

Australian Nursing And Midwifery Federation

**SUBMISSION TO THE SENATE  
INQUIRY INTO THE FINANCIAL AND  
TAX PRACTICES OF FOR-PROFIT  
AGED CARE COMPANIES (JUNE 2018)**



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## KEY MESSAGES AND RECOMMENDATIONS

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- The largest six for profit aged-care companies in Australia made \$210 million profit by using tax avoidance measures following receipt of over \$2.17 billion in taxpayer funded Government subsidies (2016-18).
- Australia has an ageing population with higher and more complex care needs. Demand for residential aged care is also increasing.
- More qualified and skilled staff in residential aged care are needed to provide safer environments and better care.
- Taxpayer and resident money should not be used by companies that use tax avoidance measures to make millions in profits instead of providing safe and effective care for older Australians in residential aged care.
- For-profit aged care companies should be prevented by the Government from avoiding paying taxes they are required to pay and must be held accountable to provide clear records of business dealings.
- To be truly publicly accountable, aged care companies should transparently report the staffing of all aged care facilities.

### The ANMF makes the following recommendations:

- Any company that receives Commonwealth funds over \$10 million in any year must file complete audited annual financial statements with 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.
- 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.





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## EXECUTIVE SUMMARY

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 are spent directly on their care. Further research commissioned by the ANMF demonstrated that large for-profit aged care companies, in particular, are, like many businesses using known loopholes and complex corporate structures and tactics to maximise earnings and profits and avoid tax, while taking advantage of generous, taxpayer funded government subsidises.

This research, *Tax avoidance by for-profit aged care companies: Profit shifting on public funds*, prepared by the Tax Justice Network – Australia, revealed these companies have the financial capacity to bridge the gap in care hours by employing more nurses and carers, but are instead placing their profits and shareholders before safe care for their residents who are also paying considerable amounts of money to access residential aged care.

The ANMF believes all elderly Australians have a right to safe, dignified care and that taxpayers' contributions to funding the companies of aged care must be directed to ensuring the provision of that care for every aged care resident.

This means that companies that receive millions of dollars via Australian Government subsidies should be required by law to meet higher standards of transparency in financial reporting. Simple and common-sense reforms are needed to ensure that these heavily subsidised companies which also charge residents and their families for their services, use tax-payer money first and foremost for the care of their residents. Proof of government funding being directly spent on the care of elderly residents needs to be mandated as a pre-requisite to receiving a subsidy.

Along with the lack of transparency regarding financial and business dealings, for-profit aged care companies are also not transparent regarding the staffing of their facilities; consumers, external organisations, and the Government have no way of knowing whether residential aged care facilities are staffed in a way that will keep them and their families safe.

### Recommendations

#### The ANMF makes the following recommendations:

- Any company that receives Commonwealth funds over \$10 million in any year must file complete audited annual financial statements with 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.
- 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.



## INTRODUCTION

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The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial, and political interests of more than 268,500 nurses, midwives, and carers across the country.

Our members work in the public and private health, aged care, and disability sectors across a wide variety of urban, rural and remote locations. We work our members to help them to improve their ability to deliver safe, best practice care in every one of these settings, to fulfil their professional goals, and to achieve a healthy work/life balance.

Our strong and growing membership and integrated role as both trade union and professional organisation provides us with a complete understanding of all aspects of the nursing and midwifery professions, and uniquely places us to defend and advance our professions.

Through our work with members we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

The ANMF has registered nurse, enrolled nurse, and carer members across the country employed in the aged care sector. We therefore have a keen interest in the quality of the operations of Australia's aged care sector and welcome the opportunity to provide feedback to the Inquiry into financial and tax practices of for-profit aged care companies.

Recent research commissioned by the ANMF demonstrated that aged care residents receive one and a half hours less care than they should, every day.<sup>1</sup> Yet there are no rules to ensure that government subsidies given to aged care companies is spent directly on their care. Further research commissioned by the ANMF demonstrated that large for-profit aged care companies are using known loopholes and complex corporate structures and tactics to maximise earnings and profits and avoid tax, while taking advantage of generous, taxpayer funded government subsidises.

This research, *Tax avoidance by for-profit aged care companies: Profit shifting on public funds*, prepared by the Tax Justice Network – Australia,<sup>2</sup> revealed these 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.

