

# Coalition Senators Dissenting Report

## General comments

1.1 Coalition Senators emphasise that they share the committee's view on the importance of aged care, especially given its deeply personal nature. Moreover, quality aged care is something that almost all Australians depend on, either for themselves or for those close to them.

1.2 Coalition Senators commend the government for deciding to hold a Royal Commission into Aged Care Quality and Safety, in recognition of the systemic problems in our aged care sector.

## Conduct and Findings of inquiry

1.3 Coalition Senators note that this inquiry was announced in response to a report by the Tax Justice Network-Australia ('TJN-Aus'), which found no evidence of illegal tax avoidance. The report, commissioned by the Australian Nursing and Midwifery Federation (AMNF), was released on 2 May 2018, and this inquiry was subsequently opened on 10 May 2018 in response to this report.

1.4 Coalition Senators note that the decision to hold this inquiry was highly irresponsible. Instead of being a fact-finding mission about the financial and tax practices of for-profit aged care providers, this inquiry was conducted with a predetermined conclusion front of mind, but not the evidence to support that conclusion.

1.5 Indeed, the TJN-Aus report found that the companies in question paid corporate tax at a rate of 29.02 per cent and 29.78 per cent for financial years 2014–15 and 2015–16 respectively.<sup>1</sup> This is very close to the headline corporate tax rate in Australia of 30 per cent for companies with turnover greater than \$50 million (applicable to all the companies in question). More importantly, these companies paid tax at a significantly higher rate than the average corporate tax rate in Australia, which is just 17 per cent.<sup>2</sup>

1.6 Coalition Senators are concerned by the intentionally misleading representation of data in the TJN-Aus report, where there is an emphasis on the proportion of income that is taxable. This measure is irrelevant, both to accountants and the ATO, and is used to create the illusion of tax avoidance.

1.7 Of further concern is the criticism of companies such as Allity which have legitimately deducted interest expense and used carry-forward losses to decrease their taxable income. Deduction of interest expense and the ability to carry forward losses

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1 See Table 2, Tax Justice Network-Australia, *Tax avoidance by for-profit aged care companies: Profit shifting of public funds*, May 2018, p. 11.

2 Congress of the United States Congressional Budget Office, *International Comparisons of Corporate Income Tax Rates*, March 2017, p. 2, <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52419-internationaltaxratecomp.pdf> (accessed 27 November 2018).

are long standing features of our tax code and are in no way forms of illegitimate tax minimisation.

1.8 Coalition Senators are at pains to highlight that, despite receiving 32 public submissions and holding almost two full days of public hearings, this inquiry has made no substantive findings of systemic tax avoidance in this sector whatsoever. This inquiry was a waste of time and public money.

1.9 Coalition Senators believe that this inquiry was a 'Trojan horse': it was ostensibly an inquiry into the financial and tax practices of for-profit aged care providers, but the TJN-Aus report's 'findings' were used by the ANMF to advocate for mandated nurse-to-patient ratios. Any inquiry into such ratios has no place being conducted by the Senate Economics References Committee. Any investigation of matters relating to staffing ratios would be best examined by the Senate Community Affairs References Committee.

#### **Chapter 4—'Broader stakeholder views' (Recommendations 1–2)**

1.10 Coalition Senators wholeheartedly agree with the Chair's report's assertion that 'the public justifiably expects assurance that government funding is appropriately allocated to the provision of quality care'.

1.11 Coalition Senators agree with Recommendation 2 of the Chair's report, which aims to increase transparency of and comparability between aged care providers, so that families are more easily able to make informed choices about aged care.

#### **Chapter 5—'Transparency' (Recommendations 3–5)**

1.12 Coalition Senators note that the government has legislated to ensure that companies are required to provide the Australian Taxation Office with the information it requires to determine the right amount of tax that companies should pay.

1.13 Coalition Senators agree that transparency is important to ensure that companies pay the right amount of tax; however, a balance must be struck between taxpayer confidentiality and the need for any information made public to be well understood and relevant.

1.14 Coalition Senators note that the government is pressing ahead with tougher rules to prevent multinationals from avoiding tax, and will increase transparency and improve enforcement by giving tax whistle-blowers greater protection.

1.15 With reference to Recommendation 3, Coalition Senators note that the Australian Accounting Standards Board (AASB) is currently consulting on how to introduce the International Accounting Standards Board's revised Conceptual Framework for Financial Reporting into Australia and improve the consistency, comparability and transparency of financial reports prepared in accordance with the Australian Accounting Standards. The consultation paper addresses the special purpose financial statement problem caused by Australia's unique accounting requirements that allow entities to self-assess as 'non-reporting entities'.

1.16 Coalition Senators reject Recommendation 5 of the Chair's Report, which recommends that 'the Australian Government convert the existing voluntary Tax Transparency Code to a mandatory code for all large and medium corporations

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operating in Australia, or adopt other strong transparency measures like the publication of data from country-by-country reporting'.

1.17 The OECD's Base Erosion Profit Shifting (BEPS) recommendation on country-by-country reports explicitly states that jurisdictions should enforce legal protections of the confidentiality of the reported information.

