10

Audit Report No. 05 2009-10

Protection of Residential Aged Care Accommodation Bonds

Introduction

Accommodation bonds[1]

10.1 Over the next forty years, the proportion of Australians over the age of 65 is projected to double. This ageing of the Australian population is expected to increase the demand for aged care services, which will necessitate additional investment in quality residential aged care infrastructure. In order to meet this demand, the aged care industry requires access to capital to fund the construction of new aged care homes and to re-build or upgrade existing homes. Capital funding for the aged care sector is, in part, sourced from accommodation bonds lodged by residents.

10.2 Residents accessing low level aged care or those receiving extra services in high level care may be asked to pay an accommodation bond to an

1 The Committee decided to examine this report even though it was tabled after the review period because of an ongoing interest in aged care issues and because Department of Health and Ageing officials were already required to provide evidence for Audit Report No. 40 2008-09.

approved provider of aged care. With the average new accommodation bond at $190 000 (as at 30 June 2008), bonds generally represent a significant proportion of a resident's life savings. Aged care providers are entitled to retain an amount from the bond each year for up to five years, in addition to the investment income derived, in order to improve building standards and increase the quality and range of aged care services. The balance of the bond is refunded to the resident, or their estate, on departure from the home.

10.3 Only aged care homes that are certified by the Australian Government as meeting required standards of accommodation can charge accommodation bonds. As at 30 June 2008, around 60 000 bonds with a total value of $8 billion were held by approximately 1000 approved providers of aged care, with an average annual increase in the total bond value of around 25 per cent.

Regulatory framework

10.4 A prudential scheme to protect accommodation bonds was first established in 1997 with the introduction of the *Aged Care Act 1997* (the Act). In order to improve the protections for residents paying bonds, the legislation introduced mandatory requirements for providers that included: a contractual guarantee of repayment from the provider to the resident; statutory timeframes for the repayment of bond balances by aged care providers to residents; and the submission of a certified annual statement by providers that they followed the requirements, were able to pay liabilities, maintained adequate insurance, and repaid bonds as required.

10.5 In 2006, the Australian Government supplemented existing prudential regulations with standards on liquidity, record-keeping and disclosure to further protect the significant sums of money held by providers on behalf of residents. The standards are aimed at assisting providers improve their financial management practices, enhance financial sustainability, and reduce the risk of default on the refund of bond balances. The changes in 2006 also introduced a requirement for the annual statement of compliance to be accompanied by an audit opinion provided by an independent, registered auditor.

10.6 In addition, the strengthening of protections in 2006 included the establishment of the Accommodation Bond Guarantee Scheme (the Scheme) whereby the Government guarantees repayment of bond monies to residents if an insolvent or bankrupt provider defaults on its obligation to refund accommodation bonds. In the event of the Scheme being triggered, there is provision for the industry to ultimately pay a levy to allow the Government to recoup the monies repaid to residents under the Scheme. The Scheme is administered under the *Aged Care (Bond Security) Act 2006* and the *Aged Care (Bond Security) Levy Act 2006*.

10.7 Since its inception in 2006, the Scheme has been activated on three occasions, with bond balances to be refunded by the Commonwealth under the Scheme totalling around $19 million. The Government did not levy the industry to recoup its outlays in relation to the first Scheme event and a decision is yet to be made in relation to subsequent events.

10.8 In introducing and augmenting prudential regulations, Australian governments have established arrangements covering bond refunds, uses for bonds and derived income and prudential standards, with new standards introduced over time to reduce the risks to residents and government. The approach taken to date involves a regime of self-managed funds held by individual aged care providers whereby providers must meet prudential standards on liquidity, record-keeping and disclosure, and ensure that bonds and bond income are used for the purpose of providing aged care to care recipients. However, in order to allow providers access to bond funds as a source of capital, the legislation does not prescribe restrictions in relation to the decisions taken by providers on where they invest bonds. That is, providers are free to determine how they invest bond holdings as long as they can demonstrate that the bonds, and any investment income generated, are used to provide aged care to care recipients. This reflects the policy approach stated by the Government in 2006 that it was not the Government's intention to run the business of each provider.

