

Wits Law Clinic, University of the Witwatersrand, Johannesburg
Private Bag 3 Wits 2050, South Africa • Tel: +27 (0)11 717 8562 • Fax: +27 (0)11 717 8519
Per email: Alicia.Raymond@wits.ac.za

PER EMAIL: Moses.Malakate@dha.gov.za.
Department of Home Affairs
Amendment of Identification Regulations

Ref: AR/Identification Submissions

Date: 06 June 2026

Sirs

**AMENDMENT OF IDENTIFICATION REGULATIONS, 1998 (“REGULATIONS”)
TO THE IDENTIFICATION ACT 68 OF 1997 (“IDENTIFICATION ACT”)
SUBMISSIONS MADE BY ACADEMICS FROM THE UNIVERSITY OF THE
WITWATERSRAND**

We are an informal group of academics from different disciplines at the University of the Witwatersrand who met to discuss the amendments to the Regulations and to prepare this set of comments. Each of us has practised within the Department of Home Affairs (“Department”)’s administrative forums, engaged in policy discussions in the field of identification, immigration and citizenship studies, and/or conducted disciplinary research relating to the proposed amendments.

We consent to these submissions being provided to any applicant who requests information under the Promotion of Access to Information Act 2 of 2000 (“PAIA”); we further request, in the interests of transparency, that the Department, in all other cases where stakeholders make submissions, obtain such consent. We would be happy to discuss these comments with the Department in an appropriate manner and can be contacted using the details we have provided.

We have eight specific comments on the proposed Regulations, which we set out below, one of which reiterates the need for transparency for all interested stakeholders.

COMMENT ONE: IMPROVE THE DIGITAL IDENTITY LEGAL FRAMEWORK

1. The systematic turn to trusted entities is an important and promising change in the general direction of population registration in South Africa.

2. To make this work, and work at scale, it is important to establish a proper fiduciary duty framework before delegating state functions to trusted entities.
3. The current approach in the Regulations foresees duties of trusted entities arising largely through regulatory restrictions and conditions on data sharing from the population register Regulation 33, data sharing agreements Regulation 34, and logging and audit requirements Regulation 36.
4. We submit that the application of fiduciary law is worth consideration: *“Although the fiduciary must commit to fulfil such a role of trust, he does not necessarily conclude a contract, but may be charged with a fiduciary role in terms of statute or being appointed by a public functionary. Although some fiduciary roles are based on contractual relationships, others may not be.”*¹
5. A fiduciary approach is aligned with and necessary for the application of amended Regulation 1 under Definitions and Interpretations, which provides:
“‘trusted entity’ means a person or entity that (a) in terms of national or provincial legislation, is subject to a direct and primary statutory obligation to establish or verify the identity of natural persons as a prerequisite for....(vi) performing any comparable public-law function where accurate civil identification is expressly required by law as a core element of the power or duty and not merely as a secondary or administrative formality, and where access to identity information is necessary and proportionate to the exercise of that power or duty; ...’
6. To provide for such a fiduciary duty language might be adapted from the provisions of, for example, section 9 of the Trust Property Control Act 57 of 1988 relating to trustees, which provides under care, diligence and skill required of a trusted entity that:

¹ Nel, Eben. ‘Fiduciary Law in South Africa: A Good Time to Come of Age’. *Journal for Juridical Science* 49, no. 1 (2024): 53–76. <https://doi.org/10.38140/jjs.v49i1.7556> at page 59.

- 6.1.1. A trusted entity (which will, according to the context, mean a person in management of that entity or a person employed by that entity in the course of their employment) shall in the performance of its duties and the exercise of its powers act with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another.
- 6.1.2. Any provision contained in an agreement related to the performance of the duties and powers of a trusted entity shall be void in so far as it would have the effect of exempting a trusted entity from or indemnifying it against liability for breach of trust where it fails to show the degree of care, diligence and skill as required in section 6.1.1 above.

COMMENT TWO: SAFEGUARD AGAINST BARRIERS TO INCLUSION AND ACCESS

1. Prohibit the trusted entity framework from creating a two-tier system of access to credible identity services based on smartphone or digital access, or expensive and geographically centralised service providers like the banks.
2. Require that all delegated service delivery functions associated with the MyMzansi app remain accessible to elderly people, people with disabilities, and those without smartphones; it is important particularly for the Department to guard against the creation of two tiers of citizenship.
3. Mandate retention of mobile or in-person Department services alongside digital channels. Currently, experience in locations such as the Wits Law Clinic demonstrates that many poor persons are functionally unable to access VFS and, by extension, the Department. Online access, as opposed to in-person counter service, is also often less able to make exceptions, so alternative channels to the digital ones must be provided.
4. Require a plan for notice beyond the MyMzansi app in Regulation 21(3). As currently phrased, this regulation would allow for sole MyMzansi notice. Through existing

judicial precedent, it has become clear in litigation against the Department that notice through presumptively non-working channels is inadequate.²

COMMENT THREE: ADAPT THE ADDRESSING SYSTEMS FOR SOUTH AFRICA'S HIGH-MIGRATION AND LOW-FORMALITY SOCIETY

1. Replace or supplement single fixed-address requirements presumed in Regulations 22 and 23 with a dynamic, multiple-address model to accommodate internal migrants and the ordinary lives of all citizens.
2. Add, at least as a supplement, digital addressing systems alongside official, formal and postal ones; such systems are used in Uruguay, Ghana, and Estonia.
3. Develop addressing standards that do not require formal street addresses as a prerequisite for enrolment, or onerous KYC requirements.

