Australian Nursing And Midwifery Federation

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

Australian Nursing & Midwifery Federation

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KEY MESSAGES AND RECOMMENDATIONS

- **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

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.[1] 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,[2] 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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[1] 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.
[2] 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).[3] 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.[4]

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;[5]

- 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.[6]

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).[1] 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.[7] 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.

[3] Australian Bureau of Statistics (ABS). (2013) Population projections, Australia, 2012 (base) to 2101. ABS cat. no. 3222.0. Canberra: ABS.
[4] 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
[5] 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
[6] 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.[8]

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%)

[7] 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
[8] 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.[9]

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.[10] 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.[11] 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.[12] 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.[13] 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.[13] 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.

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[9] 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.
[10] 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.
[11] 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.
[12] 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.
[13] 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

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.

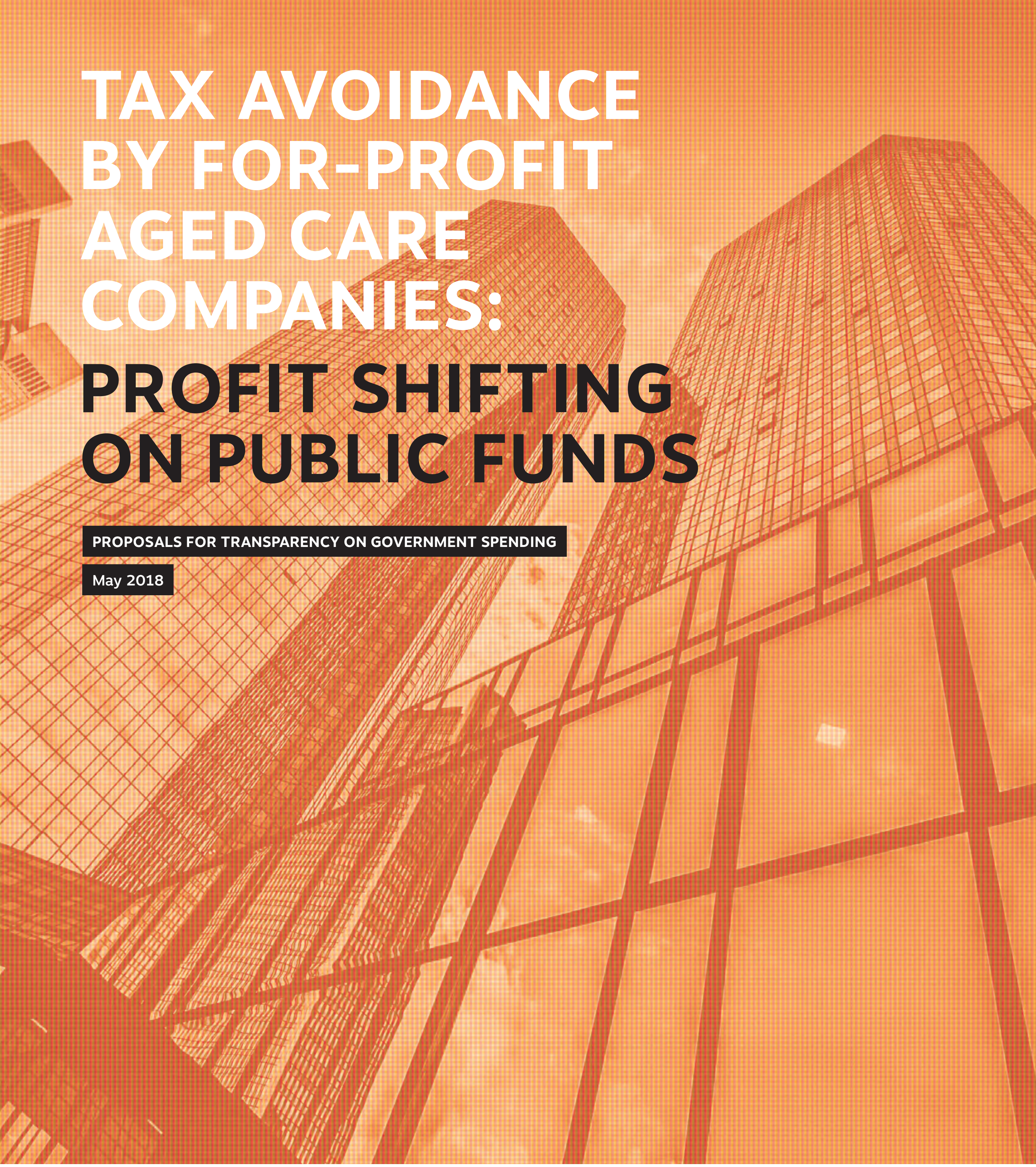
The ANMF believes all older Australians have a right to safe, dignified care and that taxpayers' contributions to funding for-profit aged companies must be directed to ensuring the provision safe and effective care for every resident. The recommendations presented in this submission must be implemented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

