



**Report into the National Arts Council's  
mismanagement of the Presidential Economic  
Stimulus Programme (PESP) Funding**

**June 2021**

## CONTENTS

Introduction	3
Summary of the mismanagement of the PESP funding by the NAC	4
The impact of the PESP funding debacle on TADA members	5
The purpose of this report	7
Why this report matters	7
Artists' relief and PESP funding: clarifying the differences	8
An overview of the PESP funding saga	13
Timeline: Key dates	19
Adjudication of funding applications by the NAC	22
Allocations of PESP funding	25
Where, when and how did it all go wrong?	26
Findings	27
Conclusion	46
Appendix 1: List of NAC members, 1 January 2017 - 31 December 2020	47
Appendix 2: Fees paid to NAC members 2019/2020	48
Appendix 3: Members appointed to the NAC, 1 Jan 2021 - 31 Dec 2024	49
Appendix 4: Summary of the Findings	50

## INTRODUCTION

Like other sectors of the economy, the creative sector was hit hard by the impact of the lockdowns implemented to limit the spread of the coronavirus. The Department of Sport, Arts and Culture (DSAC) channelled R300 million from the Presidential Employment Stimulus Programme (PESP) to the National Arts Council (NAC) to distribute among the arts sector in order 'to inject capital into the economy and get the sector back to work again'. The National Film and Video Foundation (NFVF) was also allocated an amount of funding particularly for the audio-visual sector.

In short, while it was selected as the vehicle to distribute this funding as it had decades of experience in distributing public funding to the arts sector, the NAC grossly mismanaged this task. This led to the suspension of its CEO and CFO by the Council, an unprecedented sit-in at the NAC offices by artists and court challenges to the NAC's decision unilaterally to change the contracts with arts organisations that it had entered into.

The Minister of Sport, Arts and Culture – Nathi Mthethwa - announced on 29 March 2021 that 'a forensic investigation would look into how officials overcommitted the R300m, with some creatives getting nothing, and others receiving more than they had applied for'.<sup>1</sup>

On 21 May 2021, in response to a written parliamentary question by the Democratic Alliance's Mr Tsepho Mhlongo about 'what steps is he taking regarding the mismanagement of funds at the National Arts Council', the Minister replied that: "A forensic investigation into the handling of the Presidential Employment Stimulus Programme (PESP) is being instituted by the Council of the NAC. The findings of the report will be analysed and implemented in line with the governing legislation. If there is/are individuals/s that may have transgressed in the management of the PESP rollout, consequence management will apply."<sup>2</sup>

There have been allegations of conflicts of interest against the new Council that suspended the CEO and CFO and that, according to the Minister's answer above, is instituting the forensic investigation. A letter outlining the concerns of an adjudication panel was also sent to the Minister on 21 January 2021. Furthermore, the Department of Sport, Arts and Culture appointed one of its senior management, Mr Charles Mabaso, as the liaison official between DSAC and the NAC. The DSAC had both a technical committee and a monitoring committee to oversee the PESP funding.

It is unlikely then that a forensic investigation appointed by either the DSAC or the NAC will be given terms of reference that investigate the roles and responsibilities of DSAC and/or the NAC so that an independent investigation is necessary to consider the roles and contributions, if any, of these institutions – together with other parties - to the mismanagement of the PESP funding by the NAC. With the Council having suspended the CEO, Rosemary Mangope and the CFO, Clifton Changfoot, it is likely that their investigation will focus on the roles of these senior

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<sup>1</sup> <https://www.iol.co.za/capetimes/news/probe-into-r300m-arts-funding-bungle-0db1beb7-8676-4bd2-ba37-976ae577301d>

<sup>2</sup> <https://pmg.org.za/committee-question/16263/>

management figures, and the previous Council, and not address the allegations against or roles of the current Council in the saga.

In his answer to Mr Tsepo Mhlongo on 21 May, Minister Nathi Mthethwa referenced these allegations: "...note that a legal opinion was sought on the matter of the alleged conflict of interest by some Council members, to which it stated that there was no conflict of interest as adjudication was done under the previous Council".

It is against this background that this report has been initiated.

## **SUMMARY OF THE MISMANAGEMENT OF THE PESP FUNDING BY THE NAC**

"We will all emerge more richer after this process. Above all else, we will be part of making history" – Rosemary Mangope in an email to panellists, 19 December 2020

It is now common cause that the National Arts Council overcommitted a budget of R300 million allocated to it to distribute within the creative sector. While the NAC and others have used the term 'over-subscription' to describe what has taken place, the truth is that applications to the NAC are generally over-subscribed, i.e. the total value of funds being requested more often than not, far exceeds the amount of funding available.

In this particular case, it was not simply a matter of over-subscription (in fact, one stream of funding – for job retention – was grossly under-subscribed); it was more a case of the National Arts Council committing more funds (nearly double) than it had available by virtue of a grant letter and agreement between the Department of Sport, Arts and Culture and the National Arts Council.

This, in short, is a matter of poor governance and gross mismanagement.

This report will attempt to unpack the mismanagement of the PESP funding by the National Arts Council, the reasons for it, who is culpable and what remedial action should be taken.

In summary:

- The DSAC channelled R300 million from the National Treasury to the National Arts Council to distribute to the arts sector in two streams, one stream for job retention (a wage subsidy for those already on the payroll or on contract) and the second stream for the creation of new work opportunities.
- Applications for Stream 1 with a budget of R100 million closed on 20 November 2020 and a week later, applications for Stream 2 - worth R200 million – closed.
- Outcomes for Stream 1 applicants were to be announced on 1 December 2020.
- For Stream 2, there would be two dates for announcing outcomes: by 1 December 2020 for those who applied before 14 November 2020 and for applications that were submitted after that date, outcomes would be announced by 21 December 2020.
- Adjudication panels worked through the applications and recommended those who met the compliance requirements and the criteria for PESP support. However, the adjudication of applications was not completed by 31 December 2020 when the previous Council's term of office ended. But, by then, the full amount of (and significantly more than) the PESP budget had been approved.

- Hundreds of successful applicants were contacted by the NAC and were formally informed of the amounts of funding that they had been allocated. They duly signed and returned contracts based on these Grant Notification Letters from the NAC.
- On the basis of these agreements, a number of applicants initiated their projects in order to meet the deadline of 31 March 2021 by when the projects were to have been completed, and the funds spent.
- The new Council took office on 1 January 2021 and were informed of hundreds of projects that were adjudicated positively, but that there were no more funds to distribute to them.
- The new Council decided that notwithstanding the previous Council having committed the available budget of R285 million to just over 600 projects (the NAC retained 5% or R15 million to cover its costs), the remaining 700 plus successful projects should not be prejudiced and should receive PESP funding too.
- To achieve this, the Council unilaterally slashed the amounts allocated to the original awardees, declared their contracts null and void, and issued new agreements to all the applicants who had been adjudicated successfully.
- This decision had huge implications for those who had been informed and were given written funding contracts by the NAC; they now had to bear the consequences of poor oversight, mismanagement and poor governance of the PESP funding by the NAC.
- Many of the original grantees were angered by this course of action, but because of the precarity of the sector and the fact that there had been few opportunities to earn income during the preceding year, they signed the new agreements and accepted the much-reduced funding on the basis that 'something is better than nothing'. A few refused to sign the new agreements and some – like the National Arts Festival and ASSITEJ - took legal action against the NAC.
- The South Gauteng Division of the High Court ruled in favour of the National Arts Festival and found the NAC's decision to change the contract unlawful, ordering the NAC to pay the NAF the original amount allocated to them as well as their legal costs.
- The impact of first, the over-commitment of funding by the previous Council and then the unilateral cancellation of contracts by the new Council has had far-reaching consequences for the credibility of state institutions, for relationships between civil society and public institutions, with unprecedented actions by creatives in the form of protests, a lengthy occupation of the NAC offices (60 days), and legal action.
- Ironically, the original intentions of the PESP funding have been severely undermined and has potentially thrust many creative organisations and individuals into greater precarity.

## **THE IMPACT OF THE PESP FUNDING DEBACLE ON TADA MEMBERS**

### **Jaco van Rensburg, TADA's Secretary General**

*I am the co-owner of VR Theatrical that applied for a PESP Stream 2 grant for project funding. The proposal was approved by the National Arts Council (NAC) on merit and then contracted on 28 January 2021, with payment to be made to us no later than 18 February 2021.*

*Due to time constraints and venue availability we kicked off the project immediately upon*

*signing the agreement. We subcontracted creatives and other service providers and started rehearsals. By 18 February we still had not received any payment. My numerous emails to the NAC requesting clarity fell on deaf ears.*

*We completed the now self-funded project, honouring our agreements with subcontractors. The NAC subsequently changed the project status from 'Contracted' to 'Declined' when they unilaterally adjusted their 'guiding figure'. This non-payment of a binding contract, issued by the NAC has decimated our business and jeopardised our future existence.*

## **ASSITEJ South Africa**

*The NAC bound itself to pay an amount of R448 200.00 to ASSITEJ SA so as to allow us to retain the services of 27 employees during the period from January to March 2021. Without this funding, ASSITEJ SA could not have retained these employees. On the basis of the funding, we were able to commit to retain all of the employees at least till the end of March 2021.*

*In accordance with the funding agreement between the NAC and ASSITEJ, we received a first instalment of the agreed funding in the amount of R313 740.00, constituting 70% of the overall funding amount. The balance of R134 460 ought to have been paid in a second instalment between 1 and 15 March 2021. This did not happen. Instead, in a letter of 9 March 2021, the NAC advised ASSITEJ SA that it had taken a 'resolution' to reduce the overall funding granted to us to R294 165.00.*

*The effect of this unilateral resolution was that we would not receive the balance of the promised funding (I note that the NAC has not as yet taken any steps to claim a refund from ASSITEJ SA for amounts paid in excess of the 'revised' granted amount. However, if the NAC's resolution is allowed to stand, I assume that such amounts will have to be collected).*

*I am aware that the NAC entered into similar binding funding agreements with the other applicants and subsequently also sought to unilaterally decrease the amounts promised to them. Many other organisations in the arts sector have been affected in the same way.*

*Extract from an affidavit submitted by Yvette Hardie on behalf of ASSITEJ SA, Afrika Burns Creative Projects NPC and Union International de la Marionette (UNIMA) SA in the High Court of South Africa (Western Cape Division) against the National Arts Council, Minister and Director-General of Sport, Arts and Culture.*

From the above examples, it is clear that while the intention of the PESP funding was to create new and sustain existing jobs in the creative sector decimated by the impact of the COVID-19 lockdowns, the mismanagement of the funding by the NAC made some even more vulnerable. The consequences of the NAC's decisions, poor management and governance and unilateral actions include fewer jobs, fewer opportunities for those who make their livelihoods within the creative sector to earn income and more organisations that may close down.

What was supposed to be a positive intervention in support of the creative sector has left a sour taste in the mouths of many and has caused deep distrust of the National Arts Council, the Department of Sport, Arts and Culture and of the Minister.

## **THE PURPOSE OF THIS REPORT**

In the light of the above, the purpose of the Theatre and Dance Alliance (TADA) report into the PESP funding debacle is five-fold:

- a. To determine how and why the mismanagement of the PESP funding took place so that it may be avoided in future
- b. To put into the public domain facts and evidence that any official ‘investigation’ – forensic or otherwise - may not be able to ignore
- c. To encourage those with information relevant to this matter to make such information available further to inform future reports and other investigations
- d. To determine culpability so that the responsible parties may be held accountable appropriately and
- e. To encourage further investigations by the media to keep the public, the arts sector and relevant authorities informed of related matters

A meta-aim of this report is to assert the right of the creative sector to form associations of its choice to advocate for and defend the interests of their members. This report has been undertaken by the Theatre and Dance Alliance (TADA) in the interests of the broader creative sector, and on behalf of TADA’s members in particular.

## **WHY THIS REPORT MATTERS**

1. It confirms the need for independent organisations and associations to advocate and defend the interests of those who seek to make their livelihoods in the arts. Creatives, technicians and others who work in the sector often have to accept the adverse decisions made and conditions created by those in authority because of the precarity of the sector. It is imperative that those in the sector create organisations to defend their interests, and that such organisations do so, without fear, on behalf of their constituents.
2. Investigations and reports commissioned by those in authority seldom, if ever, investigate the authorities who appointed them, when such authorities may have played no small role in the matters under investigation. This is because those conducting the reports are paid by those who commission them. Having an independent report by those affected by the debacle will provide a more holistic perspective and determine culpability beyond the narrow terms of reference defined by authorities such as the DSAC and the Council of the NAC.
3. It confirms our belief that artists have a right to participate in the policies, decisions and structures that govern their lives, to monitor and evaluate these, and to help provide corrective action where necessary, to take back our agency, rather than simply be victims.

TADA does not intend or claim this report to be the most definitive report into the PESP funding debacle; it is a report that complements other reports and investigations by civil society, by the media and other interested parties. We hope that it will help to lead to more thorough investigations and reports on the basis of which appropriate and informed action may be taken.

## **ARTISTS' RELIEF AND PESP FUNDING: CLARIFYING THE DIFFERENCES**

There appears to be a lack of clarity about the intentions of the PESP funding – the main focus of this report – because of poor communication or confusion about the different terms or kinds of funding or support made available within the sector to address the impact of the COVID-19.

The Department of Sports, Arts and Culture made available 'relief funding' 'to assist artists, athletes, technical personnel and its core ecosystem, to soften the economic impact of the COVID-19 pandemic.

