

EASTERN CAPE- NEGOTIATE MANDATE

Responses:

1. Clause 14 of the Bill – Addition of subparagraph (i) after subparagraph (h)
That clause 14 (i) be added as follows:

“(i) provide for exemption from payment of registration fees for builders who are unable to pay for their registration.

Response: The fees are important to ensure that the NHBRC is financially sustainable and the criteria to determine who must pay will be too cumbersome (Exemptions are on special circumstances and the Minister can still exempt). The fees (Registration – R745) have been in place since the inception of the NHBRC i.e year 1998. As result the proposed addition may not be necessary.

2. Clause 31 of the Bill – Addition of a new subsection 4
Subsection 4

(4) ‘failure by the homebuilder or developer to enrol a home shall not absolve the homebuilder or developer of any liability in terms of the Act.’

Response: This is already provided in the Bill under the definition of a home builder and clause 28 which provides that failure by a person to register, or to retain the registration status, as a homebuilder or developer does not affect that person’s liability and obligations in terms of this Act. Further supporting clauses are found in clause 63(1)(a) and (b), 2(1)(a) and 25(3).

3. Clause 35 – Addition of subsection 4 as follows:

(4) The Council must prescribe a procedure for submitting claims from the warranty fund as well as timeframes within which such claims must be paid.

(d) Clause 89(1) – Amendment of section 89(1) as follows:

(1) The Minister must, by notice in the Gazette, publish a code of conduct for members of the Board and staff of the Council.

Response: Submissions of claims and time frames for consideration of a claim for warranty will be provided for in the Regulations. All employees or staff of Council are regulated in terms of the Labour Laws (which include the Labour Relations Act, Basic Conditions of Employment Act. The Code of Conduct for Board members is applicable because they are not employees. As a result, the propose amendment may not be necessary.

COMMENTS FROM THE PUBLIC

1. Sinako Community Hall, Paterson, Sarah Baartman District

1.1 Inputs focused on how will the Bill affect houses that were built prior to the new Act identified as having defects. The majority of these houses were not registered with National Home Builders Registration Council (NHBRC).

Response: The Bill does not apply retrospectively and the homes not enrolled with the NHBRC will not be covered under the new Bill. Homes built and occupied in excess of 5 years, prior to the Bill coming into operation will not be covered under the warranty fund. Homes enrolled under the current Act and in occupation for less than five years will be subjected to the duration of the warranty period under the transition provisions provided for in clause 93(3).

1.2 Inputs focused on the Assessment and Enforcement Committee powers over firms found to be non-complying subsequent to release of verdict and legal retribution.

Response: Clause 61 of the Bill provides for the powers of the Compliance and Enforcement Committee on non-compliance matters referred to it by the Council. The Committee must

adjudicate objections on administrative and substantive non-compliance; may confirm, modify or set aside all or part of the decision of the Council; may impose administrative fine in line with clause 65; may determine that the registration of the developer or homebuilder be suspended for a specified period of time, or cancelled subject to prescribed rules and may impose any alternative or other appropriate relief in line with the objectives of the Bill.

- 1.3 Suggestions were that inspectors must be attached to each municipality for effectiveness and efficiency of the Act compliance.

Response: The NHBRC continue to engage with SALGA with the purpose of extending its accessibility. Currently the Inspectors are available in all the Municipalities to ensure compliance.

- 1.4 The majority of housing beneficiaries do not have title deeds, and how will the new Act affect them.

Response: The Bill does not regulate the issuance of title deeds, it seeks to provide quality assurance on the technical requirements of a home, irrespective of whether the dispensation is in terms of the current Act or the Bill. Title deed is not a qualifying criteria to determine the validity of a warranty cover.

- 1.5 Inputs focused on the interface of the new Act with the local municipalities since houses have been made a competence of local government.

Response: The Bill clearly defines and provides for duties of the MEC, HOD, MM, MMC in respect of subsidy housing project. Clause 32 of the Bill places a duty on the head of the department or municipal manager not to release funds in relation to any housing project, unless the requirements of the Act have been met. The developer or organ of state must inform the NHBRC of the appointment of the registered homebuilder in relation to

subsidy or social housing projects and the NHBRC must update its register of the homebuilders. The Bill further requires the MEC or MMC to ensure compliance with the Act through oversight.

