DRAFT NPO POLICY FRAMEWORK
ON THE AMENDMENTS OF THE
NONPROFIT ORGANISATIONS ACT
71 OF 1997

3rd March 2014
5th Draft, ver.1
Nonprofit Organisations Directorate
Contents

DEFINITIONS AND ABBREVIATIONS ................................................................. 3
EXECUTIVE SUMMARY ..................................................................................... 5
1. INTRODUCTION .......................................................................................... 8
2. THE PURPOSE ........................................................................................... 9
3. THE SCOPE ............................................................................................... 9
4. SITUATIONAL ANALYSIS ON THE NONPROFIT SECTOR ......................... 10
   4.1 The significant role of NPOs in South Africa ........................................... 10
   4.2 Composition and Size of the NPO sector ................................................ 11
5. THE HISTORICAL EVOLUTION OF THE NPO ACT .................................. 12
   5.1 The Apartheid era and the resistance period ............................................ 12
   5.2 The dawn of democracy ........................................................................ 13
   5.3 Constitutional democracy implications .................................................. 14
   5.4 The processes leading up to the NPO Act ............................................... 15
6. THE RATIONALE AND BASIS FOR THE REVIEW .................................... 17
   6.1 'One size fits all' approach ................................................................. 17
   6.2 Nonprofit sector governance practices .................................................. 18
   6.3 The inherent constraints of the NPO Directorate .................................... 19
   6.4 Enforcement and recourse ................................................................... 19
7. GENERAL PRINCIPLES ............................................................................ 20
   7.1 Protecting the fundamental Freedoms ................................................... 20
   7.2 Integrity and Good Governance ............................................................. 21
   7.3 Accountability and Transparency ......................................................... 21
8. ISSUES FOR CONSIDERATION ................................................................. 22
   8.1 Forming an NPO .................................................................................... 22
   8.2 Risk-based approach for monitoring compliance .................................... 24
   8.3 Engendering standards of good governance ......................................... 25
   8.4 Self-Regulation and Accountability ...................................................... 27
9. INSTITUTIONAL MECHANISMS ............................................................... 29
   9.1 The envisage National Directorate for Nonprofit Organisations ............. 29
      9.1.1 Registration of NPOs ...................................................................... 29
      9.1.2 Investigation and enforcement ....................................................... 31
      9.1.3 Awareness and education ............................................................... 31
      9.1.4 Public access to information .......................................................... 32
   9.2 The NPO Tribunal Function .................................................................. 33
   9.3 The new organisational form .................................................................. 33
10. CONCLUSION ........................................................................................... 34
**DEFINITIONS AND ABBREVIATIONS**

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Society Organisations:</td>
<td>Is the collective term used to describe all types of nonprofit organisations. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organisations such as registered charities, development non-governmental organisations, community groups, women's organisations, faith-based organisations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and advocacy groups.</td>
</tr>
<tr>
<td>Codes of Good Practices:</td>
<td>Is a set of rules outlining the responsibilities of or proper practices for an individual, party or organisation. These include &quot;Principles, values, standards, or rules of behavior that guide the decisions, procedures and systems of an organisation in a way that it contributes to the welfare of its key stakeholders, and that it respects the rights of all constituents affected by its operations.&quot;</td>
</tr>
<tr>
<td>Common Law</td>
<td>Is a kind of legal system where there are principles and rules of action and derives its authority from community customs and traditions. Common law is not just made by legislation. Instead, it is also made by courts through amongst others the precedent of earlier courts to help them make decisions.</td>
</tr>
<tr>
<td>Community based organisation (CBO):</td>
<td>Are non-profit agencies created by communities to address local needs. They are governed by volunteer governing bodies and staffed by volunteers and/or paid personnel. Some CBOs are also supported by volunteers. Many CBOs receive funding from a variety of sources, including grants, donations, fees, and fundraising, but government is the primary source of funding for most agencies.</td>
</tr>
<tr>
<td>Governance:</td>
<td>Establishment of policies, and continuous monitoring of their proper implementation, by the members of the governing body of an organisation. It includes the mechanisms required to balance the powers of the members (with the associated accountability), and their primary duty of enhancing the prosperity and viability of the organisation.</td>
</tr>
<tr>
<td>Governing Body:</td>
<td>The group of an NPO’s constituency representatives who are elected or invited to voluntarily serve as the constituted leadership of an NPO. The governing body can be given the title of, among others: Board, Board of Directors, Trustees, Council or Steering Committee.</td>
</tr>
<tr>
<td>Legal Framework:</td>
<td>Powers and limitations that arise from legislation and interpretation of laws, and which impel or restrain individual or organisational activities.</td>
</tr>
<tr>
<td>Non-governmental organisation (NGO):</td>
<td>Private sector, voluntary (usually non-profit and non-sectarian) organisation that contributes to, or participates in, cooperation projects, education, training or other humanitarian, progressive, or watchdog activities. In the context of South Africa these ordinarily are distinguished from the community based organisations by virtue of their organisational nature and formalisation (NGOs are more formalized, and well established as opposed to informal CBOs).</td>
</tr>
</tbody>
</table>
| Nonprofit company | Is a company incorporated for a public benefit or for a public good and, whose income and property are not distributable to its incorporators, members,
(NPC): directors, officers or persons related to any of them except as reasonable (ii) remuneration for goods or services rendered, (ii) payment of, or reimbursement for, expenses incurred to advance a stated object of the company; and (b) as a payment of an amount due and payable by the company in terms of a bona fide agreement between the company and that person or another; (c) as a payment in respect of any rights of that person, to the extent that such rights are administered by the company in order to advance a stated object of the company; or (d) in respect of any legal obligation binding on the company.

Nonprofit organisation (NPO): Is trust, a 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.

Office Bearers: A person designated to hold a position of authority and responsibility within an NPO. This can either be a director, trustee or person holding executive position, either as a full-time staff, part-time staff or as a volunteer.

Regulatory Framework: A system of regulations and the means to enforce them, usually established by a government to regulate a specific activity. In the case of NPOs, this refers to all regulations that have an influence on the NPOs.

Self-regulation: This can be understood as a response by the NPO sector itself to dealing with internal NGO challenges ranging from the question of the financial and broader sustainability of the NGO sector, to questions about good governance and the professionalisation of NPOs. NPO self-regulation can be understood at the structural level as emerging from the same structural shifts that gave rise to corporate self-regulation.

Statute Law: The body of law consisting of written laws adopted by a legislative body. Statute law is often contrasted with case law, which originates from decisions of the appellate courts; and with constitutional law, based on a country’s written constitution.

