Chapter 4
Broader stakeholder views

4.1 In addition to the views on alleged tax avoidance summarised in the previous chapter, some stakeholders outlined their objections to the Tax Justice Network-Australia's (TJN-Aus) analysis in other areas. In particular, stakeholders commented on the method used by TJN-Aus to calculate 'tax payable' by aged care, as well as claims made with regard to the profitability of large for-profit providers.

Concerns about the sector from the Australian Taxation Office

4.2 The Australian Taxation Office (ATO) raised the following areas of concern in relation to income tax regarding for-profit aged care providers: financing arrangements; use of tax consolidated groups; and use of trusts.

4.3 The ATO advised that it has concerns over the financing arrangements used by certain multinational entities in the aged care industry, particularly the conditions of their related party financing arrangements. The ATO noted that it is reviewing the application of the transfer pricing rules[1] to financing arrangements of entities in the aged care industry. In addition, the ATO noted that the OECD hybrid mismatch measure[2]—which received royal assent in August 2018 and will begin to come into effect from January 2019—will address concerns regarding hybrid mismatch arrangements.[3]

4.4 The ATO also raised concerns about the number of entities in the aged care industry operating through a multiple entry-point consolidated (MEC) group structure. The ATO submitted that such structures have 'the potential to obscure intra-group transactions for financial or public tax reporting'.[4]

4.5 The ATO further submitted that due to the nature of financial reporting obligations, MEC group structures 'can make it difficult for the public to understand

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1 Australia's transfer pricing rules seek to avoid the underpayment of tax in Australia by having businesses price related party international dealings according to what is expected from independent parties in the same situation. See ATO, *International transfer pricing—introduction to concepts and risk assessment*, https://www.ato.gov.au/print-publications/international-transfer-pricing---introduction-to-concepts-and-risk-assessment/?=top_10_publications (accessed 1 November 2018).

2 Announced in the 2016–17 Budget, the hybrid mismatch rules aim to prevent multinational companies from gaining an unfair competitive advantage by avoiding income tax or obtaining double tax benefits through hybrid mismatch arrangements. These arrangements exploit differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions. See ATO, *Implementation of the OECD hybrid mismatch rules*, https://www.ato.gov.au/General/New-legislation/In-detail/Other-topics/International/Implementation-of-the-OECD-hybrid-mismatch-rules/ (accessed 1 November 2018).

3 Australian Taxation Office, *Submission 14*, pp. 6–7.

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

the full operations of the foreign group in Australia'.[5] Accordingly, the ATO noted that:

> We encourage greater transparency by these groups through adoption of the Board of Taxation's Voluntary Tax Transparency Code and/or best practice adoption of the general purpose financial statements (GPFS) measure applicable to significant global entities (which recommends filing of an aggregated set of GPFS for the entire Australian operations of the foreign group).[6]

4.6 The ATO noted that the use of unit and discretionary trusts as vehicles to operate aged care facilities is a common feature of privately owned groups in the aged care industry, often explained by the desire to isolate the commercial risks of operating a particular facility from the broader group.[7]

4.7 Mr Jeremy Hirschhorn, Deputy Commissioner, Public Groups and International, ATO, reiterated this point:

> At the small end, we often see private groups, often around families, develop a business. That will often be through trust structures for the property side or for the entire business, and that is often aimed at pushing—in a sense, it doesn't change the tax necessarily, but it shifts the tax up a level and moves it away from the operating entity up a level. That may not be tax driven; trusts are subject to very different disclosure rules and corporate rules to companies. At some stage, there's aggregation.[8]

4.8 However, the ATO acknowledged that 'the use of trust structures means it is not possible to identify the tax payable based on publicly available information alone', and that private trusts are often not required to prepare financial statements.[9]

4.9 The ATO outlined its concerns with the use of such trust structures, stating that:

> In rare cases, trusts are used in conjunction with other tax planning or avoidance strategies to artificially reduce the tax payable on underlying business operations. There are a number of general and specific anti-avoidance rules we can apply to ensure the appropriate amount of tax is paid, in relevant circumstances.[10]

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5 Australian Taxation Office, *Submission 14*, p. 7. See also Mr Jeremy Hirschhorn, Deputy Commissioner, Public Groups and International, Australian Taxation Office, *Committee Hansard*, 4 September 2018, p. 33.

