



Funding Practice Alliance

Verbal Submission to the Portfolio Committee on Trade and Industry

On the

Lotteries Amendment Bill 2013

Introduction

The Funding Practice Alliance(FPA) welcomes the opportunity for the public to make submissions on the *Lotteries Amendment Bill 2013* to the Portfolio Committee on Trade and Industry.

The Funding Practice Alliance is made up of three organisations; CDRA (Community Development Resource Association), Inyathelo -The South African Institute for Advancement and SCAT (Social Change Assistance Trust), which are all based in Cape Town but which work across the country. The FPA was formed to respond to funding challenges and issues that affect the civil society sector in South Africa, including conducting research into the size and scale of funding to CSOs , good funding practices including grant-making practices; the administrative capacity of state funding agencies; state and civil society power relations; mutual accountability between grant - seekers and grant - makers; decision making processes related to funding; and the effectiveness of funding relationships as well as exit strategies. The FPA also published a research report on the National Lotteries Distribution Trust Fund(NLDTF) and the NDA in 2011, it is in this capacity that the FPA makes its submission today.

The FPA has made a written submission on the Lotteries Amendment Bill which provides a more detailed commentary on the specific aspects of the Bill that we have concerns about. This verbal submission will focus on only four aspects of the Amendment Bill.

Comments regarding the draft Lotteries Amendment Bill

Distributing funds without submitting an application

Point 4(2A)(1) (pg. 3 of the Bill) and Point 10(c)(q)(pg. 9 of the Bill) referring to the “Functions of the Commission” , allows the National Lotteries Commission to *conduct or authorise the Commission to conduct research on and approve grants to appropriately deserving good causes or recipients that may be funded without application lodged in accordance with this Act’.*

The clauses in the Amendment Bill that allow the National Lotteries Commission to approve grants without an application being lodged is very concerning. As the FPA we strongly object to this clause as this is considered bad funding practice in the donor community and in the civil society sector and the National Lotteries Commission should not seek the allowance for this practice. Organisations should always submit an application indicating need and activities/projects or programmes that will take place should they receive funding. Without a completed application the National Lotteries Commission would not be able to establish if there is consensus or agreement on how the distributed funds would be used. As it stands this clause would mean that the National Lotteries Commission will be distributing funds based on verbal agreements. In addition, there needs to be acknowledgement that civil society organisations that work directly with communities have a better understanding of the needs within these communities. It is therefore not necessary for the National Lotteries Commission to conduct its own research in order to determine the priority needs within communities. The NLB should instead focus on ensuring that organisations are aware of the policies and procedures of applying for grants from the NLB and in assisting organisations to apply for these grants.

Our proposal: The FPA proposes that the Portfolio Committee invite/solicit/ or request input from other donor agencies on this issue and we are willing to provide a list of donor organisations that could be contacted in this regard

The possibility for an 'organ of state' running the National Lottery

Point 13(13A)(1) (pg. 10 of the Bill) referring to Section 13 of the principal Act, allows for the Minister to decide *'on justifiable grounds not to issue a licence as contemplated in section 13, the Minister may, after consultation with the board, license or authorize an organ of state to conduct the National Lottery*'

Contrary to what many may assume, the FPA's objection to this clause is not based on the view that Government is wholly incompetent, but rather from the understanding that the requirements to run a national lottery are complex and involve specific expertise, knowledge and infrastructure. We accept that this proposal from the DTI is an attempt to ensure that we do not have a repeat of what took place in 2007 when the lottery was not operational for six months and therefore no generation of revenue for good causes. We applaud the DTI for these considerations. However it is difficult to conceive that any organ of state would be able to set up a National Lottery structure within 6 months. This means that this proposal will not address the challenge that we faced in 2007. We call on the Portfolio Committee to ask the DTI to make alternative proposals to address this issue.

Our proposal: As the FPA, our contribution to the consideration for alternative proposals is that the Miscellaneous Fund should be designated as a 'Reserve Fund' in which the five percent allocation could be set aside for instances when the national lottery is not operational and not generating an income. Civil Society organisations would then be able to continue to access funds from the 'Reserve Fund' in this instance. This is but one alternative proposal, we are sure that there are others that could be implemented at minimal cost and without stemming the flow of funds to good causes.

