

**ATT:
Mr Nkoatse Ernest Mashamaite
Department of Trade and Industry**

**Submission to the Department of Trade and Industry on the
proposed Lotteries Amendment Bill 2013**

Arterial Network South Africa (ANSA)

5 June 2013



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

1. Introduction

“A capable state does not materialise by decree... It has to be painstakingly built It requires leadership, sound policies, skilled managers and workers, clear lines of accountability, appropriate systems and consistent and fair application of rules.”

- the National Development Plan, p 35, 2012

Arterial Network South Africa welcomes the opportunity to make this submission to the Department of Trade and Industry on the proposed Lotteries Amendment Bill 2013.

The document proceeds through:

- a brief outline of Arterial Network South Africa and the constituency that the organisation represents (About Arterial Network South Africa)
- an overview of the main thrust of our response to the proposed Bill (Overview)
- a detailed response to individual provisions within the Bill, referencing the proposed amendments to specific sections of the Act (Detailed Response to the Bill)

We also note that the present submission extends and builds on evidence and argument presented in an earlier submission to the Department on the Lottery Review Policy, and have appended this document to the present submission.

At the outset, we believe that it is important to emphasise that the present submission is **not** primarily or particularly concerned with ensuring or achieving a greater role or voice for civil society organisations (which we represent) in the operation of the National Lotteries Board. This submission is primarily concerned with an argument for the state presenting a coherent and meaningful framework for the funding of arts, culture and heritage to civil society. We are arguing in the first instance for a clearer and better-managed playing field with consistent and clear rules of engagement within which we can operate - we are not arguing for our diverse and particular interests as players. Indeed, the thrust of our proposals are concerned with actively *limiting* the extent to which non-state actors can potentially inappropriately influence the allocation of resources, and *strengthening* the articulation between state actors involved in the distribution of funding.

The key principles underpinning such a framework should in our view:

- promote the greatest degree of efficiency and impact in the deployment of limited resources to the larger purposes of the social and economic development of the people of the Republic of South Africa along the lines articulated in the National Development Plan..
- maximise coherence and minimise duplication within and between the functions of different public agencies responsible for the funding of civil society organisations and good causes.

- minimise opportunities for the abuse of the system by civil society organisations, party political interests or purely individual interests.

We believe that the proposals contained in the Lottery Amendment Bill and the Policy Review document that precedes falls significantly short of meaningfully addressing these important principles.

In drafting this submission we have been mindful of the fact that the money disbursed through the National Lotteries Board is to a significant degree collected from the pockets of the historically and presently disempowered in our society, and that it is incumbent on all of us to build a system that yields the greatest degree of impact and consequence from these resources.

We also wish to note that we shall be seeking to make direct representation to the portfolio committees for Arts and Culture and Trade and Industry respectively on the present submission.

2. About Arterial Network South Africa

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 represent 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)
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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, industrial development, international promotion or institutional development. In doing so, the Network seeks to interact with a range of government departments and agencies, and it is 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 and the Lotteries Amendment Bill 2013.

3. Overview

Arterial Network South Africa welcomes the present process of legislative reform relating to the operation of the Lottery. We believe that this process has the potential to empower the National Lotteries Board to act as a significant force for transformation, redress and the development of a thriving and diverse creative culture in South Africa, supporting the aims of the Constitution and national government policy in the social and economic realm.

In its current form however, we believe the various provisions within the Lotteries Amendment Bill profoundly threaten and undermine this potential.

We urge the Department to give the most serious consideration to the objections to specific amendments to the Act put forward in our submission, and to the alternate proposals outlined herein.

We believe our objections are supported by reasoned analysis, evidence and argument, and that our positive proposals for legislative reform are based on a serious and constructive engagement with the positive intentions of the Bill, and the process that has preceded it.

Our view is that the department is at a profound crossroads with the present Bill:

- the Department can choose to entrench a situation where the National Lotteries Board struggles to effectively allocate funding through the Distributing Agency/ies, where the functions of the National Lotteries Board and the Distributing Agency/ies fail to articulate clearly both with one another and with a range of other statutory agencies and bodies, and where a handful of people are given inappropriately sweeping decision-making powers over the largest single source of grant funding available for non-profit organisations working in the arts, culture, heritage, sports, recreation and charities social/development sectors.
- Alternately, the Department can through a set of very simple measures outlined in this document, choose to make a contribution to the positive and substantive transformation of the funding system for the arts, culture and heritage in South Africa, promoting coherence, efficiency and a minimum of duplication between the different departments and agencies of government involved in such funding, and ensuring that a depth and diversity of relevant expertise is drawn on in the process. We believe that the arguments contained herein – while focused primarily on the arts, culture and heritage sectors, apply in equal measure to the charities and sports and recreation sectors.