Trust: Is an arrangement, set out in a written document called the trust deed, in terms of which an owner (founder) hands over property and/or funds to a group of people called trustees who administer the assets for the benefit of other people (beneficiaries) for a stated objective.

Voluntary Association (VA): A voluntary association (VA) is created under common law by an agreement between three or more people to form an organisation to work together to achieve a common non-profit objective. This written agreement or founding document is called the constitution.
EXECUTIVE SUMMARY

The Department of Social Development ("DSD") has a mandate to administer the Nonprofit Organisations Act, 1997 (Act 71 of 1997) ("NPO Act") which provides for a facility for organisations to register as NPOs as part of the legal framework to regulate the NPO sector.

The current South African legal framework on NPOs is rooted in the fundamental rights as stated in the South African Constitution ("the constitution"). The right to freedom of religion, belief and opinion; as stated in section 15 of the Constitution and right to freedom of association as stated in section 18 of the constitution are essential for the civil society formations. The NPO Act is the entry point on the legal framework to regulate the NPO sector.

The NPO sector, also commonly referred as the third sector after the private and government sectors, is characterised by organisations of different sizes, shapes and scopes of operation across all development and social formations. It has been established that NPOs operate both in the formal and informal sectors of the country’s economy and that those in the informal sector are poorly resourced and less formally structured.

Many challenges have since emerged in the implementation process of the NPO Act. These include ‘one-size-fits-all’ approach and fragmentation of the current dispensation. Various stakeholders have been discussing these issues and have argued for a review of NPO Act in order to bring about a truly enabling environment within which the South African NPO sector can flourish. These issues were further deliberated upon during the Ministerial Provincial Dialogues that were concluded during the months of June-July 2012 in all the nine provinces and culminated in the holding of a National NPO Summit in August 2012. These discussions and issues raised necessitated the need to review the NPO Act in its current form.

This policy framework sets out a foundation for amending the NPO Act that provides a registration facility for nonprofit organisations in the Republic of South Africa. This Policy framework sets forth objectives that will ensure that the amendments to the NPO Act is reflective of the country’s adherence to the principles of a constitutional democracy that is underpinned by commitments to
a free, equal and open society within the socio-economic contexts of South Africa.

The amendments to the NPO Act will aspire to promote transparency and accountability within the NPO sector without placing onerous requirements on organisations. A risk-based approach in managing the compliance requirements for registered nonprofit organisations will be appropriate without compromising the required standards of governance for NPOs. The current ‘one-size fit all’ approach is inappropriate for the diverse nature of the South African NPO sector. There is a need to encourage self-regulation amongst organisations to further increase the levels of accountability and transparency within the NPO sector. It will, therefore, be imperative to strike a balance between the mandatory regulatory provisions on the one hand and the self-regulation requirements on the other so as to preserve the soundness and integrity of the NPO sector.

To make this possible, a new institutional arrangement for government to provide an efficient registration facility and an effective oversight function is proposed to match the world class standards on regulating the nonprofit sector. The mandate will still be to encourage the formation of NPOs and to ensure greater transparency and public confidence in the NPO sector. The role and function will therefore be to continue to provide an efficient registration function for NPOs, awareness raising and information sharing and dissemination on registered NPOs. This function will also be capacitated to provide, on a regular basis, analytical information on registered NPOs to ensure enhancement of their public profiles and standing in the public eyes.

As the first step towards building government capacity to improve on the institutional arrangements, the NPO Directorate can be transform into an efficient, sustainable and service oriented institution of government. The Public Service Amendment Act 30 of 2007, particular section 10 makes provision a specialised direct public service on a larger scale through a focussed and fully ring-fenced entity that still remains within the areas of responsibility of and reports to the responsible Minister. This will allow greater flexibility to deliver an efficient regulatory oversight services to NPOs with appropriate government accountability arrangements within the same Budget Vote of DSD. A feasibility study that will culminate into a business case on the motivation for such a
government component will be conducted to satisfy the requirements of the Public Service Act and its subsequent regulations.

A fundamental transformation of the systems, processes and organisational orientation will be necessary and the needed steps will be taken to ensure that the institutional framework envisaged in this policy framework is fully operational when the law comes into effect.
1. INTRODUCTION

South African nonprofit organisation sector is characterised by variety of organisations of different sizes and shapes across the political, economic and social spectra of society. These organisations range from faith and community based organisations, welfare (charities), other social and sport clubs, to traditional organisations and a host of other development and social forms of organisations working tirelessly on the social fabric of society. The NPO sector is also commonly referred as the third sector after the private and government sectors.

There is no doubt that NPOs have profoundly influenced the emergence, shape and nature of our modern South African democratic society. South Africa is a highly unequal society where there are gross disparities of income and wealth. In an endeavour to address these disparities NPOs represent an important mechanism for encouraging philanthropy and promoting greater equity and implementing empowerment programmes.

In recognising this important role that NPOs play, the South African government enacted the NPO Act, as part of the legal framework to create an enabling environment for the NPOs sector. The NPO Act was conceived as part of the project to transform society and was a result of a lengthy process of legislative reform initiated by civil society and negotiated with government. The NPO Act mandates the DSD to create an administrative and regulatory framework within which NPOs can conduct their affairs by providing a voluntary registration facility.

Many challenges have since emerged in the implementation process of the NPO Act. Various stakeholders have been discussing a number of pertinent issues that relate to the legal framework of NPOs. Some of these discussions include the Ministerial Provincial Dialogues that were concluded during the months of June-July 2012 in all the nine provinces which culminated into the National Summit of August 2012. These discussions and issues raised necessitated the need to review the NPO Act in its current form.

This Policy Framework sets out the foundation to review NPO Act. Although the intention is to engage in a comprehensive review of the NPO Act, it is not the aim of government to simply write unreasonably stringent measures that will hamper the growth of the NPO sector. The objective of the review is to ensure
that the new regulatory framework is appropriate to the legal and socio-economic contexts of South Africa. Where the NPO Act meets these objectives, it should be retained as part of the legal framework.

This policy framework intends to make the case for reform, set out a clear purpose and scope for the review of the NPO Act. It then applies that defined purpose, and scope to identify and describe the principal areas of the NPO legal framework based on the current contextual realities of South African NPO sector. The issues raised in this discussion document should be carefully considered and be subjected to a public debate and scrutiny.

