



NPOS IN SOUTH AFRICA – CHANGES TO THE NPO ACT

By Ricardo Wyngaard

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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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On 29 December 2022 the President of South Africa determined the dates on which sections of the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022 (the Amendment Act) take effect. The Amendment Act introduces several changes to the Nonprofit Organisations Act (the NPO Act).

As from 1 April 2023, which is the date on which most of the substantive changes to the NPO Act comes into effect, NPOs in South Africa must comply with the following key compliance requirements:

Register in terms of the NPO Act

The NPO, as defined in the NPO Act, must be registered in terms of the NPO Act if it:

- (i) makes donations to individuals or organisations outside of South Africa; or
- (ii) provides humanitarian, charitable, religious, educational or cultural services outside South Africa.

This means that such NPOs must ensure compliance with the requirements for registration, as contained under section 12 (2), which may entail amendments to its founding document. The new section 12(4) provides that the NPO Director may only require a NPO to make an alteration to its constitution (to ensure that the constitution addresses the required matters) when considering an application for registration.

Reporting requirements of registered NPOs

Registered NPOs will be required to report to the NPO Directorate additional information about (1) the office-bearers, (2) control structure, (3) governance, (4) management, (5) administration and (6) operations – as prescribed by regulation.

The detailed prescribed requirements will be determined after consultation with the Minister of Finance and Financial Intelligence Centre. The registered NPO must ensure that the above additional information is kept up to date.

If an organisation is required to register in terms of the NPO Act and it is not, it must still comply with the requirements of the NPO Act despite its lack of registration. This would include the obligation to submit annual reports.

The NPO Director is, in terms of current provisions of the NPO Act, empowered to require a registered NPO to submit any information or document reasonably required to enable the NPO director to determine whether the NPO is complying with the material provisions of its founding document or its obligations in terms of the NPO Act.

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Making prescribed information available to prescribed persons

The new section 24(4) of the NPO Act provides that the registered NPO must make the prescribed information, about (1) the office-bearers, (2) control structure, (3) governance, (4) management, (5) administration and (6) operations, available to any person as prescribed.

Disqualification and removal of office-bearers

Chapter 3A comes into effect on 1 April 2023, which will disqualify certain persons from becoming office-bearers of registered NPOs or to continue to serve in that capacity. Section 25A (11) specifically provides that: “A person who becomes ineligible or disqualified while serving as an office-bearer of a registered nonprofit organisation ceases to be entitled to continue to act as an office-bearer immediately.”

The NPO Director may also, at any time, remove an office-bearer if the office-bearer fails to perform satisfactorily any duty imposed upon him or her by or under the NPO Act or to comply with the requirements of the NPO Act or any lawful request of the NPO director.

The NPO Act defines an office-bearer as a director, trustee or person holding an executive position. Arguably, the reference to ‘a person holding an executive position’ also includes paid staff members.

It must be noted that the Panel of Arbitrators, as appointed by the Minister in terms of section 9 of the NPO Act, has no legislative mandate to review the above decision by the NPO Director to remove an office-bearer.

New Contraventions

The new section 29(4) introduces the following contraventions that are subject to a prescribed administrative sanction:

- a) failure to perform any duty imposed or comply with a requirement in terms of section 12 or 18(1)(bA) (dealing with the new prescribed reporting requirement); and
- b) failure to register to register in terms of the NPO Act when required to do so.

What to do?

In anticipation of 1 April 2023, NPOs should, amongst other:

1. If not already registered in terms of the NPO Act, determine if they will be required to do so;
2. If required to be registered:
 - a. Consider whether the NPO’s founding document requires amendment; and
 - b. Submit an application to register (Check out: [NPO Registration Online](#)).
3. Determine if existing office-bearers are eligible to continue to serve in that capacity on 1 April 2023;
4. Consider if other changes, introduced by the Amendment Act, are applicable to the Organisation.

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SAMPLE NPO COMPLIANCE QUESTIONNAIRE

This sample NPO COMPLIANCE QUESTIONNAIRE contains over 200 compliance-related questions aimed at providing nonprofits with a bird's-eye view of some of the key compliance obligations. Include it in the next Board meeting. [Click here](#).

Important Note: The information contained in this newsletter is general in nature and should not be interpreted or relied upon as legal advice. The information may not be applicable to specific circumstances. Professional assistance should be obtained before acting on any of the information provided in this newsletter.

KEY COMPLIANCE-RELATED CHECKLIST
ON
CHANGES TO THE NPO ACT

TO TAKE EFFECT ON 1 APRIL 2023

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NEW NPO ACT COMPLIANCE REQUIREMENTS:	Yes	No	Not Sure
Requirements for registration			
1. Does the organisation make donations to individuals or organisations outside of South Africa? (amended s12(1))			
2. Does the organisation provide humanitarian, charitable, religious, educational or cultural services outside South Africa? (amended s12(1))			
<p>3. If required to register, does the law in terms of which the organisation is established or incorporated make provision for the following matters – if not does the organisation’s founding document contain such: (current 12(2))</p> <p>a) state the organisation’s name</p> <p>b) state the organisation’s main and ancillary objectives</p> <p>c) state that the organisation’s income and property are not distributable to its members or office-bearers, except as reasonable compensation for services rendered</p> <p>d) make provision for the organisation to be a body corporate and have an identity and existence distinct from its members or office-bearers</p> <p>e) make provision for the organisation’s continued existence notwithstanding changes in the composition of its membership or office-bearers</p> <p>f) ensure that the members or office-bearers have no rights in the property or other assets of the organisation solely by virtue of their being members or office-bearers</p> <p>g) specify the powers of the organisation</p> <p>h) specify the organisational structures and mechanisms for its governance</p> <p>i) set out the rules for convening and conducting meetings, including quorums required for and the minutes to be kept of those meetings</p> <p>j) determine the manner in which decisions are to be made</p> <p>k) provide that the organisation’s financial transactions must be conducted by means of a banking account</p> <p>l) determine a date for the end of the organisation’s financial year</p> <p>m) set out a procedure for changing the constitution</p> <p>n) set out a procedure by which the organisation may be wound up or dissolved</p> <p>o) provide that, when the organisation is being wound up or dissolved, any asset remaining after all its liabilities have been met, must be transferred to another nonprofit organisation having similar objectives.</p>			
4. Based upon the above, should the Organisation’s founding document be amended?			
Duty to provide reports and information			
<p>5. Has the organisation documented information about: (new s18(1)(bA))</p> <ul style="list-style-type: none"> • the office-bearers • control structure • governance • management • administration • operations 			
6. The organisation will introduce measures to ensure that the above information will be kept up to date? (new s18(1B))			
Duty to provide reports and information			
7. The organisation will introduce measures to ensure that it will not knowingly permit a disqualified person to serve or act as an office-bearer? (new s25A(10))			
Other Changes introduced by the Amendment Act			
8. The organisation has considered other changes, introduced by the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022 , are applicable to the Organisation?			