Our fundamental concerns with the present proposals lie in two principal areas:

1. The far-reaching and arbitrary powers of decision that the Amendment Bill confers on the National Lotteries Board to award funding to organisations and causes *outside of any properly articulated process or procedure*, informed only by unspecified research the Board may commission to inform such decisions and allocations. **(Pertaining principally to the proposed amendments to section 10 of the Act).**
2. The proposals regarding the appointment of members to the Distributing Agencies by the Minister as full-time members of staff evacuates the structure of any form of oversight and input from civil society, or indeed the wide range of other governmental stakeholders. **(Pertaining principally to proposed additions to section 26 of the Act)**

We understand that the first proposal arises from a desire to align the allocation of funding to national government priorities, and to empower the Board to proactively ensure that these priorities are addressed. While we fully support these motivations, we believe that the measures proposed are entirely inappropriate, and likely to yield a variety of unintended and largely negative consequences in relation to these objectives.

Rather than delimiting opportunities for the possible arbitrary or conflicted allocation of funds to particular organisations, the proposed amendments to section 10 of the Act open up a new avenue for potential abuse, notwithstanding the provisions elsewhere in the Amendment Bill that would seek to counteract such abuse. We believe that the best way to prevent abuse is to ensure consistency, transparency and simplicity, and in this regard the provisions of the Amendment Bill establish a basis for parallel and potentially conflicting powers of decision between the Board and the Distributing Agency/ies with regard to the allocation of funds. Our view is that the proper role of the Board is to exercise *oversight* over the activities of the Distributing Agencies, not to *duplicate* these activities.

Most importantly, we note that there are a variety of *already existing statutory bodies and agencies* of government at a national level that were established precisely to ensure the alignment of funding/grant-making with national priorities. In the arts, culture and heritage sphere, these would include the National Arts Council, the National Film and Video Foundation and the National Heritage Council. We note also that within the Charities and Sports and Recreation sectors, there are similar statutory bodies and agencies in place.

These structures have in varying degrees commissioned research to inform funding policy, established structures to effect these policies, and generally operate relatively efficiently and effectively with regard to responsiveness, turnaround times on adjudication and decision-making processes, and the disbursement of funding – all issues with which the National Lotteries Board and Distributing Agencies have to date severely struggled. Furthermore, these bodies are, without exception, significantly underfunded in relation to their expansive mandates, and the finance

presently available through the Lottery presently dwarfs the budgets allocated to these agencies.

With regard to the proposed powers conferred by the Act on the Board to allocate finance and solicit proposals on a discretionary basis, we propose that these powers should be strictly limited to the delegation/allocation of a substantial portion of Lottery funds to such fit-for-purpose statutory bodies, and in ways which would ensure accountability to the National Lotteries Board and the relevant Distributing Agency/ies for how this money is allocated by these agencies. Such delegation should be informed by recommendations from the relevant Distributing Agency/ies, based on proposals submitted by these statutory bodies, and with due consideration given to the capacity of these bodies to effectively and meaningfully spend and distribute the funding allocated to them.

On the second issue, we wish to register grave concern regarding the proposed framework for the constitution and functioning of the Distributing Agencies (DAs), a historically clouded issue which the Bill has sought to clarify. There are a number of key points to note here with regard to the propositions contained in the Bill:

1. The absence of any reference to a process of public nomination as a basis for the appointment of DA members by the Minister effectively excludes civil society – and indeed potentially other key stakeholders in government – from playing an oversight and informing role in the allocation of Lottery funding. We have no in-principle objection to the Minister appointing these members, but believe that this must be done on the basis of a properly public process of nomination (as indeed has been past practice, and is standard practice in all of the other statutory bodies that we have referenced).
2. The proposed appointment of members of the DA as **full-time and permanent staff members** of the National Lotteries Board as an organisation further entrenches this evacuation of any meaningful oversight and informing role on the part of stakeholders within the sector. The absence of a time-bound term of office is also likely to produce a moribund body that is insufficiently responsive to changes in the complex landscape of activity that it is tasked with supporting.
3. We also note that the Bill appears to propose the collapsing of the present three Distributing Agencies into a single Distributing Agency composed of just nine people. We do not believe that nine people – however qualified and experienced they may be, and regardless of whether they are appointed on a full-time basis or not – would have the requisite expertise and sufficient time to meaningfully adjudicate the volume, diversity and complexity of applications submitted to the Lottery. Indeed, the approach as it stands will only serve to exacerbate rather than alleviate the problems of efficiency and professionalism that have beset the organisation to date.

