



Bupa Australia & New Zealand
Office of the Chief Executive Officer

11 March 2020

Committee Secretary
Finance and Public Administration Legislation Committee
PO Box 6100
CANBERRA ACT 2600

By email: fpa.sen@aph.gov.au

Dear

Bupa Australia's submission to the Senate Finance and Public Administration Legislation Committee's inquiry into the Public Governance, Performance and Accountability Amendment (Tax Transparency in Procurement and Grants) Bill 2019

1. Context of this submission

Thank you for the opportunity to provide factual information to the Senate Finance and Public Administration Legislation Committee's (**the Committee**) inquiry (**the Inquiry**) into the Public Governance, Performance and Accountability Amendment (Tax Transparency in Procurement and Grants) Bill 2019 (**the Bill**), specifically in relation to claims made by the Centre for International Corporate Tax Accountability & Research (**CICTAR**) about Bupa Australia and the Bupa Group (**Bupa**).

2. Bupa Australia

Bupa Australia provides health and care services to over five million Australian customers. Our businesses include one of Australia's major health insurers supporting over four million customers. We also provide a range of health services including dental, optical, audiology and medical assessments to over one million customers across the country. Within our 72 residential aged care homes, we care for over 6,000 people, many of whom are living with some form of dementia. In addition, we are proud to deliver health and care services on behalf of the Commonwealth Government to support Australia's Defence Force (**ADF**) personnel since July 2019.

Together, with our 17,000 Australian employees, we are driven by our purpose of *helping people live longer, healthier, happier lives*. Bupa Australia is committed to a long-term presence in the Australian market and, since 2002, has invested over \$6 billion into its businesses including land, buildings, equipment and other assets across more than 400 regional and metropolitan locations across the country.

We operate the Bupa Health Foundation, a philanthropic entity which is dedicated to turning breakthrough medical research into real health and care improvements for all Australians. We have invested more than \$32 million in over 130 projects since 2005.

We are a significant Australian taxpayer, paying \$158.4 million in Australian income tax on taxable income of \$533.3 million for the year ended 31 December 2018. Our Australian income tax paid totalled \$445.2 million for the three years ended 31 December 2016 to 31 December 2018 as sourced from our lodged Australian income tax returns. All of Bupa Australia's businesses are owned by Australian incorporated entities and all are tax residents of Australia. We are committed to complying with applicable Australian tax laws and working with the Australian Taxation Office (**ATO**) in a constructive and transparent manner.

3. Bupa Group (Bupa)

Bupa Australia, among other companies, forms part of the British United Provident Association Ltd (**Bupa**), an international health care and provision company headquartered in the United Kingdom.

Bupa, being a company limited by guarantee, has no shareholders which means its profits are reinvested back into its businesses to deliver more and better healthcare for millions of customers around the world, in pursuit of its purpose. Bupa commenced operations in the United Kingdom in 1947 with the purpose of "preventing, relieving and curing sickness and ill health of every kind".

Today, Bupa directly employs around 80,000 people principally in the UK, Australia, Spain, Poland, Chile, New Zealand, Hong Kong, Turkey, the US, Brazil, the Middle East and Ireland. Bupa also has associate businesses in Saudi Arabia and India.

Health insurance accounts for the major part of Bupa's global operations, with around 75% of revenue and 16.7 million customers. Bupa operates clinics, dental centres and hospitals in some markets, with 15 million customers. Bupa also cares for around 22,300 care home residents in the UK, Australia, New Zealand and Spain.

Bupa is committed to complying with tax laws responsibly, ensuring that tax is paid in the jurisdictions in which Bupa operates based upon applicable laws.

In line with Bupa's approach to risk management and governance, Bupa adopts several key principles in its approach to tax globally:

- i. We only enter into commercial transactions and the tax positions we adopt are in accordance with applicable laws and practices;
- ii. We do not use contrived or artificial tax structures that are intended for tax avoidance or have limited commercial substance;
- iii. We price international related party dealings on an arm's length basis to meet the tax regulations of relevant jurisdictions;
- iv. In circumstances where tax legislation is unclear or subject to interpretation, we obtain independent external advice; and
- v. We seek to establish constructive relationships with tax authorities based on transparency and mutual respect and work positively with those authorities to minimise the extent of any disputes.

