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*Increasing Giving, Philanthropy, Corporate Social Investment & Volunteering in Southern Africa*

**COMMENTS ON**  
**DRAFT AMENDMENT BILL OF THE LOTTERIES ACT, 1997**  
**CIVIL SOCIETY SUBMISSION**  
**COMPILED BY CAF SOUTHERN AFRICA**  
**JUNE 2013**

**Dr Rob Davies**

Director-General, Department of Trade and Industry  
Private Bag X84  
Pretoria  
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**FOR ATTENTION:** Mr Nkoatse Ernest Mashamaite, [nemashamaite@thedti.gov.za](mailto:nemashamaite@thedti.gov.za)

**Re: Notice 466 of 2013:** Department of Trade and Industry

**CAF Southern Africa Board of Directors**

Buyile Mbanga, Joanne Donald, Kelvin Glen, Sheila Mokoboto-Zwane,  
Hema Morar, Jerome Mthembu, Jo-Ann Pohl (Chair), Ziaad Suleman

**Registered Section 21 Company: 2000/016493/08 Registered NPO: 014-831**

**Registered PBO with 18A status 930002036**

B-BBEE Status: Exempted Micro-Enterprise; Level 4 Contributor; CSO Beneficiary Analysis: 91%, 100% SED Recognition

CAF Southern Africa subscribes to **The Independent Code of Governance for Non-Profits in South Africa**



# CONTENTS

## Page

**3** Introduction and Context

**4** CAF Southern Africa Comments on Draft Bill

**4** • OVER-ARCHING COMMENTS ON THE INTENDED 'SYSTEM' / ENABLING ENVIRONMENT FOR SOUTH AFRICAN CIVIL SOCIETY

**6** • FURTHER RECOMMENDATIONS MADE AT THE LEVEL OF PRINCIPLE AND GOODGRANTMAKING PRACTICE

**9** • SPECIFIC RESPONSES TO CONTENTS OF THE 'DRAFT AMENDMENT BILL OF THE LOTTERIES ACT, 1997'

**11** Proposals Supported By CAFSA

**15** Proposals not Supported by CAFSA

**25** In Conclusion

**26** LIST OF CIVIL SOCIETY ENDORSEMENTS OF THIS SUBMISSION

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## 1. INTRODUCTION AND CONTEXT

The Charities Aid Foundation Southern Africa (CAF Southern Africa or CAFSA) once again congratulates the Department of Trade and Industry (DTI) on efforts over the past eighteen months to improve the functioning of the national Lottery system, and in particular the functioning of the National Lotteries Distribution Trust Fund (NLDTF).

CAF Southern Africa is one of a small handful of South African organisations whose ultimate aim is to contribute to the strengthening of civil society (i.e. non-profits (NPOs)/NGOs/ CBOs/charities), through increased and effective resource mobilisation. The institutions established by the democratic state that contribute funding and associated support to civil society are critical elements in the funding and investment system supporting civil society, and thus of significant concern for our mission.

CAF Southern Africa has already contributed substantially to efforts to improve the Lotteries system. In this regard, in partnership with five other organisations we formed the Coalition on Civil Society Resource Mobilisation. Collectively we raised funding from the Atlantic Philanthropies to undertake research, engage with relevant government institutions, and produce the report which we have previously shared with the DTI and the NLDTF.<sup>1</sup>

In addition we participated actively in the 2011 national consultative meeting, and responded to the invitation from the DTI to comment on the document entitled **'Lotteries Policy Review, A Discussion Document, August 2012'**, with a Submission in December 2012 (which was acknowledged by two DTI managers).

We now have pleasure in submitting the written comments below that refer to the **Draft Amendment Bill of the Lotteries Act, 1997**:

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<sup>1</sup> Critical Perspectives on Sustainability of the South African Civil Society Sector, Coalition on Civil Society Resource Mobilisation, Jacana, 2012 <http://www.cafsouthernafrica.org/index.php/2012-08-03-09-25-58/npo-sustainability-report>

## 2. CAF SOUTHERN AFRICA COMMENTS ON THE DRAFT AMENDMENT BILL

Our Comments and Recommendations are made under three separate but related sections:

- On the cross-governmental enabling environment system
- At the level of Principle and Good Grantmaking practice
- In response to specific aspects of the Bill

Please see these below:

### 2.1 OVER-ARCHING COMMENTS ON THE INTENDED 'SYSTEM' / ENABLING ENVIRONMENT FOR SOUTH AFRICAN CIVIL SOCIETY

**We begin by congratulating the DTI** on the positive moves made to improve the Lotteries system over the past two years. We note the inclusion within the draft Bill, of several of the recommendations made by organisations of civil society (in particular the Funding Practice Alliance (FPA) and the Coalition for Civil Society Resource Mobilisation),<sup>2</sup> and the directions that resulted from the several court proceedings and associated judgments where civil society organisations challenged the NLDTF.