2. THE PURPOSE
The purpose of this Policy document is to review the NPO Act so as to enhance the legal framework on NPOs based on the principles reflected in the Constitution and provisions of the existing statutes affecting NPOs. Due considerations will be given to existing statutes and other common law provisions associated with the establishment of an entity within the NPO sector.

3. THE SCOPE
The scope of this Policy Framework is to identify the fundamental rules for registering and reporting requirements of NPOs. It will also consider the relationship between the existing NPO Act and other statutory measures for the protection of the interests of beneficiaries, the donor community, employees, and other stakeholders.

The review will also address the institutional requirements to ensure simplicity; effectiveness and consistent enforcement by clarifying the roles and responsibilities of different agencies and other role-players within the legal framework for NPOs.

It will be imperative for voluntary associations (VAs), Nonprofit Companies ("NPC") and Trusts to be subjected to the same rules regarding formation, governance and reporting requirements in order to circumvent any legal loopholes that will undermine the principles of public beneficiation and disclosure. This will further create greater equality within the NPO sector and will also promote public confidence in the sector.
This review will be broadly consultative to allay fears on the part of the NPO sector of unnecessary reforms that would create uncertainties within the sector. Careful consideration will be given to developments within the NPO sector and other international best practice with the possibilities of adapting these to the South African context.

4. **SITUATIONAL ANALYSIS ON THE NONPROFIT SECTOR**

South African NPO sector is characterised by variety of organisations of different structure and sizes across the socio-political and economic spectra of society. These organisations range from faith and community based organisations, charities (welfare), to traditional organisations like social and sport clubs and a host of other development and social forms of organisations working tirelessly on the social fabric of society. These types of organisations are known by different names such as civil society organisation ("CSO"), non-governmental organisation ("NGO"), community based organisation ("CBO") and faith based organisations ("FBO"). The diversity of the NPO sector reflects the complexities of current South African society.

4.1 **The significant role of NPOs in South Africa**

NPOs in South Africa contribute significantly to the social, economic and political development of the country as they often play an intermediary role within society and have the ability to provide particular goods and services where markets have failed or where government falls short. These services and activities range from providing direct services to poor individuals and communities, advocacy, research and policy analysis to support work such as capacity building, technical assistance and funding to communities.

The existence of NPOs personifies the rights to freedoms of association; expression and assembly as articulated in the Constitution by enabling individuals to participate in community groups. The South African Constitution is the cornerstone of our democracy. It enshrines citizens' rights in the country and affirms the democratic values of human dignity, equality and freedom. These rights are not only applicable to natural persons, but also to juristic persons and as such have fundamental implications on the legal framework for NPOs.
The Reconstruction and Development Programme White Paper acknowledges the important role played by the NPOs and articulates the keystone of the current policy debates on the role of NPOs, and it stated that ‘...These social movements and CBOs are a major asset in the effort to democratise and develop our society. Attention must be given to enhancing the capacity of such formations to adapt to partially changed roles. Attention must also be given to extending social movement and CBO structure into areas and sectors where they are weak or non-existent... Numerous non-profit non-governmental organisations (NGOs) are also developing in South Africa and many of these NGOs play an important capacity-building role in regard to CBOs and the development process. NGOs are also engaged in service delivery, mobilisation, advocacy, planning, lobbying and financing. Thus NGOs have an important future role in the democratisation of our society. However, NGOs must also adopt transparent processes, and operate in a manner that responds, with accountability and democracy, to the communities they serve.”

Recently government’s Ten Year Review Report has further emphasised the important role of the NPOs in building social fabric of communities in that stable community organisations facilitate an environment for increasing service delivery as well as improving market performance and economic growth.

There is indeed evidence that the economy flourishes best where there is pluralism, social stability, public trust of institutions and respect for the rule of law. The NPO sector encourages all these factors, thus providing significant support for the growth and sustenance of the market economy in South Africa. The NPO Act enhances the ability of NPOs to contribute to the above factors. It permits individuals and groups to come together to fill the gaps created by market failures.

4.2 Composition and Size of the NPO sector

Over a period of time, South Africa has witnessed an increasing number of organisations that sought registration under the NPO Act. The number of
registered NPOs has grown from 76 757 by the end of March 2011 to almost 85 248 by end of March 2012, representing a growth of more than 11% per annum.

More than 80% of the total number of registered NPOs can be classified as voluntary associations. Social services organisations constitute the highest ratio at 34% of registered NPOs, followed by community development and housing and health and education with at 21% and 11%, respectively.

In terms of its contribution to the fiscal, in 2007 the total income of the NPOs was estimated to be R12, 5 billion to which the South African government contributed a substantial amount in the form of subsidies and other forms of grants, followed by the private sector through its corporate social investment programmes. Other forms of funding sources were derived from investments, membership fees and sales for services and goods and other forms of philanthropic giving.

Research indicates that NPOs operate both in the formal and informal sector of the country’s economy. The formal sector being more advanced, sophisticated, skilled labour based economy and the informal being the marginalized, unskilled labour based economy. The better resourced and organised NPOs that operate in the formal economy sector are usually referred to as NGOs and have all the attributes associated with this economy. Other NPOs that operate in the informal sector are poorly resourced and less formally structured. These NPOs have similar characteristics of the formal sector.

5. THE HISTORICAL EVOLUTION OF THE NPO ACT

This overview provides a historical perspective on the evolution of South African NPO sector and its legal framework. It identifies important historical factors that had influenced the development of the NPO Act.

5.1 The Apartheid era and the resistance period

The historical role of civil society organisations in South Africa is well documented particularly that of the NPO sector as it emerged from our country’s divisive history. Organisations were equally divided during the
apartheid era. There were organisations which actively supported the apartheid state with all its apparatus. On the other hand, there were also those organisations which were actively involved in the struggle against apartheid and were part of the resistance movement.

It was during the apartheid resistance era, especially during the 1970-1980s, that South Africa witnessed both the proliferation and the flourishing of the NPO sector. Most organisations, both NGOs and CBOs, were financially supported from both local and international funding agencies. These organisations sought to mobilise communities that reflected a spontaneous but coherent cooperation among students, youth, women, workers and political organisations with a two pronged objective of undermining apartheid while working for change as part of the development agenda.

There were also those organisations created by the apartheid government that sought to undermine the struggle and maintain the status quo. These organisations were the ones that benefitted in the main from government. The NPO sector is, therefore, very diverse reflecting both the historical patterns of our country including the racial demographics in terms of geographical locations.

