



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Reference: Auditor-General's reports Nos 32 (2008-09) to 1 (2009-10)

WEDNESDAY, 25 NOVEMBER 2009

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**JOINT STATUTORY
COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT**

Wednesday, 25 November 2009

Members: Ms Grierson (*Chair*), Mr Georgiou (*Deputy Chair*), Senators Barnett, Mark Bishop, Bushby, Feeney and Lundy and Mr Adams, Mr Bevis, Mrs Bronwyn Bishop, Mr Bradbury, Mr Briggs, Ms King, Mr Neumann and Mr Robert

Members in attendance: Senator Mark Bishop and Mr Adams, Mrs Bronwyn Bishop, Mr Bradbury, Mr Georgiou and Ms Grierson

Terms of reference for the inquiry:

To inquire into and report on:

Auditor-General's reports Nos 32 (2008-9) to 1 (2009-10)

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Committee met at 12.05 pm

BROADHEAD, Mr Peter, Assistant Secretary, Residential Program Management Branch, Ageing and Aged Care Division, Department of Health and Ageing

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SIMPSON, Mr Mark, Director, Performance Audit Services Group, Australian National Audit Office

SMITH, Ms Carolyn, First Assistant Secretary, Office of Aged Care Quality and Compliance, Department of Health and Ageing

CHAIR (Ms Grierson)—I open today's public hearing which examines the Auditor-General's Report No.5 of 2009-10: *Performance audit: protection of residential aged care accommodation bonds: Department of Health and Ageing* and I welcome the representatives from the Department of Health and Ageing. At an appropriate time, between now and quarter to one, we will also examine another audit of the department: *Performance audit: planning and allocating aged care places and capital grants: Department of Health and Ageing*.

I draw the attention of witnesses to the written guidance on the conduct of hearings available at the table. Do any of the witnesses present wish to make a brief opening statement before we proceed to questions?

Mr Cahill—We have tabled our opening statement.

CHAIR—You have tabled that, thank you.

Ms Murnane—We are happy to table ours.

CHAIR—Ms Murnane, is that available for us now?

Ms Murnane—Yes.

CHAIR—Is it the wish of the committee that the opening statements of the ANAO and the Department of Health and Ageing, when we receive them, be authorised for publication? There being no objection, it is so ordered.

Are there copies of that, Secretariat? We will try to get those circulated to members. The audit office ones we have, but we do not have a copy of the Department of Health and Ageing one for each member. We are getting that now.

Mrs BRONWYN BISHOP—It might be helpful to speak to it briefly.

CHAIR—It is very brief, I note. Ms Murnane, do you want make a few comments? It was less than a page, I think—half a page?

Ms Murnane—I would like to thank the committee today for opening a further discussion on this report. There were legislative reforms introduced to strengthen prudential regulation in 2006. It was noted then that the protections for accommodation bonds would be adjusted over time in the light of experience. This is important as an evidence base was required to identify the need for further regulatory reforms and to inform policy development to ensure any further changes targeted areas of risk. It is also crucial that the appropriate balance is struck between ensuring the safety of residents' accommodation bonds and such factors as regulatory burdens on aged-care providers and maintaining the capacity of the sector to meet the needs of Australia's ageing population.

Members may be aware that there was a Productivity Commission report published recently on deregulation that made some comments on issues around prudential bonds and other regulation in aged care and recommended that deregulation strategies be put in place in these areas, particularly the area of prudential bonds. The ANAO, of course, comes from another position and really those two positions reflect the balance I referred to before.

The ANAO's findings are important in informing the department's continued work in enhancing our administration of the prudential framework. We acknowledge that there is scope to further develop our administrative arrangements and we have accepted and will implement the seven recommendations made by the ANAO. Some of these advise putting advice to the government for some policy refinements and legislative changes. We will do this, of course, in consultation with the ANAO. We are currently working as a matter of priority on implementing the recommendations as well as acting on other useful insights identified in the audit. The department has also been engaging with aged-care stakeholders on key aspects of the issues raised in the report. A number of ANAO recommendations relate to actions the department should take to strengthen corporate and risk management planning and documentation.

CHAIR—Ms Murnane, I will interrupt you. We now all have a copy of the document you are reading from in front of us so, unless you wish to go right through it, we will save you doing that.

