



**Submission in Response to  
Consultation Paper on  
Enhanced Prudential Regulation  
of Accommodation Bonds**

**Prepared by  
National Policy Office**

**March 2011**

## **COTA Australia**

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## **INTRODUCTION**

COTA Australia - Council on the Ageing - is the national policy arm of the eight State and Territory Councils on the Ageing in NSW, Queensland, Tasmania, South Australia, Victoria, Western Australia, ACT and the Northern Territory.

COTA Australia has a focus on national policy issues from the perspective of older people as citizens and consumers and seeks to promote, improve and protect the circumstances and wellbeing of older people in Australia. This submission incorporates the views of our members collected through various consultation mechanisms.

COTA welcomes the decision to tighten up on the prudential arrangements and the opportunity to have some input into the possible direction of the reform. The Consultation paper puts forward two concerns in relation to protecting accommodation bonds. The first is around protecting the bond to ensure that it is returned when the person leaves the facility or the five years has expired. This is the key issue for consumers, residents and their families, and the one on which COTA gets most enquiries. The second concern is to protect the use of the accommodation bond funds, to ensure they are used for aged care purposes. For many consumers this is not as important a consideration as most people assume the bond funds are used to ensure the service provides quality care. However COTA would support the need to take measures to ensure that expectation is met.

In our Submission to the Productivity Commission's Inquiry into Caring for Older Australians COTA argued that accommodation costs should be separated out from support and care with individuals taking responsibility for their accommodation costs, in line with their capacity to do so. This proposition has been accepted and is included in the recommendations in the Draft report. If this proposition is accepted by the Government then there needs to be significant reform of the capital funding framework including measures to ensure an individual's money, if still provided as a bond or loan to the providers, is safeguarded.

## **ISSUES**

### **Permitted use of bonds**

COTA supports the proposals to limit the use of the bond to capital investment, loans to related parties for a permitted use, financial investments and the retiring of debt.

We would also support the proposal to allow bonds to be used to meet the initial start up costs associated with the construction or acquisition of facilities as these can be seen as an integral part of capital investment and would facilitate new construction.

We do not support the use of bonds to purchase allocated places. If the Productivity Commission draft recommendations around freeing up the supply of residential care are adopted by Government there will be no market in approved places and so existing approvals would have no value. This could lead to providers who have used bonds to purchase them not being able to recoup that money and so not pay back the bonds. Even without the proposed reforms there is quite a high risk attached to using the bonds for this purpose as the market for approvals is narrow and we have recently seen reluctance to take on new "free" approvals from the Commonwealth in the ACAR process.

We have some reservations around the proposal to allow bonds to be used to cover losses. This would need to be quite strictly controlled, with defined time limits and strict guarantees from the investor that they have the capacity to refund the bonds as required.

COTA does not support the extension of approved use to services that are not currently regulated by the Aged Care Act. Whilst we understand that many providers operate such services alongside their approved services, we think their inclusion dilutes the stated intent of the reforms which is to restrict bond usage to aged care. This is something that would have to be rethought if the Productivity Commission's recommendations are accepted and implemented by Government.

COTA supports the proposal to remove the restrictions on the use of the interest earned from the bonds as this will give providers more flexibility and should reduce the need to use the actual bonds for other purposes. There is no risk to consumers with this proposal although some may not be happy to think the bond was being used for non-age care purposes. This may become a problem for providers if residents or their families are not happy with the quality of the facility.

### **Accommodation bonds and operating expenses**

COTA's preference is for Option A that only allows bonds to be used for operational purposes in specific circumstances with agreement from the Department. We support such use being time limited and would suggest it would only be permitted where there is a clear plan to operate the facility on recurrent funding only.

Our preference would be for the Commonwealth to increase funding to residential care so they do not need to use bonds to meet their operating costs. If the bonds are used for operational purposes as a matter of course then there is a higher risk that the operator will not be able to refund bonds as required, particularly if there were to be an unexpected number of residents leaving at any given time.

### **Governance**

COTA supports the governance standards in the paper as we believe this is a necessary step in safeguarding residents' bonds.

### **Disclosure and information gathering powers**

COTA supports the use of a risk-based approach to the provision of information to the Department as we think it meets the desire to keep the regulatory burden to a minimum whilst providing sufficient safeguards for consumers.

We share the Department's concern that providers claim they cannot track the use of bonds at the moment; we believe this needs significant tightening up and we support the approach taken in the Consultation paper.

We also support the proposals about what information should be made available to care recipients. There is an issue around whether this should be provided automatically or just on request. COTA's position is that information should be provided automatically as people should not need to know what to ask for before they get the information they need. This can lead to information overload and so a two stage process could be used with a very simple statement telling people that the service complies with the requirements and then telling them where they can get more information. The detailed information could be provided on request.

We support the proposals around additional information gathering powers.

### **Criminal penalties**

We support the proposals around criminal penalties.

## **CONCLUSION**

COTA welcomes the proposed tightening of the prudential arrangements for accommodation bonds as outlined in these proposals. With over \$9 billion of consumers' money held in bonds we think the level of scrutiny and accountability should be commensurate with that in other sectors, and therefore needs to be increased. It is better to act pre-emptively than to wait until a major problem forces action.

COTA has a concern that if the new arrangements were introduced with grandfathering provisions for existing bonds, then existing residents will have a lower level of protection than those coming in under the new provisions. Whilst accepting providers may need some time to adapt to the new rules, we think it is important that existing residents' bonds are also protected.