

Management Discipline Group
UTS Business School
PO BOX 123
Broadway NSW 2007
AUSTRALIA

E: marie.delarama@uts.edu.au

18 March 2021

Committee Secretary
Senate Standing Committee on Financial Affairs
PO BOX 6100
Parliament House
Canberra ACT 2600
E: community.affairs.sen@aph.gov.au

Dear Committee Secretary,

Supplementary Submission to the Aged Care Amendment (Financial Transparency) Bill 2020 in light of the Aged Care Royal Commission Report

Since my submission in June last year to this Committee, the Royal Commission into Aged Care “Quality and Safety” has handed down their recommendations with nary a word on financial transparency. Not only was the final report silent on financial transparency, it was also silent on the application of the UN’s OPCAT (Optional Protocol to the Convention Against Torture)¹ and protecting the human rights (not just “rights”) of aged care residents.

It is now up to this Committee to pass this bill and ensure there is financial transparency legislation in the new, proposed aged care legislation because the Royal Commissioners have failed to address these issues comprehensively in their recommendations.

¹ <https://www.ohchr.org/en/hrbodies/opcat/pages/opcatindex.aspx>

In addition to my recommendations in my June 2020 submission, I make four additional recommendations to the bill:

Recommendation 1: Conflict of interest clause that discloses the real and/or perceived conflict of an aged care provider who sits on a public, publicly-funded or government, group, body or committee. This clause may be added as part of or after section 9-2A.

Recommendation 2: Disclosure, rationale and deterrence of why an aged care provider or industry lobby group member should sit on a public, publicly-funded or government group, body or committee. This clause may be added as part of or after section 9-2A.

Recommendation 3: No member of an aged care government committee must hold more than one government, body or group committee membership. This clause may be added as part of or after section 9-2A.

Recommendation 4: Incorporate the ACT elder abuse legislation – the Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020² - in the financial transparency bill as condition of providers in receipt of taxpayer funds. This clause be a new addition to the bill.

Below are the different, continuous failures and events in aged care I note since my last submission and which support the recommendations I make above.

1.0 Failure of the Royal Commission on Financial Transparency

It is a truism that a Royal Commission is not there as a legislature replacement nor should it be seen to replace government and politicians in the exercise of their roles, responsibilities and duty of care to legislate and protect the community. A Royal Commission is there to interrogate issues – not to replace the government and its solons.

² <https://www.legislation.act.gov.au/View/a/2020-41/current/PDF/2020-41.PDF>

As the royal commissioners did not present a united front in their litany and voluminous recommendations – which by its complex nature mean they found the issues in aged care difficult – mainly presents the status quo in aged care, and demonstrates that reform remains challenging due to the conflicts and vested interests in the sector.

The Royal Commission has failed to mention any forms of financial transparency in its recommendations and nowhere does it mention transparency with the same rigour as in the proposed bill by Senator Griff.

In this sense, the Royal Commission is another expensive exercise in aged care that has failed to suggest structural changes in the sector that could have sought to fundamentally protect the human rights of residents. The neoliberal policy agenda since the 1997 Aged Care Act has continued with this Royal Commission.

The Royal Commission, instead, has proposed a new regulator that will be another failed regulator duplicating responsibilities that can be delivered by other government authorities. The overwhelming and overarching *raison d'être* of the recommendations are reactive solutions to problems and issues which have failed to interrogate the heart of the problems of the sector. The cosy interaction between industry, government and bureaucracy have seen a momentous, catastrophic, collusive and snowball failure in aged care. The solutions were sought by the Royal Commission from these same parties.

The capture of this Royal Commission by the same people who were architects of the problems in the sector was not sufficiently nor critically discussed during the hearings. It is appalling that only 17% of witnesses at the Royal Commission had direct experience of the sector. Of these 17%, half were home care witnesses:

“In total there were 97 days of hearing at which 641 witnesses gave evidence. While many of these witnesses were experts from a wide variety of professional backgrounds both here and overseas, there were also 113

direct experience witnesses, people living in residential aged care, people receiving home care, and their families.”³

Thus, after three years, less than 10% of witnesses at the Royal Commission had direct experience of residential aged care in this country.

It should come then as no surprise that this Royal Commission into aged care has been a failure and their recommendations are all about form and not substance. Their proposed regulator will follow in the footsteps of useless aged care regulators whose pinnacle actions at the regulatory pyramid are mere paper cuts. Thus, passing this bill will not replace the Royal Commission’s proposed new Aged Care Act but will return integrity, transparency and accountability to the legislation as it stands. There is also little political appetite to even consider a new Aged Care Act in the post-Royal Commission environment. There is no timetable to replace the Act and none that supports the recommended timetable from the Royal Commission.

Hence, it is critical that the Senate passes this bill and ensure financial transparency is at the core of any new Aged Care Act.

2.0 Failure of the aged care regulator: Aged Care Quality and Safety Commission (ACQSC)

The current aged care regulator ACQSC has failed in its role to protect the community and residents and has operated as a wasteful, useless government arm and an adjunct of the Health Department to ensure the status quo continues in aged care. It is catastrophic body in the aged care sector that hinders rather than protects the interests of the community. It is a regulator that protects industry interests rather than critically interrogating industry and its race-to-the-bottom standards. The “quality and safety” in its title is oxymoronic - it means the opposite of what it does rather than what it is.

³ The Aged Care Royal Commission into Quality and Safety, Day 98, Transcript of proceedings, 22 October 2020, Sydney

As a case in point on how it protects industry interests, ACQSC made this boast that 99% of providers were prepared in March 2020 to face COVID-19:

“It is very encouraging that 99% of services reported having an infection control outbreak management plan that covers the key areas for COVID-19 preparedness.”⁴

The pandemic was the perfect storm that magnified the dysfunctional regulation of a sector that had woefully inadequate skilled staff, training and equipment.