Business and Arts South Africa (BASA) also launched an Artists Relief Fund, an "extension of BASA's Supporting Grants programme...for once-off, short-term financial aid for COVID-19 related medical care and/or prescription medicines. The aid can also be used to offset the loss of income due to the cancellation of confirmed engagements as a result of nationwide lockdown or other emergency measures."

BASA was also contracted by the DSAC to pay out First and Third Wave relief funding (in addition to its own relief funding) that the DSAC made available (though BASA did not adjudicate the applications for DSAC relief funding).

Funding from the Presidential Economic Stimulus Programme (PESP) was made available from National Treasury via the DSAC to the National Arts Council and the National Film and Video Fund 'to meet the government's objectives of job creation, targeting and prioritizing women, youth and people living with disabilities.' The PESP funding was to be made available through two streams, Stream 1 to retain existing jobs and Stream 2 to create new work opportunities.

On 9 March 2021, the Minister appointed a Ministerial Advisory Team (MAT) whose work would be structured around five work streams, Work Stream 1: Banking and Landlords portfolio; Work Stream 2: Wellness portfolio; Work Stream 3: School Fees portfolio; Work Stream 4: Retail and Transport Portfolio and Work Stream 5: Private and Corporate Sector Portfolios.

With terminology such as 'relief funding', 'waves', 'streams' and the same agencies doing different things, this, then, is to clarify particularly the differences between the Relief Funding and the PESP funding, since both are related to the impact of COVID-19 on the creative sector and both are sourced through the Department of Sport, Arts and Culture.

### **COVID-19 Sector Relief Fund**

#### ***First Wave***

The Department of Sport, Arts and Culture has two legs i.e. Sport and Arts/Culture. On 25 March 2020, the Minister announced that R150 million would be allocated to a Relief Fund 'to assist artists, athletes, technical personnel and its core ecosystem, to soften the economic impact of the COVID-19 pandemic.'

The deadline for applications was extended from 4 to 6 April 2020.

As per its 29 March 2020 media release, the DSAC announced that ‘the criteria for accessing this support, the identification of beneficiaries and the mechanism through which the relief fund will be managed has now been finalized in consultation with SASCO (for sport) and CCIFSA (for arts and culture)...’

Relief for the arts and culture sector would be made available only after the cancelled event/project would have been held, and the DSAC ‘reserved the right to determine the quantum of relief based on the availability of resources.’

As for eligibility, the Minister said that ‘...projects and events that are not considered to have an impact at a national level, involving artists and practitioners from various provinces, would have to approach their respective provinces’.

On 17 April 2020, the DSAC announced that more than 6000 arts and culture applications had been received, of which close to 5000 were eligible for relief funding.

The minister appointed an independent adjudication panel to evaluate the applications.

On 4 May 2020, the Minister announced at a media briefing that by then, the total number of adjudicated applications was 1050 (just over 20% of the eligible applications announced on 17 April 2020). Of these, 232 (22%) were recommended, 603 (57%) were not recommended and 203 (19%) were referred to the DSAC for assistance with the adjudication.

As clarified by the DSAC on 26 May 2020, the R150m Relief Fund was not only to provide relief funding, but also to support ‘livestreaming the work of creatives and athletes, particularly intergenerational cooperation between younger artists and legends’. The adjudication of applications for these two different areas of support was undertaken by two different panels.

Artists who were successful received a maximum of R20 000; those who requested less were given the amounts they specifically requested. Organisations could receive up to R75 000.

On 30 May 2020, the Minister announced that a combined total of R50m had been made available by the 9 provinces for relief funding for artists and athletes, and that those who benefited from national funding, were not eligible for provincial relief funding, and vice versa.

By then, the number of successful applications had increased to 1520, with the number of rejections amounting to 1660. (This would make a total of 3180 as opposed to the 5000 announced earlier, so that if there were indeed 5000 eligible applications, 1820 still needed to be adjudicated by 30 May 2020, more than 7 weeks after the closing date. 1284 appeals had been received by 30 May 2020, which, one presumes, would be 1284 of the rejected 1660).

On 6 July 2020, the DSAC published a list of 2003 beneficiaries (individuals and organisations / companies) of COVID-19 relief funding, most of whom had received the maximum of R20 000.

The final figures for the first wave were announced by the Minister on 2 August 2020. He said that a total of 5322 applications had been received for Sport, Digital, Arts, Culture and Heritage categories of which 4602 were recommended and 1570 were rejected (except that this makes for a total of 6172 rather than 5322).

By then, R61 million had been disbursed, with 1979 black beneficiaries (57% of the total) and 1483 white beneficiaries. (This would total 3462, 1140 fewer than the 4602 who were recommended for funding).

On 15 September 2020, the DSAC announced that the first wave received 5 786 applications of which 4772 (82%) were successful.

There appear to be discrepancies in the numbers provided by the DSAC.

### **Second Wave**

On 3 August 2020, the Minister announced that there would be a second wave of COVID-19 relief funding. This wave of relief funding was aimed at individuals and not organisations as 'these will be catered for on the Presidential Stimulus Programme' as per the release.

This relief was to cover the 3-month period from September to November 2020 and the relief amount was set at R2 200 per month 'using the rationale of the Expanded Public Works Programme (EPWP) rate structure of R95-R100 per day'. For three months, this would amount to a total of R6600 paid as a once-off payment.

(It is unclear why the DSAC decided to use the EPWP rate for determining the second wave quantum payable to artists, given that the EPWP is essentially an initiative to provide job opportunities for the unemployed, as opposed to the flat rate of up to R20 000 per applicant as for the first wave).

The minister also announced that they had obtained 10 000 food or cash vouchers of R700. Each province was to receive 1000 vouchers, with those receiving social grants or UIF being excluded as beneficiaries.

'To date,' states the 3 August media release, 'R61 million has been disbursed'. Unpaid beneficiaries from the first wave were estimated to total R34m. The DSAC said that R77m was available for the second wave of relief funding.

The DSAC estimated that if the entire amount were to be paid to beneficiaries, they would expect a total of 11 666 sports and arts practitioners to benefit from this funding (each receiving R6600).

Those who benefited from the first wave of relief funding were not eligible for second wave relief funding.

The call for second wave funding opened on 18 August 2020 with 31 August 2020 as the deadline (this was extended to 9 September 2020 to allow many applicants who had not submitted the required documents to do so and/or to become tax compliant). The deadline was then again extended to 11 September 2020.

On 2 November 2020, the DSAC issued a call for applications from the Craft, Design, Visual Arts and Audio-Visual sectors for relief funding totalling R22,282 million, with the DSAC ringfencing R11m from the available R77m for this, together with a further R11m from the Department of Small Business Development.

This relief funding was available to organisations, enterprises as well as individuals in these sectors, unlike the other relief funds that were available only to individuals.

The Craft, Design, Visual Arts and Audio-visual relief funding was allocated in each province by designated hubs and development agencies.

Applications opened on 2 November 2020 with 12 November 2020 as the deadline. Individuals were eligible for up to R15 000, while enterprises and organisations could receive up to R30 000. Payments to successful applicants would be made by 23 December 2020.

On 6 February 2021, the day on which the Minister announced the third wave of COVID-19 relief funding, he also provided an update on the first and second waves. “Nearly 5000 practitioners were recommended for the first phase and over R80m was paid out to the sector. In the second phase as of the 14<sup>th</sup> of December 2020, over R2 million was paid out to practitioners in the sector. 3 658 practitioners benefited from the Solidarity Fund with a total of nearly R3 million that was paid out. Through DSAC’s partnership with the DBSD, over R5m was paid to practitioners within the (craft, design, etc) sector with a further estimated R13 million to be disbursed by the end of March 2021”, he said.

### ***Third Wave***

Third wave relief funding was available to both individuals and organisations and those who had benefitted from previous waves of relief funding were eligible for third wave funding too. Successful applicants were told that they ‘may (DSAC’s emphasis) receive an amount of not less than R10 000’.

Community arts centres, education and capacity building proposals, proposals targeting marginalized communities were particularly encouraged.

On 12 April, the DSAC announced that 2315 individual applications had been approved by the adjudicators and that 939 had been verified and submitted to Business and Arts South Africa for payment. By then, 285 had been paid a total of R2 850 000 (an average of R10000 per applicant). (BASA does not adjudicate applications; their sole role is to make payments once applications have been approved).

At the time of writing (21 June 2021) the final outcomes of the Third Wave have not yet been made public.

### **Queries**

For queries to the DSAC regarding relief funding:

Toll free during office hours: 0800 724 278

Email: [COVID19FUND-ENQUIRIES@DSAC.GOV.ZA](mailto:COVID19FUND-ENQUIRIES@DSAC.GOV.ZA)

WhatsApp: 066 380 7492

### **Presidential Employment Stimulus Programme (PESP)**

On 30 October 2020, the DSAC issued a call for applications for their ‘share of the PESP in an effort to retain and create jobs in the Sports, Arts and Culture Sectors’.

The call was framed as ‘further relief to targeted sectors in the sport, cultural and creative industries’ but its aims were more specific, soliciting projects ‘that demonstrate opportunities to

create WORK (*DSAC emphasis*) in order to get income flowing and to get the sector moving as part of the reconstruction and recovery of the economy. The PESP acts here as an aggressive injection of income into the economy...'

The National Film and Video Foundation, the National Arts Council and the Sports Trust were the three agencies entrusted by the DSAC to administer the PESP.

DSAC Director General, Vusumuzi Mkhize said at the time:

We have as the department entrusted the administration of the Presidential Employment Stimulus Programme to the NAC, NFVF and the Sports Trust, as the three organisations that have in the past proven to be capable to administer projects such as these. We trust that the administration will be done in accordance with all set criteria, we furthermore pride ourselves to have at hand organisations such as these, which are capable, accountable and responsible.

The DSAC made available R300 million to the NAC to allocate within two streams:

Stream One: Job Retention via a wage subsidy (R100 million)

Stream Two: Job Creation projects (R200 million)

Applications for Stream One closed on 20 November 2020 and for Stream Two, they closed on 27 November 2020. (For the NFVF, applications closed on 30 November 2020).

Outcomes for Stream 1 applicants were to be announced on 1 December 2020.

For Stream 2, there would be two dates for announcing outcomes: by 1 December 2020 for those who applied before 14 November 2020 and for applications that were submitted after that date, outcomes would be announced by 21 December 2020.

The DSAC aimed to have 7 000 jobs retained through Stream One, and 10 000 job opportunities created through Stream Two.

The projects were to be concluded by 31 March 2021, giving applicants five months to apply, to plan, initiate and implement and report on their projects. With the closing date for Stream 2 – the creation of work opportunities – on 27 November 2020, it was likely that the earliest that projects would receive funding would be in January 2021 so that many – even if they were confirmed for funding in December – would need to take the risk and raise bridging finance to implement their projects to ensure that they would be completed by the deadline of 31 March 2021.

## AN OVERVIEW OF THE PESP FUNDING SAGA

Based on documents gleaned from court action by arts organisations against the NAC, interviews with people on the inside of the NAC and information that is generally in the public domain through media releases, news investigations and reports, the following is an attempt at a chronological narrative about the PESP funding saga.

(In addition to these facts, it is very important to note the timeline that forms part of this report as the findings are rooted not only in the content listed below, but also in the timing related to the listed facts).

1. On 16 July 2020, the Department of Sport, Arts and Culture calls a meeting with its public funding entities to present the proposed Presidential Economic Stimulus Programme to them.<sup>3</sup>
2. Three days later, DSAC invites the funding agencies – National Arts Council and the National Film and Video Foundation – to submit proposals as to how they will administer the PESP funding.<sup>4</sup>
3. National Treasury confirms the PESP funding with DSAC on 30 August 2020 who in turn shares this information with the NAC and NFVF; they are to receive R300 million and R140 million respectively.<sup>5</sup>
4. The NAC expects the window for submission of PESP applications to open on 9 October 2020 and close on 6 November 2020.<sup>6</sup>
5. The management of the NAC requests an extension of the time frame for the allocation and use of the PESP funding (beyond 31 March 2021), but the National Treasury declines the request. National Treasury wants all funding to be paid out by 31 March 2021.<sup>7</sup>
6. On 9 October 2020, the NAC is informed by Dr Cynthia Khumalo, Deputy Director-General of Arts Development and Promotion at DSAC, that the PESP funding had been delayed as the relevant ministers require more time to evaluate the proposed PESP and satisfy themselves that it really addresses the challenges faced by the country.<sup>8</sup> The NAC 'notes that the delays have compressed the length of the programme from the initial 6 months intended to about 3 months and this would place added pressure on the entity when rolling out the programme.'<sup>9</sup>
7. The President makes an announcement about the PESP to the National Assembly on 15 October 2020.
8. Vusumuzi Mkhize, Director General of the Dept of Sport, Arts and Culture, sends a grant letter to Rosemary Mangope, CEO of the National Arts Council dated 26 October 2020, confirming an 'allocation of R300 000 000 to the NAC for the implementation of the Presidential Employment Stimulus Programme (PESP). The letter outlines the goal of 10 000 job opportunities by funding individuals and organisations with a budget of R200

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<sup>3</sup> National Arts Council PESP Update, 27 October 2020

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Minutes of the Council meeting of 3 October 2020

<sup>7</sup> Ibid

<sup>8</sup> Council PESP Update, 27 October 2020

<sup>9</sup> Minutes of the Council meeting of 11 October 2020

million (Stream 2) and another goal (Stream 1) of support for the retention of 7 000 jobs in the creative sector with a budget of R100 million.

