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Friday, 7th September 2007

MP & Chairperson of the Portfolio Committee on Housing
National Assembly
Office No V79
Old Assembly Wing
Parliament

Att: Ms ZA Kota-Fredericks

Dear Ms ZA Kota-Fredericks,

SUBMISSION BY NASHO ON THE SOCIAL HOUSING BILL

On behalf of the National Association of Social Housing Organisations (NASHO) included herewith, please find our submission of comments addressing the draft Social Housing Bill, as developed by our members.

In addition to this submission, we request that we present the credentials of NASHO and the projects of its members.

If this is agreeable to you, please contact our NASHO Administrator, Ms Tamara-Ann Adler on:

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Regards,

Electronically submitted: Signed original available on request.

Joel Mkunqwana
Chairman of NASHO

**COMMENTS BY THE NATIONAL ASSOCIATION OF SOCIAL HOUSING ORGANISATIONS (NASHO)
ON THE DRAFT SOCIAL HOUSING BILL, 2007 AS PUBLISHED IN GOVERNMENT GAZETTE No.
30022 OF 6 JULY 2007**

The National Association of Social Housing Organisations (NASHO) represents 17 Social Housing Institutions with 18,294 units under ownership and management. As an interested membership based organisation, NASHO wishes to make the following comments on the draft Social Housing Bill.

General Comment

NASHO welcomes the initiative by National Government to establish a legal framework to *“ensure a viable and sustainable social housing sector, which will also contribute to the overall functioning of the housing sector.”* A legal framework is needed by the social housing sector in order to create a level of certainty and predictability for implementing agencies to deliver larger numbers of housing units.

NASHO proposes that the Bill should better spell out the balance between regulation and compliance on the one hand, and support and enablement on the other side. While the Bill is an important advance, the latest version of the proposed legislation is very heavy on the regulation and compliance monitoring of Social Housing Institutions, but very light on the support and the creation of a conducive and enabling environment. The Bill should therefore be adjusted to balance the regulatory aspect with the support aspect.

Long Title

If the Bill is enhanced to better balance regulation with support, the long title to the Bill will have to be enhanced to include reference to support for social housing.

Definitions

The definition of “approved projects” may be too limiting if it is not the intention of the legislators to exclude projects outside restructuring zones that may have constructed housing through the institutional subsidy. Is the Bill talking to the restructuring grant or is it talking to social housing, because social housing is broader than the restructuring grant if one considers that most stock to date has not benefited from this grant? If it is the intention of the legislators to refer only to projects funded through the restructuring grant, the definition of “approved project” could potentially be amended to relate to projects that have applied for “capital restructuring grant funding”. Consider changing to “accredited projects” rather than “approved projects”.

“Low to medium income households” – it is proposed that this definition be retained, but enhanced to state that the target market is that band of consumers who are unable to access housing through the market.

“Maladministration” – it is proposed that this definition must be tightly defined by adding the wording “material non-compliance” and a Council resolution deeming it to be maladministration should be passed before the administration of the SHRA may act. NASHO has assumed that “maladministration” may be interpreted to mean something similar to mismanagement. It is important that “maladministration” be more precisely defined since it is the basis upon which the SHRA may decide to exercise its powers.

“Municipal Finance Management Act” – it is proposed that a definition of this Act should be added, and that account of it be taken in the legislation since there are aspects of the Bill that would need to take the provisions of the MFMA into account.

“Social Housing” – note that there is still the Institutional Subsidy, which can legitimately be applied for under the Housing Code and this legislation does not and should not close down access to this. Therefore, the definition of Social Housing should be broader and acknowledge that Institutional Housing is also Social Housing, but will not qualify necessarily for the Restructuring Grant if it is either outside a Restructuring Zone or offers Instalment Sale tenure.

“Social Housing Institutions” – it is proposed that the “long term” should be defined as being in excess of 15 years.

“Social housing investment plan” – it is proposed that the words “capital institutional and investment activity” should read “capital and institutional investment activity”.

