



DEPARTMENT OF **HUMAN SETTLEMENTS**



**RESPONSES TO THE
PRIVATE MEMBERS BILL
AMENDING PIE ACT**

28 May 2025



1. INTRODUCTION

- Section 26 of the Constitution guarantees everyone the right to have access to adequate housing and mandates that the state must take reasonable measures, within its available resources, to achieve the progressive realization of this right.
- Section 26(3) further provides that: “No one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances. No legislation may permit arbitrary evictions.
- The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act provides for the prohibition of unlawful eviction and procedures to be adhered to when evicting unlawful occupiers.



INTRO...



➤ The landmark case on eviction matters is the Grootboom case or judgement which established and re-enforced the state obligation to provide housing, considered the application of section 26 of the constitution, the protection of human dignity of unlawful occupiers, the role of the three spheres of government in housing delivery, the importance of inter-governmental relations (IGR) in the coordination and implementation of housing programme. Any amendment to PIE Act must be in line with the constitution, and principles established in the Grootboom judgement and many other cases.

2. OBJECTS OF THE PRIVATE MEMBERS BILL

- To amend PIE Act to extend the offence to include instances where no payment was received or solicited;
- To add new considerations under section 4(6);
- To provide for joinder condition;
- To provide for stipulation of period for provision of temporary alternative accommodation; and
- To provide new considerations under section 6(3).



3. SECTION 3(1)-Offence

1. Current provision in the PIE Act

The offence is in receiving or soliciting payment of any money or other consideration in respect of unlawful occupation.

2. Private Members Bill proposal

The Bill proposes a new second offence namely: ***“incite, arrange or organise for a person to occupy land without consent of an owner or person in charge of that land”***- which exclude receipt of payment of money or other consideration.

3. Response

The proposal is in line with the department’s proposed amendment on PIE and broadens the application of section 3 and would deter any influence in invasions of land and building. Proposal is meaningful and will be considered in the department’s amendment.



4. SECTION 3(2)- Period of imprisonment

1. Current provision in the PIE Act

“Any person who contravenes a provision of subsection(1) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years, or to both such fine and such imprisonment”.

2. Private Members Bill proposal

The Bill proposes 5 years imprisonment.

3. Response

The increased period of imprisonment would deter the unlawful behaviour of arranging, organising or permitting a person to occupy land or buildings without the consent of the owner. The proposal is supported and will be considered by the department in its amendment.



....SECTION 3(2)- Period of imprisonment

Fine- The Act refers to a fine but does not stipulate the fine. The Department will further in its amendment strengthen subsection (2) by providing a maximum fine not exceeding R2 million.



5. SECTION 4(6)- stipulation of period of occupation--

1. Current provision in the PIE Act

Section 4(6) and (7) of the PIE Act provide for different periods of occupation of land by unlawful occupiers and further provides different considerations to be made by court when granting an order of eviction.

2. Private Members Bill proposal

The Bill still stipulates the different period of occupation of land by unlawful occupier.

3. Response

The principle of general application requires that the law must apply equally and not be arbitrary or directed at specific individual. It is on this basis that the department in its proposed amendment will delete all reference to period. Where there is a real need for housing, such need must be realised regardless of the period the unlawful occupier and their family have occupied the land or building. The amendment on stipulation of period is not supported.



6. SECTION 4(6)- Additional considerations

1. Current provision in the PIE Act

The Act provides for one special consideration under Section 4(6) namely: ***“the rights and needs of the elderly, children, disabled persons and household headed by women”***. When a court find that it is just and equitable to grant an order for eviction, it must consider all relevant circumstances, including the rights and needs of vulnerable group and make provision for the alternative accommodation if necessary.

2. Private Members Bill proposal

The Bill proposes as follows: two new considerations namely: **(a) “unlawful occupier’s financial means, health and previous living arrangements; and (b) the intention of the unlawful occupation”**;



---SECTION 4(6)- Additional considerations

3. Implications of new considerations

- Creation of new categories of people who must be considered for alternative accommodation other than vulnerable groups;
- Any unlawful occupier who passes the test must be provided with temporary alternative accommodation, the same way as vulnerable groups;
- Expansion of the state's obligation versus limited resources for provision of alternative temporary accommodation;
- Need for dedicated budget to address unplanned invasions and eviction orders.



-----SECTION 4(6)- Additional considerations



4. Responses

The provision of section 4(6) is broad in its application and should not be read as limited, consideration of all relevant circumstances by courts includes, unlawful occupier's financial means, health and previous living arrangements; and the intention of the unlawful occupation.

There will always be more people who fall under (a) and (b) who do not fall within the category of vulnerable group, the proposal will mean expansion of state responsibility.

The Department would not take an approach of adding special considerations under section 4(6), considering current budget challenges in delivering of alternative temporary accommodation even to the vulnerable groups. The Department does not support the proposed amendment.

7. SECTION 4(6)- vulnerable group

1. Private Members Bill proposal

*“(c) The rights and needs of any affected elderly persons, children or disabled persons and
(d) The rights and needs of any affected households headed by women”.*

The proposal entail a justification under (c) and (d) namely: **“any affected”**, on the category of vulnerable group.

