



Financial and Fiscal Commission

Assignment of Housing Function to Six Metros by 2014

Financial and Fiscal Commission's Submission

28 March 2013

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Abbreviations

BNG	Breaking New Grounds
DORA	Division of Revenue Act
FFC	Financial and Fiscal Commission
HSDG	Human Settlement Development Grant
IDPs	Integrated Development Plans
MEC	Member of Executive Council
MFMA	Municipal Finance Management Act
DoHS	National Department of Human Settlements
PFMA	Public Finance Management Act

1. Background

This Submission is made terms of Section 2(A) of the Financial and Fiscal Commission (1997) and section 9(4) of the Municipal Systems Act, (2000) (MSA). The FFC Act, requires an organ of state in one sphere of government which seeks to assign a power or function to an organ of state in another sphere of government to – (1) Notify the Commission of the fiscal and financial implications of such assignment on the future division of revenue, and (2) request the recommendation or advise of the Commission regarding such assignment.

Chapter 3, of the MSA also requires a Cabinet member, Deputy Minister or Member of Executive Council (MEC) initiating the national or provincial legislation referred to in sub-section (1) and (2) (these two sub-sections speak to function assignment) to request the Commission to make an assessment of the financial implications of the legislation.

The Submission is in five sections. The first section is the Background. The second section deals with the legislative framework underpinning assignment of functions. The third section looks at rationale for assigning housing function to municipalities, followed by principles and requirements applicable when assessing a function shift in section four and five concludes and presents recommendations.

2. Legislative Framework on Function Assignment

The Constitution of the Republic of South Africa (1996), assigns housing function as a concurrent responsibility shared between the National and Provincial Governments. Section 156(4) of the Constitution makes provision for the National Government to assign functions to a municipality, by agreement, and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 (include the item “housing”) or Part A of Schedule 5 if that matter would be most effectively administered locally and the municipality has capacity carry it out. Section 126 of the Constitution further provides for an assignment of a function by provincial MEC responsible for a function. This section provides that MEC of a province may assign any power or function that is to be exercised or performed in terms of an Act of Parliament or a provincial Act to a Municipal Council. Such an assignment must be in terms of agreement between relevant Executive Council members and the Municipal Council, consistent with the piece of legislation in terms of which the relevant power or function is exercised or performed and takes effect upon proclamation by the Premier.

The Housing Act (1997) provides powers and functions for different spheres of Government in relation to housing. Section 10 of the Housing Act in particular provides for the administration of national housing programme by municipalities through an accreditation process. This section provides that any municipality may apply in writing to the MEC responsible for housing in the form determined by the MEC to be accredited for the purpose of administering one or more national housing programs.

As such both the Constitution and the Housing Act provide for two different process of devolving a function from one organ or sphere of government to another. The former do this through a shifting or assignment of a function and while the latter use different levels of accreditation for municipality to administer selected housing programs. The difference between the two legislative processes is explained by the nature of the devolution. Accreditation only involves temporary delegation while assignment involves permanent transfer of a function. The latter includes the right to directly receive funding and assets necessary to perform a function. Table 1 provides a brief description of different applicable accreditation levels.

Table 1: Summary of accreditation levels and assignment

Accreditation Level	Description
Level One	Includes beneficiary management, subsidy budget planning and allocation, and priority programme management and administration. This is a just equivalent to some level of the delegation of a function.
Level Two	Entails full programme management and administration of all housing instruments/ programmes (in addition to all activities at Level One). This is also similar to the delegation of a function. Assessments of metros' readiness for level Two accreditation were undertaken in 2009 and 2010 and according to the DoHS all six metros affected by this proposed function assignment have Level Two Accreditation.
Level Three	Involves financial administration in addition to activities at Level Two accreditation. This implies that an accredited municipality undertakes all functions on level one and two and above these functions; it also has financial administration function.
Assignment	Equivalent to level 3 accreditation but involves formal agreement to assign and receive the function.

3. Rationale for Housing Function Assignment

Even though the Constitution is clear about division of functions across the three spheres, increasingly, there are compelling arguments for some functions to be shifted to local government especially in light of evolving intergovernmental relations. In the main two reasons dominate the discourse on devolution functions to lower levels of government. This includes horizontal and vertical integration issues.

