

Comments on Non-profit Organisations Draft Amendment Bill			
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## 1. Introduction

This submission is made by the Equal Education Law Centre (“EELC”) in response to the call for comments on the Non-profit Organisation Draft Amendment Bill (the “Bill”), insofar as it has implications on early childhood development (“ECD”). The EELC is a public interest law centre using legal advocacy, research, and litigation to advance the struggle for equal and quality education in South Africa. ECD is one of our key thematic areas of work, focusing on the analysis of the ECD regulatory framework and advocating for its comprehensive reform.

In line with the policy of the Department of Social Development, in order to receive the per-child-per-day early childhood development (ECD) subsidy, ECD programmes must be registered as non-profit organisations (NPOs). This incentivises many ECD programmes, particularly in lower-income communities, to register as NPOs.

The ECD subsidy is allocated to children from low-income families whose parents are likely to struggle to pay fees. Fees are therefore often the main source of income for ECD programmes – and a lifeline for many ECD programmes in low-income communities. In 2021, over 625 000 young children received the ECD subsidy. Many more programmes are in the process of applying for NPO registration and for the ECD subsidy.

**Any measures which make NPO registration more difficult for eligible organisations, will directly impact thousands of ECD programmes across the country, and potentially cut off the revenue stream that enables them to keep operating and to provide crucial learning and development opportunities to vulnerable children and families.**

## 2. The Draft Non-profit Organisations Amendment Bill

We would like to draw attention to two specific clauses in the Bill, which are problematic.

### (i) Governance

**Clause 4(b) proposes expanding on the governance requirements for NPO registration set out in in Section 12(2) of the Non-profit Organisations Act, by specifying six office-holders that must be in place.**

*4(b) by the substitution in subsection (2) for paragraph (h) of the following paragraph:*

*“(h) specify the organisational structures and mechanisms for its governance, **which shall at a minimum include the office of or designation of the chairperson, secretary and treasurer with their deputies;**”*

A non-profit organisation can be registered as three types of legal entities – voluntary associations, trusts and non-profit companies. Each of these legal entities are defined and governed by specific Acts of Parliament, or in the case of voluntary associations, by common law.

As registration as a NPO does not create a new form of legal entity, the governance requirements for NPO registration in the Non-profit Organisations Act should not exceed or supersede the requirements in the specific governing laws for voluntary associations, non-profit companies and trusts, which already stipulate the composition of respective boards. Under these laws, a non-profit company and voluntary association must have at least three board members, while a trust must have a minimum of one board member. The current proposed amendment therefore exceeds and contradicts more specific laws.

**Clause 4(b) is therefore neither coherent nor appropriate. It should be deleted because:**

- **It exceeds the requirements of and therefore contradicts more specific laws governing voluntary associations, non-profit companies and trusts.**
- **It is an unreasonable burden for voluntary associations in particular, which play a critical role in South Africa's civil society and in the provision of ECD programmes.**

(ii) Voluntary registration

Under the Non-profit Organisations Act, registration as a NPO is voluntary. This is confirmed in Clause 2 of the Non-profit Organisations Amendment Bill, which adds a new object of the Act:

*'(f) facilitating voluntary registration of non-profit organisations and compulsory registration for foreign organisations operating within the borders of the Republic of South Africa.*

The effect of Clause 4(d) in the Bill therefore does not appear to be in line with the government's intentions, and could be a drafting error:

*4(d)(5) Any non-profit organisation, including foreign non-profit organisations that intend to operate business within the Republic must be registered in terms of this Act before operate [sic] and shall be subjected to the provisions of this Act and any other laws of [sic]*

As drafted, this implies that *any* organisation that falls within the definition of 'non-profit organisation' must be registered as a NPO before it starts operating. In other words, it is not limited to foreign NPOs. This is in direct contradiction to Clause 2 and to the principle of voluntary registration.

**Clause 4(d)(5) should be amended or deleted because:**

- **The principle of voluntary registration must be preserved.**
- **The drafting introduces internal contradictions in the Non-profit Organisations Act.**

### **3. Consultation**

Civil society is at the heart of South Africa's democracy and social fabric. Over 200 000 NPOs in every corner of the country not only provide important services, but also organise, research, educate, advocate and represent. Any amendments to the Non-profit Organisations Act therefore have far-reaching implications. Moreover, it is essential that the many organisations and individuals affected by the proposed changes have ample opportunity to reflect, consult and contribute.

For this reason, the one-month consultation period for the Non-profit Organisations Amendment Bill is woefully insufficient. **We respectfully urge the Department of Social Development to extend the consultation period until February 2022 to ensure maximum participation from civil society.**

#### **4. Summary**

In order to ensure an enabling environment for NPOs in South Africa, and for ECD programmes in particular, we recommend that:

- Clause 4(b) be deleted.
- Clause 4(d)(5) be amended or deleted.
- The current consultation period be extended to February 2022.

**For any queries, please contact:**

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