4. Perhaps more importantly though, we further note that the Bill would have the consequence of entrenching a situation where a handful of people (under the Bill, **nine**) would be responsible for making decisions regarding the allocation of more than **80%** of the presently available grant funding for the arts, culture and heritage in South Africa. This would leave between **50 and 100 individuals** appointed through due process to the various panels of the statutory bodies referred to in the preceding section jointly responsible for adjudicating less than **10%** of presently available grant funding for the arts, culture and heritage in South Africa¹. We believe that such a situation produces an absurdity, and generates a situation in which the functions and operational structures of these adjacent agencies are both duplicated and profoundly undermined by an inadequate, ill-equipped and inappropriate decision-making structure located under the National Lotteries Board.
5. We believe that these Amendments are based on a **misdiagnosis** of where the proposed 'professionalisation' of the distribution of Lottery funding is needed. The need for professionalisation is at an organisational and systems level, and is not something which can be addressed through simply adjusting the nature and composition of the Distributing Agency/ies as a structure or structures in isolation. It is clear that for much of the life of the National Lotteries Board and the Distributing Agencies, there have been straightforward and clear shortcomings in the development of effective administrative systems, proper management of processes, simple record-keeping, and effective and timeous communication with grantees, among a host of issues that have been raised time and again. Professionalisation is not something that we believe can be addressed through legislation – it requires a concerted overhaul of how the whole system of grant management and administration operates, and the concerted development of the organisation and the staff that are responsible for this system. This is not in the first instance a legislative issue, but an issue of organisational and institutional development and strengthening – part of a wider need to develop the 'capable state' alluded to in the National Development Plan.
6. The present Bill seeks to solve the present problems of efficiency and management by moving them away from their proper location within the existing operational structures that enable the Distributing Agencies to make informed and timeous decisions on the allocation of grants. We believe it is not the responsibility of the DA membership to *manage* the adjudication and grant-making process – the DAs should be responsible for providing oversight on decision-making/adjudication and ensuring the formulation and consistent application of transparent, rigorous and clear criteria for these decisions.

¹ See our appended submission on the Lottery Policy Review document for more detail on these facts and figures.

We believe that independent part-time panels functioning as Distributing Agencies is an entirely feasible alternative – provided that they have a clear and manageable remit, and that there is a competent professional staff and an appropriate and fit-for-purpose grant management system in place to support the work of these structures.

These points further serve to emphasise our argument (detailed in our previous submission) that a significant proportion (if not the entirety) of the available funding should be delegated to **those existing statutory bodies and agencies** that have systems in place to adjudicate, allocate and process funding effectively, and in ways which align to **precisely the same** priorities of government that the NLB is mandated to fulfill. We further note that were such delegation to occur, it would effect an immediate and profound transformation in the efficiency of these existing agencies, which all currently operate at unfeasible economies of scale in terms of the cost of issuing grants against the value of those grants. In the case of both the NAC and the NFVF, both agencies are at the cusp of the 25% of their government allocation that they are allowed to spend on their own operation and administration. This is not because they are inefficient or poorly run – it is because the allocations from government are presently inadequate to their mandate. The delegation of funding to these agencies would both enable the NLB to responsibly fulfill its mandate, while simultaneously greatly enhancing the ability of these bodies to fulfill theirs. Such a measure would promote a general harmonisation and clearer articulation of roles across and between agencies of government that presently have awkwardly overlapping mandates – thereby neatly killing a number of birds with a single stone.

Indeed should the Distributing Agency contemplated in the Amendment Bill operate as a structure that is tasked with a primarily delegating function to a small number of existing statutory funding bodies, this would obviate the need for the development of a new elaborate and costly adjudication and decision-making structure under the National Lotteries Board.