DoHA's prudential regulation function

10.9 The Australian Government, through the Department of Health and Ageing (DoHA), is responsible for regulating:

- the prudential requirements under the *Aged Care Act 1997* (the Act) and User Rights Principles 1997 (the Principles);
- rules regarding the timeframes for refund of accommodation bonds and the payment of interest on late refunds; and
- the use of accommodation bond funds and ensuring that the income derived from them is directed to improvements in residential aged care infrastructure and services by aged care providers.

10.10 The aim of prudential regulation is to safeguard the significant and increasing bond holdings lodged by older Australians residing in aged care homes, while keeping the regulatory burden and costs to the aged care industry to a minimum. To this end, the Government has assigned DoHA responsibility for developing, in consultation with stakeholders, any necessary additional standards in order to reduce the risks to the residents and the Government. The establishment of new standards does not involve amendment to the primary legislation and can be achieved through amendments to the Principles. Amendments to the Principles require a policy decision by the Australian Government and are subject to Parliamentary scrutiny.

10.11 DoHA's role in administering the legislative framework established for prudential regulation under the Act and the Principles primarily comprises the following core activities:

- *monitoring compliance and acting on non-compliance by approved providers with their prudential responsibilities*: this involves assessing audited annual provider compliance statements, evaluating complaints data, reviewing regulatory intelligence, investigating possible cases of non-compliance and addressing non-compliance;
- *educating and informing approved providers and care recipients of their rights and responsibilities*: this involves producing and distributing advisory materials to assist stakeholders to understand and meet prudential requirements;
- *monitoring the efficacy of the policy framework for prudential regulation*: this involves identifying possible inefficiencies and gaps in the prudential framework, and determining the appropriate remedial response, which may include seeking amendments to the primary legislation or introducing new prudential standards; and
- *safeguarding bonds*: this involves administration of the Accommodation Bond Guarantee Scheme including the *Aged Care (Bond Security) Act 2006* and the *Aged Care (Bond Security) Levy Act 2006*.

10.12 Within the legislative framework established by Parliament, DoHA has discretion to target its regulatory resources across its core activities in order to gain reasonable assurance as to providers' compliance with established regulations. In 2008–09, the department had resourcing of $1.9 million and 12 central office staff to perform the prudential regulation function.

10.13 The department's administration of prudential regulations is positioned within the much larger national quality assurance framework for residential aged care established under the Act. This quality framework imposes a broad range of regulations on aged care providers in the key areas of accreditation, certification, and support for users' rights, which includes complaints investigation. Responsibility for regulation under the framework is broadly allocated across DoHA and portfolio agencies.

10.14 Government reforms to the regulatory framework over time have necessitated an expansion of DoHA's regulatory responsibilities and have required the acquisition and development of new, specialist skills and tailored regulatory arrangements. In particular, it has been necessary for DoHA to acquire skills in areas such as financial analysis and insolvency in order to monitor prudential compliance and to ensure the effective operation of the Scheme.

10.15 DoHA has also facilitated the evolution of the regulatory framework for prudential regulation and commenced work to enhance arrangements in light of its initial experience. Further changes to the legislative framework to strengthen protections for residents' bonds and improve the operation of the Scheme, based on DoHA's initial regulatory experiences, were passed by Parliament in December 2008.

Recent developments

10.16 In April 2009, the Senate Standing Committee on Finance and Public Administration reported on its inquiry into *Residential and Community Aged Care in Australia*. The report commented on a broad range of residential aged care issues, including financial risk factors in aged care and the viability of aged care providers. The committee considered there was a need to establish a clear understanding of the financial status of aged care providers and recommended that DoHA undertake a 'stress test' of the aged care sector in order to measure the sector's financial wellbeing.

The Audit[2]

Audit objective and scope

10.17 The audit objective was to assess DoHA's administration of prudential arrangements for the protection of residential aged care accommodation bonds.

