



The Non-Profit Lawyer

## EXCERPT: LOTTO POLICY REVIEW

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### ABOUT NPO LEGAL ISSUES:

This is an electronic newsletter published by:  
**RICARDO WYNGAARD ATTORNEYS** which is aimed at updating the non-profit sector on relevant legal issues.

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### RICARDO WYNGAARD

**ATTORNEYS** is a law practice that specialises in rendering advice and assistance on non-profit law and governance.

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The Department of Trade and Industry has succumbed to public criticism of the operations of the Lotteries Board and produced a *Lotteries Policy Review* a Discussion Document for public comment. Whilst belated, the document must be welcomed by all stakeholders as a coherent approach to on-going re-assessment and legislative refinement of the operation of the Lotteries Board. The vexed operations of the Distribution Agencies (DAs) associated with the allocation of funds, also comes under scrutiny in the Review.

The discussion document is not a defensive document. It appears to have taken to heart the many legitimate complaints, the finding of two major research reports, various advocacy activities, in and out of Parliament, as well as the scathing criticism by the courts. It is an honest appraisal which requires engagement and debate.

The full Lotto Policy Review presents 14 key recommendations for consideration, most if not all, should be a welcome breath of fresh air to boards and management of civil society organisations engaged with the Lotteries Board. Four are captured in this excerpt.

### Full-time DAs:

The frustrating experience of various civil society organisations (CSOs) has been that DAs have taken too long to make decisions. This has often threatened the very existence of CSOs applying for funds and so jeopardising their operations and infrastructure. This proposal must be operationalised by the Board through a search process which will ensure that the most sensitive, experienced and professional appointments are made to serve the interests of the millions of beneficiaries of the lotto funding.

These appointees should have no conflicting interests and should resign any conflicting positions they perceive might prejudice their decisions or open them to criticism. This is key to restoring faith in the Lotto system and to build confidence amongst South Africans, that this is a worthwhile form of giving in our country.

### Ministerial Appointment of DAs:

This proposal will no doubt require consultation and debate and further legislation refinement. The appointments should be made by the Minister but on the recommendation of the National Lotteries Board (Board). The Board has to retain structural operational authority as well as governance powers over the DAs. If this concern is not resolved, the Lotto will once again experience two centres of power, in its operations, without resolving a key fault line in its present operations. Governance and sound governance requires a clear line of authority and responsibility.

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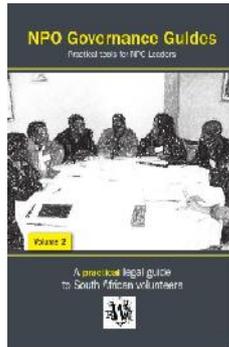
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In this edition we feature an excerpt from the our **Practical Legal Guide to SA Volunteers** which is selling for R250.

The Guide also contains:

- A sample **Volunteer Policy**
- A sample **Volunteer Agreement**
- A sample **Volunteer Indemnity Form**



### Volunteers and Risk Management:

A former Peace Corps volunteer, Jesse Osmun, from the USA was, according to media reports, sentenced by a US Court to fifteen years' imprisonment during October 2012 for sexually abusing young girls whilst volunteering at a pre-school in South Africa.

CTpost.com reported as follows: *“Just how this case impacts the future of the Peace Corps in screening volunteers could not be determined. Calls to the agency resulted in the release of the following statement from Acting Director Carrie Hessler-Radelet: ‘The Peace Corps has no tolerance for abuse of any kind, and our deepest sympathies are with all the victims involved.’ However, the prosecution said that if Osmun’s ‘prior instances of his misconduct’ had been properly reported, ‘he would not have been accepted as a volunteer ... and the abuse to these children would have been avoided.”*

The full article can be accessed at:

<http://www.ctpost.com/news/article/Ex-Peace-Corps-volunteer-gets-15-years-for-sex-3935969.php>

This is a sad example that no organisation dealing with children is exempt from properly screening volunteers. Excerpt from our:

### **Practical Legal Guide for SA Volunteers:**

*“Organisations that make use of the services of volunteers have an obligation to ensure that volunteers do not cause harm to others.”*

## Lotto Policy Review/....

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### Internal Review Mechanism

This recommendation is long overdue. It will assist in fast-tracking the appeals and resolve grievances and avoid costly legal actions. It will also assist in resolving disputes in a conciliatory manner with every side being able to acknowledge errors without subjecting itself to public embarrassment. The Internal Review Mechanism can be constituted through a volunteer tripartite body composed of government officials, corporate donors as well as senior civil society representatives. It should be able to meet at least ten times a year and deal with any disputes referred to it. It may also meet electronically. It should be logistically supported by a senior staff member reporting directly to the CEO of the Lotto. The person may also be empowered in the amendments envisaged to the Act, to be provided with a direct independent reporting function to the Board, similar to that of an ombudsperson.

### Simplified Distribution of Funds

Whilst this proposal of a three tiered funding hierarchy of small, medium and large grants is to be welcomed, some caution needs to be expressed. It is not the express aim of the Board to improve service delivery. The notion of service delivery as applied currently in South Africa is to provide local authority services to the public. The Lotteries Act envisages distribution of funds to deserving causes. The 2010 Regulations envisages distribution in three specific priority areas: the Charitable Sector, the Arts, Culture and National Heritage, and Sports and Recreation. The intention of the new regulations was to: Get the processes of the Board to reinforce government efforts to relieve poverty, to develop our least developed areas, and to build a more equal society.

### Conclusion

Technical amendments required should be undertaken as a matter of urgency. Appropriate time lines should be developed for comments, debate and lobbying by the general public and fast tracked through the 2013 legislative programme. *For the full review, please visit:*

<http://www.corejhb.org.za/>

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