



THE BANKING
ASSOCIATION
SOUTH AFRICA

**RENTAL HOUSING AMENDMENT BILL
[B21B-2011]**

**PRESENTATION TO THE PORTFOLIO COMMITTEE ON
HUMAN SETTLEMENTS**

24 April 2012



OVERVIEW

- ❑ FULLY SUPPORTIVE OF THE NEED TO STRENGTHEN AND ADDRESS SHORTCOMINGS WITHIN THE RENTAL HOUSING ACT 50, OF 1999

- ❑ IN PARTICULAR WE WELCOME:
 - ATTEMPTS TO STRENGTHEN AND IMPROVE THE EFFICIENCY OF RENTAL TRIBUNALS;
 - THE NEED FOR INCREASED LEVELS OF TRANSPARENCY IN RESPECT OF LEASE AGREEMENTS;
 - IMPROVED LANDOWNER/TENANT LEASE GOVERNANCE AND PROCESSES;
 - ATTEMPTS TO IMPROVE HYGIENE FACTORS AND MINIMUM STANDARDS.

- ❑ WE HOWEVER WISH TO HIGHLIGHT:
 - SOME MATERIAL CONCERNS;
 - SOME POTENTIAL UNINTENDED CONSEQUENCES;
 - A FEW TECHNICAL SUGGESTIONS.





MATERIAL CONCERNS

1. AMENDMENT OF SECTION 2 (5) AND (6) [VULNERABLE]

- EXISTING LEGISLATIVE FRAMEWORKS ALREADY COVER THIS:
 - THE PREVENTION OF ILLEGAL EVICTION OF UNLAWFUL OCCUPATION OF LAND ACT, 108 OF 1999 (PIE):
 - RULING IN FAVOUR OF LANDLORDS WHERE TENANTS REFUSE TO VACATE AFTER LEGAL TERMINATION OF THE LEASE AGREEMENT (JIKA)
 - NEEDS OF THE ELDERLY, CHILDREN, DISABLED, WOMEN HEADED HOUSEHOLDS MUST BE CONSIDERED, BUT THE AVAILABILITY OF SUITABLE ALTERNATIVE ACCOMMODATION SHOULD NOT BE A PRECONDITION OF AN EVICTION ORDER (Manwood Investment Trust Co.)
 - NEED FOR AN EQUITABLE, BALANCED, FAIR JUDGMENT (PE Municipality – Constitutional Court)
 - SECTION 26 (3) OF CONSTITUTION DOESN'T APPLY TO “NORMAL LANDLORD AND TENANT RELATIONSHIPS” (Betta)
 - COURTS HAVE NO DISCRETION TO DEPRIVE THE LANDOWNER OF AN EVICTION ORDER BASED ON THE PERSONAL CIRCUMSTANCES OF THE OCCUPIER OR THE AVAILABILITY OF ALTERNATIVE ACCOMMODATION (Brisley – SCA)
 - ONUS ON MUNICIPALITIES TO PROVIDE ALTERNATIVE ACCOMMODATION TO THE VULNERABLE (JHB Metro – Constitutional Court)
 - LANDLORD MAY CANCEL LEASES IN ORDER TO SIGN NEW ONES AT A HIGHER RENTAL LEVEL. ALSO THE RENTAL HOUSING ACT, 50 OF 1999 BALANCES CONFLICTING SOCIO/ECONOMIC IMPERATIVES (Aengus – Constitutional Court)





MATERIAL CONCERNS (CONT.)