10.18 The ANAO's assessment was based on the following criteria:

- DoHA has a sound governance framework to support prudential regulation;
- DoHA's oversight of prudential arrangements is sound; and
- DoHA effectively manages compliance with prudential arrangements.

10.19 The audit methodology was developed in accordance with the better practice principles outlined in the ANAO's *Administering Regulation* Better Practice Guide, which was published in March 2007. The audit report examines the extent to which the department has incorporated these principles into its prudential regulation function.

10.20 An examination of policy matters, such as the size of accommodation bonds or distinguishing between high care and low care in allowing the application of bonds, was outside the scope of this audit.

Overall audit conclusion

10.21 The ANAO made the following overall audit conclusion:

> The ageing of the Australian population is expected to result in an increase in demand for quality residential aged care homes and an expansion in building works to meet this growing demand through new and redeveloped infrastructure. Capital funding to support this increased investment in aged care homes will, in part, be sourced from resident contributions in the form of accommodation bonds.
>
> Since the inception of prudential arrangements in 1997, there has been rapid growth in the number of bonds, the total value of bond holdings and the proportion and diversity of aged care providers relying on bonds to fund the delivery of aged care services. The

2 In this chapter, all references to 'the audit' are references to Audit Report No. 05 2009-10, unless specified otherwise.

scale of bond holdings (now totalling some $8 billion), the self-managed model of stewardship, the ability of a large and diverse range of providers to make unfettered investment decisions relating to residents’ funds, and ongoing structural changes in the aged care sector including the emergence of larger and more complex providers and the entry of major publicly listed corporations, present new challenges for the Department of Health and Ageing (DoHA). These challenges and successive government reforms of regulatory arrangements for accommodation bonds have expanded the scale of DoHA’s responsibilities.

In the context of these challenges, the administrative framework established by DoHA to manage prudential arrangements for the protection of residential aged care accommodation bonds does not sufficiently support effective regulatory oversight. The department has established some of the elements necessary to underpin a sound administrative framework, such as a dedicated prudential regulation capability, a separate database to hold prudential data, and an annual audited provider compliance statement process. Notwithstanding, the following three key areas require attention in order to strengthen regulatory oversight: the systematic assessment and treatment of prudential risks that have resulted from new and evolving threats; the expansion of DoHA’s regulatory activities to include whether bonds and bond income are being used for the purpose of providing aged care as established under the *Aged Care Act 1997* (the Act); and the development of robust approaches to effectively identify and act upon instances of provider non-compliance with prudential regulations.

Managing risks to effective regulation

DoHA has indicated that the department is aware of a range of prudential risks, had considered their impact, and is working on approaches to manage these risks. Approaches included liaison with key stakeholders, such as major financiers and insolvency practitioners, to build an understanding of contemporary underlying factors that contributed to the levels of risk. While acknowledging departmental work in this area, DoHA’s regulatory activities had remained generally reactive in nature and were not informed by the systematic identification of risks to the protection of bonds. There is scope to strengthen the department’s capacity to identify and assess the significance of emerging threats, through effective risk management and the targeted collection of regulatory intelligence. Additional work in these areas would better position DoHA to reduce the likelihood of adverse events by adjusting regulatory settings or tailoring its compliance activities.

Regulatory coverage

While providers' decisions on where to invest bond holdings are unfettered, there has been a legislated requirement since the introduction of the Act in 1997 for bonds and bond income to be used for the purpose of providing aged care to care recipients. Access to bonds and bond income is an important avenue of funding for the aged care industry and is intended to complement other funding sources to improve the quality of aged care infrastructure and the range of aged care services. Currently, DoHA responds to the possibility of non-compliance with the legislated uses of bonds and bond income by employing its information gathering powers on a case-by-case basis once a provider presents with problems. DoHA has not, however, established regulatory processes to determine provider compliance with legislated uses for bonds and bond income.

The department has recently commenced work on the development of legislative options for consideration by the Government to clarify the uses of accommodation bond funds. By clarifying the use of bonds, DoHA considered that the department would be better positioned to assess whether aged care providers are compliant with the legislated uses of bonds and derived income under the Act.