The horizontal integration reasoning is based on a principle that shifting/assigning a housing function to municipalities would improve the overall coordination and efficiency of delivery. Locating the decision making authority on the implementation of national housing programmes at the local government level would enable municipalities to coordinate various activities and services that relate to the broader sustainability of human settlements and the built environment. This is important given that the local government sphere is responsible for a number of services that make human settlements habitable and this includes the provision of water, sanitation and other services. Therefore devolving the housing function to the lowest sphere will improve horizontal integration as well as the delivery of integrated human settlements that have all the necessary services and relevant infrastructure.

The vertical integration reasoning/Acceleration of service delivery is based on a reasoning that lack of certainty in respect of funding allocations affects the overall planning at the municipal level. Furthermore, in some instances the flow of funding for housing from Provincial Departments responsible for human settlements is so slow that it delays the actual housing delivery. Such a funding arrangement and disbursement often result in under-spending and roll over of funding and funding being reallocated to other provinces.

The above two motivations features prominently in the DoHS proposal to assing the housing function to the six Metros. The Commission has over the years used horizontal and vertical motivation as the bases for recommending acceleration of accreditation.. In addition to the horizontal and vertical reasons for assigning the housing function the Commission based it's recommendations for assignment on following reasons:

- a) the ability of municipalities to increase opportunities for the application of innovative planning including overall land-use planning;
- b) more coordinated approach to planning approval and implementation;
- c) improving accountability;
- d) addressing delays in the housing delivery process;
- e) enabling municipalities to fully coordinate the selection, application and approval processes for subsidy beneficiaries;
- f) improving the flow of funding and
- g) reducing bureaucratic inefficiencies

4. Assessment of the Submission against the Commission's Manual for Function Shifts

In 2007, the Commission developed a substantive manual checklist for assessing function shifts¹. The key purpose of this manual checklist is to ensure that function shifts or assignments are conducted in systematic order, ensure that resources necessary for performing a function are also shifted when a function is transferred to another authority or organ of State and more importantly that service delivery is not adversely affected. The checklist is an instrument that can be used as a safeguard against unfunded mandates and also independently verifying the appropriateness of baseline resources for the function that is

¹ Manual for checklist for assessing function shifts of 2007 available at www.ffc.co.za

being assigned. The Commission therefore has used the manual checklist to assess this proposed function assignment of housing functions. The outcomes of this exercise are briefly discussed below.

4.1 Clear definition of function shift

The Commission manual requires the authority proposing the assignment to define clearly the organs of state from which the function and/or to which the function is assigned. In this respect, the DoHS is clear on the definition of a function to be shifted from provinces to selected metros. This function relates to the overall human settlements functions which include:

- Beneficiary management, subsidy budget planning and allocation, and priority programme management and administration (Level One accreditation). This is equivalent to some level of delegation of a function.
- Full programme management and administration of all housing instruments/programmes (in addition to all activities at Level One). This is also similar to the delegation of a function (Level Two accreditation).
- Financial administration (Level Three accreditation).

Financial administration is an important aspect on this function assignment as Metros have already been accredited at Levels One and Two (the exception being financial administration). In essence financial administration completes devolution of housing function and implies that such metros will undertake all functions on Level One and Two and above these, it also has financial administration function. This level of accreditation is equivalent to the full executive assignment of a function and is proposed for selected Type A municipalities.

4.2 Principles applying to shifting of a function

In addition to clarity on the definition, it is important that any assignment be compliant with fundamental principles of function shifts. This relates to whether the proposed assignment respects, promotes or fulfils the provisions of the Constitution that apply to delegation and

assignment. Most importantly the principles concern whether the contemplated assignment fits the general framework of established government policy.

The DoHS developed a comprehensive plan for sustainable human settlements, namely “Breaking New Ground” policy (BNG) in 2004 where it envisaged the accreditation and assignment of a housing function to municipalities, in particular Metros. However, in order to be accredited or assigned a function, a municipality has to demonstrate capacity to plan, implement and maintain both projects and programmes that are well integrated within Integrated Development Plan (IDP) and within 3 year rolling capital investment programmes mandated by the Municipal Finance Management Act (MFMA). Outcome 8 also sets a target on the number of municipalities to be accredited and assigned housing function (target for 2014 is to assign a housing function to six metros). Some of government policies to benefit from this proposed function assignment include Spatial Planning and Land Policies and National Development Plan as they acknowledge the integral role of municipalities in facilitating integrated planning. The proposed function assignment therefore complies with this requirement.

4.3 Co-operative governance issues

The manual checklist for assessing function shifts requires that assignment of a function should be based on what is appropriate for the Republic as a whole, rather than on what is appropriate for a particular sphere of government or organ of state. The proposed function shift seeks to promote efficiency and to improve planning and coordination which will result in improved service delivery for the whole nation. The proposed function assignment should therefore be to the benefit of the Republic as a whole.