The ANMF believes every older Australian has a right to safe, dignified care and that taxpayers' contributions to funding aged care companies must be directed to ensuring the provision of that care to their residents.

This means that companies that receive millions of dollars via Australian Government subsidies should be required by law to meet higher standards of transparency in financial reporting and staffing. Proof of government funding being directly spent on the care of elderly residents needs to be mandated as a pre-requisite to receiving a subsidy.

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<sup>1</sup> Willis, E., Price, K., Bonner, R., et al. (2016) Meeting residents' care needs: A study of the requirement for nursing and personal care staff. Australian Nursing and Midwifery Federation.

<sup>2</sup> Ward, J. (2018) Tax Avoidance by For-Profit Aged Care Companies: Profit Shifting on Public Funds – Proposals for Transparency on Government Spending. Tax Justice Network Australia.



## USE OF TAX AVOIDANCE OR AGGRESSIVE TAX MINIMISATION STRATEGIES

The report commissioned by the ANMF, *Tax avoidance by for-profit aged care companies: Profit shifting on public funds*, prepared by the Tax Justice Network – Australia, tells us that like many companies, for-profit aged-care companies intentionally utilise known loopholes in Australia's taxation system such as stapled securities or related corporate structures and discretionary trusts to avoid paying tax.

In the most recent financial years, the six largest for-profit aged care companies (BUPA, Opal, Regis, Estia, Japara, and Allity) that operate over 20% of residential aged care beds in Australia received over \$2.17 billion AUD in government subsidies. This constituted 72% of their total revenue of over \$3 billion AUD and contributed to a combined annual profit of \$224 million AUD. They paid only around \$154 million AUD in Australian taxes in 2015-16. One company, Allity, did not pay any tax in 2015-16 or 2014-2015, while Opal paid no tax in 2014-2015.

For-profit aged-care companies engaging in these activities include: those owned by multi-national companies with Australian subsidiaries or other foreign investors such as BUPA, Opal, and Allity; Australian Stock Exchange (ASX) listed companies such as Regis, Estia, and Japara; and family owned companies such as Arcare, TriCare, and Signature. Each of these companies markets themselves using various imagery of caring, luxury, expertise, and corporate responsibility that appears to run counter to corporate practices designed to maximise company earnings and profit and limit tax liability.

The ANMF is concerned that this is occurring in the face of widespread and growing recognition of the crisis in Australia's aged care system, with known gaps in care hours and staffing levels, and its impact on the quality of care delivery.

The full report is attached at Appendix A for the information of the Committee.

### Key recommendations from the report:

- Any company that receives Commonwealth funds over \$10 million in any year must file complete audited annual financial statements with 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



# IMPACTS ON THE QUALITY OF SERVICE DELIVERY, THE SUSTAINABILITY OF THE SECTOR, OR VALUE FOR MONEY FOR GOVERNMENT

## Australia's ageing population: higher, more complex care needs

Australia has an ageing population with higher and more complex care needs. Older people are a growing proportion of Australia's population; in 2016, 15% (one in seven) Australians were aged 65 years or older. By 2056 this percentage is expected to grow to 22% (8.7 million).<sup>3</sup> The need for aged care services is increasing. Between 2015–2016 almost 214,000 people entered aged care in Australia. On average, older people in Australia spend three years in permanent residential care, just over two years in home care, and one and a half months in respite care.<sup>4</sup>

It is known that Australia's population is ageing, and that the acuity, complexity, and health and personal care needs of older Australians who enter residential aged care are increasing;<sup>5</sup>

- 31% of people in permanent residential care have high-care needs in all three domains (daily living, cognition and behaviour, and complex health care).
- 85% of residents have diagnoses of at least one mental health or behavioural condition with depression affecting 47% of residents.
- 52% of residents have a diagnosis of dementia.