As stated in the interim report of the Senate COVID Committee, its failure during COVID-19 was woefully magnificent in its catastrophic responsibility of the sector:

“Box 4.5: The Aged Care Quality and Safety Commission (ACQSC) failed to use all available regulatory powers to ensure the safety of aged care residents. The ACQSC placed too much reliance on self-assessment surveys by aged care service providers to gauge the sector's preparedness for keeping elderly Australians safe. ACQSC assessors perform essential work and should not have suspended all unannounced visits during the pandemic.”⁵

It also failed to heed ANY lessons from the disasters at Earle Haven in Queensland and Newmarch before the disaster in privately-run aged care in Victoria:

“4.70 The disastrous outcomes within the aged care sector during COVID-19, in combination with the high number of complaints and the lack of regulatory action taken by the ACQSC suggests it has failed to avoid repeating past mistakes. It was only last year that the Earle Haven Inquiry

⁴ <https://www.agedcarequality.gov.au/news/newsletter/aged-care-quality-bulletin-15-march-2020>
accessed 8 February 2021

⁵ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19/COVID19/Interim_Report/section?id=committees%2freportsen%2f024513%2f73415 accessed 18 March 2021

found the ACQSC had missed early warning signs and failed to engage critically with information received. This appears to have played out once again during COVID-19 with terrible consequences for aged care residents and their families.”⁶

If this publicly-funded and public regulator does not represent the public interests, then what does it stand for? Industry has its many lobby groups to protect their interests. So why must its narrative be part and parcel of this public regulator?

ACQSC’s ineffectual Janet Anderson also follows in the footsteps of previous aged care failed regulators from AACQA and ACSAA and whose principals I have mentioned in my previous submission (attached).

3.0 Failure of the Federal Government

The Federal Government through the Department of Health and the Ministers who have responsibilities over the aged care portfolio namely Richard Colbeck and Greg Hunt, have also failed the sector.

Nearly 75% of Australia’s COVID deaths have occurred in residential aged care – the highest proportion by sector in the OECD.⁷ This figure reduces us as a nation.

The health response by the Federal Government was the subject of the interim report of the Australian Senate COVID commission interim report. The Committee expressed its disappointment that:

“rather than accept its mistakes in leading the health response and keeping aged care residents safe, the government has repeatedly sought to avoid taking responsibility and shift blame onto the states.”⁸

⁶ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19/COVID19/Interim_Report/section?id=committees%2freportsen%2f024513%2f73415 accessed 18 March 2021

⁷ Australian Royal Commission into Aged Care Quality and Safety (2020) *Aged Care and COVID-19: A Special Report*, <https://agedcare.royalcommission.gov.au/sites/default/files/2020-10/aged-care-and-COVID-19-a-special-report.pdf> accessed 8 February 2020

If the Federal government cannot handle the responsibility of aged care, then the Commonwealth must start planning to return the responsibility of aged care back to the States. The glacial and anaemic response by the Commonwealth has cost the lives and reduced the human rights of too many Australians.

Indeed, Senator Concetta Ferravanti-Wells has requested that her own government “to have the political fortitude to fix aged care.”⁹



Source: Twitter @senator_cfw, March 17th 2021

And it is up to this Senate Committee to fix this sector by passing this bill as a first step towards meaningful and tangible reform in aged care.

3.0 The aged care status quo: Regis and its CEO Linda Mellors on an aged care government committee

In my submission last June, I pointed out that the rent-seekers in the aged care have made a fortune such as the founders of Regis which I reproduce below:

⁸ Australian Senate Select Committee (2020) First Interim Report, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19/COVID19/Interim_Report/section?id=committees%2freportsen%2f024513%2f73930
⁹ https://twitter.com/senator_cfw/status/1371834785463689222?s=10

Regis' owners are now in the BRW Rich List as a result of the company's listing in 2014 on the Australian Stock Exchange (ASX).⁵

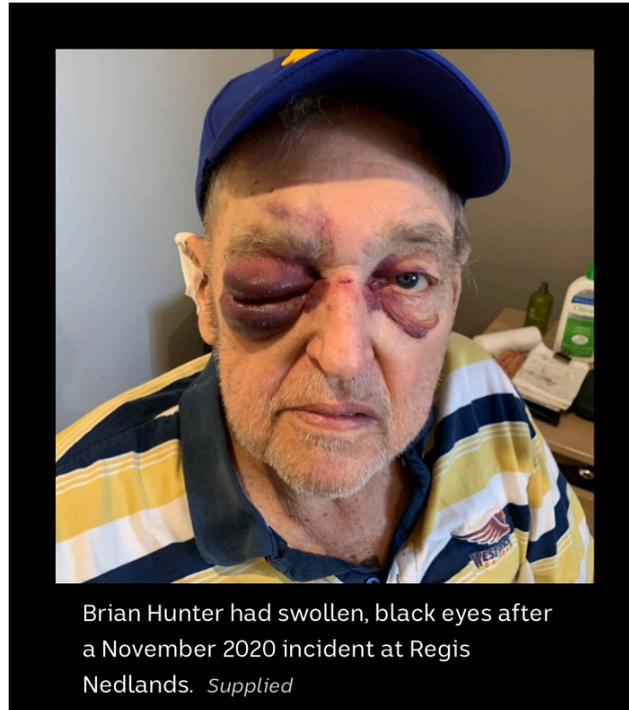


Source: ANMF

Since that submission, Regis has had another incident in their Nedlands facility with cases of neglect. I reproduce photos (WARNING) below from the reporting by this country's foremost aged care journalist, ABC's Anne Connolly on Regis Nedlands¹⁰:



¹⁰ Connolly, A., Dredge, S. and Sinclair, H. (2021) Burnt, stepped on, and left in bed to rot, *ABC 730 Report*, February 26 <https://www.abc.net.au/news/2021-02-25/regis-nedlands-nursing-home-residents-sunburnt-and-stepped-on/13179166>



Source: ABC

The Nedlands facility is not an isolated incident for the company.

Below is the Google Maps I am working on which documents incidents in Australian aged care for the past decade outside of COVID-19 (I have also generated a separate COVID map to disclose which aged care facilities had a COVID outbreak due to the Health Department’s opacity until September 2020).

So far, I have made nearly 300 entries mapping aged care facilities that have had incidents reported in both primary (coroners' reports, regulatory and accreditation actions and sanctions) and secondary sources (falls, pressure sores, maggots, assaults, starvation, neglect etc.).