**However (as emphasised in our December 2012 submission),** we remain concerned that unless all relevant government departments work together to review and improve the entire 'enabling environment' for civil society, any changes instituted will be ameliorative rather than transformational. Our key recommendation therefore remains the harmonisation of those aspects of government's developmental policy and process which should support civil society action. As we emphasised in our December 2012 submission:

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<sup>2</sup> Critical Perspectives on Sustainability of the South African Civil Society Sector, Coalition on Civil Society Resource Mobilisation, Jacana, 2012 <http://www.cafsouthernafrika.org/index.php/2012-08-03-09-25-58/np0-sustainability-report> Funding Practice Alliance, <http://www.fpa.org.za>

*'While we acknowledge and commend the movements towards improvement currently taking place in the NLB, the NDA and the NPO Directorate, we urge these agencies, together with responsible leadership in related bodies such as Treasury, SARS and the National Planning Commission, to commit to a cooperative process towards over-arching and systemic reform of the enabling environment for civil society.*

*We call for a review by the NPC of the developmental aid architecture in South Africa as a matter of urgency.*

*We further recommend that a cross-sectoral working group, which includes strong civil society representation, is established to plan the necessary changes. We expect the outcome of this recommendation to be a holistic framework for the location and effective functioning of the National Development Agency (NDA), the National Lottery Distribution Fund (NLDTF), specific allocations from official development assistance, private philanthropy and corporate social investments, congruent with the developmental state.'*<sup>3</sup>

Our further specific recommendations to the DTI flow from the above in the sense that **we strongly advise against a piecemeal and ameliorative approach.**

Instead **we again advise adoption of an integrated, systematic, logical and cooperative process**, informed by the above-mentioned civil society research and consultation, as follows:

1. Cross-governmental review of all legislation and associated institutions and systems that comprise the enabling environment for civil society: (NPO Act (**now underway – we await further developments in this regard including a legitimate national consultation process**); NDA Act; Lotteries Act (**now underway – this submission refers**); and aspects of the Income Tax and B-BBEE Acts (**CAF Southern Africa and other civil society organisations successfully petitioned the**

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<sup>3</sup> Coalition on Civil Society Resource Mobilisation, op cit, pp 99,100

**Minister to remove proposed amendments to the B-BBEE Codes that had the potential to significantly damage access by civil society organisations to corporate social investment funding).**

2. Legislative and Regulatory Reforms based on the recommended cross-governmental review
3. Institutional and Governance Reforms
4. Management and Administrative Reforms including appropriate budget allocations and organisational development

## **2.2 FURTHER RECOMMENDATIONS MADE AT THE LEVEL OF PRINCIPLE AND GOOD GRANTMAKING PRACTICE**

In addition to our comments on specific aspects of the Bill in the sections below (2.3) we wish to make the following recommendations which cover issues of principle and good grantmaking practice:

- There is no mention in the Bill of the need for a **clear developmental vision** or **Theory of Change** to guide the grant making processes of the Lotteries. The Lotteries chairman has stated publically that the financial resources of the Lotteries are limited. This makes the necessity for a clear and transparent developmental vision that reflects the public interest obligations of the Lotteries all the more critical.
- In spite of the several areas of improvement (as acknowledged above) the Bill does not deal with the root problem embedded in the current lotteries framework. This pertains to **the failure to establish distinctive roles for the Board and the Distribution Agencies**. Until now this has significantly contributed towards the governance and accountability challenges being experienced by the Board and Distribution Agencies.

The Bill proposes what we consider to be a fundamentally flawed solution to the root problem within the current lotteries framework. The Bill, in its current format, would essentially turn the National Lotteries Board into the *de facto* regulator and distributor of lotteries funds. The Distribution Agency would in essence become an extension of the National Lotteries Board. The potential value of having an independent distribution function would effectively be lost.