ATTACHMENT A



TAX AVOIDANCE BY FOR-PROFIT AGED CARE COMPANIES:

PROFIT SHIFTING ON PUBLIC FUNDS

PROPOSALS FOR TRANSPARENCY ON GOVERNMENT SPENDING

May 2018

A Tax Justice Network – Australia Report

"Any company that receives tens of millions of dollars in annual government subsidies must be required to be transparent and held publicly accountable."

TAX AVOIDANCE BY FOR-PROFIT AGED CARE COMPANIES: PROFIT SHIFTING ON PUBLIC FUNDS

Proposals for Transparency on Government Spending

tax justice network – Australia

A Tax Justice Network – Australia Report

Prepared by Jason Ward
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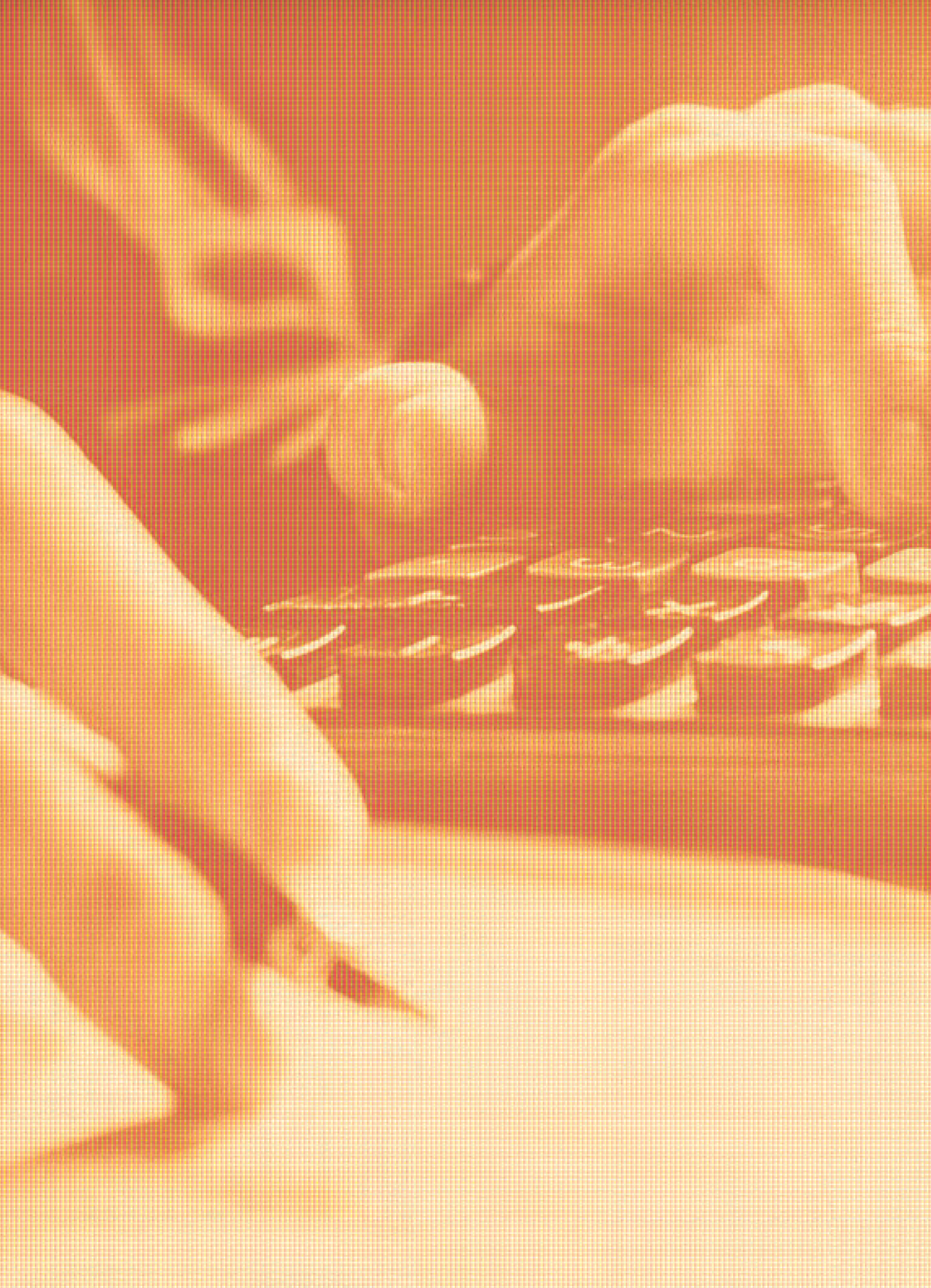
Australian Nursing & Midwifery Federation