Ms Murnane—That is fine.

CHAIR—Could you give us further information about the action the department has taken around mismanagement, in line with the recommendations from the Audit Office?

Mr Scott—The department as part of its 2009-10 business planning processes has taken the opportunity, in light of the Audit Office's report, to enhance its risk management planning around prudential regulation. In light of the ANAO's comments, we have extended the risk management plan for prudential regulation for 2009-10 and more explicitly separated out the internal administrative risks that may arise to impede the department's ability to effectively administer the prudential framework. We have more explicitly identified risks around regulatory decision making and access to appropriate staff with appropriate skills and we have more clearly set out the sorts of strategies that we will pursue to manage those risks. We have also more explicitly set out the external risk factors that may impact on an approved provider's ability to meet their prudential obligations.

CHAIR—In your plan you have drawn special attention to those matters and your intent to pursue them. What will this mean on the ground for aged-care providers?

Mr Scott—We will be putting out—and this also links to some of the other ANAO recommendations—additional information about the department's experience and findings in undertaking its regulatory tasks so that aged-care providers have a better understanding of where some of the problems are arising. For instance, we recently put out the results of the 2007-08 compliance processes to identify where approved providers were having more difficulty in meeting their obligations. Another key change that we have made is that we have set up a framework to more systematically and regularly review our largest approved provider groups, to explore with them how they are travelling and to raise any issues that we have identified as part of a more holistic assessment of the group's performance. They are a couple of the key changes.

CHAIR—Thank you. And how are they travelling?

Mr Scott—We have undertaken the first couple of visits with our two largest approved provider groups. Things seem to be travelling okay. It is as much about opening a two-way dialogue with our largest approved provider about their views of how they are travelling and the issues arising for them in the sector as it is an opportunity for us to talk through any observations we have about compliance and regulatory information.

Mrs BRONWYN BISHOP—Ms Murnane, I wonder if you could tell us how many at-risk providers we have with regard to prudential arrangements, and are they identifiable?

Ms Murnane—We do use various means to identify those homes that may be at risk of not being able to repay their bonds. There would be obviously a huge problem if a very large provider went into insolvency or, short of insolvency, was not able to repay bonds. As a matter of course we monitor the groups that have a large quantum of bond money. We also look at the financial arrangements of every home that comes into our orbit because of quality concerns, through a complaint, through an accreditation result, through an agency visit or through—and you will remember these, Mrs Bishop—an unannounced visit made by the department. I do not know whether we have an actual number at this time, but we are monitoring homes that we consider have some of the markers that could lead to default. We are looking—and this was another recommendation of the ANAO—to strengthen our targeting there and to refine what might be more subtle markers of homes that may go into default. Generally speaking—not always—we find that there is a correspondence between a default on quality and a default on bonds.

Mrs BRONWYN BISHOP—I raised with the Audit Officer earlier that, if a provider is also carrying out another business which is not related the aged-care business, that can be an indicator.

Ms Murnane—It can be an indicator, yes. Of course, it is not something that we would necessarily know. In one case in the last year we came to know after the default, but the arrangements that we have had since 1997 mean that we do not know—and we are not suggesting we should, because the cost of it was enormous and it was never all that successful. But we do not acquit the operational funds they get so, in theory, if they are able to run the home well they can spend that money wherever they like.

CHAIR—Audit Office, did you want to comment on whether there should be a list or better identification of facilities that are at risk?

Mr Lack—As Ms Murnane was saying, our thoughts were around how to better target and strengthen what the department already has in place. One of the thoughts in the audit is that DoHA does have access to general intelligence and regulatory intelligence through aged-care providers themselves, the Aged Care Standards and Accreditation Agency and aged-care complaints, and at the time of the audit was working towards being able to identify homes of concern. Our thoughts were around how they could possibly better target and strengthen that approach.

Mr BRADBURY—Could I ask a question of representatives from the department. Ms Murnane, you referred to markers that may be an indicator of potential trouble spots. Can you tell us a bit more about the profile of those providers that have ended up getting themselves into trouble? You mentioned before that there is a correlation here with overall standards of care. Are there any other factors that you can identify?