It is also a requirement that assigning authority should accept the funding requirements or support that is necessary to make the assignment successful. In this proposed function assignment, funding will follow function (meaning that financial resources for the delivery of housing function will be transferred to metros) in line with the principle advocated by Commission.

The manual requires the assigning authority to accept responsibility for constantly monitoring or reviewing the function assigned and there must be evidence of a decision taken by the

Executive Authority (such as minutes of a meeting). Furthermore, it is a requirement that proof/s of agreements reached by both parties indicating that an assignment is by consensus need to be provided. The Commission has requested both documents showing that assignment is by consensus and acceptance of responsibility for constant monitoring of the assigned function but these have not been provided. However, the Commission has been party to discussions in Parliament where affected authorities confirmed their readiness and willingness to accept the responsibility.

4.4 Transfer of the authority role

The Commission manual requires that the authority role will be transferred in full when a function is shifted by assignment. The proposed assignment complies with this requirement as the function will be assigned in full (only to the six metros) and not uniformly to all metros.

4.5 Efficient, effective and sustainable delivery of service

Important issues to be considered include the following:

- Promotion of equity, efficiency, affordability and economical and sustainable access to basic services
- Services to place responsibility of providing services as close as possible to the community
- Minimises costs of service delivery
- Economies of scale
- Promotion of efficient, effective and accountable public administration
- Promotion of cooperative government
- Addressing the historical inequalities in society
- Minimises jurisdictional spillovers and
- Benefits the greatest number of residents

The proposed function assignment has potential to meet these requirements as its main rationale is efficiency (through horizontal and vertical integration) and improved coordination. A number of inadequate settlements exist within metros, so improving housing

delivery in metros will benefit the greatest number of residents. The proposed function assignment also complies with the principle of accountable public administration as metros will be fully accountable for the overall housing performance and delivery and providing a service as close as possible to the community.

4.6 Resources following function

An analysis on the implications for housing assignment to the six metros is done under the following:

- Financial and funding implications;
- Assets and liabilities; and
- Human resources

a) Financial and Fiscal Implications of Housing Function Assignment

Capital funding for the implementation of housing programmes is currently provided from the fiscus in the form of the Human Settlements Development Grant (HSDG) to provinces through the Division of Revenue Act (DORA). The HSDG is a schedule 5 grant and is allocated through a formula which is currently under review. This formula review by DoHS is not expected to have an impact on allocation principles relating to vertical and horizontal equity. The six metros are currently accredited at Level Two and therefore undertake a number of activities on housing including management of beneficiaries, subsidy budget planning and allocation, priority programme management and full programme management and administration of all housing instruments. The only outstanding issue is financial administration which would mean that funding from the HSDG will flow directly to these metros from DoHS. Some provisions have been made in the DORA with respect to the HSDG to these six metros in anticipation of the function assignment. In fact, the DORA provides that funding for these six metros which would have been disbursed through provinces would flow directly to the metros and this is in line with the principle of funding following function. The Commission supports adherence to this principle.

On operational funding, DoHS acknowledges that a principle of funding following function is applicable from Level Two accreditation and as a result provinces are required to transfer

funds to the accredited municipalities who administer programmes on provinces' behalf. All six metros have been accredited at Level Two but there is no evidence from the report submitted by DoHS that funding was transferred to these metros. Furthermore, the report has indicated that significant disparities arose during consultation process with respect to the operational budgets proposed by provinces and the ones motivated by metros in some cases. For example, the Western Cape Province proposes a budget transfer for salaries, social contributions and goods and services of R8, 97 million, while the City has requested a budget of R22, 66 million. Currently, there is no proposed new allocation on this issue. These are some of the issues that the Commission recommends be addressed and agreements reached before the actual official assignment is made.

The Commission manual also recommends that budget process implications should be taken into account in the process of a function shift. In this case, the intention for assignment of housing function started early enough in April 2012 targeting 2013/14 financial year (about 12 months before a new financial year for the national and provincial governments and about 14 months for municipalities). The challenge facing the DoHS, however, has been on the gathering of the necessary information and compiling a report for formal submission to the Commission that has slowed a process. Furthermore, implications of a function assignment should take into account implications for the planning process and this requires an assignment to be documented in municipal IDPs.

b) Implications on Assets and Liabilities

Assets to be affected in this proposed assignment include movable assets in the form of equipment or furniture and immovable assets in the form housing projects, land and hostels. These assets should be transferred within the ambit of the Public Finance Management Act (PFMA). The Commission's manual checklist for a function shift put emphasis on due diligence investigation to ensure that assets and liabilities which are listed and valued are included in the assessment report. A key aspect in assets and liabilities management is the acceptance by the receiving authority. In the report submitted by DoHS, assets and liabilities of provinces to be transferred to metros have not all been clearly identified, verified and valued.