Monitoring compliance with prudential regulations

While DoHA has stated its approach to compliance in general terms in the *User's Guide to the Regulation of Approved Providers Holding Accommodation Bonds*, it has not comprehensively documented its approach to the monitoring and management of non-compliance over time in the form of a compliance strategy and underpinning compliance schedule. As a result, there is limited assurance that the department's activities to monitor provider compliance with prudential regulations are being effectively managed over time. As prudential regulation of around 1000 aged care providers is delivered by a relatively small team with an annual operating budget of around $2 million, it is important for the department to employ a cost-effective approach to the monitoring of compliance with prudential regulations. An approach of this type would inform the establishment of a balanced program of compliance activity targeting the department's limited resources at the highest priority compliance risks and supporting the active management of changing and emerging risks to provider compliance.

To enhance regulatory performance and, as a consequence, ensure the protections intended by the regulatory framework are realised, the ANAO has made seven recommendations to strengthen DoHA's administration of prudential arrangements.

ANAO recommendations

10.22 The ANAO made the following recommendations:

Table 7.1 ANAO recommendations, Audit Report No. 05 2009-2010

1.	In order to improve its regulatory effectiveness, the ANAO recommends that DoHA adopts a structured and systematic risk management methodology for its prudential regulation of residential aged care accommodation bonds to: routinely identify, analyse, document, evaluate and monitor regulatory risk; rank risks, based on assessments of likelihood and consequences; and plan and conduct activities to treat risks. DoHA response: *Agreed*
2.	To improve DoHA's internal management and external accountability for its prudential function, the ANAO recommends that the department establishes an integrated and balanced set of performance measures and targets for key regulatory activities, against which the achievement of prudential regulation objectives can be assessed and reported to internal and external stakeholders. DoHA response: *Agreed*
3.	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*. DoHA response: *Agreed*
4.	In order to better inform stakeholder expectations regarding the service levels to be achieved and the code of conduct to be observed, the ANAO recommends that DoHA: (a) develops, in consultation with stakeholders, a client service charter and regulatory code of conduct in relation to the prudential regulation of residential aged care accommodation bonds; and (b) reports annually on performance against the charter. DoHA response: *Agreed*
5.	The ANAO recommends that, in order to ensure nationally consistent implementation of prudential arrangements, DoHA establishes policy and procedural documentation for key aspects of its prudential regulation of residential aged care accommodation bonds. DoHA response: *Agreed*
6.	In order to plan and coordinate its prudential regulation compliance activities and facilitate the monitoring of compliance trends over time, the ANAO recommends that DoHA

	documents its compliance strategy, promulgates the strategy to internal and external stakeholders, and routinely reviews the strategy. DoHA response: *Agreed*
7.	The ANAO recommends that DoHA establishes a process or system to capture, collate and share regulatory intelligence from internal and external sources to build a risk profile of regulated entities. DoHA response: *Agreed*

The Committee's review

10.23 The Committee held a public hearing on Wednesday 25 November 2009 to examine this audit report. Witnesses from the following agencies attended and gave evidence:

- Department of Health and Ageing (DoHA); and
- Australian National Audit Office (ANAO).

10.24 The Committee heard evidence on the following issues:

- risk management;
- record keeping and documentation;
- assisting aged care providers and identifying at risk providers;
- non-compliance issues;
- liquidity of providers;
- investing and using bond money; and
- smaller providers in low-income areas.