Ms Murnane—I will ask my colleagues to give you an account—not of one home, but a comprehensive account of what we found from there. I would also like to make the point that if we were to completely and entirely foreshadow everything we are looking for, as in any regulatory agency, that would then provide a means of evasion or circumnavigation. But, in general, Mr Scott will talk about what would be the broad common factors we have found.

Mr Scott—Mr Bradbury, it is interesting that, with the several approved providers that we have either had fail or get into significant financial difficulties, there are not a lot of common elements. For the most part, while there has been concern about whether larger residential services are more viable than smaller ones, it has actually been services operated by approved providers with 50-plus beds that have in fact been the ones that get into difficulty. It has been a mix of small for-profit companies and community based organisations. So there is not really any consistency with the ownership structure.

A couple of key common denominators we have identified subsequently through the administration process are that the ones that have failed have very poor financial records and are likely to be contravening the Corporations Act for their record-keeping requirements. Another common element was that they were not in receipt of the conditional adjustment payment, which is a supplement that you can receive in the residential aged-care sector if you are lodging general purpose financial reports that are audited. There are a couple of other requirements as well, but

the key one there I think is the general purpose financial reports. So they were not receiving those. Those are in fact the couple of main elements that we have been able to identify over and above. For most of them there has also been quite a precipitous drop-off in the quality of care. Another unfortunate factor has been that for the most part there has not been a clear pattern of issues leading up to the financial difficulties becoming evident, so it is challenging for us to identify risk indicators that give us a clearer idea of problems emerging early on.

CHAIR—What is the range of liquidity held by the providers? Does it vary?

Mr Scott—It does vary quite significantly. If I can give you a bit of context, the prudential requirements we have in place include a liquidity requirement, but it has quite deliberately been pitched on an outcomes basis, so we put it on the approved provider to assess their business needs, including issues like the number of bonds they hold, their difficulty in replacing departing residents and the time it takes to access bonds from incoming residents to determine their own business needs, the liquidity they consider they need to meet accommodation bonds within the time frames that are required. So you will see quite a divergence in liquidity.

CHAIR—It is more self-regulation within those parameters?

Mr Scott—If we identify concerns such as a pattern of late bond refunds we will review liquidity management. There is a requirement for these sorts of factors to be encapsulated in a liquidity management strategy. We will review a liquidity management strategy of an approved provider if we see a pattern of non-compliance.

CHAIR—What is the definition of a late bond repayment?

Mr Scott—There are statutory time frames set out in the Aged Care Act for the repayment of bonds. In general terms it is 14 days after departure of the resident. Following the death of a resident it is within 14 days of the receipt of probate of the estate.

Mrs BRONWYN BISHOP—Is it consistent across all sectors? You have got the for-profits and the surplus makers—I have never considered the not-for-profits were not interested in making surpluses, so we will call them surplus makers—and the local and state government sectors. I notice from your figure on page 32 that in Victoria there is still a different mix there where the private sector is still the largest, and it was always the most troublesome state, I have to say, largely because there are a lot of leaseholds. Is it more likely to be in not-for-profit, for-profit or state government where there is more risk? Also, where we have got Victoria, do we still have a big leasehold base and do people who have leasehold facilities present a greater risk than those who own freehold?

Mr Scott—In Victoria there is a preponderance of our prudential problems. Interestingly, of the two failures we have had in Victoria, one owned the property and one approved provider leased their properties. So, again, there is no clear link between the property ownership. Outside of Victoria I think the bulk of the cases have been approved providers that own the land and buildings themselves.

Mrs BRONWYN BISHOP—But were they private sector or not-for-profit or state government?

Mr Scott—Both the Victorian cases—so this was Vitality Care Commissioning, which owned Bridgewater, and Kendalle, which owned three services—were private for-profit. Again, outside of Victoria the main cases that we have had have been community based organisations.

Mr ADAMS—In your initial statement you talked about an appropriate balance being struck between ensuring the safety of residents' accommodation bonds and factors such as regulatory burdens on the providers. There is not any statutory requirement laid down for a provider to invest in any particular financial service. Do you see a need for that? I think the Audit Office might have mentioned this in their audit. Do you see a need for that to occur, taking in what you said here? I do not know—they could invest the money in themselves, could they?

