

‘A DISTURBING PICTURE’

By Ricardo Wyngaard

ABOUT NPO LEGAL ISSUES:

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

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

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The Minister of Social Development, Ms Lindiwe Zulu, has on 03 November 2020 launched the **Know Your NPO Status Campaign** (the Campaign), which outlined ‘the process of deregistration of non-compliant NPOs’. The Department of Social Development (the Department) stated that: “As of September 2020, 233 180 NPOs were registered with the Department and only 30% of the registered NPOs were compliant.” This, according to the Department is: ‘*a disturbing picture*’

Large-scale non-compliance of the NPO Act has evidently been present for more than a decade. The above picture (taken a few months prior to the initial de-registration campaign during 2011) depicts many non-compliant notices meant for registered NPOs. Between December 2012 and January 2013 more than 55 000 registered NPOs were either de-registered or marked as non-compliant. During February 2013 the Department reinstated the de-registered NPOs after a public outcry and, at the time, granted a six-month grace period for NPOs to submit outstanding narrative and financial reports. This turned out to be an eight-year grace period.

In this article we summarise the deregistration process below and explore the key compliance requirements contained within the NPO Act.

The four phases:

According to the Department, the Campaign consists of four phases which will commence during April 2021. In summary, the deregistration process will be implemented as follows:

- Phase 1:** April 2021 – deregistration of NPOs that were registered between 1998 – 2012;
- Phase 2:** July 2021 – same NPOs as above that submitted previous reports, but still non-compliant;
- Phase 3:** October 2021 – deregistration of NPOs that were registered between 2013 – 2015;
- Phase 4:** April 2022 – deregistration of NPOs that were registered between 2016 – 2019.

NPOs are essentially offered timeous public notice to submit their reports and ensure compliance with the NPO Act.

Obligations in terms of the NPO Act – registered NPOs

Annual Reports:

Narrative reports – Registered NPOs must annually submit a prescribed narrative report of its activities to the Director of NPOs. The narrative report consists of the NPO’s basic details, its major achievements over the year, important meetings held and details of any changes to its constitution.

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Financial Reports - Registered NPOs must annually submit a financial report compiled by an accounting officer, which must state that the NPO's financial statements are consistent with its accounting records, its accounting policies are appropriate and have been appropriately applied in the preparation of the financial statements; and it has complied with the provisions of the NPO Act and of its constitution which relate to financial matters.

Notification to Director for NPOs:

Registered NPOs must inform the Director of NPOs within one month of:

- Any changes to the names, or physical, business and residential addresses of its office-bearers;
- Any appointment or election of its office-bearers - even if there were no changes to the office-bearers; and
- Any change to its physical or registered addresses.

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Obligations in terms of the NPO Act – the Director of NPOs

The Director of NPOs is obligated under section 20(a)(iii) to send a compliance notice in the prescribed form to a registered NPO if it has not complied with its obligations in terms of the NPO Act. Section 21 provides that: If a registered NPO which has received a notice in terms of section 20 does not comply timeously with the notice or makes material false representations in any document or a narrative, financial or other report submitted to the director, **the director must:** cancel its certificate of registration and its registration; notify the NPO in writing of the cancellation and the reasons for it and the date on which the registration was cancelled. Both sections 20 and 21 are mandatory in nature - not discretionary.

Obligations in terms of the NPO Act – the Minister

The Minister must, in terms of section 9(1) of the NPO Act, appoint persons so as to maintain a panel of arbitrators consisting of at least seven persons and designate one member of the panel to act as chairperson. The appointment of the panel must be preceded with a notice calling for nominees and stating the criteria for nominations. A registered NPO may refer the decision of the Director of NPOs to cancel its registration for arbitration to the Directorate for NPOs for consideration by an Arbitration Tribunal.

Conclusion

The NPO Act requires that an updated register must be kept of registered NPOs and those whose registrations have been cancelled. The Campaign will perhaps offer an opportunity to restore the integrity of the compromised NPO register, but this also means that the Director of NPOs and the Minister must comply with the NPO Act.

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