

NPO Legal Guides

Practical tools for NPO Leaders



A Basic Guide to the NPO Act

A Basic Guide to the Nonprofit Organisations Act

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Important Note:

The information contained in this document 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 document.

1. Introduction to nonprofit organisations:

Nonprofit organisations in South Africa can essentially be established through three forms of legal entities, namely; voluntary associations, non-profit trusts and non-profit companies.

Voluntary Associations

A voluntary association is in essence an agreement between three or more people to achieve a common object which cannot be the making of profits. It is popular amongst smaller and informal community-based initiatives. It is regulated by common law and not statute. The voluntary association is not required to be registered with a public office in order for it to exist. The voluntary association must meet three requirements in order to have legal personality, namely:

- Have perpetual succession,
- Be able to hold property distinct from its members, and
- Stipulate that no member has any rights by reason of his membership to the property of the voluntary association.

Non-profit Trusts

A trust is established in terms of the Trust Property Control Act, of 1988. In essence, a trust is established when ownership of property is transferred (by written agreement, testamentary writing, or court order) to another party, to be administered for the benefit of certain persons or the achievement of a particular goal.

The Master of the High Court oversees the appointment of trustees and polices the proper performance of the trustees' duties with respect to the trust property. The Trust Property Control Act requires that the first trustees must lodge the trust deed with the Master of the High Court. Trustees can only act in their capacity as trustees after having been authorised in writing by the Master.

Non-profit Companies

The Companies Act, No. 71 of 2008 was signed into law during April 2009 and came into operation on 01 May 2011 and replaces the Companies Act of 1973. The Companies Act recognises the non-profit company (NPC) as a separate category of company that must have a minimum of 3 directors and that can be established with or without members.

The NPC can be incorporated for a public benefit object or an object relating to one or more cultural or social activities, or communal or group interests. The NPC is registered with the Companies Commission.

2. Introduction to Nonprofit Organisations Act of 1997

The Nonprofit Organisations Act (the NPO Act) provides for a voluntary registration facility for non-profit organisations. Section 2 of the NPO Act lists its objects as being to encourage and support NPOs in their contribution to meeting the diverse needs of the population of the Republic of South Africa.

In pursuing this broad objective, the NPO Act lists five specific objectives. Probably the most important being the creation of an enabling environment in which NPOs can flourish. The others are:

- establishing an administrative and regulatory framework within which nonprofit organisations can conduct their affairs;
- encouraging nonprofit organisations to maintain adequate standards of governance, transparency and accountability and to improve those standards;
- creating an environment within which the public may have access to information concerning registered nonprofit organisations; and
- promoting a spirit of co-operation and shared responsibility within government, donors and amongst other interested persons in their dealings with nonprofit organisations.

The NPO Act is made up of five chapters. Two substantive chapters are dealing with the creation of an enabling environment and the registration of NPOs under the NPO Act. Chapter 2 of the NPO Act is entitled *Creation of an Enabling Environment* whilst Chapter 3 is entitled *Registration of Nonprofit Organisations*.

The NPO Act defines a nonprofit organisation as a trust, company or other association of persons established for a public purpose and the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered.

The NPO Act defines a registered nonprofit organisation as a nonprofit organisation registered in terms of section 13 of the NPO Act. Only nonprofit organisations, as defined in the NPO Act, can apply for registration in terms of the NPO Act.

3. Registration in terms of NPO Act

Section 12 of the NPO Act lays down a number of prescribed conditions that must be complied with in order for a nonprofit organisation to be eligible for registration in terms of the NPO Act. Its founding document (or the law in terms of which it has been established) must cover the required clauses captured in section 12 of the NPO Act.

A prescribed application form must be completed when application is made for registration in terms of the Nonprofit Organisations Act. A registered nonprofit organisation is issued with a certificate of registration which is sufficient proof that the organisation is registered in terms of the NPO Act and is a body

corporate. Section 16(1)(c) of the NPO Act provides that the certificate of registration of a NPO, or a duly certified copy of the certificate, is sufficient proof that the registered NPO is a body corporate (except for nonprofit trusts).