“Social housing regulatory plan” – it is proposed that this definition should be made more descriptive so that it is clearer what the regulatory plan is required to cover.

NASHO also proposes that the definition of the different funding mechanisms (restructuring grant; institutional subsidy etc) should be added to the Bill so that greater clarity is always available, including when referencing the regulations against the intentions of the Bill.

Chapter 2

It is proposed that the Roles and Responsibilities of National and Provincial Government be enhanced in order to require Government to administer the disbursement of grants in accordance with the approved programme plan under the National Social Housing Programme.

Roles and responsibilities of National Government

It is proposed that a clause be added giving responsibility to National Government to develop the capacity of Provincial Government to fulfil the roles and responsibilities contemplated in section 4.

National Government must ensure alignment of this Act with other national legislation, including the Municipal Finance Management Act. There are parts of the Bill where this alignment is relevant for example, where the activity required of municipalities has resource implications or where the Social Housing Institution is a Municipal Owned Entity (MOE).

3(1)(f) It is proposed that this clause should be amended to state the requirement that the Restructuring Zone is “in alignment with the IDP” not “specifically provided for...” This is necessary because the IDP’s were approved prior to the passing of the proposed legislation, and have not therefore “specifically provided for” designated restructuring zones.

Roles and responsibilities of municipalities

It is proposed that clause 5.(c) should be firmed up to be more specific about how land and buildings and services will be made available by municipalities on a preferential basis to SHI’s. It is justifiable for municipalities to make this land, buildings and services available preferentially to agents that will use them to service the affordable housing market because municipalities do have a focused pro poor approach through their Growth and Development Strategies.

It is also proposed that the Bill should open the door for the cost of municipal services to be discounted by municipalities for SHI’s providing social housing for the lower income market. If this is done through the Bill, it will assist in realizing something that all spheres of Government have said they support, but which has thus far not been done because there is not a legislative framework within which to do it.

Chapter 3

Appointment of Council

It is proposed that section 9 of the Bill should be enhanced by not only stating that the Council should consist of “fit and proper persons who have knowledge, experience or qualifications in the field of social and rental housing”, but that the Minister appoints nominees covering the spectrum of contributors to the National Social Housing Programme. One such nominee would be a nominee of the membership-based organization representing SHI’s responsible for implementing the programme (NASHO). It is very important that the Council is comprised of persons with practical knowledge of the operational challenges that the implementers must deal with on the ground. A nomination by NASHO would ensure that this is the case.

Functions of Regulatory Authority

11.(3)(a) This clause of the Bill is supported by NASHO. However, it is proposed that it should be made slightly less restrictive by including not only technical support through grants to service providers, but also through grant support to social housing institutions directly for capacity enhancements.

11.(3)(c) This clause stipulates that the Regulatory Authority should “maintain a register of social housing institutions with the prescribed details.” There does not appear to be a comparable clause regulating where the details of contracts with other delivery agents will be maintained and open to public inspection. This should be amended so that all delivery agents (whether SHI’s or other) that benefit through public funding might be monitored.

11.(3)(e) It is proposed that this clause should make it clear that the compliance is in regard to the grant agreements mentioned in clause 11.(3)(d). In addition, it is proposed that “regular” inspections are too wide open to interpretation, and that the regularity should be specified as annual.

11.(3)(f) It is proposed that the use of language should be significantly more precise in this clause and that the terms “intervene” and “take the necessary steps to rectify” should be replaced with a description of what action “intervene” might constitute, and what exact steps would be allowed under the law. This clause would be assisted through a very precise definition of what constitutes “maladministration” as has been previously proposed in this submission. NASHO also proposes that the maladministration would have to be material to justify an intervention by a funder, and that the word “material” should therefore be inserted before the word “maladministration” in this clause.

11.(3)(g) It is proposed that the words “or directly with social housing organisations” be inserted at the end of this clause.

