggest that these provisions establish an inadequately defined and thought-through additional set of criteria that applicants are required to meet and the NLB required to report on, and that they should be incorporated under the general criteria outlined in *Regulation 645 of 2010: Application for Grant in terms of the Act*. These would also add an additional and unnecessary layer of complexity to the work of delegated agencies as envisioned in the present document. We do not believe that regulating distribution in this way will contribute in any meaningful way to the effective distribution of funds, and that these provisions should serve as general criteria rather than a mandated percentage. We would also propose that the general criteria outlined in the regulations be translated into the kind of detailed programmatic framework contemplated in the previous section, where impact in these areas can be achieved through very precisely structured, appropriately scaled and articulated funding programmes of the relevant DA or the delegated agencies proposed in this document.