4. Bupa Australia's interest in the Inquiry

Bupa Australia appreciates the public interest in how much tax companies pay, including by organisations tendering for and/or in receipt of government subsidies.

We welcome the opportunity presented by the Inquiry to reaffirm our commitment to complying with Australian tax laws. As detailed above, our Australian businesses are owned by Australian incorporated entities that are all tax residents of Australia.

We share the concerns expressed by CPA Australia in its submission to the Inquiry that concludes the Bill may not achieve its aims and instead burden accountable authorities, decision makers and the ATO for minimal to no public benefit.

5. Response to CICTAR submission

We appreciate the Committee extending Bupa Australia the opportunity to correct the record regarding a number of unsubstantiated assertions made by CICTAR in its submission to the Inquiry. We note similar claims were made about Bupa in a 2018 submission to the Senate Standing Committee on Economics Inquiry into the financial and tax practices of for-profit aged care providers, which was authored by Jason Ward of the Tax Justice Network (TJN) and commissioned by the Australian Nursing and Midwifery Federation. We strongly refuted the inaccuracies within that submission at the time and would be pleased to provide the Committee with a copy of our responses.

We have outlined our response to CICTAR's most recent assertions below. Sections (a) to (c) deal with assertions related to Bupa's tax practices. Sections (d) and (e) deal with assertions related to operational issues:

a. Comments in relation to Bupa Australia's settlement with the ATO

In 2019, we reached an agreement with the ATO to settle a number of disputed matters. While we consider the positions adopted by us were in accordance with Australian tax law and the settlement involved no admission of liability by us, the settlement fully resolved all matters in dispute between us and the ATO for the 2007 to 2018 years.

Under the settlement, we paid a total of approximately \$157 million to the ATO, reflecting taxes, interest, penalties, and an offset for overpaid withholding tax for the 2007 to 2018 years. The settlement also provided certainty for both us and the ATO in relation to the taxation treatment of our existing cross border funding costs, which are considered within the 'low risk' or 'green zone' rating in accordance with the risk framework set out in the ATO's Practice Compliance Guideline PCG 2017/4.

b. Allegations that although Bupa is technically a UK-based mutual company and "not for profit" it looks and behaves like a multinational corporation with aggressive tax avoidance practices

Bupa is not a mutual company, nor is it a not-for-profit. Bupa is a private healthcare company limited by guarantee. Bupa reinvests its profits back into its businesses to provide more and better healthcare for millions of customers around the world in pursuit of its purpose. Information about Bupa's governance and structure can be found on Bupa's [website](#) and is published annually in Bupa's Group Annual Report and Accounts.

The tax positions Bupa adopts are in accordance with applicable laws and practices and Bupa does not use contrived or artificial tax structures that are intended for tax avoidance or have limited commercial substance.

c. Allegations that Bupa has a record of global tax avoidance in the UK and Spain; uses tax haven subsidiaries in global operations; is frequently before tax tribunals in the UK; has been under investigation by the Spanish tax authorities and is subject to a European Union investigation concerning illegal state aid; and uses losses generated in its UK aged care business to artificially reduce taxes owed in Spain

Bupa strongly refutes CICTAR's allegations regarding its global tax practices. As noted above, the tax positions Bupa adopts are in accordance with applicable laws and Bupa does not use contrived or artificial tax structures that are intended for tax avoidance or have limited commercial substance.

Bupa regularly reviews its tax approach to ensure it remains aligned with relevant local legislation and our operating principles (which are outlined in section three). In recent years, Bupa has made changes as part of its ongoing reviews. These include a continued focus on removing companies and structures that were inherited as part of previous business acquisitions and simplifying Bupa's corporate structure in particular markets to reflect enhanced operating standards. Appendix 1 provides further information regarding Bupa's entities in jurisdictions outlined in CICTAR's submission.

Like any large global company, regulators or government agencies may, from time to time, examine Bupa's operations. This is not unusual for a company of Bupa's size and scope, particularly as the company operates in highly regulated environments. Even allowing for this, it is important to note that contrary to CICTAR's assertion, Bupa is not "frequently before tax tribunals".