11.(3)(j) It is proposed that this clause should be removed from the legislation. It is not necessary for the Bill to regulate the terms of lease contracts because this is already provided for in law. It is proposed that leases should generally conform to the requirements of law, including the common law. It would be adequate for the regulations to the Bill to outline the minimum requirements of a lease contract. The SHRA may choose to inspect for compliance of lease agreements to these minimum requirements. It would be operationally impossible for housing institutions to function if they were required to apply for authority to make amendments to their lease agreements. It is proposed that similar references regarding the lease contract elsewhere in the Bill should also be removed.

11.(3)(k) It is proposed that this clause should be removed from the Bill. NASHO does not believe that this clause is relevant because the funder would have decided at the project approval stage whether or not the project is viable and it is at that point that the funder would get to decide whether to support the project to go forward or not. The funder would only approve funding if the project is financially viable. If funding is not approved, the project could not go ahead. It is therefore not necessary to include this clause in the proposed legislation.

In general, NASHO is of the view that much of what is legislated in clause 11 does not belong in the Bill, but would much more appropriately be dealt with in the regulations to the Bill. NASHO therefore proposes that what does not need to go into the Bill should be removed and dealt with through the regulations.

Powers of intervention of Regulatory Authority

It is proposed that this chapter of the Bill should more clearly spell out the sequential steps with specified timeframes within which the SHRA must act. One proposed step that should be inserted into section 12.(1) between (a) and (b) is that the report prepared by the SHRA official should be presented to the Council for adoption, and a resolution should be passed by the Council under the Bill declaring that, in the SHRA's view, maladministration has taken place. The onus of proof in this regard must rest with the SHRA.

A general concern that NASHO holds about the powers of intervention is that the SHRA assumes a power of intervention appropriate to the major funder of an institution. It is probable that the SHRA will not be the major funding institution and that the requirements are a) beyond its investment levels in the institution and b) conflict with obligations required by other funders including banks and donor agencies. It is proposed that in the event of an institution not fulfilling its obligations, it is required to repay the grant and be de-accredited. In the event of it not being able to do so, the funder (SHRA) would have recourse to normal legal process.

12.(3) It is noted that the words “continue to resist” appear in this clause. It is not clear why these words appear here, and it is proposed that they should be removed.

12.(7) It is proposed that the words “with a person acceptable to or recommended by the Regulatory Authority” should be removed.

12.(9)(c) It is proposed that properties cannot simply be “transferred” – this can only be done upon full closure, sale in execution, etc as the SHI will hold legal title over the property.

12.(12)(c) It is proposed that the words “the seizure and photocopying of such records” should be replaced with the words – “the copying of such records”. The “seizure” of records for the purpose of

inspection would be unnecessarily disruptive and could well make the continued operations of a Social Housing Institution impossible.

12.(13) It is proposed that the regulation of agencies that have been granted access to government subsidies should be even handed. It is therefore proposed that it is not appropriate to make the very significant powers of intervention available under section 12 applicable only to Social Housing Institutions, and not other delivery agents.

In general, NASHO is of the view that much of what is legislated in clause 12 does not belong in the Bill, but would much more appropriately be dealt with in the regulations to the Bill. NASHO therefore proposes that what does not need to go into the Bill should be removed and dealt with through the regulations.

Chapter 4

Accreditation of social housing institutions

13.(5) It is proposed that the words “or any other form of institution accepted by the regulatory authority” is superfluous and should be removed from the Bill.

13.(7)(b)(i) It is proposed that this clause should be removed and the onus should be placed on the SHRA to conduct the due diligence prior to releasing any form of funding to the SHI. In regard to Institutional Subsidy, this legislation cannot be applied retrospectively and therefore the Institutional Subsidy cannot and should not be clawed back if full accreditation is not achieved by the SHI for whatever reason. The recovery of monies granted which is contemplated in this clause should be reserved for when the housing provided through the grant is no longer being made available by the social housing institution to the affordable housing market.

Functions of social housing institutions

14.(1)(f) This clause is supported. It is proposed that these agreements should take the form of Joint Service Delivery Agreement and it would be helpful if guidance were given to the Municipalities for the establishment of these contracts. Municipalities need to and have a responsibility to assist SHI's equally in achieving the delivery of social housing.

