

The Not-for-Profit Organisations Bill

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EXPLANATORY MEMORANDUM

THE NOT-FOR-PROFIT ORGANISATIONS BILL

A. PURPOSE

1. This Bill seeks to complement attempts by government and other relevant stakeholders to create an enabling environment for not-for-profit organisations. It is thus only one component amongst a range of measures that either currently exist or are as yet being developed.
2. In addition, this Bill attempts to bring legislation affecting not-for-profit

organisations in line with constitutional guarantees of free association and the general principle of encouraging a vibrant and accountable civil society.

B. BACKGROUND

3. The White Paper of the Department of Welfare which was approved by Cabinet in February 1997 advocated the repeal of certain sections of the Fund-raising Act, 1978, and its substitution with legislation which would facilitate the creation of an environment within which not-for-profit organisations may flourish. In addition, the MIN-MEC meeting of December 1996, re-enforced the government's commitment to promulgate the necessary legislation in the 1997 session of parliament.
4. In pursuance hereof, the Minister appointed a Technical Reference Team, to formulate the policy on which legislation could be formulated. This Team comprised persons drawn from various non-governmental organisations; the Departments of Health, Public Works and Education; and several experts.
5. In addition to this, the Department of Welfare held discussions with the South African Revenue Services and briefly with the Department of Finance, as well as with the Registrar of Companies. The content of these discussions were dealt with in the deliberations of the Technical Reference Team.
6. The Technical Reference Team formulated its policy which was subsequently approved by the MIN-MEC at its meeting in April 1997 and presented to a consultative conference for consideration on 23 May 1997. The consultative conference was attended by all major stakeholders, including the Department of Welfare, other departments, representatives of domestic and international donors and non-governmental organisations.

C. SCOPE OF APPLICATION

7. This Bill applies to not-for-profit organisations who choose to subject themselves to the Bill.
8. The Bill defines a not-for-profit organisation as--

"an association of persons whose objectives and activities, when viewed as a whole, exhibit the following characteristics--

- a. it has been established for a public purpose;
- b. its income or profits are not distributable to its members, trustees or directors, except as reasonable compensation for services rendered".

3. In terms of this definition, the determinate factor is not the making of profit but rather its non-distribution.
4. Organs and quasi-organs of the state are excluded from the ambit of the Bill.

D. SUMMARY OF CONTENT

11. The contents of this Bill can briefly be summarised as follows--

11.1 it imposes an obligation on the state to determine and co-ordinate its efforts in relation to not-for-profit organisations;

11.2 It establishes a Directorate for Not-for-Profit Organisations. Unlike the Directorate contemplated in the Fund-raising Act, this Directorate has a policy making, co-ordination and implementation function. In addition it is empowered to draft and issue--

- a. model constitutions and narrative reports; and
- b. codes of good practice for not-for-profit organisations and donors;

11.3 it creates a new system for administering not-for-profit organisations by providing for a voluntary system of registration. This system is simple. It requires the completion of a basic application form and the submission of certain documents. Subjective discretion is therefore done away with;

11.4 this voluntary system of registration comes with certain advantages, viz it facilitates--

- a. the attraction of donor confidence and legitimacy;
- b. access to further benefits and allowances; and
- c. State recognition of the "not-for-profit" sector.

11.5 in exchange for these benefits, certain obligations are imposed on registered not-for-profit organisations, viz--

- a. the keeping of proper books of account;
- b. the completion of a report by an accounting officer; and
- c. the submission of narrative reports and financial statements;

11.6 it creates mechanisms to ensure that a not-for-profit organisation complies with its constitution and the Bill

11.7 it does away with all restrictions on fund-raising. Possession of a fundraising number is no longer a requirement for raising money from the public;

11.8 it creates an appeal mechanism in respect of decisions to refuse or cancel registration, and specifies a procedure for appointing the persons who may conduct appeals;

11.9 it provides for voluntary de-registration;

11.10 it obliges the Directorate for Not-for-Profit Organisations to keep and publish a register of all registered and de-registered not-for-profit organisations; and

11.11 it obliges the Minister to issue regulations concerning the circumstances and manner in which the public may have access to or inspect the constitution and other relevant reports and documents.

4. The Bill does not provide for a new corporate form for not-for-profit organisations, for the following reasons:

12.1 adequate provision for establishing a not-for-profit entity as a **corporate** body exists sufficiently either, in terms of Section 21 of the Companies Act No. 61 of 1973, or the Trust Property Control Act No. 57 of 1988, or by establishing a voluntary association in terms of common-law. The Bill has been drafted in such way that its requirements for what should appear in an organisation's constitution would automatically ensure that any organisation that gets registered would be a body corporate;

12.2 providing for a new form of incorporation is less simple than it appears. It requires detailed provisions to deal with every consequence of creating a new type of corporate body. To attempt to meet the needs of the sector, would once again involve lengthy and complex legislation which would defeat the objective of providing a simple form for this sector. For instance, the Close Corporations Act which was intended to provide a simpler form of incorporation for smaller companies took several years of preparation; and

12.3 there is no guarantee either that a new form of incorporation for not for profit organisations, would be any less complex than establishing a Section 21 Company or a Trust. The common law voluntary association remains the simplest and least complicated way for persons wishing to establish a not for profit organisation to achieve the status of a body corporate.