With respect to movable assets, it is reported that some provinces have identified assets to be transferred but a detailed, reconciled and validation of asset register is yet to be finalized. Pertaining to contractual obligations, provinces are currently implementing a large number of national housing projects which are at different stages to be transferred to the metros. According to the report from DoHS, provinces have been discouraged to enter into further project or contractual obligations in anticipation of assignment and this position is supported by the Commission on provision that delivery disruptions are minimised. The DoHS report indicates that provinces and metros will have to discuss the projects and agree on those that provinces will be required to complete. This implies that some ongoing projects currently implemented by provinces will be transferred to metros. The biggest challenge therefore will be to ensure that each stage of each project is clearly indicated, understood and compared against funding already spent and remaining to complete the project. The Commission is concerned about the potential risk of transferring ongoing projects for which funding may have been exhausted.

c) Implications on Human Resources

Staff employed by provinces and their employment conditions will be affected by this proposed housing function assignment. The Commission manual provides that labour related issues should be dealt with in terms of the Labour Relations Act of 1995, section 197 in particular. According to the report, some metros have proposed an alternative to formal transfer process and suggest advertising vacant positions so that relevant provincial staff members voluntarily apply through the normal recruitment process. Some provinces have identified the number of staff members that would be affected but agreements have not been reached between provinces and metros. In some instances (City of Johannesburg) a detailed organogram is not yet finalized or provided in order to make a possible comparison on staff vacancies with the number of provincial staff requiring transfer.

4.7 Service risk management

The Commission's manual requires a document plan for a function assignment illustrating planned steps to ensure there is no disruption to service during the transition period and this has not been provided by DoHS. Absence of this plan poses a serious risk especially given that assets including land and hostels to be transferred to metros in some cases are not yet

finalized or included in asset registers. Land could easily be invaded before it is handed over to municipalities and buildings such as hostels could further deteriorate. While it is submitted that in most cases provinces will have to complete ongoing projects before actual assignment, this will be the case on all projects. Therefore, one of the risks could be that continuity on some housing projects could be affected especially as some funding would have been spent. As a result, there will be a need for a detailed report on each project including the stage of each project and resources already used in order to ensure that metros will be able to continue with remaining work on those projects.

4.8 Deciding to shift the function

The DoHS has considered other alternatives which include delegation in the form of level One and Two accreditation for metros and this has been achieved. However, these do not give metros full administration of national housing programmes including financial administration. The next level therefore is full assignment of housing function which includes financial administration which is being considered by DoHS and this complies with the Constitution.

5. Conclusions and Recommendations

The Commission previously made recommendations for acceleration of the accreditation process. The recommendations specified that, in the short run, the housing function should be accredited to municipalities where capacity exists and capacitate those that lack capacity for assignment in the long run.

The Proposal by the DoHS has been tested against requirements for function shifts using the Commission's manual checklist. The proposal complies with the general principles underlying assignment although the Commission was not supplied with sufficient supporting information for the Commission to fully assess the implications. A significant amount of the necessary information however was contained in the proposal and also obtained during the consultations between the Commission and the DoHS officials. In The insufficiency of information made it difficult for the Commission to accurately determine the baseline allocation commensurate with the function assignment. Despite the missing supporting documentation, the Commission supports the proposed assignment of the housing function to the six metros as it is consistent with its previous recommendations and meets the principles criteria.

The Commission further recommends that the following information gaps and tasks be addressed as a matter of urgency:

- Provision of agreements between the affected provinces and metros on a number of issues including operational funding, transfer of staff, monitoring, evaluation and support plan post assignment;
- Detailed asset register from provinces;
- Detailed information of housing projects to be transferred to metros, their stages, funding allocated, funding already spent and funding remaining;
- Due diligence done on projects already started;
- Listing and valuation of assets and any liabilities; and
- Cut off date for these current liabilities to be resolved.
- An appropriate baseline be determined in order to avoid unfunded or underfunding of the full mandate

Mr. Bongani Khumalo
Acting Chairperson/CEO

A handwritten signature in black ink, appearing to be 'BK' followed by a flourish.

For and on behalf of the Financial and Fiscal Commission
