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TITLE:

THE OVERSIGHT ROLE OF THE NATIONAL DEPARTMENT OF HUMAN SETTLEMENTS ON ITS ENTITIES: THE CASE OF NHBRC

RESEARCH REPORT

BY

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Abstract

Research on the oversight role of the National Department of Human Settlements on its public entities: The case of National Home Builders Registration Council (NHBRC). This study looked at the National Department of Human Settlement's oversight role over its entities. It took place in the context of broad departmental public entity oversight management. However, the researcher's focus was on the systems and mechanisms used by the department in its oversight function with a specific focus on the National Home Builders Registration Council as one of its entities and determined if there were any impede oversight challenges.

The research explored through documentary analysis and investigative interviews with departmental officials who are charged with the responsibility of overseeing the governance of all entities reporting to the NDoH. Key accountability documentation, and commentary documents from oversight organs of state such the Auditor General and Parliamentary Portfolio Committee on Human Settlements were also reviewed and analysed.

The research discovered that the department's oversight over the NHBRC, is mainly focusing on compliance enforcement. The mechanisms and systems used are somewhat biased towards compliance monitoring. As a result of the skewed focus, there is an imbalance between legislative enforcement and service delivery on the part of NHBRC. Although the research could not make inferences to other public entities, the study helped in developing an understanding of challenges associated with oversight (generally) and the strength and weaknesses of the department's oversight systems and mechanisms (in particular). The research unveiled a need for an improvement in regard to the oversight systems and approach, and concludes by recommending that it would be necessary that government should introduce a holistic oversight framework that would guide and promote efficiency and effectiveness in all "public entities oversight initiatives".

DECLARATION

I, Reineth Ngilishi Mgiba, Student Number 0420502/P, hereby declare that this Research Report was compiled on the basis of my own academic research work.

.....

Duly signed

Date: 16 September 2011

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DEFINITION OF TERMS

Accounting Authority is the Board of Directors of a Public Entity

Accounting Officer is the Chief Executive Officer of a public entity

Corporate governance is the system by which business corporations are directed and controlled and the major attributes of corporate governance are transparency and accountability

Executive Authority this word is used interchangeably with Minister of the Parent Department - In terms of the PFMA

Governing body The governing body of a public entity is the equivalent of the private sector concept of a board of governing body members. The governing body is the focal point for good corporate governance within a public entity and is accountable and responsible for the performance, service delivery and affairs of the public entity. These terms are used interchangeably in this document.

Parent department is a department that establishes and owns the entity

PFMA is the Public Finance Management Act (No1 of 1999 as Amended)

Public entity structures established outside government departments

Public entities policy it is a policy developed and approved by the Department of Human Settlements for use over its entities

Public governance is the system by which government departments and its Public Entities are directed and controlled

Servcon Housing Solution is a private company established as a product of the Record of Understanding between government and financial institutions or lenders where lenders pledged to re-enter the low income housing market. Servcon is a private company established in terms of the Company's Act of 1973 and was mandated to provide exclusive management services with respect to the designated or ring-fenced portfolio comprising 33 306 Properties in Possession (PIP's) and Non-Performing Loans (NPL's) with a value of R1, 277 billion, for a period of 8 years from 1 April 1998 to 31 March 2006.

Thubelisha Homes is a section 21 company, established as a "special purpose vehicle to facilitate the acquisition of rightsizing housing stock and the disposal of these houses to Servcon clients".

National Department of Human Settlements is herein referred to as 'Department'

National Home Builders Registration Council is a public entity established in terms of the Housing Consumer Protection Measures Act of 1998, and has been providing an exclusive regulatory function in the home building environment. It was established in November 1998 with the mandate to protect potential housing consumers from unscrupulous homebuilders. It has since been striving to

regulate and provide better services to the consumers through registration of homebuilders and enrolment of homes.

National Housing Finance Corporation (NHFC) is a corporation established as a result of a Cabinet decision in May 1996, as envisaged in the White Paper on Housing, which was approved by Cabinet on 7 December 1994. NHFC was established to search for new and better ways to mobilise finance for housing, from sources outside the state, in partnership with the broadest range of organisations.

Nurcha is a Section 21 Company established as a Reconstruction and Development Programme (RDP) Presidential Lead Project in 1995 by agreement between the South African Government and the Open Society Institute of New York. The primary function of Nurcha is to help release finance for low cost housing from financial institutions. Nurcha's main activity is to offer guarantees to banks to encourage them to make bridging finance loans available to developers in cases where banks are not prepared to approve such loans without additional security, and thus facilitate the flow of finance from financial institutions into low-income housing development.

Rural Housing Loan Fund is a section 21 company established to provide incremental loans to rural communities for housing purposes.

Social Housing Foundation is a section 21 company established to broadly develop and build capacity for social housing; to encourage networking both locally and internationally by bringing various players together in a range of different forums, to promote information and skills exchanges and cooperation and to develop a policy framework for social housing.

Peoples Housing Partnership Trust (PHPT) is a capacity building entity established in 1997, to implement a capacity building programme to support the Peoples Housing Process. The main objective of the programme is to develop capacity at all levels of government, Non-Governmental Organisations (NGOs), Community Based Organisations (CBO's) and communities to support the Peoples Housing Process.

CHAPTER 1
INTRODUCTION

1.1 Background

Since 1994, the South African government has created a large number of institutions outside of normal departmental structures. These institutions have been set up in order to achieve a wide variety of objectives, including providing advice, facilitating investments, delivering services, and providing strategic goods. These institutions have been created in terms of a range of different methods, principally: separate enabling Acts that uniquely regulate the public purpose mandate of each institution; general company or trust statutes, either through registration in terms of the Companies Act, or as trusts or funds; or a combination of the above. These approaches were used in the absence of an overarching policy and procedural framework, resulting in these institutions being subject to an array of regulatory, governance and accountability arrangements.

One example in this regard would be entities established to support the Ministry of Human Settlements in its quest to provide 'adequate shelter' to the needy South African societies. Section 26 of the Constitution enshrines the importance of providing adequate shelter to every citizen of the country. Accordingly, the provision of shelter falls within the ambit of the state. It is for this reason that the

state, in its attempt to realize this constitutional requirement has, over an above the Ministry of Housing (now Human Settlements), created a number of public entities to support the ministry to adequately deliver on its mandate in terms of the Housing Act, 1997 (Act No. 107 of 1997) which empowers the Minister of Human Settlements to establish and finance national institutions for the purpose of housing development and supervise the execution of their mandate.

As such, eight housing support institutions were established as public entities accountable to the Minister. As generally acknowledged, the expectation is that these entities would deliver on mandated policy imperatives in the manner that is efficient and cost-effective in line with commercial principles whilst ensuring strict compliance to the manner in which public finances are managed.

At the time when these entities were established, the broader aim was to ensure that the housing Ministry gets the necessary support in its quest to stabilise the housing environment with a view to create an enabling environment for the creation of sustainable human settlements. Central to this objective was to ensure that there is maximum benefit of State expenditure in respect of housing.

Generally, the rationale for establishing entities outside parent departments is that certain services could be more efficiently and cost-effectively undertaken in specialised environments by professionally-managed, arms-length agencies functioning on commercial principles.

Government, as the Executive Authority (EA), and as the owner/shareholder in public entities, is concerned with policy implementation of service delivery and acts as a regulator. It determines the overall policy and desired direction as it relates to the provision of a service. The relationship is one of controlled and managed involvement in its investment without negatively impacting on the independence of the accounting authorities (the Boards of Directors) and without getting involved in the day to day management of its entities.

Zăpodean et al (2008), argues that it is important that the principles of good governance in public entities be applied to determine the efficiency of decision-making bodies in achieving the objectives in terms of their fiduciary duties. However, the arms length relationship between those entrusted with oversight responsibility and the governing boards who are the accounting authorities of these entities has a potential risk of creating a control gap for government and stifling service delivery and the associated social benefits.

As such, it is expected that the Executive Authority should play an active role in discharging its responsibilities with regard to the following[1]:

[1] Huggo Du Toit, Director Corporate Governance, 'Governance oversight role over state owned entities (soe's)' – (National Treasury, 2005)

i) Insisting on a high standard of governance in order to strengthen the accountability of the Board, necessitating specific reports on a quarterly basis as per relevant statutes to enable the Executive Authority to monitor progress and performance.

ii) Ensuring t hat entities set targets, both financial and non-financial, and agree on a (target) optimal capital structure annually before commencement of the budget process. As shareholder, government should agree on dividend policies that are driven by the agreed capital structure, profitability and level of agreed future capital expenditure.

iii) As much as reasonably possible, clearly detail the role and responsibilities of the board as a whole and of individual directors, taking into account potential conflict of interest between the shareholder's regulatory responsibilities as government and shareholder's responsibilities on the other hand. The mandate will include any requirements to meet explicit stated Government socio-economic objectives.

iv) As such, the board should ensure that it has clear understanding of the mandate and the implications of its implementation and will seek clarity where in doubt.

This research looks at the Department of Human Settlements' oversight on the National Home Builders Registration Council (NHBRC).

1.1.1 Establishment and Mandate of NHBRC

The National Home Builders Registration Council (NHBRC) is an organ of state established in terms of the Home Consumers Protection Measures Act 1998 (Act No. 95 of 1998) to protect all housing consumers against defined structural defects and to regulate the built industry. Primarily, its mandate is to manage the risk of structural defects in the home building industry and, in so doing, protect the housing consumer.

Chapter 1 of the Housing Consumers Protection Measures Act, Act No. 95 of 1998 as amended prescribes the mandate of the National Home Builders Registration Council (NHBRC). The Act states the objects of the Council as follows:

(a) to represent the interests of housing consumers by providing warranty protection against defects in new homes;

(b) to regulate the home building industry

(c) to provide protection to housing consumers in respect of the failure of home builders to comply with their obligations in terms of this Act;

(d) to establish and to promote ethical and technical standards in the home building industry;

(e) to improve structural quality in the interests of housing consumers and the home building industry; (f) to promote housing consumer rights and to provide housing consumer information;

(f) to communicate with and to assist home builders to register in terms of this Act;

(g) to assist home builders, through training and inspection, to achieve and to maintain satisfactory technical standards of home building;

(h) to regulate insurers contemplated in section 23(9)(a); and

(i) in particular, to achieve the stated objects of this section in the subsidy housing sector.

It is in this context that the NHBRC sees its stakeholders as all those that are involved in the value chain of housing delivery, especially the housing consumer in both the subsidy and the non-subsidy sectors. Over and above, the risk management tools used by the NHBRC in the government subsidy sector include, geotechnical assessments, structural assessments, construction management assessment, full time on-site inspections, the registration of Home Builders and Developers, the development and upkeep of the Home Building Manual that incorporates design and construction rules, and the appointment of competent persons by the Home Builder and Developer to perform geotechnical investigations and rational designs. However

a lot coming from the public and the media in general suggest that there are no sufficient checks and balances to ensure that these risk management tools are effectively managed.

1.1.2 Institutional Relationship with National Department of Human Settlements

Government as a Social Responsibility Regulator, through NHBRC as an entity of government, regulates the home building industry to protect all housing consumers from unscrupulous home builders.

The NHBRC is governed by a Council appointed by the Minister of Human Settlements who is the Executive Authority and is subject to compliance with the Public Finance Management Act, (Act No. 1 of 1999) (PFMA). PFMA defines the manner in which the Council must govern itself as well at how the Council should manage and report on the utilization of its funds. Annually, the NHBRC submit to shareholder (Minister of Human Settlements) delivery plans or strategic plans. Periodically, this entity submits progress reports on its performance in relation to service delivery targets, financial performance as well as corporate governance.

1.1.3 The oversight role of the National Department of Human Settlements

The National Department of Human Settlements is the sole shareholder of NHBRC. The Minister of Human Settlements is the Executive Authority, accountable to Parliament on all matters relating to the functioning of the NHBRC. For effective oversight management, the department has to strive to adhere and enforce all applicable regulatory frameworks and monitor service delivery by its public entities.

