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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.

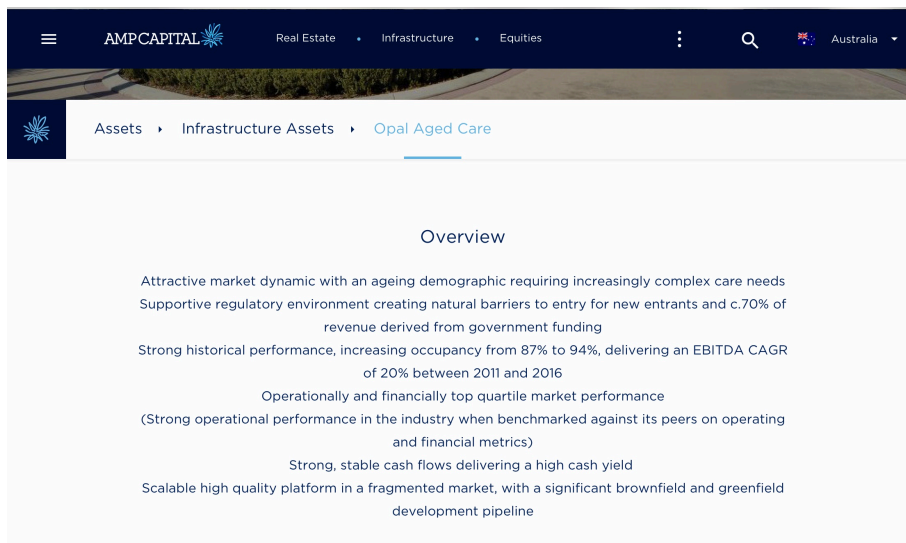
² <https://budget.gov.au/2019-20/content/services.htm>

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](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.

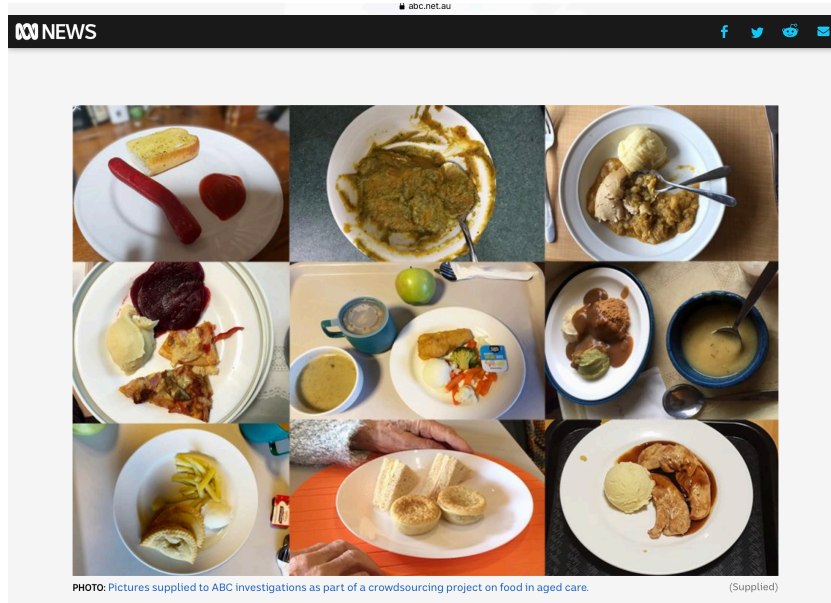


Source: Twitter @michaelwestbiz



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: 20

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 Search:

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CATEGORY ▲	DONOR ▲	VALUE ▼	PARTY (GROUPED) ▲	PERIOD ▲	RECEIPT TYPE ▲
▼ CATEGORY	Prior	From To	▼ PARTY (GROUPED)	▼ PERIOD	
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