9. The NAC proposes rather to aim for 6 000 jobs at R16 600 each for Stream 1 (this would make for a budget of R99 600 000, just R400 000 short of the allocated budget of R100 million, and 8 000 job opportunities using the formula of R25 000 per job opportunity over three months (Jan to March 2021)<sup>10</sup>. The number of job opportunities is arrived at by dividing the budget of R200 million by R25 000.00.
10. National Treasury stipulates that the NAC can take a management and capacitation fee of 5% (R15 million), which has to be subtracted from the budget for Stream 2, leaving R185 million for the creation of job opportunities. (The NAC contracts additional staff to manage the project, pays members of adjudication panels both for preparation days as well as meeting days, and pays Council and EXCO members additional fees for their work on the PESP funding).
11. Stream 1 is aimed at organisations, institutions, SMMES and sole traders who find themselves in positions where they are struggling to maintain their staff complements and will apply to specific employees they already have on their payroll or on contract.<sup>11</sup>
12. Stream 2 is to solicit proposals from the sector that demonstrate opportunities to create work in order to get income flowing and to get the sector moving.
13. According to the Director General's grant letter, the funding is to be made available 'as per the NAC's mandate' (to support the arts) and should include 'exhibitions, community outreach projects, art teaching at community level, public art, book fairs, creative writing, creation of new work/products (e.g. ceramics, pottery, wood carving, embroidery, applique, tapestry, weaving and textile design, new choreographic works, script writing), fashion design with a cultural element, festivals including literary festivals (only if they have a community participation component), music compositions and heritage-related projects'.
14. By their respective deadlines, the NAC receives 455 applications (198 individuals and 257 organisations) for Stream 1, and 2031 applications for Stream 2. This makes a total of 2 486 applicants.<sup>12</sup>
15. Individual applications are considered compliant if they submit a certified copy of their South African ID document, a valid tax clearance certificate, their latest original bank statements, a full CV outlining their relevant experience, examples of their previous work in the form of photographs, videos, etc and a signed reference letter from an arts organisation, community leader or well-known artist validating their work. The same compliance criteria apply to organisations, except that the ID is for an office bearer, the CV is of the main applicant and a certified copy of the organisation's registration certificate is to be included. All applications and compliance documents are to be submitted through the NAC's online Grant Management System (GMS).
16. Applications that are deemed compliant are dispatched to five panels (the same advisory panels that normally adjudicate NAC funding applications). 'Only fully compliant applications were sent to panels to review. While panels were reviewing, the internal team would be contacting applicants with compliance issues and give them a deadline by which to submit the required documents to make their applications fully compliant.'<sup>13</sup>

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<sup>10</sup> Council PESP Update, 27 October 2020

<sup>11</sup> Council PESP Update, 27 October 2020

<sup>12</sup> Minutes of the NAC EXCO, 30 November 2020

<sup>13</sup> Ibid

17. At the Council meeting of 30 November, Michael Arendse, Chairperson of Panel 3 dealing with Stream 2 organisational applications reports that the budget for Stream 2 was R185 million and his panel had already allocated R79 million to 86 applications with 700 more applications still to be considered. 'Therefore, panels are to think more strictly around the budgets.'<sup>14</sup> In other words, the possibility of over-commitment was already raised three days after the closing date for Stream 2 applications.
18. At the Exco meeting of 6 December 2020, the report on commitments per stream again notes that there are a few hundred more compliant applications to adjudicate 'thus it was suggested considering a reduction in the individual amounts allocated to make the budget'.<sup>15</sup>
19. Stream 1 with a budget of R100 million is undersubscribed with only R44 million committed to approved applicants. NAC's management requests National Treasury to agree to transfer the balance of funds from Stream 1 to Stream 2.
20. At its meeting of 6 December 2020, the Exco decides to be more lenient on compliance and encourages the panels to approve applications despite them not being compliant, provided that full compliance documents would be available at the time of contracting. If applicants are tax registered at the time of submission and could prove tax compliance by the date of contracting, they should be approved.
21. The minutes of an EXCO meeting state "subsequent to processing and awarding PESP grants under the first batch of applications, there was an unexpected surge of further applications just before, but still within the application closing date. Regrettably, the total budget for the PESP programme was allocated to the first batch of applications. This resulted in the second batch of successful applications not being able to be awarded any funds due to the budget being exhausted.'<sup>16</sup>
22. The minutes of the new Council meeting of 5 February 2021 state that by 19 December 2020, the PESP funding was not oversubscribed (**Note:** it should read **over-committed**, not over-subscribed). Only by 30 December 2020, once the final batches were approved, did it become clear that the amount had been over-committed.
23. By 30 December 2020, the day before the termination of the previous Council's tenure, the criteria for approval are summarized as follows: if the project was viable, has artistic merit, fulfils transformation criteria and can create jobs, it should be approved. (**Note:** Interestingly, notwithstanding the fact that the country had gone into a stricter lockdown level the day before, compliance with COVID-19 protocols was not a factor considered for a viable project, even though many project applications included gatherings that could spread the coronavirus).
24. On 21 January 2021, Panel 3: Stream 2 members adjudicating projects/organisations send an eleven-page letter to the CEO, the former Chairperson of the NAC and the Board secretary listing a number of concerns about the management of the PESP process, the poor communication, irregularities in the adjudication process and compliance issues.
25. On 27 January 2021, the NAC establishes an Approvals Committee comprising Avril Joffe, Jones Chisekula, Celenhle Dlamini, Tshepo Mashiane and Zikie Molusi to adjudicate the outstanding applicants.

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<sup>14</sup> Minutes of Council, 30 November 2020

<sup>15</sup> *ibid*

<sup>16</sup> Exco minutes, 30 December 2020

26. On 28 January, since by then there has been no setting up of a meeting with the CEO and Panel 3 in response to the concerns raised in their letter of a week earlier, Theo Lawrence, one of Panel 3's members, writes to the Minister of Sport, Arts and Culture and the Director General urgently to raise his concerns about the "mismanagement and irregularities in the PESP Review Process administered by the NAC".
27. At a meeting of the new Council in late January 2021, it is confirmed that the previous Council had selected 1 406 applicants with a final value of R611 million, R311 million more than the NAC had been granted by the DSAC.
28. A report to the Council meeting of 3 February 2021 listed 6 reasons for the over-allocation of funding:
  - Poor communication between Council/Exco and the Adjudicating Panels
  - Poor project management by inexperienced project managers
  - Depletion of the budget before all eligible applications were reviewed
  - The employment of the 'first come, first served' method which then prejudiced later applicants that were compliant and
  - The awarding of more money to applicants than they applied for (**Note:** this was as the result of the NAC applying the formulae of R16 600 per Stream 1 job and R25 000 per Stream 2 job, even if this was more than that budgeted for by applicants)
29. Panel members 'were frequently told by Council members that the budget was not a major issue as more funds were likely to be raised'.<sup>17</sup>
30. In the wake of numerous legitimate applicants that had not been awarded funding, the new Council decides on three 'principles' in resolving the matter:
  - All approved and compliant applications must receive PESP funding
  - All approved and compliant applicants must not receive more than what they originally applied for
  - No approved project must receive more than R2 million; however, Council will consider projects that create jobs at scale and have a national footprint
31. As at 8 February 2021, there are 2 486 applications for PESP funding. 614 were approved in 2020 and R25 124 910 had been paid to 155 of the successful applicants.
32. It is revealed that there is no budget should there be successful appeals against the NAC's decision to decline or reduce committed budgets for PESP funding.
33. At their meeting on 8 Feb, it is suggested by the management that a further R45m-R50m could be granted to the NAC. This could come from other sectors that had not been able to spend their PESP funds.
34. It is noted that all successful applicants that applied before 21 November 2020 and were fully compliant, were announced in mid-January. The remaining 792 that were approved after that were not announced yet on the assumption that more funds would be received.
35. On 8 February 2021, the Council "noted that the letters sent out to the (successful) applicants and the content thereof suggested that there was a binding contract between the applicants and the NAC. Thus, NAC would need to get a full legal opinion should they be taken to court for repudiation".
36. By 11 Feb 2021, it is recorded that there were 1406 successful applications. 614 had received Grant Notification Letters (GNLs) and these 614 had been allocated the full R285 million available for PESP funding. This left 792 compliant and legitimate

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<sup>17</sup> Minutes of Council, 5 February

- applicants without funding. Of the 614 approved, contracted projects, only 262 were from Stream 2.
37. The Council discusses the performance of the PESP Senior Project Manager with a view to asking her to step down. There is also a discussion about holding the CEO accountable.
  38. By 16 Feb 2021, it is reported that 613 Grant Notification Letters had been sent. 413 contracts were distributed and 383 signed and returned.
  39. 316 individual applications and 445 organisational applications from Stream 2 were approved for a total of 761 successful applications, but not yet notified. It was agreed then that those who were not compliant at this stage would be removed from the list of 761.
  40. 98 applicants in Stream 1 and 146 in Stream 2 are paid more than they requested (as a consequence of the previous EXCO applying the formulae of R16 600 for Stream 1 and R25 000 for Stream 2).
  41. The new Council meets with legal counsel, Nita van Zyl on 17 February 2021 to get her opinion on their proposal to change the contracts and reduce the total amounts of those individuals and organisations that had already signed such contracts.
  42. At a meeting on 18 February 2021, the Chairperson says that where there is a GNL or contract in place, these could not be changed as NAC would be legally challenged. She also says that the Minister has said that the NAC cannot change contracted agreements and that GNLs are contracts. The Minister also states that once money is in an artist's account, the NAC must not recall the money.
  43. Legal counsel Van Zyl briefs the Council on 19 February 2021.
  44. A summary of the state of PESP funding is provided to the Council on 21 February 2021:
    - 44.1 Total PESP budget excluding the NAC's admin fee: R285 million
    - 44.2 Total amount approved: R545,3 million
    - 44.3 Total cash paid out by 21 February: R24,4 million
    - 44.4 Unpaid amount to approved beneficiaries: R520,9 million
    - 44.5 Budget available in cash: R260.5 million
    - 44.6 Value of second tranche payments to contracted applicants: R10,4 million
    - 44.7 Remaining funds (minus second tranche payments): R250 million
  45. The NAC announces on 24 February 2021 that they have created more than 23 000 jobs in a short period of time.
  46. On 27 February 2021, DSAC asks for the legal opinion so that they can review it.
  47. Of the 761 approved but not informed applicants, 216 are not compliant. This would potentially reduce the number of approved applicants to 545.
  48. DSAC confirms to the new Council that they were in regular contact with the NAC through two committees: a technical committee and a monitoring committee. They were aware of the over allocation of PESP funding, but not the extent – R611 million versus the R300 million they approved.
  49. The new Council pleads with DSAC to reconsider their decision not to have the NAC as an implementing agency for the third phase of relief funding. DSAC says the decision is not punitive but is rather aimed at not overloading the NAC when it is still dealing with PESP funding. Council says this amounts to a vote of no confidence. They assure DSAC that all payments will be done by 31 March 2021, with a slight spillover into April.
  50. On 14 March 2021, the NAC meets with Abahlali ba se NAC.

51. At its meeting on 15 March 2021, the NAC decides that all Stream 2 allocations are to be reduced by 56%.
52. The South Gauteng High Court decides on 31 March 2021 in favour of the application by the National Arts Festival against the NAC, and orders the NAC to pay NAF R3,486 million.
53. On 21 June 2021, the South Gauteng High Court delivers its finding that the NAC has acted unlawfully in unilaterally changing the contract of the National Arts Festival as it had done with all those PESP applicants who had been awarded contracts by the previous Council. It orders the NAC to pay the balance of R4 513 600 of the total award of R8 million to, as well as the legal costs of, the National Arts Festival.

## TIMELINE: KEY DATES

<b>Date</b>	<b>Activity/Event</b>	<b>Commentary</b>
15 Mar 20	President announces a National State of Disaster	
23 Mar 20	South Africa enters Lockdown Level 5	
25 Mar 20	DSAC announces R150m relief funding for artists, athletes and sports people to soften impact of COVID-19 lockdowns.	
1 May	Country moves from Lockdown Level 5 to Level 4	
1 June	Lockdown level 3 comes into effect	
16 July 20	DSAC calls a meeting with public funding entities to present the proposed PESP.	
19 July 20	DSAC invites entities to submit proposals for how they will administer PESP funding.	
2 Aug 20	Minister announces that 5322 applications were received for Sport and Arts first wave relief funding, of which 4602 were recommended for funding and 1570 were rejected (this makes a total of 6172 rather than 5322).	Many applicants received the maximum grant of R20 000 for individuals and R75 000 for organisations; those who asked for less received what they asked for.
3 Aug 20	Minister announces that there will be a second wave of relief funding aimed at individuals as there will be funding for organisations from the proposed Presidential Economic Stimulus Programme.	
17 Aug 20	We move from Lockdown Level 3 to Level 2	
18 Aug 20	DSAC issues a call for second wave artists' relief funding. 30 August is the deadline.	To cover September to November, at R2200 per month based on the Extended Public Works Programme formula (Total of R6600).
30 Aug 20	DSAC receives confirmation from Treasury about PESP funding.	
21 Sept 20	Level 1 comes into effect	
6 Oct 20	DSAC provides final clarity on numbers to be provided for NAC (R300m) and NFVF (R140m)	
9 Oct 20	DSAC informs NAC of delay to allow ministers to discuss the PESP further and to await an announcement by the President	
15 Oct 20	President makes announcement to the National Assembly.	
19 Oct 20	Minister calls for nominations of candidates to serve on the National Arts Council.	