6 Australian Taxation Office, *Submission 14*, p. 8.

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

8 Mr Jeremy Hirschhorn, Deputy Commissioner, Public Groups and International, Australian Taxation Office, *Committee Hansard*, 4 September 2018, p. 33.

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

10 Australian Taxation Office, *Submission 14*, p. 8.

4.10 The committee notes that the Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018, which was introduced into the House of Representatives in September 2018, includes measures to improve the integrity of income tax law for arrangements involving stapled structures that deliver low tax rates to foreign investors.[11]

Maximising profit over care

4.11 A large number of stakeholders supported the conclusions of TJN-Aus and expressed concerns about the implications of the financial practices of for-profit aged care providers on the quality of care provided to residents.

4.12 The Australian Nursing and Midwifery Federation (ANMF) asserted that:

> Recent research commissioned by the ANMF demonstrated that aged care residents receive one and a half hours less care than they should, every day. Yet there are no rules to ensure that government subsidies given to aged care companies is spent directly on their care.[12]

4.13 Indeed, the ANMF considered that the TJN-Aus Report shows that for-profit aged care providers are maximising profits over the provision of better quality care:

> This research…revealed that these [for-profit] companies have the financial capacity to bridge the gap in care hours by employing more nurses and carers but are placing their profits and shareholders before safe, effective care for their residents.[13]

4.14 Similarly, the Combined Pensioners and Superannuants Association (CPSA) argued that the findings of the TJN-Aus Report 'demonstrates a trend that for-profit aged care companies are compromising on providing quality care services and are instead choosing to direct their attention towards maximising profit'.[14]

4.15 CPSA further 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.[15]

4.16 CPSA contended that this view is supported by the decrease in staff with higher levels of qualifications in residential aged care facilities:

> Attempts to cut staffing costs is evidenced in the decrease of RNs and ENs [Registered Nurses and Enrolled Nurses] employed in aged facilities, who

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11 Parliament of Australia, *Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018*, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6192 (accessed 21 November 2018).

12 Australian Nursing and Midwifery Federation, *Submission 11*, p. 7.

13 Australian Nursing and Midwifery Federation, *Submission 11*, pp. 7 and 13.

14 Combined Pensioners and Superannuants Association, *Submission 1*, pp. 4 and 6.

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

receive higher wages, and the increase in personal care workers, who receive lower wages. In 2016, the gross median weekly wage reported by RNs was $1352 and by ENs it was between $1000 and $1050, compared to a median weekly wage of $689 for PCAs [Personal Care Assistants].[16]

4.17 The NSW Nurses and Midwives' Association (NSWNMA) highlighted similar concerns in relation to staff quantity and quality in residential aged care facilities operated by for-profit 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.[17]

4.18 The NSWNMA further submitted that:

> It is our opinion this can only be feasibly explained as a cost-saving exercise by for-profit providers.[18]

4.19 Submissions from other state and territory nursing unions made similar claims about the quality of service provision, including staffing levels, by for-profit aged care providers.[19] The inquiry also received and reviewed a significant volume of correspondence from aged care staff and relatives of residents who expressed concerns over the level of staffing and quality of care.

4.20 Mr Ward from TJN-Aus acknowledged that the financial conditions for some providers in the industry, both not-for-profit and for-profit, are challenging. However, Mr Ward argued that the motivation of large, for-profit aged care providers is different to those of their not-for-profit counterparts:

> Several submissions generalise about conditions across the entire aged-care sector, without focusing on the large for-profit companies. Again, of course many of the smaller non-profits and some for-profit providers are struggling financially as they genuinely attempt to provide the best quality of care possible. These providers face challenging conditions, but the experience and motivation of the large for-profit companies is entirely different.[20]

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16 Department of Health, *The Aged Care Workforce 2016*, March 2017, p. 27, as cited in Combined Pensioners and Superannuants Association, *Submission 1*, p. 5.