Source: Author's

In this map, Regis has been documented as having issues in their home at Yeronga, QLD in 2017 where 7 died after a fatal gastro outbreak¹¹, at Wynnum QLD in 2017¹² (a gastro outbreak which did not result in any deaths), at Port Coogee in WA in 2019¹³ (ACQSC action over personal and clinical care standards), Kuluin in QLD in 2018 (ACQSC over non-compliance of 5 standards)¹⁴ and Regis Nedlands in 2019 where the ACQSC forewarned issues over failing to meet current standards¹⁵ which has since snowballed to the 2021 incident documented above.

Given that Regis is a publicly-listed company and does not suffer from the perennial financial constraints ascribed by many aged care providers (or so we

¹¹ <https://www.qt.com.au/news/seven-dead-aged-care-home-amid-claims-gastro-outbr/3215401/>
¹² <https://www.qt.com.au/news/seven-dead-aged-care-home-amid-claims-gastro-outbr/3215401/>
¹³ <https://agedcarequality.govcms.gov.au/sites/default/files/media/Residential%20services%20serious%20risk%20decisions%20register%20-%20September%202019.pdf>
¹⁴ <https://www.myagedcare.gov.au/non-compliance-checker/details-provider/1-DS-63/1-EK-9020>
¹⁵ <https://agedcarequality.govcms.gov.au/sites/default/files/media/Residential%20services%20serious%20risk%20decisions%20register%20-%20November%202019.pdf>

are led to believe by the industry lobby groups), the company’s failure to ensure all their facilities are up to a minimum standard that meets community expectations demonstrates the current haphazard and lacklustre appetite to regulate these entities.

It was then a surprise to learn that the CEO of Regis, Linda Mellors, also sits on an Australian Government health committee: the aged care advisory group (see below). Apart from a lobby group CEO, OPAN’s Craig Gear and a consultant, Alan Lilly, the majority of members of this committee are from government health departments across the Commonwealth and State level.

Professor Michael Kidd AM (Chair)	Deputy Chief Medical Officer, Department of Health
Dr Anne-Marie Boxall	Chief Allied Health Officer, Department of Health
Ms Andrea Coote	Chair, Aged Care Quality and Safety Advisory Council
Dr Paresh Dawda	Principal and Director Prestantia Health
Dr Danielle Esler	Deputy Chief Health Officer, Northern Territory
Mr Craig Gear OAM	Chief Executive Officer, Older Persons Advocacy Network (OPAN)
Professor Lyn Gilbert AO	Honorary Professor, Senior Researcher, Marie Bashir Institute for Infectious Disease and Medical Research, University of Sydney
Dr Catherine Kelaher	Principal Medical Adviser, Department of Health
Adjunct Professor Alan Lilly	Principal, Acumenity
Professor Alison McMillan	Chief Nursing and Midwifery Officer, Department of Health
Dr Linda Mellors	Managing Director and Chief Executive Officer, Regis Aged Care Pty Ltd
Associate Professor Michael Murray AM	Head of Geriatric Medicine at Austin Health
Adjunct Clinical Associate Professor Mary O’Reilly	Medical Director, Patient Safety and Clinical Excellence, and Deputy Chief Medical Officer, Austin Health
Professor Nicola Spurrier	Chief Public Health Officer, South Australia
Professor Craig Whitehead	Director, Rehabilitation and Aged Care, Southern Adelaide Local Health Network
Dr Melanie Wroth	Chief Clinical Advisor, Aged Care Quality and Safety Commission

Source: Health Department – Aged Care Advisory Group Committee Members

<https://www.health.gov.au/committees-and-groups/aged-care-advisory-group>

Mellors is in a privileged position as this group advises the Australian Health Protection Principal Committee. I raise questions whether her role in this committee was an obstacle to the public disclosure of aged care facilities that had COVID last year in Victorian aged care given her company had outbreaks at their

Brighton (fatal), Cranbourne, Fawkner (fatal) and Macleod facilities.¹⁶ I note what the then Chief Medical Officer Brendan Murphy had stated about their failure to disclose to the Senate COVID Committee (and under questioning from the Committee chair Senator Katy Gallagher in May 2020) was primarily to protect the reputational risk of providers at the expense of the community interest, residents and aged care employees during a once in a century pandemic:

“While state and territory health authorities may choose to publicly disclose the names of aged care services that have known cases of COVID-19 from a broader public health perspective, the Department would prefer not to name further facilities due to the impact public disclosure has on services, their staff and residents due to media exposure as well as their continued ability to operate.”¹⁷

The conflicts of interest in aged care must be addressed concurrently as part of the financial transparency reasoning behind this bill. For far too long this sector has operated in the darkness with decisions being made with neither accountability nor responsibility. For a sector that receives increasing billions in taxpayer funds, this is unsupportable and is indicative of tolerating and encouraging poor governance practices to flourish in the darkness. Therefore I make the following the recommendation:

Recommendation 1: Conflict of interest clause that discloses the real and/or perceived conflict of an aged care provider who sits on a public, publicly-funded or government, group, body or committee. This clause may be added part of or after section 9-2A.

¹⁶ 12th March 2021 aged care COVID-19 update

<https://www.health.gov.au/sites/default/files/documents/2021/03/covid-19-outbreaks-in-australian-residential-aged-care-facilities-12-march-2021.pdf>

¹⁷ Question Subject: List of residential aged care facilities with positive tested COVID-19 cases. PDR Number: IQ20-000107, Parliamentary Inquiry Question on Notice, Department of Health, Senate Select Committee on COVID-19: Australia’s Government Response to the COVID-19 Pandemic, 6 May 2020

Until their house in order, Regis and other aged care providers should not hold the privilege of sitting on an aged care government committee, group or body and the information perks that come with holding such a position such as accessing asymmetrical information, and withholding public interest information. The appearance of conflicts in aged care is plenty, but the ramifications of the substance of such conflicts are enormous.