CHAPTER 1

PURPOSE AND INTERPRETATION OF THIS ACT

1. Purpose

The purpose of *this Act*⁽¹⁾ is to encourage and support *not-for-profit organisations* in their contribution to meeting the diverse needs of the population of the Republic of South Africa, by--

- a. creating an environment in which *not-for-profit organisations* may flourish;
- b. establishing an administrative and regulatory framework within which *not for-profit organisations* can conduct their affairs;

- c. encouraging *not-for-profit organisations* to maintain and improve adequate standards of governance, transparency and accountability;
- d. creating an environment within which the public may have access to information concerning registered *not-for-profit organisations*; and
- e. promoting a spirit of co-operation and shared responsibility within government and amongst other relevant stakeholders in their dealings with *not-for-profit organisations*.

2. Interpretation of this Act

1. Any person interpreting and applying *this Act* must--
 - a. give a liberal construction to its provisions, in a manner that--
 - i. is consistent with the statement of purpose set out in Section 1; and
 - ii. accounts for the particular purpose, role and circumstances of any relevant *not-for-profit organisation*;
 - c. consider the provisions of *this Act* in the light of any other law governing a particular *not-for-profit organisation*, preferring a reasonable interpretation of each law that avoids a conflict between those laws, over an interpretation that brings them into conflict; and
 - d. with respect to any particular *not-for-profit organisation*, apply the provisions of Section 16(1) and 17(3) only to the extent that they do not conflict with any other law governing that *not-for-profit organisation*.
 5. Subject to sub-section (1), if any conflict relating to the matters dealt with in *this Act* arises between *this Act* and the provisions of any other law, except an Act amending *this Act*, the provisions of *this Act* will prevail.
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CHAPTER 2

CREATION OF AN ENABLING ENVIRONMENT

3. Statement of state's responsibility to not-for-profit organisation.

Within the limits prescribed by law, every organ of state must determine and coordinate the implementation of its policies and measures in a manner designed to promote and enhance the capacity of *not-for-profit organisations*.

4. Establishment of Directorate for Not-for-profit organisations

1. The *Minister* must establish within the *national department* a Directorate for Not-

for-profit organisations to support and enhance the capacity of *not-for-profit organisations*.

2. The *national department* must provide the *Directorate* with the administrative support necessary to perform its functions.
3. The *Directorate* must perform its functions in accordance with the directives and administrative procedures determined by the head of the *national department*.

5. Functions of Directorate

In addition to any other function specified elsewhere in *this Act*, the *Directorate* is responsible for--

- a. developing policy;
- b. determining and implementing programs;
- c. facilitating the development and implementation of multi-sectoral and multi-disciplinary programs; and
- d. liaising with other organs of state and relevant interested parties to achieve the purpose of *this Act*.

6. Model documents and Codes of good practice

1. The *Directorate* may--
 - a. prepare and issue model documents including--
 - i. a model constitution for *not-for-profit organisations*; and
 - ii. the model of the narrative report to be submitted by *registered not-for-profit organisations* to the *Directorate*.
 - c. prepare and issue codes of good practice for--
 - i. *not-for-profit organisations*; and
 - ii. those persons, bodies or organisations making donations or grants to *not-for-profit organisations*.
3. Any model document or code of good practice, or any change or replacement of it must be--
 - a. made in accordance with the procedure contemplated in section 28 with any changes required by context; and
 - b. published in the Gazette.

7. Reports of the Directorate

1. Within six months after the end of each financial year, the *Directorate* must submit to the *Minister* a written narrative and financial report on the activities of

the *Directorate* for the previous *financial year*.

2. Within one month after receiving a report contemplated in sub-section (1), the *Minister* must table it in Parliament. If Parliament is not in session at any time during that month, the *Minister* must table the report within one month after the start of the next session of Parliament.

8. Designation of Director for Not-for-profit Organisations

The *Minister* must designate an employee of the *national department* as the Director for Not-for-profit Organisations. The *director* is responsible to perform the functions conferred on the *director* by or in terms of *this Act* or any other law.