5.2 The dawn of democracy

With the beginning of the political transition during the 1990s, most NPOs began to re-assess their organisations' mission and activities in light of the expected changes of the political environment and a potential transition to democracy. It was during this period that NPOs initiated a number of capacity building projects to be 'ready for governing' and exploring alternative roles in supporting a new political dispensation. Many foreign governments and other international donor agencies supported financially this new direction of civil society with the hope that a new democratic government will continue this trend.

However, it soon became clear that there are insufficient resources available to immediately satisfy everyone. Therefore, difficult decisions had to be made regarding trade-offs amongst various constituencies. It
was during this era that the broader NPO sector experienced a ‘brain drain’ and was somehow weakened as a competent cadre of leadership joined the new government. Furthermore, most international funding agencies withdrew from the country or redirected their funding elsewhere.

Despite this contradictory role and nature of civil society, the new government maintained its commitment to the course of the sector and recognised the central role of the NPO sector through the policy that were developed in providing an environment in which the NPO sector could still flourish. This resulted into the establishment of a more user-friendly administrative and regulatory framework within which the NPO sector could conduct its affairs.

The legal environment for the NPO sector has, therefore, fundamentally changed since the new democratic dispensation. Major apartheid era deficiencies in the legal framework for NPOs have since diminished. The mandatory registration for fundraising purposes and the limited tax benefits that few organisations accessed and the failure to recognise the legal existence of voluntary associations (“VA”) whose objectives in many instances were declared unlawful have since disappeared with apartheid.

5.3 Constitutional democracy implications

The creation of an enabling legal framework for NPOs that was identified as a priority in the early nineties and various other initiatives to promote reform have yielded satisfactory results to the extent that the NPO Act is rooted in the fundamental rights as stated in the Constitution.

The rights to freedom of religion, belief, opinion and association as contained in the Bills of Rights are essential for the formation of NPOs. This means that everyone has the right to associate with other people and form organisations and express themselves in whatever way they choose provided that this is done in compliance with existing laws and it does not infringe upon other people’s rights.

The NPO Act is therefore based on these fundamental principles of the Bills of Rights and serves three purpose mainly:
it enables organisations to establish themselves as legal entities;

it regulates the way in which such legal entities operate. Part of this includes the registration of an organisation with the NPO Directorate in the DSD and;

it provides tax and other incentives for the sector to financially and otherwise sustain itself. This compares fairly well with international best practices and accepted norms and standards for regulating the nonprofit sector.

The NPOs can pursue three different options to become a legal entity within the current legal framework, namely:- Voluntary Associations; Trusts and incorporated NPO companies. The NPO Act is the entry point in the regulatory framework for NPOs to derive benefits from the enabling environment as it provides a registration facility for all these NPO entities\(^5\).


5.4 The processes leading up to the NPO Act

The NPO Act was promulgated on 3 December 1997 and the first NPO was registered on 1 September 1998. The objectives of the Act is to create an enabling environment that would allow NPOs to maintain adequate standards of governance, transparency and public accountability, while at the same time enjoying a wide degree of freedom and autonomy.

The NPO Act repealed all of the provisions of the Fundraising Act, 1978 (107 of 1978) (“Fund-raising Act”) that constrained the activities of organisations except chapter two thereof. The initiative of the enabling environment for civil society organisations goes back to 1992 when a group of prominent people from the NPO and business sectors, undertook

\(^5\) in terms of section 2 (a) of the NPO Act, a nonprofit organization is defined as a trust, company or other association of persons: (a) established for a public purpose; and (b) the income and property of which are not distributable to its members or office bearers except as reasonable compensation for service rendered.
a study of several policy areas affecting NPOs in South Africa which led to a draft *Discussion Document towards a Nonprofit Organisations Bill*. This discussion document culminated into a NGO Week of December 1996 that discussed the enabling environment for the NPO sector. The gaps and challenges identified by the NGO sector in the mid-1990s formed the basis for a series of discussions and attempts to formulate policy principles regarding the NPO sector and the environment within which it operated.

Following this NGO Week, a workshop with regional and international representatives of NGO coalitions from other African countries was held and the following four principles emerged to inform the notion of an enabling environment:

- A legal framework on NPOs should promote the independence of civil society, not control it;
- The regulatory framework on NPOs should allow government intervention only when absolutely necessary;
- The law on NPOs should promote accountability of organisations without placing on them undue burdens; and
- The law should be simple and user-friendly.

It transpired from this approach that the majority of people in the NPO sector interpreted the concept of an enabling environment back then- and arguable to date as giving organisations as much freedom to operate as possible, with minimal government interventions and ensuring some accountability to their constituencies. The purpose was to remove the remaining restrictive apartheid laws rather than for the government to control the NPO sector. It is for these reasons that the NPO Act repealed the Fundraising Act emphasising the importance of creating an enabling environment for NPOs.

Post 1994, the NPO sector enjoyed an increasing level of freedom and self-determination following the removal of restrictive environment of the apartheid years. The NPO sector has been afforded the opportunity by

---

government to engage with and influence national and provincial policies, and to shape the way service delivery has been implemented.

6. THE RATIONALE AND BASIS FOR THE REVIEW

In January 2005, the Department of Social Development concluded a study on ‘An Impact Assessment of the Nonprofit Organisations Act 71 of 1997’ which identified number of challenges within the NPO Act and it made specific recommendations7. In 2010, a study on NPO governance re-iterated the need for the review of the NPO Act8.

Some of the challenges emerging from these studies relate to the difficulties of monitoring an increasing number of NPOs, while attempting to ensure that public funds are well accounted for and public confidence is inspired to further support the NPO sector. Other challenges relate to the role of the NPO Directorate, as the regulator, to manage an efficient regulatory framework that promotes accountability and transparency and enhances standards of good governance within the NPO sector.

These challenges and factors identified below, further amplify the need to review the NPO Act.

6.1 ‘One size fits all’ approach

The Impact Assessment Research indicates that there is a clear problem with a ‘one size fits all’ approach inherent in the legal framework for NPOs as the lack of recognition given to different categories of NPOs affect them in different ways.

Larger and better resourced NPOs are more likely to benefit maximally from the enabling environment because they have the capacity to comply with the regulatory requirements. Small and emergent community based organisations on the other hand, are often unable to meet the minimum standards as they found them to be onerous and not necessarily within their current capacity to comply with. This point is somewhat reflected in the low levels of compliance rate of CBOs to submit annual reports as per the requirements of the NPO Act.

---

A general lack of management was identified as a likely cause of the smaller and emerging CBOs' inability to comply. There will, therefore, be a need for the regulatory framework to differentiate between the different categories of NPOs and to align standards and the regulation regiment accordingly.

