

MEDIA RESPONSE TO GROUNDUP ENQUIRY: REPARATIVE MEASURES PROCESS

The National Lotteries Commission (NLC) places on record its unequivocal appreciation for the role played by Mr Raymond Joseph, as well as other internal and external whistleblowers, journalists' sources, and civic actors who, often at great personal risk, exposed maladministration, fraud, and corruption within the institution.

Some of their actions contributed materially to uncovering systemic wrongdoing, enabled law-enforcement and oversight processes to function, and ultimately advanced the public interest. Such conduct reflects the highest ideals of ethical citizenship and democratic accountability.

Whistleblowing, by its very nature, is not a remunerative or commercial endeavour. It is undertaken in good faith, motivated by integrity, conscience, and a commitment to the rule of law. In South African constitutional and administrative law, whistleblowing is recognised as an act of civic responsibility, not a contractual or compensable service rendered to the state. Accordingly, whistleblowing does not, in and of itself, give rise to an expectation of damages, compensation, or financial reward from a public institution, absent a statutory entitlement or a court order.

It is against this backdrop that the NLC implemented its Reparative Measures Process which was a voluntary, pastoral, non-judicial, and restorative initiative aimed at ethical acknowledgement, healing, and institutional renewal rather than compensation or the determination of legal liability.

The NLC has, through its Reparative Measures Process, provided ethical acknowledgement and restorative recognition to qualifying individuals, including expressions of respect and affirmation of their integrity and contribution. However, the NLC has deliberately refrained from issuing a formal apology in the legal sense.

This approach is grounded in legal prudence and governance obligations.

In public-sector law, a formal apology by an organ of state may reasonably be construed as:

- an admission of fault or negligence;
- an acceptance of legal liability for harm suffered; and
- a potential foundation for civil claims for damages.

Such an implication would have far-reaching legal consequences, including:

- exposure to contingent liabilities in contravention of the Public Finance Management Act, 1999 (PFMA);
- prejudice to ongoing or concluded investigations by the SIU, SAPS, or prosecutorial authorities; and
- the risk of undermining disciplinary, recovery, or criminal processes relating to historical wrongdoing.

For these reasons, and on the basis of legal advice, the NLC adopted a restorative acknowledgement model, which allows the institution to:

- recognise courage and ethical conduct;
- affirm the public value of whistleblowing; and
- support healing and dignity,

without conceding legal liability or creating unauthorised financial or legal obligations.

This position does not diminish the moral force or societal importance of whistleblowing, nor does it detract from the NLC's recognition of the profound personal costs often borne by those who speak out. Rather, it reflects the constitutional and statutory constraints within which public institutions must operate, balancing ethical accountability with legal compliance and fiscal responsibility.

For clarity and completeness, the NLC responds *ad seriatem* to the questions raised.

Question 1

If the scope of the reparations programme was confined to only current and former staff, why did the NLC accept non-staff applications in the first place?

Response:

The initial phase of the Reparative Measures Process was exploratory in nature. Expressions of interest were invited broadly to allow the NLC to understand the full range of harm arising from past wrongdoing, including harm affecting employees, whistleblowers, and communities.

Acceptance of an application at that stage did not constitute confirmation of eligibility, nor did it create an entitlement or legitimate expectation. Final eligibility criteria were determined only after careful legal, constitutional, administrative, and fiscal assessment.

Question 2

Why did it take almost a year to inform non-staff applicants that they were excluded?

Response:

The timeframe reflects the complexity of designing a first-of-its-kind reparative process within the public sector. The NLC was required to ensure constitutional alignment, PFMA compliance, independent verification of claims, and the development of lawful parallel mechanisms to address community harm.

Premature determinations would have risked procedural unfairness and legal vulnerability.

Question 3

When, why and by whom was the decision taken to exclude non-staff?

Response:

The decision was taken by the NLC as the statutory accounting authority, acting through its governance structures and informed by legal advice.

The exclusion of non-employees from individual reparative awards was necessitated by the absence of an employment nexus, constitutional fairness requirements, administrative feasibility, and PFMA restrictions on unauthorised financial commitments.

Question 4

What outside input informed the decision to exclude non-staff?

Response:

The Minister of Trade, Industry and Competition issued a policy directive to explore reparative measures but did not participate in operational decisions such as eligibility criteria or individual determinations.

No instruction was sought or received from National Treasury, the Auditor-General, the Department of Justice, or other external bodies regarding beneficiary selection.

Question 5

What criteria were used to exclude non-staff?

Response:

Eligibility for individual reparative measures was confined to current and former NLC employees who:

- were employed between 1 January 2017 and 31 January 2023;
- made protected disclosures or resisted wrongdoing;
- suffered verified harm as a result; and
- were independently verified as not implicated in wrongdoing.

Applicants associated with community projects or external entities fell outside this lawful beneficiary class.

Question 6

Does the NLC believe it acted in good faith?

Response:

Yes. The NLC engaged transparently, applied consistent criteria, and subjected the process to independent legal assurance. Good faith in public administration requires adherence to law, even where outcomes may be disappointing to some.

Question 7

What were the costs of advisors and consultants involved in the process?

Response:

The NLC is committed to transparency and accountability in all aspects of the whistleblower and reparations process, including the consideration of costs expended. Given the very brief and truncated timeline for the process, coupled with the pressure to compile a comprehensive response, the consolidation and verification of all cost-related information required careful review.

At this stage, the NLC is still finalising the full financial details to ensure accuracy and completeness and this will be subjected to external audit. Once this has been completed, the results will form part of the NLC's Annual Report which is made public.

This approach ensures that all figures are reliable and presented responsibly, while recognising the practical challenges of compiling detailed financial information under tight deadlines.

Question 8

Why has the NLC not mentioned the rejection of non-staff applications in any of its communications about the outcome of the process?

Response:

The NLC's communications about the outcome of the whistleblower and reparations process have focused on both eligible applicants while maintaining strict confidentiality and legal compliance as well as community projects which will follow an internal process to fix. Whistleblowing is undertaken in good faith and in the public interest, without expectation of compensation. In this regard, section 66 of the Public Finance Management Act (PFMA) clarifies that organs of state, including the NLC, are not required to pay compensation to whistleblowers.

Non-staff applications that were found ineligible or did not meet the criteria were therefore not highlighted in public communications although community buildings and the need to restore these buildings based on a

consultative process with identified communities has been discussed. However, the NLC recognises that some external whistleblowers, whose organisations were affected or “hijacked” and did not achieve their intended outcomes, have made valuable contributions. These individuals have been informed that NLC personnel will engage with them directly to explore, where plausible, measures to resuscitate projects previously undertaken by their NPOs. All whistleblowers and applicants are also encouraged to participate in future grant funding processes through the standard application procedures.

This approach ensures transparency, compliance with legal obligations, and continued support for public-interest initiatives, while protecting the integrity of the reparations process.