The Department of Trade and Industry itself came up with the ideal solution during 2010 when it made a recommendation to the Portfolio Committee on Trade and Industry, i.e. that **Distribution Agencies should become accountable bodies in terms of the Public Finance Management Act (PFMA)**. This, together with the further proposals captured in this submission, would **increase accountability of the Distribution Agencies whilst separating the regulation function from the distribution function**.

We realise that this may not seem to be the most convenient option, but CAF Southern Africa is of the opinion that the option as currently stated in the Bill, would not solve the governance and accountability problems which have been pointed out via our research and in various court judgments.

- The Lotteries should allocate a reasonable percentage of the annual available quantum of funding to **Human Rights and Social Justice** causes. This will ensure that a contribution is made to the unacceptable levels of inequality and marginalisation that continue to characterise our society. Until recently most of the work of civil society organisations focusing on human rights and social justice in South Africa has been funded by international donors. These have now announced that their support is being re-directed towards (what they consider to be) more pressing priorities in countries less developed than South Africa. Corporate social investment contributions are not made to social justice causes.

We believe that unless a provision for human rights and social justice is explicitly made in the legislation/regulations it will be overlooked. We therefore

recommend that the RDP provision (which is being removed in terms of the Bill) be replaced with **Human Rights and Social Justice**.

- In view of ongoing withdrawal of international funding from South Africa, the economic recession, and continuing poverty and inequality, civil society organisations are adopting innovative means to build their financial sustainability. These include diversified funding strategies, income generation and, where appropriate, organisations are transforming themselves into **social enterprises**. The UK's 'Big Lotto' has acknowledged the contributions of social enterprise in its funding strategy and SA's Lotteries would be wise to follow suit.<sup>4</sup>
- We note with approval that the Bill does reflect that consideration should be given to the allocation of a reasonable percentage of funding towards the **institutional development and capacity** of civil society organisations. As we have previously emphasised, without strong boards, good management and efficient staff it is not possible for organisations to function effectively. The danger is then that allocated project funding will not be used to optimal levels. **We therefore recommend that explicit provision is made for this in the grant application process (rather than at the discretion of the DA as is currently suggested in the Bill)**

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<sup>4</sup> <http://www.bigfund.org.uk/>

### 2.3 SPECIFIC RESPONSES TO CONTENTS OF THE 'DRAFT AMENDMENT BILL OF THE LOTTERIES ACT, 1997':

We noted in our December submission to the DTI that until the above-recommended cross-governmental and systemic disconnections are dealt with, it does not seem useful to make piecemeal responses and recommendations for improvement. However as the DTI has now progressed to the issuing of this Bill we make the specific comments below in good faith and in the expectation that the responsible Minister will, in addition to guiding the amended Bill through the Parliamentary process, also approach the responsible Ministers in the Department of Social Development (DSD), the South African Revenue Service (SARS), the National Treasury and the National Planning Commission, in regard to our **OVER-ARCHING RECOMMENDATION for an holistic and cross-governmental approach to the enabling environment for civil society.**

**The following specific proposals are made in the Bill:**

- a. **One Distribution Agency:** The appointment of multiple Distribution Agencies, as currently provided for in the Lotteries Act, will be removed. The Bill makes provision for one Distribution Agency that is appointed by the Minister of Trade and Industry.
- b. **New Appeal function of the Board:** The Bill proposes that the Board have the power to review or serve as appeal authority over decisions of the Distributing Agency.
- c. **Unsolicited grants:** The Bill proposes that the Board be given the power to conduct research on and approve grants for '*appropriately deserving good causes*' without the need for formal applications being lodged in accordance with the Lotteries Act.
- d. **Appointment criteria for Board:** The Bill lists the disqualifying criteria for the appointment of members of the Board. The Bill also provides that it would be

an offence if a Board member fails to inform the Minister of circumstances that would result in her/his disqualification.

- e. **Appointment criteria for members of Distribution Agency:** The Bill lists the disqualifying criteria for the appointment of members of the Distribution Agency.
- f. **Meetings of the Board:** The Bill provides that the Board must meet regularly and the Minister may terminate membership of a member who does not attend two meetings consecutively without notification and approval of the chairperson or the Board.
- g. **Increased discretionary powers of the Board:** A number of discretionary powers are proposed in the Bill for the Board.
- h. **Reducing certain decision-making powers of the Board:** The Lotteries Act currently provides for the Minister and the Board to separately make decisions on the same matters. The Bill proposes that those decisions be made by the Minister after consultation with the Board.
- i. **Conduits:** The Bill proposes the elimination of conduit organisations unless good cause is shown as to why potential beneficiaries are unable to make application on their own.
- j. **Administrative Costs:** The Bill gives the Distribution Agency discretion to issue a directive on splitting grants distributed between administrative costs and actual cause funded.
- k. **Authorising an organ of state to operate the national lottery:** The Bill states that the Minister of Trade and Industry may appoint or authorise an organ of state to conduct the National Lottery for a period not exceeding eight years.