Bupa's UK care homes are owned by a UK incorporated entity, having previously been indirectly owned by a Spanish holding company for regulatory and solvency reasons. Any losses made by the UK business were not used to artificially reduce taxes in Spain.

The 'illegal state aid' investigation referenced by CICTAR is not an investigation into Bupa. In April 2019, the European Commission published its decision that held certain aspects of the UK's Controlled Foreign Company rules gave rise to unlawful state aid. This affects many UK-based multinational groups. The UK Government disagrees with the decision and has applied to the European Union courts for annulment of the Commission's decision. The position taken by Bupa fully adhered to UK legislation at the time and Bupa obtained specific clearance from Her Majesty's Revenue & Customs (HMRC).

d. Awarding of the Australian Defence Force Health Services Contract (ADF HSC)

Bupa Australia participated in an extensive, competitive tender process to provide health and care services to ADF personnel.

In relation to the awarding of the ADF Health Services Contract to Bupa, Air Vice-Marshal Tracy Smart has stated:

There were several reasons why Bupa came out ahead. One of the most important things was the proposal they put forward looking at innovation and ways to deliver our services better, both more effectively as well as more efficiently. That innovation was, I guess, part of the DNA of the contract. It was incentivised so that as we worked together to find better ways to do business both parties would benefit. The other part of it was their approach to a true partnership with Defence, to make sure we delivered the best possible health care to the men and women of the ADF.

(Source: Supplementary Budget Estimates Hearings of the Foreign Affairs, Defence and Trade Committee on 29 November 2019)

The ADF Health Services Contract includes agreed key performance indicators to ensure ADF members receive care in a timely manner as required by their healthcare needs. Since July 2019, we have facilitated the delivery of over 200,000 quality and timely healthcare services to ADF members.

This included a substantial effort to deliver additional health care resources to ADF personnel as they supported the Australian community during the January 2020 bushfires. Bupa returned Defence health facility staffing back to usual or greater levels, earlier than planned. This involved the voluntary recall of approximately 100 people from leave to support 24-hour operations, with positive feedback from senior Defence stakeholders regarding our rapid response.

We also note that there was full disclosure by Bupa Australia of our proposed subcontractor arrangements for the delivery of the ADF Health Services Contract as part of the Commonwealth procurement process.

e. Comments in relation to Bupa Australia's aged care operations

a) Quality of care

Bupa Australia cares for more than 6,000 residents within 72 aged care homes. The vast majority of our homes are operating well and fulfilling the high standards expected by our residents, their families, regulators and the community. Essential to this work are our 9,000 employees who genuinely care about the clinical, lifestyle and wellbeing needs of our residents.

In the care homes where issues have occurred, we have taken swift action to ensure our residents are receiving the high-quality care they expect and deserve. We have invested tens of millions of dollars into our aged care operations resulting in additional staffing, resources and training. Positive progress is being made, with the number of sanctioned care homes reducing from a total of 15 to four as at the date of this submission. Significant improvements have and continue to be made at these four homes for the benefit of residents and staff.

b) Cost of care

In its submission, CICTAR makes an indirect assertion that it is inappropriate for organisations such as Bupa Australia to 'profit' from government care subsidies provided to aged care residents.

Government subsidies contribute directly toward supporting aged care residents' care, but do not cover the full cost of that care and the gap is growing. Currently, an aged care resident assessed to have the highest needs is eligible to receive \$219 per day in government funding in accordance with the Government's Aged Care Funding Instrument (ACFI) assessment. In addition to this, a Basic Daily Care fee is paid for by the resident, up to a maximum of \$51.63 per day. Taken together, aged care providers receive a maximum of \$270/day or \$11 per hour to support a resident requiring the highest level of care, including direct care costs, food, cleaning, laundry, utilities, social activities and other indirect care costs. By comparison, public funding for a patient within an acute care facility is around \$1,400 per day.