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

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

19 See, for example, Australian Nursing and Midwifery Federation (TAS Branch), *Submission 4*; Australian Nursing and Midwifery Federation (SA Branch), *Submission 5*; Queensland Nurses and Midwives' Union, *Submission 6*.

20 Mr Jason Ward, Spokesperson, Tax Justice Network-Australia, *Committee Hansard*, 17 July 2018, p. 2.

4.21 Similarly, Adjunct Associate Professor Michael West expressed the view that a culture of maximising profits within a corporation can result in a conflict of interest. Specifically, in the for-profit aged care sector, a conflict can arise between a company's duty to its shareholders and the provision of care:

> Every institution has a culture, and corporations all have their cultures too, and there's a huge diversity in these cultures. Generally, the culture comes from the top, is led from the top. Generally, over the years I've found if there's an aggressive culture in maximising profit at all costs then there's a fundamental conflict of interest. The government and most people and stakeholders want the elderly to be looked after. Of course there are the workers; you need to pay workers a reasonable amount to do that. It's a market. I agree that it is a market. It's not distorted in that sense, but there is a conflict of interest. If your duty is to your shareholders primarily, and your personal bonus rides on getting costs down and getting profits up, then all it needs is a bit of aggressive behaviour on the part of the executives, which we see all the time, and care is going to be sacrificed.[21]

4.22 Mr Ian Yates, Chief Executive at COTA Australia (COTA), disagreed with views that a profit motive necessarily places quality of care at risk:

> …it depends how the governance structure—the owners—and the senior management in that company set their culture. I say that because 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, and there are not-for-profit providers in this country who turn in very substantial profits. They're just not distributing them as dividends.[22]

4.23 Mr David Armstrong, Chief Executive Officer at Allity, assured the committee that for-profit providers can obtain value for shareholders at the same time as providing high quality care:

> Absolutely. We get funded the same [as other providers] and we're accountable on the same basis for resident outcomes through the accreditation process and providing specified care and services. So we're absolutely accountable, and we compete on that basis to meet residents' expectations.[23]

4.24 Mr Grant Corderoy, Senior Partner at StewartBrown, reasoned that:

> …if they [for-profits] weren't providing the standard of care we would expect to see two things: we would expect to see their occupancy levels decline and we would expect to see major staff movements. We deal very

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21 Adjunct Associate Professor Michael West, Private Capacity, *Committee Hansard*, 17 July 2018, p. 13.

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

23 Mr David Armstrong, Chief Executive Officer, Allity Pty Ltd, *Committee Hansard*, 17 July 2018, p. 48. See also Mr Sean Rooney, Chief Executive Officer, Leading Age Services Australia, *Committee Hansard*, pp. 25–26.

> strongly with the sector and we don't see a massive difference in occupancy levels—that's resident occupancy levels—and we're not seeing a major staff movement change where staff are visibly moving from for-profit to not-for-profit providers, because they've got access to providing the same quality care.[24]

4.25 The Aged Care Industry Association (ACIA) argued that a provider's ownership type does not predict quality of care outcomes:

> …a focus on ownership type is misleading and unhelpful. The key outcome from the Australian aged care system should be [the] provision of high-quality care to older Australians. There is no evidence that ownership structure is a predictor of care quality or of care outcomes for residents—focusing on ownership structure is a diversion from the key area of care quality.[25]

Stronger links between government subsidies and quality of care

4.26 Some inquiry participants advocated for stronger links between government subsidies and quality of care, as measured through legislated skills mixes and staffing ratios.[26]

4.27 The ANMF, for example, argued that 'taxpayers contributions to funding for-profit aged companies must be directed to ensuring the provision [of] safe and effective care for every resident'.[27] Accordingly, the ANMF recommended that:

> - Residential aged care companies must publicly and transparently report the staffing of all aged care facilities.
> - Residential aged care companies should provide proof that government funding is being spent directly on the care of residents. This should be mandated as a pre-requisite to receiving a subsidy. The best way of demonstrating this would be to implement mandated and legislated skills mixes and staffing.[28]

4.28 Likewise, CPSA contended that:

> For-profit aged care providers financial and tax practices that channel Australian Government subsidies into profits clearly do not provide value for money for the Government. Government aged care subsidies should be used for the purpose they are assigned for, that is caring for residents. Ring

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24 Mr Grant Corderoy, Senior Partner, StewartBrown, *Committee Hansard*, 17 July 2018, pp. 31–32.

25 Aged Care Industry Association, *Submission 9*, p. 7. See also COTA Australia, *Submission 23*, p. 5.

26 See, for example, Australian Nursing and Midwifery Federation, *Submission 11*, Combined Pensioners and Superannuants Association, *Submission 1*; NSW Nurses and Midwives' Association, *Submission 2*; Australian Nursing and Midwifery Federation (Tas Branch), *Submission 4*; Queensland Nurses and Midwives' Union, *Submission 6*.

27 Australian Nursing and Midwifery Federation, *Submission 11*, p. 13.

28 Australian Nursing and Midwifery Federation, *Submission 11*, p. 13.

> fenced funding and stricter monitoring needs to be put in place to ensure all Government funds are being used for this intended purpose. The [TJN-Aus] report highlights that there are currently inadequate safeguards in place to ensure that the $2.17 billion in Government subsidies given to for-profit providers is spent directly on care for residents.[29]

4.29 The Queensland Nurses and Midwives' Union (QNMU) submitted that there is considerable evidence linking the quality of care with the staff levels and skill mix of the aged care workforce. Referencing the TJN-Aus Report, the QNMU reasoned that, in light of the profits and attempts to minimise tax liabilities made by for-profit aged care providers, 'there seems significant capacity for improvements in staffing and skill mix to achieve evidence based minimum levels'.[30]

4.30 The NSWNMA took the stance that value for money in aged care is 'inextricably linked to personal safety'. Further, the NSWNMA argued that public expectations of sufficient protections must be guaranteed not only through accountability of providers' tax practices, but also through ensuring the appropriate allocation of government subsidies to the provision of quality care.[31]

4.31 The NSWNMA went on to emphasise that the aged care industry provides care to the most vulnerable, contending that:

> Therefore the same protections that are afforded to children, must also be afforded to the elderly. Mandated ratios of staffing and skills mix, determined by an evidence-based model of care, and regulated appropriately, must be applied to the sector.[32]

4.32 That view was supported by Ms Bronagh Power, Policy Officer at the CPSA:

> All older Australians should have access to safe, dignified care and taxpayers' contributions to funding aged-care companies must be directed to ensuring the provision of that care. CPSA believes that the accountability of aged-care providers and the quality of care for residents can be ensured by tying the provision of subsidies to adequate staffing ratios and the delivery of quality care. Profits must not come before the dignity, safety and wellbeing of older Australians.[33]

4.33 However, a number of submitters and witnesses cautioned that, without concurrent changes to the funding model for aged care, any mandated staff-to-resident changes would significantly impact the viability of all aged care providers, both

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29 Combined Pensioners and Superannuants Association, *Submission 1*, p. 7.

30 Queensland Nurses and Midwives' Union, *Submission 6*, p. 7.

31 NSW Nurses and Midwives' Association, *Submission 2*, p. 12.

32 NSW Nurses and Midwives' Association, *Submission 2*, p. 12.

33 Ms Bronagh Power, Policy Officer, Combined Pensioners and Superannuants Association, *Committee Hansard*, 17 July 2018, p. 17.

for-profit and not-for-profit. Some stakeholders also advised that such changes would inevitably result in an increased financial burden on government.[34]

Gap between revenue and profits

4.34 TJN-Aus observed that there is a significant gap between the reported revenue and profits of the for-profit aged care providers examined in its report.