I therefore make further recommendations in the bill that aged care government committees must not have the presence of industry nor donors as sitting members of any public or government body, group or committee. Reiteratively, regulatory capture is present in aged care and they are privy to asymmetrical information which gives them advanced warning of regulation which may prove detrimental to their business model.

Recommendation 2: Disclosure, rationale and deterrence of why an aged care provider or industry lobby group member should sit on a public, publicly-funded or government group, body or committee. This clause may be added part of or after section 9-2A.

Additionally, a member of an aged care government committee must not hold multiple committee memberships. Multiple memberships of aged care committees reifies the status quo in aged care and that these same voices are heard and heard again crystallising the echo chamber in Canberra when it comes to aged care policy formulation and implementation.

Recommendation 3: No member of an aged care government committee must hold more than one government, body or group committee membership. This clause may be added as part of or after section 9-2A.

4.0 Rentseeking and COVID-19: The case of Heritage Care

The failure of the Commonwealth Government to adequately deal with the aged care outbreak in Victoria demonstrates that despite an additional funding of

\$1.6B to the sector during the financial year 2020-21¹⁸, there is no financial transparency on how this was expended.

One of the few highlights from the Victorian COVID-19 aged care outbreak was that there was no fatal COVID-19 outbreak at Victorian government-owned aged care facilities. While there were COVID-19 outbreaks in 7 government-owned aged care facilities (Bill Crawford, P.S. Hobson Nursing Home, Talbot Place, Grant Lodge, Westernport Nursing Home, Sheridan Aged Care and Boyne Russell Nursing Home)¹⁹, there were no fatalities related to COVID-19 in government-owned facilities primarily due to the requirement that they have proper staffing ratios including qualified staff.

In contrast, privately-owned residential aged care in Victoria suffered from the regulatory neglect and lack of transparency – financial, staffing, quality and other information – of the current Commonwealth regime.

One of these privately run Victorian aged care operators is Heritage Care which owned Epping Gardens. There was a fatality rate of 37% at Epping Gardens.²⁰ Of 103 residents that caught COVID-19, 38 residents in Epping Gardens died.

The founder and co-owner of Heritage Care is Peter Arvanitis.²¹ He has form in the sector as he had also founded Estia Health, another ASX-listed aged care company with substantial ownership from Kerry Stokes.

During the outbreak, the previously reported lifestyle of Arvanitis and his wife in Vogue Living found a new audience.

¹⁸ <https://www.health.gov.au/sites/default/files/documents/2020/10/budget-2020-21-aged-care-covid-19-pandemic-response.pdf>

¹⁹ <https://agedcarecrisis.com/covid19-aged-care>

²⁰ <https://agedcarecrisis.com/covid19-aged-care>

²¹ <https://greekherald.com.au/news/australia/aged-care-mogul-peter-arvanitis-facing-legal-action-leaves-for-greece-with-wife/>



Areti Arvanitis with her Maserati pictured in 2014. Photo: Chris Hopkins

Source: Domain²²



7/11

In her dressing room, Areti wears Gucci; Canapé Alpha sofa by Pierre Paulin; curtains made in Dedar velvet fabric from South Pacific Fabrics; joinery by LWW Interiors; silk-viscose carpet from RC+D.

Source: Vogue Living²³

Meanwhile, during the height of the COVID-19 outbreak at Epping Gardens, the distress of employees, residents and their loved ones were desperate – while the lack of staffing and qualified staff is a familiar case in aged care, COVID19 exposed these weaknesses a hundred fold:

²² <https://www.domain.com.au/news/toorak-mansion-of-arvanitis-family-listed-with-a-12-95-million-price-guide-955927/>

²³ Kiely, A. (2020) House tour: The Melbourne mansion with Gucci in almost every room, 6 March, <https://www.vogue.com.au/vogue-living/interiors/house-tour-the-melbourne-mansion-with-gucci-in-almost-every-room/>

"...Donna O'Brien was called on Sunday, July 26, by a geriatrician at Epping Gardens and told her mother was one of the residents whose positive results had come back that day. "He thought she wasn't looking too good. 'But if you want, we can give her some tablets and leave her here for a while?'" he said. "I put the phone down. I made one call back, as usual, nobody answered, and then I called the ambulance myself...."

"To get a phone call to say she's dehydrated, fluid in her lungs, heart not functioning properly, with a cough and came in with a temperature," Suzanne Agnello said....Sam Agnello told Four Corners: "To this day, my sister and I have not had a call from the management of Epping Gardens to say, 'Condolences for your mum' And I think that's utterly disgusting and appalling."²⁴

Since the deregulation of the sector, instead of investing taxpayer money into staffing, and improving the care and quality of life outcomes for their residents, some providers have only been interested in investing in themselves.

The case of Heritage Care and COVID19 demonstrates the ineffectual regulation and the lack of accountability in the sector. During the height of the pandemic, the Commonwealth government was exposed as inept, unable and unwilling to fix the deeply embedded systemic problems in the sector. Arvanitis and his wife have since absconded unable to deal with the public opprobrium and the legal action his company faces.

This case is one of many cases in aged care that show the need to have this financial transparency bill pass and become legislation if we are ever to hold to account providers who receive substantial taxpayer funds.

²⁴ Curnow, S., March, S. and Selvaratnam, N. (2020) Epping Gardens aged care coronavirus outbreak led to desperation behind the scenes, records reveal, *Four Corners*, 2 September <https://www.abc.net.au/news/2020-08-18/epping-gardens-aged-care-coronavirus-outbreak-in-melbourne/12551524>

5.0 TriCare and its offshore accounts

Another reason why we must have financial transparency legislation in aged care is due to the offshore dealing accounts of some providers. I've mentioned in my previous submission the work completed by Jason Ward on the tax arrangements by some providers.

One of these providers is TriCare. TriCare 's Toowoomba facility came to public scrutiny in August last year when one of its aged care residents, Kylie Kilroy, revealed the lack of staffing and quality of care she received at the facility to journalist Anthony Klan.²⁵ TriCare is owned by the O'Shea family and are also political donors.