## Increased demand for residential aged care

Demand for aged care is also growing proportionally; over the last five years, entries for respite care have increased by 19%, and permanent residential aged care entries have increased by 4%. Average times between assessment and admission increasing by 87% in 2015-16 compared with 2014-15. The age of elders entering residential aged care has also increased by 14% over the last 8 years, which is also higher than the ages of those using home care.<sup>6</sup>

## More qualified and skilled staff = safer environments and better care

There is substantial evidence that residential aged care in Australia faces reduced staffing levels, fewer licensed nursing staff, and increased acuity of residents (see Allard 2014; Chenoweth et al., 2014; Gao et al., 2014; Henderson et al., 2016a; King et al., 2013).<sup>1</sup> Recent budget decisions along with reductions in the number of suitably qualified aged care staff employed by companies has led to an increasingly critical situation where aged care residents are not receiving the care they need.

On 1 December 2015, the Australian Senate referred a Senate inquiry on to the Senate Community Affairs References Committee.<sup>7</sup> This inquiry resulted in a range of proposed recommendations including consideration of nursing requirements, publication of staff ratios, and measures to address inequitable pay for aged care staff. The inquiry highlighted the needs for; an integrated sector-wide workforce development strategy, improved training, further workforce and workplace regulation, and noted the specific challenges faced by the aged care workforce in remote communities.

<sup>3</sup> Australian Bureau of Statistics (ABS). (2013) Population projections, Australia, 2012 (base) to 2101. ABS cat. no. 3222.0. Canberra: ABS.

<sup>4</sup> Australian Institute of Health and Welfare (AIHW). (2018) Aged Care. Canberra: Government of Australia [Online]. Available: <https://www.aihw.gov.au/reports-statistics/health-welfare-services/aged-care/overview>

<sup>5</sup> Australian Institute of Health and Welfare (AIHW). (2018) Gen-aged care date: People using aged care. Canberra: Government of Australia [Online]. Available: <https://www.gen-agedcaredata.gov.au/Topics/People-using-aged-care>

<sup>6</sup> Australian Institute of Health and Welfare (AIHW). (2018) Gen-aged care date: Admissions into aged care. Canberra: Government of Australia [Online]. Available: <https://www.gen-agedcaredata.gov.au/Topics/Admissions-into-aged-care>



A key finding of the inquiry was the limited data available in relation to aged care and aged care service delivery. This lack of nationally agreed standards – such as transparency around the staffing of aged care facilities and the provision of a minimum standard workforce composition that can provide safe and effective care for residents – needs to be addressed and was recommended in 2017 as a result of the inquiry.

A study by the University of South Australia, Flinders University, and the ANMF South Australian Branch and was conducted to collect evidence relating for the development of a staffing methodology that incorporates both staffing numbers as well as skills mix in the context of residential aged care.<sup>8</sup>

The findings of the study support for the need for action to improve both staffing levels and skills mix in Australian residential aged care facilities.

#### Key findings from the report:

- Residential aged care facilities are admitting a greater number of residents with more complex needs, higher acuity, and who have shorter lengths of stay than previously.
- Residents with the highest nursing and personal care needs should receive five hours of care per day from nursing, care workers, and therapy staff, however only 2.84 hours was being provided. This is greater than the required 2.5 hours required by those with the lowest needs, but considerably lower than what is appropriate and safe for high-needs residents.
- An additional .5 hours should be added to direct care nursing and personal care for each resident to ensure enough time for staff to suitably attend to indirect care needs of each resident.
- Only 8.2% of 3,206 aged care staff survey respondents reported that staffing was “always adequate”, further higher resident numbers per staff member was associated with more frequently missed care.
- Inadequate staffing numbers was commonly identified by staff as the greatest reason for missed care, with type and frequency of missed care being consistent across 24 hours.
- Factors associated with time needed to deliver care were administrative burden (which impeded especially registered nurses’ ability to deliver direct care to residents), inadequate skills mix, size of facility, communication needs of residents and families, and working with residents with special needs (including those with dementia, receiving palliative care, and culturally and linguistically diverse people).
- Fixed staffing was associated with more missed care, while in contexts where staff were able to request more staff, less care was missed.

#### Key recommendations from the report:

- A staffing methodology should be adopted for residential aged care facilities
- The methodology should incorporate the time taken for both direct nursing and personal care tasks based on the assessed acuity of residents as well as the time for indirect nursing/personal care needs.
- A minimum average of 4.3 hours (four hours and 18 minutes) of care should be provided to each resident by staff with a skills mix of registered nurses (30%), enrolled nurses (20%), and personal care workers (50%)

<sup>7</sup> Parliament of Australia. (2017) Future of Australia’s aged care sector workforce. Commonwealth of Australia [Online]. Available: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/AgedCareWorkforce45/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AgedCareWorkforce45/Report)

<sup>8</sup> Willis, E., Price, K., Bonner, R., et al. (2016) Meeting residents’ care needs: A study of the requirement for nursing and personal care staff. Australian Nursing and Midwifery Federation.