Therefore, as with other Departments, the National Department of Human Settlements should ensure compliance to regulatory frameworks such as the Public Finance Management Act, 1999 (as Amended), Treasury Regulations, Entity specific legislation (Own Enabling legislation), King Code and the Protocol on Corporate Governance. This responsibility should be expressed in the Shareholder Compact signed between the Executive Authority and the Chairpersons of the Boards of entities.

The Department acknowledges by in large, that the PFMA is critical in the execution of the oversight function over its entities. Its oversight is therefore informed by the legislative prescripts as enshrined in the Act. Accordingly, the NHBRC submits annual strategic corporate plans for approval by the Executive Authority. In

implementing the strategic corporate plans, NHBRC submits quarterly service delivery progress reports to departments. The only mechanism used by the department to ensure that NHBRC performs well on its mandate is by way of tracking service deliver performance against approved Strategic Corporate Plans, which sets out pre-determined performance measures and indicators.

As indicated above, the Department established the NHBRC in terms of 'its own enabling legislation' to ensure that it delivers on a legislated mandate. It is envisaged and expected that the legislative framework establishing the NHBRC should enable the department to effectively oversee NHBRC governance and its operations.

It may concluded that the step taken by government to establish the National Home Builders Registration Council was genuine and for a defined purpose. The home building industry is one of the largest economic sectors in the economy of South Africa. If left un-regulated, it would have dire consequences for the social wellbeing of the society. Therefore, as a social responsibility regulator, government would be exposed to massive social welfare obligation in the area of shelter provision.

Government's biggest responsibility is to ensure that NHBRC performs in terms of its statutes and delivers what was initially intended when its enabling legislation was promulgated. Notwithstanding the above, service delivery is highly depended on adherence to good corporate governance.

Available documentation suggests that the Department of Human Settlements has been experiencing oversight challenges when dealing with its entities, in general, particularly in respect of service delivery and adherence to good corporate governance. Quite often, this has a negative impact on service delivery and the ultimate beneficiary of such services becomes the looser. The Department has seen a growing number of complaints against the National Home Builders Registration Council from the public as well as Parliament in respect of its service. This prompted a need to determine if there are challenges in respect of the Department of Human Settlements in its role as overseer of National Home Builders Registration Council's with particular reference to the mechanisms and systems used to monitor service delivery and enforce accountability.

In broad terms, the research paper determined challenges impacting on the Department of Human Settlements' oversight role over NHBRC in the area of policy implementation and accountability. Furthermore this research explored the

possibility of developing effective mechanisms to enhance the Department's oversight.

1.2 Problem statement

Public entities are established, amongst others, to collectively contribute to the achievement of boarder government objectives and priorities. It has been broadly acknowledged that state owned entities have been instrumental in achieving government's goals and objectives through the implementation of policy.

However, Government as a shareholder should employ oversight systems and mechanisms to ensure effective policy implementation by each of its entities. The efficiency and integrity of each government department's oversight role is of great significance to service delivery in general. Therefore, this role needs to be properly carried out if government is to derive positive returns from its investment.

In general, the mechanisms and systems employed by the Department of Human Settlements in respect of its role to overseer its entities warrant a closer investigation. Available documentation suggests that the Department of Human Settlements has

been experiencing oversight challenges when dealing with the National Home Builders Registration Council, particularly in respect of service delivery and adherence to good corporate governance. Quite often, this has a negative impact on service delivery and the ultimate beneficiary of such services becomes the looser. The Department has seen a growing number of complaints against the National Home Builders Registration Council from the public as well as Parliament in respect of its service delivery and its governance. These include,

i) Inadequacies in service delivery by NHBRC

There is currently no framework in South Africa to ensure that those who conduct inspections are sufficiently skilled and knowledgeable in the built environment and can be trusted by all the stakeholders to protect their interest, while most importantly ensuring that the quality standards are complied with. Various stakeholders with varied developmental requirements are involved in the quality assurance exercised during housing delivery. There is no coordination of role players in the housing sector when it comes to this element.

ii) Corporate governance and accountability

NHBRC has since 2007 been experiencing internal operational difficulties that have impacted on corporate governance. Symptomatic to these problems has been its inability to comply with the statutes. For an example, submission of Annual Reports to Parliament on time in the past years has been a challenge for the NHBRC. This is a contravention of the Public Finance Management Act, 1999 (Act No.1 of 1999) and non compliance with this Act is a criminal offence. At some point, the Board had to suspend its Chief Executive Officer, partly due to this element.

iii) Customer care

The operational tools used by the NHBRC to ensure maximum protection of housing consumers from unscrupulous home builders include, geotechnical assessments, structural assessments, construction management assessment, full time on-site inspections, the registration of Home Builders and Developers, the development and upkeep of the Home Building Manual that incorporates design and construction rules, and the appointment of competent persons by the Home Builder and Developer to perform geotechnical investigations and rational designs.

However a lot coming from the public and the media in general suggest that there are no sufficient checks and balances to ensure that these tools are effectively managed. Oversight by the Department does not extend to the day to day operations of the NHBRC at project implementation level. With the increasing number of complaints from the public, this deficiency is putting a lot of strain on the Department of human settlements' oversight role.

The above issues might be a reflection of possible structural weaknesses and or governance oversight loop holes within the NDoHS' oversight. Indication is that, these challenges have persisted for quite a considerable number of years since the establishment of this entity and have sparked an outcry in the circles of government particularly National Treasury, Auditor General and Parliament, questioning the ability of the National Department of Human Settlements' capacity and ability in respect of its oversight.

It was therefore opportune to explore any of such oversight challenges as they posed a serious threat to effective service delivery as well as good governance within the entity. As such, the ultimate goal of this research is to determine the structural weaknesses with regard to the oversight role of the Department.

1.3 Research objectives

This research looks at the National Department of Human Settlement's oversight role over the National Home Builders Registration Council. Broadly, the research will determine the challenges affecting the oversight role of the National Department of Human Settlements and determine if there are any oversight structural weaknesses and gaps that may be impacting on the ability of this entity to fully implement its mandate.

Therefore, the broader aim of the study is to determine challenges impacting on the oversight function of the Department on NHBRC. Based on the findings, the study seeks to make recommendations to enhance the oversight function of the Department.

1.4 Research Questions

1.4.1 Primary research question

According to Zikmund (2003) a research question is the researcher's translation of the business problem into a specific need for inquiry. The primary research question for this study is "what are the factors impeding the oversight role of the Department of

Human Settlements' over the NHBRC?' or what are the oversight challenges of the Department of Human Settlements'

1.4.1 Secondary research questions

The following secondary questions are designed with a view to assist in gathering relevant information used to answer the primary research question above.

- What are the **oversight control measures** used by NDHS for ensuring good governance and effective policy implementation by NHBRC?
- What **mechanisms** can be put in place to enhance oversight?

1.5 Structure of the report

This report is structured in terms of the following chapters.

Chapter one:- Introduces the orientation of the study and provides a brief background of the project and a snapshot of the National Home Builders Registration Council, its institutional relationship with the NDHS and the current oversight systems and mechanisms of the Department. Importantly, it also states the objectives, problem statement and research questions, as well as the motivation and significance of the study.

Chapter two:- Covers the review of literature on the subject matter and incorporates literature from a range of published books, scientific journals and research dissertations and theses. This chapter also discusses literature on corporate governance and government oversight in general.

Chapter three:- Discusses in detail the research methodology applied, research design, the measuring instrument and the fieldwork procedure followed.

Chapter four:- Consist of the research findings including the analysis of the data.

Chapter five consists of a summary, conclusion and recommendations for further research.

1.6 Conclusion

In conclusion, it is important to indicate that the research has explored and determined the factors impeding the Department of Human Settlements' oversight over its entities particularly the National Home Builders Registration Council. The following chapter provides a comprehensive review of literature on this subject with a view of detailing different perspectives of other scholars and researchers of oversight. Furthermore, the section also attempts to highlight available literature on this topic and the key themes for purposes of this research.

CHAPTER 2
LITERATURE REVIEW

2.1 Introduction

As Bruce (1994) argues, the purpose of literature is to provide the background to and justification for the research undertaken. Literature exposing the manner in which NDHS exercises oversight particularly in ensuring that entities perform in accordance with their establishment mandate was explored. Whilst this was the primary objective of the review, this section also attempts to provide a 'context definition' of oversight; the necessary systems, tools, mechanisms, structures and institutional arrangements for effective oversight.

2.2 Defining Oversight

In the context of this study, oversight refers to the legislative and/ or parental role of the departments (Executive Authorities) over its public entities. These include the monitoring of day to day activities of the Board as well as company executives.

The primary objective of oversight is to create an enabling environment and the culture of good corporate governance and effective accountability. Gloeck (2003:3)

argues further and insinuates that the central question has not been whether or not government and the public service providers should be accountable, but rather how they can be more accountable. However, it is contestable, if institutionally, and at official level there is willingness to institutionalize oversight as a key management function at departmental level.

According to the Open Society Foundation (2006), the purpose of oversight is, of course, to hold the executive accountable, and to seek to remedy situations where the executive has not performed according to its legislated mandate. The intention of oversight is, primarily, constructive engagement in order to improve the performance of those structures being overseen and to reflect the concerns of the people to those same bodies. The key term here is constructive oversight. Constructive oversight ensures a 'clean, efficient and open administration (good government); it ensures effective policy and legislation (development); and it does this in a manner that is not necessarily adversarial (co-operative governance) although it may be adversarial in the interests of good government at times.

On the other hand the South African Parliament defined oversight as a constitutionally mandated function of legislative organs of state to scrutinise and oversee executive action and any organ of state (Parliament: 2003).

2.3 Oversight management: A case for South Africa

It is critical to indicate the basis of oversight from the onset. In terms of the South African Constitution 1996*, g*overnment is divided into three branches, namely the legislature, the executive and the judiciary. Each branch has its own structures and bodies to enable it fulfil its particular roles and responsibilities. Thus the legislature has Parliament, the judiciary has Courts and the executive has Cabinet and ministries – with departments and various business and non-business entities (referred to as 'non-departmental entities' or public entities).

Public entities are a subset of institutions belonging to the executive branch of government. They are distinct from departments in that they are usually separate juristic persons from the State. They also usually enjoy a greater degree of autonomy/independence than departments. The non-departmental entities fall under the authority of a Minister who is accountable to Parliament for their functioning. Each Minister is usually only responsible for one department, but, in addition, they may be responsible for a number of these other entities.

Kekana (2002) says the creation of such entities is to create an independent body which to a large extent can operate outside the stricter control and more

independently from the state department under which an entity/enterprise is classified to render certain services whether as a business enterprise or entity or as a non-business. Furthermore, these entities should carry out their business without interference from government or manage their businesses more in line with private business principles and even on a competitive basis. Some government business enterprises are not always viable projects for private business enterprise, more especially from the view point of profit-making, yet necessary for the country and the government to achieve its goals of service delivery. As such, the State will embark on such an enterprise in the interest of its citizens

The Departments of Public Service and Administration and National Treasury took a stance that the existing policy frameworks for classifying and managing public sector institutions in South Africa need to be improved. Accordingly, there is an acknowledgement that the current frameworks do adequately address government's need to ensure good corporate governance and accountability[2].

It follows therefore that one of the areas requiring the attention of government is that all public resources, and therefore all public entities and government enterprises,

[2] Departments of Public Service Administration and National Treasury (2002) 'Draft Framework on the Governance and Administration of Public Entities.'

should be subjected to an appropriate degree of democratic control and *oversight* so as to ensure proper stewardship and application of these resources. Generally, government acknowledges the practical challenges associated with its oversight role over its entities[3].

Various constitutional institutions (examples include parliamentary portfolio committees, select committees, SCOPA etc) have been introduced and established to exercise oversight with a view to ensure maximum return on investment in definite areas. As such, oversight is spread throughout government machinery and across levels and spheres.