A registered NPO is required to reflect its registered status and registration number on all of its documents.

See **Annexure A** on how to register an organisation in terms of the NPO Act.

4. Key obligations of registered NPOs

Accounting Records

Registered NPOs must:

- Keep, accounting records in line with the standards of the generally accepted accounting practice of its income, expenditure, assets and liabilities.
- Draw up financial statements within six months of its financial year-end which must include:
 - An income and expenditure statement, and
 - A balance sheet reflecting its assets and liabilities.

Accounting officer's report

An accounting officer must compile a written report within eight months of the organisation's financial year-end.

ACCOUNTING OFFICER'S REPORT

The accounting officer's report must state whether or not the organisation's:

- Financial statements and accounting records are consistent.
- Accounting policies were appropriately applied with the preparation of the financial statements.
- Financial conduct has complied with the provisions of the NPO Act and its own constitution.

Annual Narrative Reports

Registered NPOs must annually submit a prescribed narrative report of its activities to the Director of NPOs of its activities. The narrative report consists of the following three sections

Section A: Basic details about the organisation on the form provided.

Section B: The organisation's major achievements over the year, in response to the questions provided.

Section C: List of important meetings held by the organisation during the year, and details of any changes to your constitution.

Change of Organisational details

The Director of NPOs must be informed **within one month** of:

- Any changes to the names, or physical, business and residential addresses of the organisation's office-bearers.
- Any appointment or election of the organisation's office-bearers - even if their were no changes to the office-bearers.
- Any change of the physical or registered address of the organisation.

SAMPLE LETTER TO NPO DIRECTORATE

To update details of Office-bearer

*ABC Organisation (NPO 869 746)
PO Box 980, Brits, 0194
96 Rose Street, Brits, 0194
30 September 2012*

*Directorate for Nonprofit Organisations
Private Bag X901
Pretoria
0001*

‘Per Registered Mail’

RE: NEW OFFICE-BEARER – NPO 869 746

The above matter refers.

Please note that the following new office-bearer has been appointed by Committee of ABC Organisation at a Committee meeting on 15 September 2011:

<i>Vice-Secretary:</i>	
<i>Full names:</i>	<i>Randall Mongalo</i>
<i>Business Address:</i>	<i>17 Paul Kruger Street, Brits, 0194</i>
<i>Residential Address</i>	<i>21 Protea Streets, Brits, 0194</i>
<i>Tel. No. Home:</i>	<i>012 253-8970</i>
<i>Fax No.:</i>	<i>012 253-5490</i>
<i>Email:</i>	<i>randal@abcorganisation.org.za</i>
<i>Capacity in Organisation:</i>	<i>Vice-Secretary</i>

Kindly confirm receipt of this notification.

**Yours faithfully,
ABC ORGANISATION**

Chairperson

PER: Chairperson

5. Reporting to the NPO Directorate

Registered NPOs must provide with Director of NPOs:

- Within nine months after its financial year-end with the prescribed narrative and financial reports,
- Within one month after any appointment or election with the names and physical, business and residential addresses of its office-bearers, and
- Within one month before a new address for service of documents will take effect with a notice of any change of address.

The prescribed narrative report and financial report is available on the website of the Department of Social Development at: <http://www.dsd.gov.za/npo/index.php>

See **Annexure B** for Sample Report.

Changing the Organisation's founding document or name:

When changing the Organisation's founding document it is important to comply with:

- The legislation in term of which the organisation was established. If a trust, the Trust Property Control Act and, if a company, the Companies Act of 2008.
- The notice, quorum and voting requirements specified in the relevant Act (where relevant) or the founding document.

It is also important to note that the founding document may stipulate that amendments can only be made at certain organisational meetings, e.g. general meetings.

The NPO Act provides that a registered NPO may change its founding document and its name, but must send the Director of NPOs:

- A copy of the resolution changing the founding document, see **Table 1**,
- A certificate signed by a duly authorised office-bearer stating that the resolution complies with its constitution and all relevant laws, see **Table 2**, and
- The original certificate of registration, if the organisation has resolved to change its name.