Ms Murnane—I will turn to recommendation 3 of this report on page 26. It states:

The ANAO recommends that DoHA enhances its regulatory approach to include reviews of whether aged care providers are using bonds and bond income for the purpose of providing aged care to recipients as required in the Aged Care Act 1997.

That particular requirement of the act is very general and unlike other requirements in the act that do specifically require something of the provider it was at the time deliberately not spelt out to give the provider, because the industry at the time argued—and this makes sense and is still recognised as quite a sensible thing to say—that if they are going to raise capital they need to have flexibility. However, as a result of recommendation 3, which we have accepted, we are working up proposals to put to the government that would allow us to come a lot closer to assuring that the bond money was utilised, in a general sense, in the interests of aged care. This could be a range of things. It could of course be paying off debt—there are a whole range of things that could be argued there. But we have told the Audit Office we accept it but that we want flexibility in the way in which we put proposals to government to consider how this might be done.

Mr ADAMS—Sure. That is not quite what I asked but that was an important point that we needed to cover. The issue I ask about is whether a provider could invest the money back to themselves and then pay themselves six per cent. They could put it into Dodgy Jim's Investment Program or the New York Stock Exchange. There are no statutory regulations to say where they should invest. That is what I am asking you.

Ms Murnane—There is not—no. One of the first things you would need to do to be able to have a line of sight into the bond money is to look at where that bond money was kept and perhaps for it to be kept separately from the operational money if you were going to make requirements on the bond money that you were not make generally. This is a delicate area. I mentioned right at the outset that we are actually at the moment dealing with recommendations that come from two points of view—one of the ANAO and one of the Productivity Commission. We do not believe that it is beyond us to reconcile those two, and that is what we are now trying to do.

CHAIR—So there is a difference of opinion between the Audit Office and DoHA. Is that right?

Mr Cahill—No, not necessarily. Given what Ms Murnane is saying, we are looking at saying that there needs to be coverage of these matters. That has to be balanced with not putting an unnecessary burden on the industry. I think what Ms Murnane is saying is that that can be reconciled by thinking through what the right position is that needs to be adopted and also informed by the fact that it does not necessarily mean the same arrangements are implied across the industry. It might be driven on a risk profile or a range of other arrangements. Hence, high-risk providers are scrutinised differently from those who are a lower risk and who do not necessarily need that burden.

Mr ADAMS—I am much more interested in high-risk investments—blue chip or whatever. I am interested in where the money is invested—that is, profit-making business operations. Money invested in bonds was hopefully returned to the system, but we know that the Audit Office has certain compliance problems with that money and whether it is reinvested. That was my concern. I take it that you are telling us that you have two situations that you are trying to balance and you will make recommendations on that.

Ms Murnane—That is right. We will provide advice to the government. The sort of insight into what happens in a private business arrangement that you are suggesting certainly would be regarded as incredibly intrusive. I do not think it would be endorsed by ASIC. Certainly it is not something that our act at the moment would allow us to do.

CHAIR—Mr Bradbury, you had a question on this one, too.

Mr BRADBURY—Going to the issue of intrusion, as I understand it, the money being a bond is to be refunded. It is put forward; it is held; and, subsequently, at the point of departure—whatever the reason for that departure—the money is refunded.

Ms Murnane—Yes.

Mr BRADBURY—It would seem to me that there is almost something in the nature of a trust-like relationship created here. It is all good and well to talk about how intrusive it might be to go into that space of what happens with the money between the point of deposit and departure, but I would have thought that, ordinarily, obligations of a somewhat fiduciary nature would apply in respect of those funds anyway. I want to pick up on a point that was made earlier—that is, if I am interpreting correctly the comments that you made earlier, Ms Murnane. Is it correct that these funds are not separately held in an account? They are just part of the operational funds of the business?

Ms Murnane—It is. When the 1997 bill was debated, when it was introduced, the then government did look at many ways that might provide greater security. The spirit of the 1997 act was, in many ways, to engage in a partnership with industry and to look at industry sharing with the government the main objective of the act which is the overriding interest of the frail aged person in their care. There is and in fact until last year there had been no default at all in relation to bonds.

CHAIR—But there were, according to the report, over six that went into an external administration.

Ms Murnane—Yes, in the last couple of years. There had been homes that went into administration previously, but there was no default in terms of repaying bonds.