For larger organisations that have registered as NPC or Trusts, the NPOs registration is viewed as an additional burden, which sets in place lower- or inconsistent- standards than those to which they currently comply. NPC and Trusts that have also registered under the NPO Act must concurrently comply with the respective laws in terms of which they have been registered as well as the NPO Act.

Furthermore, in some instances, an organisation may often have to comply with three different regulatory bodies that require different kinds of information, as is the case where the organisation is also registered as a PBO under the taxation law. Organisations then have to amend their founding documents and reporting requirements accordingly.

In effect, the current regulatory environment may lead to inevitable variances in the perceived status of NPOs, and over time, undermine the status accorded to these legal entities. In addition, the lack of integration between the different regulatory authorities leads to unnecessary duplication of government resources.

6.2 Nonprofit sector governance practices

There are different requirements for the minimum number of people that can constitute the governance of an organisation. For VAs, there is no limit to the number of people who would assume the fiduciary duties of the organisation. There is therefore a need for setting a minimum number of office bearers that should be consistent with existing statute requirements for establishing and incorporating an organisation as a legal entity.

It will be an important part of the review on the current NPO Act to ensure that NPOs are more transparent by improving public accountability on the governance of the organisations. Office bearers must be held accountable of their decision if they are deemed to be contrary to good governance
practices. Emphasis must be placed on the need for disclosure of the information if it is required.

6.3 The inherent constraints of the NPO Directorate
The implementation function of the current NPO Act is the responsibility of a Directorate within DSD that does not have the requisite capacity to discharge this function effectively, despite it being given a statutory mandate to regulate the NPO sector. This is severely hampering its effectiveness on the NPO sector.

Since the enactment of the NPO Act, the Directorate has witnessed an increased number of organisations that apply for registration as NPOs, yet personnel capacity has remained constant and not matching the demand. This has a ripple effect on the Directorate's ability to monitor the compliance of registered NPOs. The limited financial resources made available to the Directorate put constraints on the extent of the impact of the NPO Act on the NPO sector.

A recent work-study concluded that for the Directorate to improve its regulatory function, it will need to increase its current capacity by almost 42% to meet this increasing demand for registering NPOs and the accompanying monitoring function. It is apparent that the likelihood of achieving this within the DSD's current institutional arrangement is very limited.

6.4 Enforcement and recourse
The NPO Act provides effective mechanisms to enforce noncompliance. Where an organisation fails to report as provided for in the NPO Act, the organisation is served with a month's notice to comply. If the organisation still fails to submit the necessary reports or submit false information, its registration status is cancelled.

In the event where funds are misappropriation and fraud is committed, ordinary criminal law principles are applicable. The enforcement of misconduct of office bearers is therefore dependable on the judiciary.
7. GENERAL PRINCIPLES

Principles are interrelated and interdependent and must be holistically considered in their applications. This policy framework is underpinned by a set of key principles and any new development on the legal framework should adhere to these principles as explained below.

7.1 Protecting the fundamental Freedoms

Freedom of expression, association and assembly as contained in the Constitution accords these rights to person or any group to establish an organisation without any hindrance and other burdens. The amendments of the NPO Act should therefore made it easier and inexpensive for all persons (natural and legal) to establish a NPO and to have it legally recognised.

The NPO sector is a vital means of harnessing voluntary resources in the provision of assistance to those in need and it fulfils a range of positive social, cultural, religious, educational and other public benefits purposes. The focus of the NPO sector on development factors, gives expression to the fundamental rights such as the right to dignity, health, education and others. To be able to do these, the principle of freedom of association, should inform the amendments to the NPO Act.

The registration of NPOs should be subjected to an administrative review process that will ensure fairness and transparency. A register of registered NPOs must be available to the public to further enhance public confidence. Termination of registration status of a NPO must follow acceptable due processes where the organisation is afforded an opportunity to correct and rectify its actions. The cancellation of an NPO's status should also be subjected to administrative review process by an independent body.

The primary policy objectives to amend the NPO Act must thus emphasise the need to balance oversight with possible threats to freedom of association as a civic liberty right. This would be done by strengthening and supporting the NPO sector, building its capacity and protecting it from abuse with minimum disruption to its many positive contributions. In this way, the NPO Act should be amended to preserve
and encourage the dynamism of the sector while mitigating the vulnerability of the sector to abuse.

7.2 Integrity and Good Governance
The NPO Act must be amended to require certain minimum provisions necessary for the operation and governance of an organisation and these must be laid down in a governing/ founding document of a NPO. An NPO must also have the discretion to change its governance structure and operations within the limits of the law.

The amendments of the NPO Act must also provide for office bearers of NPOs to execute their responsibilities with due care and diligence. Office bearers and other persons involved in an NPO must avoid any actual or potential conflict between their personal interests and the interest of the organisation. No earnings/profits or assets of an NPO must be distributed to any person other than an another than to another NPO involved in similar work nor should the assets/earnings of the NPO be used for any personal benefits, directly or indirectly by any person involved in the NPO.

Although basic standards of conduct will be required of all NPOs, organisations will be permitted and encouraged to set higher standards through self-regulation mechanisms. NPCs must abide by norms of good governance to improve their own transparency and accountability capabilities. Efforts and measures to reduce the risk of fraud and corruption must be encouraged at all times.

7.3 Accountability and Transparency
One of the most significant regulatory needs is to ensure transparency and accountability on the part of NPOs. Transparency maintains public trust in individual organisations as well as in the sector as a whole. The amendment of the NPO Act must, therefore, encourage NPOs to produce regular reports that are readily available to the public.

The reporting requirements should, however, be made simple to complete and must also be uniformly applicable to all other regulatory bodies. The reports should, at least, contain the NPO financial and operational activities and be submitted on an annual basis. Reporting
requirements must ensure that NPOs are using fundraised money for the purpose for which it was raised. The NPO with significant public benefit activities and/or support should be required to publish or otherwise make available a report of its general finances and activities to the broader public.

8. ISSUES FOR CONSIDERATION

It should be noted that it is not only a responsibility of the state to create an enabling environment for NPOs to flourish. The private sector, the donor community and other stakeholders including the NPO sector itself, have equally an important role to play in creating an enabling environment for NPOs.

Government's commitment in creating an enabling legal environment for a healthy and vibrant NPO sector requires respect to the rule of law and commitment to basic democratic processes. A well-designed legal framework for NPOs requires reasonable balances between the privileges NPOs are accorded and the responsibilities they are expected to exercise.

