Chapter 3

Tax practices of for-profit aged care providers

3.1 As noted in Chapter 1, 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.

Findings of the Tax Justice Network-Australia Report

3.2 The TJN-Aus Report examined publicly available information on the six largest for-profit aged care providers operating in Australia—Bupa, Opal, Regis, Estia, Japara, and Allity.[1] TJN-Aus calculated that together these providers received over $2.17 billion in government subsidies for aged care services, representing 72 per cent of their total revenue of $3 billion. The TJN-Aus Report indicates that these companies reported after-tax profits of $210 million in the most recent financial years available.[2]

3.3 Using Australian Taxation Office (ATO) corporate tax transparency data, TJN-Aus calculated that the six largest for-profit providers examined paid around $154 million in tax in 2015–16.[3]

Table 3.1: ATO corporate tax transparency data 2015–16 and 2014–15

($ millions)	2015/16				2014/15			
Company	Total income	Taxable income	% Taxable	Tax payable	Total income	Taxable income	% Taxable	Tax payable
Bupa (total)	$7,484.9	$352.9	4.7%	$104.7	$6,743.4	$334.5	5.0%	$96.3
Opal	$527.2	$7.9	1.5%	$2.4	$236.9	$0.0	0.0%	$0.0
Regis	$484.4	$68.7	14.2%	$20.6	$481.5	$46.2	9.6%	$13.8
Estia	$447.4	$58.3	13.0%	$17.5	$285.8	$15.5	5.4%	$4.7
Japara	$333.9	$29.4	8.8%	$8.8	$285.6	$20.9	7.3%	$6.3
Allity	$315.6	$0.0	0.0%	$0.0	$298.8	$0.0	0.0%	$0.0
TOTALS	$9,593.0	$517.2	5.4%	$154.0	$8,332.0	$417.1	5.0%	$121.0

Source: TJN-Aus Report, May 2018, p. 11

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1 Regis, Estia and Japara are aged care companies listed on the Australian Securities Exchange (ASX).

2 Data for BUPA is 2017, Opal is 2016 and all others are the 2017 financial year. Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 11.

3 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 11.

3.4 According to the ATO, the total combined income of all for-profit aged care providers was just over $5 billion in 2015–16, with a total profit of $529.3 million and after tax profit of $402 million.[4]

3.5 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'.[5] TJN-Aus asserted that for-profit aged care providers use various methods to reduce tax payable. In particular, TJN-Aus cited concerns regarding the use of stapled structures and related corporate structures:

> Companies can use various accounting methods to avoid paying tax. One method is when a company links (staples) two or more businesses (securities) they own together, each security is treated separately for tax purposes to reduce the amount of tax the company has to pay. Aged care companies are known to use this method as well as other tax avoiding practices. Another practice is by 'renting' their aged care homes from themselves (one security rents to another) or by providing loans between securities and shareholders.[6]

3.6 The TJN-Aus Report cited ATO concerns regarding the use of stapled securities 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):

> …using stapled structures often have effective tax rates for foreign investors of between 0–5% and rarely over 10%.[7]

3.7 While TJN-Aus acknowledged recent government reforms to tighten the rules of stapled structures, it concluded that, to date, 'very little attention has been paid to the use of these practices in the for-profit aged care sector'.[8]

3.8 Elaborating on this point, Mr Jason Ward, Spokesperson for TJN-Aus and author of the TJN-Aus Report, told the committee that:

> What is different, and particularly alarming, about the for-profit aged care sector is that the profitability here is based on government funding or, to put

4 Australian Taxation Office, *Submission 14*, p. 4.

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

6 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 5.

7 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 37.

8 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 38.

> it differently, other businesses and people, including aged care residents and workers paying their share of taxes.[9]

3.9 TJN-Aus highlighted the lack of transparency in for-profit aged care providers' tax practices:

> It is difficult to get a detailed and complete picture of the full extent to which these heavily subsidised aged care companies are avoiding paying as much tax as they should, because Australian law is not currently strong enough to ensure that their financial records and accounting practices are publicly available and fully transparent.[10]

3.10 TJN-Aus expressed the view that there is an overarching need for greater transparency around the financial and tax practices of for-profit aged care providers. TJN-Aus argued that:

> As a basic principle, companies that receive millions of government subsidies must be held to a higher standard of transparency and must be publicly accountable.[11]