CHAIR—So even the ones that went into administration did not default on bonds.

Mrs BRONWYN BISHOP—They still got their money.

Ms Murnane—The bonds were repaid.

CHAIR—Mr Adams, you wish to go on?

Mr ADAMS—Yes. Going to the area of smaller nursing homes in relation to low-income regions and areas of the country where there are a lot fewer bonds, what sort of an effect does this have on the amount of money that those nursing homes have to reinvest into their capital programs? What effect is that having on the industry?

Ms Murnane—It has a big effect on the sorts of homes you are talking about, particularly in rural areas and in some socially and economically disadvantaged areas. There is a range of things that government does there. There are some special capital grants available for some but not all of those homes. It is not expected in some areas that residents or that some people will be able to pay bonds—for example, they may not have a house to sell or if they do sell they will not sell their home for very much. The government pays for them through a concessional scheme on an ongoing basis. It is not a bond that goes to the provider but it is an extra payment in lieu of the bond. The third thing is that one of the election promises of this government was a zero interest loans initiative. That has helped some providers to establish themselves in areas of social and economic disadvantage.

Mr ADAMS—They say that the bonds structure may work in some regions but does not work in others. So we are in a situation of policy which needs to be constantly monitored or looked at because there are issues which the areas I represent do have in being able to raise that capital. There are not the people who have an amount of money that can be put into bonds.

Ms Murnane—The bonds structure in the main is only lawful for low-income homes when predicated on people having a home to sell. For most people, that is their biggest source of wealth and that is the asset they liquidate to be able to pay the bond.

CHAIR—There are questions we will have to put on notice. Our time is drawing to an end. I know you have brought along witnesses for the other part of our hearing. I would like to at least swear those witnesses today so that we can give questions on notice to them before our meeting ends, if that is possible.

Ms Murnane—Yes. They are outside.

CHAIR—We will go on with questions until they come in.

Mrs BRONWYN BISHOP—On that prudential question that Mr Adams was asking, the Trustee Act years and years ago used to list the sort of entities in which you could invest money. That practice applied right across the board to institutions that had any sort of fiduciary

relationship, but that went by the board a long time ago because it became impractical. I think the recommendations that you are going to make with regard to that recommendation have to take into account that to prescribe where you can put money just does not work. It has to be a much broader concept than that. I wanted to know if there is an increase in extra service places to attract bonds to enable money to be provided for high-level care, where of course there is no bond facility.

Ms Murnane—You are drawing attention to the fact that in extra service homes it is assumed that, to be able to enter those homes, people have more wealth that they are able to channel into extra things for their care, and they then do pay bonds for high care. I understand that, but what was your question?

Mrs BRONWYN BISHOP—Has the number of extra service places increased as a way of addressing the problem of getting access to capital funds for at least some of the high-level care providers?

Ms Murnane—It has increased, but not dramatically. I have not got the figures with me.

Mrs BRONWYN BISHOP—Could I ask on notice how many people we have in residential care, how many people are on community aged care packages and how many extra service places are there?

Ms Murnane—We can provide that on notice.

Mr GEORGIU—This is on Audit report No. 40 2008-09: *Planning and allocating aged care places and capital grants*. You make comments about the general complaint that the briefings given to failed applicants were too general, but you do not make a recommendation. You have got a lovely phrase here: ‘to continue to seek to improve the debrief process.’ Do you know what they should be doing in order to meet these needs for a thorough debriefing and, if so, could you advise me and advise them and indicate on the way through why it was not worth a recommendation?

Mr Lack—With the tender-like approach that the department has for distributing places to providers, one of the difficult situations is in giving feedback to a failed applicant. How do they then keep confidential how another provider might have put their package together? The easiest thing to do would be to say provider A did not do as well as provider B because provider B had all these bells and whistles. One of the things that the department has been doing is putting more senior people into that role so they have got more expertise in being able to provide a higher level of feedback that allows a little bit more prescription for the recipients or the people who did not get the—

Mr GEORGIU—I sort of get the point but it seems to me that you draw attention to a problem—which I know is a generalised problem that is quite significant for a lot of the voluntary agencies—but you do not actually think your way through it or say by consensus that this is what you should be able to advise them on and these are the limits of the disclosure. We are not really dealing with the creation of \$3 billion contracts and confidentiality. These are pretty straightforward—

Mrs BRONWYN BISHOP—If you are a big provider, you are getting a lot of dough.