10.25 The Department's opening statement acknowledged the ANAO's contribution to assisting the administrative arrangements supporting the prudential regulation of accommodation bonds. Implementing the ANAO's findings was a high priority for the Department, as well as ensuring changes are effective and sustained.[3]

10.26 Corporate risk management planning and documentation was an area where the ANAO made a number of recommendations for improvement. DoHA's 2009-10 business planing has involved extending the scope of risk

3 Department of Health and Ageing (DoHA), *Submission No. 5.*

analysis and performance measures, as well as building upon existing policy and procedural documentation.[4]

Risk management

10.27 The Audit Report noted that DoHA has not effectively implemented a structured and systematic risk management approach to inform its administration of prudential arrangements. The ANAO also found that the Prudential and Approved Provider Regulation Branch's 2008-09 operational plan contained high level risks without sufficient underpinning information. Recommendation 1 of the audit was that DoHA adopts a structured and systematic risk management methodology for its prudential regulation of residential aged care accommodation bonds.[5]

10.28 The Committee asked for further information about action the department has taken around risk management. DoHA stated that its 2009-10 planning has involved enhancing risk management planning for prudential regulation: extending the scope of their risk management plan and explicitly separating internal administrative risks. In addition:

> 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.[6]

10.29 The ANAO noted that the PRB operational and business plans were not routinely reviewed and updated to 'account for changes in the regulatory environment or work program priorities, for example the impact of the changed financial climate in late 2008 on provider compliance'.[7] The ANAO also found the OACQC business plan did not identify specific prudential risks.[8] Considering the high (and increasing) value of accommodation bond holdings, and acknowledging DoHA's response to Recommendation 1 of the Audit Report, the Committee asked what work

4 DoHA, *Submission No. 5.*

5 Audit Report No. 05 2009-10, pp. 54-57.

6 Mr Iain Scott, DoHA, p. 3. All references to witnesses' evidence comes from the Committee's hearing into this audit dated 25 November 2009, with page numbers relating to the Proof Committee Hansard.

7 Audit Report No. 05 2009-10, p. 52.

8 Audit Report No. 05 2009-10, p. 53.

DoHA has undertaken to mitigate and manage the risk posed by the global financial downturn on bond holdings.

10.30 DoHA explained that the Department:

> … has monitored several key factors affecting prudential risks such as trends in the profitability of approved providers and the impact of the global financial downturn on the sector. This included meeting with a number of major aged care financiers as the global financial downturn began to unfold to assess the risks and implications for aged care.[9]

10.31 The ANAO notes the PRB has had a role in several cases in departmental efforts to transfer ownership from a troubled provider to a new provider, such as through negotiating ownership or service delivery matters, and that this may pose risks to the 'perceived objectivity and impartiality of a regulator'.[10] The ANAO notes that formally recognising risks and considering mitigation strategies in such cases would help the department manage potentially conflicting roles and responsibilities.[11]

10.32 The Committee asked DoHA if the Department intend to formally record such risks and mitigation strategies. DoHA indicated that the *Aged Care Act 1997* governs the transfer of aged care services between approved providers and that decisions regarding transfer of services are made by a separate delegate outside the PRB.[12] The Department confirmed that PRB:

> … has adopted a more detailed approach to the identification of those internal risks that may affect the effectiveness of its administration of the prudential framework, including the management of approved providers in financial difficulty.[13]

Record keeping and documentation

10.33 The ANAO found that DoHA's current record-keeping did not meet better practice standards or comply with departmental policy.[14] The ANAO noted that weaknesses had been identified in this area in previous audits, indicating that DoHA had not made the necessary improvements.[15] The

9 DoHA, *Submission No. 13.*

10 Audit Report No. 05, 2009-10, p. 50.

11 Audit Report No. 05, 2009-10, p. 50.

12 DoHA, *Submission No. 13.*

13 DoHA, *Submission No. 13.*

14 Audit Report No. 5, 2009-10, pp. 73-74.

15 Audit Report No. 5, 2009-10, p. 74.

Committee asked the Department what actions it was taking to improve their record-keeping procedures. DoHA replied:

> Staff in Prudential and Approved Provider Regulation Branch have been reminded of obligations and responsibilities for record-keeping and are receiving formal training on Departmental records management policies and procedures. A guidance manual on record-keeping procedures is being developed and will be provided to all staff in Prudential and Approved Provider Regulation Branch.[16]