In a follow-up article by Klan published in March 2021, he stated that TriCare has now received an additional \$25M from the Federal Government's Department of Health despite reducing their beds. While TriCare operates in Queensland, their parent company TriCare Group Pty Ltd is located in Norfolk Island. As Klan points out, the \$103M of aged care taxpayer funds received by TriCare is "150% of Norfolk Island's entire GDP."²⁶

This case, like Heritage Care, demonstrates the dire need to have accountability on the public funding of aged care providers. It is hard to see any end to the gross pilfering of government funds if there is neither transparency nor accountability to how such public funds are expended.

6.0 Fifty sexual assaults in aged care. Every week.

The need for financial transparency in aged care is only tempered by the fact that there are 50 sexual assaults in aged care every week²⁷ and nothing has changed to address this gross abuse of some of our most vulnerable Australians.

²⁵ Klan, A. (2020) Nursing home hell: A heartbreaking dispatch from the trenches, 3 August <https://www.theklaxon.com.au/home/nursing-home-hell-heartbreaking-dispatches-from-the-front-line>

²⁶ Klan, A. (2021) Tax haven aged care giant TriCare handed mystery \$25M taxpayer 'bonus', 10 March <https://www.theklaxon.com.au/home/mystery-25m-bonus-for-tax-haven-aged-care-giant>

²⁷ Branley, A. and Lohberger, L. (2020) Aged care royal commission hears there are around 50 sexual assaults a week of residents nationally, *ABC News*, 22 October

In a research paper commissioned by the Royal Commission, they note the following sobering statistics in the sector:

“Around 39.2 per cent of people living in Australian aged care facilities experience elder abuse in the form of neglect, emotional abuse or physical abuse according to experimental estimates...Of these three types of elder abuse, the most prevalent was estimated to be neglect (experienced by 30.8 per cent of people), followed by emotional abuse (22.6 per cent) and physical abuse (5 per cent).”²⁸

Despite these alarming figures, the Royal Commission failed to recommend any criminal penalties when it comes to elder abuse nor make any recommendations to involve the Australian Federal Police when such abuse occurs in residential aged care which is under Commonwealth jurisdiction.

The AFP has jurisdiction over offences committed against children²⁹ yet when it comes to elder abuse, they are missing as part of the Federal regulatory institutional infrastructure to deal with offences committed in a sector that has Commonwealth oversight.

While I understand this Committee is primarily focused on financial transparency in aged care, the Committee must also see this bill in the context of abuse and lack of accountability beyond the financial measurements.

Providers need to be accountable for the crimes that are committed in their facilities - facilities that receive substantial taxpayer funding to ensure that they look after our most vulnerable people.

<https://www.abc.net.au/news/2020-10-22/aged-care-royal-comm-told-of-50-sex-assaults-a-week/12801806>

²⁸ <https://agedcare.royalcommission.gov.au/news-and-media/elder-abuse-australian-aged-care-facilities>

²⁹ <https://www.afp.gov.au/what-we-do/crime-types/child-protection>

Throwing more money at the sector with no accountability will yield the same results of the past two decades. 50 sexual assaults in aged care a week is damaging, morally reprehensible and shows the successive and systemic failure to treat older Australians with a modicum of human rights.

Therefore, I recommend - where the Royal Commission has failed to do so - that this Committee look at adding a human rights and elder abuse clause in the financial transparency bill as a condition of providers receiving taxpayer funding. There must be redress if a crime is committed in a Federally-funded residential aged care facility.

I recommend that this bill incorporate elder abuse legislation as set out in the Australian Capital Territory:

Recommendation 4: Incorporate the ACT elder abuse legislation – the Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020³⁰ - in the financial transparency bill as a condition of providers in receipt of taxpayer funds.

7.0 Concluding remarks

The issues I have outlined in my previous submission still stand. In the post-Royal Commission climate, it is business as usual in aged care with Federal regulation (or lack thereof) being the Achilles heel in our system.

I support the bill and it must be passed in order for meaningful reform on the Federal level. There is nothing in the Royal Commission recommendations that will prevent or counteract the bill's passage.

A new aged care act must include financial transparency. This bill fits rights in. But until such a time that proposed new act passes, this bill must be incorporated in the existing legislation.

³⁰ <https://www.legislation.act.gov.au/View/a/2020-41/current/PDF/2020-41.PDF>

The ball is in the court of our Federal politicians, especially our Senators, to bring a sliver of sunshine into the heart of darkness of Australian aged care.

Yours sincerely,

Dr. Marie dela Rama

Dr. Marie dela Rama

Attached (previous submission in June 2020)

Management Discipline Group
UTS Business School
PO BOX 123 Broadway
NSW 2007
E: marie.delarama@uts.edu.au

24 June 2020

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
community.affairs.sen@aph.gov.au

Dear Committee Secretary,

RE: Aged Care Legislation Amendment (Financial Transparency) Bill 2020

I welcome this bill from Senator Stirling Griff and sincerely hope it passes and becomes legislation.

This bill amends the unwieldy **Aged Care Act** that has so far reflected the financial interests of aged care providers and their lobby groups over the human rights concerns of the community. I propose amendments and additions to **section 9-2A** of the bill.

This bill also recognises that some aged care providers have entered the sector attracted by the investments returns underwritten by government funding and placing such returns ahead of care¹. Accordingly, this bill also amends the Corporations Act. I propose an extra consideration to **section 296** of the **Corporations Act**.

¹ dela Rama, M., Edwards, M., Dalton, B., and Green, J. (2010) Honourable intentions? Analysing the interests of private equity in the aged care sector, *Third Sector Review*, 16 (3): 63-82

1.0 Cognitive dissonance

It is hard not to consider the many oxymoronic, cognitively dissonant issues currently present in the sector.

This year, \$21.6B of taxpayer money is being spent on the sector, “an increase of more than 50% since 2014.”² Despite this extraordinary doubling of public funds towards the sector in 6 years, there is 0% transparency, accountability and disclosure on how these funds are by spent, how much of it is being spent on direct care, and where does the spending go.

Enough is enough. Let the shine light on the sector and bring accountability to the sector. It’s time to publicly open the books on every aged care provider in receipt of public funds. As long as public monies are received by providers, public accountability on the expenditure of these public funds is fundamental for the community to ever have the confidence that taxpayer money is going to where it is intended. This is the integral string attached to public money: public accountability for private expenditure.