Clause 33 of the Bill also places a duty on the NHBRC to report to the Minister any failure by the MEC or MMC to comply with the Act in relation to appointing the registered homebuilders and ensuring the enrolment of any homes forming part of the subsidy housing and social housing project.

- 1.6 The Act must reinforce measures to ensure that contracted builders are locals in order to improve accountability.

Response: The issues of localization of contractors does not fall within the objects of the Bill, however NHBRC continue to provide training to ensure that contractors well equipped.

- 1.7 Considering that bureaucracy processes are lengthy and damages i.e., from natural disasters require an immediate response, how will the new Act affect those that devise interim measures while awaiting finalization of government processes?

Response:

The application of the Bill excludes disasters in terms of clause 41(4) and the Department has Emergency Housing Program that covers disasters. The object of the Bill is to ensure quality assurance on newly constructed homes to ensure that they comply with technical requirements.

Emergency Housing Program is contained in part 3 vol.4 of the National Housing Code established in terms of section 3(4)(g) of the Housing Act and Division of Revenue Act, 2023 (DORA) that puts funding for emergency response in the direct control of the Department of Human Settlements. In terms of this program the

Department may intervene by supplying building materials and can also provide vouchers for home owners to repair their homes.

1.8 The Bill is silent on the project steering committee (PSC) regulations and empowerment by the new Act. It rather focuses mostly on home owner and home builder.

Response: The issues of PSC do not fall within the object of the Bill. The mandate of the Council is to regulate home building industry and protect housing consumers.

2. Nkululeko Hall, Barkley East, Joe Gqabi District

2.1 The Bill was overwhelmingly supported and welcomed by the community members.

Response: The comment is welcomed.

2.2 The Bill is good as it aims to protect the home owners from the shoddy workmanship done by the unqualified builders and contractors. As some people's houses have been built by unregistered builders, how they are going to deal with in terms of the provisions of the Bill.

Response: This is already provided in the Bill under the definition of a home builder, clauses 28 which provides that failure by a person to register, or to retain the registration status, as a homebuilder or developer does not affect that person's liability and obligations in terms of this Act. Further supporting clauses are found in clause 63(1)(a) and (b) 2(1)(a) and 25(3).

2.3 It was suggested that inspectors must inspect the construction of a house from the first phase, i.e. foundation until the last phase in order to be able to identify and rectify building defects at an early stage.

Response: During construction, the NHBRC inspector conducts a minimum of four inspections at the following stages: 1. Foundation, 2. Super-structure, 3. Practical completion, and 4.

Stormwater. Inspection is conducted on the four mentioned critical stages of construction to ensure compliance with all the technical requirements. If there are non-compliance they can be detected and addressed at an early stage.

2.4 As the Bill provides that builders and building plans must be registered before the building takes place even for rural areas, the role of the municipality with respect to the inspection in this process is not clear.

Response: The roles of the inspectors from Municipality and NHBRC differ and is regulated by different legislation. The NHBRC inspects compliance with technical requirements. The inspection conducted by the Municipality is regulated in terms of the National Building Regulations and Building Standards Act 103 of 1977.

2.5 Some of the government subsidized houses are built with cheap blocks and water filters in during rainy days which is a health hazard.

Response: The Bill seeks to ensure that all houses comply with the NHBRC technical requirements and homes are covered by the warranty fund. Section 85(3) provides that the Home Building Manual may require a plan and associated documents to be approved by a competent person, and different requirements may be determined in respect of different categories of homes, or different types of building techniques or materials.

2.6 The Bill must make it compulsory for municipalities to have inspectors and engineers.

Response: The Municipality has its own mandate according to its own legislative framework which falls outside the scope and application of this Bill.

2.7 In Chapter V on submission of claims from the warranty fund, it is not clear where the people must submit their claims in order to be

reimbursed on the warranty fund after the builder or contractor left the unfinished structure and within the period of five years the housing defects appears. The timeframe for the processing of the claim is not specified.

Response: The Bill will be administered by the NHBRC and all such claims will be submitted to the NHBRC. The time frames and processes will be provided for in the regulations.

2.8 It was suggested that the Department must seriously consider the requirement of taking the lowest bidder in terms of price during the evaluation stage of the bidding process as this often results in contractors with the lowest price abandoning projects due to cash-flow challenges.

Response: Procurement should be undertaken in accordance with section 217 of the Constitution, PFMA and Preferential Procurement Framework Act and other pieces of legislation. This does not fall within the objects of the Bill.

