

WESTERN CAPE - NEGOTIATION MANDATE

Responses:

General concerns and proposed amendments

1. Clause 16: Conditions of appointment of Chief Executive Officer and Chief Financial Officer

16(1) The appointment of the Chief Executive Officer and the Chief Financial Officer is subject to the conclusion with the Board of an annual performance contract, which must provide for the grounds on which the appointment Chief Executive Officer and the Chief Financial Officer may be terminated.

Response: The grounds for termination are conditions of employment contract regulated terms of which can only be enforced through contractual terms in accordance with the labour law prescripts.

2. Clause 12: Committees of Board

12(4) The aspect of remuneration of co-opted members of committees of the Board must be determined by the Board with oversight by the Minister in consultation with the Minister of Finance.

Response: There are sufficient governance control measures already in place such as the PFMA. The oversight role by Minister of Human Settlement will be sufficient.

3. Clause 13: Delegation and assignment of functions by Board

13(6) Remuneration agreements must be concluded in consultation with the Minister and the Minister of Finance.

Response: Clause 13(6) refers to Service Level Agreements. The Board will have to comply with section 217 of the Constitution and procurement legislation i.e the Preferential Procurement Framework Act. Clause 12(3) must be read with clause 13(6).

4. Clause 14: Functions of Council

14(1)(n) Council must be obliged to consult with the provinces regarding developing and prescribing the requirements for the approval of a certification body and the listing of a competent person.

14(2)(a) Council must be obliged to call for comments by the provinces on the approval of a certification scheme and the approval of a certification body.

Response: Council will publish a list of such certification as part of its obligation to prescribe the requirements as per clause (14)(1)(n) also read with clause 14(1)(o) in a process where the public will be allowed to

comment resulting in consultation with provinces. This will be published as part of the Rules in order to achieve the objects of the Act in terms of clause 87 of the Bill. This response also applies to the comment regarding clause 14(2)(a) of the Bill.

5. Clause 63: Administrative non-compliance with Act

63(3) Penalty provisions regarding failure to pay or commensurate with the category of fees payable in respect of a particular category of home of homebuilder must be clarified.

Response: This will be carried through Regulations by the Minister.

6. Clause 67: Alternative dispute resolution 67(2)(a) The term “adjudicate” should be re-considered or used in conjunction with other alternative dispute resolution mechanisms such as mediation and negotiation.

Response: The word “adjudicate” is a more generic and is a facilitation of alternative dispute resolution process that can be followed such as mediation, negotiation, conciliation and arbitration.

Technical concerns and proposed amendments

7. Clause 1: “technical standards” are akin to “Technical Requirements” use upper case letters, namely “Technical Standards”.

Response: Agreed.

8. Clause 5: The word “the” is missing in clause 5(c). it should read as follows: “(c) ensure the structural quality of homes in the interests...”.
Heading to Chapter III: It is suggested that the heading to this chapter be expanded to apply to the “Registration of Homebuilders and Developers”.

Response: Agreed.

9. Clause 29: Register of enrolments

29(3) There is a mistake in the citation of the Promotion of Access to Information Act, 2000 in this clause. Correct the citation from “Promotion of Access to Information Act, 2000” to: Promotion of Access to Information Act, 2000 (Act 2 of 2000).

Response: Agreed.

10. Clause 61: Powers and duties of Compliance and Enforcement Committee

61(1)(a) The references to “section 64(6) ...and section 63(6) ...” should be reversed to reflect the numerical order in which these sections appear in the

text. Refer firstly to “section 63(6)” and its attendant provisions and then to “section 64(6)” and its attendant provisions.

Response: Agreed.

11. Clause 85: Home Building Manual

85(5) The “National Regulator for Compulsory Specifications Act, 2008 (Act No. 5 of 2008)” has been defined and the short form of the title to the Act ought to be used for this reason.

It is suggested that the title be amended and that the full citation of the “National Regulator for Compulsory Specifications Act, 2008 (Act No. 5 of 2008)” to the shortened form of the Act, namely the “National Regulator for Compulsory Specifications Act, 2008”.

Response: Agreed.

Procedural concern

12. Concern was raised regarding the non-accessibility of communication in terms of public participation processes at the National Council of Provinces level.

3.2 The Bill contains certain drafting, grammatical and typographical errors. To improve the text, it is RECOMMENDED that the author review the Bill using generally accepted Commonwealth legislative drafting practices, as well as enlist the support of a language practitioner familiar with these practices.

Response: It is our humble submission that the Bill is aligned to the standard of legislative drafting however we noted the following:

The department will ensure consistency to reference to major structural defects in the following clauses and proper referencing:

- a. **Section 30(12) – refers to clause 9 instead of 10.**
- b. **Sections 42(5)(b), 64(1)(a), 65(2)(b)**
- c. **64(1)(a) – delete (a) and insert (any) to read “any defect” not “a defect” and 64(7) refers to section 64 instead of section 65**
- d. **42(5)(b) – insert “major structural” defects.**
- e. **65(1) – delete reference to 65 and insert “63”.**
- f. **65(2) – on the last sentence insert “rectifies “major structural defect”.**