Section 55(2) of the South African Constitution outlines the oversight powers of the National Assembly, by requiring that it "must provide for mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it; and to maintain oversight of the exercise by the national executive authority, including the implementation of legislation; and any organ of state." Parliament and the nine provincial legislatures have permanent committees in the form of Portfolio Committees. Each portfolio committee is linked to a different portfolio of the executive

[3] Departments of Public Service Administration and National Treasury (2002) 'Draft Framework on the Governance and Administration of Public Entities.'

normally Ministries. The members of the committee are drawn from members of parliament (MPs) at national level, or members of the provincial legislatures (MPLs) at provincial level. At both national and provincial level, portfolio committees exert oversight over government policy, actions, legislation and budgets (Open Society Foundation: 2006).

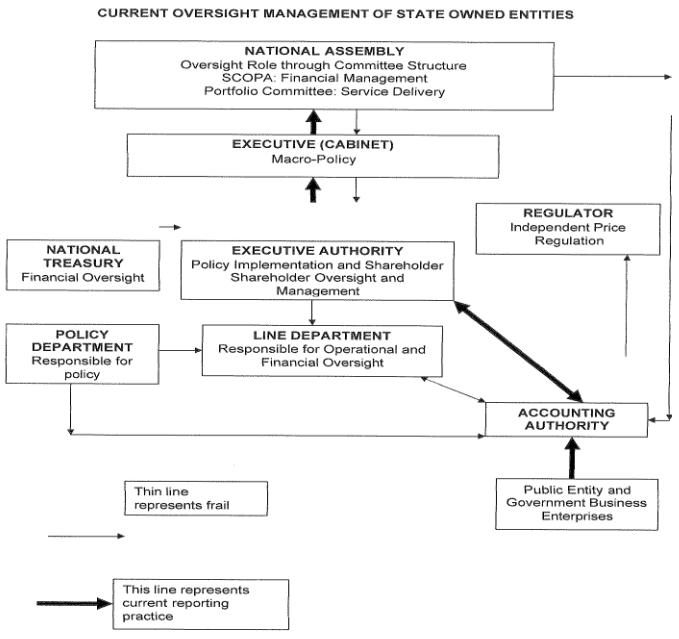
To fulfill its oversight and accountability mandate, Parliament has established mechanisms through which Committees can interact with civil society organizations, organised business, experts and professional bodies as a way of enhancing accountability. These Committees can call Ministers, departmental heads and governing boards of entities to account on any issue relating to any matter over which they are effecting accountability within the ambit of the provisions of sections 56 and 69 of the Constitution and legislation.

Stemming from the above, it is critical to note that the concept of oversight contains many aspects which include political, administrative, financial, ethical, legal and strategic elements. Therefore current practices and oversight mechanisms would include the committees of Parliament (with their associated practices), specialist divisional units within government departments as well as Auditor General. In conducting oversight, the committee would either request a briefing from the organ of

state or visit the organ of state for fact-finding, depending on the purpose of the oversight. The committees would have to consider the appropriate means for conducting oversight to cover all organs of state. (Parliament: 2003)

The Executive Authority (Responsible Minister) is the governing body that is responsible for the effective and efficient delivery of the service delivery requirements identified and also exercises shareholder oversight. The schematic diagram below indicates the current oversight management of state owned entities in general. The arrows in thick black indicate the oversight path and the reporting practice.

Figure 1 Oversight of State Owned Entities



Source: National Treasury, 2004

The above oversight arrangement depicts deferent players in the overall oversight value chain. Whist the focus of this study is on oversight at the 'Executive Authority or departmental level' there seems to be common challenges at both the National Assembly (at committee level) and the Executive Authority (at departmental level0. Oversight mechanisms and tools used by the departments over entities to account for their performance, using their strategic plans, budget documents and annual reports remains a huge challenge.

Some commentators are highly critical of ministerial responsibility as the chief mechanism for achieving accountability, and describe the concept as possessing only 'fading utility'[4]. At this point one can advert to the role of the Public Protector and certain of the other Chapter 9 institutions - they are alternative mechanisms, besides ministerial responsibility, of holding the executive accountability.

2.4 Fundamentals of effective oversight

It is necessary for the National government to oversee the operations of public institutions to uphold the principle of public control. However, for oversight and public control to be effective, oversight must be reinforced by sufficient access to

[4] N Lewis & D Longley, 'Ministerial Responsibility: The Next Steps' 1996 *Public Law* 490 at 493) in Cordier et al (1999)

information so that governments can regulate these institutions and so that citizens can control governments (Sanford et al: 1975).

2.4.1 Functions of oversight

For purposes of strengthening oversight, Parliament developed and introduced mechanisms to guide its work on oversight. The mechanisms introduced require 'oversight' to be strong both administratively and politically. Accordingly, the following key functional elements need to be adhered to enable strong administrative and political oversight (Parliament: 2003).

(i) To detect and prevent abuse, arbitrary behaviour or illegal and unconstitutional conduct on the part of the government and public agencies. At the core of this function is the protection of the rights and liberties of citizens.

(ii) To hold the government to account in respect of how the taxpayers' money is used. It detects waste within the machinery of government and public agencies. Thus it can improve the efficiency, economy and effectiveness of government operations.

(iii) To ensure that policies announced by government and authorised by Parliament are actually delivered. This function includes monitoring the achievement of goals set by legislation and the government's own programmes.

(iv) To improve the transparency of government operations and enhance public trust in the government, which is itself a condition of effective policy delivery.

However, corporate governance of state-owned enterprises has proved to be a major challenge in many economies. Notwithstanding the above, there is currently no international benchmark to help governments assess and improve the way they exercise ownership of these enterprises, which often constitute a significant share of the economy. To correct the aforementioned, there is a need to find a balance between the state's responsibility for actively exercising its ownership functions (administrative), such as the nomination and election of the board, while at the same time refraining from imposing undue (political interference) in the management of the company (Johnston: 2005).

In South Africa, the state should act as an informed and active owner and establish a clear and consistent ownership policy, ensuring that the governance of state-owned

enterprises is carried out in a transparent and accountable manner, with the necessary degree of professionalism and effectiveness (Johnston: 2005).

2.4.2 Elements of effective oversight

For oversight to be effective, whether at administrative or political level, it is critical that government (as owner) should clearly describe its role particularly its governance relationship with its entities

This is supported by Johnston (2005), when he insists that government should develop and issue an ownership policy that defines the overall objectives of state ownership, the state's role in the corporate governance of SOEs, and how it will implement its ownership policy. However he emphasizes that government should avoid involvement in the day-to-day management of SOEs and allow them full operational autonomy to achieve their defined objectives. In essence the boards should exercise their responsibilities and their independence should be respect.

At the same time, this approach should not demean government's role to exercise its ownership rights. According to the legal structure of each company, government should exercise its prime responsibilities to (Johnson: 2005),

(ii) Be represented at the general shareholders meetings and voting the state shares.

(iii) Establish well structured and transparent board nomination processes in fully or majority owned SOEs, and actively participating in the nomination of all SOEs' boards.

(iv) Set-up reporting systems allowing regular monitoring and assessment of SOE performance.

(v) Maintain continuous dialogue with external auditors and specific state control organs were permitted by the legal system and the state's level of ownership,

(vi) Ensure that remuneration schemes for SOE board members foster the long term interest of the company and can attract and motivate qualified professionals.

The above elements need to be supported by concise regulatory frameworks in order to promote effective oversight. For this purpose, in South Africa, the following frameworks have been put in place to ensure effective oversight:

i) Public Finance Management Act, 1999 (as Amended)

ii) Treasury Regulations

iii) Entity specific legislation (Own Enabling legislation)

iv) Signing of Shareholder Compact or Performance agreement

The PFMA was introduced in 1999 to regulate financial management in the public sector. All public sector departments and agencies are bound by the legislative prescripts as enshrined in the Act. The Public Finance Management Act (PFMA), 1999 gives effect to financial management reforms that place greater implementation responsibility on managers in the public service, and makes them more accountable for their performance. In terms of these two legislative frameworks, entities are supposed to submit annual strategic corporate plans for approval by the Executive Authority. In implementing the strategic corporate plans, entities submit quarterly service delivery progress reports to departments. Departments use these reports as a tool to exercise their oversight. Coupled with this legislation, government introduced

Treasury Regulations to supplement the provisions of the PFMA. The PFMA is critical in the execution of the oversight function over public sector agencies or entities [5] .

For proper oversight management, entities have to be established in terms of 'own' legislation. Where an entity is established in terms of legislation, the legislation stipulates governance provisions as well as its relationship with the Executive Authority including the signing of shareholder compact[6]. Shareholder Compacts or Performance Agreements are introduced to: –

i) Formalise and regulate the working relationship between the Minister and the Board pursuant to the provisions of the Act applicable to the specific public entity and the PFMA.
ii) Set out the mandated key performance measures and indicators to be attained by the public entity.
iii) Facilitate the assessment and monitoring of the Board's performance against the public entity performance in delivering the desired outcomes and objectives.

[5] Huggo Du Toit, Director Corporate Governance, 'Governance oversight role over state owned entities (soe's)' – (National Treasury, 2005)

[6] Departments of Public Service Administration and National Treasury (2002) 'Draft Framework on the Governance and Administration of Public Entities.'

iv) Define procedures and reporting channels for accountability arrangements and quarterly reporting to the Minister or the Minister's representative in order to facilitate effective performance monitoring, evaluation, as set out in the Shareholder Compact or Performance Agreement and corrective action to be taken.

2.4.3 Factors affecting oversight

Whilst the above legislative frameworks have been introduced and are being used as oversight tools by parent departments and guide the relationship between the Executive Authority and its entity Mesquita et al (2007), argues that Agencies have no incentive to conceal their activities from the overseer.

He insists on the need for reforms that are likely to reduce inefficiency such as those that improve overseer expertise. The parliamentary study on oversight and accountability reveals that, that at ***political level***, the challenge facing portfolio committees is that they need to ensure that departments (including their public entities) provide good quality service delivery information in their strategic plans with tight performance targets and then to ensure that departments report against those targets in their annual reports. Furthermore, it may be concluded that the end-year or

ex post oversight mechanisms in legislatures have been relatively weak, as legislatures (both at national and provincial spheres of government) have focused on narrow financial oversight only, through the public accounts committee process.

Similarly, at the ***administrative level***, the 'managed relationship' between the public entities and parent departments, has not been without challenges across national departments. A study by National Treasury highlighted the following impediments on government's effective oversight on its entities[7] .

- Capacity and organisation of the 'parent' department: Good practice in this area is for parent departments to establish units with appropriate capacity to oversee the entities for which the Minister is responsible, and that all reporting lines should go through this unit, for both performance and finance. These units should also be responsible for giving feedback to entities (both from the Minister and based on their own analysis) (DPSA & NT: 2005).

[7] Departments of Public Service Administration and National Treasury (2002) 'Draft Framework on the Governance and Administration of Public Entities.'

The challenge with a parent department that is incapacitated or improperly organized is that any official may demand information at any given time from the entity particularly on cross cutting issues. This creates resistance from the part of entities because at times this is done by junior officials from various business units. Quiet often requesting same information over again. Established oversight units should be supported by the top management of the parent department particularly when dealing with strategic matters affecting entities. The absence of executive support degrades the department's efforts to enforce mandate or policy implementation.

- Deficient Financial and Performance Accountability: The performance of an entity, whether satisfactory or not is a mirror image of the department's oversight efficiencies. Therefore relationship between parent department and entity is defined in terms of financial and performance accountability. In order for performance accountability to be measured, the objectives of entities have to be translated into annual performance targets. The review indicates that 'good practice' in this regard involves two things: annual service delivery contracts with the chief executive officer of the entity and

compilation of these contracts by a central body for tabling in Parliament (DPSA & NT: 2005).