The gap between care costs and funding means that we do not profit from care costs, including government subsidies. In fact, our investments in aged care have exceeded the profits we have made since we started operations in 2007. This is an issue across the residential aged care sector which has implications for future investment and sustainability. These matters are under consideration by the Royal Commission into Aged Care Quality and Safety.

c) Existing financial reporting regulation in aged care

As a residential aged care provider, we must comply with a range of additional accountability and financial reporting principles under the *Aged Care Act 1997 (Cth)* (**the Act**). For example, as an approved aged care provider Bupa Aged Care Australia Pty Ltd must:

- Prepare an audited General Purpose Financial Report (**GPFR**) in accordance with accounting standards;
- Make respective GPFRs available to all intending or current residents of residential aged care facilities as per the *User Rights Principles (2014)*;
- Submit annually an *Aged Care Financial Report* to the Department of Health which shows approved provider compliance with the requirements of the *Aged Care Act* and the *Fees and Payments Principles 2014 (No.2)* in relation to charging, managing and refunding accommodation bonds and refundable deposits and, where applicable, entry contributions.

Government funding of aged care is also subject to reporting and audit under the ACFI regulations. These requirements are in addition to financial reporting obligations under other legislation, including the need to file publicly available audited financial statements with Australian Securities and Investments Commission as required by the *Corporations Act 2001 (Cth)*.

Bupa Australia again extends its thanks to the Committee for the opportunity to provide further detail to this Inquiry. We invite you to contact Amanda Lean, Bupa ANZ Director Public Affairs at _____ if you require further information in respect of this submission.

Yours sincerely,

Hisham El-Ansary
Chief Executive Officer
Bupa Australia & New Zealand

Appendix 1 – Specific jurisdictions referred to in CICTAR’s report

In its submission, CICTAR has referenced jurisdictions where Bupa has several entities incorporated. We note that none of the entities listed below are under the direct supervision or control of Bupa Australia.

Bupa does not use contrived or artificial tax structures that are intended for tax avoidance or that have limited commercial substance. Bupa regularly reviews its tax approach and structures to ensure they are in line with local legislation and our operating principles. Bupa is consistently seeking to simplify its corporate structure but, where companies have been acquired through acquisition, it can often take years to remove such entities from Bupa’s structure. There are no artificial or contrived tax benefits to owning the entities below and all applicable taxes are paid in each jurisdiction.

Jurisdiction	Response
St Kitts and Nevis	<ul style="list-style-type: none"> Bupa has an active company (<i>Amedex Services Ltd</i>) in St Kitts and Nevis because it serves customers through the selling and administration of international health insurance policies in these countries.
Bermuda	<ul style="list-style-type: none"> Bupa has a single entity in Bermuda (<i>Amedex Insurance Company (Bermuda) Limited</i>) which is a life insurance company Bupa acquired as part of a prior acquisition. This company is now in runoff and its product is no longer available to new customers. The company is US resident for tax purposes.
Jersey	<ul style="list-style-type: none"> Bupa previously held a single entity in Jersey (<i>Bupa Holdings (Jersey) Limited</i>), which was dormant and did not take part in any trading activity. This entity has now been removed from our structure. Additionally, Bupa provides health insurance coverage for both individual customers and corporates in Jersey.
Guernsey	<ul style="list-style-type: none"> Bupa held a total of five companies in Guernsey during 2019. These companies were: <ul style="list-style-type: none"> <i>Bupa Guernsey No 2 Limited</i> – removed in 2019; <i>Bupa Holdings (Guernsey) Limited</i> – Dormant; <i>Bupa LeaseCo Holdings Limited</i> – Dormant; <i>Bupa LeaseCo (Guernsey) Limited</i> – Dormant; and <i>UK Care No.1 Limited</i> – Non-trading. Additionally, Bupa provides health insurance coverage for both individual and corporate customers in Guernsey. <i>UK Care No. 1 Limited</i> is UK resident for tax purposes.