It will, therefore, be imperative for the NPO Act amendments to identify the fundamental rules governing the procedures for the formation of NPOs and their public benefit focus; their governance, and office bearers and the reporting requirements in the context of encouraging NPOs to continue their own efforts of building a credible self-regulatory dispensation.

The issues discussed below will be incorporated into the amendments of the NPO Act and due consideration will also be given to the principles as previously mentioned.

8.1 Forming an NPO

The right to form an organisation is a fundamental right that is enshrined in the Constitution. The right to freedom of religion, belief and opinion; and freedom of association as contained in the Constitution are essential for the formation of NPOs. This means that everyone has the right to associate with other people and form organisations and to express themselves in whatever way they choose provided that this is done within the law.
Based on these fundamental principles of the Constitution, the current legal framework for NPOs serves to provide a registration facility for organisations to incorporate and acquire legal personality *legal status*. This legal personality protects members of such an organisation from personal liabilities arising from activities of such an organisation and allows an NPO to enter into contracts, incur debt, sue and be sued, and to engage in other transactions in its name.

The current legal framework provides an organisation such *legal status* and it encourages the formation of organisations of different sizes in society. This is important, since NPOs in South Africa play a critical role in societal change and stability that is vital for our functioning democracy. Individuals should be accorded the protection of personal liability if they want to form an NPO for public benefit purposes.

The mandatory provisions within the legislation that organisations should comply with must, therefore, be retained and in addition, optional and voluntary requirements should be allowed in the event where the mandatory provision is inadequate. There is also be a need to establish the minimum number of office bearers required to constitute the governance structure of an NPO. This minimum number of office bearers' requirement must be consistent with existing provisions of other legislations affecting the NPO sector.

It is intended in the review of the current legislation to simplify the registration requirements so that ordinary persons can form and register a NPO. Key to this intention is the establishment of the minimum number of office bearers required for constituting the governance structure of a nonprofit organisation. In attempting to simplify formation procedures, the new legislation should take cognisance of the fact that one other key function of registering an organisation, as a NPO, is to permit other regulators within government, including the taxation services, to have sufficient information to enable them to perform their tasks.

It is, therefore, proposed that the process of registering a NPO should be automated as far as possible; the entire process should be an electronic filing system. In order to create a simple and easier registration process, only the essential information must be required. The process of updating
this information should be as simple as possible to reduce the burden on the organisation, and also to ensure that stakeholders, particularly donors and funders, have sufficient information about the organisation to assess the risk of working with the organisation.

The regulation of foreign organisations that have established a presence in South Africa requires special consideration. A simple process that allows foreign organisations to be registered and maintained in South Africa must be developed. For purposes of recourse in cases of misconduct and winding up, particularly with respect to liabilities for debts, the duties and fiduciary responsibilities of its office bearers and inter group transactions must be concluded in South Africa. Foreign NPOs must equally be subjected to the same requirements and obligations as that of any registered NPO. However, registration of foreign NPOs must be compulsory considering the risk of money laundering and financing of terrorist activities.

Finally, it is important to recognise that NPOs vary in size, scope and income levels. These attributes provide an adequate basis for differentiation. Therefore, a risk-based and proportionate approach will be appropriate when dealing with NPOs where their assets, services, beneficiaries or reputation are at risk of serious abuse or damage.

8.2 Risk-based approach for monitoring compliance

The NPO sector is diverse and organisations take different legal forms. Uniform compliance standards will, therefore, be difficult to implement as there can be no ‘one-size-fits-all’ approach to regulating the nonprofit sector given its diversity. Different types of NPOs present different regulatory challenges. These factors underscore the importance of implementing a risk-based approach in regulating the NPO sector that is appropriate to the organisation’s risk profile.

The risk profile should be commensurate with the size and income levels of the organisations. The larger the size and the higher the income levels of the organisations are the more vulnerable and at risk the organisations can be. Specific risk assessment tools will have to be developed to ascertain the levels of risk and to determine the proportionate information required of the organisation to submit as part of the compliance
requirements of the legislation. This information should be made available to the public to further strengthen public trust and confidence in the NPO sector.

The risk assessment tools may use different criteria, such as whether the organisation is involved in raising and distributing funds, the amount of money involved, the geographical locations of its activities, and the track record of any partner or beneficiary organisations and their officers. This risk and proportionate framework will guice the compliance requirement which should be able to explain the regulatory compliance work when dealing with NPOs whose assets, services, beneficiaries or reputation are at risk of serious abuse or damage.

### 8.3 Engendering standards of good governance

There are common threads that sustain the NPO sector despite the diversity and heterogeneous nature of this sector. One of such threads is the desire to ensure excellence in the sector, through improved governance processes that strengthen transparency and accountability. The NPO sector has acknowledged that the leadership of an organisation has a responsibility to foster an organisational culture and practice that is consistent with the prevailing values and mission of the organisation as well as with generally acceptable sound practices. The ethical behaviour of any leadership of an organisation is a critical aspect of its ability to retain and inspire public trust.

NPOs are increasingly realising the importance of good governance as an organisational imperative. The amendments to the NPO Act should, therefore, continue to engender these standards of leadership and good governance within the NPO sector.

The basic responsibility of any governing body or board is taking legal responsibility for the organisation. This includes the fiduciary responsibility that recognises a duty to act for the good of others and to ensure that the organisation has sufficient resources to carry on with its activities. At a practical level, the governing body or board of an organisation has an obligation to provide financial, legal and ethical oversight; and programme activities oversight to the organisation.
Good governance engenders these virtues and is made up of sound principles and practices that are essential to the effectiveness, success and long-term sustainability of NPOs. The governing body or board of any organisation needs to be guided by a set of key good governance principles.

The following principles, all informed by the principle of equality, provide a framework for governance bodies or boards of organisations to focus on good governance.

- **NPO must be led and controlled by an effective governing body which collectively ensures that the organisation meets its objectives and uphold its values.**

- **The members of the governing body must collectively be responsible and accountable for ensuring and monitoring that the organisation is performing well and complies with all its obligations.**

- **The governing body must have clear responsibilities and functions. The governing body should organise itself to discharge its responsibilities and functions effectively.**

- **The governing body must periodically review its own performance and the overall effectiveness of the organisation and take any necessary steps to ensure that continuation of work is improved.**

- **The governing body and individual members must maintain the highest ethical standards- and ensure that conflicts of interest are properly dealt with.**

- **The governing body must be open, responsive and accountable to the beneficiaries, members, partners of an NPO and others with an interest in the work of an NPO.**

- **The governing body must give everyone in the organisation an opportunity to input into the affairs of the organisation, i.e. in the form of leadership change and content contribution.**

- **The governing body must strive to promote higher standards of good governance and acceptable practices.**
These principles are pragmatic enough to be implemented by a variety of organisations and are also flexible to allow each organisation’s governing body and management to adapt them to the dictates of organisation’s mission and scope.

