

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
LOTTERIES AMENDMENT BILL**

[B 21—2013]

*(As proposed by the Portfolio Committee on Trade and Industry)
(National Assembly)*

[B 21A—2013]

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AMENDMENTS PROPOSED TO

LOTTERIES AMENDMENT BILL

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CLAUSE 1

1. On page 2, to omit lines 7 and 8, and to substitute:

“board means the board of the National Lotteries [**Board established by section 2**] Commission appointed in terms of section 3;”
2. On page 2, after line 21, to insert the following paragraph:

(f) by the substitution for the definition of “distributing agency” of the following definition:

“‘**distributing agency**’ means [**a person**] an agency appointed by the Minister [to distribute money] in terms of section 26A read together with section 26B(3) of this Act, but not any department in the national or a provincial sphere of government;”
3. On page 3, in line 4, to omit “and”.
4. On page 3, in line 8, after “Constitution” to insert:

“established solely to conduct the National Lottery”; and”.
5. On page 3, after line 8, to insert the following paragraph:

“(j) by the deletion of the definition of “promotional competition”.

CLAUSE 4

1. On page 3, in line 37, after “application” to insert “prescribed”.
2. On page 3, in line 40, to omit “solicit” and to substitute “invite”.
3. On page 3, in line 41, after “causes” to insert “in the prescribed manner”.
4. On page 3, in line 43, after “by” to insert “amongst others”.
5. On page 3, from line 50, to omit paragraph (b) and to substitute:

“(b) manage the staff, and its financial, administrative and clerical functions; and”.
6. On page 4, to omit lines 4 and 5, and to substitute:

“**2B.** (1) The board shall, in consultation with the Minister, appoint a person with suitable qualifications and experience as Commissioner of the Commission who—”.
7. On page 4, in line 10, to omit “renewable term not exceeding five years” and to substitute “term of five years which may be renewed only once for a further period of five years.”.

8. On page 4, in line 11, to omit “The Minister shall, after consultation with the board” and to substitute “The board shall, in consultation with the Minister,”.
9. On page 4, in line 13, to omit “three years” and to substitute “12 months”.
10. On page 4, to omit lines 22 and 23, and to substitute:

“2C. (1) The board, in consultation with the Minister, may at any time discharge or suspend the Commissioner from office if—
(a) he or she becomes disqualified in terms of section 2E;”.
11. On page 4, in line 30, to omit paragraph (d) and to substitute:

“(d) he or she is found guilty—
(i) in any disciplinary proceeding whether in the Republic or elsewhere to have acted fraudulently, dishonourably, or in breach of a fiduciary duty; or
(ii) in any court of law whether in the Republic or elsewhere of an offence that involves an element of dishonesty.”
12. On page 5, in line 2, to omit “Minister” and to substitute “board”.
13. On page 5, in line 22, to omit “Minister” and to substitute “board”.
14. On page 5, in line 54, to omit “the Minister and”.
15. On page 5, in line 54, after “board;” and to insert “and”.
16. On page 5, in line 57, to omit “Minister, after consultation with the”.
17. On page 5, from line 58, to omit “in consultation with the board in the case of a person appointed by the Commissioner,”.
18. On page 6, in line 8, to omit “, Minister”.
19. On page 6, in line 10, to omit “, Minister”.
20. On page 6, in line 10, to omit “as the case may be, after consultation with the board or Minister,”.
21. On page 6, in line 14, to omit “, Minister”.
22. On page 6, from line 14, to omit “as the case may be, after consultation with board or Minister,”.
23. On page 6, in line 18, to omit “Minister,”.
24. On page 6, in line 35, to omit “such membership” and to substitute “his or her employment”.
25. On page 6, in line 36, after “who” to insert “received a grant or”.
26. On page 6, to omit line 39, and to substitute:

“(3) The board shall—”

CLAUSE 5

1. On page 6, in line 51, after “rights” to insert “who may only attend meetings of the board per invitation or if matters relating to the adjudication of applications for grants or distribution of grants are to be discussed.”.

CLAUSE 6

1. On page 8, in line 38, after “who” to insert “received a grant or”.
2. On page 8, after line 42, to insert:

“(4) Despite any provision of this Act the Minister may, after consultation with the board, consider whether such contravention is likely to compromise the impartiality of such a person and inform such a person of his or her decision which may include but is not limited to—

- (a) suspending such a person pending any further investigations;
- (b) instituting a disciplinary inquiry to probe such conflict or circumstance; or
- (c) termination of membership of such a person.”.

CLAUSE 10

1. On page 9, after line 22, to insert:
 - (c) by the deletion of the word “and” at the end of paragraph (j), deletion of the full stop at the end of paragraph (k) and by the substitution of a semicolon;
2. On page 9, in line 35, to omit “or appeal”.
3. On page 9, from line 37, to omit paragraphs (q), (r) and (s).
4. On page 9, from line 51, to omit paragraph (u).
5. On page 9, from line 57, to omit paragraph (v) and to substitute:

“(r) take all reasonable steps to recover any amount in relation to a grant which has been withdrawn, prohibited or reduced in terms of section 33.”
6. On page 10, after line 6, to insert the following subsections:

“(4) The board may request the Commission to conduct research on appropriately deserving worthy causes that may be funded or recipients that may be funded without lodging an application.