Provincial Concerns

Point 30(g) (pg. 18 of the Bill) referring to Section 32 of the principal Act, removes the following clause from the principal Act (Section 32 (4)): *'In performing his or her functions in terms of subsection (3), the Minister shall – (a) consult with the board and the relevant distributing agency before giving any directions to that distributing agency; and (b) take into account – (i) general development in the Republic, with specific reference to the regional, economic, financial, social and moral interests of the Republic and the enhancement of the standard of living of all people in the republic; and (ii) provincial and local interests, including – (aa) the number of lottery tickets sold in each province; (bb) the population of each province; and (cc) the financial requirements of each province.'*

The FPA would like to raise two concerns with regards to the deletion of this section of the Lotteries Act which requires the Minister to consider provincial and local interests, the population of each province, the financial requirements of each province, etc. The first is that it is unclear as to why this clause is being deleted as it does not address any of the policy issues raised by the DTI or the specified objectives of the Amendment Bill. And it may be useful for the DTI to clarify why this clause is being removed from the Bill. Secondly the deletion of the clause implies a disregard for the differences in terms of the work of civil society organisations and the organisational formations that exist within civil society and across the country. Considering provincial civil society interests and concerns enables the National Lotteries Commission to better respond to societal and community challenges, not to do so ignores the uniqueness of the communities across South Africa, and we all know how developmental types will always choose a bottom up approach to addressing community needs. The FPA submits that the Portfolio Committee should consider that communities across South Africa are not faced with the same challenges. We also note the opinion of the DTI and the State Law Advisors that this Bill should be dealt with in accordance with the procedure established in section 75 of the Constitution. We ask however, that given the proposal that this clause be deleted, request the Portfolio Committee to allow the NCOP to deliberate on the Bill. Even if the Bill will not affect provincial government structures it will have a considerable impact on the civil society organisations and communities in these provinces.

Our Proposal: We propose that the Portfolio Committee not accept the deletion of this clause. While it may make the National Lotteries Commission job easier as the regulations requiring that at least 5 percent of allocations from each fund must go to each province, could be done away with, this will not bode well for organisations based in less developed provinces.

Amendments not considered in the Bill

The Act and its purpose

The Lotteries Act lacks a clear statement of intent regarding the long-term purpose of and NLDTF. The Lotteries Act needs a statement that outlines the kind of society we seek to become, and from this, the kind of activities and initiatives for which the NLDTF funds are earmarked to support work in line with this long-term purpose. It needs to be absolutely apparent from the wording in the Act that this state funding agency is geared to support the growth and development of a particular

kind of society. It should also be apparent that the kinds of organisations that will be supported are not only those servicing immediate needs and priorities, but also those whose goals are longer-term in line with the framing paragraph referred to above. At first glance, the Lotteries Act seems to have been developed solely to legislate for the formation of the NLB and the NLDTF, and to provide guidance on how these would operate and what their responsibilities would be including providing licences for the operation of lotteries in South Africa. The fact that the establishment of the NLB, NLDTF and the Distributing Agencies is primarily meant to ensure that as much funds as possible are available for distribution to the civil society sector in recognition and support for the work that they do has become secondary, and needs to be addressed within the Bill at this juncture as a record of the purpose behind these structures.

Point 13(13A)(2) (pg. 10 of the Bill), the Minister *'in deciding whether justifiable grounds contemplated in sub section (1) exist, the Minister may take into consideration national government plans and priorities.'*

There are currently clauses in the Amendment Bill that refer to the 'consideration of national government plans and priorities' and there is a statement at the back of the Amendment Bill under the 'Memorandum on the objects of the Lotteries Amendment Bill' section that states that 'the fundamental policy principle approved by government on the National Lottery was that the National Lottery will be utilised as a source of generating substantial revenue that will be used to fund projects of national interest in respect of which there was insufficient funding from the State expenditure.'

If in fact a decision has been made by the government that NLDTF funds will now be used as budget relief for the state then we request clarification on how and when this decision was made. I think we can all agree that the decision to divert an average of R2 Billion of funds from one sector to another is not a simple decision nor is it one to take lightly.

Our understanding from the Wiehahn Report and the Gambling Review Report is that the NLB and the NLDTF has been established to distribute funds to the civil society sector whose primary purpose is to improve South African society. The inclusion of the clause to consider Government plans and priorities in determining how and where funds should be distributed also implies that the work of civil society organisations is not aligned to government priorities. The FPA submits that this clause is not necessary, as civil society organisations are established for the "public good" and all their activities are geared towards improving and uplifting communities.

The FPA would like to clarify that the purpose of civil society organisations is not to implement government plans and priorities. This does not mean that the work of civil society organisations is against the national plans and priorities as determined by government. However, a statement within the Lotteries Act that explicitly states that the 'allocation of funds should be informed by national plans and priorities' fails to take into account that civil society organisations are guided by the needs of communities and society and are strategically placed to respond to these needs. The allocation of funds from the NLDTF strictly according to 'national plans and priorities' would

change the entire nature of the civil society sector in South Africa as organisations would no longer look to communities to assess the greatest needs of society.

Conclusion

Overall the FPA is pleased that this piece of legislation has finally been tabled and encouraged by attempts to address the challenges at the NLB. We hope that the Portfolio Committee is able to remove those clauses in the Amendment Bill that aim to take away a vital source of income to a sector that has and continues to ensure that even those that the government cannot reach are not excluded from South African society.