4. Detailed Response to the Lottery Amendment Bill 2013

This section of our submission expands on the overall concerns, arguments and proposals contained in the preceding section through reference to relevant sections of the proposed Lotteries Amendment Bill 2013 with which we have issue, and includes some concerns and detail not necessarily registered in the preceding overview.

4.1 Cross-cutting Concerns

We would wish to register a general concern regarding the definition of “distributing agency” contained in the Bill:

- the Bill consistently makes reference to a “distributing agency” in the **singular** rather than “distributing agencies” in the **plural**. It is unclear whether this implies that the present three distributing agencies will be collapsed into a single distributing agency under the provisions of the Lottery Amendment Bill. The wording of the Bill with regard to the proposed additional Section 26B to the Act strongly implies a single body that would replace the three extant structures.
- Should the latter interpretation be the correct one, the concerns delineated in this submission regarding the narrowness of the band of expertise assigned to the adjudication of Lottery funds would be further and substantially amplified.

4.2 Amendment of Section 10 of the Act

There are two issues here that we would wish to draw the Department’s attention to with regard to the proposed amendments to Section 10 of the Lotteries Act:

4.2.1 *The Locus for Adjudicating Appeals*

The proposed amendments to section 10 of the Act are cause for major concern in two areas:

- i. The addition of the proposed sub-clause (l) makes provision for the Board to “serve as review or appeal authority against decisions of the distributing agency [sic] regarding applications for grants”
- ii. The addition of a proposed sub-section (10) to section 10 of the Act which stipulates that the Board “shall ensure that a simple and clear process or procedure for the settlement of disputes lodged against the distributing agency is developed”.

Comment:

We do not see how the Board will be able to effectively and timeously prosecute this function in the context of the variety of other wide-ranging matters that it is mandated to address as a Board (licensing, regulation, oversight), and in the context of the volume of appeals that we believe are likely to be lodged. The proposed amendments to section 10 of the Act do little to resolve the question of **how** appeals

will be addressed by the Board other than to simply say that they will be addressed - the provisions in the Bill seem only to serve to further defer clarity on the question of how appeals will be managed to a later moment, and to do so in a way that continues to make this something which is essentially at the discretion of the Board, rather than an issue that is properly resolved by the Amendment Bill.

Our recommendation:

We recommend that the Amendment Bill make provision for a distinct structure to be established that functions as an adjunct or permanent subcommittee of the National Lotteries Board with a parallel existence to the Distributing Agency/ies (“an Appeals/Review Committee”), and which includes independent legal and sectoral expertise appointed by the Minister to fulfill this function. We propose that this should be addressed through the addition of a section or sub-section to the Act that would define the procedures for the appointment of, and powers, of such a sub-structure. We accept the contention that the recommendations of such an adjunct structure or sub-committee should be subject to the final approval/oversight of the National Lotteries Board.

4.2.2 The Expanded functions conferred on the Board with regard to the allocation of funding

We draw attention to the proposed additional functions contemplated in the inclusion of additional clauses (m) and (n) to section 10 of the Act:

- that the Board should be empowered to “conduct research on and approve grants to appropriate deserving good causes or recipients that may be funded without application lodged in accordance with the Act”
- and (n) “have the power to solicit applications for grants from any appropriate and deserving causes that it deems fit”

Comment:

While we are sympathetic to the need for the National Lotteries Board to prosecute its functions proactively, in an informed way, and in harmonisation with the overall objectives of government, we are troubled by the content of these two provisions on a number of fronts:

1. We are concerned that these provisions will formalise and legitimate what has in fact been an established practice to date: the distribution of funds to various causes and organisations without reference to the procedures, processes and deadlines that all other ‘ordinary’ applicants are obliged to comply with. We also believe that the dividing line between ‘solicited’ and ‘unsolicited’ proposals can become entirely meaningless in the face of effective lobbying of Board members from particular organisations and interest groups.
2. As the provisions stand, they essentially provide the Board with carte blanche to fund any organisation or cause without reference to any consistent, detailed criteria or due process. We believe these provisions open up substantial scope for abuse and the arbitrary allocation of funds based on criteria and procedures that are given no adequate definition, other than that

these decisions *may* have been informed by some (unspecified) form of research initiated by the Board. Such a model generates a situation within which the particular networks and interests of a small number of Board members shape funding patterns in ways that blur lines, diminish transparency and promote ever more insidious and invisible conflicts of interest.