Furthermore, the statutory requirement is that strategic plans of entities should be approved on an annual basis and implementation monitored on a quarterly basis to promote financial accountability. Although departments do receive quarterly reports and satisfy themselves on compliance matters, quiet often salient issues raised by entities do not get attended to on time by top management. This defies the importance of accountability in respect of service delivery performance and financial accountability.

- Political meddling: although it is the prerogative of politicians to change policies, when this happens too frequently, or when the changes are perceived to be arbitrary or unnecessary, it generates resistance. Therefore political continuity regarding the roles and functioning of entities is crucial to ensuring their efficiency and effectiveness (DPSA & NT: 2005).

The lifespan of entities is determined by the social needs of the country's population. When government changes occur at political level, whether changes in ministries or at political party level, many a times new ministries bring along changes in terms of policy and therefore approach to service delivery. This creates confusion and resistance on the part of entities.

Notwithstanding the above, there is an acknowledgement that these impediments can only be endemic if government does not prioritise its oversight role.

2.5 Mechanisms to enhance oversight

The government as the owner/shareholder is concerned with policy implementation of service delivery and acts as regulator. The focus on governance intervention is a key factor if government is to realise the benefit of its investment in its public entities. Central to this is the legitimacy and the effectiveness of the management of entities i.e. from governing boards to the company executives.

It is important that note that oversight by the government rests by and large on the prescripts of the Public Finance management Act, Act No. 1 of 1999 (PFMA). The PFMA governs or gives authority to the Executive Authority (Minister of the Parent department) oversight powers with particular reference to the corporate plans, shareholder's compacts and quarterly reporting on progress in respect of service delivery.

In relation to the **capacity and organisation** of the 'parent' department, and as indicated earlier in this document, very often the parent departments are more responsible for the malfunctioning of control mechanisms than the entities. It is therefore critical for parent departments to establish oversight units with appropriate capacity to oversee the entities for which the Minister is responsible, and that all reporting lines should go through this unit, for both non-financial and financial performance information. These units should also be responsible for giving feedback to entities (both from the Minister and based on their own critique of delivery status quo).

Oversight is concerned with the reviewing, monitoring and overseeing of the affairs, practices, activities, behavior and conduct of the entities, in order to be satisfied that the affairs and business of the entities are being conducted in the manner expected

and in accordance with all normal commercial, legislative and other prescribed or agreed norms. This includes the review, monitoring and overseeing of the fact that the management of the entities, its strategic and business planning, its conduct of its business operations and its reporting thereon and accounting thereof, is being effectively managed by the entity's executive management and staff and that the assets and goodwill are being properly protected and preserved. The Executive Authority's corporate governance responsibility as shareholder, involves ensuring that, from the Board of directors downwards, and also in respect of accountability of the Board upwards to the shareholder, all the necessary and appropriate corporate governance structures, procedures, practices and controls and safeguards, are established, properly implemented and operate effectively in the entity concerned [8].

The highlights of lessons from other countries have indicated a common need for a particular entity to **account** to a single Minister, and not to two or more. It is 'good practice' for there has to be a one-to-one communication line between Government and entity, and that Government should be personalised by a single Minister who is accountable for all issues relating to that particular entity.

[8] Departments of Public Service Administration and National Treasury (2002) 'Draft Framework on the Governance and Administration of Public Entities.'

Although it is the prerogative of 'politicians' to change policies, when this happens too frequently, or when the changes are perceived to be arbitrary or unnecessary, it generates resistance. Therefore **political continuity** regarding the roles and functioning of entities is crucial to ensuring their efficiency and effectiveness (DPSA & NT: 2005).

The inherent expectation by government is that public entities should exert social impact in delivering their mandates. Therefore the accounting authorities should carry out the mandates of these entities in such a manner as to ensure the increase of shareholder value as well as maximization of socio-political benefits in terms of the broader principles and policies of government. However, as a shareholder, government should ensure that its entities understand the respective policy imperatives for which mandates are to address for maximum achievements of delivery targets.

Generally, measures and oversight instruments have been introduced to promote good governance and enhance oversight to the effect that in 1992 the institute of Directors initiated the establishment of a committee known as the King Committee aimed at interrogating corporate governance in the South African context.

Consequently, the committee institutionalised corporate governance by the publication of the King Report in November 1994.

It promoted an integrative approach, which incorporated the interests of all stakeholders of an organisation and not only those of the shareholders. It drove home the notion that organisations should realise that their actions impacts on the society and the environment in which they operate.

2.6 Conclusion

Whilst there is sufficient literature on governance oversight in general, the literature survey also revealed that there are very limited empirical studies on the role of government departments on public entities under their control.

However the literature review has assisted in enhancing understanding the research problem and the related questions. The literature has revealed that that there is an emphasis on oversight and accountability at the level of parliament. Automatically, this calls for the need to close this gap at the level of government departments, particularly those owning entities.

For effective governance oversight on public entities the literature review has revealed critical areas requiring attention, such as the need for strong political and administrative oversight, accountability and managed relationship between the departments and entities. Literature has shown that these areas are calling for a fresher need to assess the effectiveness of current oversight mechanisms within government in general and at departmental level in particular. Therefore the envisaged study moves from the premise that the degree of oversight by departments determines the functioning or malfunctioning of control mechanisms than the entities themselves.

CHAPTER 3
RESEARCH METHODOLOGY

3.1 Introduction

The manner in which a research is designed manifest the manner in which the research is to be conducted. The primary purpose of a specific research design being to collect as much information as possible and to determine answers to the research questions so as to provide necessary information for decision-making (Malhota in Grobbelaar:2005). This is confirmed by Mouton (2001) when he says that a research design is a plan or blue print of how you intend conducting the research.

This research is qualitative. According to Levine (1998), a qualitative approach to research can yield new and exciting understandings, but it should not be undertaken because of a fear of quantitative research. The intention was to conduct a documentary analysis supplemented with small scale interviews of about two senior officials in charge of oversight in the Department of Human Settlements as well as six support staff members, the NHBRC Chief Executive Officer, Chairperson of the Council as well its Company Secretary.

Generally, the interviews focused on the oversight role of the NDoH over the NHBRC to determine any structural weaknesses in exercising its control over the entity. Moreover, the questions were posed to assess the department's ability to conduct the necessary checks and balances with entities when required.

3.2 Approach

The research is envisaged to be exploratory. In the exploration, the researcher conducted an analysis of relevant documents about the NHBRC such as quarterly service delivery reports, annual reports, auditors' reports, parliamentary oversight reports and reviewed other available literature on the subject. This was also complemented by drawing lessons from key studies underlining the subject matter. Bailey's (1982:304-6) in Pohl (2001:8) argues that it is somewhat beneficial to use a documentary analysis approach in that there is easy accessibility of the subject matter which allows one to use studies undertaken elsewhere in the world.

In considering the above, the researcher also took note of Bailey's (1982:304-6) as well as Platt's (1989:46) argument that at times the use of documentary studies may disadvantage the researcher, some studies may have been bias and might not have covered the same subject as the current study. The aim was to consider related

studies that only looked at the way government departments in South Africa and abroad have been exercising their oversight over their public entities, with particular reference to the systems and mechanisms employed in their oversight function. A comprehensive structured questionnaire was used for these interviews. As Cooper et al (1995) recommends, the questionnaire was pre tested to detect weaknesses and possible errors and to check if questions would derive relevant answers for the study. This was done with randomly chosen departmental officials and was found to be relevant for the study.

3.3 The Scope of the study

The study moves from the premise that the Department of Human Settlements has established a number of public entities with deferent mandates. However for the purpose of this study, focus was mainly on entities established by the National department of Human Settlements, with particular emphasis on the National Home Builders Registration Council (NHBRC).

The NHBRC was established in terms of an Act of Parliament, which should facilitate easy oversight by the parent department on its service delivery and governance related matters. There has been a number of governance failures stemming from

lack or inability of the department to exercise adequate oversight which impact on service delivery or policy implementation by this entity. Therefore the aim was to focus on this entity with a view to derive lessons, the basis of which, will inform improvement/s required for effective oversight.

3.4 Instruments for data collection: Interview and Documentary Analysis

Substantial information from various reports on the topic was gathered to allow *documentary and content analysis*. These included departmental annual reports, entities quarterly performance reports and board meeting packs, reports from the Auditor General, Parliamentary Questions, Ministerial and Departmental letters. As will be seen in subsequent chapters these documents formed the basis for the determination of any oversight weaknesses within the NDoHS. On the other hand *Interviews* with relevant officials formed the key mode of information gathering on key oversight activities and challenges experienced. A pre-prepared or structured questionnaire was used as a distinct tool for this purpose. The forgone instrumentation is briefly discussed below for in-depth understanding of the scope covered.

3.4.1 Document analysis

Despite Mouton's (2008:179) assertion that the use of literature reviews is a non-empirical design classification, it was important to conduct a literature survey as the researcher was envisaging getting historical and recent information on issues and debates in this field as well as understanding the problem better. In this respect, books and articles on oversight, newspaper articles as well as information available on the government website were reviewed.

Content analysis of historical (dating back to 2005) and recent Strategic Plans of this entity as well as its Annual reports for the same period was undertaken. These included Auditor General Reports as well as Parliamentary briefings and related questions.

For the purpose of this study, it was critical to prioritise documentation coming from statutory institutions such as the Auditor General and Parliament, These included audit queries and parliamentary questions and parliamentary briefings.

3.4.2 Interviews

As highlighted above, the interview technique was a very key method for gathering the required information. For this purpose, it was important to conduct interviews with a sample of eight key individuals charged with accountability within the NHBRC and the National Department of Human Settlements. Therefore the NHBRC Chairperson of Council, CEO as well as the Company Secretary were interviewed. As part processes of the interviews certain documents such as board meeting packs and minutes, were requested (where possible). Information emanating from board packs was used to ascertain if all board decisions were supportive to the mandate of the organisation.

Furthermore and flowing from information extracted from these reports, additional information was gathered through interviews with the Deputy Director General and the Chief Director in charge of public entities oversight in the Department of Human Settlements. It was also critical to engage officials from both external auditors of this entity and officials from the Auditor General to determine the extent of their discovery of malfunctioning and or in adequate departmental oversight.

Interviews were also conducted with experts in government with a view to draw comprehensive understanding of governance oversight.

3.5 Verification of data collected

Guion (2002) describes validity, in qualitative research, as a phenomenon that relates to whether the findings of your study are true and certain.

- "True" in the sense of your findings accurately reflecting the real situation.
- "Certain" in the sense of your findings being backed by evidence.
- “Certain” means that there are no good grounds for doubting the results; i.e. the weight of evidence supports your conclusions.

The verification of data was a challenging activity in that it required an intense cross referencing exercise. For the credibility of this research, it was critical that empirical evidence be gathered. It was therefore critical to interview external auditors, and officials from the Auditor General following engagements with the NHBRC Board Chairperson and the CEO. Furthermore, this was complemented by a content analysis of Annual Reports, Strategic Corporate Reports, management reports and press releases.

For purposes of verifying collected data, data triangulation was applied. The researcher opted for this type of triangulation because it was most relevant for this study and mostly it is the popular and easiest to implement. Denzil (1989) simplified it and described three types of data triangulation (Time, space and person) and for the purpose of this study a key strategy was to apply a 'person triangulation' to allow for a comparable the evaluation of data collected. Furthermore, using this type of triangulation allowed the researcher to collect information from more than one level of persons i.e a set of individuals, groups or collective.

A comparable number of people from each information group was then included and in-depth interviews were conducted to gain insight on what the individuals perceived as control measures of oversight, outcomes of oversight and required mechanisms for effective oversight. Measures and outcomes that are agreed upon by all informants were triangulated and the weight of evidence determined the validity of the outcome. The belief is that informants were looking at issues from different points of view. This also covers experts or critical stakeholders such as the Auditor General.