9. Panel of Arbitrators and Arbitration Tribunal

1. The Minister must appoint persons as required to maintain a panel of arbitrators consisting of at least seven persons;
2. The following procedure applies whenever the Minister is required to nominate a person to the panel of arbitrators, in terms of sub-section (1) -
 - a. the *Minister* must publish in the Gazette and by any other widely circulated means of communication, a notice calling for nominees and stating the criteria for nominations;
 - b. the *Minister* must consider all nominations submitted in response to the notice;
 - c. the *Minister* must compile a short-list of nominees and publish it for comment in the Gazette and by any other widely circulated means of communication; and
 - d. the *Minister* must consider any comments received in response to the short list.
5. The terms and conditions of appointments of members of the panel of arbitrators must be *prescribed* by the *Minister*.
6. For any purposes of *this Act*, an Arbitration Tribunal may be composed of three members of the panel of arbitrators.

10. Establishment of Advisory or Technical Committees

1. The *Minister* may appoint any advisory or technical committees for purposes of achieving the objectives of *this Act*.
2. When appointing an advisory or technical committee, *the Minister*, may determine--
 - a. its composition, functions, and working procedure;
 - b. the terms, conditions, remuneration and allowances applicable to its members; and
 - c. any incidental matters relating to it.

CHAPTER 3

REGISTRATION OF NOT-FOR-PROFIT ORGANISATIONS

11. Benefits of registration

The *Minister* may *prescribe* benefits or allowances applicable to *registered not for-profit organisation*, but may do so only with the concurrence of any state department affected by a particular benefit or allowance.

12. Requirements for registration

1. Any *not-for-profit organisation* that is not an organ of state may apply to the *Directorate* for registration if it has adopted a *constitution* that meets the requirements of sub-sections (2) and (4).
2. (2) Unless the laws in terms of which a *not-for-profit organisation* is established or incorporated make provision for the items in this subsection⁽²⁾, the *constitution* of a *not-for-profit organisation* that intends to register must--
 - a. state the organisation's name;
 - b. state the organisation's main and ancillary objectives;
 - c. state that the organisation's income and profits are not distributable to its members or *office-bearers*, except as reasonable compensation for services rendered;
 - d. state that the organisation is a body corporate which has an identity and existence distinct from its members or *office-bearers*;
 - e. state that the organisation will continue to exist notwithstanding changes in the composition of its membership or *office-bearers*;
 - f. state that the members or *office-bearers* have no rights in the property or assets of the organisation solely by virtue of them being members or *office bearers*;
 - g. specify the powers of the organisation;
 - h. specify the organisational structures and mechanisms for its governance;
 - i. describe the rules for convening and conducting meetings including quorums required for and the minutes to be kept of those meetings;
 - j. determine the manner in which decisions are to be made;
 - k. provide that the organisation's financial transactions must be processed through a *banking account*;
 - l. determine a date for the end of the organisation's financial year;
 - m. specify a procedure for changing the *constitution*;
 - n. specify a procedure by which the organisation may be wound up; and
 - o. provide that, when the organisation is being wound-up, any asset remaining after all its liabilities have been met must be transferred to another *not-for-*

profit organisation having similar objectives.

16. The constitution of a not-for-profit organisation that intends to register may--
- a. prescribe qualifications for and admission to the organisation;
 - b. establish the circumstances in which a member will no longer be entitled to the benefits of membership;
 - c. provide for termination of membership;
 - d. provide for appeals against loss of benefit of membership or against termination of membership and specify the procedure for those appeals and determine the body to which those appeals may be made;
 - e. provide for membership fees and matters determining membership fees and other payments by members;
 - f. provide that any member or *office-bearer* does not become liable for any of the obligations and liabilities of the organisation solely by virtue of their status as a member or being an *office-bearer* of the organisation;
 - g. provide for the appointment of *office-bearers* and define their respective functions;
 - h. specify a procedure for nominating, electing or appointing *office bearers*;
 - i. establish the circumstances and manner in which *office-bearers* may be removed from office and provide for appeals against such removals and specify procedures for those appeals and to determine a body to which those appeals can be made;
 - j. provide that its *office-bearers* are not personally liable for any loss suffered by any person as a result of an act performed or omitted in good faith by the *office-bearer*, while performing functions for or on behalf of the organisation.
 - k. provide for making investments;
 - l. establish the purpose for which finances may be used; and
 - m. provide for acquiring and controlling assets.

