Chapter 1
Introduction

1.1 On 10 May 2018, the Senate referred an inquiry into the financial and tax practices of for-profit aged care providers to the Senate Economics References Committee for inquiry and report by 14 August 2018.[1] The committee received two extensions to report—initially to 20 September 2018; and finally to 27 November 2018.[2]

1.2 The terms of reference for the inquiry were:

> The financial and tax practices of for-profit aged care providers, with particular reference to:
>
> a) the use of any tax avoidance or aggressive tax minimisation strategies;
>
> b) the associated impacts on the quality of service delivery, the sustainability of the sector, or value for money for government;
>
> c) the adequacy of accountability and probity mechanisms for the expenditure of taxpayer money;
>
> d) whether current practices meet public expectations; and
>
> e) any other related matters.[3]

Conduct of the inquiry

1.3 The committee advertised the inquiry on its website and wrote to relevant stakeholders and other interested parties to draw attention to the inquiry and invite them to make written submissions.

1.4 The committee received 32 submissions as well as additional information and answers to questions taken on notice, which are listed at Appendix 1.

1.5 The committee also received a large volume of correspondence from aged care workers and families of aged care residents citing concerns with staffing levels and/or quality of care.

1.6 The committee held two public hearings: Sydney on 17 July 2018 and Melbourne on 4 September 2018. The names of witnesses who appeared at the hearings are listed at Appendix 2.

1.7 References to the Committee Hansard are to the Proof Hansard and page numbers may vary between the Proof and Official Hansard transcripts.

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1 *Journals of the Senate*, No. 97, 10 May 2018, p. 3104.

2 See *Journals of the Senate*, No. 106, 13 August 2018, p. 3423; and *Journals of the Senate*, No. 114, 10 September 2018, p. 3654.

3 *Journals of the Senate*, No. 97, 10 May 2018, p. 3104.

1.8 The committee thanks all of the individuals and organisations that assisted with the inquiry, in particular those who made written submissions and appeared at the committee's public hearings.

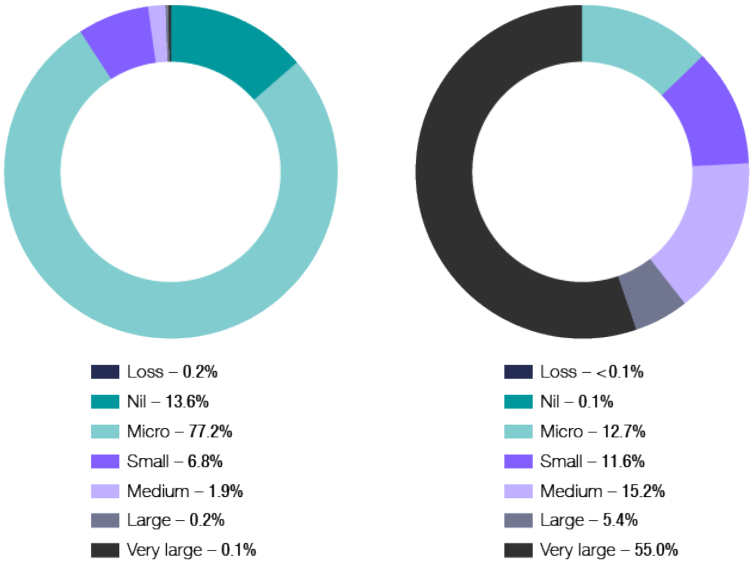
Background to the inquiry

1.9 Corporate income tax is an important contributor to Australia's tax base, and is the second largest contributor to Commonwealth tax revenue after personal income tax.

1.10 Australian corporations that are considered permanent establishments are required to pay corporate income tax on assessable income. The general rate of company taxation is 30 per cent.[4] Assessable income is defined as total revenue less allowable deductions that are associated with doing business.

1.11 Despite representing only a small proportion companies, large corporations account for the majority of net tax in Australia.[5] In 2015–16, 'very large' companies—that is, companies with total business income of $250 million or more—represented only 0.1 per cent of companies operating in Australia, but accounted for 55 per cent of net tax (see Figure 1).[6]

Figure 1: Number of companies and net tax, by size, 2015–16 income year



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4 From the 2017–18 income year, companies that are 'base rate entities' must apply the lower 27.5 per cent company tax rate. See Australian Taxation Office, *Changes to company tax rates*, https://www.ato.gov.au/Rates/Changes-to-company-tax-rates/?page=1#Base_rate_entity_company_tax_rate (accessed 2 October 2018).

5 Net tax as defined by the ATO is essentially the amount of tax owed for the income year, before refundable credits are taken into consideration.

6 Australian Taxation Office, *Taxation statistics 2015–16*, https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Taxation-statistics/Taxation-statistics-2015-16/ (accessed 2 October 2018).

Senate inquiry into corporate tax avoidance

1.12 The nature and prevalence of tax avoidance and aggressive tax minimisation among large corporations has been a matter of particular interest to this committee.

1.13 In October 2014, during the 44th Parliament, the Senate referred an inquiry into corporate tax avoidance to the committee. At that time, there were widespread concerns regarding the tax practices of large corporations and multinational enterprises operating in Australia, with a number of reports and investigations asserting that many corporations were not 'paying their fair share' of taxation revenue.