3. Furthermore, these proposed amendments establish an unhelpful duplication and parallel system of potentially confusing and conflicting funding responsibilities between the Board and the Distributing Agency/ies.
4. Having said this, we do believe there **is** scope for tightly delineated discretionary allocations to be effected along the lines indicated in the Overview section of this submission and in our original (appended) submission on the Lottery Review Policy document.

Our recommendation:

As we have noted earlier (and in the appended submission), there are a variety of **existing statutory bodies** that function across the various categories of Lottery funding which are presently woefully underfunded in relation to their mandates. These agencies (the National Arts Council, the National Heritage Council, the National Film and Video Foundation) have in varying degrees established effective and detailed structures, protocols and procedures in place for the allocation of funding, and also have active programmes of research that inform their respective approach to funding in their precise areas of mandate. They are also aligned to precisely the same overarching mandates of government that guide the Lottery in its distribution of funding.

4.4 The proposed inclusion of sections 26A, 26B and 26D to the Act

The proposed sections 26A and 26B make provision for the appointment of Distributing Agencies, and delineate the functions, process of appointment and accountability thereof. Again, we would wish to draw attention to the uncertainty as to whether a single distributing agency is contemplated in the Amendment, or the reform of the existing three entities.

4.4.1 Clarity regarding the legal status of the Distributing Agency/ies

The proposed section 26A summarises the rationale for the Distributing Agency/ies.

Comment:

The proposed Section 26A does not adequately clarify what the status of the Distributing Agency/ies is/are as a legal entity or entities. If they are in legal terms a substructure of the National Lotteries Board, this should in our view be clearly stated under section 26A.

4.4.2 The composition of the Distributing Agencies

Section 256B outlines the process of appointment and the composition of the Distributing Agency.

Comment:

The proposals regarding the composition of the National Lotteries Board are cause for great concern. These concerns are outlined in the overview section of this document and summarised here:

1. We do not believe that a Distributing Agency composed of nine people – however well-qualified and experienced they may be as individuals – will have the requisite diversity and range of expertise that is required to adjudicate applications relating to a vast range of activities across arts culture, heritage, sports, recreation and the charities sector.
2. Neither do we believe that appointing the members of the Agency as full-time members of the staff of the National Lotteries Board will address the myriad of problems experienced to date relating to the efficiency of the NLB and the Distributing Agencies in processing grant applications. Furthermore any gains that may (very notionally) be made by appointing these members on a full-time basis are lost by virtue of the Amendment Bill reducing the overall number of adjudicators dramatically.
3. The contrast with other funding agencies for the arts, culture and heritage is striking. For example, the National Arts Council presently has six funding panels comprised of approximately five members each – approximately 30 people are responsible for adjudicating applications relating to roughly 15% of the scope activity of the proposed Lottery Distributing Agency.
4. We believe that the proposition contained in this section of the Bill that DA appointees should become, in effect, full-time permanent staff members of the NLB is hugely problematic, and robs this structure of the independence and dynamism that a committee of individuals who are active in the sector and who have time-bound terms of office would have.

Our recommendation:

While we are extremely concerned by the propositions contained in the Bill, at the same time we do not believe that the NLB should now go about setting up an elaborate and costly new set of panels of expertise for the purposes of adjudication. As noted elsewhere in this submission, there are already a variety of statutory funding bodies which already have these structures in place. If there is going to be a single Distributing Agency as broadly proposed, we believe that it would only be able to operate effectively if it's remit were concerned primarily with overseeing the allocation of funds to already existing statutory bodies that have overlapping mandates to those of the NLB and that have structures in place for the adjudication of funding applications.

In other words, the Distributing Agency would effectively become a 'meta-funder', responsible for distributing its funds to other funding agencies established by statute in the fields of arts, culture and heritage, sports and recreation and charities/social development. In such a scenario, the Distributing Agency would cease to receive applications directly from any other organisations, and work exclusively through these existing public conduits for funding, all of which are presently inadequately resourced. These statutory bodies (in the arts, culture and heritage field these

would be the National Arts Council, the National Film and Video Foundation, the National Heritage Council and Business and Arts South Africa) would be allocated funding based on programmatic proposals addressing the funding priorities outlined in the Lotteries Act, and would be accountable to the Distributing Agency and the National Lotteries Board for the proper expenditure of these funds to these ends. We have also noted elsewhere the ways in which such a delegation of funding would have a significantly transformative impact on the economies of scale under which these existing statutory bodies operate.