- I. **Removal of RDP Category:** The Bill makes provision for the removal of the redundant funding category for the Reconstruction and Development Programme.

**Please note our comments on each of these below:**

### **2.3.1 Proposals Supported By CAFSA:**

The following proposals contained in the Bill are supported by CAFSA:

- **Disqualifying criteria for the appointment of members of the National Lotteries Board**

The Bill adds further criteria that would disqualify a person from being appointed by the Minister of Trade and Industry as a member of the Board (proposed section 3A). This includes:

- a political office-bearer;
- a person disqualified as a director of a company in terms of the Companies Act of 2008;
- a person who has been removed from a position of trust in the past five years on account of misconduct; and
- a person not of a sound mind

It would be an offence, in terms of the Bill, if a Board member fails to inform the Minister of circumstances that would result in his/her disqualification (proposed section 3(7)(f)). Members of the Board may also be subjected by the Minister to a probity test.

#### **CAFSA's viewpoint:**

The Lotteries Act does capture some disqualifying criteria and the proposed Bill adds to the criteria and places an obligation on Board members to inform the Minister if a situation would result in his/her disqualification.

This will be a notable improvement.

- **Disqualifying criteria for Distribution Agency**

Similarly to the criteria proposed for the Board, the Bill proposes a number of criteria that would disqualify a person from being appointed as a member of the Distribution Agency by the Minister of Trade and Industry. These include:

- a political office-bearer;
- a person disqualified as a director of a company in terms of the Companies Act of 2008;
- a person that has been removed from a position of trust in the past five years on account of misconduct; and
- a person not of a sound mind

The Bill also introduces a new section dealing with conflict of interest pertaining to members of the Distribution Agency (proposed sections 26D).

**CAFSA's viewpoint:**

CAFSA welcomes the proposed section on conflict of interest which is consistent with a recommendation made in our Sustainability Report.

This will be a notable improvement.

- **Meetings of the Board**

The Bill provides that the Board must meet regularly and the Minister may terminate the membership of a member of the Board who does not attend two meetings consecutively without notification and approval of the chairperson or the Board (proposed sub-sections 4(7) & (8)).

**CAFSA's viewpoint:**

CAFSA supports this proposal.

- **Administrative Costs and Project Expenditure**

The Bill allows for a directive on the splitting of the grant distributed between administrative costs and actual cause funded. This discretion is given to the distribution agency.

**CAFSA's viewpoint:**

As we have noted (in point 2.2 above) we welcome this move. However this should be an aspect of the grantmaking policy of the NLDTF and not be left to the 'discretion of the Distribution Agency'. Organisations applying to the Lotteries for funding should have the responsibility (in terms of the good grantmaking practice policy of the NLDTF) to budget reasonable operational costs into their funding applications.

- **Reducing discretionary powers of the board**

The Lotteries Act provides in some situations for the Minister and the Board to separately make certain decisions on the same matter. The Bill proposes that the decisions be made by the Minister after consultation with the Board. The Minister of Trade and Industry, in consultation with the Board, would have the responsibility to make decisions regarding conditions of licensing, varying such conditions, revoking a licence and suspending a licence.

**CAFSA's viewpoint:**

CAFSA supports these proposed amendments as this would provide clarity regarding responsibility for decisions regarding licensing.

- **Authorising an organ of state to operate the national lottery**

The Bill states that the Minister of Trade and Industry may appoint or authorise an organ of state to conduct the National Lottery for a period not exceeding eight years.

**CAFSA's viewpoint:**

We do not agree with this provision as firstly it is completely impractical and secondly if adopted would be an invitation for corruption and mismanagement. Government is staffed by civil servants who have neither the skills nor the experience to run a National

Lottery. Secondly Government does not have the technical infrastructure and expertise necessary, and thirdly the level of corruption throughout government is already disgraceful. The lottery generates billions of Rands every year and requires stringent governance and accountability mechanisms. This requirement would not be served by placing control of the lottery within government until and if corruption is controlled.