- ❑ BETWEEN PIE AND THE RENTAL HOUSING ACT, 50 OF 1999 AN EXISTING BALANCED FRAMEWORK ALREADY EXISTS AND WHICH HAS A CLEAR LEGAL CASE TEST HISTORY;

- ❑ FURTHER ATTEMPTS TO SHIFT MORE RESPONSIBILITY FROM THE STATE TO THE PRIVATE SECTOR FOR THE VULNERABLE WILL SIMPLY:
 - RESULT IN UNNECESSARY AND COSTLY COURT CHALLENGES FOR THE STATE ;
 - PROMOTE LANDLORD FLIGHT FROM RENTAL INTO HOME OWNERSHIP MODELS PARTICULARLY WITHIN INNER CITIES AND COASTAL AREAS;
 - INDUCE THE PRIVATE SECTOR TO SPURN FURTHER RENTAL STOCK INVESTMENT AT A TIME WHEN THE DEPT. OF HUMAN SETTLEMENTS HAS IDENTIFIED RENTAL AS AN IMPORTANT ALTERNATIVE FORM OF TENURE, AS WELL AS THEIR BEING AN ACUTE SHORTAGE OF RENTAL STOCK (IN PARTICULAR WITHIN THE ‘GAP’ AND AFFORDABLE HOUSING MARKET SEGMENTS);
 - INCREASE LANDLORD RENTAL/INVESTMENT FINANCE COSTS AND FUNDING ACCESS DIFFICULTY AS PRIVATE SECTOR LENDERS IDENTIFY INCREASED LENDING RISK FOR THIS SECTOR;
 - PROMOTE ABUSE BY THOSE THAT THE STATE DOES NOT INTEND PROTECTING (PIE HAS PROVIDED UNSCRUPULOUS TENANTS/CRIMINALS WITH A LEGISLATIVE FRAMEWORK TO FRUSTRATE A LANDLORD’S EASE OF EVICTION AND/OR IS BEING USED TO HIJACK BUILDINGS (PIE REQUIRES REVIEW IN THIS REGARD));





MATERIAL CONCERNS (CONT.)

RECOMMENDATIONS:

❑ REMOVE SECTION 2 (5) AND (6) OF THE RENTAL HOUSING AMENDMENT BILL AND TRANSFER THIS TO THE SOCIAL HOUSING ACT 16 OF 2008;

❑ RE-EVALUATE THE RECOMMENDATIONS OF THE SA HUMAN RIGHTS COMMISSION HEARINGS OF 2007 INTO EVICTIONS, WHICH INCLUDED AMONGST OTHERS:

“THE NEED FOR A CREATIVE GOVERNMENT INTERVENTION WHICH COULD INCLUDE:

- A REVIEW OF GOVERNMENT’S POLICY OF ONLY ASSISTING FIRST TIME HOME OWNERS;
- THE NEED FOR MUNICIPALITIES TO INCLUDE THE PROVISION OF ALTERNATIVE ACCOMMODATION FOR THOSE LEFT DESTITUTE BY EVICTIONS INTO THEIR IDP’S
- THE CREATION OF “LOSS OF INCOME COVER” AS PART OF THE SOCIAL SECURITY SYSTEM .“

MAJOR MORTGAGEES IN COLLABORATION WITH GAUTENG PROVINCE/JHB. METRO UNDERTOOK A SUCCESSFUL PILOT PROJECT IN 2008 FOR “VULNERABLE PERSONS” FACING EVICTION. UNFORTUNATELY ATTEMPTS TO CONVINCE NATIONAL GOVERNMENT TO REVIEW ITS FOCUS ON MERELY FIRST TIME HOME OWNERS TO INCLUDE SUBSEQUENT VULNERABLE FAMILIES CAME TO NIL.





MATERIAL CONCERNS (CONT.)

2. INSERTION OF SECTION 4B(B) INTO ACT 50 OF 1999

- ❑ SUPPORTIVE OF NEED FOR A TENANTS DEPOSIT TO ATTRACT INTEREST, BUT PROPOSED AMENDMENT PROVIDES NO PREFERRED CREDITOR PROTECTION STATUS FOR A TENANT'S DEPOSIT

RECOMMENDATION:

AMENDMENT BILL SHOULD PROVIDE FOR A PREFERRED CREDITOR STATUS FRAMEWORK FOR TENANT DEPOSITS AND THE MOOTED REGULATIONS SHOULD DETAIL IMPLEMENTABLE GUIDELINES (ESTATE AGENTS ACT, 1976 AND VARIOUS AMENDMENTS THERETO MAY BE RELEVANT).