27 Oct 20	PESP Grant letter sent from DSAC Director General to NAC Chief Executive Office confirming purpose and amounts of PESP funding. By this date, no PESP transfer from DSAC to NAC yet.	
30 Oct 20	DSAC issues open call for PESP funding with applications for Stream One closing on 20 Nov and for Stream Two on 27 Nov.	
9 Nov 20	Closing date for nominations of NAC candidates.	
18 Nov 20	Minister calls on public to comment on the longlist of nominees for the NAC.	
26 Nov 20	Deadline for public comments on the longlist of NAC nominees.	
1-3 Dec 20	Interviews take place for new members of the National Arts Council.	
15 Dec 20	Deadline for public comment on the shortlist of 22 names submitted by the interviewing panel for the National Arts Council.	
23 Dec 20	NAC scraps its annual holiday from 23 Dec to 4 Jan to work through the PESP applications.	
29 Dec 20	With the rise in infections, the country moves to an adjusted Lockdown Level 3	
31 Dec 20	Term of National Arts Council ends	
6 Feb 21	Minister calls for applications for Third Wave relief funding.	Successful applicants to receive a minimum of R10 000.
28 Feb 21	NAC announces that CEO Rosemary Mangope and CFO Clifton Changfoot have been suspended.	
1 Mar 21	Country moves from Level 3 to Adjusted Level 1	
3 Mar 21	Creatives led by Sibongile Mngoma begin an occupation of the NAC offices in an effort to get the NAC to pay creatives what they were originally promised.	
9 March 21	Minister Mthethwa appoints a Ministerial Advisory Team (MAT)	MAT members are Sharif Baker (SACIA), China Mpololo (SAMIC), Joy Mbewana (CCIFSA), Nozipho Nguse-Dlamini (CSTAHOOD), Gabi le Roux (TUMSA), Thobela Dlamini (SACPU) and Lara Foot (Baxter Theatre). ( <b>Note:</b> The latter subsequently resigned).
26 Mar 21	ASSITEJ SA lodges case against NAC in Western Cape High Court.	
29 Mar 21	Minister admits to maladministration of PESP funding by the NAC.	

31 Mar 21	South Gauteng High Court rules in favour of the National Arts Festival against the NAC's unilateral decision to change their contract and orders the NAC to pay NAF R3,4m.	
3 May 21	At a Portfolio Committee meeting, Deputy Director General Cynthia Khumalo says that by then R201 million of the PESP funding had been paid by the NAC. There were 546 individuals and 714 organisations for a total of 1260 beneficiaries.	
31 May 21	South Africa moves to adjusted Level 2 due to a third wave of infections.	
27 June 21	President Ramaphosa announces that the country will move to Lockdown Level 4 to curb the high rate of infections.	
21 June 21	The South Gauteng High Court rules in favour of the National Arts Festival; the NAC acted unlawfully in cancelling their original contract with NAF. The NAC has to pay NAF the balance of the original R8m award and cover NAF's legal costs.	
25 June 21	The NAC provides an update on the PESP funding with 1 331 approved beneficiaries, who have been paid R227 895 954.10 by then. 38% of the beneficiaries have been paid their full amounts by this date.	

## **ADJUDICATION OF FUNDING APPLICATIONS BY THE NAC**

### **Process**

According to a member of an adjudication panel, the normal process for adjudicating and approving funding applications was as follows:

1. There is a call for applications to be submitted by a particular deadline.
2. After the deadline, all applications are vetted for compliance (i.e. valid tax clearance certificates, certified company registrations, certified copies of the identity documents of the main applicants, proof of bank account, bank statements, etc) by the staff (Artistic Development Officers).
3. Those that do not comply, may be excluded from the adjudication process or ADOs may contact the applicants and request the missing documentation.
4. Applications that comply with the required standards are submitted to the relevant adjudication panel.
5. Each panel is given a budget so that they know how much they are able to recommend per approved application. Generally, the amount of funding available is divided equitably between the five panels. For example, if R20m is available for a funding cycle, each of the five panels comprising up to five members each, and with each panel chaired by a Council member, has R4m to allocate to their approved applicants.
6. All panellists score the applications independently and those that receive the highest common scores, are approved. Those that have more ambivalent scoring are discussed and are either approved or rejected.
7. The panel then allocates the available budget between the approved applicants depending on their respective budgets and the amount of funding the panel has to allocate.
8. The panels' recommendations are then considered by the Council which does not simply rubber stamp the recommendations of the panels but may interrogate their recommendations and propose changes as the Council is the highest decision-making authority.
9. Once the Council has approved applications, the NAC's staff communicate with the applicants and engage in the contracting process.

### **Assessment Criteria**

As per its website, the NAC outlines the assessment criteria for applications.

There are basically four categories of assessment (called 'quadrants'), each worth 15 points, and within each categories, there are three further categories of up to 5 points each, making up the 15 points per category. Points per sub-category are 1 (Poor), 2 (Fair), 3 (Good), 4 (Very good) and 5 (Excellent).

The quadrants or larger categories all start with "P" and are: Programme Impact (Innovation/Artistic merit, Ability to transform the sector, Legacy), Profiling (Global recognition, Increased market access, Advocacy), Partnerships (Capacity for partnerships, Capacity to pay it forward, Community Support), Processes (Organisational management, Budget and finance management, Feasibility and ability to comply).

## **Thematic focus of Advisory Panels**

Originally, advisory panels were appointed along discipline lines so that 'every field of the arts' was interpreted to mean every discipline such as music, theatre, dance, literature, craft, visual arts, etc.

The previous Council (before the Council that took office from January 2021) changed the panels so that they are no longer constituted along discipline lines, but around themes.

While the NAC calls for projects along discipline-based lines as per its mandate i.e. craft, dance, literature, music, theatre, visual arts and multi-disciplinary projects, applications are adjudicated by five panels, as follows:

- a. Social Cohesion and Nation-Building
- b. Strategic Initiatives
- c. Innovation, Design and Creation
- d. Capacity-building and
- e. Arts platforms/showcases/exhibitions, festivals

Panels thus adjudicate applications in terms of these themes and the criteria listed above.

## **For Noting**

On the subject of Advisory Panels, the National Arts Council Act states in Clause 11:

11.1 The Council may establish an advisory panel for every field of the arts it deems necessary

11.2 Every advisory panel shall consist of no more than five members who have achieved distinction or have special knowledge or experience in the field of arts in question, and who are not members of the Council.

11.3 An advisory panel shall advise the Council on the merits of applications for grants and on any other matter relating to the field of the arts for which it was appointed.

11.4 Every meeting of an advisory panel shall be chaired by a Council member.

11.5 The Council shall appoint persons to an advisory panel on the basis of nominations obtained from the public as prescribed.

11.7...A member of an advisory panel shall hold office for a period not exceeding two years, and may be appointed on the same or a different panel after a further two years have elapsed....

11.9...The Council may at any time terminate the membership of a member of an advisory panel if sufficient reason exists therefore.

11.10 Members of advisory panels shall not be eligible for grants from the Council during their tenure.

## **The relevance of the Advisory Panels to PESP Funding**

The Advisory/Adjudication Panels played an important role in assessing the applications for PESP funding.

The compliance criteria for PESP funding were:

- Examples of previous work done by the applicant
- A certified tax clearance certificate
- A certified copy of the Identity document of the main applicant (not older than 3 months)
- Certified company registration (not applicable to individual applicants)
- Payslips, PAYE or other proof of payment to employees such as a bank statements or a contract
- Proof of a bank account
- CV of the main applicant
- A reference letter (signed and dated) from someone with stature in the arts or the community, validating the work of the applicant

Compliance was traditionally checked by the Arts Development Officers, the full-time staff.

## **Contracting of panellists**

Since the PESP funding did not constitute 'normal' NAC funding, the panellists were contracted specifically to adjudicate the PESP funding applications.

Consistent with Clause 11.10 of the NAC Act, "Panellists signed MoUs with the NAC and were aware that they needed to declare and recuse themselves in discussion applications in which they were conflicted".<sup>18</sup> Members of panels were remunerated at the rate of R4 255.00 per day, both for preparation days and for days on which they attended meetings.

## **Panellists express concern**

Members of Panel 3 responsible for adjudicating Stream 2 organisational applications submitted a lengthy letter to the CEO on 21 January 2021 in which they raised their concerns about the PESP process. The CEO suggested that they have a meeting to which the panellists agreed, but when a week had passed and no meeting had been set up, one of the panellists, Mr Theo Lawrence, sent a letter outlining their concerns to the Minister and Director General of the Department of Sport, Arts and Culture.

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<sup>18</sup> Minutes of the NAC EXCO meeting, 30 Nov 2020

## ALLOCATIONS OF PESP FUNDING

On 12 March 2021, the NAC published a list of beneficiaries of PESP Funding.

For stream 1, there were 348 individual and organisational beneficiaries who were allocated a total of R27 592 355. Stream 1 – with a budget of R100 million was thus heavily under-subscribed.

For Stream 2, 368 individuals were allocated a total of R47 153 611 and R203 290 643.61 was divided up between 566 organisations.

Funding that was available for the undersubscribed Stream 1 was shifted to Stream 2.

Collectively, there were 1282 beneficiaries with a total allocation of R278 036 609.61.

**(Note:** The numbers keep changing).

The NAC's 5% administration fee of R15 million would take the total to R293 036 609.61, leaving an amount of R6 963 390,39 available or unaccounted for.

85 applicants received funding for both Streams 1 and 2.

15 applicants received funding for two projects in Stream 2.

4 applicants were successful in receiving funding for 1 project in Stream 1 and 2 projects in Stream 2.

One applicant received funding for two projects in Stream 1 and one project in Stream 2 which appears to be an anomaly, given that applicants could only be awarded funding for one project in Stream 1.

For the list of PESP outcomes and the amounts each successful applicant was allocated, see <https://www.nac.org.za/funding-news/full-list-of-pesp-outcomes-with-grant-amount/>

Originally, the formulae applied for the allocation of funding per job subsidy or work opportunity were:

Stream 1: R16 600 per wage subsidy

Stream 2: R25 000 per work opportunity over three months, or R8 333 per month. However, with up to 50% of the fee for operational costs, the amount could be reduced to R12 500 per work opportunity over three months or R4 166 per month.

The Council that took office on 1 January 2021, in an attempt to spread the available funding more equitably between approved and compliant projects, agreed on a new amount of R10 895 per work opportunity over three months. This would amount to R3 631 per month. With up to 50% allocated to admin and operational costs, the monthly amount per work opportunity would be R1 816.

When one considers that the **daily rate** paid to members of panels who adjudicated the PESP funding was R4 225, then the final monthly sum of R1 816 for those who work in the creative sector, is particularly iniquitous. We are not against fair remuneration for those who work within public funding structures, but once more, it is those who make decisions and administer funding that is supposed to benefit the creative sector who benefit far more than the creatives.

Others have interrogated the lists of approved recipients (e.g. the SA Roadies Report on NAC PESP Recipients), and this report has not delved into the legitimacy of the recipients. We are satisfied that this issue has been raised in several forums so that it has to form part of the terms of reference of a thorough, independent investigation.

## **WHERE, WHEN AND HOW DID IT ALL GO WRONG?**

By 6 December 2020, 9 days after the closing date for Stream 2, concerns were already being raised at the EXCO meeting, where R89 485 578 was recommended for approval, which amounted to just less than a third of the available funding of R285 million. With a number of compliant applicants still to be reviewed, '...it was suggested considering a reduction in the individual amounts allocated to make the budget'.

At the final EXCO meeting on 30 December 2020, there were still 300 applications that were to be reviewed according to the minutes of the meeting which state further that:

CEO highlighted that after today's earlier approvals to the amount of R362,1 million and the estimated amounts for Batches 2 and 3 (applications to be reviewed), the NAC was over budget. The CEO highlighted the figures were approaching R600 million.

There appeared to be an expectation of more funding from the DSAC. At the Exco meeting of 6 December 2020, it was reported that:

The Director General had informed Management that should NAC demonstrate that they are capable of distributing the funds with the prescripts and criteria provided, then they would most likely receive more funds for distribution. Thus it was noted that the budget was not a restraint, as NAC were likely to receive more funds. The main constraint that management was facing in the process was time constraints.

The CEO reported to the EXCO meeting of 30 December 2020 that some of the PESP funds allocated to other sectors of the economy remain unspent and there was the possibility of some of these funds being transferred to the NAC.

At that meeting it was recorded that

Management was commended on the good work done and it was highlighted that it would be a brilliant feather in the NAC's cap if the NAC was able to use the unspent funds from the other sectors and that this would put the NAC in good standing to receive further allocations for public employment should that be approved for the next financial year....

...the NAC should aim for as many approvals and meeting as many of the targets as agreed to and if the announcements could.

The findings below reflect the views of TADA's PESP Team regarding how and why the mismanagement of the PESP, and who should be held responsible.

## FINDINGS

### **1. The short time allocated to realise the ambitious aims of the PESP funding was hopelessly unrealistic so that the project was set up for failure from the start.**

The letter confirming the funding from the DSAC to the NAC was sent on 27 October 2020. The project was to be completed in its entirety by 31 March 2021, a total of 5 months.

The aims of the PESP funding were:

- a. To allocate R100 million to retain 7 000 jobs and
- b. To allocate R200 million to create 10 000 new work opportunities.

The NAC's annual budget is in the region of R120 million, of which it allocates less than R100 million to projects over the course of a year. In this PESP funding instance, the NAC was required to allocate (advertise, check for compliance, adjudicate, compile and distribute contracts, pay out a first tranche of funding, follow up and check narrative and financial reports, allocate a second tranche of funding, close out the project) three times more funding than they usually received, in less than half a year.