Considering the findings of each of the reports summarised above, the ANMF has serious concerns regarding why gaps in care persist in the wake of the generous \$2.17 billion in annual tax payer funded subsidies which provided after tax profits of \$210 million to the six largest for-profit aged care companies.

## Inadequacies in staffing and service delivery in for-profit aged care

There is considerable and mounting evidence that staffing and service delivery in for-profit aged care facilities is unsafe, ineffective, and worsening. In a recent survey by the ANMF, 183 nurses (registered and enrolled) and personal care workers reported upon their experiences of working in for-profit aged care facilities (Allity, Arcare, Bupa, Estia, Japara, Opal, Regis, and TriCare). Responses were received from each State and Territory apart from the Northern Territory (ACT n= 1, NSW n = 22, QLD n = 86, SA n = 14, TAS n = 6, VIC n = 48, WA n = 6).

Out of the 183 respondents:

- **165 (90.2%) reported that current staffing levels at their facility were inadequate** (92% of personal care workers/ 89.6% of enrolled nurses/ 87.6% of registered nurses).
- **111 (60.6%) reported that the ratio of registered nurses to other staff was inadequate** (58.5% of personal care workers/ 60.7% of enrolled nurses/ 65.3% of registered nurses).
- **164 (89.6%) reported that the ratio of personal care workers to residents was inadequate** (97% of personal care workers/ 86% of enrolled nurses/ 79.6% of registered nurses).
- **171 (93.4%) reported that they were required to care for the same number of residents with fewer staff or hours** (92% of personal care workers/ 100% of enrolled nurses/ 94% of registered nurses).

Respondents were also asked what changes were happening at their facilities. Out of 183 respondents:

- 118 (64.5%) reported **roster changes were being implemented to reduce staff hours**
- 113 (61.7%) reported a **reduction in the number of personal care workers**
- 56 (30.6%) reported a **reduction in the number of registered nurses**
- 44 (24%) reported a **reduction in the number of enrolled nurses**
- 20 (11%) reported that **staff redundancies** were occurring

When asked what impact these changes had on care for residents, respondents reported that these changes had resulted in staff not having enough time for the following activities:

- 159 (87%) time to spend with residents and families
- 155 (84.5%) behaviour management/dementia management
- 153 (83.6%) good skin care
- 148 (80.9%) bathing/hygiene
- 143 (78.1%) continence management
- 138 (75.4%) pressure area care
- 136 (74.3%) feeding/nutrition
- 129 (70.5%) good pain management
- 130 (71%) palliative care
- 118 (64.4%) bed changes



These results reveal that most respondents feel that care for residents is suffering in several domains due to for-profit aged care companies' changes to staffing. Further published evidence is provided below.

Japara has introduced a policy; *Respecting Night Time for Residents* which calls for staff not to enter residents' rooms at night. This may increase the risk of preventable harm or death for residents who are unable to call for assistance, as staff will be discouraged from checking on residents who may fall, injure themselves, require pain medication, or experience a night-time exacerbation of illness. While this policy is phrased around promoting residents' privacy and comfort, it is likely that it is in fact a mechanism to manage insufficient overnight staffing.

Poor quality care from aged care companies linked to lack of spending on resident's care appears to extend to the provision of food and nutrition. It is well known that sufficient nutritional intake amongst older people is imperative to prevent malnutrition and frailty which can in turn lead to avoidable incidents such as falls, injury, illness and death.<sup>9</sup>

A recent study focussed upon the impact of funding cuts to the residential aged care industry in relation to trends in food expenditure and found that compared with the United States, United Kingdom, and Canada, Australian aged care facilities spend less on feeding residents.<sup>10</sup> Over 2015-16, data were compiled from 817 residential aged care facilities, representing 64,256 residential beds. On average, total spending on catering consumables (including cutlery/crockery, supplements, paper goods) was \$8.00 Australian Dollars (AUD) per resident per day. Spending was \$6.08 per resident per day for raw food and ingredients. Community dwelling adults spend approximately \$17.25 per day on food. The results indicated that in 56% of facilities there was around a 5% drop in the cost of food compared to the previous year and a 128% increase in the cost of supplements and meal replacements.

