



**Institute for the
Study of Social
Change**

Professor Richard Eccleston and Mr Lachlan Johnson
Institute for the Study of Social Change
University of Tasmania
Private Bag 22
Hobart
Tasmania, 7001

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Dear Secretary

Re Inquiry into the financial and tax practices of for-profit aged care providers.

We are pleased to make this submission to the Senate Economics References Committee Inquiry into the tax practices of the for-profit aged care sector. Our submission reflects our views as tax policy scholars who have researched and published widely on topics of international tax cooperation, transparency, and corporate tax avoidance. The submission does not reflect the views of the University of Tasmania or our funders, including Commonwealth agencies such as the Australian Research Council.

The key points which we would like to make in this submission include:

- We broadly concur with the analysis and findings presented in the Tax Justice Network Australia's recent report *Profit Shifting on Public Funds* outlining the aggressive tax practices of some for-profit aged care providers operating in Australia.
- We commend many of the recent initiatives introduced by the Australian government designed to limit aggressive tax avoidance practices by MNCs. While significant progress has been made, many firms continue to pursue aggressive tax avoidance strategies and resisting calls to increase transparency and public disclosure.
- Given that many large corporations benefit from government contracts and subsidies, we believe (based on our ongoing research) that national governments could and should use procurement policies, certification standards, and other conditions required to receive government subsidies to improve corporate tax behaviour and compliance. Such an approach is not only likely to be effective but would also enhance accountability associated with public spending.

These points are examined in greater detail in the annexure below.



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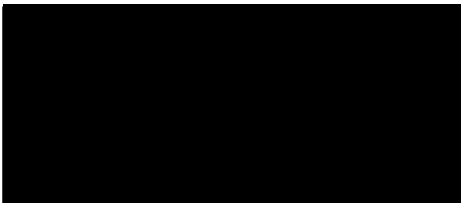
Naturally we are happy to discuss this submission with members of the Committee should they require additional information.

Yours sincerely,

Professor Richard Eccleston



Lachlan Johnson





Annexure

The tax practices of for-profit aged care

Recent insights into the tax positions of some for-profit aged care providers in Australia are cause for concern. Despite receiving around three quarters of their total revenue from government subsidies, Australia's six largest for-profit providers, Bupa, Opal, Allity, Regis, Estia, and Japara, have been using aggressive accounting structures to minimise corporate tax liabilities. These subsidies amounted to some \$2.17 billion in 2015-16. Not only are these revelations of tax avoidance troubling from the perspective of public expectations surrounding the conduct of aged care firms, they also highlight deficiencies in the governance and accountability of this heavily-subsidised sector. The aggressive use of stapled structures and other loopholes by some in this sector – of which around 20% (by number of beds) is operated by for-profit firms – presents a significant and growing policy challenge.

Abuse of stapled structures, arrangements whereby two or more commonly-owned entities are bound together, by for-profit aged care firms costs the Australian government a significant amount of money in forgone tax revenues. Moreover, some firms also employ contrived rental arrangements between securities to procure significant tax deductions. Taken together, accounting practices such as these mean that the for-profit portion of the aged care sector, firms generating an estimated \$3 billion in revenue, paid a mere \$154 million in corporate tax in 2015-16 (Ward 2018).

Government should insist that corporations practice tax transparency in order to receive government subsidies or contracts

This submission commends the government for laudable recent progress in both raising public awareness of corporate tax issues, and tightening the regulatory regimes which promote compliance. Australia is on the right track and is coming to be seen as a world leader in pursuing evasive or abusive corporate tax strategies. Among the most promising tax avoidance measures of recent months arising from the Black Economy Taskforce are new proposals to enact tender contract tax compliance measures for firms benefiting from lucrative public procurement. This submission argues, however, that the same ethical arguments underpinning such legislative efforts apply equally to industries supported by significant public subsidies such as aged, disability and health care, as well as defence industries and pharmaceutical suppliers.

The requirement that firms bidding for government contracts ought to have strong tax compliance records is a rapidly growing area of the regulatory response to corporate tax avoidance in many parts of the world. National governments, such as the UK, have had (albeit imperfect) tender contract tax compliance measures for some years. Likewise, some sub-national governments, such as the province of Ontario in Canada, have introduced



similar measures. Even some local councils, representatives of the “Tax Haven-Free Cities Network” in Europe, have committed to rewarding tax-compliant firms in their public procurement and tender contracting processes.

There is no reason, however, for the requirement of a proven track record of tax compliance and transparency for firms carrying out work through a formal government contract to not also be applied to sectors of the economy heavily reliant on public industry subsidy. As Ward writes, “companies that receive millions of taxpayer dollars via Australian government subsidies must be required by law to meet higher standards of transparency in financial reports and be publicly accountable” (2018, p. 6).

It should be noted that while an appropriate legislative response is part of the solution to this challenge, change at the level of corporate governance and intra-firm culture will also be required. As Ward’s report highlights, a clear disjuncture can be observed between public expectations of fair, earnest compliance in good faith with tax legislation, and firms’ internal perceptions of the importance (or unimportance) of social license and civic duty to their tax and accounting practices. The role of government should centre largely on promoting transparency and disclosure of transactions between related parties. Allowing the current level of opacity around such disclosure regimes to persist in for-profit aged care provision will be injurious to both the public’s perception of the integrity of the tax system and the long-term sustainability of the aged care sector. This submission concurs with Ward’s policy prescription for the filing of audited financial statements to ASIC by firms receiving more than \$10 million in taxpayer subsidy per year. Equally important is the recommendation that transactions between related trusts, and similar stapled structure arrangements wherein beneficial tax treatment is obtained by contrived interparty lease and finance payments, must be subject to greater disclosure.

These recommendations for greater accountability in the tax arrangements of aged care providers have the potential to help promote change in internal corporate governance practices and broader societal awareness of the importance of tax transparency issues. With a rapidly growing proportion of Australians living longer, resulting in growing demand for aged care services, it is vital that government act to improve the integrity and reputation of this sector as a paramount priority.