AGED CARE INDUSTRY ASSOCIATION

Submission to Senate Economics Reference Committee Inquiry into

Financial and tax practices of for-profit aged care providers

June 2018

The Aged Care Industry Association (ACIA) is a national peak body representing both private and not-for-profit aged care providers. We represent and advocate for our members to governments and other stakeholders; we promote best practice in aged care; we provide education and training services; we support information sharing and cooperation across the industry.

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KEY POINTS

1. Aged care taxation should be subject to the same scrutiny as other comparable areas of the economy.
2. Private aged care providers should face the same accountability and scrutiny as other providers.
3. Australian aged care will require significant investment over the next decade – which, on an historical basis, has been supplied by the private sector.
4. Aged care operators have been placed under financial pressure by government policy changes in recent years.
5. Attacks on private aged care providers will make it more difficult to attract sufficient private investment to support provision of care to older Australians.
6. Tax is payable on profit, not on revenue. Any analysis based solely on revenue is guesswork.
7. Aged care providers supply care to older Australians, whose costs are subsidised by government. This is conceptually different from direct expenditure by government.
8. Aged care providers are subject to significant financial oversight already.
9. An absence of evidence is not a sufficient basis on which to assert tax avoidance.

INTRODUCTION

The aged care sector is similar to many other areas of the Australian economy – governments contribute subsidies and regulate activities, and a range of organisations respond to these structures if they believe they can run a sustainable business. Consequently, there is no reason why the practices of private aged care providers should be scrutinised at higher levels than those of businesses in any other sector.

The evidence provided by the Quality Agency and its predecessor organisation regarding aged care quality[1] does not identify ownership type as a risk factor for aged care quality. There is also no reason, therefore, why private aged care providers should be singled out for greater scrutiny than other providers, including government.

It is concerning that private aged care providers have been subject to significant unjustified criticism in recent times. Private aged care providers make up a significant proportion of Australia's aged care system – according to Department of Health figures, at 30 June 2017, private providers supplied 79,758 residential aged care places (39% of the national total). In addition, private investors contribute significant amounts of funding to support maintenance, refurbishment and expansion of the residential aged care capital stock.

[1] E.g., The Aged Care Standards and Accreditation Agency Ltd *The Standard Special Edition 2010*, p.12
http://www.aacqa.gov.au/about-us/copy_of_Specialedition10yearsaccreditation.pdf/view

The Aged Care Financing Authority indicates that:

> the Department [of Health] estimates that the investment requirement of the sector over the next decade to be in the order of $35 billion[2]

Given this projected need for investment, the contribution of private investors and private operators in supporting Australia's aged care system will only grow more important over time.

ACIA is concerned that policy changes in recent years have already significantly reduced the attractiveness of aged care as an investment destination; ongoing attacks on private aged care operators may give rise to investor hesitation regarding aged care.

Without private capital, the necessary investment to support the future of Australia's aged care will not be possible.

ACIA supports a strong and sustainable aged care system that provides the high-quality services older Australians require. This can only be achieved by recognising and valuing the contribution of all aged care providers regardless of their ownership.

[2] Aged Care Financing Authority 2017, *Fifth Report on the Funding and Financing of the Aged Care Sector*

RESPONSE TO TERMS OF REFERENCE

1. ***the use of any tax avoidance or aggressive tax minimisation strategies***
2. ***the associated impacts on the quality of service delivery, the sustainability of the sector, or value for money for government***

There is no evidence of tax avoidance or 'aggressive tax minimisation' strategies by aged care providers.

Legal tax minimisation strategies are a normal and acceptable element of business operations – this is recognised by the Australian Taxation Office. Businesses should not be penalised for managing their financial affairs.

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

More broadly, it is not clear why residential aged care should be singled out from the multiple other areas of the Australian economy in which governments contribute subsidies and regulate activities (for example, childcare) or make major acquisitions (such as defence), and a range of organisations respond to these structures if they believe they can run a sustainable business.

Consequently, there is no basis to conclude that tax management arrangements acceptable in other contexts are not acceptable in aged care.

In contrast with recent inquiries into industries such as banking or superannuation, the Productivity Commission's review of the aged care industry in 2011 did not suggest that poor outcomes were widespread, or that care recipients were being disadvantaged.

In addition, private aged care providers are subject to a range of additional tax payments that do not apply to NFP providers. These include:

a. Payroll tax
b. Land tax
c. Council rates

Furthermore, NFP providers access a range of salary benefits for staff, reducing staffing costs compared to private providers. It is perverse that private providers, who already pay taxes to which NFP providers are not subject, should be questioned on the basis of unproven assertions that they are avoiding tax.

It is instructive to note that ACFA reports that "there is some representation of all ownership types in each quartile [of financial performance]"[3]. The report further notes that government providers had the strongest financial performance in the top quartile[4].

[3] ACFA 2017, p.104

These findings underline the reality that ownership type is not the primary driver of financial performance, and the need to avoid simplistic and incorrect assumptions regarding providers' operations.

Care and financial outcomes are not driven by ownership type; a focus on a particular class of providers is unhelpful and misleading.

