

NORTH WEST - NEGOTIATE MANDATE

Responses:

1. Section 42(2) of the Bill should be amended to make wall plate and roof leaks warranty cover duration from 2 to 5 years, after the finalisation of the construction of a home.

Response: The warranty cover was initially 1 year (currently), and the Bill proposes that it be extended, it commences on contraction of the roof plus 2 years after finalisation of the construction of the home as 1 year may not be enough time because there is lack of rain in other areas. Weather conditions have been factored in considering the life span of a roof, if a roof is able to withstand all conditions within a period of two years, then it has been properly constructed and any further issue after a period of two years will ordinarily be maintenance related.

It is important to note that Minister is empowered to extend the period of the warranty cover, after the council have undertaken an actuarial assessment to determine whether the home warranty fund is able to provide for the additional period. The enrolment fee must be proportionally adjusted in accordance with the extended period of the warranty cover. Clause 40(3) (4) and (5) enables further extension of the cover, however cautioning that it must be proved that there are sufficient funds. The wall plate will be covered on five years warranty as part of the structure in terms of Clause 40(1).

2. Addition of a provision as Section 24(1)(h), which will include that the register contemplated in section 23 of the Bill should also reflect compliance with section 8 of the Employment Services Act (No.4 of 2014) regarding employment of the foreign nationals.

Response: The proposal to have the register include the foreign national's employees of the home builder to have valid work permit may

burden the NHBRC to enforce the mandate of the Department of Labour and the Department of Home Affairs. The Home Builder has a responsibility to ensure compliance with all applicable legislation. All home builders who foreign nationals are required to have and produce valid work permit when they register or enrol the home with the NHBRC (this will be included in the Regulations and Policies of the NHBRC). The issue of employment of foreign nationals by any employer falls within the mandate of the Department of Labour.

The Committee recommends that:

1. The Bill must be accommodative to Residents in Rural Villages, where proclamations are not formalised.

Response: The Bill seeks to cover both rural and urban areas.

2. With respect to the new funding streams proposed by the Bill, the Committee recommends that oversight must be enhanced and intensified on how monies will be appropriated and utilised.

Response: The NHBRC is already subjected to oversight as it is a Schedule 3 entity in terms of the Public Finance Management Act. The Bill is aligned to the PFMA, Companies Act and other pieces of legislation. Clause 32 and 33 of the Bill further emphasises the oversight role of the MEC and MMC

3. There must be smooth transition and synergy; issues of capacity would be addressed timeously.

Response: Clause 4(1) provides that the National Home Builders Regulation Council will continue to exist as a juristic person, known as

National Home Building Regulatory Council. Clause 93 further deals with transitional provisions.

4. The Department of Human Settlements must start working on a proper plan and structure for new composition as proposed by the Bill.

Response: The comment is noted

5. The Bill must detail how a Home Builder will be exempted in respect where, the Municipality is unable to assist with the approval of the plan.

Response: The Housing Consumer Protection Bill [B 10B–2021, authorises the Minister responsible for housing to give exemptions from the applicant of the Bill. The subsection reads as follows:

(5) Notwithstanding the provisions of this Act, the Minister may, after consultation with the Council, in exceptional circumstances—

(a) on application in the prescribed manner, exempt a person or home from the provisions of this Act; or

(b) in the public interest, by notice in the Gazette, exempt certain persons or homes belonging to a category or class specified in the notice from the provisions of this Act, either generally or subject to such conditions as may be specified.

Exemptions can only be granted if it is in exceptional circumstances and in the public interest. Exemption will be treated on a case-by-case bases, since the reasons for the municipality’s inability to approve plans will be taken into considerations.

6. There must be smooth collaboration and effective inter-relations of all Entities with the Municipalities.

Response: Noted, collaboration with all stakeholders is encouraged.