



MINISTRY
HUMAN SETTLEMENTS
REPUBLIC OF SOUTH AFRICA

**REMARKS BY THE MINISTER OF HUMAN SETTLEMENTS, MMAMOLOKO KUBAYI
ON HOUSING CONSUMER PROTECTION BILL, NATIONAL ASSEMBLY, CAPE
TOWN, 14 MARCH 2023**

Madam Speaker

Honourable members

Since the promulgation of the Housing Consumers Protection Measures Act No. 95 of 1998 on 04 June 1999, the National Home Builders Registration Council (NHBRC) has identified several challenges with certain key provisions of the Act, which impacted negatively on the efficiency of the Council's mandate.

The inefficiencies identified on the current Act, related to inadequate protection of housing consumers, the transformation of the industry, the high risk of litigation, the inadequate enforcement powers, the ineffective alternative dispute resolution mechanism and the excessive turnaround time of the current enforcement procedures.

The main criticism of the Council from the public is that it does not provide protection where it is really needed. The scope of application of the Act currently limits the ability of the Council to protect all housing consumers as well as the circumstances under which the consumers are protected. For this reason, the Draft Bill before you is introducing the following:

1. Extends the cover to hostels, timeshares and share blocks; and importantly extends its scope to include additions, alterations, renovation or repair of a home - in so far as these necessitate the submission of building plans to the municipality in terms of the National Building Regulations and Building Standards Act of 1977.

2. It extends the period of cover under the warranty fund to commence on the date of the commencement of construction, until five years after the date of certification of compliance with the technical requirements by the Council inspectors. The amount of cover however is not increased, and any claim made and paid out of the warranty fund during construction, will be deducted from the total amount available for claims.
 - a. The warranty period for roof leaks has been extended from 1 year to two years as a roof leak does not always manifest itself within the first year, especially in the more arid areas of the country.
 - b. The Bill determines that a home builder or a developer that is not registered has the same liability as a registered homebuilder or developer. This ensures the protection of an unsuspecting housing consumer who might not have been aware of the requirements of the Act and made use of a builder who is not registered and who did not enroll a home as required by the Act.
 - c. Inspectors and all other employees of Council are now having a duty to report corruption, conflict of interest, not to use confidential information for personal benefit.
 - d. Council may now apply to court for an order directing the person to comply with the Act or to stop construction.
 - e. A willful or gross negligence by competent person (such as engineer) which cause, or fails to prevent a major structural defect is now a substantive non-compliance

which may trigger an administrative fine and other sanctions which may be imposed by the compliance and Enforcement Committee

- f. The Municipal Manager has a duty to ensure that funds are not released for housing project unless the project is enrolled.
- g. The Draft Bill adds new value to the objectives of government in that it incorporates the grading system that the Council published under government notice GN R192/2008. The system facilitates the ease of doing business as the housing consumer/ developer/organ of state can easily obtain information about the competence and profile of the homebuilder. The entrance of new participants in the industry will be facilitated through equitable entry level requirements.
- h. The Draft Bill provides for the principals of the company to be personally held accountable. In the same vein, the definition of a “person” has been extended to include a trust, as some homebuilders are trusts. The Draft Bill provides for the trustees to be held accountable in the same manner as the principals or directors of a company.
- i. Sustainability of new entrants in the home building industry will be enabled through the prohibition of “pay when paid” provisions in building contracts. Emerging homebuilders can often not sustain their businesses and fail because of irregular payment from the main contractors. The main contractors, however, also need to be ensured of prompt payment from the employer, and therefore the right to regular payments and penalty interest is introduced, as well as the right to suspend the works.
- j. Emerging homebuilders and employers are also in need of education and training in addition to purely technical training, for example: business practices, financial management, the applicable legislation and project management. The Draft Bill therefore provides for the warranty fund surplus to be utilized towards human

settlements' developmental programmes, which facilitates the economic transformation of the industry.

- k. The Draft Bill provides for an innovative and strengthened new enforcement system which is procedurally fair, cost effective and allows for speedy resolution of cases. Furthermore, the Draft Bill introduces an effective penalty mechanism in terms of which the Compliance and Enforcement Committee may impose a fine equal to 10% of the value of the housing project to which the non-compliance relates (no longer R25 000 that was not deterrent to big constructions companies); 100% of the monies paid from the warranty fund; 10% of the turnover of the home builder or a fine up to a maximum amount of R1 000 000. 00 (one million rand) as prescribed by the Minister.
- l. Lastly, the maximum penalty for criminal offences imposed by a court has been increased to R1.5 million or imprisonment, in accordance with the Adjustment of Fines Act 101 of 1991.
- m. NHBRC to expropriate money from Parliament since currently it is funding itself from enrolment fees, registration fees and renewal of registration fees.
- n. The fees have never been changed since 1998 (initial registration fee R745.61 and annual registration renewal fee R526.32)

We believe that the amendments that are proposed in this Bill will enhance both the protection of consumers and efficiency in the operations of the NHBRC.

I thank you