4.35 Some stakeholders, including TJN-Aus, drew a number of conclusions from this gap. For example, Mr Ward argued that looking at revenue can be an important indication of the use of tax avoidance strategies to reduce taxable profit:

> Of course tax is based on profit. Of course the expense of running an aged-care business is significant. However, the primary trick in most corporate tax avoidance strategies is to reduce taxable profit through artificial means. This appears to be exactly what Allity, Bupa and others have done.[35]

4.36 Mr Hirschhorn from the ATO sympathised with TJN-Aus' reasoning, commenting that 'in this market, it's often said the tax planning is in the expenses and not so much in the income'. Mr Hirschhorn elaborated that:

> …it is very hard to distinguish between tax planning through inflated expenses and just having high expenses and not being very profitable. And I would say the failing of that [percentage taxable] metric is that it does not distinguish between tax minimisation techniques and companies which are struggling to make a significant profit. It also does not necessarily distinguish amounts which are reported as income in accounts—for example, revaluation gains—which are not taxable whilst they're unrealised. I understand why they look at that ratio, but it does fail to distinguish between economic performance and tax minimisation strategies.[36]

4.37 Conversely, industry groups tried to explain the gap on a number of fronts. For instance, StewartBrown submitted that it 'is generally understood that company tax is payable on taxable income not on revenue', and therefore:

> …assuming the quoted figures in Table 2 [see Table 3.1] are accurate, the combined tax payable ($154 million) as a percentage of taxable income ($517.2 million) represents an average income tax rate of 29.8%. We

34 See, for example, Mr Grant Corderoy, Senior Partner, StewartBrown, *Committee Hansard*, 17 July 2018, p. 35; Mr Matthew Richter, Chief Executive Officer, Aged Care Guild, *Committee Hansard*, 17 July 2018, p. 42; Mr Ben Feek, Chief Financial Officer, Opal Aged Care, *Committee Hansard*, 4 September 2018, pp. 12–13.

35 Mr Jason Ward, Spokesperson, Tax Justice Network-Australia, *Committee Hansard*, 17 July 2018, p. 2. See also *Committee Hansard*, 17 July 2018, p. 3.

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

suggest that such an average taxation rate is above the majority of listed or for-profit entities in all other industry sectors in Australia.[37]

4.38 The Aged Care Guild noted that not all businesses have the same ratio of profit to revenue, and argued that it is therefore 'inappropriate to compare the profitability of the aged care providers to revenue or, for that matter, to other unrelated industries'.[38] The Aged Care Guild went on to argue:

> 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.[39]

4.39 ACIA drew the committee's attention to total revenue and expense figures for the aged care industry, noting that incurred expenses, especially wages for the sector's workforce, make up a substantial portion of revenue. ACIA contended that:

> Conflating revenue with profit as a basis to allege under-payment of taxation is deeply misleading. Tax is payable on profit; to claim revenue provides any indication at all of taxable income is simply flawed. Taking figures from the Aged Care Financing Authority, the aged care sector in 2015–16 attracted revenues of $17.4 billion. However, the sector incurred expenses of $16.3 billion; any claim to determine taxable income based only on revenue can be no better than guesswork.[40]

4.40 Mr Ben Feek, Chief Financial Officer at Opal Aged Care, also told the committee:

> Opal had total income of $527.2 million as quoted on page 5 of the [TJN-Aus] report, and the report infers that, by only paying $2.4 million in tax in that year, it was by inference doing something wrong. Opal had in that year $511.5 million of expenses. Those expenses are incurred providing the services to our residents. Profit before tax was $15.6 million. So the level of profitability that is in fact taxable is far less than the revenue that has been realised by Opal.[41]

Profitability of large for-profit providers

4.41 Another key assertion made by TJN-Aus was in relation to the six largest for-profit aged care providers making large profits earned principally from government subsidies.

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37 StewartBrown, *Submission 3*, p. 5. See also Aged Care Guild, *Submission 17*, p. 11; Mr Grant Corderoy, Senior Partner, StewartBrown, *Committee Hansard*, 17 July 2018, pp. 33–34.