3.6 Data analysis, interpretation and presentation

Due to the nature of the study and the sample size of the research informants, no sophisticated statistical software package was used. However for the purpose of presenting the findings of this research it was important to conduct a desktop analysis of collected data.

Analyzing collected data consists of a number of interrelated processes that are intended to summarize, arrange, and transform data into information. At this critical stage, it was important to revisit the objective/s of the research to proper analysis and interpretation. It was therefore important to transform the raw results in to information that will enable you to paint a clear picture of the challenges impeding on the Department of Human Settlements' oversight over its entities.

The process of analyzing collected data began with a quick review of the results, followed by editing, analysis, and reporting.

- **Quick Review:** Although a the questionnaire tested/piloted before put into use it was critical to conduct a quick review of results to determine any flaws in the questionnaire design or response population, before data analysis. Secondly,

the idea was also to see if the results "made sense". This also assisted in depicting critical areas to focus on for detailed analysis.

- **Editing and Cleaning:** This was the second critical step to **undertake.** Special care was taken when editing collected data to avoid any alteration or throwing out of responses. This was critical to avoid biasness of results.
- **Detailed Analysis**: This being the most critical aspect of the research project, considerable time was allocated for proper analysis. The type of analysis chosen and that made sense for the study was a simple in-depth comparison between questions sets to identify trends and themes. Therefore, for the purpose of this study basic analysis using cross tabulations was sufficient to enhance readability and understanding.
- **Reporting:** This comprehensive report details the findings and recommendations as compiled in Microsoft word format. As detailed, the report reviews the research objective to elicit understanding of what the research is all about. Actual analysis, conclusions and recommendations that relate back to the research objectives are included.

Having followed the envisaged research approach, the next chapter provides in detail, the findings of the researcher project. The findings exposes, amongst other things, the results of the engagements between the researcher and the officials

charged with oversight responsibility at the National Department of Human Settlements. Notably, the findings share some light into the oversight control measures and mechanism used by NDHS for ensuring good governance and effective policy implementation. Critical to the findings are the challenges facing the department in its role as the overseer of its entity.

CHAPTER 4
FINDINGS OF THE STUDY

5.1 Introduction and Background

As envisaged, the research was exploratory and documents about the NHBRC were explored, interrogated and analysed. This included the interrogation of accountability documents such as quarterly service delivery reports, annual reports, auditors' reports as well as parliamentary oversight reports, board meetings packs (including minutes), Ministerial and Departmental correspondences. Substantial information was gathered from the aforementioned documents and documentary and content analysis was conducted.

In addition, face to face interviews with relevant informants in and outside the department, formed the key mode of information gathering. A pre-prepared or structured questionnaire was used as a distinct tool for this purpose (attached herewith as **Annexure A**). The specifications of interviews conducted are hereunder briefly discussed for an in-depth understanding of the sources of information.

(a) Chief Executive Officer of NHBRC

As will be noted later in the document, a face to face interview with Mr Sipho Mashinini, CEO of NHBRC conducted in the offices of NHBRC shared light on NHBRC's organisational perspective on the oversight role of its parent department and observed weaknesses. This interview was highly critical for the research.

(b) Deputy Director General (former) in charge of Public Entities

The second interviewee was Mr Joseph Leshabane, former Deputy Director General of the Department of Human Settlements. It was critical to get an independent perspective in this subject from a former senior official of the department who was the head of the oversight business unit. As will be noted later in the document, this interview provided an invaluable insight on areas of strength and weaknesses of the department. It was fulfilling to such information from someone who shared information from a detached position.

(c) Acting Chief Director: Entities Governance Oversight

Mr Morris Mngomezulu is in charge of entities oversight in the Department of Human Settlements as an acting Chief Director. The interview with him was conducted on 18 February 2011 in his office. The interview also provided critical information, particularly in respect of challenges faced by the department and the business unit he is in charge of in particular.

The following departmental officials could not avail themselves for face to face interviews but managed to complete the questionnaire:

(i) Mr Jan Maritz - Deputy Director: Financial Monitoring

(ii) Ms Kgaugelo Sehlapelo – Chief Planner Finance

(iii) Mr James Dlamini – Chief Planner Corporate Governance

(iv) Mr Solly Mabasa - Deputy Director Policy Advocacy

(v) Mr Phillip Phaahla – Chief Planner Financial monitoring

(vi) Ms Anna Mokgadinyane – Chief Planner Corporate Planning Support

Historical information indicate that for a number of years the quality failures encountered in some of the houses built through the National Housing Subsidy Programme have been receiving increased attention. Several stakeholders (including Cabinet, MinMec (Minister and MECs Committee), Parliament, Auditor General, National Treasury and the media) have in different ways brought the quality failures into the spotlight. Their concerns varied from value for money questions, violation of beneficiary rights and the need for better quality control systems and accountability for such quality failures. Furthermore subsidy houses are financed through the integrated Housing and Human Settlements Development Grant that is administered

by the Director General as the 'National Transferring Officer" in terms of the Division of Revenue Act (DORA).

In 2002 NHBRC's mandate was extended to include the government subsidy market. Three years after, NHBRC could only enrol 188 projects in principle, which consist of 230995 units, out of this, 54 projects were enrolled totalling 73153 units and lastly 22 projects qualified for home enrolment totalling 25933. In effect, for three years, the NHBRC approved the building and construction of 25933 government subsidised houses nationally without issuing a certificate of enrolment to one single house. The certificate of enrolment confirms that all quality measures have been complied with.

Furthermore, according to the ABC of Housing Stats of September 2005, 724 164 houses where recorded as complete and still under construction for the period 1 April 2002 to 31 September 2005. It is not clear whether the Provincial Housing Departments and Municipalities were reporting or not reporting projects to NHBRC as expected. Whichever case may be, this amounted to the contravention of the Act and as a consequence deprives the deserving nation decent quality housing. According to NHBRC this was fuelled by the fact that provinces have not been forthcoming to enrol housing projects and units with the NHBRC for structural warranty cover and general consumer protection as prescribed by the Act. Despite

being empowered by the Act, NHBRC's attempts to enforce compliance by Provincial Housing Departments have met with complications in the intergovernmental context to an extent of political interference. Moreover, provinces have not internalised and therefore acknowledged the value for NHBRC's involvement in the project delivery chain.

This chapter provides a comprehensive detail of the results of this study. It is critical at this point, to remind the reader that the purpose of this study was to determine challenges impacting on the oversight function of the department on NHBRC and investigate the functionality of the existing departmental oversight systems and mechanisms.

The chapter is organized into three major sections and themes. The first section presents the results on **Theme 1: Governance and Service Delivery**, the second section present the results on **Theme 2: Oversight and accountability** and the third section presents the results on **Theme 3: Strong political and administrative oversight.** Each section provides the reader with a description of findings from interactions with informants and an evaluation of what would work well and what would not. Additionally, each section includes tentative recommendations for improving oversight within the context of this study.

5.2 Theme 1: Governance and Service Delivery

Key Findings

The study has revealed that there is a correlation between good governance and service delivery. Information derived from an investigative study commissioned by the National Department of Human Settlements during 2009 seems to support this notion. The said study was on quality assurance, in which a local authority and a provincial authority in the Gauteng Province identified gaps and challenges requiring attention, particularly, on quality assurance (service delivery expectation on NHBRC).

The study revealed that there is currently no framework in South Africa to ensure that those who conduct inspections to ensure quality houses/homes are sufficiently skilled and knowledgeable in the built environment and can be trusted by all the stakeholders to protect their interest, while most importantly ensuring that the quality standards are complied with.

Whilst the study discovered that there are clear lines of accountability regarding the final responsibility for the quality of materials used in housing delivery with the SABS, NHBRC and the Agrément Board of SA, the same cannot be said on quality

assurance and control processes when it comes to monitoring and certifying quality on state funded housing units.

Various stakeholders with varied developmental requirements are involved in the quality assurance exercised during housing delivery. In the interview with the CEO of NHBRC, it was confirmed that there is no coordination of role players in the housing sector when it comes to the element of quality assurance. It goes without saying that the NHBRC's quality assurance work is thorough and comprehensive, with clear building quality index reports issued for each enrolled house that gets built. However, the challenge is who acts on the findings of the reports that are issued by the NHBRC? The other problem is that the NHBRC reports seems to focus on samples, meaning that not all the housing units developed in particular development get the necessary attention. This is where a huge gap has ensued.

The above coordination hurdle undermines the financial contribution made by the public through the enrolment of homes and projects for an insurance cover for a defined period. For instance, the financial statements made public in 2008, revealed that the National Home Builders Registration Council (NHBRC) had in excess of R2,5-billion invested. Yet only R4,5-million was spent that year to remedy defects. It has been discovered from documents reviewed regarding public complaints against

the NHBRC that are received by the Department that the public is already calling for the review of the NHBRC. The public is worried about the amount accruing from interest alone on the funds this entity holds. One developer (Rabie Property Group) is alleged to have paid in excess of R40-million since 2003 to the NHBRC for which it has received little or no benefit. This is partly due to capacity constrained of the provincial offices of the NHBRC as well as laxity in corporate governance issues on the part of inspectors. As a result, warning signals for an imminent organizational collapse ensued as complaints skyrocketed.

The Department commissioned another study to detect key risky areas and activities within the NHBRC. From the findings of the said study very serious and drastic inferences could be made against the Department's oversight role, particularly its ability (approach) and capacity (in terms of systems and mechanisms employed) to effectively monitor the NHBRC.

The study also revealed that the NHBRC, as an organization, is clear of what is expected of it in terms of its mandate of regulating and providing quality assurance for the home building industry. In addition, the interview with the Accounting Officer (CEO of NHBRC) confirmed that there is a general inference that the NHBRC directly supports the strategic intent of its parent department (the NDoHS). However, the

governance relations is not intact in that it appears that the entity is not sure if the parent department (Department of Human Settlements) is fully exploiting the potential within the NHBRC to achieve 'what it intends to achieve'- its strategic vision on human settlements. For instance, the notion that there seems to be no alignment between the strategic intent at provincial level in terms of delivery of quality human settlements "….these spheres of government look like different organization that happen to collaborate in the delivery of housing by default'.

Whilst the National Department of Human Settlements seems to be holding the purse (through grant funding) for the delivery of housing in the country via provinces, it appears that there is very minimal influence that this sphere of government at the provincial level has particularly on ensuring quality housing delivery. Politically, not all provinces share the same passion and zeal to deliver in collaboration with the NHBRC, particularly, when it comes to compliance to its quality assurance requirements.

This is aggravated by the fact that entities such as the NHBRC which are expected to support government at national level to realize its objective of delivering sustainable human settlements that are of quality standard, feel aggrieved by the so called "…..invisible or hopeless oversight". According to the information received, at the

time of this study (1 year six months after the new administration was instituted), the Minister was yet to meet his entities (one on one with his accounting authorities and share his vision and delivery expectations. The NHBRC do not know if they are on the right track or not. On the other hand, the Council Advisory Committee constituted in terms of the Housing Consumers Protection Measures Act of 1998 to advise the Minister on possible alternative insurance for the home building industry has failed to submit proposals to introduce outside insurers in 2003 which it should have done.

It appears that the element of vigour is absent and therefore there is no vigilance on the part of the department on what needs to be done. There is more emphasis on checklist on compliance (interview with the CEO, NHBRC). The feeling is that there is a dire need to shift from paper based oversight (reliance on quarterly reports) to visible constructive engagements such as shareholder representation at Board level. One typical example mentioned relates to procurement where the extension of an inspection contract by the Board to one of the service providers was done outside procurement regime. Despite the absence of representation at the board level, from the oversight perspective, the department has not requested any minutes of the board meetings follow through on governance matters.

5.3 Theme 2: Oversight and Accountability

Key Findings

NHBRC has since 2007 been experiencing internal operational difficulties. Symptomatic to these problems have been the inability of this entity to submit Annual Reports to Parliament on time in the past years. In terms of the Public Service Management Act, 1999 (Act No.1 of 1999) non adherence to deadlines contravenes the Act. At some point, the Board had to suspend its Chief Executive Officer.