13. Application for registration

1. A *not-for-profit organisation* may apply for registration by submitting to the *director*--
 - a. a *prescribed* form that has been properly completed;
 - b. two copies of its *constitution*; and
 - c. any other information that may assist the *Directorate* to determine whether or not the *not-for-profit organisation* meets the requirements for registration.
4. The *director* may require further information relevant to the consideration of the application.
5. Within two months of receiving an application from a *not-for-profit organisation* or the further information contemplated in whichever is the later, the *director*--

- a. must consider the application and any further information provided by the applicant; and
 - b. if satisfied that the applicant complies with the requirements for registration, must register the applicant by entering the applicant's name in the *register*.
3. If, after considering an application in terms of sub-section (3), the *director* is not satisfied that the application complies with the requirements for registration, the *director* must send the applicant a written notice, giving reasons for that decision and informing the applicant that it has one month from the date of the notice to comply with those requirements.
 4. The period within which compliance must be effected may be extended by the *director* on good cause shown by the applicant
 5. If an applicant who has received a notice in terms of sub-section (4) complies with the requirements for registration within one month from the date of that notice, or the extended period granted to the applicant in terms of sub-section (5) the *director* must register the applicant by entering the applicant's name in the register.
 6. If an applicant who has received a notice in terms of *sub-section (4)* either does not attempt to comply with the requirements for registration within one month from the date of that notice or the extended period granted to the applicant in terms of sub-section (5), alternatively makes an attempt within that time which the *director* concludes is inadequate to comply with those requirements, the *director* must--
 - a. refuse to register the applicant; and
 - b. notify the applicant in writing of that decision and the reasons for it.

14. Appeals against decision to not register

1. Within one month after a decision of the *director* to not register a *not-for-profit organisation*, the organisation may appeal against the decision by submitting the following items to an Arbitration Tribunal--
 - a. the application to register;
 - b. the appropriate *director's* notice in response to the application, issued in terms of sub-section 13(4);
 - c. details of the organisation's response to the *director's* notice; and
 - d. the *director's* notice and reasons for the decision which is the subject of the appeal.
5. Within one month of receipt of the relevant items, the Arbitration Tribunal must consider the appeal in the *prescribed* manner and send a written notice of its decision to the organisation that submitted the appeal. If the appeal has not upheld the appeal, the notice must include the reasons for the decision.
6. If the Arbitration Tribunal upholds an appeal, the *Director* must register the organisation by entering its name in the appropriate *register*.

15. Certificate of Registration

1. Upon registering any applicant, the *director* must--
 - a. issue a certificate of registration in the applicant's name on a *prescribed* form which must include a registration number;
 - b. send the certificate and a certified copy of the registered *constitution* to the applicant; and
 - c. advise the applicant of the date on which its name has been entered in the *register*.

4. A *not-for-profit organisation* that has been registered remains registered until--
 - a. its registration is cancelled in terms of *this Act*;
 - b. the organisation is voluntarily deregistered; or
 - c. the organisation is wound-up.

16. Effect of registration

1. The certificate of registration of a *not-for-profit organisation*, or a duly certified copy of the certificate, is sufficient proof that the organisation--
 - a. has met all the requirements for registration;
 - b. has been registered in terms of *ibis Act*; and
 - c. is a body corporate⁽³⁾.

4. For the purposes of *this Act*, service of any document directed to a *registered not-for-profit organisation* at the physical address most recently provided to the *director* will be service of that document on that organisation.
5. A *registered not-for-profit organisation* must reflect its registered status and registration number on any of its documents.

17. Accounting records and reports

1. Every *registered not-for-profit organisation* must, to the standards of generally accepted accounting practice, principles and procedures--
 - a. keep books and records of its income, expenditure, assets and liabilities; and
 - b. within six months after the end of its financial year, draw up financial statements, including at least--
 - i. a statement of income and expenditure for that financial year; and
 - ii. a balance sheet showing its assets, liabilities and financial position as at the end of that financial year.

3. Within two months of drawing up its financial statements, every *registered not-*

for-profit organisation must arrange for a report to be compiled by an *accounting officer* and submitted in writing to the *registered not-for-profit organisation* expressing an opinion as to whether or not--

- a. the financial statements of the *registered not-for-profit organisation* are consistent with its accounting records;
 - b. the accounting policies of the *registered not-for-profit organisation* are appropriate or have been appropriately applied in the preparation of the financial statements; and
 - c. the organisation has complied with the finance related provisions of both *this Act* and of its *constitution*.
4. Every *registered not-for-profit organisation* must preserve each of its books of account, supporting vouchers, records of subscriptions or levies paid by its members, income and expenditure statements, balance sheets, and *accounting office's* reports, in an original or reproduced form, for a *prescribed* period from the end of the financial year to which they relate⁽⁴⁾.