With reports that more than half of the sector’s providers are in the red³, surely fundamental accountability questions must be asked: Where - exactly - is \$21.6 billion of public money going? How much of the \$21.6 billion of taxpayer money is being funnelled towards rent-seeking behaviour instead of direct care? What can the Federal Government do to ensure public funds are reoriented towards direct care efforts?

2.0 Providers who are not struggling

In contrast to the majority of providers who struggle, there are providers who are not financially struggling at all. In fact, they are raking it.

In two reports published by the Tax Justice Network Australia⁴, the following providers have been named as restructuring their companies so that their tax obligations are minimised: Aegis, Arcare, Allity, BUPA, Estia, Hall and Prior, Japara, McKenzie Aged Care, Opal, Regis and TriCare.

It would be appropriate that the passing of this bill creates an onus on the part of these providers that they take as much active interest in the care of their residents, as they do over their tax obligations.

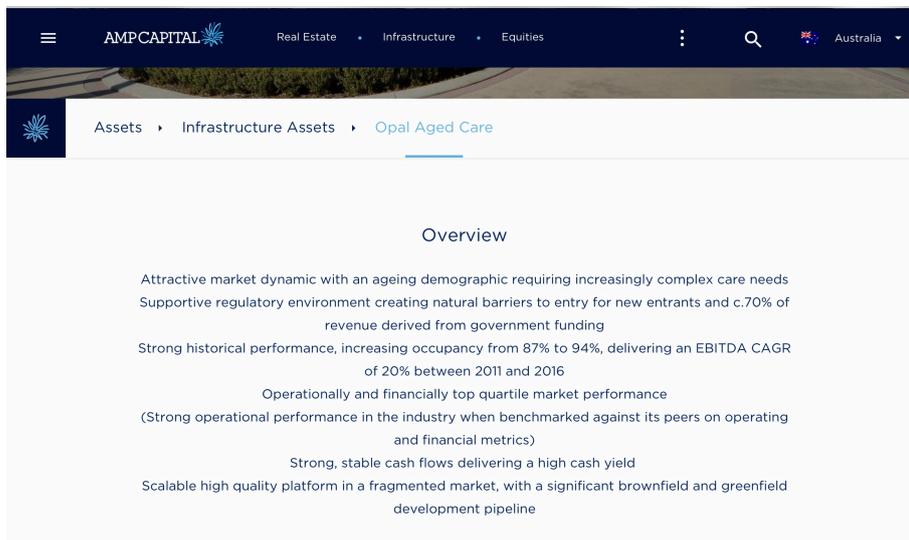
² <https://budget.gov.au/2019-20/content/services.htm>

³ [https://www.stewartbrown.com.au/images/documents/StewartBrown - Aged Care Financial Performance Survey Sector March 2020.pdf](https://www.stewartbrown.com.au/images/documents/StewartBrown_-_Aged_Care_Financial_Performance_Survey_Sector_March_2020.pdf)

⁴See their two reports: 1) Tax Avoidance by For-Profit Aged Care Companies: Profit Shifting on Public Funds (2018) <http://www.taxjustice.org.au/fpagedcaxreport> and All in the Family: Tax and Financial Practices of Australia’s Largest Family-Owned Companies (2019) http://anmf.org.au/documents/reports/All_In_The_Family_Report.pdf

Below are more examples of how these providers are not struggling.

AMP Capital-owned Opal Aged Care boasted fantastic annual investment returns of 20% between 2011 and 2016 due to 70% of its revenue being derived from government funding:



Source: AMP Capital webpage screenshot

Regis' owners are now in the BRW Rich List as a result of the company's listing in 2014 on the Australian Stock Exchange (ASX).⁵



Source: ANMF

⁵ Stensholt, J. (2015) Regis Healthcare float a rich one for Dorman and Roberts, *Australian Financial Review*, 29 May <https://www.afr.com/companies/healthcare-and-fitness/regis-healthcare-float-a-rich-one-for-dorman-and-roberts-20150527-ghak03>

Furthermore, the owners of Estia and Aveo with their luxury cars and vanity plates show they will not be going hungry anytime soon.

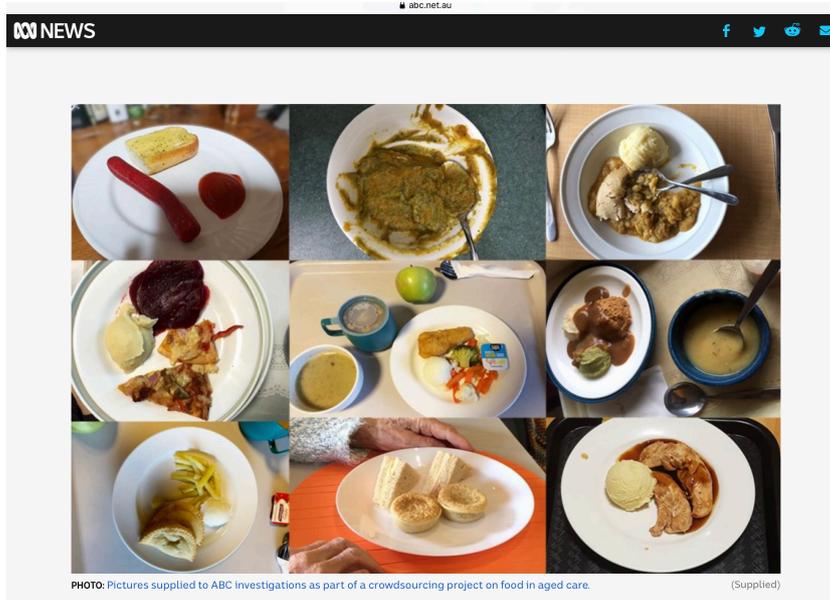


Source: Twitter @michaelwestbiz



Source: Twitter @msfridayology

In contrast, the average food budget of an aged care facility is around \$6.08 a day, and accordingly, the quality of the food budget is reflected thus:



Source: ABC (2018)⁶

The Department of Health has now also engaged the services of Aspen Medical (\$15.6M)⁷ and Mable (\$5.71M)⁸ to deal with the COVID pandemic in aged care. Yet no public accountability exists on how, where, when, what Mable (backed by perennial rich lister James Packer’s Ellerston Capital)⁹ and Aspen Medical (headed by Dr Andrew Walker named as having British Virgin Island interests¹⁰) have expended their public funds and to what purpose.