However, if the Ministry is unwilling to entertain such a delegation of funding, then we strongly reiterate the view the adjudicating structure outlined in the proposed additions to section 26 of the Act will be **wholly inadequate** as a mechanism for meaningfully adjudicating the volume and complexity of proposals submitted to the NLDTF, and the Department would need to return to the drawing board in developing an adjudication structure or structures that would do justice to the breadth of activity with which it would be concerned.

4.4.3 Conflicts of Interest

The inclusion of Clause 26D to the Act as proposed in the Amendment Bill seeks to ensure the absence of conflict of interest. The proposed amendments appear to do so through conferring on the Minister responsibility for resolving and addressing such conflicts.

Our Comment:

We are concerned about the undue and unrealistic degree of responsibility that these amendments would confer on the Minister for resolving problems of conflict of interest within the Distributing Agency/ies. While there may be a strong argument for the Minister having a role in addressing conflicts of interest at the level of the Board itself (which are addressed to a limited degree through the proposed insertion of section 3A through the Amendment Bill²), the Distributing Agency is, as we understand it, a substructure of the Board, and such conflicts should be addressed by that body, not directly by the Minister.

Our recommendation:

We propose that the provisions for addressing Conflict of Interest in the Act should involve:

1. Strengthening the conflict of interest provisions relating to the Board
2. Clarifying and strengthening the role of the Board in addressing conflicts of interest that may lie at the level of the Distributing Agency or Agencies.
3. Making explicit provision for ordinary members of the public to make submissions to either the Minister or the Board relating to real or perceived conflicts of interest within either the Board or the Distributing Agency/ies.

² We note that the proposed section 3A has been erroneously marked as section “26C” in the Amendment Bill.

There is also then the question of conflicts of interest that may operate at the level of employees of the Board who are involved in the administration of grants, a matter that has been extensively ventilated in past submissions from a range of organisations to the Ministry and the NLB, and in the media more broadly. We would wish to make the point that addressing conflicts both at this level and more generally relates back to the broader question of the professionalisation of the National Lotteries Board in a much more holistic sense. As noted in the preceding comments on the 'proffesionalisation' question, our view is that this is not fundamentally an issue which can be resolved through legislative measures or intervention. It is an issue of the nature of the leadership and management at the helm of the National Lotteries Board as an organisation, and the ability of that leadership and management to:

- ensure that effective systems and checks and balances are in place at the level of the administrative processes associated with grant management, and in the recruitment and management of staff.
- instill, promote and aggressively defend an organisational culture in which there is no place for corrupt or abusive behaviour on the part of board members, Distributing Agency members or ordinary employees of the Board.

ADDENDUM

ANSA SUBMISSION ON LOTTERY POLICY REVIEW DOCUMENT

**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

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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:

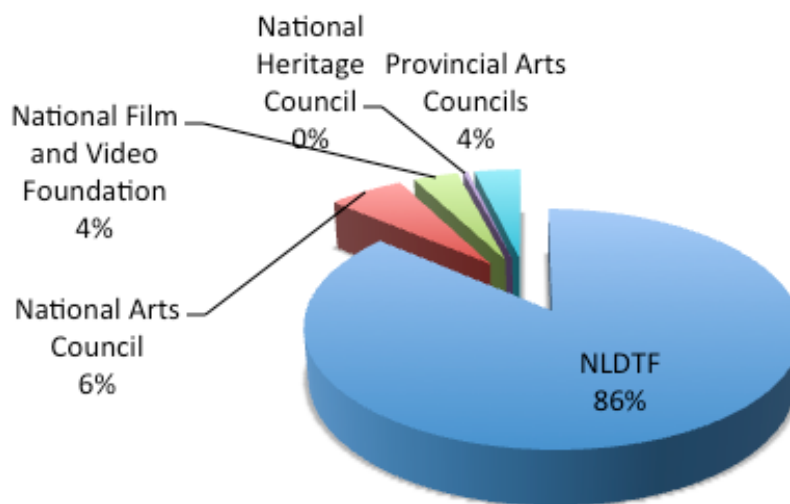
- the National Arts Council disbursed R49 million rand in the 2011 financial year
- the combined investment of Provincial Arts Councils is estimated at no more than R30 million in the 2011 financial year
- the National Film and Video Foundation disbursed R29 million in the 2010 financial year

- 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:

Division of application-based funding available at a national level



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 it's 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.