18. Duty to provide reports and information

1. Every *registered not-for-profit organisation* must provide the *Directorate* with--
 - a. a narrative report of its activities in the *prescribed* manner together with its financial statements and the *accounting office's* report as contemplated in Section 17(2), within nine months of the end of its financial year; '
 - b. the names and physical, business and residential addresses of its *office-bearers* within one month of any appointment or election of its *office-bearers* even if their appointment or election did not result in any changes to its *office-bearers*; and
 - c. a physical address in the Republic of South Africa for the service of documents as contemplated in Section 16(2);
 - d. notice of any change of address within one month before a new address for service of documents will be effect; and
 - e. any other information as may be *prescribed*.
6. The *Directorate* may request a *registered not-for-profit organisation* to submit to the *Directorate* any information or document reasonably required for purposes of enabling the *Directorate* to determine whether the organisation is complying with--
 - a. the material provisions of its *constitution*;
 - b. any condition or any term of any benefit or allowance conferred on it in terms of Section 11; or
 - c. its obligations in terms of this section and Section 17 or any other material provision of this Act..

4. A *registered not-for-profit organisation* must accede to the request contemplated in sub-section (2) within one month of receipt of the request.
5. If the *accounting officer* of a *registered not-for-profit organisation* becomes aware of any instance in which the organisation has failed to comply with the financial provisions of either *this Act* or its *constitution*, the *accounting officer* must notify the *Directorate* of that occurrence--
 - a. within one month of becoming aware of it; and
 - b. in writing with sufficient detail to describe the nature of the noncompliance.
3. The duty imposed on an *accounting officer* in terms of sub-section (4) supersedes the *accounting office's* duty of confidentiality owed to the organisation concerned.

19. Changing the constitution or name of registered not-for-profit organisations

1. A *registered not-for-profit organisation* may change its *constitution* or its name.
2. A *registered not-for-profit organisation* that has changed its *constitution* or its name must send the *Directorate*--
 - a. a copy of the resolution and a certificate signed by a duly authorised *office-bearer* stating that the resolution complies with its *constitution* and all relevant laws; and
 - b. if the organisation has resolved to change its name, the original of its current certificate of registration.
3. Upon receiving the documents contemplated in so, from an organisation that has resolved to change its *Constitution*, the *director* must--
 - a. register the changed or new *constitution* if it meets the requirements for registration;
 - b. endorse a copy of the resolution, certifying that the change or
 - c. replacement of the *constitution* has been registered; and
 - d. send the endorsed copy of the resolution to the *registered not-for-profit organisation*.
5. Upon receiving the documents contemplated in sub-section (2) from an organisation that has resolved to change its name, the *director* must--
 - a. enter the new name in the *register* and issue a certificate of registration in the new name of the organisation;
 - b. remove the old name from that *register* and cancel the earlier certificate of registration; and
 - c. send the new certificate to the organisation.

20. Non-compliance by registered not-for-profit organisations with its constitution and obligations

1. The *director* may send a compliance notice in the *prescribed* form to a *registered not-for-profit organisation* if the *director* determines that the organisation has not complied with--
 - a. a material provision of its *constitution*;
 - b. a condition or term of any benefit or allowance conferred on it in terms of section 11; or
 - c. its obligations in terms of Sections 17, 18 or 19 or any other material provision of *this Act*,
4. A compliance notice contemplated in sub-section (1) must--
 - a. be in writing;
 - b. notify the organisation of the *director's* determination and the reasons for that determination; and
 - c. inform the organisation that it has one month from the date of the notice to comply with the provisions and obligations of *this Act*.
4. The period within which compliance must be effected may be extended by the *director* on good cause shown by the organisation.

21. Cancellation of Registration

1. If a *registered not-for-profit organisation* which has received a notice in terms of Section 20; either does not attempt to comply with the notice within one month after the date of that notice or the extended period granted to the organisation in terms of Section 20(3), alternatively makes an attempt to comply within that time, which the *director* concludes is inadequate to comply with the notice, the *director* must--
 - a. cancel its certificate of registration and deregister the organisation by amending the *register*; and
 - b. notify the organisation in writing of--
 - i. that decision and the reasons for it; and
 - ii. the date on which the amendment was made to the *register*.
3. When a not-for-profit organisation's registration has been cancelled, all the rights, benefits and allowances it enjoyed as a result of being registered will end.

22. Appeals against cancellation of registration

A *registered not-for-profit organisation* may appeal against the decision of the *director* to cancel its registration, and the procedure established in Section 14 applies to that appeal, with the changes required by context.

23. Voluntary Reregistration

1. A *registered not-for-profit organisation* may voluntarily deregister itself by sending the *Directorate* a written notice--
 - a. stating its intention to voluntarily Reregister; and
 - b. specifying a date, at least two months after the date of the notice on which the Reregistration must be effected.

3. Upon receiving a notice of voluntary Reregistration in terms of sub-section (1) from a *registered not-for-profit organisation*, the *director* must--
 - a. cancel the organisation's certificate of registration, and deregister it by amending the *register*; and
 - b. notify the organisation in writing of the Reregistration and specify the date on which the amendment was made to the register.