The governance glitch within NHBRC sparked an outcry in the circles of government particularly National Treasury and Parliament, questioning the ability of the Department of Human Settlements' capacity and ability in respect of its oversight.

The review of a report on a study commissioned by the Department to conduct an organization wide diagnosis to determine the health of this organisation unearthed critical governance challenges. The Department's primary concern was to foresee and prevent or minimize service delivery collapse on the part of the NHBRC following the hint from a number of complaints received from the public. The study ascertained the extent of the problems and determined if the entity is fit for purpose with respect to its service delivery objectives. Broadly, the Department's expectation

was that the organizational diagnosis would determine the health of the NHBRC and its ability to fulfil its legislated functions. Stakeholders such as builders, technical service providers, Provincial Human Settlements Departments, previous Council members and staff were interviewed. According to the report, following this assignment, it was discovered that there was role confusion that led to poor accountability and delayed responsibility. By legislation and practice, the Council is structured as a board but has the responsibility of an executive.

This ignited an interest to review Board meeting packs for the year ending March 2009. This review revealed elements of dysfunctionality within the Board, - something which could not be picked by the shareholder in its oversight management role. Some of the things discovered include,

(a) All work is done in the name of the Council

On reviewing the 2008 Annual Report, it was discovered that the Council is sited as the accounting authority in the 2008 annual report. Whilst this is correct in that the Council as the final decision making authority and governing Board gets involved in

operational detail. This over-involvement of the Council is a serious corporate governance matter because it tempers with the day to day operations of the entity.

(b) Council has 11 committees

The Council has 11 committees and several task teams to engage, direct and review work. However, the Council decisions are deferred for more than a year due to inadequate information and/or committee review. In the process the Executive directors get freed from final accountability and responsibility lacks clarity. As a result when proposals get tabled at the Council, it happens without any cross functional review and impact analysis. This shows an element of a lack of an integrated and unified work style

(c) Shareholder representation within the governance structure of NHBRC

The responsibility of appointing board members of housing entities lies with the Minister of Human Settlements particularly where there is an enabling legislation pointing to that effect. This is the case with the NHBRC.

The fact that the NHBRC is a public entity for whose performance the Executive Authority, in this case the Minister of Human Settlements is accountable to Parliament should be represented at board level. However this is not the case at the NHBRC.

The stance has always been that the National Department is a shareholder to and plays an oversight role over its entities in general. The Department's relationship with its entities is set out in a shareholders compact which is an agreement between the Minister and the board of an entity which describes the relationship between the parties.

A quick look at the fiduciary duties of board members, it is critical to note that the most fiduciary duties are that they must,

(i) Act independently at all times with unfettered discretion;

(ii) Exercise independent judgment; and

(iii) Take decisions according to the best interest of the institution.

Playing an oversight role over an institution while also occupying the position of a board member undoubtedly constitutes a conflict of interest.

This kind of conflict is clearly set out in a reported judgment of *Fisheries Development Cop of SA v AWJ Investments (Pty) Ltd 1980 (4) SA 156 (W)* where it was held that "the director's duty is to observe utmost good faith towards the company, and in discharging that duty he is required to exercise an independent judgment and to take decisions according to the best interests of the company as his principal. He may in fact be representing the interests of the person nominating him, and he may even be the servant or agent of that person, but, in carrying out his duties and functions as a director, he is in law obliged to serve the interests of the company to the exclusion of any such nominator, employer or principal……he cannot be subject to the control of any employer or principal other than the company"

The King Report II also describes this kind of independence as follows: "Independence is the extent to which mechanisms have been put in place to minimize or avoid potential conflicts of interests that may exist, such as dominance by a strong chief executive or large shareholder. These mechanisms range from the composition of the board, to appointments in committees of the board, and of

external parties such as the auditors. The decisions made, and internal processes established should be objective and not allow for undue influences".

One of the most serious implications for being a board member is one of being personally liable in terms of damages and criminal liability arising out of breach of fiduciary duties. In terms of both the Companies Act and the PFMA, board members' liability is unlimited is that they can be suit personally. They are jointly and severally liable for any breach of fiduciary duties.

It then becomes too risky for public service officials appointed as board members to remain independent in view of their official duties to their employers and Executive Authorities. Despite the above rationale, this is a critical governance matter that has a bearing on oversight and accountability.

One of the key challenges discovered in this study is that here is role confusion between the Council and the Executive Management of NHBRC. It was discovered that the Council, as the final decision making authority, gets involved in operational decision making, thus delaying implementation. This element may be attributed to the governance anomaly where structurally the Council is positioned to be the board but

has the responsibility of an executive. For an example, the Council has eleven committees and several task teams to engage, direct and review work in the Council. Council decisions are deferred for more than a year due to inadequate information and/or committee review. As a result officials who are supposed to be taking responsibility and accountability (Executive directors) end up freed from final accountability. The fact that proposals are tabled to the Council without cross functional review and impact analysis depicts the dysfunctionality at executive level.

The lack of precision within the governing Board reflects the need to close the gap on shareholder representation at the Board level. It follows that shareholder representation would improve board performance especially when there is a potential risk of not achieving the board's goals or properly carrying out the board's basic functions. An interview conducted with the Chief Executive Officer of the NHBRC also revealed the necessity of stakeholder representation. He indicated that interest departments such as Public Works, Trade and Industry need to be represented. He indicated that representation from the shareholder should not be negotiable. He emphasised that where officials are in the board as observers to explain matters such as government or departmental policy and direction, this will filter through and strengthen strategic leadership at the NHBRC.

Customer service orientation is deficient in the organization. Mechanisms to establish a stakeholder management capability do not exist. Customer satisfaction is addressed only when crises arise, indicative of poor planning.

5.4 Theme 3: Strong Administrative and Political Oversight

Key Findings

Literature has revealed that oversight is conducted from three different perspectives, namely Administrative (technocratic) oversight, and Political (Executive) oversight, as well as Political oversight from the perspective of opposition parties. For adequate accountability, it is emphasised that oversight within these layers or levels should be strong.

The researcher interviewed officials of the Department whose responsibility is to overseer NHBRC as it delivers on its mandate.

(i) Administrative oversight

Administratively, the National Department of Human Settlements has in place oversight systems and mechanisms to ensure that its entities implement policy/mandate in a manner that contributes to its strategic goals. The study discovered that the administrative oversight of the department is relatively strong. From the interview with the CEO of NHBRC, there was a clear indication that the administrative oversight systems and mechanisms put in place by the department are satisfactorily.

In terms of the organisational structure, a dedicated division at Chief Directorate level has been established. According to the 2009 Annual Report, the main purpose of this division is to provide oversight management to entities reporting to the Ministry of Human Settlements.

The main mechanisms used by the department to exercise oversight are guided by the applicable legislations such as own entity legislation, the PFMA, Companies Act, King Code, Protocol on Corporative Governance, and other relevant guidelines. Such mechanism find expression in a Entities Monitoring Framework approved by STRATMAN (an departmental high decision making structure),

Mainly, the following are used:

- Business Corporate Plans

The accounting authority for a public entity must at least six months before the start of the year, or another period as agreed to between the executive authority and the public entity, submit a budget of estimated revenue and expenditure for approval by the executive authority in terms of section 53 (1) & (2) of the PFMA.

The Department **participates** in the strategic planning activities of the public entities so as to **facilitate alignment** of their programmes to the national policies and priorities with a view of achieving pursuance of the National Department's mandate by the public entities, and to **agree on the allocation of the appropriated funding** to those programmes to ensure transparency and accountability for the use of public funds. This is followed by **submission of draft and final strategic plans** and budgets by the 30th of September (a date which is 6 months before the start of the year for which the strategic plan is prepared) 1st April each year respectively.

Service delivery targets (both non financial and financial) should find expression in **a service level agreement** between the Executive Authority (the Minister) and the entity and ensure that it describes the behaviour expected on both sides to support effective management and performance of the entity.

- Quarterly Performance Reports

Entities, through accounting officers, submit quarterly reports on their actual revenue and expenditure up to the end of the quarter as well as a projection of expected revenue and expenditure for the remainder of the current financial year within thirty days of the end of each quarter. In addition, Treasury Regulations stipulates that the accounting authority must quarterly report to the executive authority through the designated accounting officer on the extent of compliance on the Public Finance Management Act, 1999 and regulations. Any non-compliance must be reported together with reasons for the non-compliance.

In this regards, the Department's role is always to ensure that the quarterly reports are drafted in terms of the required format as prescribed above and that time frames are adhered to.

According to the Department's monitoring framework, these reports are used to monitor and assess whether:

- ✓ Performance is in line with the Business Plan and mandate
- ✓ The entity is on course or not achieving the targets in terms of their business plan
- ✓ Expenditure of the entity is within the budget parameters and expenditure relating to the mandate and approved objectives of the entity.
- ✓ Governance Structures, including procedures and policies, are in place and operational
- ✓ Entities do not deviate from its mandate

☐ Midterm Review

The department conducts midyear performance reviews with its entities in November of every year. These reviews take into account the performance of entities for the preceding two quarters (i.e. April to September). The expectation is that these reviews should provide the Department an opportunity to review progress in policy

implementation, implementation challenges experienced by entities, and jointly agree with entities on solutions.

- ☐ Oversight visits to entities

The Department also conducts periodic visits to entities in order to engage the executive management on salient issues emanating and observed from quarterly reports. It is believed that these visits also assist the Department to communicate matters of concern and Ministerial priorities.

- ☐ Annual reports

The Accounting Authority (the governing Board) for a public entity must submit its Annual Report within five months after the end of the financial year. The annual report should comprehensively disclose the public entity's strategic objectives and outcomes as identified and agreed on by the executive authority, the key performance measures and indicators for assessing the entity's performance in delivering the desired outcomes and objectives and the entity's actual performance against the strategic objectives and outcomes.

☐ Service Level Agreement or Shareholder Compact

An audit query from the Auditor General in 2006 discovered that the department does not enter into any form of service level agreement with its entities and recommended that the department should initiate a process and develop a generic shareholder framework.

Following this recommendation, a framework was developed and approved by STRATMAN, expectation of which was that the Executive Authority (Minister of Human Settlements) would enter into a service delivery agreement on behalf of the State as a Shareholder with the Chairpersons of the Board as an accounting authority of an entity.

The service delivery agreement should document key performance measures and indicators to be attained by the public entity, and is used by the Board of Directors to guide the company and its strategy formulation and implementation. It is envisaged that this should provide clarity about the expectations of the State as a shareholder in terms of service delivery, government priorities etc.

In respect of the effectiveness of the above systems and mechanisms of oversight, indication (90% of the respondents) is that these systems are somewhat effective in that there are constant engagements with entities through the periodic submission of reports. However, indication was that the current oversight systems have a disadvantage in that they promote usage of an invisible 'remote control' on entities by officials –a phenomenon that is seen as ineffective. Though the NHBRC submits reports, and there is feedback from the department, the senior executives are not sure if government officials do follow up on salient issues raised in eth reports.

One of the means and ways for the department to engage with the NHBRC is through the midyear performance review held once a year around November of every year. Documentation reviewed has indicated that these reviews should normally be attended by top management of the department. The expectation is that these reviews should be providing the Department an opportunity to review progress in policy implementation, review and, where necessary, align the entity's strategies with new policy developments and direction. Furthermore this also presents both the department and NHBRC with an opportunity to explore mitigating measures to alleviate policy implementation challenges. Jointly agree with entities on solutions. However, in the past three years, attendance of the department's top management has been deteriorating, the worst being 2010 where none of the Deputy Director

Generals were present –let alone Chief Directors. This is sending wrong signals to the entities. Although only the NHBRC Executive/s was interviewed in this study, an inference could be made that this is a strategic drawback that affects all other entities.

