

Statement of Intent

Issued by the Board of the National Lotteries Commission



FOR IMMEDIATE RELEASE

20 November 2023

INTRODUCTION

1. The Board of the National Lotteries Commission, as constituted in terms of the National Lotteries Act, resolved at the meeting held in Pretoria on 30 October 2023, that the Board should take steps to address the matter of the misconduct perpetrated by some members of the Board whose appointments expired in March 2022.

2. The Board took note of the media reports of misconduct on the part of some members of that Board, the effect of which was that large sums of money were misappropriated from the National Lotteries Distribution Trust Fund, that the grant funding system was extensively abused over a very long time, and that, as a result, the National Lottery and its public image, have been put into grave disrepute.

3. The President issued Proclamation R.32/2020 dated 6 November 2020 on the basis of which the Special Investigating Unit (SIU) was empowered to investigate, to report and to take steps to determine the extent of corruption, malpractice and maladministration perpetrated by members of the then Board of the NLC, and by staff and executives of the NLC, and to make recommendations as necessary. The SIU has the power not just to investigate and make recommendations, but more importantly, it may also institute any civil litigation that may be necessary to ensure the recovery of any proceeds of such wrongdoing that may be due to the NLDTF. The SIU has been undertaking such investigation since 2020. The SIU has been reporting regularly to the Parliamentary Portfolio Committee of the Department of Trade, Industry and Competition, and kept the National Lotteries Commission briefed on the progress of the investigation.

4. The National Lotteries Commission is a statutory national public entity whose accounting and oversight arrangements are set out in Schedule 3 of the Public Finance Management Act. The

purpose of the National Lotteries Commission is to regulate the National Lottery, including advising the Minister on the appointment of an operator of the National Lottery, to receive and to serve as custodians of the monies paid into the National Lotteries Distribution Trust Fund (NLDTF), to serve as trustees of the NLDTF, to be accountable for grants that are made by the Distribution Agencies to promote good causes, and to manage staff, the financial, administrative and clerical functions of the Commission.

5. Chapter 6 of the PFMA determines that the Board of the NLC is an Accounting Authority and as such exercises fiduciary responsibilities that require, among others, that it must act at all times “with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity (s. 50).” The Act further sets out in s.50 the general responsibilities of the accounting authorities. It goes on to aver that the Accounting Authority has a duty to:

Prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity...

Altold, the duty to maintain good governance at all times falls on the Board of the NLC.

6. Section 86(2) of the Act states that an accounting authority is “guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that authority wilfully or in a grossly negligent way fails to comply with a provision in ss. 50, 51 or 52.”

7. As a Board we are conscious of our corporate responsibility under the Act to advance the principles set out in the Act and in the Constitution, and to maintain good governance in the management of the affairs of the NLC. We are also conscious of the fact that notwithstanding that we were not part of the Board under whose administration and governance so much malfeasance was committed, we remain accountable for the consequences of the actions of that Board. Yes, we are also aware that in a corporate setting we cannot completely wash our hands from the acts of our predecessor Boards without formally determining a departure from such resolutions as we may find unlawful, ultra vires or are not in the best interests of the public entity. The resolutions of the predecessor Boards are held to be binding on successor Boards unless otherwise amended or waived.

8. It is for those reasons that we believe that we are honour bound to take actions when evidence surfaces that demonstrates that the actions of members of our predecessor Board were in violation of the Act in that they failed to undertake their duties and responsibilities with due care, honesty, efficiency and moral character such as to put at risk the organisation that they were appointed to

serve. Notwithstanding that various agencies are seized with this matter; we are of the view that ultimately the responsibility as a matter of law belongs to us as the substantive Board of the NLC today.

9. We take seriously our duty in terms of the King IV Code of Corporate Governance to the extent that it applies to state entities and it is not inconsistent with the PFMA, that we bear responsibility for good corporate governance of the entity, and that, as the Board, we are duty bound to govern the entity ethically and effectively, and, to the extent that the Board deals with public resources, it bears the burden of ensuring that the organisation maintains an ethical culture in all its dealings and that in our practices we are portrayed as a responsible corporate citizen.

10. We are aware also that the law allows that any Director as in this case (although to some extent this may be distinguished from a Company in terms of the Companies Act No 71 of 2008), but who has acted in an egregious or vexatious manner against the principles of the Act to the detriment of the public entity and those it is designed to serve. Such a director may be declared a delinquent director. That is so in order to make sure that such an unrehabilitated delinquent director may never again cause harm to any other organisation willy nilly.

11. We are equally mindful that Board members are individually and severally liable for the Acts of the Board. That puts a duty on every Board Member to take individual responsibility and, if needs be, to defend and uphold the reputation of the organisation. We are not able to proceed against ALL members of the Board because our information does not attest to the fact that all members of the Board acted in a wilful and reckless manner in their conduct of the affairs of the NLC, or are accused of gross negligence, or colluded in the corrupt dealings of some of the members of the Board. However, we believe that the entire Board must be investigated so that those against whom evidence is found should face the long arm of the law.

12. We believe that once Board members are found to have been liable for criminal conduct, or who by their conduct have caused the institution a quantifiable loss of money, such monies as can be proved in court must be claimed against such Board Members and repaid back into the NLDTF. Members of the Board owe the NLDTF a duty of care and failure to exercise the duty of trust has cost the National Lotteries Commission and the brand name of the business of the Lottery dearly. This will require that we institute claims for civil liability.

13. Finally, there is, in our view, a justifiable case to be made for a civil liability claim for delictual damages suffered by the NLC as a result of the actions of the delinquent Board members. The reputational damage they have caused to the NLC is incalculable. It is our intention to seek legal

advice so as to lay a claim for damages for the reputation, goodwill and the good name of the NLC that was harmed as a result of their misconduct.

CONCLUSION

14. For these reasons, we conclude

1. That the Board of the NLC has decided to lay criminal charges against those members of the then Board, especially between 2015-2022, who have been identified through the investigations undertaken by SIU and other law-enforcement agencies;
2. to seek legal advice for an application that may be made in a court of law that such may be declared delinquent directors;
3. to claim all monies that have been misappropriated as a result of their misconduct; and
4. to institute a civil claim against them for delictual damages to the NLC.

N Barney Pityana GCOB FKC MASSAf

CHAIRPERSON: National Lotteries Commission

On behalf of the Board

Gqeberha, 20 November 2023

ABOUT THE NATIONAL LOTTERIES COMMISSION

The National Lotteries Commission is established in terms of the Lotteries Act No 57 of 1997 to regulate lotteries and sports pools in South Africa. From these regulatory activities, we collect revenue to distribute funds to qualifying organisations that work for the public good across South Africa