If this was not difficult enough, the NAC was also required proactively to solicit applications particularly from women, youth and people with disabilities.

The short time not only placed enormous pressure on the National Arts Council, but also on the arts and culture sector that had to devise and plan projects, obtain the necessary compliance documentation, submit the project for adjudication by the respective deadlines (20 and 27 November 2020), start implementing the project once they received a Grant Notification Letter from the NAC so that they could complete the project by 31 March, arrange bridging finance to support the project before receiving their first tranches of funding...only then to receive notification that the original Grant Notification Letters were no longer valid, and that they would receive significantly reduced funding).

For a sector reeling from the devastating impact of the lockdowns related to COVID-19, the PESP funding offered some respite even under enormous pressure; to have the original contracts declared null and void for those who had received them, was yet another hard blow, for a sector that had done nothing to warrant such disrespect and abuse. Because of its general precarity, and the additional precarity caused by COVID-19 lockdowns, the sector accepted the funding made available even under disrespectful and abusive conditions, but this cannot be the way in which funding and general support are made available to the arts and culture sector in future.

In NAC Council minutes:

It was highlighted that some panels did not clearly understand the concept of R25 000.00 per opportunity as some panels had granted the full amount (requested by some applicants) that were above the R25 000 per job mark.

As it was clear that there had not been much understanding of the concept by the team, panels or beneficiaries, it was suggested that the NAC should go back to the sector and help people to understand the concept for the next round.

The minutes of 30 November 2020 state:

The mistake that most applicants had made was that they assumed that they were applying for NAC funding. The Presidency indicated the guiding figure was R25 000 per job opportunity and must include project and human costs. Applicants thought that it was R25 000 per person for three months, with the leftover funds for the project. But this was not so.

The minutes of the Exco meeting of 6 December 2020 state:

Stream 1 applicants did not fully understand how to calculate the wage subsidy of R16 600 per person. For many there was a disconnect between the number of employees they listed and the number they provided proof of payment for.

The NAC went to great lengths to try and reach rural applicants. However, the numbers were still low.

The short time window affected both the applicants' readiness and their submissions, as well as thepanellists' ability to assess the applications.

It was noted that the majority of applicants (90%) did not understand the funding formula.

The confusion was not only within the sector, but also within panels. Minutes of a later meeting state:

It was noted that the funding formula for the PESP programme differed from the normal formula used by the NAC and this had caused some confusion among panel members.

In the Council's 19 December 2020 minutes:

It was highlighted that some of the applicants had not understood the purpose of the PESP which was to provide relief....It was highlighted that the Project Managers should communicate the purpose of the PESP and make applicants understand the Presidency was offering a relief to assist people and organisations to get back on their feet.

It was highlighted that these issues had come up because of management's failure to implement Exco's decisions due to a lack of understanding of the decisions.

And yet, the minutes from as early as 3 October 2020 state:

The CEO indicated that after consulting the Audit and Risk Committee, the Panel of Committee Chairpersons and communications, it was resolved that the NAC would accept this tight time frame. However, the implications and risks would be outlined to National Treasury.

In a thorough and comprehensive risk assessment of the project, dated 27 October 2020, the CEO clearly outlines a number of risks related to the NAC's management of the project generally, and to the short time frameworks in particular. These listed risks include:

Impossible deadlines for delivery due to Treasury misunderstanding of the nature of the sector.

Lack of adequate resources (DSAC not transferring the budget timeously), resulting in insufficient human capital to undertake the function, lack of understanding of how panels function, delay in support staff commencing their duties.

Inability to disburse all funding by the financial year end in 2021.

The NAC had requested an extension beyond 31 March 2021, but National Treasury had insisted that all the funds needed to be distributed by 31 March 2021.

In summary, some of the consequences of the unrealistically short time to implement and close out the project were manifested in:

- The lack of training and lack of time to train the new contractees brought on board by the NAC to assist with the PESP project.
- The confusion and lack of clarity within the NAC Council members and among adjudication panels about the purpose of the PESP funding, the differences between this funding and normal NAC funding and the funding formulae to be applied per job.
- The pressure to distribute the funding so that compliance requirements were relaxed or not attended to as rigorously as should have been the case.
- The lack of time to educate the creative sector about the goals of the PESP funding, to solicit high quality applications and to ensure adequate understanding of the funding formulae. (By the closing dates for applications for both streams, 2 486 applications had been received, of which 1 406 (56%) were selected for funding which meant that more than a 1000 applicants were unsuccessful. But, more importantly, 2 486 applications in no way represents the breadth of need within the sector and could be an indicator of the lack of time to prepare adequate, compliant applications, as well as applicants' difficulty with managing the online Grant Management System).
- The lack of time for panels to adjudicate the applications timeously so that some panels completed their work before other panels, resulting in the applications that had been adjudicated first, being awarded funding on a first-come-first-served basis.
- The lack of time to solicit proposals that sufficiently targeted rural areas and resonated with the transformation criteria.

In short, if the aim was to create jobs 'that after the funding period, the jobs would be sustainable and have a multiplier effect' as outlined by the NAC, then the preparation and implementation times were woefully inadequate. It may be too early to assess the impact of the PESP funding on – sustainable - job creation within the creative sector, but it would be no surprise if the number of retained jobs and sustainable work opportunities created represent a massive waste of expenditure of public funding on this project.

### ***Who should be held responsible for the short time allocated to this project?***

From the suspension of the NAC's CEO and CFO and statements made by the current Council, it is likely that those in authority who commission forensic investigations – the DSAC, the NAC Council, other government agencies – will look particularly at the previous NAC Council, its Exco and its senior management as scapegoats for the mismanagement of the PESP funding.

However, while the previous NAC Council, its Exco and senior management should indeed shoulder significant blame (see later findings), the primary responsibility for the failure of the

PESP funding to realise its ambitious goals ((in terms of its transformative, sustainable job creation) lies with government that was directly responsible for the woefully inadequate time provided. It should have been obvious to government that it was nigh impossible to sustain and/or create 17 000 job opportunities in the creative sector in a total of 5 months, a target never set nor realized before.

The National Arts Council – and its senior management – were completely aware of the dangers and risks attached to the short time available to them, as reflected in their risk analysis, their early approaches to National Treasury to extend the deadline and management’s reports to Exco/Council. As reflected in Exco minutes:

Management highlighted that the project deadlines have been set up in such a way that it was possible to fail, however, everyone was working hard to get the process to move despite all the constraints and challenges faced.

The National Arts Council was pressurized by government to implement a task beyond their capacities within the limited time of 5 months. The NAC was aware of the poor quality of the applicants and of the potential wastage of resources, but were also concerned about their reputations with government, and had to be seen to be able to deliver, lest their inability compromises future funding. As per the Exco minutes:

It was noted that the applications were generally very poor. Large amounts of capital were to be distributed to poor applications and this would be detrimental to the NAC if the applicants were unable to deliver.

***Specifically then, overall responsibility for the failure of this project and the wastage of millions of rands of public funding, lies with***

- a. The President, for announcing the Presidential Employment Stimulus Package only in mid-October to parliament so that nothing could be done before this announcement (the DSAC first informed the NAC of this programme in mid-July 2020, three months earlier)***
- b. The group of ministers who delayed the announcement in order to satisfy themselves that the funding would meet the country’s challenges (and in so doing, ironically compromised the time needed for the funding to do exactly that)***
- c. National Treasury who refused to extend the time framework for the project, notwithstanding the representations made to them by the NAC (and now has been forced to accept that the project will overrun the original time limits)***
- d. The Minister who does not appear to have done enough to convince his cabinet colleagues of the particular nature of the creative industries; it would appear that the main political ‘win’ was to get the funding, significant as it was, rather than to ensure that the funding would be put to its best use, and not be wasted in a box-ticking exercise and***
- e. The Department of Sports, Arts and Culture that established two committees – a Technical Committee and a Monitoring Committee – and who appointed one of its senior management, Mr Charles Mabaso, as its liaison with the NAC; there is little evidence of any support or corrective action taken by the DSAC who allocated the PESP funding tasks to the NAC and the NFVF, and were aware of the over-allocation of funding (though not necessarily its quantum).***

**2. The timing of the project i.e. the times at which the project was to be implemented, were the worst for a project of this ambition and scale, and its unrealistic time frameworks.**

**2.1 Not only was the time given for the project completely unrealistic, the time at which the project was to be implemented was grossly inappropriate and reflects incredibly poor vision, sensitivity and management on the part of those who set and enforced the timing, for the following reasons.**

The PESP funding was intended to address the impact of COVID-19 on the creative sector, but it was also done in the midst of the pandemic, and at the rise of the second wave of infections which forced a lockdown that would impact on the ability of many successful applicants to deliver on their projects.

As noted in the minutes of Council/Exco meetings:

Additionally, very little was mentioned in the way of COVID-19 compliance, yet much of the funding was towards festivals and other interactive events that were likely to increase the spread of COVID.

Applicants were required to be compliant in terms of tax clearance, registration, certified identity documents and the like, as were to be adjudicated in terms of demonstration of job retention, transformation and sector experience (Stream 1) and the proposal in getting the sector back to work, transformation, number of jobs created, sector experience and the budget and activity plan (Stream 2), but while “COVID-19 compliant” is mentioned as a criterion for Stream 2, it is not mentioned for Stream 1.

There is no evidence of how the NAC would assist/deal with projects that would fall foul of any new lockdown regulations and would be unable to deliver their projects within the tight time frameworks.

In a letter to the Minister on 28 January 2021 to alert him to the mismanagement and irregularities in the PESP process, one of the adjudication panellists raises this matter as one of their main concerns as panellists:

“Failure to anticipate that many applicants would apply for projects that involved the gathering of an audience or delegates at events such as concerts, festivals, theatre shows, workshops and conferences. Although they may have made adequate provision for PPEs when they applied in November 2020, they did not anticipate the 2<sup>nd</sup> wave of COVID-19 nor the severely restrictive NDM regulations, all of which will most certainly prevent many applicants from completing their project activities and reports and receive their payments within the requisite period of 1 January to 31 March 2021.”

As recorded in the chronology earlier in this report: By 30 December 2020, the day before the termination of the previous Council’s tenure, the criteria for approval are summarized as follows: if the project was viable, has artistic merit, fulfils transformation criteria and can create jobs, it should be approved. (**Note:** Interestingly, notwithstanding the fact that the country had gone into a stricter lockdown level the day before, compliance with COVID-19 protocols was not a factor considered for a viable project, even though many project applications included gatherings that could spread the coronavirus.

Not to take more account of the pandemic in the timing, time allocated to the project and the adjudication of applications was both irresponsible and lacking in foresight.

***Specific responsibility for this lies with***

- ***The government entities outlined above (the President, cabinet ministers, National Treasury, Minister of Sport, Arts and Culture and Department of Sport, Arts and Culture) for the lateness with which the PESP was approved, announced and advertised, and the short time given to deliver on its goals.***
- ***The National Arts Council – its Council members, Exco and senior management – for their failure to take sufficient account of the pandemic in the adjudication and the potential implementation of successful projects that would meet the job creation and work opportunities goals, but in so doing, potentially contribute to the spread of the coronavirus.***

**2.2 The end-of-year holiday season is not the optimum time for planning and implementing job retention and job creation projects.**

South Africa generally ‘winds down’ in December and it is not before mid-January that the year gets under way. That creatives had to plan and submit projects for implementation during this period, that the NAC’s adjudication panels had to meet at this time when some staff and Council members had pre-booked holidays, that creatives had to use this time to arrange bridging finance to initiate their projects in January and that the NAC had not paid over any money to successful projects before the end of 2020, reflect – again - the poor timing of the PESP project for the creative sector.

As recorded in the Exco minutes of the previous NAC

The last index for individual projects could not be presented as chairperson of the panel was on holiday and despite several efforts could not be reached.

***Specific responsibility for this lies with the government entities outlined above (the President, cabinet ministers, National Treasury, Minister of Sport, Arts and Culture and Department of Sport, Arts and Culture) for the lateness with which the PESP was approved, announced and advertised, and the short time given to deliver on its goals***

**2.3 The appointment of the new National Arts Council and the decision that they would take office on 1 January 2021 in the midst of the PESP funding crisis, without an induction, due to COVID-19, is a most serious reflection of poor judgement on the part of the Minister of Sport, Arts and Culture.**

The Council minutes of 18 December 2020 record the following:

It was reported that statutorily, the Council’s term was ending on the 31<sup>st</sup> of December 2020. The CEO highlighted that she had indicated to DSAC that Council was still meeting to discuss the PESP approvals and was awaiting feedback. It was highlighted that the Council should know that there may be a need for the last Council meeting before 31<sup>st</sup> of December to finalise outstanding matters.

The Exco minutes of 19 December 2020 record that:

With regard to a possible extension of the Council's term, it was noted that the CEO had verbally discussed with the DSAC and on email on the delays of the PESP project and that a memo had been forwarded to the minister's office...there was no indication of whether the term of the Council would be extended and there was a need to complete any outstanding matter as if the term was ending on 31 December.

It was highlighted that should this be left for the new Council to deliberate, there was a risk of further delays as the new Council would have to go through an induction and constitute an Exco before the indexes (of recommended applicants) could be considered for approval.

The Exco minutes of 30 December 2020 record that:

CEO highlighted that one of the greatest concerns was that there was no control over the timelines of the new Council because they had to start with the induction process by the DSAC which might result in delays in the closeout of the PESP.

The new Council, at its meeting of 8 February 2021 recorded:

In ideal circumstances, the old Council would have pushed this programme to its completion.

