

## Executive summary

Residential aged care is a deeply personal subject for many Australians. It is an experience we have seen or can easily imagine for our parents, our friends, or indeed ourselves.

Australians have high expectations for this care. They rightly expect that they, and those they love, will be treated with dignity and decency at the end of their lives. The nation faces increasing challenges in meeting those expectations as Australia's ageing population places further demands on our aged care system.

Providers have been publicly vocal for some time that a further public investment of funds will be needed. These views were repeated during the course of this inquiry. In light of this, it is more important than ever to ensure that each dollar that is currently spent on care is used effectively and efficiently.

The sector that receives those funds, however, is undergoing a significant transformation itself. Whilst not-for-profits continue to be the largest group of providers, for-profits have steadily increased their presence. In 2016–17, for-profit providers held a share of operational residential aged care places that was more than fourteen per cent higher than they held in 2010–11.<sup>1</sup> The consequence of this is that for-profit providers represent a large and growing recipient of public funds.

### Questions about financial practices

The report published by the Tax Justice Network-Australia (TJN-Aus) in May of this year raises a series of legitimate questions about how for-profit aged care providers are using this public money.<sup>2</sup> They are questions that merit investigation. Australians would be rightly appalled if it transpired that public money that had been provided to fund care for older Australians had been improperly diverted to other corporate purposes.

Chapter 3 of this report sets out the details of the TJN-Aus Report. The questions raised differ from provider to provider. In short, however, they relate to the use of stapled structures and related party transactions such as financing.

As is also set out in that chapter, the for-profit providers mentioned by TJN-Aus have denied that there is any evidence of malpractice on their part. The providers have objected to the assumptions and implications drawn by TJN-Aus in reaching its conclusions.

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1 See report, p. 12; Aged Care Financing Authority, *Sixth report on the Funding and Financing of the Aged Care Sector*, July 2018, p. 82.

2 For further details, see report, pp. 3–4.

Leading Aged Services Australia, for instance, observed that:

It is important to recognise that the Tax Justice Network Report relies solely on publicly available information in relation to the companies and identifies no evidence of tax avoidance. Rather, it infers that the scale of revenues and complexity of corporate structures implies improper dealings.<sup>3</sup>

For-profit providers and industry stakeholders have, in particular, objected to what they see as a conflation of revenue and profit. The Aged Care Guild, for example, argued that:

The amount of tax payable by [for-profit] providers is based on the taxable income of the entity and not its revenue, so the reference to the low ratio between tax payable and revenue is irrelevant and is not grounds for claiming that there is endemic tax avoidance or use of accounting structuring to avoid tax.<sup>4</sup>

It is the committee's view that these objections miss the point. TJN-Aus, like every private citizen or entity, only has access to information that is publicly available. The conclusions drawn may well be incomplete to the extent that the information itself is incomplete.

The for-profit providers are correct that there is little publicly available evidence of tax avoidance on their part. It would be surprising if there were. Entities would need to be undertaking avoidance of such a brazen nature and scale for evidence of it to be just lying out in the open on their public accounts.

The committee cannot with any certainty conclude that for-profit providers are engaging in improper tax or financial practices. The problem, however, is that the committee is also unable to conclude that they are not.

We are not alone in our concerns about transparency. The Australian Taxation Office (ATO) advised that it had questions over the financing arrangements used by certain multinational entities. As one witness from the ATO observed:

...in this market, it's often said the tax planning is in the expenses and not so much in the income...it is very hard to distinguish between tax planning through inflated expenses and just having high expenses and not being very profitable.<sup>5</sup>

Likewise, the ATO submitted that although some of the corporate structures adopted by entities in the aged care industry do not in and of themselves raise tax compliance concerns, they have 'the potential to obscure intra-group transactions for financial or public tax reporting'.<sup>6</sup>

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3 Leading Aged Services Australia, *Submission 15*, p. 11.

4 Aged Care Guild, *Submission 17*, p. 11.

5 Mr Jeremy Hirschhorn, Deputy Commissioner, Public Groups and International, Australian Taxation Office, *Committee Hansard*, 4 September 2018, p. 32.