The office bearers of a NPO bear the ultimate responsibility for the effective and efficient management of the organisation through its governing body. It is the duty of the office bearers to maintain high standards of governance in accordance with the organisation’s founding document and other related policies.

8.4 Self-Regulation and Accountability

Despite the diversity and heterogeneous nature of the NPO sector, there are indeed common threads that sustain the NPO organisations. An increased level of scrutiny, and complexity of questions being asked of the sector have resulted in the development of a range of different accountability mechanisms and tools designed to strengthen operational capacity, management structures, performance measurements, accounting practices and delivery systems. These efforts have inspired the desire within the NPO sector to ensure excellence in the sector, through improved governance processes that strengthen transparency and accountability.

One of the international benchmarked prominent means of strengthening accountability and transparency is through the NPO sector’s self-regulation efforts expressed in codes of conduct, codes ethics and good practices and other certification schemes. The emergence of fraudulent NPOs that have no legitimate purpose other than to take advantage of the foreign funds available for NPOs undertaking development work can be directly linked to lack of self-regulation in the NPO sector. Without some form of regulation, confidence in the NPO sector will diminish, particularly as a result of the abuse of funds and the emergence of fly-by-night NGOs and Briefcase NGOs (BRINGOs).

Regulation in the sector must ensure that there is accountability to donors and their beneficiaries who they provide services to or on whose behalf they speak. Self-regulation, therefore, enables the NPO sector to retain public trust and confidence, which is the cornerstone of the existence of
NPO, their relationship and image. NPOs are more trusted than any other actor in society because of the values they espouse. Any actions or criticisms that undermine this base can have a significant impact on the ability of NPOs to carry out their activities.

In the context of the prevailing good governance discourse, it is important to have a sense of the factors and developments that are driving initiatives around self-regulation of the NPO sector. While some NPOs are addressing the issues of accountability individually through their own effort of self-regulation, many are also tackling it collectively through networks and other coalitions. A growing number of networking and coalition organisations are attempting to develop a set of common norms and standards to which they will hold themselves and their member organisations accountable. These efforts of the NPO sector to demonstrate good governance and care should be recognised as peer group pressure and moral persuasion can be effective tools in promoting a culture of transparency.

There is however, a need to strike a balance between the mandatory regulatory provisions and the self-regulation requirements to preserve the soundness and integrity of the NPO sector. This will not only ensure that NPOs maintain high levels of accountability and transparency to inspire greater public confidence and trust, but will also afford organisations the support they need to pursue their various missions and the flexibility to adapt to the changing needs of society. The principles of good governance are significant in this area for standards setting and the self-regulation can afford such an opportunity.

Therefore, the initiatives of the NPO sector on improving its self-regulation mechanisms should be encouraged and the mandatory regulatory framework should be able to make provision for co-existence with a self-regulatory dispensation within the NPO sector.
9. INSTITUTIONAL MECHANISMS

The primary objective of the amended NPO Act will be to ensure that through a proper system, it encourages good governance, disclosure and accountability within the nonprofit sector. The review on the institutional arrangements should consider this objective.

It is important to review the administration and regulatory mechanisms to ensure that:

- a world class NPO sector is promoted;
- regulatory obligations are effective and efficient; and
- the administration, infrastructure, systems and procedures facilitate and ensure compliance with the legal framework.

Equally important within the NPO legal framework is an ombudsman function that will assume the responsibility of a trusted intermediary role between the regulatory authority and the NPO sector. This function is assumed by the Arbitration Tribunal working in concert with the sector and the regulatory authority.

The institutional arrangement consists of the NPOs registration facility function and an arbitration panel. These institutions are further explained below.

9.1 The envisage National Directorate for Nonprofit Organisations

The proposed new National Directorate for NPOs will have a mandate to encourage the formation of nonprofit organisations and their accountability through an efficient and effective registration facility that will create greater transparency and public confidence in the nonprofit sector. This mandate will be met through an efficient registration function for NPOs that will have a national footprint. This function will incorporate elements of education and awareness and dissemination of information on nonprofit organisations.

9.1.1 Registration of NPOs

The vision for NPOs and the maintenance of that registration is to ensure an efficient service that is effective and imposes minimal constraints on the nonprofit sector and its donor community. The nonprofit registration service will have to be transformed into an
efficient electronic registration service with expedited turnaround times. It will also allow NPOs to register or to update information through direct web online access.

Transitional arrangements will however have to be considered to ensure that this transformation does not cause undue disruptions to the organisations and to the internal processes. To this end, the new dispensation will have to also allow for paper based system for those organisations that cannot access the electronic system. This is more critical to ensure equitable access to all our client organisations without discriminations.

Access to registration services will need to be facilitated geographically, to ensure that all South Africans, even those in remote areas, are able to access the service. Additional services will need to be provided to those South Africans who are not computer literate or do not have access to the internet. A network of partners will be considered, which could include provincial department offices and civil society networking organisations to ensure easy access on a national basis. In addition, electronic searches of NPO names and other information will be available to expedite the service. Services will continue to be provided on a non-payment basis to encourage access to a diverse group of people, ranging from the lower to higher end of the market.

Many of these transformation imperatives are already underway in the NPO Directorate. It will, however, require further emphasis on the transformation of NPO Directorate from a people intensive function to a largely systems oriented institution that can provide acceptable quality service to the NPO sector and the broader public that is in line with best international practices.

In addition to the above transformation imperatives, the accountability of the registration service to its clients (NPOs) is paramount, especially in view of the fact that the registration service will be offered on a no-user-pay principle to enhance public accessibility and accountability. To this end, service standards will be developed and
published. Updated information on meeting the standards will be regularly published.

9.1.2 Investigation and enforcement

In addition to the above core functions, another key activity of envisage National Directorate for NPOs will be to ensure that stakeholders have recourse and redress through the effective enforcement of their rights. The intention is not to create a body that will continually interfere in the affairs of organisations. Rather, the intention is to create a body that can, and should when needed, act swiftly and effectively to ensure compliance, prevent wrongdoing and enforce punitive measures.