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

39 Aged Care Guild, *Submission 17*, p. 11. See also StewartBrown, *Submission 3*, p. 5.

40 Aged Care Industry Association, *Submission 9*, pp. 6–7.

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

4.42 Mr Ward from TJN-Aus argued that to obtain a true picture of the profitability of large for-profit aged care providers, the focus should be on individual providers rather than averaging across the sector:

> I think in some ways you have to look at the individual companies, because that's where the detailed information is. But I do think it's very important to take a look at the larger for-profit sectors as a separate trend entity and understand what patterns are going on with them versus other parts of the industry whether they be non-profit or for-profit.[42]

4.43 However, industry stakeholders rejected the TJN-Aus analysis. For example, StewartBrown commented that:

> An underlying theme of the Report appears to be in relation to FP [for-profit] entities making large profits gained substantially from recurrent government subsidy funding. The Report was silent regarding analysing the profitability or even making comparison to other industry sectors.[43]

4.44 Other industry stakeholders such as Bupa also claimed that it 'is a misconception that residential aged care providers are highly profitable'.[44]

4.45 StewartBrown noted results from its *Aged Care Financial Performance Survey* (ACFPS) which found that, for the six months to December 2017, 41.3 per cent of residential aged care facilities reported an operating loss.[45]

4.46 LASA pointed to the findings of Aged Care Financing Authority's (ACFA) *Fifth report on the Funding and Financing of the Aged Care Sector*, observing that:

> [ACFA's report] states that total profit for the sector was $1.1 billion, including $1.3 billion of 'other' income which suggests that operating profit is dependent upon 'other' income, as in previous years.
>
> The ACFA report makes specific mention of the inclusion of other (non-operating) income in the financial results with the observation that the overall profitability is dependent upon the other income.[46]

4.47 StewartBrown suggested that a more appropriate measure of financial performance of aged care providers is the Return on Assets (ROA) ratio, which relates to a provider's operating surplus as a measure of the total assets employed. The ROA ratio is used to assess what levels of real return providers are achieving in relation to the assets employed, irrespective of debt or equity.[47]

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42 Mr Jason Ward, Spokesperson, Tax Justice Network-Australia, *Committee Hansard*, 17 July 2018, pp. 8–9.

43 StewartBrown, *Submission 3*, p. 6. See also Aged Care Guild, *Submission 17*, p. 11.

44 Bupa, *Submission 21*, p. 3.

45 StewartBrown, *Submission 3*, p. 9. The StewartBrown December 2017 *Aged Care Financial Performance Survey* incorporated financial data from over 915 residential aged care facilities across Australia.

46 Leading Aged Services Australia, *Submission 15*, p. 9.

47 StewartBrown, *Submission 3*, pp. 6 and 14.

4.48 StewartBrown advised that:

> Using this relevant ratio, the ROA for year-end 2016 was approximately 1.7%, and this declined to approximately 1.2% for FY17 and we expect it to be around 0.5% for FY18. This is hardly a viable return for aged care provider organisations.[48]

4.49 The Aged Care Guild noted StewartBrown's ROA analysis, and also calculated the ROA for its own members—which comprise the eight largest private residential aged care providers (including five of those providers examined in the TJN-Aus Report). The Guild submitted that:

> Already, the financial condition of aged care has deteriorated to a level overall that will deter investment that is essential to meet the future needs of elderly Australians. Stewart Brown estimated that in the period to December 2017 aged care overall showed a return on assets of only 0.5%—whereas six months earlier it was at 1.3%. For Guild members, return on assets fell from 3.8% to 2.6% in the same period.[49]

4.50 The Aged Care Guild also proposed that it is 'informative to compare the returns of Guild members and the sector generally to those being achieved by other sectors of the economy' (Table 4.1).[50] The Guild elaborated that:

> By any measure, to say that Guild members are reaping large profits through taxpayer subsidies is incorrect. In fact, taxpayer subsidies are used to fund residents' care—not profits—and the returns in the aged care sector are far less than many other sectors…[51]