14.(1)(i) It is proposed that the words “if funded through public grants” should be added between the words “ownership” and “on”. This would more accurately reflect the intention of the legislation.

14.(1)(k) It is proposed that this clause should be removed entirely in line with the comments made on clause 11.(3)(j) above.

14.(1)(l) It is proposed that this clause is too vague and open ended, and that it should be made specific or removed.

14.(3)(a) It is proposed that this clause should be removed entirely in line with the comments made on clauses 11.(3)(j) and 14.(1)(k) above.

Management of social housing institutions

15.(1)(a)(i) It is proposed that the words “risk management and risk strategy policies” should be simplified to read “risk management policies”.

15.(1)(a)(ii) It is proposed that the words “internal control and audit models” should be simplified to read “internal controls”.

15.(1)(a)(iii) and (iv) It is proposed that these clauses should be removed in their entirety because they are vague and do not define corporate governance requirements.

15.(1)(b) It is proposed that this clause should be replaced by a simple clause stating that the Social Housing Institution shall “notify the SHRA of the name and designation of the dedicated resource who shall be responsible for (a); (b); and (c)”. This section of the Bill, as it is presently drafted, is unnecessarily invasive in it's dealing with operational matters which are the responsibility of the Board of Directors of an SHI. It is proposed that recruitment and performance management of SHI staff is not something that can be regulated through national legislation.

15.(3) These clauses are unnecessarily constricting and specific. Rather state that “Obligation of the Governance structure to ensure that sound and competent management is in place at all times”.

Reporting by social housing institutions

16.(1)(a) The regularity and detail of these reports should be as stipulated not in the regulations but in the contract between the SHRA and the SHI.

16.(4) It is proposed that the words “subject to the Promotion of Access to Information Act 2000” be removed and replaced with the words - “the SHRA must obtain written consent from the concerned SHI before releasing any information sourced from that SHI.” This would serve to ensure that the distinction between public information and information gained from SHI’s by a public institution is upheld. The reference to the Promotion of Access to information Act in this clause only serves to blur this distinction.

Financing of social housing

18. This section must contain adequate substance to balance with the regulatory aspects of the Bill and in order to ensure that the legislation is enabling legislation. The current version of the Bill does not contain adequate substance, and the Bill is therefore not balanced when comparing the enabling provisions of the legislation (which should be spelled out in this clause) and the regulatory provisions of the legislation spelled out in substantial detail in the Bill.

Regulations

19(2) It is proposed that this section of the Bill should be removed because criminal acts are already covered by legislation and this act should not seek to create offences which are already adequately covered in criminal law.

General Issues of Clarity

It is proposed that the Bill should create greater clarity on what is meant by “other delivery agents”. The Bill should also clarify whether “other delivery agents” will be regulated under the same conditions as accredited SHI’s. It appears from the proposed legislation that this is not the case, but it is not clear why this is the case.

It is proposed that clarity should be obtained as to whether the SHRA has jurisdiction to regulate SHI’s that have not benefited from the Restructuring Grant. If an SHI has only had access to the Institutional Subsidy for example, is it regulated under the Social Housing Bill?

It is proposed that both the Accreditation Guidelines and the Criteria for Allocation of Funding should be prescribed in the Regulations to the Act.

It is proposed that the Housing Vote for the social housing programme for 2006 to 2009, as outlined in the Financial Implications in the Memorandum to the Bill should not be utilized for the Regulatory Authority staff costs and operational costs, but for grant funding exclusively. These funds are very moderate and should be deployed for the purpose of service delivery. It is proposed that the overhead costs of establishing the SHRA and funding staff and overhead costs should be resourced through the traditional route of allocations to National Housing Agencies, and should not be drawn from the budget of the National Social Housing Programme.

NASHO would welcome further engagement by the Department of Housing on this important legislation to the extent that NASHO can provide input that may be useful to ensuring a strong and growing National Social Housing Programme in South Africa.