3.11 The TJN-Aus Report recommended two reform measures to 'restore integrity to the tax system and ensure public accountability' on government subsidies paid to for-profit companies:

- Any company that received Commonwealth funds over $10 million in any year must file complete audited annual financial statements with the Australian Securities and Investments Commission (ASIC) in full compliance with all Australian Accounting Standards and not be eligible for Reduced Disclosure Requirements.
- Public and private companies must fully disclose all transactions between trusts or similar parties that are part of stapled structures or similar corporate structures where most or all income is earned from a related party and where operating income is substantially reduced by lease and/or finance payments to related parties with beneficial tax treatment.[12]

3.12 The remainder of this chapter outlines stakeholder views regarding the allegations of tax avoidance by for-profit aged care providers presented in the TJN-Aus Report. Specific observations of TJN-Aus in relation to the financial and tax practices of the six largest for-profit aged care providers, as well as comments received from providers addressing those matters raised, are then discussed.

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9 Mr Jason Ward, Spokesperson, Tax Justice Network-Australia, *Committee Hansard*, 17 July 2018, p. 1. See also Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 9.

10 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 6.

11 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 41.

12 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, pp. 6 and 43.

3.13 Other stakeholder views regarding the analysis and conclusions presented by TJN-Aus are discussed in Chapter 4. The recommendations made by TJN-Aus in its report, and broader discussion of the financial transparency and related regulation of aged care providers, are provided in Chapter 5.

Industry views on alleged tax avoidance

3.14 A number of industry stakeholders challenged the analysis in the TJN-Aus Report.[13]

3.15 For example, the Aged Care Industry Association (ACIA) observed that:

> The recent report by the Tax Justice Network found no evidence of tax avoidance by large private aged care providers. The tenor of the report makes it clear that the author sought to find such evidence; the failure to come up with evidence of tax avoidance strongly suggests that tax avoidance is not occurring.[14]

3.16 Likewise, the Aged Care Guild refuted assertions that for-profit aged care providers are engaging in tax avoidance, submitting that:

> …indeed the TJN/ANMF report itself shows that the rates of tax paid by aged care providers are at the higher end of tax rates paid by Australian companies.
>
> The report contains a variety of unsubstantiated assertions or inferences that are both factually wrong and objectionable.[15]

3.17 StewartBrown also contested the analysis presented in the TJN-Aus Report and characterised the terminology used in relation to for-profit providers accounting practices as 'misleading':

> The [TJN-Aus] Report strongly suggests that the six [for-profit] entities examined seemingly have legal structures designed to avoid company taxation. We noted that there was no actual evidence provided to support this contention...
>
> The Report's use of the terminology "using accounting methods to avoid tax" (or similar) is, in our opinion, misleading. The statutory and legal structures of entities dictate the appropriate accounting treatment, not the reverse.[16]

3.18 Leading Aged Services Australia (LASA) 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

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13 See, for example, StewartBrown, *Submission* 3; Aged Care Industry Association, *Submission 9*; Leading Aged Services Australia, *Submission* 15; Aged Care Guild, *Submission 17*.

14 Aged Care Industry Association, *Submission 9*, p. 4.

15 Aged Care Guild, *Submission 17*, p. 2.

16 StewartBrown, *Submission 3*, p. 6. See also Aged Care Guild, *Submission 17*, p. 10; Mr Grant Corderoy, Senior Partner, StewartBrown, *Committee Hansard*, 17 July 2018, p. 34.

> identifies no evidence of tax avoidance. Rather, it infers that the scale of revenues and complexity of corporate structures implies improper dealings.[17]

3.19 With regard to inferences in the TJN-Aus Report that for-profit aged care providers use stapled structures to avoid paying tax, LASA asserted that 'stapled securities are a legitimate business structure'.[18] LASA explained that:

> It is not uncommon for operators to structure their business so that the operating business is separate to the property side business for residential aged care, given the different considerations in these two business categories.[19]

3.20 LASA also commented that the TJN-Aus analysis does not provide 'a coherent systematic link between the tax issues it raises and the quality of services'.[20]

3.21 When questioned as to how the findings of the TJN-Aus Report can be reconciled with this statement from the ATO, Ms Annie Butler, Federal Secretary of the ANMF, told the committee that:

> We're not suggesting that companies are doing things that are illegal. What we have suggested is that the way that the system currently exists provides for too many uses of sophisticated structures and moving money around, sharing it around through complicated structures for companies, rather than ensuring that the money goes to full care provision.[21]

