



social development

Department:
Social Development
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE NPO AMENDMENT BILL, 2018

1. INTRODUCTION

- 1.1 The Non-Profit Organisations (NPO) Act was promulgated in 1997, to date no substantive amendments have been effected, except the 2000 amendments which were technical. The Non-profit Organisations Amendment Bill, 2018 ("the Bill"), seeks to amend the Non-profit Organisations Act, 1997 (Act No. 71 of 1997) ("the Act"). The Bill seeks to ensure that the new regulatory framework is responsive to the challenges faced by the non-profit organisations sector and to reflect the country's adherence to the principles of a constitutional democracy that is underpinned by the commitments to a free, equal and open society within the political and socio-economic context of South Africa and the prevailing global context.
- 1.2 The Bill further seeks to aspire to promote transparency and accountability within the non-profit organisations sector without placing numerous requirements on the organisations.

2. WHAT THE BILL SEEKS TO ACHIEVE

- 2.1 The main purpose of the Bill is to strengthen regulatory mechanism without constraining its strategic intent, which is to "create an enabling environment for NPOs to flourish" in their endeavour to provide services to the most vulnerable in society and to advocate and be a voice to the voiceless. Furthermore, to ensure that the new regulatory framework is responsive to the challenges faced by the non-profit sector and to reflect the country's adherence to the principles of a constitutional democracy that is underpinned by commitments to a free, equal and open society within the political and socio- economic context of South Africa and the prevailing global context. The main objectives of the Bill are to seek:
- a) Alignment with international best practice;
 - b) Simplification of financial reporting requirements;
 - c) Alignment with the Companies Act as far as possible;
 - d) Introducing a tiered/risk approach to financial reporting requirements to facilitate reduced compliance for smaller NPOs and more stringent compliance for NPOs of significant size or activities.
 - e) Reducing the likelihood of abuse of the NPO business form.
 - f) Strengthen regulatory instruments and supervision of NPO sector in order to ensure that NPOs are not abused for any reasons besides what they are established for.

- g) Increase efficiencies within the NPO Regulatory Framework; to reduce red tape in the administration of the NPO Regulation.
- h) Decentralise NPO services in order to ensure easy and efficient access to NPO services at local level

3. PROBLEM STATEMENT

- 3.1 The Department of Social Development has recognised that some sections of the NPO Act proved to be outdated and ambiguous. As a result, the Act is non-responsive to modern day challenges such as money laundering and the financing of terrorist activities through NPOs; there is no registration provision for foreign organisations operating within the borders of the Republic of South Africa nor registration of similar/identical names; there is no minimum organisational structure; there is no requirements for disclosure of previous conviction relating to the embezzlement of moneys of non-profit organisation and the status of conviction; one size fits all reporting requirements (high compliance costs for smaller organisations); lack of enforcement powers to mitigate abuse of NPOs; lack of punitive measures for offenses identified in the NPO Act; outdated requirements for access to information, institutional arrangements results in centralised provision of services with poor provincial foot print and ambiguity and misalignment with other NPO regulatory framework
- 3.2 Being aware of these challenges the Department commenced with the NPO amendments. The amendments were informed by a range of factors which include the Impact Assessment on the NPO Act in 2005; Resolutions of the National NPO Summit (August 2012); the NPO Regulatory System Evaluation Study conducted by DPME in 2016; outcomes of the Mutual Evaluation of South Africa/IMF/FATAFT 2020 and the input received from 13 Consultations with Non Profit Organisations across all 9 provinces representing all sectors organised between August 2017 to November 2017

4. THE BILL RESPONDS TO THE FOLLOWING KEY AREAS OF CONCERN

AREAS	ISSUES
Centralised NPO services	National competency with no proper institutional arrangements at Provincial level, this results in misalignment, lack of accountability, challenges with access to services, there are no specific responsibilities delegated to provinces and yet NPOs are located and community level.
Name reservations	The registration process does not take into account the names already in the register, which creates duplication of same names.
Office Bearers who are Non-South Africans	The Act is silent on requirements for foreign nationals who want to set up an NPO in South Africa, there is no requirement to request relevant documentation and to liaise with Department of Home Affairs/A to validate status of Non South Africans.
Registration of foreign Organisations (NPOs) operating in SA	The Act is silent on foreign/ International organisations operating in South Africa. There are Foreign NPOs that register without being registered with CIPC in terms of Companies Act sec 23.
Governance	Majority of Voluntary Associations (VAs) are failing to adhere to governance principles which in turn affects their opportunity for funding.
Compliance with Reporting	<p>Reporting requirements are the same for all organisations despite the size of the organisation “one size fits all”. The NPO Act does not define the meaning of generally accepted accounting practice (gaap) leaving it open for interpretation and possible misapplication and material misstatements. NPOs are therefore left to their own devices to determine the appropriate reporting conventions as either: International Financial Reporting Standards (IFRS), International Financial Reporting Standards for Small and Medium Enterprises (IFRS for SMEs), or a practice that is appropriate to the business of the NPO.</p> <p>All NPOs are subjected to same standard of reporting irrespective of the annual income.</p> <p>NPOs are faced with the complex decision to select a reporting convention by considering the following: multiple legislative requirements applicable to the NPO, specifications from donors or those related to government grants, the nature and scope of the activities of the NPO.</p>
Access to information about registered NPOs by public members	The Act is not aligned to FICA and POPIA