24. Register of not-for-profit organisations

1. The *Directorate* must keep a *register* in the *prescribed* form of--
 - a. all *not-for-profit organisations* that have been registered;
 - b. all *not for-profit organisations* that have had their registration cancelled; and
 - c. all *not-for-profit organisations* that have voluntarily deregistered.

4. Within two months after the end of each *financial year*, the *Directorate* must publish in the Gazette the names of--
 - a. all *not-for-profit organisations* that are registered; and
 - b. all *not-for-profit organisations* whose registration had been cancelled during the previous *financial year*, and
 - c. all *not-for-profit organisations* who voluntarily deregistered during the previous *financial year*.

25. Access by the Public to Documents submitted to the Directorate

1. The *Directorate* must preserve in an original or reproduced form--
 - a. the *constitution* of a *registered not-for-profit organisation*;
 - b. the *constitution* of a *not-for-profit organisation* whose registration has been cancelled, or that has voluntarily deregistered for a *prescribed* period from the date of the cancellation or Reregistration; and
 - c. any report or document submitted to the *Directorate* in terms of *this Act* for a *prescribed* period from the end of the financial year to which they relate.

4. All members of the public have the right of access to and to inspect any document that the *Directorate* is obliged to preserve in terms of i

5. The *Minister* must issue regulations concerning the circumstances and manner in which the public may have access to or inspect the documents referred to in subsection (2).
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CHAPTER 4

REGULATIONS

26. Minister's power to issue regulations

1. The *Minister* may issue any regulation that is necessary or expedient to achieving the purpose of *ibis Act*, including any regulation that is explicitly or implicitly contemplated in *this Act*.
2. As a matter of convenience, and for ease of reference only, Annexure "A" comprises a summary listing of examples of matters in respect of which *this Act* contemplates that the *Minister* may make regulations.

27. Conditions, restrictions or prohibitions in regulations

1. Any condition, restriction or prohibition contained in a regulation must -
 - a. be proportionate to the object pursued by that regulation; and
 - b. limit the conduct of persons and bodies as little as is reasonably possible.
3. If a failure to comply with a condition, restriction or prohibition in terms of regulation is an offence by which a person may be subject to criminal liability, that regulation must provide that, to the extent practicable, before being subject to criminal liability, the affected person must be given notice of the offence and an opportunity to comply with the regulations.

28. Procedure for issuing regulations

1. When intending to issue or amend regulations, unless the public interest requires the regulation to be made without delay, the *Minister* must comply with the following procedure--
 - a. The intention to issue the regulation must be announced by notice in the Gazette and other widely circulated means of communication;
 - b. The notice must specify--
 - i. that a draft regulation has been developed for comment; and
 - ii. where a copy of the draft regulation may be obtained;

- c. the period for comment must be at least one month;
 - d. at any time before issuing the regulation, discussions and consultations of any form may be held with any relevant interest group;
 - e. the comments received and the content of all discussions and consultations must be considered before issuing the regulations.
6. The provisions of sub-section (1) apply equally to an intended amendment of a regulation other than an amendment to correct a textual error.
 7. Any regulation affecting state revenue or expenditure may be made only with the concurrence of the member of the Cabinet responsible for Finance.
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CHAPTER 5

GENERAL PROVISIONS

29. Offences

1. It is an offence to cause a *not-for-profit organisation*, when it is being wound-up, to transfer its remaining assets in the manner contemplated in Section 12(2)(o);
2. It is an offence for any body or organisation to present itself as being validly registered in terms of *this Act* unless it is registered in terms of *this Act*.
3. It is an offence for any body or organisation--
 - a. to make unauthorised use of a registration number, registration certificate or any information contained in a registration certificate; or
 - b. to make material false representations in a narrative, financial or other report submitted to the *Directorate*.
3. In any criminal proceeding in respect of an offence created in terms of *this Act*, a copy of the *register* will be admissible as evidence and considered as sufficient proof of whether an organisation has been registered or deregistered.

30. Penalties

A person, body or organisation who is guilty of an offence in terms of *this Act* is liable for a fine or imprisonment or both a fine and imprisonment.

31. Amendment of Schedules and Annexures

The *Minister*, by notice in the Gazette, may add to, change or replace any Schedule or Annexure to *this Act*.