TABLE 1: SAMPLE RESOLUTION TO AMEND CONSTITUTION

Extract of Resolution Adopted
At a Special General Meeting of ABC Organisation
Held On 12 August 2012
At: 96 Rose Street, Brits, 0194 At: 18h00

There was tabled:

A proposal to amend clause 1 of the constitution of ABC Organisation by changing name of ABC Organisation to XYZ Organisation.

It was resolved:

That clause 12.2 of the Constitution be amended by changing name of ABC Organisation to XYZ Organisation.

Certified a true extract of a Resolution duly adopted at the abovementioned Special General Meeting of ABC Organisation.

Signed at Brits on 12 August 2012

Signed by:
The Chairperson

TABLE 2: SAMPLE CERTIFICATE OF COMPLIANCE

I, Emily Dlamini,

Certify that:

1. I am the duly elected chairperson of ABC Organisation.
2. The members of ABC Organisation have agreed to change its constitution.
3. The changes comply with notice, quorum and voting requirements of the constitution.
4. The change complies with the relevant laws that apply to the Organisation.
5. The notice of amendment and extract of resolution are attached hereto.

Signed at Brits on 12 August 2012

Signed by:
The Chairperson

Annexure A

A Basic Guide to completing the NPO APPLICATION FORM

The image shows a sample of the NPO Application Form. The form is titled 'REGISTRATION BY AN ON-PROFIT ORGANISATION'. It includes sections for 'READ THIS FIRST', 'ORGANISATIONAL DETAILS', and 'WHERE DOES THIS FORM GO?'. The 'ORGANISATIONAL DETAILS' section includes fields for 'Name of the organisation', 'Physical address', 'Postal address', 'Tel', 'Fax', 'E-mail', and 'Date of financial year-end'. The 'WHERE DOES THIS FORM GO?' section includes checkboxes for 'Organisations for Non-Profit Purposes', 'Organisations for Public Benefit', and 'Organisations for Religious Purposes'. The form also includes a section for 'READ THIS FIRST' which provides information about the registration process.

Prepared by **RICARDO WYNGAARD ATTORNEYS**
www.nonprofitlawyer.co.za

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Disclaimer:

This document is aimed at serving as a guide and may not be applicable to all specific circumstances. Professional assistance should be obtained before acting on any of the information in this document.

Page 1:

1. Write down the name of the Organisation.

Please Note: The name on the Application Form must be same as the name in the constitution.

2. Enter the Physical and Postal Addresses and Telephone and Fax Numbers for the Organisation.
3. Enter the date of the Organisation's financial year-end.

Please note: The date on the Application Form must be the same as the date in the constitution.

- ☒ If the date for the financial year-end is not reflected in the constitution, registration will be denied.

Page 2:

4. Complete the section called ***Particulars of Office-bearers*** section.

Please note: Check in the constitution for the required number of office-bearers and their portfolios. The detail on the Application Form must be the same as in the constitution.

- ☒ The full and correct details of all the office-bearers must be provided.
- ☒ Make sure to enter all 13 digits where space is provided for the identity numbers.
- ☒ Make sure that the space for **Capacity in Organisation** correspond with the capacities (portfolios) listed in the constitution. For example, if the constitution makes provision for a Chairperson, Deputy-Chairperson, Secretary, Deputy-Secretary and Treasurer – these five capacities must be captured in the application form. If only three are reflected on the application form, registration will be denied.
- ☒ If there are more than six office-bearers, make a copy of page 2 (before filling in any detail) and fill the details of the rest of the office-bearers on that copy.

Page 3:

5. Complete the section called **Compulsory requirements for registration in terms of section 12(2)** by providing the applicable reference in the constitution.

Please note: It is not sufficient to only refer to the page where the relevant clause is located – you must refer to the specific clause as shown in the following example.