1.14 A consistent focus of the inquiry's work was the need to improve the transparency of corporate tax information for both administrators and the community more broadly. As emphasised in the final report for the inquiry:

> The public availability of corporate tax information allows researchers, journalists and the wider community to scrutinise and question the structure and operation of private companies and multinational enterprises operating in Australia. The public's ability to scrutinise and question tax affairs is vital to build and maintain confidence and trust in the integrity of the tax system.[7]

1.15 Since the referral of the inquiry into corporate tax avoidance in 2014, the Australian Government has announced a number of significant measures to address the issue of tax avoidance in four successive budgets from 2015–16 through to 2018–19.

Tax Justice Network-Australia Report

1.16 In early 2018, the Tax Justice Network-Australia (TJN-Aus) was commissioned by the Australian Nursing and Midwifery Federation (ANMF) to analyse possible tax avoidance by for-profit aged care companies and to provide recommendations for improving transparency on government spending on for-profit aged care. The subsequent report—*Tax avoidance by for-profit aged care companies: Profit shifting of public funds* (TJN-Aus Report)—was released in May 2018.

1.17 The TJN-Aus Report examined publicly available information on the six largest for-profit aged care providers—Bupa, Opal, Regis, Estia, Japara, and Allity—as well as a number of smaller for-profit aged care providers.

1.18 TJN-Aus argued that the 'evidence suggests that in this growing sector, which is highly dependent on government subsidies, for-profit companies have been deploying aggressive tax avoidance strategies'.[8] In particular, TJN-Aus cited concerns regarding the use of stapled structures and related corporate structures to divert income through an asset trust on which tax is assessed on a flow-through basis (that is, the ultimate beneficiary pays tax).

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7 Senate Economics References Committee, *Part III—Much heat, little light so far*, May 2018, p. 29.

8 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 7.

1.19 TJN-Aus acknowledged the significant recent social and political focus on tax avoidance by multinational companies, but contended that there has been 'little focus on companies providing social services'.[9] TJN-Aus also acknowledged recent corporate tax avoidance reform measures relating to stapled structures and the strengthening of Multinational Anti-Avoidance Law (MAAL), as being 'a step in the right direction'.[10] However, TJN-Aus argued that:

> …additional transparency measures are necessary and should be an urgent priority to restore integrity to the tax system and ensure accountability on government spending.[11]

Purpose and scope of inquiry

1.20 The aged care system in Australia has undergone major reform in recent years which has had the effect of opening up the sector to private, for-profit aged care providers. The operation, effectiveness, and quality of service provided by the aged care sector has also been, and is presently, the subject of numerous government and parliament-initiated inquiries and reviews.

1.21 Most notably, on 16 September 2018, the Prime Minister, the Hon Scott Morrison MP, announced that the Australian Government would ask the Governor-General to establish a Royal Commission into Aged Care Quality and Safety.[12] The Commission is required to provide an interim report by 31 October 2019, and a final report by 30 April 2020.[13]

1.22 The committee acknowledges this plethora of recent reviews into the aged care sector, and notes that it does not seek to traverse the breadth of matters examined through these processes. However, the committee is aware that many aspects of the aged care system—including quality of care, financial viability, workforce availability and regulatory oversight—are highly interconnected, and any analysis of one aspect is unlikely to be independent of other aspects.

1.23 That said, the scope of this inquiry, and discussion in this report, is primarily limited to examining the financial and tax practices of for-profit aged care providers, particularly in the residential aged care sector.

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9 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 8.

10 The Hon Scott Morrison MP, Treasurer, 'Levelling the playing field for Australian investors: Taxation of Stapled Structures', *Media Release*, 27 March 2018; The Hon Scott Morrison MP, Treasurer, 'Making sure multinationals pay their fair share', *Media Release*, 28 March 2018.

11 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 43. See also Mr Jason Ward, Spokesperson, Tax Justice Network-Australia, *Committee Hansard*, 17 July 2018, p. 1.

12 The Hon Scott Morrison MP, Prime Minister of Australia, 'Royal Commission into aged care quality and safety', *Media Release*, 16 September 2018.

13 Information relating to the Royal Commission into Aged Care Quality and Safety, including the Commission's terms of reference, can be accessed at: https://agedcare.royalcommission.gov.au

1.24 Given the economic focus of this inquiry and the significant level of Australian Government expenditure on residential care, as compared to other aged care services, remaining discussion in this and following chapters is primarily focused on residential aged care.

1.25 Residential aged care is the largest part of the industry from a capital, funding and staffing perspective, and for-profit aged care providers are more involved in the provision of residential care which can be more profitable than the provision of services in an older person's home. Further, the nature of residential aged care can better lend itself to the use of stapled structures whereby property assets may be held separately to the business undertaking service delivery.

Structure of the report

1.26 This report comprises five chapters, including this introductory chapter:

- Chapter 2 provides an overview of the aged care system in Australia, including its legislative framework and regulatory oversight, the funding of aged care, and information and statistics relating to residential aged care providers.
- Chapter 3 examines stakeholder views regarding the allegations of tax avoidance by for-profit aged care providers presented in the TJN-Aus Report, as well as specific observations relating to the financial and tax practices of the six for-profit providers examined.
- Chapter 4 discusses broader stakeholder views regarding the analysis and conclusions presented by TJN-Aus.
- Chapter 5 explores financial transparency mechanisms and the adequacy of related regulation of aged care providers.