(5) The board may recommend to the Minister to prohibit, withdraw or reduce any grant made by the distributing agency if the board receives information that such grant is utilised or is likely to be utilised in an unauthorised manner that does not comply with the purpose or conditions stipulated in the grant or is utilised or is likely to be utilised for an unlawful purpose.”.

CLAUSE 12

1. On page 10, to omit lines 16 and 17, and to insert:

Section 13 of the principal Act is hereby amended—

 - (a) by the substitution for subsection (5) of the following subsection:

“(5) The licence contemplated in subsection (1) may allow the licensee to appoint another person to conduct certain lotteries of the National Lottery on behalf of the licensee only with the written approval of the Minister; Provided that the board has made a recommendation to the Minister to allow such appointment if the person to be

appointed has satisfied the provisions of section 13(2)(b) and any other requirements or conditions as directed by the Minister.”.

CLAUSE 13

1. On page 10, in line 24, to omit “two” and to substitute “eight”.
2. On page 10, from line 27, to omit subsection (2) and to substitute:

“(2) In deciding whether justifiable grounds contemplated in subsection (1) exist, the Minister shall consider any relevant factor including but not limited to—

- (a) national government policies or priorities;
- (b) the need to grow local industries and to procure goods from local manufacturers;
- (c) the need to transfer skills and technology to the citizens of the Republic; or
- (d) the need to comply with the legislative framework for the promotion of broad-based black economic empowerment and transformation.”.

3. On page 10, from line 30, to omit subsection (3) and to substitute the following subsection:

“(3) In appointing an organ of state to conduct the National Lottery, the requirements contemplated in section 13(2)(a) do not apply.”.

4. On page 10, in line 46, after “Minister” to insert:

: Provided that the board has made a recommendation to the Minister to allow such appointment if the person to be appointed has satisfied the provisions of section 13(2)(b) and any other requirements or conditions as directed by the Minister.”;

5. On page 10, after line 46, to insert the following subsection:
“(5) The Minister shall publish in the Gazette the appointment of an organ of state to conduct the National Lottery in terms of this section.”.

6. On page 10, after line 46, to insert the following section:

“**Temporary licence**

13B. The Minister may at any time owing to the fact that—

- (a) the licensee is for any reason whatsoever unable to conduct the National Lottery in terms of the conditions of the licence or is unable to meet the conditions of the licence to the satisfaction of the Minister;
- (b) the licence to conduct the National Lottery is suspended for any reason whatsoever;
- (c) the licence to conduct the National Lottery is revoked in terms of this Act; or
- (d) the licence to conduct the National Lottery has expired, after consultation with the board, appoint or authorise any person or organ of state as the case may be, for a non-renewable period not exceeding 24 months to conduct the National Lottery on such terms and conditions the Minister deems appropriate.”.

CLAUSE 22

1. On page 13, from line 53, to omit subsection (3) and to substitute:

“(3) The fund shall be held in trust by the board for distribution of any sum paid into the fund as is allocated for expenditure referred to in section 26(3)(b), (c), (d) and (e), after the distributing agency has considered, evaluated and adjudicated an application for a grant or following a recommendation of funding of worthy good causes from the Commission after research conducted in terms of this Act.”.

CLAUSE 24

1. On page 14, from line 10, to omit paragraph (c).
2. On page 14, to omit lines 14 to 19, and to substitute:

“26B. (1) The distributing agency shall be responsible for—

- (a) considering, evaluating and adjudicating applications for grants or recommendations of funding of worthy good causes received from the Commission; and
- (b) preparing reports on grants already awarded and on the performance of its functions to the board on a quarterly basis or as and when requested by the board.”.

(2) The number of the distributing agency members in each category shall be determined by the Minister after consultation with the board in line with the size of the funds in such category: Provided that such number shall not exceed nine in each category.

(3) Members of the distributing agency shall be appointed for a period of five years, which may be renewed only once, to serve on a full time basis as members of the distributing agency and staff members of the Commission responsible for adjudication of applications for grants or recommendations of funding of worthy good causes received from the Commission.”.

3. On page 14, in line 21, to omit “nine”.
4. On page 14, in line 22, to omit “distribute the grants” and to substitute “consider, evaluate and adjudicate applications for grants or recommendations of funding of worthy good causes received from the Commission”.
5. On page 14, in line 24, after “finance;” to insert “and”.
6. On page 14, from line 25, to omit paragraph (b) and to substitute with the following paragraph:

“(b) designate one person from amongst the members of the distributing agency as a full-time chairperson, for a non-renewable period of five years, on such terms and conditions determined by the Minister in consultation with the Minister of Finance.”.

7. On page 14, from line 29, to omit subsection (4) and to substitute with the following subsection:

“(5) A member designated as a full-time chairperson shall upon the expiry of such period become an ordinary member entitled only to ordinary full-time member’s conditions of appointment and remuneration unless his or her appointment as a member of the distributing agency has expired.”.