Payroll Tax Supplement abolition

Prior to 1 January 2015, the Commonwealth Government paid a Payroll Tax Supplement to aged care providers to promote competitive neutrality across provider types[5]. Abolition of this supplement directly impacted the ability of private aged care providers to provide aged care services. Figures from the Commonwealth indicated this represented a funding cut to private providers of $652 million over four years.

Financial sustainability of aged care providers

The aged care industry has been repeatedly hit by government funding cuts, leading to a steady decline in financial performance. This has reached the point where a recent survey of aged care providers' financial performance found that 41% of providers were loss making. This covers all types of ownership structure[6].

The Aged Care Financing Authority found that, in 2015-16, the aged care sector as a whole only made a profit due to the contribution of "Other income"[7].

3. the adequacy of accountability and probity mechanisms for the expenditure of taxpayer money

Accountability for expenditure of taxpayer money must be correctly understood. Aged care providers are accountable for the outcomes they achieve for residents. The Commonwealth is not the sole contributor to the cost of care and services. That cost is shared between the Commonwealth (70%) and the consumer (30%).

Aged care subsidies are not grants, subject to repayment or reporting. Similar activities occur in many areas of the economy. Should all suppliers to government be subject to increased financial reporting obligations, government is likely to find that fewer organisations are willing to act as suppliers. This reduction in competition, in turn, may well lead to increased pricing – and reduced value for taxpayer money.

Aged care providers are subject to a financial accountability regime administered by the Department of Health as well as oversight by the Australian Taxation Office. Companies are

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[4] ACFA 2017

[5] NFP providers were eligible for Payroll Tax Supplement to the extent that their inputs included payroll tax costs.

[6] Stewart Brown 2018, 'Aged Care Financial Performance Survey: Residential Care Report – December 2017'

[7] "Other income" includes additional service fees; net interest earned; donations and contributions; capital grant; and, income from the sale of assets.

subject to regulation by the Australian Securities and Investment Commission. In addition, listed companies are subject to ASX oversight.

Given these layers of oversight regarding adherence to taxation obligations – ACIA believes that existing accountability and probity mechanisms applying to aged care providers are more than adequate.

Perhaps more important than financial oversight are considerations of care outcomes and care quality. Providers are accountable for care quality outcomes both through the provisions of the *Aged Care Act 1997* and through responding to consumer expectations.

4. whether current practices meet public expectations

It is impossible to conclude what constitutes 'public expectations'. ACIA view is that consumers most likely want access to a residential aged care bed when they need it and in a location that suits them. ACIA believes that taxation practices of our members are in accordance with a public expectation that they are lawful.

5. any other related matters

Foreign investment

The Tax Justice Network notes that some large Australian aged care companies are foreign-owned (e.g., Bupa). We do note however, that the organisations listed in the Tax Justice report represent 20% of all aged care beds in Australia. An understanding of the ownership of all private providers brings out that they are owned by Australians. Examination of the annual reports of the listed entities reveal that their shareholders include organisations in which 'ordinary Australians' are shareholders and are beneficiaries of profits generated by their employer.

In this context, it is also worth noting that employees of private aged care providers cannot access the range of salary sacrifice benefits available to employees of NFP providers. This has the effect of increasing tax revenue from the operations of private providers – for any given level of employee payments, private provider employees pay more tax.

Tax payable on profit, not on revenue

Conflating revenue with profit as a basis to allege under-payment of taxation is deeply misleading. Tax is payable on profit; to claim revenue provides any indication at all of taxable income is simply flawed. Taking figures from the Aged Care Financing Authority, the aged care sector in 2015-16 attracted revenues of $17.4 billion. However, the sector incurred expenses of $16.3 billion[8]; any claim to determine taxable income based only on revenue can be no better than guesswork. Approximately 65% of the aged care sector's expenses is made up of salaries - which then circulate through the economy (as well as attracting tax payments by employees).

Incidence of taxation

Owners of Australian companies, unless they are tax-exempt, are subject to taxation on any distributions from companies they own. Australian residents also receive franking credits for company tax paid.

These factors mean that reductions in corporate taxation are unlikely to prove significantly advantageous to company owners: if reduced taxation flows through into increased dividend payments, these payments will be subject to the income tax obligations of the individuals receiving them. In addition, the reduced corporate tax paid will reduce the franking credits received by Australian resident shareholders. Consequently, reduced payment of company tax is unlikely to advantage owners of Australian companies.

Company borrowings also contribute to lenders' profits, on which tax is paid. This underscores the need to consider taxation from a broad perspective – company tax payments by private providers are only one of many avenues through which companies' operations generate tax revenue.

Ownership type does not predict quality of care outcomes

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

Conclusion

As discussed above, ACIA believes to focus either on private aged care providers more on than NFP aged care providers, or on the tax practices of private aged care providers more than on the tax practices of businesses in other sectors, does not contribute to provision of high-quality care and services to older Australians.

If tax avoidance is occurring, it should be addressed; organisations who are committed to providing high-quality care to older Australians in an increasingly challenging financial environment should not be implied to be engaging in illegal or unethical activity in the absence of evidence.

[8] ACFA 2017