



NPO DE-REGISTRATIONS - This time for real (we think!)

Organisations which hold NPO status in terms of the NonProfit Organisations Act and which are very behind with their annual reporting requirements should brace themselves for a promised clean-up of the NPO Register, commencing on 31 October 2024.

The planned updating of the NPO Register will begin by removing from the list 64 000 organisations which were granted NPO status during the period 1998 to 2012, but have, according to DSD, never filed any of the required reports.

The requirement is that non-compliant organisations are notified before de-registration can occur and given an opportunity to catch up, but if the email address on record at DSD is out of date, these notices may be going astray. DSD has assured the NonProfit Working Group that they will also **post on their website the names and NPO numbers of affected organisations**, to try to deal this.

The filing of annual reports is a requirement of continued registration as an NPO so organisations which have not filed pre-2012 reports should really have been deregistered at least 12 years ago. However, past attempts to bring the NPO Register up to date (and restore its credibility with donors) have been halted, either because of claims by affected organisations that their non-compliance was due to some dysfunction or maladministration at DSD or because of political interference.

The fresh impetus to remove non-compliant organisations from the Register is driven by a perception that an 'under regulated' nonprofit sector is one of the reasons for the grey-listing of South Africa by FATF (the Financial Action Task Force). The NPO Directorate is now attempting to comply with recommendations by FATF to get the NPO Register current so that it functions as an accurate database to allow money-laundering, terrorist financing and fraud to be detected and dealt with. Of course, it will take a lot more than an up-to-date NPO Register for effective detection to occur, but it will be a start.

NPO registration is an **additional accreditation** available to voluntary associations, charitable trusts and nonprofit companies (previously Section 21s) who apply to be registered and meet the minimum requirements set out in the NPO Act and Regulations. Replacing the previous "Fund Raising Act" status (which was compulsory in order to solicit funding), NPO status was introduced as a voluntary status and is still, for most organisations, voluntary.

Changes to the NPO Act in 2022 (as part of the unsuccessful attempt to avoid grey-listing) did introduce one compulsory category of registration: organisations which are registered in South Africa but who operate or provide funding in places outside of South Africa. These have been identified as creating the greatest risk in terms of money laundering and terrorist financing, and so are now required to register and to report to DSD in greater detail than other registered organisations.

For all other organisations, the accreditation as an NPO remains voluntary, as it should be in a constitutional democracy which protects the freedom of association. **NPO status is not linked in any way to tax exempt status, and is also not foundational to the existence of organisations, but an add-on status.** The loss of the status will not affect the legal existence of an organisation or its ability to function.

NPO accreditation is, however, practically required for organisations which receive government funding and it is these organisations which would be worst affected by removal of the status.

The long-overdue clean-up is planned to take place in phases. The second phase will target organisations which have never filed reports and who were registered in the period 2013 to 2015 and the final phase will deal with the latest years. The dates of commencement of these phases are yet to be announced.

What should organisations do?

1. Check first **whether NPO status is legally or practically required**. For an organisation which does all of its work inside of South Africa and which has no donors which require it to have NPO status, the governing board may decide that NPO status is not useful, and that the registration should be allowed to lapse.
2. For organisations who wish to retain NPO status, **check that reports are being filed each year and that the receipt of these reports has been acknowledged** by DSD.
3. Make sure **contact details are updated** at DSD, or notices may be going astray.
4. **Check in on the DSD website** where the list of organisations about to lose their status will be posted.
5. If the organisation was registered prior to 2012 and wishes (or needs) to retain the status and has never filed a single report, **immediate action** is required. The practical difficulty is that the NPO Directorate systems will not receive more recent reports if older ones are owed and, naturally, the records for the period prior to 2012 may be scanty or non-existent.

The NPO report consists of two parts: financial statements and a narrative dealing with activities and meetings.

- For organisations registered prior to 2012 which wish to retain NPO status, you will need to locate or reconstruct any documents, financial statements, bank statements, minutes and reports that you can for the missing years.
- To fill any gaps (which there well might be if the governing body or staff have changed) you might need to resort to affidavits to explain the gaps.
- DSD has a standing internal policy of accepting bank statements instead of financial statements in cases where the organisation did not have funds for accounting services.
- You can write to DSD and request an extension of time to collate and file missing reports.

If you have been filing reports but are deregistered OR receive no notice of non-compliance but are deregistered, then you may **lodge an appeal** with the Arbitration Tribunal. In past cases where it has been shown that no notices were being received, the status has been reinstated.

The main DSD portal to check registration status is <https://www.npo.gov.za> .Updates on any developments will be posted by Inyathelo on <https://www.inyathelo.org.za/index.php/partner-websites/npo-working-group>

Nicole Copley, lawyer and Chartered Tax Practitioner, is the founder of ngoLAW and has been providing legal services to nonprofits for more than 30 years. She is part of the NonProfit Working Group which pools the expertise of activists and advisors in the sector to engage with government and support civil society. The ngoLAW team provide services of registering organisations as NPOs and also filing their reports on an annual basis. Contact them on <https://ngolawsa.co.za/>