Table 4.1: Return on Asset comparisons to other industry groups[52]

ASX GICS industry group	2017 %	2018 (*est*) %
Commercial and professional services	12.01	11.56
Consumer services	17.41	15.37
Food and staples retailing	10.28	10.57
Health care equipment and services	14.87	16.95
Media	19.43	16.85
Retailing	13.10	13.67
Software and services	29.77	31.70
Telecommunication services	11.01	11.44
Transportation	4.65	5.11
Guild members (*average*)	3.80	2.60

48 StewartBrown, *Submission 3*, p. 6.

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

50 Aged Care Guild, *Submission 17*, p. 7.

51 Aged Care Guild, *Submission 17*, p. 7.

52 Aged Care Guild, *Submission 17*, p. 7. GICS refers to the ASX classification system for industry sector groupings based on Global Industry Classification Standards.

4.51 Mr Andrew Sudholz, Chief Executive Officer of Japara Healthcare, indicated that aged care is not a highly profitable sector, irrespective of provider ownership type:

> It's important to understand that everyone in this industry is trying to make a profit that sustainable, but the industry now has quite a few places not making a profit, and that is both the church and charity and the privately owned people.
>
> The question about what is inadequate profit has to do with the return on invested capital, and we're currently running in the very low single-digit range. The evidence is there; it's one or two per cent.[53]

4.52 The Aged Care Guild acknowledged that its members do compare well with other aged care providers in relation to the level of returns, particularly when compared against the not-for-profit sector. However, the Guild observed that there are a number of reasons for this, including: the provision of 'additional services' in its members' facilities (fees for which have previously been reported as 'other income' by providers)[54]; and the concentration of Guild member providers in major cities or large regional centres, therefore attracting higher accommodation payments.[55]

4.53 This reasoning was supported by Mr Corderoy from StewartBrown in explaining the difference between the ROA calculations provided by the Aged Care Guild and StewartBrown:

> In the for-profit sector, the vast majority of their facilities are in the metropolitan areas and a smaller amount are in the inner regional areas. Of course the not-for-profit sector and the government have a much greater spread, including taking the burden, as it were, for the outer regional and remote areas. If you look at say the metropolitan sector, the return on assets would be greater, but remember that our figures are looking at the whole geographic sector…So when you're looking at an overall average, the not-for-profits clearly will have a lower result. But if we just do a return on assets on metropolitan Sydney and metropolitan Melbourne, yes, they would be higher than our figures, but our figures are looking at the sector as a whole.[56]

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53 Mr Andrew Sudholz, Chief Executive Officer, Japara Healthcare, *Committee Hansard*, 4 September 2018, pp. 19–20.

54 In its sixth annual report, ACFA noted that '[s]ome items previously classified as "other revenue" have now been apportioned to more appropriate revenue items. This means that reported "other" income is 26 per cent less in 2016–17 compared with 2015–16'. Aged Care Financing Authority, *Sixth report on the Funding and Financing of the Aged Care Sector*, July 2018, p. 97.

55 Aged Care Guild, *Submission 17*, p. 6. See also Mr Matthew Richter, Chief Executive Officer, Aged Care Guild, *Committee Hansard*, 17 July 2018, p. 40.

56 Mr Grant Corderoy, Senior Partner, StewartBrown, *Committee Hansard*, 17 July 2018, p. 32.

Consumer choice in the sector

4.54 Regulatory constraints on the provision of aged care services mean that consumers are limited when it comes to choosing a service. While for-profit providers contend that they compete based on the quality of the services provided, a lack of transparency and accountability means that consumers are limited in their ability to make informed decisions about their care. Further, the reluctance of many residents and their families to change residential settings means that appropriate information to make an informed decision regarding residential care entry is essential.