2.9 The registration of homebuilders in Chapter III is commended. However, there is a concern that it is going to compromise the rural homebuilders who do not have funding to undergo the training and registration with the NHBRC whose test also involves finances.

Response: The Bill requires that home builders be registered, the NHBRC is increasing its accessibility to reach all remote areas including the provision of online services. The NHBRC does not charge for writing a test it only charges for registration and annual membership. Clause 34 (3) of the Bill provides for the use of warranty fund surplus towards developmental programs e.g. provision of training and capacitation of the upcoming homebuilders.

2.10 This Bill is very good mostly for the urban areas, which have most RDP houses that have been built with the substandard materials but their

material has not been prepared to sustain disasters during climate change.

Response: All home builders are required to use materials approved and the requirements prescribed in the Home Building Manual. The home builders must comply with the technical requirements to ensure structural integrity of a home. This requirement applies to both rural and urban areas (Clause 85(3)).

2.11 In Chapter V, housing rectification was raised strongly in that as the government is having a challenge on rectifying defects in houses in the urban areas, how is it going to ensure that the warranty fund claims are processed speedily in both urban and rural areas.

Response: The NHBRC has been processing claims since inception. It will continue to improve customer service through accessibility and it has extended its digital footprint to ensure that it expands its reach to all housing consumers be it urban or rural.

2.12 It was requested that the Traditional Leaders must be properly informed or educated about this Housing Consumer Protection Bill before it is passed into law, as the custodians of the communal land. This arrangement will capacitate Traditional Leaders to ensure that the land before it is distributed to the people, it is surveyed or tested whether it is conducive for building homes.

Response: During the cause of the public hearing, some traditional leaders attended the hearings and are aware of the Bill, however the engagements with these important stakeholders will continue.

2.13 The Department and the Municipality were requested to speedily resolve the challenge of bulk infrastructure in the area as it is a huge challenge and causes delays in projects.

Response: The National Department, Provincial Departments and Municipalities are working together to ensure that challenges of bulk infrastructure are resolved.

3. Indoor Sports Centre, Komani, Chris Hani District

3.1 The Bill was overwhelmingly supported but in Chapter III there was a concern on the registration of builders and houses to be built in the rural areas, as their land is not surveyed and the communities do not know if the land is suitable for construction or not, hence they request a proper consultation with the Traditional Councils.

Response: This request is noted, however during the cause of the public hearing, some traditional leaders attended the hearings and are aware of the Bill. The NHBRC requires that upon application of enrolment of a home building plans approved by the Municipality must be submitted. This will ensure that houses are built on a suitable land.

3.2 The Bill must state clearly how the rural builders will be capacitated, as there are qualifications or funds required from them to be trained as qualified builders.

Response: Clause 34(3) provides for surplus of the warranty fund to be used for developmental programmes that will assist with the capacitation of home builders irrespective of whether it is in urban or rural areas.

3.3 The registration of builders is a challenge in that foreign owned companies register in majority since they collectively assist one another while local people are at a disadvantage since they do not have financial means to register.

Response: The NHBRC cannot discriminate or prohibit registration of foreign home builders if they comply with other pieces of legislation and meet the registration requirements. If the foreign nationals have the necessary work permits/ company registration

documents and approved by Departments of Labour, DTIC and Home affairs. It is important to note that the registration fee and enrolment fees have not been increased since the inception of the current Act.

- 3.4 In Chapter V, the Bill is silent on the time frame for the time period on receiving the warranty fund for the house defects after lodging a claim and there are no specifications of things to submit when one lodges a claim.

Response: Submissions of claims and time frames for consideration of a claim for warranty will be provided for in the Regulations.

- 3.5 Some builders face a challenge after the company they registered under in the NHBRC has gone bankrupt.

Response: The NHBRC provides training for home builders to capacitate them however issues relating to bankruptcy is not within the mandate of the NHBRC.

- 3.6 There was a concern about the lack of collaboration between all role players when disaster strikes. People are given temporary structures which become a health hazard to them after some time as building of a permanent structure takes too long.

Response: This are issues outside the objects of the Bill and are managed in terms of the Emergency Housing Programme of the Department. In terms of this program the Department may intervene by supplying building material and can also provide vouchers for home owners to repair their homes.