Compulsory Clauses – Section 12 (2) NPO Act - EXAMPLE	CLAUSE
a. state the organisation's name	Clause 1
b. state the organisation's main and ancillary objectives	Clause 2
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	Clause 4.1
d. make provision for the organisation to be a body corporate and have an identity and existence distinct from its members or office-bearers	Clause 3.1
e. make provision for the organisation's continued existence notwithstanding changes in the composition of its membership or office-bearers	Clause 3.2
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	Clause 4.2
g. specify the powers of the organisation	Clause 5
h. specify the organisational structures and mechanisms for its governance	Clause 8-10
i. set out the rules for convening and conducting meetings, including quorums required for and the minutes to be kept of those meetings	Clause 11
j. determine the manner in which decisions are to be made	Clause 11.6
k. provide that the organisation's financial transactions must be conducted by means of a banking account	Clause 12.3
l. determine a date for the end of the organisation's financial year	Clause 12.5
m. set out a procedure for changing the constitution	Clause 14
n. set out a procedure by which the organisation may be wound up or dissolved	Clause 15
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	Clause 15

Please note: If any of the above clauses are not in the constitution, the organisation will have to amend its constitution to capture the outstanding clauses.

NB: Some common problems organisations being experienced when completing this section:

- ☑ If the clauses in the constitution do not properly capture the requirements listed in section 12, the Directorate for Nonprofit Organisations will not register the organisation.
- ☑ Constitutions sometimes do not capture the “**Powers of the Organisation**” and only reflect the “powers of the committee”. This is insufficient as the NPO Act requires for the organisation’s powers to be reflected.
- ☑ The constitution must stipulate that the organisation’s financial transactions **must** be conducted by means of a bank account. This is compulsory. If the constitution makes this optional, by for example, stating that at organisation “may” make use of a bank account – it is insufficient.
- ☑ It is required that the constitution states that upon dissolution any assets remaining after its liabilities have been met, must be transferred to another **non-profit organisation** having similar objectives. If the constitution only states to another ‘organisation’ – it is insufficient and will not be registered.
- ☑ The constitution must “set out the **rules for convening and conducting meetings**, including **quorums** required for and the **minutes** to be kept of those meetings”. Sometimes constitutions reflect the rules for meetings, but do not specify the quorum requirements or that minutes should be kept of meetings.

Please note: The section on **Optional Provisions for Registration** is voluntary and does not have to be completed.

Page 4:

6. Completing the section called **Additional Information Required** is voluntary, but if completed, it must reflect the correct information, i.e., date when the organisation was established, area of operation (geographical and sector) and if the organisation is affiliated to any other body or structure.
7. Completing the section called **Declaration by person submitting this application** is compulsory.

Please note: The person signing the form must have the authority to do so and should insert his or her name, capacity and signature and add the date.

Submitting the application:

8. The NPO Act requires that a NPO must submit a properly completed NPO Application Form and **two copies of its constitution**. The NPO Directorate may require any other information to determine whether or not the nonprofit organisation meets the requirements for registration.

Please note: Do not submit the original constitution, but **two copies**.

- ☒ It must be **signed** copies of the constitution, alternatively, if the constitution is unsigned the organisation must submit a resolution signed by an authorised member confirming that the constitution was adopted.
- ☒ The application containing the above documents should be send **per registered mail** to the NPO Directorate. Copies should be made of the complete set of documents that were sent to the NPO Directorate.



social development

Department:
Social Development
REPUBLIC OF SOUTH AFRICA

P.O.Box X901, Pretoria, 0001, 134 Pretoria Street, HSRC Building, Pretoria
Tel: (012) 312 7500, Fax: (012) 312 7684, e-mail: NPOEnquiry@socdev.gov.za

Annexure B

Enquiries: Directorate Nonprofit Organisations

NON-PROFIT ORGANISATION ANNUAL REPORTS

In terms of the Nonprofit Organisations Act, 1997(Act No,71 of 1997)

The accompanying guideline will help registered Non-profit organisation office bearers (Chief Executive Officers, or governing body Chairpersons, or both) prepare and submit their **annual narrative** and **financial reports** to the Department of Social Development's Non-profit organisation's Directorate.

These two reports will contain:

1. Narrative (written) Report:

This describes your organisation's activities over the previous twelve months, and includes the following sections:

Section A: Basic details about the organisation on the form provided.

Section B: The organisation's major achievements over the year, in response to the questions provided.