4.55 On this point, Aged Care Crisis Inc., a not-for-profit consumer-based advocacy group, submitted that:

> [For consumers to] exert choice in the marketplace requires information, the knowledge to assess and use it, as well as the confidence and power to use it. Without this citizens are at high risk of being exploited.
>
> During the 20 years of this system Australia has been the most opaque of all countries in collecting and supplying data to those who need it. Providers won't even tell us how many staff they have let alone supply any data about the care they provide.[57]

4.57 These concerns were also raised by Public Services International (PSI), who suggested the current nature of funding for aged care is harming the community and leading to worse consumer outcomes.[58] PSI stated that:

> The current funding model for aged care services, as with other government funded services that utilise for-profit provision of the service, is open to rent seeking behaviour, as:
>
> …
>
> There is limited ability for the user of the service to gain experience and knowledge of the sector, or the provider, prior to the need for the service arsing, and, changing provider once engaged is difficult. This creates a significant power imbalance and makes 'choice' an abstract construct for the consumer. This is made worse by the current lack of public information on service providers.[59]

4.56 In regional Australia, consumer choice is more limited than in metropolitan centres:

> **ACTING CHAIR:** I suppose that, when we look at competitiveness in markets, there's always that question about what we are competing for. I think there are some real questions about the extent to which aged care is a genuinely competitive market, not least because, once a patient enters a home, moving them is, as I know from personal experience, so immensely traumatic that the idea that you will decide you don't like that choice and

57 Aged Care Crisis Inc., *Submission 32*, p. 35.

58 Public Services International, *Submission 13*, [pp. 3–4].

59 Public Services International, *Submission 13*, [p. 3].

make another choice is really limited by the practical realities of moving a frail aged person with dementia.

Another analysis of this market might be that, at least for those people who are reliant on private capital, the battle really is competition for private capital rather than competition for clients. Do you think that's a fair characterisation of how this market operates?

Norah Barlow: I definitely believe that it's a competitive sector at the point of getting a resident into your home and providing the type of services and environment that you would want. That does require capital, because you are actually building. So I definitely see that point. I understand your point that, once they're in a home, for lots of reasons they generally don't move.

ACTING CHAIR: My personal experience, to be honest with you, is mostly in regional Australia, so it's not very competitive at the point of entry either.

Norah Barlow: No, being location specific would suggest that that's pretty difficult. In metros, it's a very big difference.[60]

4.57 Chapter 5 provides a broader discussion of financial transparency and related regulation of aged care providers, as well as suggested measures to enhance the integrity and public visibility of providers' financial and tax practices. By extension, the measures proposed also go some way to enhancing consumers' ability to make informed decisions about their care.

Committee view

4.58 The committee acknowledges that aged care is a sector where expenses are characteristically high and profit margins are low.

4.59 However, the committee considers that the insights provided by TJN-Aus, and in turn through this inquiry, demonstrate that current frameworks—in particular, the ability to use stapled and other complex corporate structures—provide scope for providers to potentially avoid, or at the very least minimise, their tax obligations.

4.60 The committee is concerned by the apparent difficulty in obtaining a complete picture of these practices by for-profit aged care providers. The committee contends that—in an industry that is tasked with caring for those who are highly vulnerable, and indeed, is heavily reliant on government subsidies to do so—such limited visibility is unacceptable to the public.

4.61 Further, the committee notes evidence from the ATO that it has some concerns over the financing arrangements used by certain entities in the aged care industry, particularly the conditions of their related party financing arrangements.

4.62 In light of this, the committee considers that greater investigation of the tax and financial structures of aged care providers is warranted.

60 *Committee Hansard*, 4 September 2018, pp. 28–29.

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.

4.64 While not the focus of this inquiry, the committee acknowledges stakeholder concerns regarding quality of care by for-profit aged care providers, as well as calls to implement safeguards to ensure government subsidies are spent directly on care provision. The public justifiably expects assurance that government funding is appropriately allocated to the provision of quality care and, as such, concerns about getting value for money from government subsidies are inseparable from the personal safety of aged care consumers. The committee contends that more can be done to increase the transparency and comparability of information relating to quality of care across the aged care sector to support aged care consumers and their families.

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.