10.34 DoHA informed the ANAO that the PRB did not have a documented risk-based strategy or compliance schedule but had outlined its approach to the management of prudential non-compliance in its *User's Guide to the Regulation of Approved Providers Holding Accommodation Bonds.*[17] The ANAO recommended that DoHA document its compliance strategy, promulgate the strategy to internal and external stakeholders, and routinely review the strategy.[18]

10.35 In its response to this recommendation, the Department said it would review, update and expand its *User's Guide to the Regulation of Approved Providers Holding Accommodation Bonds* to include more detail and incorporate recent experience. The Committee asked DoHA what progress had been made with this project. The Department informed the Committee it had replaced the *User's Guide to the Regulation of Approved Providers Holding Accommodation Bonds* with a revised publication, the *Residential Care Manual 2009*, released in September 2009.[19] It further informed the Committee:

> The Prudential and Approved Provider Regulation Branch is updating information on its prudential compliance strategy, including providing information that the Department uses in assessing compliance and the ways the Department may respond to a range of non-compliance risks. The updated strategy will balance the need to provide more detailed information on the Department's assessment of prudential compliance with the risk that some approved providers may use the information to attempt to evade their regulatory responsibilities.[20]

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16 DoHA, *Submission No. 13.*

17 Audit Report No. 5, 2009-10, pp. 76-77.

18 Audit Report No. 5, 2009-10, p. 78.

19 DoHA, *Submission No. 13.*

20 DoHA, *Submission No. 13.*

Assisting aged care providers and identifying at risk providers

10.36 A significant area of interest and concern for the Committee is the stability of aged care providers.

10.37 Asked what changes to organisational planning will mean 'on the ground' for aged care providers, DoHA advised that additional information will be made available to providers about the Department's regulatory tasks to inform aged care providers on where any 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.[21]

10.38 Asked how providers are performing, DoHA stated that they had undertaken two visits with the two largest approved providers group, with things 'travelling okay'.[22] The Committee is pleased to see additional effort put into working with the largest providers; this represents a good approach to ensuring provider stability and obtaining feedback.

10.39 DoHA was asked about the number of at-risk providers and if they are identifiable. Various means are used to identify homes at risk of not repaying accommodation bonds. DoHA was unsure about the specific number of providers being monitored, 'but we are monitoring homes that we consider have some of the markers that could lead to default'. The Department is responding to findings of the ANAO and strengthening their monitoring targeting and refining their markers of home default.[23]

10.40 The ANAO reiterated their view, mentioned by DoHA, that improvements to monitoring would be based on better targeting and strengthening established mechanisms (one recommendation from the audit was to establish a process to capture, collate and share regulatory intelligence in order to build a risk profile of regulated entities).[24]

21 Mr Iain Scott, DoHA, p. 3.

22 Mr Iain Scott, DoHA, p. 3.

23 Ms Mary Murnane, DoHA, p. 3.

24 Mr Steven Lack, ANAO, p. 4; Audit Report No. 5 2009-10, pp. 89-90.

10.41 A standard procedure for identifying at risk providers is to monitor providers that have a large amount of bond money. Another approach of DoHA is to examine the financial arrangement of homes that are brought to their attention because of quality concerns:

> … through a complaint, through an accreditation result, through an agency visit or through… an unannounced visit made by the department… Generally speaking—not always—we find that there is a correspondence between a default on quality and a default on bonds.[25]

10.42 The Committee suggested that another indicator of risk is where a provider carries out another business unrelated to aged care. DoHA agreed, however noted that they are not in a position to necessarily know if this is the case.[26]

10.43 Asked to elaborate on the profile of providers that have encountered financial difficulties, DoHA provided a broad overview of common factors found. Of the approved providers that have either failed or got into significant financial difficulties, there have not been a lot of common elements. There was 'not really any consistency with the ownership structure'.[27]

10.44 Some common elements, however, were evident:

- 'very poor financial records' that were likely to be contravening the *Corporations Act*;
- such providers were not receiving conditional adjustment payments, a supplementary payment contingent mainly on lodging audited general purpose financial reports; and
- additionally, steep drop-offs in quality of care were evident.[28]

10.45 The lack of a clear pattern leading up to financial difficulties presents challenges for the Department in identifying risk indicators that provide clear, early warning of problems.[29]

10.46 The Committee encourages DoHA to continue to develop their targeted approach to monitoring, as outlined in the ANAO's audit report.