1.18 Coalition Senators note that the purpose of country-by-country reporting is to increase revenue authorities' access to and understanding of the global tax position of multinational corporations. The country-by-country reporting program allows the tax administrations of participating countries, including Australia, to leverage the information contained in country-by-country reports to better identify potential tax risks—particularly in respect of transfer pricing matters.

1.19 The Australian Taxation Office condemns the proposal that country-by-country documentation be publicly released. The Commissioner of Taxation stated in his evidence before Senate Estimates on 25 October 2017:

The arrangement, through the OECD—we signed a multilateral agreement. That agreement is based on the information that is exchanged. The information is to be kept within the confines of the relevant tax authorities. If people call for this to be made public—no-one would give us anything, so there'd be nothing to make public. We've signed up to an international agreement, as with the others, to say that this will occur as long as the information is only provided to tax authorities.<sup>3</sup>

1.20 Coalition Senators note the immense value of this country-by-country reporting, and reaffirm its transformative power. As the Commissioner of the Australian Taxation Office noted in his evidence before the Senate Economics Legislation Committee at Senate Estimates on 25 October 2017:

...our people think this is of enormous benefit to get the level of detail that we've never had before in a proactive way...this is transformational in our international tax work.<sup>4</sup>

1.21 Coalition Senators note that Australia is bound by an international multilateral agreement. As noted by Mr Mark Konza, Deputy Commissioner, International, in evidence before the Economics Legislation Committee at Senate Estimates of 28 February 2018:

We're a party to a global deal where all the countries got together, examined the issue and agreed that these files would be transferred between the countries, as long as confidentiality was maintained. For Australia to move unilaterally to publish them would be to break a deal that we've made as a country.<sup>5</sup>

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3 Mr Chris Jordan, Commissioner of Taxation, *Committee Hansard*, 25 October 2017, p. 109.

4 Mr Chris Jordan, Commissioner of Taxation, *Committee Hansard*, 25 October 2017, p. 109.

5 Mr Mark Konza, Deputy Commissioner, International, *Committee Hansard*, 28 February 2018, p. 114.

1.22 Coalition Senators do not support public release of information gained through country-by-country reporting.

### **Review of National Aged Care Quality Regulatory Processes—'Carnell-Paterson Review'**

1.23 Coalition Senators note that the government has been consistently working to reform the aged care sector. On 1 May 2017, the Minister for Aged Care commissioned a Review of National Aged Care Quality Regulatory Processes (Carnell-Paterson Review).

1.24 Receiving over 400 submissions and conducting over 40 consultations, the review highlighted the need for better coordination in regulatory functions, expanded intelligence-gathering capacity and a better system for sharing information on provider performance with the public and aged care service providers, to promote service improvement.

### **Establishment of the Aged Care Quality and Safety Commission**

1.25 Coalition Senators commend the government for its work to establish the Aged Care Quality and Safety Commission, a one-stop-shop which will replace the existing Australian Aged Care Quality Agency and the Aged Care Complaints Commissioner from 1 January 2019. The establishment of the Commission forms an integral part of the government's response to the Carnell-Paterson Review.

### **Maintaining the integrity of the tax system**

1.26 Coalition Senators note that the Government has been working consistently to reform our tax system to ensure that it maintains a broad base, and is not susceptible to tax avoidance, particularly by multinational corporations.

1.27 Coalition Senators wish to draw attention to the 2018–19 Budget, in which the government announced further measures to ensure businesses are paying their fair share of tax. These include:

- Strengthening the rules that limit interest deductibility to stop companies shifting profits out of Australia, including requiring companies to align the value of their assets with the value included in their financial statements; and
- Broadening the scope of large multinationals being subject to the Multinational Anti-Avoidance Law (MAAL) and the Diverted Profits Tax (DPT).

1.28 Coalition Senators also note that the 2018–19 Budget strengthens the definitions of a large multinational (or Significant Global Entity) to ensure that it operates as intended. This will ensure that large multinational businesses that are ultimately owned by private entities or investment entities are not inadvertently excluded from the application of tax integrity rules such as the DPT and MAAL.

1.29 Furthermore, Coalition Senators note that the government is introducing tough new laws to prevent multinationals from avoiding tax by addressing hybrid mismatch arrangements.

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## **Concluding remarks**

1.30 Whatever mechanisms are identified to address these issues and concerns, consideration must be given to ensure that any requirement does not unreasonably add burden and red-tape to businesses, noting the majority of businesses are law-abiding corporations. Accordingly, any disclosure obligation built into the reporting process should consistently capture any forms of serious illegal behaviour, not just corporate tax avoidance in isolation. It would not be best regulatory practice to impose red-tape on law-abiding firms requiring them to establish internal processes to prevent remote likelihood events.

1.31 Coalition Senators stress the importance of care, choice and sustainability in the aged care sector. With an ageing population, more and more Australians will need to rely on the aged care sector to look after themselves and their loved ones. Australians will continue to rely on the government, not-for-profit and for-profit aged care sectors working in concert with one another.

1.32 As such, Coalition Senators warn that any punitive measures intended to impact one sector (e.g. the for-profit sector) may have unintended and potentially dire consequences for other sectors. Coalition Senators encourage caution.

**Senator Jane Hume**  
**Deputy Chair**