Section C: List of important meetings held by the organisation during the year, and details of any changes to your constitution.

2. Financial Report:

To be completed by a registered accounting officer or an auditor. (An accounting officer is a person who is registered in terms of section 60 of the Closed Corporations Act). The financial report includes the following sections:

Section A: The organisation's income and basic accounting details on the form provided.

Section B: A copy of your most recent Annual Financial Statements, which include a Balance Sheet and an Income and Expenditure Report.

- These two reports together tell the story of your organisation's activities, its income and expenditures for the past year. The reports must reach the Directorate within nine (9) months of your organisation's financial year end. We urge you to adhere to this timing. Please indicate any difficulty you may be having well in advance of the date.
- Please follow the headings on the forms when preparing your reports, and answer all the questions. You can choose to add further information on separate sheets of paper.
- Receipt of these reports will ensure that the name of your organisation remains on the Department's Non-profit Organisation Register. The Directorate has the powers to cancel your registration if you fail to comply.
- Registration may also be removed should the Directorate discover that you have issued false reports on either activities or finance.

We hope that the guidelines and the forms will assist you in submitting your annual reports. Please contact the office of the Directorate if you have any questions.

With best wishes for your organisation and its work.

Yours faithfully

Director: Non-profit Organisations

Narrative (written) Report on the past year's activities:

1. Section A: Basic details about the Organisation:

1.1 Organisation name:.....[ABC Development Organisation](#)

1.2 Non-profit Organisation Registration Number:.....[NPO 869 746](#)

1.3 The twelve-month period this Report covers:.....[March 2011 – February 2012](#)

1.4 Contact persons (Two office bearers nominated by the Organisation):

Contact person[Emily Dlamini](#)

Contact person's title in your organisation[Chairperson](#)

Telephone number ([012](#))[253 1378](#)

Fax number ([012](#))[253 2843](#)

Cell phone number[083 7690000](#)

E-mail addressemily@abcdevelopment.org.za

Another contact person is[Henry Beukes](#)

Contact person's title in your organisation[Secretary](#)

Telephone number ([012](#))[253.8743](#)

Fax number ([012](#))[253 2843](#)

Cell phone number[073 9080000](#)

1.5 Organisation's physical address:

.....
.....[96 Rose Street](#)

.....
.....[Brits](#)

.....
.....[0194](#)

Province[North West Province](#)

Postal code[0194](#)

1.6 Organisation's postal address (if different to 1.5):

.....

PO Box 980

.....

Brits

.....

.....

Province North West Province

Postal code 0194

1.7 Organisation's Office Bearers (Persons who hold positions of authority and responsibility within the Organisation. These are the members of your Governing Board or Controlling Committee.) If the form does not have enough spaces for all your office bearers please add the rest on a sheet of paper, and attach.

Name	Office bearer title	Work or home address	Postal address	Telephone (include dialing code)	ID Number	
Emily Dlamini	Chairperson	2 Apple Str. Brits	2 Apple Str. Brits	012 253 6538	790124 5290 08 2	
Henry Beukes	Secretary	5 Pear Str. Brits	5 Pear Str.Brits	012 253 2094	810921 5110 08 2	
Randall Mongalo	Vice-Secretary	9 Orange Str. Brits	9 Orange Str. Brits	012 253 4000	730616 0090 08 2	
Sipho Mose	Treasurer	2 Plum Str. Brits	2 Plum Str.Brits	012 253 6000	851005 5165 07 2	

NOTE: If any of the above Office Bearers are changed between this Report and the next Report please send the information to the Directorate, within one month of the change. This should contain information, as above, about each of the new Office Bearers.

- 1.8 **Fill in the following details on your organisation about each staff member's job title, whether they are female or male, their race group and the skills they have.**

➤ *If this table does not have enough space for all your staff, please make another one like this and add it to your report.*

Job title of staff member	Gender Female or male	Race Indian, Black, White, Asian
Mavis Sithole	Female	Black
Gwede Nobakada	Male	Black

- 1.9 **Basic skills or services of the Organisation: Broadly describe the service activities of the Organisation (i.e: nursing, counseling, monitoring, activism, managing, fundraising or community development):**

.....
Community Development
.....
.....
.....
.....