- 3.7 There is a general concern on the delays in the issuing of title deeds by the Department.

Response: The purpose of the Bill is to ensure product quality and provide a measure of protection for consumers where the quality

standards have not been met by contractors. The Title Restoration project is governed and determined by the Spatial Planning and Land Use Management Act, 16 of 2013 insofar as township establishment is concerned, and the Deeds Registries Act, 47 of 1937 with regards to property registration, and its primary purpose is security of tenure. In an effort to address the delays in issuing of Title Deeds, the Minister working with MMC have introduced a program to issue title deed on every Friday, which program is referred to as "Title deed Friday". Further the Department is working with the Operation Vulindlela to unlock some of the challenges.

3.8 The department takes too long to build one a permanent structure after a disaster. A beneficiary indicated that they were given a temporary structure as a family of 16 in 2016, the temporary structure is now dilapidated and has been damaged by another disaster.

Response: The Department will conduct an investigation around the circumstances pertaining to this particular beneficiary.

3.9 Houses that were built in Dodrecht were of poor quality. A new contractor was appointed to rectify the houses but the contractor appointed to rectify the houses is also doing substandard work.

Response: The Department will conduct an investigation around the circumstances pertaining to this particular area.

3.10 There is a challenge with application for rebates of municipal rates caused by either delays in issuing title deeds or delays in the transfer of title deeds as beneficiaries do not have financial means to approach attorneys for the transfer of title deeds.

Response: As indicated above, the Department is fast-tracking the issuing of title deed.

3.11 The certification of local builders who need to pay registration fees is another challenge.

Response: Noted, the comment may need further clarity.

4. Mdantsane: NU 10 Community Hall, Buffalo City Municipality

4.1 Inputs focused on how will the Bill affect houses that were built prior the new Act identified as having defects. The majority of these houses were not registered with National Home Builders Registration Council (NHBRC).

Response: The Bill does not apply retrospectively and the homes not enrolled with the NHBRC will not be covered under the new Bill. Homes built and occupied in excess of 5 years, prior to the Bill coming into operation will not be covered under the warranty fund. Homes enrolled under the current Act and in occupation for less than five years will be subjected to the duration of the warranty period under the transitional provisions provided for in clause 93(3).

4.2 The Act must reinforce measures to ensure that contracted builders are locals in order to improve accountability.

Response: The issues of localization of contractors does not fall within the objects of the Bill.

4.3 Inputs suggested that the new Act must include the redressing of small medium enterprises (SMEs) transferring awarded tenders to unregistered SMMEs. This conduct weakens accountability.

Response: Section 45(4) provides that a person who was awarded a bid for the construction of a home may not subcontract that construction or part of it to a homebuilder—

(a) who was requested to rectify a structural defect or roof leak and failed to do so, or did not complete that rectification without reasonable grounds; or

(b) who is not registered as a homebuilder in terms of this Act.

4.4 NHBRC is accused of not conducting rigorous housing inspection. If inspection continues to lack rigorousness, the new Act will not be effective.

Response: The Bill seek to ensure that Inspectors are more capacitated to ensure that they conduct a detail inspection as their powers are clearly defined and they will be peace officers. Clause 70(3) provides that an inspector or employee may not engage in any activity that may undermine the integrity of the Council.

4.5 The value chain of housing construction involves engineering consultants, inspectors from municipality and NHBRC amongst others, however, legal retribution proposed by the Bill concentrates a solely on the contractor. The new Act must consider broadening the spectrum of accountability.

Response: The Bill does extend accountability to both competent persons, inspectors, MEC, MMC, HOD, MM and Council in terms of clause 32 and 33. Clause 42(4) provides that where the cause of dispute or claim can be attributed to any action or omission by the developer, organ of state, certification body or competent person, the Council may hold such persons accountable for the rectification or cost of rectification of that home.

4.6 The Bill is silent on the project steering committee (PSC) regulations and empowerment by the new Act. It rather focuses mostly on home owner and home builder.

Response: The issues of PSC do not fall within the object of the Bill. The mandate of the Council is to regulate home building industry and protect housing consumers.

5. Alfred Ndw District Council Chamber, emaXesibeni (Mt Ayliff)

5.1 The Bill was supported and appreciated as it aims to address the registration of builders and contractors to ensure that people get qualified and trained contractors who will be held accountable for any

defects. Houses will be stronger and will not be affected by disaster. Clarity is required with respect to whether the Bill will be applicable to current RDP houses that demonstrate shoddy workmanship.