32. Delegation of powers

1. Subject to Section 15 of the Exchequer Act, 1975 (Act No 66 of 1975), the *Minister*, in writing, may delegate any power conferred on the *Minister* or the *Directorate* by *this Act* or any other Act, except the power contemplated in Section 8 to--
 - i. any person in the employ of the *national department*;
 - ii. any board or body established in terms of *this Act*, or
 - iii. any organ of the state⁽⁵⁾ if the head of the organ of state concurs with the delegation.
4. A person or body to whom a power is delegated in terms of AILS Fiji when exercising that power must do so subject to the direction of the *Minister*.
5. At any time, the *Minister* may--
 - a. withdraw a delegation made in terms of sub-section (1); and
 - b. withdraw or amend any decision made by a person or body in terms of a delegated power contemplated in sub-section (1).
3. Until it is withdrawn or amended, any decision made by a person or body in terms of a delegated power contemplated in sub-section (1) is deemed to have been made by the *Minister*.
4. Any right or privilege acquired, or any obligation or liability incurred, as a result of a decision in terms of a delegated power contemplated in sub-section (1) cannot be affected by any subsequent withdrawal or amendment of that decision.
5. The *national department* may enter into agreements with any public or private provider of products and services to enable it or the *Directorate* to perform and fulfil the functions of responsibilities conferred on them in terms of *this Act*.

33. Restriction of liability

1. The State Liability Act, 1957 (Act No 20 of 1957) applies, with the changes required by context, to each body established in terms of *this Act*, but a reference in that Act to "the *Minister* of the Department concerned" must be interpreted as referring to the Chairperson or head of the relevant body.
2. No member of staff, person or contractor of a body contemplated in sub-section (1) is liable for any damages arising from the publication or disclosure in terms of *this Act* of any report, finding, or recommendation that is given in good faith and submitted to the *Minister*, or to Parliament.

34 Repeal of laws and transitional arrangements

1. The laws mentioned in column 1 of Schedule 1 are repealed to the extent indicated in column 3 in that Schedule.
2. The provisions in Schedule 2 concerning transitional matters are part of *this Act*.

35. State bound

36. Definitions

In *this Act* unless the context indicates otherwise--

"accounting officer"

means in relation to a *not-for-profit organisation*, the person contemplated in Section 60 of the Close Corporations Act, 1984⁽⁶⁾;

"banking account"

means an account with a banking institution registered in terms of the Banks Act, 1965, or a building society registered in terms of the Building Society Act, 1986;

"constitution"

includes a trust deed and memorandum and articles of association;

"director"

means the person appointed in terms of Section 6;

"Directorate"

means the body established in terms of Section 4;

"financial year"

means a year which commences on 1 April and ends on 31 March;

"Minister"

means the Minister for Welfare and Population Development;

"national department"

means the national department responsible for welfare;

"not-for-profit organisation"

means a trust or association of persons whose objectives and activities, when viewed as a whole, exhibit the following characteristics--

- a. it has been established for a public purpose;
- b. its income or profits are not distributable to its members or office bearers except as reasonable compensation for services rendered; and

"office-bearer"

means a director, trustee or person holding an executive position;

"prescribed"

means prescribed by regulation and "*prescribe*" has a corresponding meaning;

"register"

means the register contemplated in Section 25;

"registered not-for-profit organisation"

means a *not-for-profit organisation* registered in terms of Section 13 of *this Act*; and

"this Act"

includes the section numbers, the schedules, and any regulation issued in terms of *this Act* but does not include the page headers, headings, footnotes and annexures.

37. Short title and commencement

This Act is called "*The Not-for-profit Organisations Act, 1997*", and comes into operation on a date fixed by proclamation in the Gazette.

SCHEDULE 1

LAWS REPEALED BY SECTION 34

Number and year of law	Short title	Extent of Repeal
107 Of 1978	Fund-raising Act, 1978	The whole of Chapter I and the whole of Chapter III to the extent that it applies to fund-raising organisations, branches of such organisations, and any other organisation contemplated in Chapter I.

SCHEDULE 2

TRANSITIONAL ARRANGEMENTS

1. Director of Fund-raising

For the purposes of this schedule, every power, duty and obligations conferred on the Director of Fund-raising, in terms of the Fund-raising Act, 1978, must be exercised by the director.

2. Status of unauthorised and registered fund-raising and other organisations

1. Subject to items (2), (3) and (4), any fund-raising organisation, branch of a fund-raising organisation or any other organisation, duly authorised or registered in terms of Sections 4, 5 or 6 of the Fund-raising Act, 1978, is deemed to be registered as a *not-for-profit organisation* in terms of *this Act*, and the director must enter the name of the organisation in the register as soon as practicable after *this Act* comes into operation.
2. Every organisation contemplated in Item (1) must apply to be registered in terms of this Act--
 - a. within two years after *this Act* comes into operation; and
 - b. in accordance with the procedure contemplated

3. If the authorisation or registration of an organisation contemplated in sub-item (1)

would expire on a date within two years after *this Act* comes into operation, the organisation must apply to be registered in terms of *this Act* no later than two months before the expiry date. This application must be made in accordance with the procedure contemplated in Sections 13-15

4. If the application contemplated in sub-item (2) or (3) is not or cannot be timeously made by the organisation concerned, its registration will lapse and the *director* must
 - a. cancel the organisation's certificate of registration and deregister the organisation by amending the register; and
 - b. notify the organisation in writing -
 - i. of that decision and the reasons for that decision; and
 - ii. of the date on which the appropriate amendment was made to the register.