In respect of compliance to relevant legislations it was discovered that the Office of the Auditor General had given three consecutive unqualified audit reports in the past three years. It should be borne in mind that the Office of the Auditor General invites itself to conduct audits on any public entity. The independent audit of the Office of the Auditor General has confirmed to the public that NHBRC is properly managed. The increase in both home enrolment and registration of homebuilders demonstrates public confidence.

An enquiry from the Rapport newspaper insinuated that there is a decision gap at the Board level when it comes to deciding what and how the remuneration of staff should be paid due to the absence of the Council and the Remuneration Committee. However it has been discovered that in the absence of Council and a Remuneration Committee, new staff continued to be remunerated in accordance with existing salary grades. In terms of annual salary increases, annual performance bonuses for staff including Executive Management, the National Department of Housing gave

approval in line with the submissions from NHBRC, taking into cognisance outcomes of the Performance Management System. The approval for 2004/5 was on 29 June 2005 and, 2005/6 approvals were on 12 April 2006.

Administratively, the above finding shares some light in respect of NHBRC compliance. Inference could be made that the Auditor General's reports reflect positively on the department's enforcement and oversight.

(ii) Political oversight

The study has found that political oversight is divided into two levels, firstly, political oversight is exercised by the political head of the department who accounts to Parliament on the affairs of all entities reporting under his/her department. Normally, the political head accounts through Annual Reports tabled in Parliament within six months after the end of the financial year. Secondly, political oversight is also exercised by a dedicated Parliamentary Portfolio Committee which comprises of members from both the ruling party and the opposition. Periodical and as in when it feels so, the Portfolio Committee can either invite a public entity to account on a matter of interest.

Shareholder expectation should find expression in the Service Level Agreement or Shareholders' Compact. However, it study has discovered that it has been difficult for the department to get the Executive Authority to sign these document. Although the NHBRC has been submitting its draft Service Level Agreement signed by the Chairperson of the Council for the past three years, none of these were countersigned by the Executive Authority. It is not clear what has been preventing the Executive Authority to sign. It could be concluded however that there are varied levels of understanding in regard to the relevance of these documents between the Ministry and its administrative wing (the Department).

As per statutory requirement, the Portfolio Committee on Housing (Human Settlements) in Parliament received NHBRC's Annual Reports for the 2006/7, 2007/8 and 2008/9. However these reports were submitted to Parliament without the Executive Authority or even the Director General having endorsed.

CHAPTER 5
CONCLUSION AND RECOMMENDATION

6.1 Introduction

This chapter consists of a summary, conclusion and recommendations for further research. In broad terms, the research paper determined challenges impacting on the Department of Human Settlements' oversight role over NHBRC in the area of policy implementation and accountability. Furthermore this research explored the possibility of developing effective mechanisms to enhance the Department's oversight.

Literature on governance oversight in general is adequate, however the study also revealed that there are very limited empirical studies on the role of government departments on public entities under their control. At present, the concept of 'oversight' is generally conceived in terms of the implicitly proactive 'watch-dog' role to be played by an elected legislative assembly towards the activities and functions of the executive and administrative arms of government. It is testimony to the currency of the term in political thought that, as yet, no definitions of it appear in dictionaries of political terminology.

As seen in the report, the literature survey conducted for the purpose of this study revealed that oversight on entities is a new and a growing phenomenon particularly at the departmental level. Not only did the literature assisted in understanding this new concept but also assisted in unpacking the research problem and the related questions for this study.

The study revealed that there should be balance between the oversight and accountability processes at the level of parliament and those at departmental level (or administrative level). This study emphasized of the need to close this gap at the level of government departments, particularly those owning entities.

For effective governance oversight on public entities the literature review has revealed critical areas requiring attention, such as the need for strong political and administrative oversight, accountability and managed relationship between the departments and entities. Literature has shown that these areas are calling for a fresher need to assess the effectiveness of current oversight mechanisms within government in general and at departmental level in particular. Therefore the envisaged study moved from the premise that the degree of oversight by departments determines the functioning or malfunctioning of control mechanisms than the entities themselves.

In conclusion, it should be noted that, in general, the study agrees with the notion that the rationale for establishing entities outside parent departments is that certain services could be more efficiently and cost-effectively undertaken in specialised environments by professionally-managed, arms-length agencies functioning on commercial principles.

However, the Executive Authority (EA), and as the owner/shareholder in public entities, should be concerned with policy implementation of service delivery and should act as a regulator. The relationship should be such that government is able to control and manage its involvement (by virtue of its investment) without negatively impacting on the independence of the accounting authorities (the Boards of Directors) and without getting involved in the day to day management of its entities.

Notwithstanding the above, the arms length relationship between those entrusted with oversight responsibility and the governing boards who are the accounting authorities of these entities has a potential risk of creating a control gap for government and stifling service delivery and the associated social benefits. It is important that the principles of good governance in public entities be applied to determine the efficiency of decision-making bodies in achieving the objectives in terms of their fiduciary duties. Therefore for oversight to be effective, whether at

administrative or political level, it is critical that government (as owner) should clearly describe its role particularly its governance relationship with its entities .

6.1.1 Current situation

The National Department of Human Settlements and its oversight management is currently structured at the Chief Directorate level with two directorates one dealing with the performance of entities in respect of financial and non financial matters and the other dealing with corporate governance issues.

The staff complement of this business unit is 20 but at the time of this study there were two critical vacancies at Chief Director and Director Levels. As set back for effective oversight. The oversight function conducted through this business unit spread over two directorates functions of which are entirely informed by legislative frameworks such as the PFMA.

The study unveiled that whilst the above legislative arrangements for discharging oversight responsibilities is not without drawbacks. In some cases, it leads possibly to overlapping consideration of the same oversight items or reports by different divisions

or business units in the department. There are divergent views and conclusions at the strategic level requiring additional considerations beyond the scope of this study.

However from the department's oversight approach it could be concluded that where there is only one standing oversight division with clear role and uninterrupted function oversight become meaningful. The advantage afforded by this approach that the shortcomings noted above can be avoided. Notwithstanding the above notion effective exercise of oversight responsibility could still be inhibited if the authority of the "officials entrusted with oversight responsibility" is not comprehensive enough to address all pertinent aspects of the oversight function, including compliance issues and linkages to the programme budgeting and management improvement processes.

From the Executive Authority accountability point of view, Ministers are traditionally accountable for both the policy and management of their departments as well as policy implementation by their statutory agencies[9]. The growth of the public service has meant that Ministers cannot be expected to have knowledge of all the workings of their departments and its entities. However, as Corder et al (1999) puts it, it is true to say that in terms of the doctrine Ministers can be expected to put in place systems

[9] J Jowell & D Oliver (1989) in Corder et al (1999).

and procedures to ensure proper management and the efficient utilisation of resources allocated to their departments including those of its entities. Ministerial responsibility is the cornerstone of accountability.

However, since it is based on departmental hierarchy and lines of responsibility culminating in the Ministers, it proves far less useful when the element of the executive in question consists of statutory bodies or agencies which are outside the departmental sphere of control.

In the context of this Department, it is clear that the ministerial responsibility over the NHBRC has been stretched to the limit. Generally, an aspect of the problem is that while ministers can in the face of developments disclaim responsibility in many instances, the traditional doctrine also excludes public servants from responsibility.

In this instance, Corder et al (1999) made a comparison of constitutions in other parts of the world to assist in understanding the above dichotomy. Internationally, different countries and nations' expectations in this area of political accountability varies:

United Kingdom: As part of the responsibility of ministers to Parliament there exists the convention of impartial, non-political civil servants who are not directly accountable to Parliament; accountability takes place through the minister concerned. As a consequence civil servants can refuse to answer questions about advice to ministers on policy or their opinion on policy[10]. However, the realisation that policy and policy-making is difficult to separate from administration has led to increased efforts to hold civil servants responsible. With regard to executive agencies the Public Service Committee of the House of Commons has stated that a minister's duty to give an account can be delegated to the chief executive of the agency in question, but 'the liability to be held to account…cannot'[11]. Therefore ministers must take steps to correct the failings of executive agencies revealed by parliamentary scrutiny.

Canada: The political neutrality of civil servants and ministerial responsibility means that the British model is followed. By convention civil servants remain anonymous in the sense that they should not be criticized personally or otherwise held accountable in Parliament[12].

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[10] C Turpin 'Ministerial Responsibility' 53 at 65 in J Jowell & D Oliver The Changing Constitution (1989).

[11] M Radford 'Mitigating the Democratic Deficit? Judicial Review and Ministerial Accountability' 35 to 40 in P Leyland & T Woods Administrative Law Facing the Future (1997).

[12] P W Hogg, Constitutional Law of Canada (3rd ed) 1992).

Australia: In general the inheritance of the British model means that civil servants cannot easily be held accountable. In particular civil servants have at times, when questioned or asked to produce documents, successfully invoked the public interest immunity when appearing before committees[13]. One of the important ways in which ministerial accountability takes place is during Parliament's plenary sessions especially through the institution of question time, draft resolutions, interpolations, special debates and budgetary approval.

6.1.2 Enhancing the effectiveness of the oversight function of the National Department of Human Settlements

What is required to enhance the effectiveness of the oversight function of the department of human settlements over the NHBRC is that:

(a) Thematic oversight reports should, as far as feasible and practical, be part of the meeting agendas of the department's strategic management forums.

(b) All oversight reports should be reviewed in a comprehensive and coordinated manner. Over an above those produced by the "operational" oversight mechanisms related to the programme, finance, budget and the functioning of the respective organization, reports from external auditors, Board of Directors

[13] Odgers' Australian Senate Practice 8th ed (1997).

particularly when they cover different oversight elements (audit, investigation, inspection, evaluation and monitoring) should also be reviewed.

(c) At all times the intention should be that the outcome of the above reviews should be fully linked to departmental actions in respect to the key strategic policy matters, to setting policy (strategy) and/or management directives on the pertinent issues.

This will provide an opportunity for provinces to meaningfully engage with the NHBRC and other entities that do business with them. In such cases, provincial departments of human settlements may raise strategic matters that nay improve service delivery from both sides.

6.2 Conclusion

This study looked at the National Department of Human Settlement's oversight role over its entities. The study took place in the context of a broad oversight management by the department of over its entities. However, the broader objective was to examine the internal systems and mechanisms used by the department in its oversight function with a specific focus on the National Home Builders Registration

Council as one of its entities and determined if there are any challenges impacting on its oversight role. Since the nature of the research was exploratory, it shared light in answering the primary research question.

From the findings, it could be concluded that there is evidence ground breaking that there are impediments in the oversight function of the Department of Human Settlements' over the NHBRC. These impediments relate to the following:

(a) Administrative bottleneck

Ministerial responsibility is the cornerstone of accountability in the above governance set up. However the departmental hierarchy and lines of responsibility culminating in the Ministers is blurring the effectiveness of the department's oversight.

(b) Invisible shareholder/entity relationship management

Legislatively the Minister of Human settlements is accountable for service delivery or policy implementation by all statutory agencies reporting to this

department. However the current systems and procedures to ensure proper management and the efficient utilisation of resources allocated to the NHBRC are not convincingly adequate.

In the context of this Department, it is clear that the ministerial responsibility over the NHBRC has been stretched to the limit. Generally, the problem is that whilst ministers can in the face of governance challenges disclaim responsibility in many instances, the traditional doctrine also excludes public servants from responsibility.

Moreover, an investigative analysis of documentation from oversight organs of state such as the Auditor General and Parliamentary Portfolio Committee on Human Settlements was also conducted. It was found that whilst the department exercises its oversight role over the NHBRC, its focus is mainly on compliance enforcement. There is no balance between legislative enforcement and service delivery on the part of NHBRC. A phenomenon that unveiled the need for an improvement oversight systems and approach. The researcher could not make inferences to other entities, however, the study helped in developing an understating of challenges and a framework for effective oversight.

Having researched on the oversight role of the National Department of Human Settlements on its entities: The case of National Home Builders Registration Council (NHBRC).