- **Removal of the category for Reconstruction and Development Programme**

Section 27 of the Act will be deleted in terms of the Bill.

**CAFSA's viewpoint:**

As this category has never been used CAFSA supports this proposed amendment but in addition **recommends that it is replaced with a category for Human Rights and Social Justice.**

## 2.3.2 Proposals Not Supported By CAFSA

### One Distribution Agency

The appointment of multiple distribution agencies, as currently envisaged by the Lotteries Act, will be removed through the provisions proposed in the Bill. The Lotteries Act currently allows for the appointment of more than one Distribution Agency in terms of sections 28(2), 29(2), 30(2) and 31 (1). This is because the Minister of Trade and Industry is required to consult different Ministers when appointing the respective Distribution Agencies. The requirement to consult is removed by the Bill and all sections now refer to 'a *Distribution Agency*'.

The Bill proposes that this single Distribution Agency shall be:

- a. Appointed by the Minister of Trade and Industry (proposed section 26A(a));
- b. Accountable to the National Lotteries Board (proposed section 26A(b));
- c. Responsible for the adjudicating and distribution of funds (proposed section 26A(c));
- d. Composed of persons appointed on a permanent basis (proposed section 26B(2)); and
- e. Staff members of the Board **or** persons appointed on terms and conditions appointed by the Minister (proposed section 26B(2) & (4)).

### CAFSA's viewpoint:

As we have noted at the level of Principle (in point 2.2 above) CAFSA does not support the appointment of one Distribution Agency that will be accountable to the Board as this would not deal with the root governance and accountability challenges historically faced within the national lotteries.

The reasons for our viewpoint are summarised below:

- 1) **The Regulator and the Distributor** - Our Sustainability Report says: "*It is inconsistent with the structure of the Act for the staff of the regulator also to be the staff of the distributor.*" It concludes further that: "*In terms of Section 32 of the Lotteries Act, it is envisaged that the allocations **be paid over** to the distribution agency and that the distribution agency pay the recipient.*" However, the Regulations promulgated by the Minister, contrary to the Lotteries Act, made provision for the payment of grant monies directly from the Board to grant recipients. It is not envisaged in terms of the Lotteries Act that the *regulator* (Board) should also fulfil the role or take responsibility as the *distributor* (Distribution Agency). The Board is not, in terms of the Lotteries Act, responsible for the distribution of the lotteries funding. This function vests with the Distribution Agencies that should, in terms of the Lotteries Act, account for such distribution. For example, the Lotteries Act requires the Auditor-General to audit all financial statements reflecting expenditure from the monies to be allocated to organisations.
  
- 2) **Individuals as members of Distribution Agencies** - Our Sustainability Report also indicates that the appointment of *individuals* as members of distribution agencies is inconsistent with the provisions of the Lotteries Act. The appointment of separate legal persons is envisaged in the Lotteries Act for appointment within Distribution Agencies.
  
- 3) **Consequences of proposals** - The adoption of these proposals would effectively result in the merger of the function of the *distributor* with the *regulator*. This would effectively eliminate the need for a separate distribution function. The members of the Distribution Agency would essentially become staff members of, and accountable to the Board. This begs the question as to whether there would be any meaningful difference between the Distribution Agency and the Board.

### **CAFSA's Recommendations:**

The Department of Trade and Industry itself came up with the ideal solution when it made a recommendation to the Portfolio Committee on Trade and Industry that Distribution Agencies should become accountable bodies in terms of the Public Finance Management Act.

### **Our Sustainability Report proposed the following solutions:**

- a. The Lotteries Act should be amended to allow the Minister to appoint legal entities as DAs rather than individual 'members'.
- b. The legislation should include the provision that the Minister commence appointment of DAs at least one year prior to the expiry of the serving Distribution Agencies.
- c. DAs should execute their mandate independently of the Board, declare their interests and should not create dissension.
- d. Regulations should require Distribution Agencies to submit and publish audited reports annually.
- e. Regulations should stipulate increased public accountability reporting by Distribution Agencies detailing all applications received, processed, approved and rejected, and the time frames/amounts/appeals involved. All provisions of The Promotion of Access to Information Act (PAIA) should apply at all times to every application.
- f. The DTI should set up a structured forum for civil society to engage with the autonomous Distribution Agencies to allow consultation and for civil society to monitor performance.
- g. The Distribution Agencies should be required to compile/submit an externally audited data report containing the following information: details of applications for funding received, details of applications for funding that have been rejected, and details of successful applications.