To have commissioned the National Arts Council to distribute R300 million in 5 months with its 3,5 years of experience, but then to end its term two months into the project and to appoint a new Council to take over the project from 1 January 2021, with an induction of the new Council taking place only in March 2021, the month in which the project was to be closed out, is a most serious error of judgment on the part of the Minister, Nathi Mthethwa.

While there cannot be any guarantee that the project would have turned out differently, by extending the term of office of the previous Council by a mere three months to 31 March 2021, the Minister would have:

- allowed the previous Council, Exco and management to apply their experience, knowledge and networks in resolving the crisis of their making, in consultation with the arts sector, the Department of Sport, Arts and Culture and other entities as appropriate.
- prevented the allegations of conflicts of interest against members of the new Council as the adjudication, contracting and payment of funds would all have been done under the auspices of the previous Council.
- not placed the new Council in an the invidious position of having to resolve the overallocation of funding – which the previous Exco was completely aware of so that the new Council did not 'discover' this on their appointment – and to do this with severely limited collective knowledge, experience and understanding of how the NAC works and of the role and intention of the PESP funding (if there was confusion among the previous Council and adjudication panels, how could the new NAC be of one mind about this, without any induction?) and
- prevented the new Council from thoroughly compromising its credibility, integrity and standing in the creative sector less than three months into its term, so that the level of distrust is such that it would be better for a new Council to be appointed.

***Specific responsibility for this lies with the Minister of Sport, Arts and Culture, Nathi Mthethwa, whose poor judgement has thoroughly compromised the aims of the PESP funding and has wrecked the credibility of the new National Arts Council.***

***It is strongly recommended that the current Minister be replaced as soon as possible and that a new Minister oversees the establishment of a new National Arts Council.***

- 3. The focus on jobs, while understandable and necessary in the context of COVID-19's devastating impact on the creative sector, was outside of the mandate, capacity and expertise of the National Arts Council and represented a misunderstanding of the nature of the sector on the part of government.**

The objects of the NAC as outlined in Clause 3 of the National Arts Council Act are:

- a. To provide, and encourage the provision of, opportunities for persons to practice the arts
- b. To promote the appreciation, understanding and enjoyment of the arts
- c. To promote the general application of the arts in the community
- d. To foster the expression of a national identity and consciousness by means of the arts
- e. To uphold and promote the right of any person to freedom in the practice of the arts
- f. To give the historically disadvantaged such additional help and resources as are required to give them greater access to the arts
- g. To address historical imbalances in the provision of infrastructure for the promotion of the arts
- h. To promote and facilitate national and international liaison between individuals and institutions in respect of the arts and
- i. To develop and promote the arts and to encourage excellence in regard to these

While it is completely possible that in the pursuit of the above, the NAC would help to sustain existing and create new jobs (or work opportunities), this is not its primary focus, unlike the primary focus of the PESP funding. The NAC does not have the expertise to evaluate applications on their capacity to create jobs and none of the criteria that adjudication panels use mentions 'job retention' or 'job creation' as one by which to evaluate 'normal' NAC applications.

The memo from the CEO, Rosemary Mangope on 15 December 2020 to panellists, states:

There is shared understanding that the main objective of the PESP is to inject capital into the economy and get the sector back to work again. The driving principle is job creation.

It is also common cause that the PESP projects are not normal NAC projects.

She repeats this in an email to panellists on 19 December 2020 where she again notes:

This initiative encompasses the entire value chain of the creative sector. It goes beyond what the NAC normally funds. It is inclusive of the "missing middle", these are projects that do not fall squarely into the mandate of the NAC, NHC and NFVF.

Once again, please note the PESP's main objective is to fund opportunities to create WORK in order to get income flowing and to get the sector moving.

The PESP acts here as an aggressive artificial injection of income into the economy that enables ambitious proposals that create opportunities for employment and collaboration.

The focus of the NAC appears to have been far more on the political imperative and the box-ticking exercise of job retention and work creation and the associated numbers (17 000), than the quality and sustainability of the jobs, the impact of these jobs on the creative sector or whether the amounts allocated were actually sufficient for their intentions.

R16 600 and R25 000 over three months respectively do not amount to much, particularly when up to 50% could be used for project costs. Rather than job retention or job creation amounts, these figures would be not that dissimilar to the relief funding made available earlier in the year.

The strict application of the formulae of the above amounts per job, or per work opportunity, resulted in scores of projects being allocated more funding than they had asked for, and contributed in some way to the over-allocation of funding.

The Exco was clear that:

All applicants must be given 100% of the guiding cost for each stream: R16 600 per job in Stream 1 and R25 000 per job in Stream 2.

They reprimanded the CEO when she questioned the wisdom of this approach:

Management highlighted that it was not their understanding that all figures that were below the R25 000 guide must be revised upwards. The Committee highlighted that management could not be questioning Exco's decisions.<sup>19</sup>

From the documentation, the number of job opportunities created was important:

"The number of "job" opportunities created was important and management must not lose sight of this as the NAC would be judged based on this."<sup>20</sup>

"There needs to be a message to the Arts Development Officers (ADOs) and Project Managers that the key deliverable was the number of work opportunities created, not the number of projects or the amounts of money spent."<sup>21</sup>

On 30 November 2020, the Exco expressed their concerns about the job numbers not being realized:

The Committee raised concerns that the numbers were far from the target and NAC needed to demonstrate the numbers could be achieved. Management expressed confidence that this could be done. Even though a low number of applications, a high number of jobs could be retained.

After the new Council was appointed and they learned that the previous Council had over-committed the available budget and that a number of approved applicants still needed to be awarded funding, the new Council reduced the guiding figure from R25 000 per work opportunity to R10 895. This, they said would also create more jobs so that the original target of 14 000 (the NAC proposed 6 000 for Stream 1 and 8 000 for Stream 2 as opposed to DSAC's figures above, 7 000 and 10 000 respectively), would be exceeded with a total of 21 249 job opportunities being created.

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<sup>19</sup> Exco minutes, 19 December 2020

<sup>20</sup> Minutes of Council meeting, 3 October 2020

<sup>21</sup> Minutes of the NAC EXCO meeting, 11 Dec 2020

At their media conference on 24 February 2021, the NAC announced that they had created 21 249 jobs in such a short space time, a massive achievement for the NAC!

What they failed to say was that:

- The 21 249 jobs were created in theory, on paper, not in practice and were related to the formulae that they had devised, rather than an actual number of job opportunities created (This was their way of balancing the books 21 249 jobs X R10 895 each for a total of R231 million)
- By then, the NAC had paid out less than R40 million to successful applicants so that they had not created anywhere near their projected number of jobs (if any jobs had been created by then, it would have been by applicants who arranged bridging finance to do so in the absence of receipt of their NAC grants)
- R10 895 over three months amounted to R3 631.66 per job opportunity of which up to 50% could be used for project costs, amounting then to a highly disrespectful salary subsidy of R1 815.83 per month
- By then, they had still to inform the 760 applicants who had been approved for funding but who had not yet received Grant Notification Letters, so that by that time, at least 760 projects had not yet created any of the 21 249 jobs the NAC was touting to the media

That R100 million was made available for 'job retention' reflects a lack of knowledge about the sector and the lack of permanent jobs generally, and the impact of COVID on further reducing such jobs. That Stream 1 was undersubscribed by more than 50% reflects the irregular nature of work within the sector.

There is clearly a need for sustainable jobs within the creative sector. However, the political pressure to deliver thousands of jobs in a short space of time, militated against sound research being undertaken, clear strategies being devised, nuanced approaches being applied to different sectors of the creative industries and the education and training of the potential applicants in how to apply effectively and capacity-building for implementing and managing the jobs programme.

***Specific responsibility for this again lies with***

- ***The government entities (the President, cabinet ministers, National Treasury, Minister of Sport, Arts and Culture and Department of Sport, Arts and Culture) for the lack of time to research and devise an appropriate plan and programme to deliver the desired number of jobs within a decent period of time and***
- ***The Department of Sport, Arts and Culture that lacks a plan on how to create sustainable jobs within the creative sector so that it simply passed this responsibility to the National Arts Council that lacks the expertise, experience and research capacity for doing so.***

**4. A number of internal issues within the NAC directly related to the management of the PESP funding, contributed to the mismanagement of the funding.**

The NAC was under huge pressure to deliver 7 000 retained jobs and 10 000 new job opportunities in a completely unrealistic time framework. From the minutes of various meetings, the letter from one of the panellists, Mr Theodore Lawrence, to the minister and a document

from the panel on which Mr Lawrence, addressed to the CEO and former Chairperson of the NAC, there were a number of internal missteps related to the adjudication, allocation and management of the PESP funding.

These include:

- Concerns raised that the project managers contracted to assist with the PESP project did not have the requisite experience and the necessary speedy computational and interpretive skills (“...it is our view that the NAC, including its Project Management Team, has not been able to rise to the challenges and respond appropriately, timeously and efficiently to them i.e. the challenges posed by the PESP funding in a short time period. Close monitoring and management of the key deliverables in the Project Plan by inexperienced...independent consultants without the direct involvement of the NAC’s more experienced management team, is proving to be a significant weakness...”)<sup>22</sup>
- New staff only had a week’s training before having to hit the ground running; ideally they needed more time to be onboarded
- The project manager for Panel 3 (Stream 2: Organisations) was not able to deliver and had to be replaced
- Panels worked differently and with more or less rigour depending on their chairpersons.
- Some panels were not satisfied that the compliance work was being done by ‘the office’ and undertook this themselves, which is not their role and contributed to delays
- Project managers were of the view that the decision made by Exco was wrong. R25 000 per opportunity over 3 months translated to just over R8000 per month and with 50% going to operational costs, this amounted to R4000 per person per month.
- The NAC was handling one of its usual calls at the same time as the PESP funding was being allocated; this was the reason for the usual ADOs not being used on the PESP funding, with new staff being contracted.
- Not all panellists entered scores on the Grant Management System, this could have skewed scoring and decisions.
- The Council knew that the funds had been over-allocated (“So the question arises as to how the EXCO could have approved any of the Panel Recommendations presented to it at its final meeting held on 30 December 2020, knowing full well that there were insufficient funds, that we were clearly oversubscribed (i.e. over-approved) by millions and that some Panels, such as ours, still had over a hundred applications to review?”)<sup>23</sup>
- Panels were not informed of the amounts of funding available to them for allocation (unlike when normal NAC applications are adjudicated) so that that the panels allocated substantial amounts ‘blindly’. (“Despite our Panel at the start of our review process as well as in numerous panel meetings making enquiries about the pool of funds provisional set aside for STREAM 2: Organisations, no such information was

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<sup>22</sup> Urgent Concerns Arising from the PESP Review Process, a document addressed to the CEO, former Chairperson and Board secretary of the NAC on 21 January 2021 by five members of the adjudication Panel 3: Stream 2 (Organisations)

<sup>23</sup> Ibid

- forthcoming... Everyone seemed to be operating in silos and allocating funds to recommended applicants as if there was a blank cheque!”)<sup>24</sup>
- It would appear that the Exco and/or panels were led to believe that extra funding would be made available by the DSAC, but there was never any such information in writing (“At various occasions, our panel chair...indicated that you, as NAC CEO, were in the process of obtaining additional funds via DSAC but at the close of our panel meeting of 28 December 2020, Ms Julie Diphofa confirmed that there was no possibility of further funds.”)<sup>25</sup>
  - There were problems with the NAC’s Grant Management System that did not always function efficiently.
  - Communication within the NAC – between panels, between panels and EXCO, between panels and the management - was not optimal.

The CEO and the CFO were placed on suspension by the new Council.

From the above narrative and minutes, it is clear that as the two most senior members of management, they carry a large weight of responsibility for the internal factors that contributed to the over-allocation of the available funds to applicants.

A sympathetic reading of the situation of management is that they were under huge pressure to deliver a massive project in a short space of time, at a time of year when they should be going on holiday, and with a looming change of Council. All of this in the midst of a pandemic and a second wave of infections.

However, notwithstanding this pressure, the key failure of responsibility had nothing to do with this: it was simply gross negligence not to have a sound system with sufficient and appropriate checks and balances to monitor the allocation of funding by panels.

One of the excuses posed by the NAC for the over-commitment of funds is that there was an “unexpected surge” of applications on the last day, implying that panels had dealt with applications received earlier and had allocated much of the funding by then. But, as with the NAC’s excuse of ‘over-subscription’, this excuse is disingenuous as there is always a surge of applications just before a funding deadline (so this should have been expected), just as every call for funding is over-subscribed (but NOT over-committed as was the case with the PESP funding).

The NAC’s management had more than enough experience in grant allocation and had devised a comprehensive risk analysis; that they failed adequately to monitor the allocation of funding amounts, regularly to check on the allocations despite early warnings from as early as 6 December about possible over-commitment of the budget, is absolutely unacceptable.

The consequences of their negligence have been severe for the sector.

The minutes of an Exco meeting note:

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<sup>24</sup> Ibid

<sup>25</sup> Ibid

...that another employment stimulus programme was being lined up and those who had been able to distribute their funding, would get more funding.

Without anything in writing, it was completely wrong to lead the Exco to believe that the DSAC or National Treasury would make additional funding available. This, it would seem, was entirely a figment of the CEO's imagination, unless she can prove that she was led to believe this by DSAC representatives.

It is clear that the CEO was under pressure to implement the decisions of Exco e.g. in applying the job funding formulae which contributed to the over-allocation of funding, but even this is not sufficient to exonerate her role in as the accounting officer for the massive allocation of funding.