Mr GEORGIU—I do not agree.

CHAIR—Would you like your question answered, Mr Georgiou?

Mr GEORGIU—Yes.

Mr Lack—One of the things that we try to do when we think about whether a recommendation is a useful idea or not is to take on board what the agency is already doing, and they have been progressing their thoughts in that area. As I said, they are using more senior people to provide the feedback.

Ms Cronin—And they have done some work to consider what the feedback responses have been. We found that DoHA was actively reviewing the comments provided.

CHAIR—Before we proceed, I welcome to the table Ms Podesta and Mr Broadhead. This is about Audit report No. 40 2008-09: *Planning and allocating aged care places and capital grants*. I will just signal to you that we are going to run out of time. We can proceed for a few more minutes, but we will of course be putting questions on notice regarding both audit reports and will ask you to indulge us in responding to those.

CHAIR—I will just signal to you that we are going to run out of time. We can proceed for a few more minutes but we will of course be putting questions on notice regarding both audit reports and will ask you to indulge us in responding to those.

Mrs BRONWYN BISHOP—All the calculations for the allocation of beds are on the basis that the population is 70 and over. I have long since come to the conclusion that they should be reconfigured at the age of 80, not 70, because that is realistic. My recollection is that the cost would initially diminish and then rise reasonably steeply, but it does seem to me to be the way forward. Could I have your comment?

Ms Murnane—That was a recommendation of the National Health and Hospitals Reform Commission report and the recommendations of that report are now under consideration by the government.

Mr GEORGIU—Could I just come back to the other report and to special needs? The audit noted that in 2007 two of the four state offices had not sufficiently addressed or passed on information about special needs groups. There was a response by the department that they then distributed best practice guidelines. But still, even after the report and the best practice guidelines, the audit found that the department could improve their provision of information to their ACPACs by sufficiently addressing all special needs groups. This is a real problem. There are real idiosyncratic behaviours by your state offices with respect to special needs. Can you tell me what you are doing to address them and can you tell me why a problem that has been highlighted twice still has not been resolved?

Mr Broadhead—I am not sure I can agree that they are idiosyncratic. However, what we do is—

Mr GEORGIU—Well, they are very different.

Mr Broadhead—we have a standard set of information which we do put to them.

Mr GEORGIU—I take back ‘idiosyncratic’. Would ‘differentially established and applied’ salve your wounds?

Mr Broadhead—We do put out standards sets of information to our ACPACs. In fact, it is the aged care advisory committees that provide us with advice rather than our state offices. It is true that our state offices convene them, but it is the ACPACs, as we call them, that actually provide advice, and they are constituted as per the act. Up to a point we can ask them to do things but we cannot compel them to do things in an exactly standard way. We always seek the advice of the advisory committees going into a round and we always take account of the advice that we get from those advisory committees, but it is actually the advisory committees rather than the state offices that provide us with advice.

Mr GEORGIU—How transparent are the activities of the ACPACs—deliberations, recommendations, names?

Mr Broadhead—I believe the names are known publicly.

Mr GEORGIU—When did that start?

Mr Broadhead—I do not believe there has been any mystery about it at any stage. I am sorry; I do not have a long history here, but my understanding is that they are not secret in any way. They are asked to undertake their activities in confidence because of course, ahead of us putting out the guide as part of the round, we do not want people getting the jump or being advantaged by inside information about where particular priorities may be, given that it is a competitive process. But the information that they provide to us gets incorporated in the guide that we then publish for the round, and that becomes the basis upon which people respond to us. Does that address your question?

CHAIR—One of the issues that came up in the report—and it was a fairly positive report—was your ability to predict costs because of democratic change and your ability to control administration costs should you need to find savings, because the data was not clear as to where your major costs were allocated. We are going to lose our quorum, so I will put that on notice and ask Mrs Bishop to move that the transcript of today’s proceedings and the tabling statements be part of the record. There are other matters occurring today in the parliament, so I will now conclude our hearing. Further questions will be put on notice. Thank you very much for attending.

Resolved (on motion by **Mrs Bishop**):

That this committee authorises publication of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 12.49 pm