Ireland	<ul style="list-style-type: none"> • Bupa has five trading companies in the Republic of Ireland as follows: <ul style="list-style-type: none"> ○ <i>Bupa Global Designated Activity Company (BGDAC);</i> ○ <i>Hugh Bradley Limited;</i> ○ <i>GK Medical and Dental Services Limited;</i> ○ <i>Woodquay Dental Limited; and</i> ○ <i>Xeon Dental Services Limited.</i> • All entities are either operating dental practices or service companies or, in the case of BGDAC, a licensed entity selling International Private Medical Insurance (IPMI). • An additional Irish holding company called <i>Oasis Healthcare Holdings Ireland Limited</i> is also incorporated in Ireland. • BGDAC was established as a response to the UK leaving the European Union to enable Bupa to provide continuity of cover to European customers previously sold and serviced from the UK under EU passporting rules. In the absence of establishing an alternative EU insurance company Bupa would not have been permitted to continue to support its European customers for regulatory reasons. • BGDAC is fully licensed and regulated in Ireland and approval was obtained from the Central Bank of Ireland. In addition, our UK regulators, the Financial Conduct Authority and Prudential Regulation Authority were fully consulted and engaged throughout the process. • BGDAC is also registered in the Netherlands (see below), Malta, and Denmark through licensed branches allowing for customers to be serviced and sold to in these locations.
Netherlands	<ul style="list-style-type: none"> • The BGDAC branch in the Netherlands offers IPMI and related products and services to customers in the Netherlands and the rest of Europe. • Bupa previously held two other entities in the Netherlands (<i>BI Healthcare Holdings BV</i> and <i>Bupa Holdings Overseas Cooperatief B.A.</i>), which have now both been liquidated.
British Virgin Islands (BVI)	<ul style="list-style-type: none"> • Bupa's Hong Kong clinics business, Quality HealthCare (QHC) includes three entities incorporated in the British Virgin Islands: <ul style="list-style-type: none"> ○ <i>Altai Investments Limited;</i> ○ <i>Berkshire Group Limited; and</i> ○ <i>Dynamic People Group Limited.</i> • These entities were established by the previous owners and inherited through the acquisition of QHC by Bupa in 2013. • Bupa derives no tax benefits from the existence of these entities. They are currently under review as part of an ongoing process to simplify our corporate structure.

Singapore	<ul style="list-style-type: none"> • <i>Bupa Singapore Holdings Pte Ltd</i> holds an investment in one of Bupa's joint ventures. • In addition, Bupa has a strategic relationship with a Singapore third party which offers IPMI and related products and services, administered by our Bupa Global business, to local customers.
Gibraltar	<ul style="list-style-type: none"> • <i>Bupa Malta Investments No. 1 Limited</i> and <i>Bupa Malta Investments No. 2 Limited</i> were incorporated in Gibraltar and dormant in 2019. • Both entities were removed from our structure on 24 January 2020.
Hong Kong	<ul style="list-style-type: none"> • Bupa operates a health insurance business and Quality HealthCare clinics business in Hong Kong, which are fully operational in supporting local customers. • As of 31 December 2019, both businesses had the following legal entities incorporated in Hong Kong: <ul style="list-style-type: none"> ○ <i>Bupa Limited</i>; ○ <i>Bupa (Asia) Limited</i>; ○ <i>Bupa International Limited</i>; ○ <i>Allied Medical Practices Guild Limited</i>; ○ <i>Alpha Medical MRI (TST) Limited</i>; ○ <i>Central Medical Diagnostic Centre Limited</i>; ○ <i>DB Health Services Limited</i>; ○ <i>Eplushealth Limited</i>; ○ <i>Great Option Limited</i>; ○ <i>Jadeast Limited</i>; ○ <i>Jadefairs International Limited</i>; ○ <i>Jadison Investment Limited</i>; ○ <i>Jadway International Limited</i>; ○ <i>Marvellous Way Limited</i>; ○ <i>Megafaith International Limited</i>; ○ <i>Quality HealthCare Dental Services Limited</i>; ○ <i>Quality HealthCare Medical Services Limited</i>; ○ <i>Quality HealthCare Medical Centre Limited</i>; ○ <i>Quality HealthCare Nursing Agency Limited</i>; ○ <i>Quality Healthcare TPA Services Limited</i>; ○ <i>Quality HealthCare Psychological Services Limited</i>; ○ <i>Quality HealthCare Professional Services Limited</i>; ○ <i>Quality HealthCare Physiotherapy Services Limited</i>; ○ <i>Central MRI Centre Limited</i>; and ○ <i>Central PET/CT Scan Centre Limited</i>.

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