- **Lack of Independence of Distribution Agency**

The proposed section 10(9) provides that: “*The board shall ensure that the distribution agency performs its distribution function independently and without fear, favour or prejudice.*” This clause would at best be superfluous. The members of the proposed Distribution Agency would:

- Be staff members responsible to the Board,
- Be subject to the Board's review and appeal, and
- Be unable to distribute unsolicited funding

**CAFSA's viewpoint:**

The necessary independence and public accountability of the Distribution Agencies cannot be effectively achieved when the DAs comprise individuals that are directly responsible to the Board. The Board is in essence exercising a delegated executive function on behalf of the government with regard to the national lottery. Given this, it is hard to envisage how the Board can ensure that the *Distribution Agency performs its central function independently and without fear, favour or prejudice*. The Lotteries Act does not explicitly require the Board to act independently and without fear, favour or prejudice. Rather the Act requires that the Board advise the Minister of Trade and Industry on a number of matters.

Section 11(5) of the National Youth Development Agency Act, for example, provides a more meaningful comparable provision. It reads: “*A member [of the board of the National Youth and Development Agency Act] must act impartially, in good faith and without fear, favour or prejudice and is subject only to the Constitution and law.*” The members of that Agency are with reference to the execution of their mandate, in theory, subject to the Constitution and the law – not to the executive. This is not the same for the National Lotteries Board. The proposed section 10(9) would be void of substance within this particular context.

**CAFSA's Recommendation:**

The proposed section would, in CAFSA's view, be without substance within the broader framework captured in the Bill. See proposed solutions captured in sections above.

- **Appeal and Review function of the Board**

The Bill proposes that the Board serve as a review or appeal authority against decisions of the Distributing Agency (proposed section 10(1)(l)).

**CAFSA's viewpoint:**

The Board's appeal function would go against the grain of the proposals made by CAFSA and the Sustainability Report. This proposal in the Bill reinforces the view that the Board would become the *de facto* regulator and distributor. The function of the Distribution Agency, as a distributor, would effectively be nullified by the Bill as the Board would be in a position to override decisions of the Distribution Agency.

**CAFSA's Recommendation:**

An independent appeal panel as envisaged in the Companies Act of 2008 or the Nonprofit Organisations Act should be considered.

- **Unsolicited grants**

The Bill proposes that the Board be given the power to conduct research on and approve grants for '*appropriately deserving good causes*' without the need for a formal application being lodged in accordance with the Lotteries Act. (proposed section 10(1)(m)).

**CAFSA's viewpoint:**

In principle this is a good idea. Certain well-regarded international funders do not accept unsolicited proposals. They research in areas that accord with their funding policy and then invite applications from organisations working in the particular field.

**CAFSA's Recommendation:**

When the Lotteries works on its Developmental Vision/Theory of Change it will develop funding focus areas (probably in accordance with the most pressing needs of South Africa and aligned with government's developmental agenda. If there is a particular focus which is not covered by applications from organisations the Board can facilitate

expert research into that area and the organisations that work there. It should then invite applications from a number of the organisations covered during the research process and these applications should be reviewed by objective experts in the fields of grantmaking and the area of potential funding. **The difference between this Recommendation and the Bill is that selected organisations have the responsibility then to apply and motivate for the available funding.** This increases the responsibility and accountability of these grantees as they are required to go through the same application and adjudication process as organisations applying through the usual channels.

- **Increased discretionary powers of the Board**

A number of discretionary powers are proposed in the Bill for the Board. For example:

- a. Section 10(6) of the Bill provides that: "*The Board may make any such arrangements as it seems fit to discharge its functions in terms of the Act*";
- b. Section 10(7) of the Bill provides that; "*The board may in consultation with the Minister, determine any other process or monetary threshold that will facilitate effective and efficient distribution of grants including the processing of applications, internal review or appeal process of the distribution agency.*"
- c. Section 10(8) provides that; "*The board may determine or direct or order the performance of any other matter or research intended to enhance the optimum functioning of the board and the distribution of grants.*"
- d. Section 10(9) provides that: "*The board shall ensure that the distribution agency performs its distribution function independently and without fear, favour or prejudice.*"
- e. Section 10(10) provides that: "*The board shall ensure that a simple and clear process or procedure for the settlement of disputes lodged against the distribution agency is developed.*"