3. TRANSITION PERIOD

- ❑ AMENDMENT BILL MAKES NO PROVISION FOR A TRANSITION PERIOD OR CLARITY IN RESPECT OF EXISTING LEASES

RECOMMENDATION:

BILL SHOULD NOT BE RETROSPECTIVE OR APPLY TO EXISTING LEASES





MATERIAL CONCERNS (CONT.)

4. REGULATIONS (CLAUSE 14)

□ MINISTER MAY MAKE REGULATIONS PERTAINING TO NORMS AND STANDARDS WITHOUT PUBLIC CONSULTATION IN RESPECT OF:

- TERMS AND CONDITIONS OF A LEASE SPECIFICALLY IN RELATION TO FAIRNESS AND PROTECTION OF THE WEAKER CONTRACTING PARTY
- SAFETY, HEALTH AND HYGIENE
- BASIC LIVING CONDITIONS INCLUDING ACCESS TO BASIC AMENITIES
- SIZE
- OVERCROWDING
- AFFORDABILITY

(SUCH NORMS AND STANDARDS MAY BE SET PER GEOGRAPHIC AREA)

CONCERNS:

- NO INDICATION OF WHAT THESE WILL BE;
- OF PARTICULAR CONCERN IS THEY MAY IMPACT ON CONTRACT AND AFFORDABILITY (WE ASSUME THIS RELATES TO A TENANT: IS THIS AN ATTEMPT TO CAP/REDUCE RENTAL FOR THE VULNERABLE?);
- NO PUBLIC CONSULTATION;
- MAY BE GEOGRAPHIC AREA BASED;
- COULD PROMOTE LANDLORD FLIGHT AND/OR NEGATIVELY IMPACT ON EFFICIENT FUNCTIONING OF PROPERTY MARKET PARTICULARLY WITHIN INNER CITIES /COASTAL AREAS;
- COULD LEAD TO “PATCHY” RENTAL STOCK AND FRUSTRATE GOVERNMENTS INTENTION IF THERE IS GEOGRAPHIC DIFFERENTIATION ;
- COULD NEGATIVELY IMPACT ON VIABILITY OF RENTAL COMPANIES/INVESTORS TO WHICH MORTGAGEES HAVE SUBSTANTIAL EXPOSURE.





MATERIAL CONCERNS (CONT.)

RECOMMENDATIONS

- REMOVE SUBSECTION 1(fb)1;
- NEED FOR UNIFORM NORMS AND STANDARDS ACROSS THE COUNTRY;
- NEED FOR PUBLIC CONSULTATION (MINIMUM OF 30 DAYS) BEFORE REGULATIONS ARE PROMULGATED.





TECHNICAL CONCERNS

1. **CLAUSE 6 4B(D)(II) – OBLIGATIONS AND RIGHTS OF A LANDLORD**
 - THE LANDLORD HAS A RIGHT TO “...WHERE THE TENANT FAILS OR REFUSES TO VACANT THE DWELLING, REPOSSESS THE RENTAL HOUSING PROPERTY...”

RECOMMENDATION

THE SECTION SHOULD RATHER REFER TO THE LANDLORD’S RIGHT TO OBTAIN AN ORDER OF EVICTION FROM THE COURT.

2. **AMENDMENT OF SECTION 10 OF ACT 50 of 1999 (11b)(1A))**
 - THE PRACTICALITY OF TWO TRIBUNALS HOLDING SIMULTANEOUS MEETINGS AND/OR A TRIBUNAL BEING HELD IN THE ABSENCE OF THE NOMINATED CHAIRPERSON IS QUESTIONED AS THE PROPOSED AMENDMENT BILL MAKES NO PROVISION FOR THE MEC TO APPOINT AN ALTERNATIVE CHAIR;

RECOMMENDATION

THE AMENDMENT BILL SHOULD PROVIDE FOR THE NEED FOR AN MEC TO APPOINT AN ALTERNATIVE CHAIRPERSON.





ANY QUESTIONS