Non-compliance of conditions by authorised and registered fund-raising and other organisations

If an authorised or registered fund-raising organisation, branch of a fund-raising organisation or any other organisation fails to comply with the terms and conditions of its authorisation or registration, the procedures contemplated in will apply.

Pending proceedings

1. Any pending application for authorisation or registration made in terms of Sections 4, 5 and 6 of the Fund-raising Act, 1978, must be dealt with by the director in accordance with the procedure contemplated in Sections 13-15.
2. Any pending application to amend any authorisation or registration made in terms of Section 8 of the Fund-raising Act, 1978, must be dealt with by the director in accordance with the procedure contemplated in that section despite its repeal but for all other purposes must be deemed to have been conducted in terms of *this Act*.
3. Any pending application to withdraw any authorisation or registration made in terms of Section 8 of the Fund-raising Act, 1978, must be dealt with by the director in accordance with the procedure contemplated in Section 23 of this Act.
4. Any pending appeal instituted in terms of Section 10 of the Fund-raising Act, 1978, may be continued in terms of that section despite its repeal but for all other purposes must be deemed to have been conducted in terms of *this Act*.
5. Any pending investigation into the affairs of an authorised or registered Fund-raising organisation conducted in terms of Section 30 of the Fundraising Act, 1978, may be continued in terms of that section despite its repeal but for all other purposes must be deemed to have been conducted in terms of *this Act*.
6. Any pending criminal proceeding instituted in terms of Section 34 of the Fund-raising Act, 1978, may be continued in terms of that section despite its repeal but for all other purposes must be deemed to have been conducted in terms of this Act.

5. GENERAL PROVISIONS

1. (1) Except as otherwise provided in this Schedule, any action taken under any provision repealed by Schedule 1--
 - a. is deemed to have been taken under the corresponding provision of *this Act*, and
 - b. continues to have force and effect--
 - i. except if it is inconsistent with *this Act*; or
 - ii. until it is repealed in terms of *this Act*.

ANNEXURE A

SUMMARY OF MINISTER'S POWER TO ISSUE REGULATIONS

CHAPTER	SECTION	SECTION TITLE
3	11	Benefits of registration
3	13(1)(a)	Application for registration
3	14(2)	Appeals against decision to not register
3	15(1)(a)	Certificate of registration
3	17(3)	Accounting records and reports
3	18(1)(a)	Duty to provide reports and information
20	20(1)	Non-compliance by registered not-for profit organisation with its constitution and obligations
3	14(1)	Register of not-fcr-profit organisations
3	25(1) & (3)	Access by the public to documents submitted to the Directorate
4	26(1) & (2)	Ministers power to issue regulations

Footnotes:

1. The italicisation of words denote that the word is defined in section 36 of this Act.
2. The purpose of this qualification is to ensure that those considering an application for registration do not refuse an application simply because its constitution does not contain provisions as set out in this sub-section in circumstances where a statute applicable to the organisation contains provisions to this effect.
3. Note that by virtue of Section 2(c), other statutes may modify or exclude the application of this provision for purposes of those statutes.
4. Note that by virtue of Section 2(c), other statutes may modify or exclude the application of this provision for purposes of those statutes.
5. Section 239 of the Constitution of the Republic of South Africa, 1996, defines Organ of states as –
 - a. any department of state or administration in the national provincial or local sphere of government, or
 - b. any other functionary or institution –
 - i. exercising a power of performing a function in terms of the Constitution or a provincial constitution, or
 - ii. exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officers.
6. Section 60 of the Close Corporations Act, 1984, provides as follows –
 1. No person shall be appointed as or hold the office of an accounting officer of a corporation, unless he is a member of a recognised profession which –
 - a. as a condition for membership, requires its members to have passed examinations in accounting and related herds of study which in the opinion of the Minister of Trade and Industry would qualify such members to perform the duties of an accounting officer under this Act;
 - b. has the power to exclude from membership those persons found guilty of negligence in the performance of their cubes or of conduct which is discreditable to their profession; and
 - c. has been named in a notice referred to in subsection (2).
 4. The Minister of Trade and Industry may from time to time publish by notice in the Gazette the names of those professions whose members are qualified to perform the cubes of an accounting officer in terms of this Act.
 5. A member or employee of a corporation and a firm whose partner or employee is a member or employee of a corporation, shall not qualify for appointment as an accounting officer of such corporation unless all the members consent in writing to such appointment.
 6. A firm as defined in section 1 of the Public Accountants and Auditors' Act, 1991, and any other firm may be appointed as an accounting officer of a corporation, provided each partner in the latter firm is qualified to be so appointed.