6 Australian Taxation Office, *Submission 14*, p. 7.

The industry may have difficulty convincing the community that financial opacity is appropriate from companies that are in receipt of large sums of public money, and are actively campaigning to receive more on the basis that current expenditure is insufficient.

The committee believes that both the industry and the public would be best served by strengthening the framework for transparency and accountability.

### **Recommendation 3**

**5.51 The committee recommends that the Australian Accounting Standards Board implement the necessary changes to apply the International Accounting Standards Board's revised Conceptual Framework as soon as practicable.**

### **Recommendation 4**

**5.54 The committee recommends that the Australian Government investigate options to increase the public transparency of aged care providers' financial information held by the Department of Health.**

### **Recommendation 5**

**5.57 The committee recommends that the Australian Government convert the existing voluntary Tax Transparency Code to a mandatory code for all large and medium corporations operating in Australia, or adopt other strong transparency measures like the publication of data from country-by-country reporting.**

### **The link to quality of care**

Throughout the inquiry, for-profit providers sought to reassure the committee that their financial practices would not have an impact on the quality of care received by older Australians. One would hope not.

The community would have an intuitive concern, however, that each dollar that is taken for corporate purposes is a dollar that is not spent on the provision of care.

This committee was not in a position to examine this question. We did not take evidence about failings in care on either an individual or systemic basis. The committee notes, however, that the Royal Commission into the aged care sector was announced after the commencement of this inquiry. The committee considers that the Royal Commission may be in a position to determine whether corporate financial practices were a factor in any of the case studies it investigates.

### **Recommendation 1**

**4.63 The committee recommends that, as part of its deliberations, the Royal Commission into Aged Care Quality and Safety consider the tax and financial structures of aged care providers.**

The committee notes the concerns of a considerable number of stakeholders that for-profit providers would prioritise profits over care. The NSW Nurses and Midwives' Association, for instance, highlighted how this was apparent from the industrial practices of many providers:

We represent workers employed in many for-profit healthcare settings. Our members have highlighted common concerns in relation to funding

shortfalls in aged care facilities operated by large for-profit aged care providers. In recent years they have experienced shorter shifts, reduced staffing and been given additional duties, making workloads problematic and often unachievable. In turn, this creates higher absenteeism such as sick leave, which is not replaced. This compounds the issue. These combined factors create an environment where overworked staff cannot provide the quality of care that residents expect and deserve.<sup>7</sup>

Likewise, the Combined Pensioners and Superannuants Association argued that:

The financial practices of for-profit aged care providers not only manifests in the avoidance of tax, but also in other cost cutting measures such as employing too few staff and staff with lower levels of qualifications.<sup>8</sup>

For-profit providers emphasised that in any event, competitive pressures acted as an active disincentive to cut services for profit. The Chief Executive of COTA Australia stated:

...there are for-profit providers in this country who want to be around for a long time who believe that the way to stay around for a long time is to deliver a quality product...<sup>9</sup>

The committee remains concerned that aged care is not a sufficiently competitive market for this to be true. Older Australians in rural and regional areas face a paucity of choice. Even those in urban areas face real barriers to the exercise of choice once they are in a particular facility. There are real personal costs associated with moving an older person who may have complex health and care needs. Families and older people themselves often balk at the prospect.

Given this, it is imperative that older Australians and their families have as much information as possible at the point where they can more easily exercise choice—the point of entry.

## **Recommendation 2**

**4.65 The committee recommends that the Australian Government explore opportunities to better share information about quality of care across the aged care sector, with the aim of increasing transparency and comparability, and supporting informed decision-making for aged care consumers and their families.**

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7 NSW Nurses and Midwives' Association, *Submission 2*, p. 6.

8 Combined Pensioners and Superannuants Association, *Submission 1*, p. 4.

9 Mr Ian Yates, Chief Executive, COTA Australia, *Committee Hansard*, 17 July 2018, p. 54.