2. Section B: The Organisation's major achievements over the past year:

NOTE: Responses to the questions below must be given on separate sheets of paper.

- 2.1 List the Organisation's planned objectives set at the beginning of the past year (the measureable activities you planned to achieve);
- 2.2 Indicate which of the Objectives listed in 2.1 you achieved or partly achieved.
- 2.3 Explain how you achieved, or partly achieved, the Objectives indicated in 2.2. Try to keep your explanations to 100 words or less for each of the Objectives.
- 2.4 Give a general description of the ways in which beneficiaries (individuals/groups/communities/social or economic or environmental condition) benefited from your Organisation's programme, projects or services during the past year. Try to keep your description to 100 words or less.

3. Section C: List of important meetings held by the Organisation during the past year, and details of any changes to your Constitution.

NOTE: Responses to the headings below must be given on separate sheets of paper.

- 3.1 List the number of meetings your Organisation held during the past year. Use the following headings (if applicable):

1. What meetings of the kinds listed below (if applicable) did your organisation hold during the period of the report? And how many of each did you have?

Type of meeting	No of meetings held during the year	
Annual general meeting	One	
Special general meeting	One	
Management meeting	Four	
Board meeting	Four	
Executive meeting	Six	
Others (specify)		

- 3.2 Give the date of your Annual General Meeting – and indicate if this was held at the time stated in your Constitution or not. If not, give the reason for delay or advance.

13 May 2012. The AGM was held within the timeframe stipulated in the constitution.

3.3 If the Organisation held a Special General Meeting, or Meetings, during the past year, give a short explanation for this.

If your organisation did have special general meetings, please explain why you needed them. If you need more space to write, add an extra piece of paper to this report for it.

[The organisation held a special general meeting on 12 August 2012 to change its name.](#)

3.4 Did the Organisation make any change or changes to its Constitution during the past year:

YES/NO

YES

NOTE: If your answer is YES, please attach the following to your Report:

3.4.1 A copy of the resolution/s to change the Constitution; [See Copy of Resolution Attached](#)

3.4.2 A copy of the changed Constitution. [See Changed Constitution Attached.](#)

Financial Report – income and expenditures:

1. Section A: The Organisation's income and basic accounting details:

1.1 Accounting Officer's name: [Ms. June Andrews](#)

1.2 Accounting Officer's address (an outside individual or accounting company or auditor):

.....

[June Stewards Accounts Inc.](#)

.....

[122 Main Road](#)

.....

[Brits](#)

.....

Province [North West](#)

.....

Postal code [0194](#)

.....

1.3 Organisation's accounting policies (i.e. Are your accounts done monthly):

[The accounts are done bi-monthly.](#)

1.4 Has the attached Accounting Officer's report and annual statement of accounts been approved by your Organisation's Office Bearers? YES/NO [YES](#)

NOTE: The Directorate will only accept a report and financial statement that has been approved by your Office Bearers.

1.5 What % (percentage) of your total annual expenditure was spent on administration costs (i.e. salaries, rental, travel, water/lights, maintenance, insurances, stationery

etc):.....43%

1.6 Indicate your sources of income under the headings below(with a tick):

Kinds of funds:	
Donations:	X
Fees/membership:	
Sales of products or services:	
Gifts-in-kind (other than money):	X
General income (i.e. fundraising events)	X
Interest on investment:	

1.7 What %(percentage) of your annual income came from submitting project or grant proposals to corporates, foundations/trusts or foreign donors:.....70%

1.8 Who did you use to raise your income during the past year? (you can tick more than one box if you used more than one method):

Our fundraising was done by:	
Full-time staff member/s	
Part-time staff member/s	
Volunteer/s	X
Outside person/company for a fee or commission	
Other	

2. Section B: A copy of your most recent Annual Financial Statements, which include a Balance Sheet and an Income and Expenditure Report.

[See Attachment](#)

Attach your organisation's annual Balance Sheet and Income and Expenditure Report.