COMMENT FOUR: SIMULTANEOUSLY STRENGTHEN DATA PROTECTION AND IMPROVE DATA SHARING

1. Regarding Regulations 32 and 33 and elsewhere, strengthen data safeguards governing biometric data held by commercial entities.³
2. Implement legal firewalls which prevent, for example, health data from being used for immigration enforcement.

COMMENT FIVE: CONSIDER CROSS-BORDER PROVISIONS AND CROSS-BORDER CONSEQUENCES OF EXISTING PROVISIONS

1. Regarding Regulation 34(2)(k), add a SADC-oriented cross-border data sharing framework with appropriate privacy protections.

² P.P.M and Others v Minister of Home Affairs and Others(14238/21) [2024] ZAGPPHC 2 (16 January 2024). <https://www.saflii.org/za/cases/ZAGPPHC/2024/2.html>.

³ See section 4 of Burke's Public Comment. Mark Burke, "Public Comment on Draft Amendment of Identification Regulations, 1998," May 31, 2026.

Wits Law Clinic, University of the Witwatersrand, Johannesburg
Private Bag 3 Wits 2050, South Africa • Tel: +27 (0)11 717 8562 • Fax: +27 (0)11 717 8519
Per email: Alicia.Raymond@wits.ac.za

2. Align the Regulations with regional digital identity interoperability initiatives at SADC and at AfCFTA levels; the example of a health passport in border areas is worth considering.

COMMENT SIX: ENABLE EFFECTIVE OVERSIGHT

1. Require publication and independent evaluation of the pilot referenced in the Regulations before full rollout.
2. Clarify enforcement mechanisms under POPIA as they apply to accredited trusted entities.⁴

COMMENT SEVEN: REQUIRED INTEGRATION WITH THE BIRTHS AND DEATH REGISTRATION ACT 51 OF 1992 (“BIRTHS AND DEATHS REGISTRATION”), IMMIGRATION ACT 13 OF 2002 (“IMMIGRATION ACT”) AND SOUTH AFRICAN CITIZENSHIP ACT 88 OF 1995 (“CITIZENSHIP ACT”)

1. To ensure effective implementation of this scheme, it will be additionally necessary to ground the Regulations in primary legislation rather than having this content as regulatory amendments. As Mark Burke has noted, *“the draft regulations make substantive policy choices that may well exceed the scope of the regulation-making power under section 22 of the Identification Act, 1997. The introduction of digital identity credentials, trusted entities, verified relationships, and API-based data sharing represents a fundamental expansion of the identity governance framework that should properly be addressed through primary legislation.”*⁵
2. In any case, for long-term efficacy, it would be advisable to have this regulatory content on digital identity synchronise with the Birth and Death Registration Act and Immigration Act, including provisions for permanent residents. This submission was also made on the White Paper on Citizenship, Immigration and Refugee Protection by Academics from the University of the Witwatersrand on 15 February 2026.

⁴ See Burke’s Public Comment, section 5, Theme 3: Independent Oversight.

⁵ Mark Burke, “Public Comment on Draft Amendment of Identification Regulations, 1998,” May 31, 2026.

Wits Law Clinic, University of the Witwatersrand, Johannesburg
Private Bag 3 Wits 2050, South Africa • Tel: +27 (0)11 717 8562 • Fax: +27 (0)11 717 8519
Per email: Alicia.Raymond@wits.ac.za

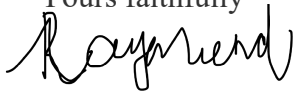
3. Part of the core functions of the Regulations is to enable secure digital identity credentials and to strengthen population register governance. The Identification Act applies to persons under section 3, meaning citizens and permanent residents. The efficacy of the intended system cannot be assured without proper consideration of other legislation. Identification can be based on birth, naturalisation, or permanent residence, and this needs to be considered before enacting the regulations; failure to do so would render the core purposes moot.

COMMENT EIGHT: MANDATE TRANSPARENCY IN DIGITAL IDENTITY POLICY DEVELOPMENT

1. Require public disclosure of all submissions received during the consultation process; we consent to these comments being disclosed to a PAIA request.

We trust that the above is in order and kindly request acknowledgement of receipt for the submissions.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Raymond', is written over the typed name 'Alicia Raymond'.

UNIVERSITY OF THE WITWATERSRAND
Jonathan Klaaren
Thea de Gruchy
Keith Breckenridge
Tunde Okunyoye
Alicia Raymond