**CAFSA's viewpoint:**

The above powers are aimed at solidifying the Board's role as the *de facto* distributor and decision-maker in relation to distribution. Some discretionary powers afforded to the Board in terms of the Bill are wide, vague and confusing. This is particularly concerning in light that the Supreme Court of Appeal's (SCA) commented that *"the board does not appear to understand its mandate properly."* The SCA commented that the Board's chairperson seemed to have held the view that *"grants given by the board are 'gratuities' which are allocated at the board's discretion."* This was dismissed by the SCA as 'wrong' and it stated that - *"The board holds public funds in trust for the purpose of allocating them to deserving projects. And it must ensure that these funds are allocated to those projects, provided of course that they meet the necessary requirements. The funds do not belong to the board to be disbursed as its largesse."*

**CAFSA's Recommendation:**

CAFSA believes that:

- a. The Board's role and discretion should be limited to it being a regulator – not a distributor.
- b. The Board should not fulfil the role of an appeal or review body.

Pursuant to our Sustainability Report the Bill should make provision for the following:

- a. The properly constituted Distribution Agencies to have the discretion to conduct research and contribute to knowledge of grant-making practice.
- b. Clear timelines for the adjudication process should be determined and communicated to applicants in a transparent manner. This will assist the organisations in their planning.
- c. Organisations should be informed within a prescribed period if their applications have been rejected, along with reasons for the rejection.

- **Providing funds through Conduit Organisations**

The proposed section 26E (1) provides that: *“No applications for grants by a juristic person acting as an agent, representative or conduit of any potential beneficiary shall be considered unless good cause is shown as to why such potential beneficiary is unable to make application on its own.”*

**CAFSA's viewpoint:**

The above provision allows for the Distribution Agency to reject or refuse to consider an application that was submitted with the assistance of a conduit organisation on arbitrary grounds (section 26E (2)).

**CAFSA's Recommendation:**

CAFSA believes that the Act should provide for objective grounds that will allow a Distribution Agency to refuse to consider an application submitted with the assistance of a conduit organisation.

Pursuant to our Sustainability Report the Lotteries Act should make clear provision for the role of larger organisations with more experience in managing funds to be contracted to channel funds to CBOs and to play a support role to these small organisations.

The Distribution Agency should seriously consider all reasonable applications made in accordance with the vision and policy of the NLDTF once these have passed through the vetting process within the NLDTF. Objective reasons for rejection of such applications must be established within the NLDTF grantmaking policy.

**Authorising an organ of state to operate the national lottery**

The Bill states that the Minister of Trade and Industry may appoint or authorise an organ of state to conduct the National Lottery for a period not exceeding eight years.

## CAFSA's viewpoint:

We do not agree with this provision as firstly it is completely impractical in terms of execution, and secondly if adopted would be an invitation for mismanagement and potential corruption.

It is inferred that the main reason behind the proposal to allow for the appointment of an organ of state to operate the national lottery is to prevent a delay in operations as resulted from the 2007 gap in the functioning of the Lottery and associated court case against the Minister of Trade and Industry and the National Lotteries Board (*Uthingo Management (Pty) Ltd v Minister of Trade and Industry and Others*).

**The essence of the 2007 Case:** This case is in essence an example of an organ of state and national minister failing to exercise their legal mandate. In the case the Court found amongst other items that: *"There are serious shortcomings in the investigation the Board carried out and consequently in the memorandum they presented to the minister."* The Court further found that: *"The Minister and the National Lotteries Board failed to consider or take into account mandatory and material information prescribed by section 13 of the Lotteries Act, namely the shareholders in the entities which constitute the applicant."*

The Minister would **not**, when appointing an organ of state, be under an obligation to comply with **section 13(2)(b)(i)** of the Lotteries Act which requires the Minister to be satisfied that an applicant for the licence has **sufficient appropriate knowledge or experience** to conduct the National Lottery. The court found that: *"The Minister has again failed to state that he has satisfied himself as required by the abovementioned section 13(2)(b)(i)."*

The Bill is essentially proposing an apparently convenient solution for government to run the state lottery, whereas findings of this Court decision and the Supreme Court of Appeal (as referred to in this submission) should be a warning of the shortcomings of organs of the state in these matters.