However, we would like to make an important point with regard to the culpability of the current Council. The NAC's terms of reference for a forensic audit tasks the investigators with determining the roles of the CEO, CFO and previous council in the PESP funding debacle, but does not at all include the current Council's role and responsibility.

Yet, while the previous Council and/or EXCO might have over-committed the available budget by 30 December 2020, they had not issued contracts to all approved parties yet – even the 613 approved by then; neither had they distributed any funding yet.

It was the current Council that decided that all eligible and approved applicants would benefit from the PESP funding, so that they are responsible for

- a. unilaterally declaring the original contracts null and void
- b. distributing new contracts to all those considered eligible which now numbered more than 1200
- c. the judgement against them in the Southern Gauteng High Court that has found their unilateral changing of the contracts to be unlawful so that the NAC may now be liable for both the original amounts allocated by the previous Council AS WELL AS the amounts contractually awarded to those who were still awaiting formal adjudication and approval by 31 December 2020

In other words, the previous Council were certainly responsible for contributing to the chaos through their approval of applicants and funding in excess of the available budget, but by the end of their term, they had not contractually committed to every approved applicant; this is what the current Council did. If all applicants who had their contracts changed by the current Council took the National Arts Festival judgment as a basis for demanding the original amounts awarded to them, and those who were subsequently awarded funding by this Council were given the funding promised to them, this Council would have bankrupted the NAC.

***Specific responsibility for the over-commitment of the available budget by more than R300 million lies with:***

- ***The NAC's Accounting Officer and CEO, Ms Rosemary Mangope***
- ***The NAC's Chief Financial Officer, My Clifton Changfoot***
- ***The previous Council but particularly the Executive Committee who approved the funding allocations and did not ensure sufficient and adequate checks and balances***
- ***The previous NAC's Audit and Risk Committee and***

- ***The current Council for the decision that all eligible applicants should receive PESP funding and related decisions and consequences***

**5. Members of the NAC – both the current NAC and the previous NAC, and in all likelihood, all NACs before them, benefited illegally from NAC funding.**

Clause 4.10 of the National Arts Council Act states:

Members of the Council shall not be eligible for grants from the Council during their term of office.

This, to the layperson, would appear to be a clear principle that anyone who serves on the Council may not receive funding from the Council – whether in their personal capacities or through their organisations.

However, it would appear that Council members – and their organisations in particular - have received funding from the NAC from the start of the NAC in 1996. The arguments that have been forwarded by the Council are principally that:

- a. The DSAC provided a legal opinion that members’ organisations could receive funding provided they as members recused themselves from the decisions and
- b. Since the NAC Act requires people who are knowledgeable about the sector to serve in order to make informed decisions about the allocation of funding, everyone is potentially compromised and no-one would make themselves available to serve should they not be able to access NAC funding.

On the first issue, should the DSAC have indeed provided such an ‘independent’ legal opinion, that is all it is – an opinion. It is a matter that has not been – and should be – tested in court since for the layperson, it is untenable that those who serve on the Council have more possibilities of being funded (you fund my project while I recuse myself and I’ll agree to fund your project while you recuse yourself) than those who are not on the Council.

As for whether there is a difference between receiving funding in one’s personal capacity or whether one’s organisation receives such funding, for the layperson the law would apply to both. It is the position of the individual serving on the Council that potentially benefits her/himself and/or the organisation of which s/he is a part, so that the law would want to prevent those who serve on the Council benefiting either personally or organisationally. If one’s organisation benefits from funding, one benefits indirectly anyway, through the sustainability of the organisation, funding being freed up from other sources to cover one’s own salary, the reputational benefits associated with programmes, the NAC funding being leveraged to raise additional fundraising from other sources, etc.

The same applies to members of advisory panels with Clause 11.10 of the Act stating

Members of the advisory panels shall not be eligible for grants from the Council during their tenure.

However, the Act is even more forceful on this subject of conflicts of interest and the use of positions to secure funding for oneself or one’s organisations or projects.

Clause 8.5 of the Act states

A member of the Council shall not vote or in any manner participate in the proceedings of any meeting of the Council nor be present at the venue where such meeting is held, if, in relation to any matter before the Council, he or she has any interest which precludes him or her from performing his or her functions as a member of the Council in a fair, unbiased and proper manner.

It would appear that the practice at the NAC was for a Council member simply to leave the room in which the Council was meeting to debate decisions about allocations of funding related to the member, and after the – generally positive – decision, s/he would return to the meeting. The law, however, stipulates that the person should not even be on the premises, so that – to the layperson – it is clear that decisions that benefited Council members contravened the law in two ways: both by virtue of the Council member or her/his organisation actually being awarded funding, and by her/him being on the premises when such decisions were made.

While the above clause refers to a range of matters such as e.g. whether a Council member who has applied to offer professional services to the Council in exchange for remuneration, even if the Council believed that members were eligible for funding at least through their organisations, this Clause was rarely, if ever, applied.

As for the second argument i.e. that the NAC requires knowledgeable people, that is true, but not all knowledgeable people are dependent on NAC funding. The Act requires 14 nationally-appointed people who are willing to serve the arts, not all of them in the arts, some are lawyers, finance persons with a feel for the arts, etc. If our country is not able to find 14-23 people every four years willing to serve the arts sector – and who would get paid a fee to attend NAC meetings and prepare for such meetings – without them or their organisations being eligible for funding for the time during which they serve, then we are in serious trouble.

(See Appendix 3 for the fees paid to 16 Council members in the 2019/20 financial year – an average of R91 486 each).

***Council members – and/or their organisations – who have benefited from PESP Funding.***

There are at least five current Council members who have benefited from PESP funding.

The Durban Music School, whose Director, Kim Matthews and Board Chairperson (according to the School's website as at 25 June 2021), Bongani Tembe both serve on the NAC, received a total of R588 330 (R414 010 from Stream 1 and R174 520 from Stream 2).

Sipho Sithole's Afrocentric Talent Agency was allocated R1 089 500.

Madre Loubser is the Youth Development and Education Officer for Cape Town Opera that was allocated R337 745 for Stream 1 and Stream 2 funding of R500 000 for a total of R837 745.

The BAT Centre whose director Nise Malange serves as the KwaZulu Natal representative on the NAC, received R163 425 for Stream 1 and R435 800 for Stream 2 (a total of R599 225).

A case could be made for current board members who applied for PESP funding and who were awarded such funding before they were appointed to the Council at the beginning of 2021.

However, there are at least four questions in this regard:

1. New Council members have said that it was after their appointment that they discovered – in addition to an approved 634 applications – 748 more who had been positively adjudicated. And that accordingly, the funding awarded to the 634 applicants had to be revised to allow for the 748 to receive funding too as this would be fair. The question is, how many of the new Council members had an interest in the 748 ‘discovered’ applications so that they directly intervened in the allocation of funds to ensure that their projects/organisations received funding too? After all, would they – having received confirmation letters – have decided that they would willingly agree to cut their funding for others to receive funding too?
2. If the law states that Council members – and we make the case for their organisations too – should not receive funding during their tenure, and it was decided prior to their appointment, but not yet contracted after their appointment, would they not fall foul of the law? If most projects only received funding contracts after 1 January when the new Council took office, then technically, they were in place and receiving funding – even if it was adjudicated before 1 January, but not contracted by then, - surely they would not be eligible, unfortunate as it may be?
3. If new Council members were adjudicated positively and were to be allocated sums of PESP funding, and if they were party to an agreement that their funds would be cut to allow more to benefit from the funding, including other Council members and their projects, by how much was their funding cut relative to the funding cuts that others received?
4. If new Council members participated in decisions around funding in which they had a direct interest and were present on the premises when such decisions were made, or even on-line since this is where decisions were made during COVID-19 lockdowns, they would have been in breach of the law so that the decisions taken would be legally invalid.

However, Madre Loubser, the Youth Development and Education Officer of Cape Town Opera which received a total of R837 445 is a member of the current Council but was also a member of the previous Council in her capacity as the Western Cape representative. Her organisation is a beneficiary of PESP funding, which in terms of the argument being made in this report, is a contravention of the NAC Act, even if Ms Loubser was not part of the panel that adjudicated Cape Town Opera’s applications or if she recused herself from the NAC meeting where the applications were approved.

Similarly, Erica Elk, the Director of the Craft and Design Institute (CDI) was a member of the previous Council as well as of the Executive Committee. The CDI received R207 005 for Stream 1 and R1 111 290 for Stream 2, a total of R1 318 295.00.

The minutes of the EXCO meeting of 6 December 2020 record that “Ms Elk requested to be recused from the meeting. However, the Committee stated that her inputs were required for the discussions. She would thus be recused for specific applicants that she was directly conflicted with and not for the whole discussion itself”.

In terms of Section 8.5 of the NAC Act, Ms Elk would be present in the room/on the premises in a Zoom call.

The minister received a legal opinion to say that allocations were made prior to the appointment of the new Council, but the new Council members had direct interests in the discussions and

decisions about allocations after the date. There were still 732 projects not allocated funding. Were the projects of new Council members among these? If so, they should have not participated – in terms of the law – in any discussion or decision related to this, not should they even have been ‘in the room/Zoom’.

One possibility was the first come, first served possibility. They decided against this in the name of ‘equity and fairness’, which at a superficial level, is correct. But, in arguing against a first come, first served approach, and that everyone should be paid and that there should be a limit of R2m, their projects fell conveniently within this cap. Why R2m and not R1m?

Essentially then, the decisions were illegal if Council members were party to decisions – or even present in the room/Zoom meeting where the decisions were made – in which they, or their organisations, had direct interests.

The new Council, at its meeting on 5 February 2021, declared:

It was noted that as things stood, no members gained unlawfully from the programme.

This is not true and not for the NAC to decide.

**Recommendations:**

- ***There is a need to test the Act in a court of law and bring a few test cases to a court so that the eligibility of Council members for NAC funding is not simply based on a legal opinion, but on actual case law.***
- ***An investigation needs to be held into the previous Council and the current Council members who have benefited, and while it would be unfair to have them repay the funding allocated when this was the accepted practice within the NAC, it may be appropriate to ban them from receiving funding for a similar length of time that their representative served on the NAC and in which they were awarded funding.***
- ***Future advertisements for new NAC members should make it clear that NAC members – or the organisations of which they are a part - are not eligible for funding during their NAC tenure so that there is no ambivalence about that.***
- ***Should a court determine that the Act is unclear on this matter, then it should be referred back to parliament in order to be amended to make it clear that Council members will not be beneficiaries of NAC funding.***

6. **The new Council, appointed on 1 January 2021, has acted with dishonesty, with arrogance and insensitivity towards the creative sector, and has lost the respect of the sector. The Council should be disbanded and its members prevented from standing for public office for at least four years.**

There is no doubt that the new Council, appointed to take office on 1 January 2021, inherited a poisoned chalice. It was grossly unfair to appoint them in the midst of the PESP funding project and more particularly when the budget had been oversubscribed. It was also a gross failing on the part of the Minister and the Department of Sport, Arts and Culture not to induct the Council till March, so that they were required to act and resolve the PESP funding crisis with minimal insight, training and support.

However, the manner in which the Council – and some of its members in particular – conducted themselves and acted towards the creative sector when the latter would or could have been sympathetic to their position, has alienated the Council from the sector and made it difficult to establish relationships of trust.

### **1.1 Unilateral decision to change the Grant Notification Letters and distribute new letters that drastically cut the funding of original grantees.**

The new Council, when being informed that the previous Council had over-allocated the available budget by more than R300 million and that there were more than 700 applicants who were eligible for funding, made a unilateral decision to declare the contracts and GNLs issued by the previous Council null and void, and drastically to reduce the funding in accordance with their principle that ‘all eligible applicants should receive PESP funding’.

There was no consultation with the sector, no engagement with those affected, no attempt at negotiation: the Council simply informed the sector of their decision, and arrogantly said that they were ready for any legal challenge that may come from the creative sector. This was a Council taken up with its power rather than having a conciliatory, sensitive attitude to the sector that was reeling from the impact of COVID-19.

In legal speak, ‘the unilateral decision was irrational, unfair and was taken with no regard for the consequences it would have on the person and institutions the Council had already contracted with.’

The South Gauteng High Court has ruled that the NAC acted unlawfully in changing the contracts unilaterally, a reflection of the arrogance and poor judgement with which the NAC acted.

### **1.2 The lack of engagement with and attitude towards Abahlali ba se NAC reflected the lack of sensitivity, arrogance and dishonesty of the new Council.**

On 3 March 2021, Sibongile Mngoma led an occupation of the NAC Offices with fellow individual artists to demand answers to eight questions related to PESP funding:

- a. List all those who have been paid and indicate how much each was paid.
- b. Are the payments for Stream 1 completed, and if so, who was paid and how much were they paid?
- c. Provide the full list of those contracted or who received Grant Notification Letters in Stream 2.
- d. Provide the full list of the 1300 applicants whom the new Council had agreed should receive PESP funding.
- e. When are the payments being finalized for all those who signed their contracts?
- f. When are payments and contracts being finalized for all those still awaiting contracts?
- g. When are payments, contracts and Grant Notification Letters being finalized for those still under review?
- h. When are those who have been rejected being notified?

To the layperson, these would be relatively simple questions to answer, so that it is not possible to understand why Abahlali ba se NAC, as the occupying artists labelled themselves, had to sit-in and sleep at the NAC offices for 59 days in search of these answers.

The longer they stayed there and the longer these questions were not answered, or self-congratulatory notes were posted by the NAC, or briefing sessions were held where the answers were not clearly given and other questions were raised about conflicts of interest, the more the credibility of the new Council plummeted. As members resigned from the Council, so the credibility of the Council declined further. When the NAC applied for a court order to eject the artists from the NAC building, the new Council lost any moral high ground. If they had been transparent and provided the information that the artists demanded, and which was no state secret, and the artists had still refused to move, they could have used their access to the media, their superior resources to show that they had responded in good faith, and that the artists were being unreasonable.