Response: The Bill applies to all enrolled homes built by organ of state for the benefit of the housing consumers. The Bill however does not apply retrospectively and the homes not enrolled with the NHBRC will not be covered under the new Bill. Homes built and occupied in excess of 5 years, prior to the Bill coming into operation will not be covered under the warranty fund. Homes enrolled under the current Act and in occupation for less than five years will be subjected to the duration of the warranty period under the transitional provisions provided for in clause 93(3).

- 5.2 In Chapter V, the Bill is silent on the time frame for processing compensation from the warranty fund for houses with defects.
- 5.3 The Bill is not clear on how and where complaints against homebuilders that have done substandard work must be submitted.
- 5.4 The Bill is also silent on timeframes for processing and resolving complaints.
- 5.5 The Bill must provide a process for lodging a claim in the warranty fund and how consumers may access the fund.
- 5.6 The channels for lodging a complaint against NHBRC are not included in the Bill

Response to 5.2-5.6: The Bill will be administered by the NHBRC and all such claims will be submitted to the NHBRC. The time frames and processes will be provided for in the regulations in terms of clause 86.

- 5.7 There is a challenge of sale of RDP houses in the area which are bought by a lawyer in the area.

Response: This issue is not regulated within the object of the Bill; the sale of RDP houses is regulated in terms of the Housing Act

section 10B and A & B. However, it is important to get more information regarding the matter.

5.8 Furthermore, in Chapter V a point of housing rectification was raised strongly and that the government is having a challenge on rectifying the houses with defects in the urban areas, how is it going to ensure that the warranty fund claims are processed speedily in both urban and rural areas.

Response: The NHBRC has been processing claims since inception. It will continue to improve customer service through accessibility and it has extended its digital footprint to ensure that it expands its reach to all housing consumers be it urban or rural.

5.9 The NHBRC and the Department must consider the amendment of the National Home Building Regulation Act of 1977 as the court ruled that it is not enforceable in the former Transkei areas since Transkei was not part of South Africa. Municipalities do not enforce the Act. The National Home Building Regulatory Act must be amended to make it applicable throughout South Africa.

Response: The comment is noted.

5.10 In Chapter III there is no clarity on how the rural builders will be capacitated, as they have no qualifications or funds required from them to attend the training to be trained and be qualified builders. Also the extent of the training by NHBRC and skills they will impart is not clear. A concern is that, at registration to NHBRC, will there be categorization of builders. This might lead to unequal competition between the rich and poor and the Bill is silent on the role to be played by the NHBRC in bridging this gap and assisting the homebuilders.

Response: Clause 34(3) provides for surplus of the warranty fund to be used for developmental programmes that will assist with the

capacitation of home builders irrespective of whether it is in urban or rural areas.

5.11 The Bill must indicate clearly on the route that must be taken by the Real Estate Developers that have been already in the industry and the legislation must ensure that it uplifts the marginalized people.

Response: Clause 81 provides for the duties of the property practitioners involved in the sale of a home. Clause 34(3) provides for surplus of the warranty fund to be used for developmental programmes that will assist with the capacitation of home builders.

5.12 There is a concern that in as much as the Bill is intended to protect consumers, it must not be used as a back door and be linked to the payment of property rates by those in rural areas.

Response: The objects of the bill is to protect housing consumers in as far as quality assurance of the integrity of a home structures is concerned. It does not regulate property rates

5.13 As the Bill will affect both rural and urban communities, as in Section 61 (1) on compliance and enforcement, what is the role of the local sphere and where will funding for the locals come from.

Response: Clause 34 of the Bill does indicate that the NHBRC is funded from different streams generated from registration, enrolments and other avenues.

5.14(c) Inputs focused on how the new Act will affect home owners with houses built prior to its effectiveness when they want to make renovations to the building structure.

Response: Clause 2(1)(b) provides that the Act applies to any additions, alterations, renovation or repair of a home which requires the submissions of building plans to a municipality in terms of the National Building Regulations and Building Standards

Act, 1977 (Act No 103 of 1977). Enrolled additions, alterations, renovations and repairs of an existing home shall enjoy the benefit of a home warranty cover. The Minister will still prescribe regulations regarding the process of enrolment and warranty cover for additions, alterations, renovations and repairs