



THE NPO AMENDMENT BILL

By Ricardo Wyngaard

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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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DETAILS:

Postal:
P.O. Box 35131, Menlo Park, 0102

Tel: +27 21 859 1111
Fax: +27 86 538 8435
ricardo@nonprofitlawyer.co.za

www.nonprofitlawyer.co.za

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The Non Profit Organisation Amendment Bill, 2021 (the Bill) was published in Government Gazette No 45244 on 1 October in which the Department of Social Development (the Department) invited any interested person or body to provide written comments on the Bill by no later than Sunday, 31 October 2021. The Bill proposes several changes to the Nonprofit Organisations Act of 1997 (the NPO Act) which would have important implications for many non-profit organisations.

Brief historic context

Changes were initially recommended to the NPO Act in an [Impact Assessment](#) that was published during 2005. It was specifically recommended that: “The Minister [of Social Development] should facilitate a process to assess and align relevant legislation, to allow for an integrated regulatory framework that allows for consistency within the legal framework for registering NPOs.” Subsequently, during 2012, the Department published its Policy Framework on NPO Law Reform, which had a sharpened focus on compliance and enforcement. This document was later amended. In an article entitled Winds of change, yet again: [The NPO Act Amendment Policy Framework](#), co-authored with Peter Hendricks, we asked:

- (1) Whether a separate juristic person which is recognised as a national public entity would be more suitable as a regulatory authority for NPOs?
- (2) Whether the regulatory authority should be expected to be accountable to a department or should it be expected to act impartially, in good faith and without fear, favour or prejudice?

The Department: Planning, Monitoring and Evaluation published during 2017 a report entitled [Evaluation of the Non-Profit Regulatory System](#) in which it amongst other made the following key recommendation: “The National Department of Social Development should strengthen and streamline the legislative and regulatory framework that guides the development and organisation of the non-profit sector.”

The Memorandum on objects of the Bill

Although the invitation refers to the *Memorandum on objects of the Bill*, it could not be traced on the Department’s website. Our understanding is that the Rules of the National Assembly specifically provide that when Bills are being initiated by Cabinet members, it must include a memorandum explaining the objects of the proposed legislation. The absence of the explanatory memorandum is most unfortunate, and members of the public do not know the motivations for the proposed changes within the Bill. The Bill’s preamble identifies the following five amendments:

1. amend and insert certain definitions;
2. to provide for the office of the Registrar of non-profit Organisations;
3. to provide for the registration of nonprofit organisations and compulsory registration of foreign organisations;
4. to provide for the Arbitration Tribunal for the disputes resolution; and
5. to provide for matters connected therewith.

Our comments below are not meant to serve as a comprehensive comment on



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Registrar of non-profit Organisations

The Bill proposes the replacement of the definitions of 'Director' and 'Directorate' with 'Registrar' and 'Office of the Registrar'. No changes are being proposed to the functions or reporting responsibilities of either the Director or the Directorate. Essentially, a name change is being proposed.

Compulsory registration of foreign non-profit organisations

The Bill proposes the compulsory registration of foreign nonprofit organisations that intend to operate business within the Republic of South Africa. The following aspects are unclear:

1. Whether this requirement would apply retrospectively to foreign non-profit organisations that are operating in South African and already registered as external companies in terms of the Companies Act of 2008?
2. Whether such foreign nonprofit organisations would be required to:
 - amend their founding documents (as adopted in their countries of origin) to comply with the requirements contained under section 12 of the NPO Act?
 - to appoint at least six office-bearers, if their current board membership is less than the proposed six office-bearers?

Minimum number of office-bearers

The Bill proposes that registered NPOs must have a minimum number of office-bearers with the designation of chairperson, secretary and treasurer with their deputies. Again, it is unclear whether this requirement would apply retrospectively to organisations that are currently registered in terms of the NPO Act. The Bill makes effort to address the issue of related office-bearers, which has for a lengthy period seemingly been incorporated internally as a matter of practice by the Directorate.

Previous convictions by members and office-bearers

The Bill requires organisations to 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. This requirement purportedly applies to 'members' of the organisation. The reason for this inclusion is unclear as organisations may have a vast number of 'members' – as opposed to board members - who are not involved with the day to day administration or governance of the organisation.

Also, no disclosure is required if someone has been found guilty of 'embezzlement of money' at a for-profit, organ or state or state-owned enterprise. The newly-named Registrar is not granted with any express power to refuse the registration of an organisation who has disclosed the presence of a convicted embezzler.

Similar or identical names

The Bill will seemingly enable the Registrar to refuse the registration of organisations with similar, identical and confusing names. The retrospective nature of this provision is also unclear. Likewise, alignment with other legislation governing the registration or reservation of names has seemingly not been a priority.

Reporting requirements

The Bill proposes some changes to the provisions regulating the accounting records and reports of registered non-profit organisations. The purpose for these amendments is not clear, save to say that all registered non-profit organisation will continue to be obligated to compile and submit a written report by an accounting officer.

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