We do not agree with the proposal that be provision be made for an organ of state to operate the national lottery for the following reasons:

- a. The above case is an example of inefficiency on the part of an organ of state. It was the apparent failure on the side of the Lotteries Board and the Minister to comply with their legal mandate that resulted in the 2007 delay and associated gap in the functioning of the Lottery.
- b. The preferred way to prevent a similar delay is for the Board and the Minister to ensure that their legal mandates are executed effectively. Having an organ of state operating the national lottery would not result in efficiency.
- c. Organs of state are staffed by civil servants who have neither the skills nor the experience to run a National Lottery.
- d. Organs of state do not have the technical infrastructure and expertise required to operate the National Lottery.
- e. Organs of state are already overburdened in fulfilling their constitutional mandates and are not equipped to deal with the extra burden of running a National Lottery.
- f. This also appears as a convenient way to deal with a more deep-rooted challenge that has arisen as a result of inefficiency. The 2007 court case has illustrated the important role that the judicial system plays in identifying and addressing administrative inefficiency. The Bill would essentially allow for a situation where the Minister may appoint an organ of state and not be required to demonstrate the same diligence as required when appointing a private bidder.

### 3. IN CONCLUSION

In conclusion we once again commend the DTI for progress made as reflected in the Bill. We trust that our comments and suggestions above will be seriously considered and will be useful during the current legislative reform process. We would be happy to advise further as the reform process continues.



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CEO

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<b>Abrina Esther House</b>	Jane Grindley Ferris, Director
<b>Age-in-Action</b>	Ingrid Cupido
<b>Altus Sport</b>	Gert Portgieter
<b>Amagwe Village</b>	Erna Steynberg - <i>Manager</i>
<b>Bird Life South Africa</b>	Mark Anderson - <i>CEO</i>
<b>Bloemfontein Baptist Church</b>	Rev. Johan Jansen
<b>Catholic Health Care (CATHCA)</b>	Yvonne Morgan - <i>Director</i>
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<b>Child and Family Welfare Society of Pietermaritzburg</b>	Julie Todd - <i>Director</i>
<b>Child Welfare SA – Kleinmond</b>	Theresa Els - <i>Manager</i>
<b>Children’s Hospital Trust</b>	Camilla Thorogood – <i>Information and Knowledge Manager</i>
<b>Children of the Dawn</b>	Magali Malherbe – <i>National Project Manager</i>
<b>Douglas Murray Home for the Aged</b>	Fred Daniels - <i>CEO</i>
<b>Durban YMCA</b>	Ian Booth - <i>CEO</i>
<b>Elim Hlanganani</b>	Florence Khosa - <i>Director</i>
<b>Families South Africa (FAMSA) Grahamstown</b>	Anne Harris - <i>Director</i>
<b>Families South Africa (FAMSA) Potchefstroom</b>	Marietha Oelofse - <i>Director</i>
<b>Families South Africa (FAMSA) Western Cape</b>	Noelene Blekkenhorst - <i>Director</i>
<b>Families South Africa (FAMSA) Johannesburg</b>	Pam Gillingham - <i>Director</i>
<b>Gerald Fitzpatrick House and Nursing Home</b>	Shadia Africa - <i>Fundraiser</i>

<b>HEDCA</b>	Penny Toussaint
<b>Holy Cross Hospice</b>	Sister Priscilla Dlamini - <i>Director</i>
<b>HospiceWits</b>	Nigel Unwin - <i>CEO</i>
<b>Ikageng Old Age</b>	R.C. Moeketsi - <i>Director</i>
<b>Jabulani Khakibos Kids</b>	Stefanie Burnett – <i>CEO/ Founder</i>
<b>Jo'burg Child Welfare</b>	Dr J.M. Loffell
<b>Kids Haven</b>	Moira Simpson - <i>Director</i>
<b>Lamontville Foundation</b>	Themba Blose - <i>Chairperson</i>
<b>Leliebloem House Child and Youth Care Centre</b>	Francisco Cornilius - <i>Director</i>
<b>Leprosy Mission</b>	Peter Laubscher
<b>Mpumalanga Leadership Foundation</b>	T.J. Maré - <i>CEO</i>
<b>National Osteoporosis Foundation of SA</b>	Teréza Hough - <i>CEO</i>
<b>National Welfare Forum</b>	Rajesh Latchman - <i>Coordinator</i>
<b>Phoenix Zululand</b>	Nonceba Lushaba - <i>Director</i>
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<b>St Georges Home for Girls</b>	Graeme Cairns
<b>Suid-Afrikaanse Vrouefederasie (SAVF)</b>	Sita Rootman - <i>Manager</i>
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<b>UWC, Community Law Centre,</b>	Samantha Waterhouse – <i>Parliamentary Programme Coordinator</i>
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