3.22 Mr Ian Yates, Chief Executive at COTA Australia (COTA), also commented on the legality of tax strategies utilised by for-profit aged care providers:

> …we're sure that for-profits use all of the tax options that are legally available to them in the current tax system, but we don't have any evidence that they go further than that, and we're pretty confident that the ATO looks pretty closely at them.[22]

3.23 Similarly, Mr Sean Rooney, Chief Executive Officer of LASA, argued that '[l]egal tax minimisation strategies are a normal and acceptable element of business operations', further contending that '[b]usinesses should not be penalised for managing their financial affairs'.[23]

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

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

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

20 Leading Aged Services Australia, *Submission 15*, p. 14.

21 Ms Annie Butler, Federal Secretary, Australian Nursing and Midwifery Federation, *Committee Hansard*, 4 September 2018, p. 2.

22 Mr Ian Yates, Chief Executive, COTA Australia, *Committee Hansard*, 17 July 2018, p. 51.

23 Mr Sean Rooney, Chief Executive Officer, Leading Age Services Australia, *Committee Hansard*, p. 24.

3.24 Mr Rooney also reflected on the size of providers operating in the aged care industry, suggesting that the relatively small number of large for-profit providers—those with more than 20 residential facilities—should be kept in focus when examining the tax practices of those companies:

> There are around 900 approved providers of residential aged care in the aged-care system. Two-thirds of those would be single-site operators, so they are small businesses that are privately owned, community run et cetera. The number of organisations that would have more than 20 sites is less than two per cent—it's 19 organisations—and of those I think nine are for-profit. So rather than comment on the individual tax practices of any of those companies, I say again that we have a well-regulated corporate governance system and I presume it's their role to deal with the individual cases. Seeing the issue that's before this committee, knowing that there are 902 providers and only nine of them are of that scale is I think something to keep in focus.[24]

3.25 Indeed, the ATO submitted that it has 'no evidence to suggest the tax risk appetite of the for-profit aged care services industry differs from other industries'.[25]

Comments from for-profit providers

3.26 In addition to the general stakeholder views outlined above, the committee received evidence from the six for-profit aged care providers examined in the TJN-Aus Report**,** responding to the allegations of tax avoidance and tax minimisation made by TJN-Aus.

Bupa

3.27 In its analysis of Bupa—the largest aged care provider in Australia—TJN-Aus pointed to the 'minimal tax payments' made by the company in 2015–16, compared with its total income:

> In 2015/16 from nearly $7.5 billion in total income, taxable income was less than $352 million and tax paid was less than $105 million. According to the same ATO data, Medibank Private, the next largest health insurer, ranked 34th with $6.8 billion in total income. Medibank had a taxable income of $552 million and paid tax of $148 million, significantly higher than Bupa.[26]

3.28 TJN-Aus also stated that 'Bupa's corporate structure is highly complex', and went on to observe that:

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24 Mr Sean Rooney, Chief Executive Officer, Leading Age Services Australia, *Committee Hansard*, p. 24.

25 Australian Taxation Office, *Submission 14*, pp. 3 and 5. See also Mr Jeremy Hirschhorn, Deputy Commissioner, Public Groups and International, Australian Taxation Office, *Committee Hansard*, 4 September 2018, p. 31.

26 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 12.

> Complex corporate structures with extensive related party transactions are a hallmark of aggressive tax avoidance. Related party transactions are frequently used to shift profits to jurisdictions or entities with lower tax rates or other tax benefits. Bupa's lease payments and multiple loans between related parties are significant, but limited information is provided in Australian filings.[27]

3.29 Bupa disputed contentions that it engages in tax avoidance strategies, claiming that:

> Bupa Australia does not avoid paying tax. Our Australian operating businesses (which includes our health insurance, health services, and aged care businesses) are owned by Australian incorporated entities that are all tax residents in Australia.
>
> For the year ended 31 December 2016, Bupa Australia paid $114m in income tax in Australia on taxable income of $391m. Bupa Australia's effective income tax rate for the year was 28.5%. Within this, Bupa Aged Care paid $20m in income tax on taxable income of $67m. Bupa Aged Care's effective income tax rate was 28.7%.[28]

3.30 Bupa suggested that the TJN-Aus Report 'contains inaccuracies and misleading statements about Bupa Aged Care', including:

- Using Bupa Australia's overall income for the year ended 31 December 2015 of $7.5b, rather than that of Bupa Aged Care ($573m), is incorrect. Bupa Aged Care represents less than 10% of Bupa Australia’s revenue and profit.
- Incorrect assumptions about Bupa Australia's corporate structure and wrongly suggesting stapled structures and related party lease arrangements are used to shift profits and avoid paying tax. Bupa Australia does not use any stapled structures and does not derive any tax benefit from our unit trusts or related party lease payments.[29]

3.31 With regard to assertions by TJN-Aus regarding the use of corporate structures, Bupa claimed that it does not generate beneficial income tax treatment from its unit trusts:

> Bupa Australia does not generate any beneficial income tax treatment from unit trusts. Bupa Australia's unit trusts were inherited through the acquisition of an aged care group. The unit trusts are members of our Bupa Australia income tax consolidated group and therefore all related party transactions are disregarded in line with the principles of Australia's tax consolidation regime.[30]

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27 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 15.

28 Bupa, *Submission 21*, p. 5.

29 Bupa, *Submission 21*, p. 4.

30 Bupa, *Submission 21*, p. 5.

Opal

3.32 In its report, TJN-Aus made a number of observations regarding the amount of company tax paid by Opal in recent years. TJN-Aus also made reference to Opal's corporate structure and related party loans, suggesting that these 'may explain how taxable profits disappear from Australia'.[31]

3.33 In particular, TJN-Aus observed that:

- Opal (DAC Finance Pty Ltd[32]) had zero taxable income and paid no tax on a total income of $236.9 million in 2014–15, and paid $2.4 million in tax on only $7.9 million of taxable income in 2015–16 (on a total income of $527.2 million).[33]
- Reported repayments of subordinated related party loans to the value of $83 million and $88 million were made by Opal in 2015 and 2016 respectively. TJN-Aus commented that 'this related party loan payment was likely the largest factor in reducing [Opal's] taxable income in Australia'.[34]
- G.K.Goh Holdings Limited (GKGoh), a Singapore listed entity with an almost 48 per cent interest share in Opal, received dividends in the order of $16 million from the company.[35]

3.34 Opal stated that it 'takes its tax compliance responsibilities seriously', expressing the view that:

> [The TJN-Aus] report was deficient in its analysis of Opal's state of tax affairs in the 2014, 2015 and 2016 financial years and misrepresented Opal's strong commitment to Australian corporate income tax compliance by not providing appropriate context behind the level of corporate income tax paid by Opal in those years.[36]

3.35 Opal claimed that the company's income tax paid was reduced in the years examined as a result of operating losses carried forward from previous years. Opal argued that these carry forward tax losses were 'incurred in the normal course of business and external debt refinancing activities'.[37]

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31 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 20.

32 DAC Finance Pty Ltd is Opal's operating company for its aged care services. See Opal Aged Care, *Opal Simplified Structure*, [p. 1] (tabled 4 September 2018).

33 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 19.

34 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 20.

35 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 22.

36 Opal Aged Care, *Submission 21*, p. 4.

37 Opal Aged Care, *Submission 21*, p. 4.

3.36 Mr Ben Feek from Opal Aged Care emphasised this point, telling the committee that:

> The use of tax loss carry forward is an essential feature of Australia's tax system and not a signal that an organisation has done anything wrong.[38]

3.37 Mr Feek also explained that:

> There are three separate components of the Opal group: DAC Finance…the Principal Healthcare Finance Trust; and a financing entity called ACIT Finance. These components do transact with each other but not in a way that reduces tax. For example, ACIT Finance is the financing entity, which borrows from four Australian banks and on-lends amounts borrowed within the Opal group as required. There are no offshore loan agreements. Principal Healthcare Finance Trust is a property trust which owns property assets, and DAC Finance is the operating business, which employs our people and provides care to our residents.[39]

3.38 With regard to observations made by TJN-Aus on related party loan repayments, Opal clarified that, during the years mentioned, 'related party borrowings were from Australian entities that were subject to the prevailing corporate tax rate'.[40] Further, Mr Feek advised the committee that the related party loan repayments cited by TJN-Aus had no impact on taxable income:

> The impact on the repayment of a loan to ACIT Finance in relation to DAC Finance's taxable income was nil. As I mentioned before, the repayment or borrowing of an amount does not directly impact taxable income. To clarify: in 2015, when DAC Finance repaid $83 million to ACIT Finance, it also borrowed $92 million from ACIT Finance and overall borrowings were little changed over the year. So what the Tax Justice Network has done is identified a specific line in the cash flow statement to highlight an[d] infer that some mischief has been realised when in fact that's not the case and, in the ordinary course of business, the entities that are operating will seek to borrow from ACIT Finance but also then seek to repay borrowings from ACIT Finance to minimise the level of interest expense they incur. So money revolves all the way in the cycle, but it does not generate any tax advantages for any participant in the structure.[41]

3.39 The committee questioned representatives from Opal as to how its operating company, DAC Finance, could have zero taxable income in 2015, yet in the same year make significant dividend payments ($16 million as cited by TJN-Aus) to a parent company. Mr Feek explained that:

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38 Mr Ben Feek, Chief Financial Officer, Opal Aged Care, *Committee Hansard*, 4 September 2018, p. 12.

39 Mr Ben Feek, Chief Financial Officer, Opal Aged Care, *Committee Hansard*, 4 September 2018, p. 11.

40 Opal Aged Care, *Submission 21*, p. 4.

41 Mr Ben Feek, Chief Financial Officer, Opal Aged Care, *Committee Hansard*, 4 September 2018, pp. 13–14.

> The dividends that are paid by the group to its investors are a result of assessing the profitability of the three components in a combined way. It's both DAC Finance Pty Ltd and the profitability of Principal Healthcare Finance Trust that is considered when assessing the ability of the business to pay dividends.[42]

Allity

3.40 In its analysis of Allity, TJN-Aus stated that it is the only one of the six for-profit aged care providers examined to have paid no tax in 2014–15 or 2015–16. In those years, Allity reported zero taxable income on total revenue of $298.8 million and $315.6 million respectively.[43]

3.41 TJN-Aus stated that Allity's 'most recent annual financial statements [financial year 2016–17] indicate that some of the company's most aggressive tax avoidance tactics may have been curtailed'.[44] TJN-Aus pointed to a fall in Allity's reported interest expenses as a possible indication of reduced tax avoidance.

3.42 TJN-Aus stated that for 2015–16, Allity reported that the balance of a shareholder loan—to the value of approximately $18.7 million—with an interest rate of 15 per cent was extinguished in December 2015.[45] TJN-Aus concluded that:

> …it appears there is little doubt that the sole purpose of this shareholder loan at a 15% interest was to reduce taxable income on profits made in Australia from Australian government subsidies. While the loan may be extinguished, it appears that the impact on avoiding tax payments in Australia may be ongoing.[46]

3.43 Mr David Armstrong, Chief Executive Officer of Allity, rejected claims by TJN-Aus that Allity engages in aggressive tax planning and tax avoidance. Mr Armstrong stated that:

> All financing and acquisition structures adopted are conventional, and I can categorically state that Allity is fully compliant with all applicable tax laws and has satisfied all of its tax obligations by the relevant due dates. Contrary to the Tax Justice Network-Australia report, Allity does not and

42 Mr Ben Feek, Chief Financial Officer, Opal Aged Care, *Committee Hansard*, 4 September 2018, p. 14.

43 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 23.

44 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 24.

45 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 26.

46 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 26.

has not used stapled structures at any point nor does Allity make any rent payments to any related entities outside of the group.[47]

3.44 Mr Armstrong also highlighted that all entities within the Allity corporate structure are treated as a single taxpayer for Australian taxation purposes:

> In terms of our corporate structure, Allity is the trading name of a group of Australian entities of which Australian Aged Care Partners Holdings is the head company. This entity acquired the aged-care business known as Primelife from Lendlease in March 2013 and then ECH's residential aged-care homes in May 2014. All entities within the Allity group are incorporated in Australia. They are tax residents of Australia and they're treated as a single taxpayer for Australian taxation purposes. This effectively explains why there can be no motivation for avoiding paying tax in any transactions between entities in the Allity group.