5. NPO BILL AMENDMENTS

Sections	Current NPO Act	Suggested Amendments
Section 1	Definitions of "constitution"	'constitution' includes a trust deed and [memorandum and articles of association] <u>Memorandum of Incorporation</u> ;"
	deletion of the definition of Directorate	Directorate" wherever it occurs of the expression "Office of the Registrar"
	Deletion of Director	Registrar" means "the person designated in terms of section 8 and it shall be substituted for the "[Director]" wherever it appears in the Act
	Minister for Welfare and Population Development]	Minister <u>for Social Development</u>
Section 2	provides for the objects of the Act	addition of the new paragraph (f) facilitating voluntary registration of nonprofit organisations and compulsory registration for foreign organisations operating within the borders of the Republic of South Africa
Section 4	<i>Establishment of Directorate for Nonprofit Organisations</i> The Minister must establish within the national department a Directorate for Nonprofit Organisations	The Minister must establish within the national department the Office of the Registrar of Nonprofit Organisations
Section 8	<i>Designation of Director of Nonprofit Organisations</i> The Minister must designate an employee of the national department as the Director of Nonprofit Organisations to be in charge of the Directorate and to perform the other functions conferred on the director by or in terms of this Act or any other law.	The Minister must designate an employee of the national department as the Registrar of Nonprofit Organisations to be in charge of the Office of the Registrar and to perform the other functions conferred on the Registrar by or in terms of this Act or any other law
section 11 (benefits accrual for registering)	Minister to prescribe benefits or allowances applicable to registered nonprofit organisations, after consultation with the Parliament and with the concurrence of every Minister whose department is affected by a particular benefit or allowance.	"The Minister may prescribe benefits or allowances applicable to registered nonprofit organisations, after consultation with [<i>the committees of the two Houses of</i>] Parliament [<i>responsible for Social Development</i>] and with the concurrence of every Minister whose department is affected by a particular benefit or allowance."

<p>section 12 (registration of NPOs)</p>	<p>Any nonprofit organisation that is not an organ of state may apply to the [director] Office of the Registrar for registration.</p>	<p>12(1) Any nonprofit organisation that is not an organ of state may apply to the <u>Office of the Registrar</u> for registration.</p>
	<p>specify the organisational structures and mechanisms for its governance;</p>	<p>"(h) specify the organisational structures and mechanisms for its governance, <u>which shall at a minimum include the office of or designation of the chairperson, secretary and treasurer with their deputies</u>";</p>
	<p>Addition of paragraph (p) which provide for the disclosure of previous conviction relating to the embezzlement of moneys of nonprofit organisation and the status of conviction.</p>	<p>"(p) <u>disclose whether a member or office bearer has been previously been found guilty of an offence relating to the embezzlement of money of any nonprofit organisations and the status of the conviction</u></p>
	<p>add subsections (4) to the Act to provide that any NPO which have the similar or identical name to any other organization and such name is likely to cause confusion will not be permitted to register such name unless there is sufficient proof that the applicant has a legal right to such name or consent to the use of the name.</p>	<p>(4) No nonprofit organisation that has a similar or identical name to an existing nonprofit organisation or any other organisation and such name is likely to cause confusion with any other organisation or individual person shall be permitted to register, unless there is sufficient proof that the applicant has a legal right to that name or has consent to use that name.</p>
<p>section 12</p>	<p>Addition Subsection (5) provides that all the NPOs and foreign nonprofit organisations operating within the Republic must register in terms of this Act before it can operate and shall be subjected to the provisions of this Act and any other laws of the Republic.</p>	<p>(5) Any nonprofit organisation, including foreign nonprofit organisations that intend to operate business within the Republic must be registered in terms of this Act before operate and shall be subjected to the provisions of this Act and any other laws of the Republic."</p>
<p>section 13</p>	<p>prescribe the manner for which a nonprofit organisation may apply for the registration</p>	<p>"(1) A nonprofit organisation may, <u>in the prescribed manner</u>, apply for registration by submitting to the office of the Registrar (to be regulated)</p>
<p>Section 17</p>	<p>Prescribe the manner in which all nonprofit organisations must keep accounting records and draw up its financial statements.</p>	<p>Every registered nonprofit organisation must, [to the standards of generally accepted accounting practice] <u>in the prescribed manner</u> (to be regulated)</p>

Section 18	Prescribe manner in which a nonprofit organisation must be registered. Further seeks to provide the manner in which the narrative report together with the financial statements and accounting officer's report must be provided.	"(1) Every registered nonprofit organisation must, in writing, in a prescribed manner (to be regulated)
Section 24	Section 24(1) (a) of the Act provide for the director to keep a register of all nonprofit organisations that has been registered within that financial year.	Section 24 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: “(a) all nonprofit organisations that have been registered within that financial year;”.

5. SUCCESS FACTORS FOR THE AMENDMENT

- 5.1 The desired outcomes of the amendments is to increase operational efficiencies within the provision of the services to be rendered to NPOs; to strengthen good governance, which is compliance and accountability and to reduce red tape in the administration and simplify process to NPOs access to information.
- 5.2 In addition; to reduce the cost of compliance for NPOs as they provide those services. In other words, to tailor design compliance according to the size of the NPO, thus moving away from one size fits all approach.