8. On page 15, in line 51 after “circumstances;” to insert “or”.
9. On page 15, in line 2, to omit “board” and to substitute “distributing agency”.
10. On page 15, after line 55, to insert:

“Restraint of trade

26E. A member of the distributing agency or his or her spouse, life partner, immediate family member or business partner or associate, may not during the time of his or her membership or for a period of 24 months after the termination or expiry of such membership, take up employment or in any way receive any benefit from any person who received a grant or intends to apply or has applied for a grant in terms of this Act.”.

11. On page 16, from line 3, to omit paragraphs (b), (c) and (d).
12. On page 16, from line 15, to omit paragraph (f).
13. On page 16, in line 18, to omit “distribution”.
14. On page 16, from line 23, to omit paragraph (i).
15. On page 16, from line 26, to omit subsection (1) and to substitute with the following subsection:

“(1) The distributing agency shall consider, evaluate and adjudicate applications for grants or recommendations of funding of worthy good causes received from the Commission after research conducted in terms of this Act.”.

16. On page 16, after line 28, to insert:

“(2) The distributing agency shall, consider, evaluate and adjudicate recommendations of funding of worthy good causes from the Commission following research conducted in terms of this Act.”.

17. On page 16, from line 33, to omit subsections (3) and (4).
18. On page 16, after line 41, to insert the following section:

“Review

26H. (1) A decision of the distributing agency concerning an application for a grant is subject to review by the board only on application by an aggrieved applicant in the manner prescribed: Provided that such review shall be adjudicated upon by a board committee set up for such purpose without delay.

(2) If the board overrules the decision of the distributing agency, the board may either—

- (a) order the distributing agency to re-evaluate the application taking into consideration matters raised by the board; or
- (b) set aside the decision of the distributing agency and substitute it with an order the board deems appropriate.”.

CLAUSE 26

1. On page 16, to omit lines 47 to 57 and lines 1 to 6 on page 17, and to substitute:

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

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

“(2) The distributing agency shall consider, evaluate and adjudicate applications for grants and **[may, subject to section 33]** the Commission shall pay such grants to appropriate recipients in accordance with this Act and subject to the conditions **[applying to its appointment]** imposed and to any directions issued by the **[Minister after consultation with the Minister responsible for welfare and population development in the national sphere of government or by the Minister of Finance]** board, from the sum allocated for charitable purposes.”; and”.

CLAUSE 27

1. On page 17, from line 11, to omit subsection (1) and to substitute with the following subsection:

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

2. On page 17, from line 20, to omit subsection (2) and to substitute with the following subsection:

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

CLAUSE 28

1. On page 17, from line 31, to omit subsection (1) and to substitute with the following subsection:

“(1) So much of any sum paid into the fund as is allocated for expenditure referred to in section 26(3)(d), shall be held in the fund for distribution by the **[distributing agency appointed by**

the Minister in consultation with the Ministers responsible for arts, culture, science and technology, and environmental affairs in the national sphere of government] Commission to distribute the allocated sum fairly and equitably amongst all persons who meet the prescribed requirements.”;

2. On page 17, from line 41, to omit subsection (2) and to substitute with the following subsection:

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

CLAUSE 29

1. On page 17, to omit line 55 and lines 1 to 4 on page 18, and to substitute:

“(3) The distributing agency shall consider, evaluate and adjudicate applications for grants and **[, subject to section 33] the Commission** shall, pay such grants to appropriate recipients in accordance with this Act and subject to the conditions **[applying to its appointment]** imposed and to any directions issued by the **[Minister, or by the Minister of Finance]** board, from the sum allocated for specific purposes identified by the Minister after consultation with the board;

CLAUSE 30

1. On page 18, to omit lines 9 to 19, and to substitute:

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

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

2. On page 18, from line 36, to omit subsection (2) and to substitute with the following subsection:

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

CLAUSE 31

1. Clause rejected.

NEW CLAUSE

1. That the following be a new Clause.

Substitution of section 33 of Act 57 of 1997

31. The following section is hereby substituted for section 33 of the principal Act:

“Power of Minister to prohibit, withdraw or reduce certain grants

33. The Minister shall at any time after receiving a recommendation from the board or information from any other person that the grant awarded by the distributing agency—

- (a) is utilised or is likely to be utilised in an unauthorised manner that does not comply with the purpose or conditions stipulated in the grant;
 - (b) is utilised or is likely to be utilised for an unlawful purpose; or
 - (c) was applied for in a misleading or fraudulent manner,
- prohibit, withdraw or reduce any such grant and may impose any such conditions as the Minister considers appropriate.”

CLAUSE 32

1. On page 19, after line 2, to insert:

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

“The Minister may, [**with the concurrence of**] after consultation with the board, make regulations regarding-”;

2. On page 19, in line 5, to omit “and appeal”.
3. On page 19, in line 6, to omit “and”.
4. On page 19, after line 10, to insert the following paragraph:

(d) by the addition of the following paragraphs:

“(c) the period within which an application for a grant or recommendation of funding shall be finalised; and

(d) any other process that facilitates the efficient and effective application for grants and the distribution thereof.”

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