The approach on investigation and enforcement should emphasise corrective measures in promoting the spirit of the legislation of creating an enabling environment for the nonprofit sector. Advice and guidance will be provided to an organisation to rectify any non-compliance challenges they are faced with. The aim will always be to put the organisation back on a proper footing without the need to intervene. All investigations will follow specific transparent processes that involve gathering information, analysing the information and making the outcomes of a formal inquiry available to the public.

9.1.3 Awareness and education

Funders and communities are increasingly requiring NPOs to adopt higher standards of ethics and conduct their affairs in a transparent manner. A significant proportion of registration facility services will therefore be on providing NPOs with advice and guidance, helping organisations to comply with the legal obligations and improving their knowledge and understanding of best practices. Another important function will be to educate office bearers about their duties and responsibilities and to facilitate their access to accredited training programmes to enhance nonprofit governance and ethics. This will not only help organisations to work more effectively, but also increase the public understanding and support for the nonprofit sector.

Easily accessible and user-friendly information on amended NPO Act should be made available and disseminated. In addition, 'user notes'
and guidelines will be made available to guide the public and specific shareholders. This will also to promote voluntary compliance by NPOs.

The National Directorate for NPOs will also need to initiate campaigns to promote registration of voluntary associations in the rural and other disadvantaged communities and to educate smaller community based organisations about the benefits. Specific outreach programmes will need to be put in place.

9.1.4 Public access to information

As the National Directorate for NPOs will have access to key information on the NPO sector, it will be important that information is available to the general public. Stakeholders, including communities and potential funders, should be able to access relevant information with ease.

On regular basis, analytic information on the NPOs will be made available. This may require additional research on the NPO sector, their income levels and contribution to the South African economy.

This information will be available electronically and in a user-friendly manner through the directorate. Where possible, links to individual NPOs websites will be established. Furthermore, additional information may be added to the NPO information, such as any unscrupulous activities or any instances of potential risks that an organisation may get involved in.

Information dissemination and availability will enhance the ability of policy makers and funders to make policy decisions about the sector and will increase transparency in the sector. It will further enable the "blacklisting" and publication of the names of organisations that have been involved in unscrupulous practices and to be dealt with accordingly so as to protect the sector and avoid prejudicial generalisation of the sector.
9.2 *The NPO Tribunal Function*

It is proposed that, in addition to the registration facility, the existing tribunal and appeal mechanism should be equally strengthen to adjudicate certain matters brought by the amendments to the NPO Act. The tribunal should still act independently from the registration facility and will continue to play a mediatory role between the National Directorate for NPOs and organisations. Its decisions should be binding on all parties concerned.

While there is currently a consolidation of the judiciary into the High Court and Supreme Court of Appeal, a compelling case can be made for other matters relating to the NPO sector to be dealt with through a separate administrative body that has experience in NPO sector matters and that can expedite the adjudicative process. In particular, where there is in-fighting within NPOs, the tribunal can arbitrate disputes within organisations that should be binding to all parties concerned.

As a matter of principle, disagreements can be settled outside a court through this tribunal system with less formal mechanisms. It may not be necessary to create a new institution for this purpose, as existing mediation mechanisms may be explicitly recognised in amendments of the NPO Act. However, there will be a need to capacitate this function to effectively execute its mandate.

9.3 *The new organisational form*

Section 10 of the Public Service Act, 2007 (Act 30 of 2007) as amended ("Public Service Act") makes provision for a government service component as a separate entity from a government department. The government component should provide for a specialised direct public service on a larger scale through a focussed and fully ring-fenced entity that still remains and reports to the responsible Minister.

This government component provides an institutional mechanism for the delegation or assignment of a government function to a government agency within the public service without having to assign a separate juristic person (public entity) outside the public service. The envisaged National Directorate for NPOs can easily meet this criterion of a
government component as contemplated in section 10 of the Public Service Act.

By taking this organisational form, this National Directorate for NPOs will have its own administrative and operational arrangement that can be customised to suit the required service delivery environment. It will also be easier to transform the current NPO Directorate into a government component as the staff members will remain public servants. The existing staff members do not have to resign when they take up positions in the new Directorate. This will therefore ensure continuation and retention of existing staff members who have gained critical competence skills over a period of time.

It is envisaged that new Directorate will also provide the necessary infrastructure support for both the Tribunal and the advisory committee that would consist of people drawn from the NPO and not necessary being full time public servants.

10. CONCLUSION

It is envisaged that the Regulatory Reform on NPOs will proceed through three separate stages, that is:-

- consultation and finalisation of the policy framework;
- the drafting of a memorandum based on this policy document;
- the drafting, publication and consultation on the new NPO legislation.

This policy framework will be presented to internal stakeholders in government, externally to stakeholders and the NPO sector. Provincial workshops and roadshows were held as part of this consultation process that culminates into the National Summit of NPOs to further consolidate issues raised and inputs received.

Concurrent with public consultation on the policy framework, DSD, with the assistance of a local working group of experts supported by some international experts where required, will prepare a drafter’s memorandum, which will inform the new legislation. In preparing such a memorandum, current legislation, as well as international practice and regulatory provisions will be studied. The final document, drawn from inputs and feedbacks from all the different stakeholders
and role-players, will clearly outline the thinking, and should be consistent with this policy framework.

The final stage in arriving at the new Regulatory Framework on NPOs will be the process of drafting the new law. This process will be based on the drafter’s memorandum, giving effect to the policy. Once the new law has been drafted, both the legislation and the drafter’s memoranda will be made public and extensive consultation on the new law will ensue. It is anticipated that the new legislation will be made public for further inputs. Given the nature of the topics to be discussed and the potential impact on the nonprofit sector, it is imperative that the process should be transparent and consultative and that all outputs should be widely publicised.

Due to the extensive nature of the proposed reform, an interim review of current legislation will be performed to deal with problematic provisions. Any amendments should be in line with the philosophy outlined in this policy framework.

A concurrent and equally important process is the establishment of the institutional framework. This will involve, as a first step, the transformation of the NPO Directorate into an efficient, sustainable and service-oriented regulatory authority. A fundamental transformation of the systems, processes and organisational orientation will be necessary. Steps will be taken to ensure that the institutional framework envisaged in this policy framework is fully operational when the amendments to the NPO Act come into effect.

The current NPO Directorate can be capacitated accordingly to meet the expectations and what is envisaged in the amendments for the NPO Act. A feasibility study that will culminate into a business case on the motivation for such a government component (SANPORA) will be conducted to satisfy the requirements of the Public Service Act.