25 Ms Mary Murnane, DoHA, p. 3.
26 Ms Mary Murnane, DoHA, p. 4.
27 Mr Iain Scott, DoHA, p. 4.
28 Mr Iain Scott, DoHA, pp. 4-5.
29 Mr Iain Scott, DoHA, p. 5.

Non-compliance issues

10.47 The ANAO noted that at least one case had arisen where a contracted processing firm that processes Annual Prudential Compliance Statements from providers had incorrectly processed a qualified audit opinion as being fully compliant (based on the advice of the provider).[30] The ANAO suggested that DoHA could undertake a risk-based approach to review audit opinions or better utilise contracted resources.

10.48 The Committee asked what action DoHA had taken to minimise the likelihood of not fully taking into account an auditor's opinion. The Department confirmed that it is moving to a risk-based approach and indicated that the case in question had occurred in the 2006-07 Annual Prudential Compliance Statement return and that the PRB:

> … subsequently implemented a policy whereby all audit opinions are reviewed by Departmental staff, irrespective of whether the Annual Prudential Compliance Statement was referred by the contractor for consideration.[31]

10.49 The ANAO found that departmental investigators do not generally seek evidence to corroborate statements about remedial action made by aged care providers, who have been contacted by the department to undertake corrective action, in response to cases of prudential non-compliance.[32] The ANAO suggested DoHA adopt a risk-based approach to collecting evidence to demonstrate remediation of non-compliance. The Committee asked the Department what action it had taken to adopt such a risk-based approach.

10.50 DoHA told the Committee the PRB already adopts a risk-based approach when seeking evidence to demonstrate remediation of non-compliance.[33] The Department assured the Committee it continues to refine these procedures:

> The Prudential and Approved Provider Regulation Branch will continue to build on its risk-based approach for seeking evidence of remediation of non-compliance as part of the work to update its prudential compliance strategy. The Prudential and Approved Provider Regulation Branch is working with the Department's State and Territory Offices (STOs) to develop a prudential 'check

30 Audit Report No. 5, 2009-10, p. 88.

31 DoHA, *Submission No. 13.*

32 Audit Report No. 5, 2009-10, p. 95.

33 DoHA, *Submission No. 13.*

list' of the types of evidence that could be sought when resolving prudential-related complaints. The Prudential and Approved Provider Regulation Branch is also working to develop procedural documentation regarding evidence to be sought to demonstrate remediation of prudential non-compliance.[34]

Liquidity of providers

10.51 Asked about the liquidity held by providers, DoHA explained that it varies significantly:

> … 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.[35]

10.52 DoHA stated that there is a requirement for these issues to be encapsulated in a liquidity management strategy. If concerns were identified, such as a pattern of late bond refunds, a provider's liquidity management strategy would be reviewed.[36]

Impact of property and ownership structure

10.53 The Committee asked whether Victoria has a big leasehold base for aged care homes, and if this presented a greater risk to providers than those who owned freehold. DoHA stated that there was no clear link between property ownership and financial problems. There have been two homes fail in Victoria, in one case the provider owned the property and in the other the provider leased the property. Outside of Victoria, however, 'the bulk of the cases have been approved providers that own the land and buildings themselves'. The homes that failed in Victoria were both run by private for-profit organisations, whereas outside of Victoria the main cases of failure have been community based organisations.[37]

34 DoHA, *Submission No. 13.*
35 Mr Iain Scott, DoHA, p. 5.
36 Mr Iain Scott, DoHA, p. 5.
37 Mr Iain Scott, DoHA, pp. 5-6.