Nevertheless, aged care as a business stream has been the dominant discourse since the 1997 Aged Care Act while the care of our most vulnerable is a distant concern. For example, the aged

⁶ Blumer, C. (2018) Would you eat this? The real food inside aged care facilities in Australia, *ABC Investigations*, 18 September <https://www.abc.net.au/news/2018-09-17/food-in-aged-care/10212880?nw=0>

⁷ <https://www.tenders.gov.au/Cn/Show/82c055d5-a3bb-4449-95dc-33211f672e93>

⁸ <https://www.tenders.gov.au/Cn/Show/aef414b3-f4c7-4196-b19c-5afbdcc23e40>

⁹ Morton, R. (2020) Government’s \$5.8M aged care app offers no duty of care, *Saturday Paper*, 23 May <https://www.thesaturdaypaper.com.au/news/politics/2020/05/23/exclusive-govs-58m-aged-care-app-offers-no-duty-care/15901560009868>

¹⁰ Butler, B. (2014) Doctor accused of hiding \$15M worth of shares, *Sydney Morning Herald*, 16 April <https://www.smh.com.au/business/doctor-accused-of-hiding-15m-worth-of-shares-20140416-36r6b.html>

care lobby group LASA, lobbied against the introduction of air-conditioning into aged care facilities¹¹ while no doubt these same lobbyists enjoy this comfort in the offices they are housed.

This must change and this bill will be a step in the right direction on the arduous journey ahead of long awaited reform of the sector that truly reflects how we ought to care for older Australians.

3.0 Specific comments relating to sections of the bill

Below are my comments and queries with respect to the proposed sections of the bill.

3.1 Aged Care Act (1997)

With respect to the proposed **section 9-2A**:

-In **subsection 2**, I suggest the addition of the following clauses (l) and (m):

(l) to disclose how much tax was paid in a financial year to the Australian Taxation Office (ATO). This recognises that some for-profit providers have not been meeting their tax obligations (see 2.0) and have actively avoided tax. This would also be a reminder to not-for-profit providers of the tax concessions they are given in order that they meet their mission and organisational obligations.

(m) to disclose how much political donations they have made to a political party in a financial year as providers BUPA and Hall and Prior have done in the past. Indeed, it should be noted that the previous BUPA Chair was former Health Minister Nicola Roxon, while Shadow Aged Care Julie Collins met up with Hall and Prior principal Graeme Prior¹² in a trip which does not appear on her registry of interests.¹³ Mr. Prior also sits on the newly formed Aged Care Industry Workforce Council¹⁴ (see screenshots which follow this paragraph). This proposed clause recognises and discloses any competing interests and obligations that some legislators might have towards their political donors. The overriding concern in the Aged Care Act - as the legislation's title suggests - must be the care of the elderly and not the financial interest of either donor and/or recipient. This clause may be considered as part of clause (j) *under the total amount of non-operational costs* but for readability and transparency purposes, it may be more appropriate to have this as a separate clause in the Act.

¹¹ Connolly, A. (2019) No mandatory air conditioning for aged care residents after pressure from lobby group, ABC News, 18 February <https://www.abc.net.au/news/2019-02-18/air-conditioning-unlikely-in-final-aged-care-regulations/10820210>

¹² <https://hallprior.com.au/news/2018/09/hon-julie-collins-mp-meets-with-hall-prior-management-team/>

¹³ https://www.aph.gov.au/Senators_and_Members/Members/Register

¹⁴ <https://www.acnc.gov.au/charity/32558b15301edfa5776ab1651a76ff1e#people>

Name Listed on Returns

BUPA Australia
 Level 4, AMP Centre, 50 Bridge Street
 SYDNEY NSW 2000

Has submitted the following returns:

There have been no returns reported

Is named on the following returns:

Found 13 returns

Page size:

Name ▲	Return Type	Financial Period
Australian Labor Party (ALP)	Political Party	2017-18
Australian Labor Party (ALP)	Political Party	2013-14
Australian Labor Party (ALP)	Political Party	2012-13
Australian Labor Party (ALP)	Political Party	2009-2010
Liberal Party of Australia	Political Party	2017-18
Liberal Party of Australia	Political Party	2016-17
Liberal Party of Australia	Political Party	2012-13

Source: Australian Electoral Commission

DEMOCRACY FOR SALE

THE PROBLEM THE PARTIES THE INDUSTRIES OUR PROJECT

Show 50 entries Search:

CATEGORY ▲	DONOR ▲	VALUE ▼	PARTY (GROUPED) ▲	PERIOD ▲	RECEIPT TYPE ▲
▼ CATEGORY	Prior	From	▼ PARTY (GROUPED)	▼ PERIOD	
		To			
Social Service Organisations	Hall and Prior	\$27,500	Labor Party	2015-2016	Other Receipt
Social Service Organisations	Hall and Prior	\$27,500	Labor Party	2016-2017	Other Receipt
Pharmaceutical/Health	Hall & Prior Aged Care Organisation	\$2,200	Labor Party	2012-2013	Other Receipt
Pharmaceutical/Health	Hall & Prior Aged Care Organisation	\$1,650	Labor Party	2012-2013	Other Receipt
Social Service Organisations	Hall and Prior	\$1,500	Labor Party	2016-2017	Other Receipt
		Σ = 60,350			

Source: Democracy for Sale website¹⁵

¹⁵ <http://www.democracyforsale.net>

HOME | NEWS | 2018 | SEPTEMBER | HON. JULIE COLLINS MP MEETS WITH HALL & PRIOR MANAGEMENT TEAM

Hon. Julie Collins MP meets with Hall & Prior management team

05 September 2018



Chief Executive Officer Graeme Prior and the Hon. Julie Collins MP.