However, in the minds of the creative sector, the new Council has:

- a. Been untransparent and evasive in answering the legitimate questions
- b. Not been forthcoming on questions about which Council members and/or their organisations benefited from PESP funding
- c. Acted in a high-handed manner towards a sector that required a far more sympathetic approach in the context of COVID-19 and the mismanagement of the funding by the NAC

The clear breaches of the NAC Act by the Council in deciding on matters in which members of Council had direct interests reflects the collective lack of understanding of its fiduciary and legal roles and obligations.

Finally, the 'last straw' act of disrespect by the new Council is its decision to allocate R10 895 per job opportunity over three months to creatives, a salary subsidy that works out to less than R2 000 per month as shown earlier.

In doing so, this Council has shown that it has neither the empathy nor the wisdom in responding to the needs of the creative sector at the moment.

As if these were not sufficient reasons for the new Council to be disbanded forthwith, that the Council and Minister have lost so spectacularly in the High Court in the application brought against them by the National Arts Festival who contested the Council's unilateral decision to renege on the original amount awarded to the National Arts Festival (the Council has been ordered to pay the original amount as well as the legal costs of NAF), opens up the Council to more claims – both from those who had original contracts lowered as well as those who received new contracts. This could mean that the new Council becomes obligated for the R300 million allocated to the original 613 beneficiaries as well as the funding allocated to the 748 beneficiaries afterwards.

Even if this is not the case, their loss in court is an indictment on the arrogance with which they approached the decision unilaterally to declare legitimate contracts null and void, and their poor judgement in matters of the law.

***Recommendation:***

***That the current Council be terminated as soon as possible with an Administrator to be appointed by National Treasury until a new Minister is appointed and a new National Arts Council is appointed.***

## **CONCLUSION**

The COVID-19 pandemic has adversely impacted the creative sector like no other factor since 1994. There is a massive need for empathetic, visionary leadership and support for the sector. The actions and decisions of the National Arts Council – both the current Council and the previous Council as well as the senior management of the NAC – have shown that they are not capable of this. Neither is the Minister or Department of Sport, Arts and Culture. To move the sector forward both during the pandemic and beyond, requires a clearing out of those responsible for the gross mismanagement of the PESP funding, as well as the minister and department that contributed to this through their negligence, lack of oversight and the very poor management of the transition between the two Councils.

**Appendix One: List of National Arts Council members appointed to serve from 1 January 2017 to 31 December 2021.**

Mr Hartley Ngoato (Chairperson)

Ms Jabu Dlamini (Deputy Chairperson)

Mr Edmund Mhlongo

Ms Mmathebe Faith Moja

Ms Thandiwe January-McLean

Mr Pheni Ngove

Dr Same Mdluli

Ms Avril Joffe

Ms Erica Elk

Ms Nakedi Ribane

Mr Michael Arendse

Mr Bongani Mavuso

Mr Moshe Apleni

Mr Zolani Mkiva

Ms Thoko Nogabe

Mr Masengana Jerry Mabuza

Prof Sekgothe Mokgoatsana

## Appendix 2: Fees paid to NAC members 2019/2020

By 2019/2020, there were some changes to the Board.

<b>Name</b>	<b>Council fees</b>	<b>Other fees</b>	<b>Audit &amp; Risk</b>	<b>Total</b>
Hartley Ngoato (Chairperson)	97 200	97 200		194 400
Avril Joffe (Exco)	28 584	43 023	51 804	123 411
Erica Elk (Exco)	42 876	40 494		83 370
Nakedi Ribane	54 786	61 932		116 718
Michael Arendse	59 550	54 786		114 336
Same Mdluli	33 348	19 056		52 404
Masengana Mabuza (Exco)	59 550	30 966		90 516
Thokozile Nogabe	38 112	52 404		90 516
Sekgothe Mokgoatsana (Exco)	59 550	71 460		131 010
Edmund Mhlongo	28 585	0		28 585
Mandie van der Spuy	38 112	59 550		87 662
Maleshni Naidoo	28 584	7 857	26 190	62 631
Phumlani Manzi	50 022	26 202		76 224
Johane Chisekula	50 022	30 966		80 988
Madre Loubser	54 786	14 292		69 078
Dennis Sithole	42 876	19 056		61 932

### Appendix 3: NAC Members appointed to serve from 1 January 2021 to 31 December 2024

Name	Position	Comments
Mr Zikie Molusi	Chairperson	Removed by Council/Minister, February 2021
HRH Princess Celenhle Dlamini	Deputy Chairperson	Currently, Chairperson
Mr Tshepo Mashiane	Gauteng representative	
Ms Nise Malange	KZN representative	
Mr Gamelihle Mbuyane	Mpumalanga rep	
Mr Jones Chisekula	North West rep	
Ms Madre Loubser	Western Cape rep	
Adv Eric Nkosi		
Dr Sipho Sithole		
Mr Ashley Latchu		
Mr Bongani Tembe		
Mr Michael Arendse	Continuity member from previous Council	
Mrs Avril Joffe	Continuity member from previous Council	Resigned, March 2021
Ms Kim Matthews		
Ms Michelle Constant		Resigned, February 2021
Ms Stephanie D'Silva		

#### New Members/Additional members appointed since 1 January 2021

Ms Layla Swart

Ms Linda Mvanana

Ms Marion Mbina-Mthembu

Advocate Steve Kekana

Ms Phumzile Zitumane

Mr Mbangiseni Masia

## Appendix 4: Summary of the Findings

1. The short time allocated to realise the ambitious aims of the PESP funding was hopelessly unrealistic so that the project was set up for failure from the start.

### *Who is responsible?*

Overall responsibility for the failure of this project and the probable wastage of hundreds of millions of rands of public funding, lies with

- a. The President, for announcing the Presidential Employment Stimulus Package only in mid-October to parliament so that nothing could be done before this announcement (the DSAC first informed the NAC of this programme in mid-July 2020, three months earlier).
- b. The group of ministers who delayed the announcement in order to satisfy themselves that the funding would meet the country's challenges (and in so doing, ironically compromised the time needed for the funding to do exactly that).
- c. National Treasury who refused to extend the time framework for the project, notwithstanding the representations made to them by the NAC (and now has been forced to accept that the project will overrun the original time limits).
- d. The Minister who does not appear to have done enough to convince his cabinet colleagues of the particular nature of the creative industries; it would appear that the main political 'win' was to get the funding, significant as it was, rather than to ensure that the funding would be put to its best use, and not be wasted in a box-ticking exercise and
- e. The Department of Sports, Arts and Culture that established two committees – a Technical Committee and a Monitoring Committee – and who appointed one of its senior management, Mr Charles Mabaso, as its liaison with the NAC; there is little evidence of any support or corrective action taken by the DSAC who allocated the PESP funding tasks to the NAC and was aware of the over-allocation of funding by the NAC (though not necessarily its quantum).

### *Accountability*

The relevant portfolio committees, parliament as a whole and the Auditor General need to investigate and hold accountable those responsible.

2. The timing of the project i.e. the times at which the project was to be implemented, were the worst for a project of this ambition and scale, and its unrealistic time frameworks.
  - 2.1 The PESP funding was intended to address the impact of COVID-19 on the creative sector, but it was also done in the midst of the pandemic, and at the rise of the second wave of infections which forced a lockdown that would impact on the ability of many successful applicants to deliver on their projects.

### *Who is responsible?*

Specific responsibility for this lies with

- The government entities outlined above (the President, Cabinet Ministers, Minister of Sport, Arts and Culture and Department of Sport, Arts and Culture) for the lateness with which the PESP was approved, announced and advertised, and the short time given to deliver on its goals.
- The National Arts Council – its Council members, Exco and senior management – for their failure to take sufficient account of the pandemic in the adjudication and the potential implementation of successful projects that may meet the job creation and work opportunities goals, but in so doing, contribute to the spread of the coronavirus.
- National Treasury that insisted on the project being completed by 31 March 2021, without taking into account the pandemic and the impact of the related lockdowns on the potential for the project to be delivered timeously and effectively.

#### *Accountability*

The relevant portfolio committees and parliament as a whole need to investigate and hold accountable those responsible.

2.2 The end-of-year holiday season is not the optimum time for planning and implementing job retention and job creation projects by creatives working in some disciplines.

#### *Who is responsible?*

Specific responsibility for this lies with the government entities outlined above (the President, cabinet ministers, National Treasury, Minister of Sport, Arts and Culture and Department of Sport, Arts and Culture) for the lateness with which the PESP was approved, announced and advertised, and the short time given to deliver on its goals.

#### *Accountability*

The relevant portfolio committees and parliament as a whole need to investigate and hold accountable those responsible.

2.3 The appointment of the new National Arts Council and the decision that they would take office on 1 January in the midst of the PESP funding crisis, without an induction due to COVID-19, is a most serious reflection of poor judgement on the part of the Minister of Sport, Arts and Culture.

#### *Who is responsible?*

Specific responsibility for this lies with the Minister of Sport, Arts and Culture, Nathi Mthethwa, whose poor judgement has thoroughly compromised the aims of the PESP funding and has wrecked the credibility of the new National Arts Council.

#### *Accountability*

It is strongly recommended that the current Minister be replaced as soon as possible and that a new Minister oversees the establishment of a new National Arts Council.

3. The focus on jobs, while understandable and necessary in the context of COVID-19's devastating impact on the creative sector, was outside of the mandate, capacity and

expertise of the National Arts Council and represented a misunderstanding of the nature of the sector on the part of government.

*Who is responsible?*

Specific responsibility for this again lies with

- The government entities (the President, cabinet ministers, National Treasury, Minister of Sport, Arts and Culture and Department of Sport, Arts and Culture) for the lack of time to research and devise an appropriate plan and programme to deliver the desired number of jobs within a decent period of time and
- The Department of Sport, Arts and Culture that lacks a plan on how to create sustainable jobs within the creative sector so that it simply passed this responsibility to the National Arts Council that lacks the expertise, experience and research capacity for doing so.

*Accountability*

The relevant portfolio committees and parliament as a whole need to investigate and hold accountable those responsible.

4. A number of internal issues within the NAC directly related to the management of the PESP funding, contributed to the mismanagement and overallocation of the funding.

The contracting of inexperienced project managers to assist with the PESP project, the lack of training of new staff, inadequate checking of compliance, problems with the NAC's Grant Management System, and, unlike normal NAC funding processes, adjudication panels were never being told what their budgets were so that they approved applicants and allocated funding 'blindly', all contributed to the overallocation and mismanagement of the PESP funding.

*Who is responsible?*

Specific responsibility for the over-allocation of the available budget by more than R300 million lies with

- The NAC's Accounting Officer and CEO, Ms Rosemary Mangope
- The NAC's Chief Financial Officer, Mr Clifton Changfoot
- The previous Council but particularly with the Executive Committee that approved the funding allocations and did not ensure sufficient checks and balances
- The NAC's Audit and Risk Committee
- The new (current) Council and its decision to award PESP funding to all eligible candidates and related decisions and consequences.

*Accountability*

The CEO and CFO need to face disciplinary charges, and these need to be done in as transparent a manner as possible.

An investigation needs to be undertaken by National Treasury and/or the Auditor General into the roles of the previous Council, and its Executive and Audit and Risk Committees in particular

in the mismanagement and over-allocation of funding; those found responsible and complicit should be banned from holding public office in future.

5. Members of the NAC (and/or their organisations) – both the current NAC and the previous NAC - benefited illegally from PESP funding.

*Who is responsible?*

The National Arts Council members, the CEO as Accounting Officer and the Department of Sport, Arts and Culture are responsible for allowing this to take place.

*Accountability*

There is a need to test the NAC Act in a court of law and bring a test case to court so that the eligibility of Council members for NAC funding is not simply based on a legal opinion (as it currently appears to be), but on actual case law.

An investigation needs to be held into the previous Council and the current Council members who and/or whose organisations have benefited from NAC funding, and while it would be unfair to have them repay the funding allocated when this may have been the accepted practice within the NAC, it would be appropriate to ban them – and their organisations - from receiving funding for a similar length of time that their representative served on the NAC and in which they were awarded funding.

Future advertisements for new NAC members should make it clear that NAC members – or the organizations of which they are a part - are not eligible for funding during their NAC tenure so that there is no ambivalence about that.

Should a court determine that the Act is unclear on this matter, then it should be referred back to parliament in order to be amended to make it clear that Council members and/or the organisations which they govern or manage or in which they are employed, cannot be beneficiaries of NAC funding.

6. The new Council, appointed on 1 January 2021, has acted with dishonesty, with arrogance and insensitivity towards the creative sector, and has lost the respect of the sector. Its unilateral action in cancelling the original contracts has been declared illegal by the South Gauteng High Court in the action brought by the National Arts Festival against the NAF. The Council should be disbanded and its members prevented from standing for public office for at least four years.

Their unilateral decision to change the Grant Notification Letters and distribute new letters that drastically cut the funding of original grantees – now found to be illegal by the South Gauteng High Court – and the lack of engagement with and attitude towards Abahlali ba se NAC, reflected the lack of sensitivity, the arrogance and dishonesty of the new Council at a time when the creative sector needed empathy and support.

*Recommendation:*

That the current Council be terminated with an Administrator to be appointed by National Treasury or relevant authority until a new minister responsible for arts and culture is appointed, and a new National Arts Council is appointed.