



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. The purpose of the Act was to create an enabling environment in which NPOs can flourish, and allow for voluntary registration with minimal regulatory powers conferred on the NPO Directorate located within the Department of Social Development (DSD). Further to that, the Act necessitated government to “promote, support and enhance the capacity of non-profit organisations to perform their functions”.
- 1.2 The aim of the NPO Act amendment is to strengthen regulatory mechanism and make it relevant to the current environment, 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.
- 1.3 Furthermore; to increase efficiencies within the NPO Regulatory Framework; to reduce red tape in the administration of the NPO Regulation but also to increase and more conversations with regards to NPOs access to information.
- 1.4 Objectives for NPO Amendment Bill will ensure the strengthening regulations for monitoring of NPOs which will bear positive benefits related to regulatory costs.
 - 1.4.1 Ensure easy and efficient access to NPO services;
 - 1.4.2 To reduce the cost of compliance as they provide those services. Accordingly, to tailor design compliance according to the size of the NPO, thus moving away from one size fits all approach.
 - 1.4.3 Ensure better quality of services for beneficiaries and increased public confidence.
 - 1.4.4 To strengthen regulatory instruments by empowering the Department to discharge its function effectively,
 - 1.4.5 To strengthen supervision of NPO sector and employ better monitoring systems to ensure that NPOs are not abused for any reasons besides what they are established for.
 - 1.4.6 To foster integration and cooperation amongst different NPO regulators within government departments and agencies.

2. PROBLEM STATEMENT

- 2.1 Various factors constrain NPOs in SA in their efforts to fulfil their role of promoting social justice by providing services and performing advocacy and humanitarian functions, bringing citizens’ concerns to governments and monitoring service delivery.

2.2 Ineffectiveness of NPOs as a result of an unfavourable operating environment.

- 2.2.1 Fragmentation that exist in the NPO regulatory framework. There are no linkages between the different types of regulation. (NPO Act; Companies Act; Trust Properties Act; Income Tax Act). Each piece of legislation is crafted as a separate and distinct piece of regulation that does not recognise the broader regulatory system for NPOs.
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- 2.2.3 A ‘one size fits all’ approach inherent in the NPO Act, as the lack of recognition is not given to different categories of NPOs and their stage of development.

2.3 Institutional inefficiencies:

- 2.3.1 The cost of compliance for NPOs.
- 2.3.2 Mitigate the risk of money laundering and the financing of terrorist activities through NPOs. According to Financial Action Task Force (FATF) NPOs are at risk of being abused for terrorism at different levels: from the misappropriation of street-level fundraising to the infiltration of terrorist organisations at the programme delivery level.
- 2.3.3 Each compliance requirements requires extensive information and documentation and places substantial administrative demands on NPOs.

2.4 Constraints for NPOs

- 2.4.1 Though all NPOs face regulatory burden, small NPOs operating in historically disadvantaged communities face the most compliance regulatory burden and the compliance cost is unaffordable.
- 2.4.2 There is a clear divide between the better resourced and organised NPOs (usually referred to as NGOs), and community-based organisations, which are largely deprived of resources and are less formally structured (usually referred to as CBOs).
- 2.4.3 Small organisations are systematically excluded from tax exemption benefits due to complicated nature of the tax system.
- 2.4.4 NPOs are still finding it challenging to maintain compliance with the NPO Act. Over 60% of NPOs are currently non-compliant; the 'one-size-fits-all' approach and fragmentation of the current regulatory environment.

2.5 Constraints for the State (Regulators of NPOs)

- 2.5.1 The government authority responsible for oversight of the NPO sector has not applied any measures to address the risk to NPOs of Terror Finance (TF) abuse nor begun monitoring of organizations deemed to be vulnerable.
- 2.5.2 Fragmentation in the Regulation of NPOs (CIPC; SARS) in different locations (no synergy/harmonisation).
- 2.5.3 High cost for the state to enforce NPO Compliance.
- 2.5.4 South Africa has not identified the subset of NPOs that, based on their characteristics or activities, are at risk of Terror Finance (TF) abuse.

3. AREAS OF CONCERN AND ISSUES

AREAS	ISSUES
Centralised NPO Registration services	Registration is centralised and can only be done at National office, this affects service delivery in a negative way.
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	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	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	All NPOs are subjected to same standard of reporting irrespective of the annual income.
Access to information about registered NPOs by public members	To promote public accountability

4. 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 for <u>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."
section 12 (registration of NPOs)	Any nonprofit organisation that is not an organ of state may apply to the [director] Office of the Registrar for registration.	12(1) Any nonprofit organisation that is not an organ of state may apply to the Office of the Registrar for registration.
	specify the organisational structures and mechanisms for its governance;	"(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> ";
	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.	" <u>(p) 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>
	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.	(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.
section 12	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.	(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."

section 13	prescribe the manner for which a nonprofit organisation may apply for the registration	"(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)
Section 17	Prescribe the manner in which all nonprofit organisations must keep accounting records and draw up its financial statements.	Every registered nonprofit organisation must, [to the standards of generally accepted accounting practice] <u>in the prescribed manner</u> (to be regulated)
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.