6.3 Recommendations

Recommendation 1: Strong Administrative Oversight

It could be concluded, from the study that therefore that the Executive Authority should play an active role in discharging its responsibilities by insisting on a high standard of governance in order to strengthen the accountability of the Board, necessitating specific reports on a quarterly basis as per relevant statutes to enable the Executive Authority to monitor progress and performance.

This is possible if there is common understanding between the parent department and the entity that promotes setting of targets, both financial and non-financial, and agrees on a (target) optimal capital structure annually before commencement of the budget process. As much as reasonably possible, government should clearly detail the role and responsibilities of the board as a whole and of individual directors, taking into account potential conflict of interest between the shareholder's regulatory responsibilities as government and shareholder's responsibilities on the other hand.

(i) Capacity and organisation of the 'parent' department

Good practice in this area is for parent departments to establish units with appropriate capacity to oversee the entities for which the Minister is responsible, and that all reporting lines should go through this unit, for both performance and finance. These units should also be responsible for giving feedback to entities (both from the Minister and based on their own analysis).

In order to enhance its capacity, government should exercise its prime responsibilities and firstly be represented at the general shareholders meetings; secondly establish well structured and transparent board nomination processes in fully or majority owned SOEs, and actively participating in the nomination of all SOEs' boards; and lastly set-up reporting systems allowing regular monitoring and assessment of SOE performance.

(ii) Shareholder representation at Board level

It should make governance sense for the shareholder to be represented in the governing boards of its public entities so as to ensure that its interest are taken care off for coherent policy advocacy. There are many ways to enhance accountability of

entities through the governing bodies. Representation is one of them. It is acknowledged that government officials may get outvoted in board meetings and this ends up compromising the Department. In this instance, it is recommended that government officials should be appointed specifically to direct policy and advised on matters requiring the input of government.

To ensure that independent voice can be heard on the board of the governing body, it is important to have majority of independent directors be appointed to the board. This is normally informed by the enabling legislation referred to earlier in the document.

However, it should be emphaised that from the perspective of the shareholder, representation by one official on the board is the best way to enhance accountability of the governing body in some jurisdictions. It is particularly a common

(iii) Set-up reporting systems allowing regular monitoring and assessment of public entities performance.

Over and above the reporting systems and mechanism recommended by the regulatory frameworks, it is important to ensure that parent department should institute mechanisms that would avoid ddual accountability by accounting officers of entities to both the Accounting Authorities and Executive Authorities. As noted this is prevalent within the department‘s entities, and has created elements of mistrust between the CEOs and governing bodies of certain entities.

This conflates good governance in that the CEO assumes the role of the governing body and promotes conflict of interest between the CEO’s management role and the required oversight accountability that is supposed to be exercised by the governing body.

(iv) Institute a structured and transparent board nomination processes

The study discovered that though Minister is empowered to appoint Council members, the administrative oversight do not ensure that there are processes in place to ensure relevant competency and expertise in the council.

The majority of the directors should be non-executive members to ensure an appropriate balance of power, as well as independence and objectivity in the governing body. An independent governing body member is one who has no relationship with the entity, its related entities, or its officers, that could interfere or reasonably be perceived to interfere with the exercise of the director's independent business judgement regarding the best interests of the entity. The study discovered that this is a cause for concern in that the extent to which this is monitored by the department could not be measured.

Therefore, to ensure that the management of the governing body is fit and proper, it is a widely adopted practice that they have to meet certain requirements in respect of honesty, integrity and competence. Supervisory authorities may assess the skills and knowledge of the governing body members through appropriate tests to make sure that it is competent enough to properly perform its duties. However disclosure should always be regarded as the most important tool to enhance accountability of the governing body to the parent department.

(v) Evading multiple strategic/policy directives:

For public entities to deliver on mandates effectively, it is critical to institute proper oversight mechanism to ensure constant monitoring of the effectiveness and efficiency of the operations of these entities in respect of policy implementation, and compliance with applicable legislation. The extent to which this is monitored can only be measured by the manner in which policy directives to entities are streamlined and effectively managed. Multiple policy directives from different officials from the parent department do not only confuse the strategy of a particular entity but also opens space for misdirected innovativeness within the entity.

(iv) Improved Financial and Performance Accountability

The performance of an entity, whether satisfactory or not is a mirror image of the department's oversight efficiencies. Therefore relationship between parent department and entity is defined in terms of financial and performance accountability. In order for performance accountability to be measured, the objectives of entities have to be translated into annual performance targets.

However, for proper oversight management, entities have to be established in terms of 'own' legislation. Where an entity is established in terms of legislation, the legislation stipulates governance provisions as well as its relationship with the Executive Authority including the signing of shareholder compact.

A universal introduction of Shareholder Compacts or Performance Agreements will assist parent departments to: –

- Formalise and regulate the working relationship between the Minister and the Board pursuant to the provisions of the Act applicable to the specific public entity and the PFMA.
- Set out the mandated key performance measures and indicators to be attained by the public entity.
- Facilitate the assessment and monitoring of the Board's performance against the public entity performance in delivering the desired outcomes and objectives.
- Define procedures and reporting channels for accountability arrangements and quarterly reporting to the Minister or the Minister's representative in order to facilitate effective performance monitoring, evaluation, as set out in the Shareholder Compact or Performance Agreement and corrective action to be taken.

In support of the above initiatives, 'the department' may wish to adopt, as a matter of principle, the following modus operandi for enhancing the effectiveness of its oversight function:

- Prioritise oversight reports and ensure they become part of the agenda for the strategic management and /or ministers meetings with the departmental executives
- Review all the relevant parts of the oversight reports to elicit issues requiring attention – this may be done in a comprehensive and coordinated manner through analysis reports;
- Link fully the above review to setting policy and/or management directives on the issues in question, with specific legislative actions on the strategic/policy matters whenever required;
- In addition, make organizational arrangements to ensure that consideration of entities programme matters are linked systematically to the department's consideration of administrative/budgetary/ financial matters;
- Furthermore, consider/verify, either separately or as a part of the review exercise above, compliance with the legislative prescripts to enforce accountability and responsibility.

Recommendation 2: Improved regulatory frameworks

It should be mentioned that the introduction of the legislative frameworks in South Africa do assist in the oversight management over entities and in guiding the relationship between the Executive Authorities and their entities. However there is room for improvement in that parent departments do not have absolute powers over their agencies on matters relating to the fiduciary powers of Board Members. The reform should improve overseer authority and afford adequate control powers to be able to exercise sufficient control.

The approaches and means used to overseer the governance of entities have to be reviewed from time to time, in line with the trends and developments in this area accross the globe. For an example Governing Boards are charged with a responsibility to ensure that a State Owned Entity maintains an effective, efficient and transparent system of financial and risk management and internal control. In this regard Boards are required to establish processes and practices within the entities to manage all risks associated with the entities' operations.

In broad terms, the Shareholder's sensitivity over commercial risks should be taken care of by the Board. This control measure should be supplemented by constant expression of intent in corporate plans and progress reports by the Board that it has appropriate risk management policies and practices in place and that adequate systems and expertise are being applied to achieve compliance with those policies and procedures. Whilst this is, to some extent adhered to, the requisite periodic checks and balances on the part of the shareholder has been lacking.

Pursuant to the above, there is a continuing need to conduct continuous risk assessments to guard against any deviation from respective mandate thereby avoiding fruitless expenditure. Up until now the control adequacy and effectiveness is based exclusively on management perception. The inherent danger in this is that management becomes more optimistic or pessimistic about the control environment than they really should be.

The prevention of irregular, wasteful and fruitless expenditure should always be reason enough to undertake checks and balances. This could be done in a manner that does not compromise the independence of these entities particularly in respect of their audit processes. As delivered by this study, the manner in which this is effectively monitored by the Department of Human Settlements is a cause for

concern. The prevalence of this challenge, if unchecked, has dire negative impact to service delivery.

Recommendation 3: Strong Political Oversight

The challenge facing portfolio committees is that they need to ensure that departments (including their public entities) provide good quality service delivery information in their strategic plans with tight performance targets and then to ensure that departments report against those targets in their annual reports. The oversight mechanisms have been relatively weak as the focus has been on narrow financial oversight only.

Political meddling as a result of change in government or ministries has potential to undermine the structures and systems currently in place. Although it is the prerogative of politicians to change policies, when this happens too frequently, or when the changes are perceived to be arbitrary or unnecessary, it generates resistance. Therefore political continuity regarding the roles and functioning of entities is crucial to ensuring their efficiency and effectiveness.

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ANNEXURE A

QUESTIONNAIRE
INTERVIEW WITH DEPARTMENTAL OFFICIALS

Respondent Name: ……. **Respondent Address:** …….. …….. …….. **Tel. No.:** ……..	**Interviewer:** I declare that this interview was performed as instructed through a face-to-face interview with the interviewee and I ensured that all the questions were correctly asked. Interviewer Name: ……. Date of interview: …….

As part fulfilment for the Degree of Master of Management in Public Policy, students are required to conduct a research on topics of their choice in relation to public policy.

My chosen Research Topic is:

THE OVERSIGHT ROLE OF THE NATIONAL DEPARTMENT OF HUMAN SETTLEMENTS ON ITS ENTITIES: THE CASE OF NHBRC

You have been randomly chosen as one of the potential sources of information for this study. Your answers or information will solely be used for the purposes of this study and will not be used to discredit you or your organisation in anyway. Would you give me some of your time to go ahead with the interview/or complete the questionnaire?

A: PERSONAL DETAILS

1. Designation

Deputy Director General ☐

Chief Director ☐

Director ☐

Other ☐

2. Business Unit

B: Questions

1. What is your view in respect of the strategic vision of the organisation towards its public entities?

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2. In your role (as Department), what systems and mechanisms have you put in place to conduct your oversight on your Department's Entities?

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3. Are these systems and mechanisms effective?

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4. Has there been any impediments/challenges in your oversight role and what has been the nature of these impediments/challenges. ?

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5. Do you think there could be better mechanisms to enhance your oversight? If Yes, elaborate

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6. Do you believe that Good Corporate Governance is the basis for effective policy/mandate implementation for entities? If so, what oversight control measures have you put in place to promote good governance in your department.

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7. Is there any additional information you may want to provide?

End.

QUESTIONNAIRE
INTERVIEW WITH NHBRC

Respondent Name: ……. Public Entity: …… Designation: …… **Physical Address:** …….. …….. …….. **Tel. No.:** ……..	**Interviewer:** I declare that this interview was performed as instructed through a face-to-face interview with the interviewee and I ensured that all the questions were correctly asked. Interviewer Name: …… Date of interview: …….

As part fulfilment for the Degree of Master of Management in Public Policy, students are required to conduct a research on topics of their choice in relation to public policy.

My chosen Research Topic is:

THE OVERSIGHT ROLE OF THE NATIONAL DEPARTMENT OF HUMAN SETTLEMENTS ON ITS ENTITIES: THE CASE OF NHBRC

Your organisation has been randomly chosen from the public entities of the National Department of Human Settlements as the focal point of study for an academic research at the University of Witwatersrand. Information gathered through this research will solely be used for the purposes of this study and will not be used to discredit you or your organisation in anyway. Would you give me some of your time to go ahead with the interview/or complete the questionnaire?

QUESTIONS

1. What is your view in respect of the strategic vision of the organisation towards the NHBRC?

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2. In your view (as the Accounting Officer), are current oversight systems and mechanisms used by NDOH effective?

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3. To what extent does the NDoH assist your mission to effectively deliver your mandate?

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4. From the strategic point of view, are there any impediments/challenges in your relationship with the Department? What is the nature of these impediments/challenges?

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5. Do you think there could be better mechanisms to enhance the relations? If Yes, elaborate

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5. Do you believe that Good Corporate Governance is the basis for effective policy/mandate implementation for entities in general? If so, please explain,

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7. Is there any additional information you may want to provide?

End.