2. Responses

Section 4(6) of PIE Act is very clear, ***----a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all relevant circumstances, including the rights and needs of the elderly, children, disabled persons and household headed by women”.***



-----SECTION 4(6)- vulnerable group



The purpose of consideration under section 4(6), is for courts to determine who will be affected by an order of eviction and provision of alternative temporary accommodation for those negatively affected by eviction order.

The Department has full confidence on the independence of the judiciary in carrying out its responsibility in terms of the PIE Act, and therefore the Department does not support the proposal amendment under (c) and (d).

8. SECTION 4(13)(a)- joinder condition



1. Private Members Bill proposal

Addition of subsection 13 under section 4, the Bill proposes under 13(a), a **joinder condition** when the court issues an order for eviction after considering whether land has been made available or can reasonably be made available by a municipality having jurisdiction, or other organ of state or another land owner for the relocation of the unlawful occupier, as contemplated in subsection (7);

2. Implication of the proposal

If a municipality or other organ of state or another land owner are not joined to the proceedings, the court may not grant an order for eviction requiring any of the parties to provide alternative accommodation or land to the unlawful occupier.

-----SECTION 4(13)(a) joinder condition

3. Responses

Considering that section 4 proceedings are instituted by the land owner or person in charge, it is critical that the municipality or other organ of state be afforded an opportunity to present their plan with full financial implications on the provision of temporary alternative accommodation or land before an order of eviction is granted.

The department support the proposed amendment and will consider the joinder condition in its amendment.



9. SECTION 4(13)(b)-Stipulation of period by courts for provision of temporary alternative accommodation

1. Private Members Bill proposal

The Bill proposes under 13(b), that where reasonable to do so and if alternative accommodation is only made temporarily, the court must stipulate the period for which such alternative accommodation or land is made available to the unlawful occupier by the municipality, or other organ of state or another land owner.



SECTION 4(6)-stipulation of period



2. Responses

The requirement for stipulation of period must be carefully considered due to its risk of contempt of court, and measures must be put in place by relevant municipality to ensure compliance with courts deadlines.

Normal practice by courts has been to request the plan from the municipality or other organ of state or land owner on how they are going to provide temporary alternative accommodation.

The court has left it on the state to determine conditions for provision of alternative accommodation.

The proposal is reasonable, however the sector is not ready and there are no standard operating procedures nationwide to address invasions and eviction orders.

The proposal needs further engagements with the sector.

10. SECTION 6(3)-Eviction at an instance of organ of state

1. Current provision in the PIE Act

Section 6(3) of the PIE Act provide- *“In deciding whether it is just and equitable to grant an order for eviction, the court must have regard to (a) the circumstances under which the unlawful occupier occupied the land and erected the building or structure; (b) the period the unlawful occupier and his or her family have resided on the land in question; (c) the availability to the unlawful occupier of suitable alternative accommodation or land”*.

2. Private Members Bill proposal

The following insertions are to be considered by courts as justification for provision of alternative accommodation

(a) *“including the intention”*



.....SECTION 6(3)-Eviction at an instance of organ of state

Responses

The proposal is for the court to pay special attention to the intention of the unlawful *occupier when the court assesses the circumstances under which the unlawful occupier occupied the land and erected the building or structure.*

The proposal is necessary as it will eliminate unlawful occupiers who have other reasons other than homelessness when occupying the land or erecting buildings and structure.

If the court find any other reasons other than homelessness, it may not make an order for the provision of alternative accommodation.

The proposed amendment is supported, and the Department will consider it in its proposed amendment.

(c) *“within the area of the municipality’s jurisdiction*



.....SECTION 6(3)-Eviction at an instance of organ of state



Response

The proposal is responding to instances where the court issues an eviction order with an order for provision of alternative accommodation by the municipality or any organ of state, which was not a party to the proceedings.

The proposed joinder condition will assist in eliminating this practice by courts as the affected municipality will be joined before an order for eviction is granted.

The proposal is supported and will be considered by the department in its amendment.

.....SECTION 6(3)-Eviction at an instance of organ of state

(d) "the resources of the municipality or any organ of state"

Response

The proposal is reasonable, however it should be noted that a lack of resources cannot supersede the right of access to adequate housing and cannot take away the state obligation to take all reasonable steps to realise such right.

Limited resources can justify prioritisation of vulnerable group, hence the department does not support the addition of more categories under section 4(6) as it will allow other people to equally be prioritised. Proposal will be considered in the Department's amendment.

Private Members Bill further proposes the insertion of subsection 3A dealing with stipulation of period when the court make an order for provision of alternative temporary accommodation. The proposal is not supported based on similar reasons provided under the proposed section 4(13)(b).



10. CONCLUSION



- The Department developed an Amendment Bill on the PIE Act in the year 2008, however the process was put on hold since there was a need for extensive consultation which included the Human Settlements White Paper and the PIE Policy foundation.
- The Department has been consulting with various stakeholders, amongst others Provincial Departments of Human Settlements, Metropolitan Municipalities, SALGA, and NGOs on the draft Policy on PIE.
- The Department will finalise the PIE Policy in the financial year 2025/26 which will enable the development of PIE Amendment Bill.
- The Department does not support the Private Members Bill
- The Department will continue with the process already underway to finalise PIE Policy and then to introduce PIE Amendment Bill



THANK YOU