A Monash University study in 2017 found that despite billions of dollars of tax-payer funded government subsidies, a 400 percent increase in preventable deaths has occurred over the previous 10 years, with falls (82%), choking (8%), and suicide (4.5%) representing the main causes of death.<sup>11</sup> These results are particularly alarming when viewed alongside more recent reports, outlined above, that Jarpara is disincentivising staff from entering resident's rooms at night likely based upon insufficient staffing and that aged care staff report that for profit companies are reducing already insufficient and stretched staff numbers.

In 2015, an Australian study that confirmed earlier Australian findings by Ellis and Howe in 2010, found that residential aged care facilities operated by for-profit companies have a higher rate of a failure to meet standards than not-for-profit or government operated residential aged care services.<sup>12</sup> The study also found that the number of sanctions imposed in aged care did not appear to be diminishing. The authors recommended that structural characteristics of ownership and location of services, as well as the jurisdictional differences, need to be taken into consideration by Australian governments and key stakeholders when planning reforms to their funding and regulation.

Considerable evidence has also been presented from international observational studies, indicating that care delivered in for-profit facilities is inferior to care delivered in non-for-profit facilities. Both receive tax-payer funded subsidies.<sup>13</sup> The authors of a recent paper citing international evidence called upon decision-makers to take responsibility to ensure residential aged care public policy is consistent with the available evidence and least likely to cause harm.<sup>13</sup> We know that most of funding for-profit companies receive is from government taxpayer-funded sources, and the evidence suggests there is a greater likelihood of inferior care in this sector.

<sup>9</sup> Artaza-Artabe, L., Saez-Lopez, P. Sanchez-Hernandez, N. et al. (2016) The relationship between nutrition and frailty: Effects of protein intake, nutritional supplementation, vitamin D and exercise on muscle metabolism in the elderly. A systematic review. *Maturitas*. Nov. 93:89-99.

<sup>10</sup> Hugo, C., Isenring, E., Sinclair, D. et al. (2018) What does it cost to feed aged care residents in Australia? *Nutr Diet*:75(1):6-10.

<sup>11</sup> Ibrahim, J., Bugeja, L., Willoughby, M., et al. (2017) Premature deaths of nursing home residents: an epidemiological analysis. *Med J Aust*. 206(10):442-447.

<sup>12</sup> Baldwin, R., Chenoweth, L., dela Rama, M. et al. (2015) Quality failures in residential aged care in Australia: The relationship between structural factors and regulation imposed sanctions. *Australas J Ageing*. 34(4):E7-12.

<sup>13</sup> Ronald, L.A., McGregor, M.J., Harrington, C. et al. (2016) Observational Evidence of For-Profit Delivery and Inferior Nursing Home Care: When Is There Enough Evidence for Policy Change? *PLoS Med*. 13(4): e1001995.



## CONCLUDING REMARKS

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A considerable and growing body of research, both published and independent as well as commissioned by the ANMF demonstrates that there is a commensurately growing crisis in Australia's aged care system. Residents are adversely affected by staff shortages, missed care, and higher risk of harm and death. Residents are not receiving the care that they deserve and that they and the Australian public pays for via taxes. This is because there are no rules to ensure that government subsidies given to aged care companies are spent directly on resident care.

It is known that large, for-profit aged care companies use known loopholes and complex corporate structures and tactics to maximise earnings and profits and avoid tax, while taking advantage of generous, taxpayer funded government subsidises. These companies have the financial capacity to provide better care for their residents by employing more nurses and carers, but they are instead placing their profits and shareholders first.

The ANMF believes all older Australians have a right to safe, dignified care and that taxpayers' contributions to funding for-profit aged companies must be directed to ensuring the provision safe and effective care for every resident. The recommendations presented in this submission must be implemented to ensure quality of service delivery, the sustainability of the sector, and value for money for government.

### Recommendations from this submission

#### The ANMF makes the following recommendations:

- Any company that receives Commonwealth funds over \$10 million in any year must file complete audited annual financial statements with 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.
- 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.