3.45 Mr Armstrong went on to explain that Allity Pty Ltd, a company within the Allity group, functions as the operating company and approved provider of aged care services. With regard to the public availability of information on Allity's financial affairs, Mr Armstrong acknowledged that:

> Confusion can be created when referencing the accounts of this entity as it doesn't provide a consolidated view of the group's profitability or tax position. The only reason for publishing these accounts is because Allity Pty Ltd is the approved provider under the Aged Care Act and, as such, is required to do so. The relevant reference is the accounts of the tax consolidated group Australian Aged Care Partners Holdings Pty Ltd.[48]

3.46 In response to observations by TJN-Aus that Allity paid zero corporate income tax in 2014–15 or 2015–16, Allity explained that:

> Allity was in a tax loss position for its first two years of operation (FY14 and FY15). From Allity's establishment in March 2013, significant costs were incurred in respect of acquisition and investment activity to grow and improve the business and the services it provides.
>
> …
>
> Having absorbed tax losses from the peak acquisition and investment growth phase, we anticipate being in an income tax paying position from FY 18 onwards.[49]

3.47 On the matter of shareholder loans arising from Allity's acquisition of aged care services, the committee questioned representatives from Allity as to how such

47 Mr David Armstrong, Chief Executive Officer, Allity Pty Ltd, *Committee Hansard*, 17 July 2018, p. 43.

48 Mr David Armstrong, Chief Executive Officer, Allity Pty Ltd, *Committee Hansard*, 17 July 2018, p. 43.

49 Allity, *Submission 20*, p. 5. See also Mr David Armstrong, Chief Executive Officer, Allity Pty Ltd, *Committee Hansard*, 17 July 2018, pp. 43–44 and 47.

loans could justifiably offer an interest rate of 15 per cent on a commercial basis. Mr Armstrong advised that:

> The balance of the initial acquisition cost was $128 million, which was provided through a mix of shareholder equity and shareholder loans. That was considered appropriate to reflect the risk and return requirements of investors at the time. The shareholder loans were certainly paid out at the absolute earliest opportunity that was available, so there was never an intention to include those shareholder loans as a part of the long-term capital structure. They were paid out in December 2015. Just to explain the shareholder loan, it's a form of mezzanine debt, so it's effectively riskier than bank debt because the rights of the note holders are subordinated to the bank's. Therefore, it requires a high rate of return to reflect that risk. The rate adopted on the notes was a rate that was researched by Archer and was a market rate at the time the notes were issued and reflected the risk-return characteristics of the investment.[50]

ASX listed providers—Regis, Estia and Japara

3.48 TJN-Aus' analysis found that together, the three ASX listed for-profit aged care providers—Regis, Estia and Japara—'received over $1 billion in the most recent year'.[51] TJN-Aus stated in its report that:

> Regis, Estia, and Japara are listed on the Australian Securities Exchange (ASX) but appear to be using methods to reduce the amount of tax they pay while earning large profits from over $1billion of government subsidies.[52]

3.49 TJN-Aus noted that:

> While these companies are not officially structured as stapled securities the internal ownership of properties through trust structures may provide the same tax advantages.[53]

3.50 TJN-Aus also queried the limited disclosure of information relating to the internal trust structures of the three ASX listed providers.[54]

3.51 In response to the observations made by TJN-Aus, Mr Sudholz, Chief Executive Officer of Japara Healthcare, told the committee:

> Whilst the report by the Tax Justice Network-Australia contains a blanket statement on Japara's apparent use of complex tax avoidance schemes, it

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50 Mr David Armstrong, Chief Executive Officer, Allity Pty Ltd, *Committee Hansard*, 17 July 2018, p. 44. See also Allity, *Submission 20*, p. 18.

51 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 29.

52 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 29.

53 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 29.

54 Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 29.

> does not provide any support for that allegation. Japara respectfully disagrees with these allegations and that they could apply in any way to its operations. Japara is taxed as a company in Australia and has a very simple corporate structure.[55]

3.52 Regis also claimed that it does not use any tax avoidance or aggressive tax minimisation strategies. With regard to transactions between its internal subsidiary trusts, Regis submitted:

> Regis is the head company of a single income tax consolidated group, which comprises Regis and all of its subsidiaries. Transactions between internal subsidiary companies and trusts within the income tax consolidated group do not affect Regis' effective corporate income tax rate or income tax payable.
>
> Regis' internal trusts are unit trusts and do not have external beneficiaries. There is no tax advantage delivered to Regis via these trusts as they are all part of a single Regis tax consolidated group and are generally a result of historical acquisitions.[56]

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55 Mr Andrew Sudholz, Chief Executive Officer, Japara Healthcare, *Committee Hansard*, 4 September 2018, p. 17.

56 Regis Healthcare Limited, *Submission 7*, pp. 1–2.