Hall & Prior Chief Executive Officer Graeme Prior and members of our management team recently hosted the Hon. Julie Collins MP, Shadow Minister for Ageing and Mental Health. They met on Monday, August 27 at their West Perth head office for a briefing on issues affecting aged care.

Source: Hall and Prior (2018)¹⁶

-In **subsection 3 (c)**, in addition to personal care attendants, the terms assistants in nursing (AiN) and nursing support workers (nsw) be added as these terms are interchangeable and they must be covered accordingly.

3.2 Corporations Act (2001)

With respect to the proposed amendment after **section 296(1b)**, I propose another part of this Act be amended or added with respect to the revolving door phenomenon that has now become embedded and systemic in aged care. While there are continuous disclosure obligations under **sections 674-675**¹⁷, these only apply to listed companies.

I propose that this Committee consider the inclusion of a revolving door transparency continuous disclosure obligation either in this Act or as an additional section in the Aged Care Act. As Australia is a signatory to the UN Convention Against Corruption¹⁸ (UNCAC), this convention needs to be operationalised in either Act. As UNCAC Article 18, Trading in Influence, states:

¹⁶ <https://hallprior.com.au/news/2018/09/hon-julie-collins-mp-meets-with-hall-prior-management-team/>

¹⁷ http://www5.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s674.html http://www5.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s675.html

¹⁸ https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

“Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.”

The reason for this proposed consideration is explained in the next section.

4.0 The revolving door¹⁹

The term revolving door when applied to politics denotes the movement of senior people between the public and the private sectors and vice versa. There are legitimate reasons for such two way movement of senior personnel: it brings real world, commercial experience, and specialised expertise and knowledge to bear on the processes of improved public policy and decision making in the public interest; and, it informs business about the workings of governments.

However, such movements can provide opportunities for vested private interests to advance their own agendas at the expense of the general public good; at a minimum they can foster perceptions of close and cosy relationships between business and politics against the public interest.

Revolving door politics presents problems for modern democracies that go largely unrecognised, unaccounted for and un-policed, and as a result can profoundly undermine representative democracy and the base of trust upon which it is built.

The traditional legal and criminal conceptions of corruption are premised around the taking of personal benefits in the form of gifts, payments and bribes in return for exercising public duties in the interests of the private parties making the payments and that will gain commercially from the officer's decision at the expense of the public good.

¹⁹ This section is from the following book chapter: dela Rama, M., Klettner, A. & Lester, M. (2018) *Cui Bono? Corruptors and corruptees - Corporate governance and corruption: the roles and responsibilities of the private sector* in Ellis, J. (ed.) *Corruption, society and the law*. London: Routledge

The difficulty arising with revolving door behaviour is that the conflict of interest that arises is typically displaced in time between the exercise of the influence and the payment of the benefit. The 'decision' or 'favour' done in public office is likely to be rewarded once they leave their position in the public sector and takes up lucrative employment in the private sector, typically with an organisation with whom the office holder was dealing in their public office.

Receiving direct *quid pro quo* payment upfront while in office and then conferring political favour can be more readily associated for purposes of prosecution than the *ex-post* benefit rewarded and accepted after the favour. The conflict of interest only becomes apparent after they leave office.

In the UK, political revolving door movements are monitored by the Advisory Committee on Business Appointments (ACOBA) - a non-departmental public body under the aegis of the Cabinet Office. The UK National Audit Office noted there were four risks with the revolving door: abuse of office, undue influence, profiteering and switching sides.

In France, the revolving door is addressed with Article 432-13 in the penal code preventing the movement for three years, punishable by three years' imprisonment and a fine of €200,000. The caveat or what makes the French experience different is that public servants do not need to resign from their positions if they wish to run as an elected official. Indeed, over half of lower house representatives come from the public sector.

4.1 The revolving door in Australian aged care

There have been many instances of the revolving door in Australian aged care. They raise concerns on how those in charge of setting out aged care policy and regulation are now in the organisations that they used to have oversight. The blurring of the roles and responsibilities between the regulator and regulated has distorted how the sector is regulated and which aged care organisations - due to their deep links to the political class and the bureaucracy - currently benefit from such policies. The most prominent are mentioned below.

Former politicians

Nicola Roxon, former Health Minister - previously Chair of BUPA

Mike Baird, former NSW Premier - currently Chair of HammondCare

Former senior public servants

Mark Brandon, former CEO, Commonwealth's Aged Care Standards and Accreditation Agency (ACSAA) - currently Chief Policy and Regulatory Officer, Estia.

Jane Halton, former Secretary to the Commonwealth's Finance and Health Departments - currently Chair of COTA; Director at Crown Casino, ANZ Bank, Vault Services, Clayton Utz; National Covid Coordination Commission Member.

Nick Mersiades, former Head of Ageing and Aged Care Division of Commonwealth's Health Department - currently Director of Catholic Health Australia, Deputy Chair Federal Aged Care Financing Authority (ACFA), Federal Aged Care Sector Committee Member

Nick Ryan, former CEO, Commonwealth's Australian Aged Care Quality Agency (AACQA) - currently CEO of Lutheran Services.

Peter Shergold, former Secretary, Department of Prime Minister and Cabinet; former Chair, Commonwealth's Aged Care Sector Committee - currently Chair of Opal Aged Care.

Until a National Integrity Commission is established which covers the revolving door across all sectors, a separate consideration must be enacted for the sector which must include temporal and exclusionary limits. This is integral in the context of financial transparency in the sector.

Cui bono? The ties that favour the politically well-connected in aged care have contributed and continues to contribute to the distorted access and influence certain providers have, as reflected in the current rendering and concerns of the Aged Care Act. These ties also contribute to the uneven playing field of the sector. \$21.6B of taxpayer money must be accounted for - if not to care, to where?

The considerations in this bill must outweigh any concerns the aged care vested interests and their lobby groups have over shining light on their practices that have had such a detrimental effect on the care of older Australians.

I look forward to hearing from the Committee in due course.

Kind regards,

Dr. Marie dela Rama

Dr. Marie dela Rama