Investing and using bond money

10.54 The audit noted that DoHA had not established processes to monitor whether bonds and bond income was being used for appropriate purposes. Recommendation No. 3 of the audit recommended that DoHA review whether aged care providers are using bonds and bond income for providing aged care, a requirement under the *Aged Care Act 1997*.[38] In response to this, DoHA are developing a proposal to put to 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… but we want flexibility in the way in which we put proposals to government to consider how this might be done'.[39]

10.55 In response to DoHA's comment on potential legislative changes in this area, the ANAO made the following comment:

> In the interim, DoHA should administer compliance within the existing legislative provisions under the Act through the establishment of appropriate processes to gain an assurance that providers are using accommodation bonds for the provision of aged care to care recipients and bond income to improve building standards and the quality and range of aged care services.[40]

10.56 While seeking legislative amendments is a positive step, the Committee is disappointed that such an important issue was not addressed prior to the ANAO audit. Additionally, the Committee urges DoHA to establish some process to obtain information on whether bonds and bond income are being used for legislated purposes (using a targeted risk based approach, not just being reactive when issues arise) within the current legislative framework, without the need for legislative reform.

38 Audit Report No. 05 2009-10, pp. 65-67.

39 Ms Mary Murnane, DoHA, p. 6.

40 Audit Report No. 05 2009-10, p. 67.

Recommendation 18

The Committee recommends that the Department of Health and Ageing (DoHA) report back to the Committee within twelve months of the tabling of this report on DoHA's implementation of Recommendation Number 3 from the Australian National Audit Office Report No. 5 2009-10, outlining progress towards monitoring whether or not bonds and bond income is being used according to the requirements of the *Aged Care Act 1997.*

10.57 The Committee questioned the Department about the need to have visibility of where bond monies are invested (there are no restrictions on where and how providers invest bonds). The Department acknowledged that this was a 'delicate area'. The ANAO commented that 'there needs to be coverage of these matters' without 'putting an unnecessary burden on the industry', using a risk profiling or other targeted arrangement: 'Hence, high-risk providers are scrutinised differently from those who are a lower risk and who do not necessarily need that burden'. The Department stated that advice will be provided to government on getting a balance between the need to have visibility and not intruding into private business arrangements.[41]

10.58 Some members of the Committee were concerned that the money received for bonds is included in the operating accounts of care facilities rather than a separate trust account that would impose restrictions on where the money is invested. Others maintained that introducing prescriptive measures on investment options was unworkable. DoHA indicated that the major concern of both government and industry was the interests of the 'frail aged person in their care' and that, despite a number of facilities going into liquidation in recent years, all bonds had been repaid.[42] However, the ANAO noted that this was due to the Government activating the Accommodation Bond Guarantee Scheme (the Scheme) three times since 2006 refunding bond balances totalling $19 million that were jeopardised when providers went into liquidation.[43]

41 Ms Mary Murnane, DoHA, pp. 6-7; Mr Matt Cahill, ANAO, p. 7.

42 Ms Mary Murnane, DoHA, pp. 7-8.

43 Audit Report No. 05 2008-09, pp. 24 and 40.

Smaller providers in low-income areas

10.59 The Committee expressed concern that smaller providers operating in low-income areas who have access to fewer bonds may be disadvantaged as they would have less funds to invest and draw on for capital programs. DoHA informed the Committee that the government has a number of programs in place to assist these providers including special capital grants, a concessional scheme whereby providers receive an extra payment in lieu of a bond and a zero interest loans initiative.[44]

Conclusion

10.60 The Committee understands the importance of aged care accommodation bonds to the capital growth of aged care facilities and acknowledges that to date no aged care clients have suffered the loss of their bonds. However, the Committee is concerned at the potential for loss to occur and would like to see the prudential regulation strengthened with more attention paid to risk management implementation and ongoing monitoring.

10.61 The Committee believes that full implementation of the recommendations made by the ANAO will improve DoHA's administration of prudential arrangements for the protection of residential aged care accommodation bonds and assist in providing ongoing care for our frail aged.

Sharon Grierson MP
Chair

44 Ms Mary Murnane, DoHA, p. 8.