Commissioned by the Australian Nursing & Midwifery Federation (ANMF)

With over 268,500 members, the ANMF is the industrial and professional voice for nurses, midwives and assistants in nursing in Australia.



BACKGROUND ON THE TAX JUSTICE NETWORK AUSTRALIA

The Tax Justice Network - Australia is the Australian branch of the Tax Justice Network (TJN) and the Global Alliance for Tax Justice. TJN is an independent organisation launched in the British Houses of Parliament in March 2003. It is dedicated to high-level research, analysis and advocacy in the field of tax and regulation. TJN works to map, analyse and explain the role of taxation and the harmful impacts of tax evasion, tax avoidance, tax competition and tax havens. TJN's objective is to encourage reform at the global and national levels.

The Tax Justice Network aims to:

- promote sustainable finance for development;
- promote international co-operation on tax regulation and tax related crimes;
- oppose tax havens;
- promote progressive and equitable taxation;
- promote corporate responsibility and accountability; and
- promote tax compliance and a culture of responsibility.

In Australia the current members of TJN-Aus are:

- ActionAid Australia
- Aid/Watch
- Anglican Overseas Aid
- Australian Council for International Development
- Australian Council of Social Service
- Australian Council of Trade Unions
- Australian Education Union
- Australian Manufacturing Workers Union
- Australian Nursing & Midwifery Federation
- Australian Services Union
- Australian Workers Union, Victoria Branch
- Baptist World Aid
- Caritas Australia
- Community and Public Service Union
- Electrical Trades Union, Victoria Branch
- Evatt Foundation
- Friends of the Earth
- GetUp!
- Greenpeace Australia Pacific
- International Transport Workers' Federation
- Jubilee Australia
- Maritime Union of Australia
- National Tertiary Education Union
- New South Wales Nurses and Midwives' Association
- Oaktree Foundation
- Oxfam Australia
- Save the Children Australia
- Save Our Schools
- SEARCH Foundation
- SJ around the Bay
- Social Policy Connections
- TEAR Australia
- The Australia Institute
- Union Aid Abroad – APHEDA
- United Voice
- Uniting Church in Australia, Synod of Victoria and Tasmania
- UnitingWorld
- Victorian Trades Hall Council
- World Vision Australia

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Tax Avoidance by For-Profit Aged Care Companies: Profit Shifting on Public Funds Proposals for Transparency on Government Spending

"COMPANIES PROVIDING SOCIAL SERVICES AND BENEFITING FROM TAX-PAYER FUNDED GOVERNMENT SUBSIDIES ARE USING COMPLEX TAX AVOIDANCE SCHEMES."

1. EXECUTIVE SUMMARY

Background

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).[1] 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.[2] The Australian tax payer, via the Commonwealth Government contributes around 75% of the expenditure in aged care in Australia, which is around 96% of the total funding on aged care from Commonwealth and State Governments. Government recurrent spending on aged care services in Australia was $17.4 billion Australian dollars (AUD) in 2016-2017, with residential aged care services accounting for 69.3% ($12.1 billion AUD).[3] Some of this funding is provided as subsidies to aged care provider companies including those that operate for profit.

In 2018 the Australian Nursing and Midwifery Federation (ANMF), Australia's largest national professional and industrial nursing and midwifery organisation with over 268,500 members, commissioned the Tax Justice Network - Australia to analyse possible tax avoidance by for-profit aged care companies and to provide recommendations for improving transparency on Government spending on for-profit aged care.

Key points from the report

- By number of beds, not-for-profit providers are the largest aged care provider group in Australia (52% in 2013-2014), however there has been a rapid growth in the size and spread of for-profit companies; Bupa, Opal, Regis and Estia are the largest aged care providers nationally. If Japara and Allity are included, these 6 for-profit companies operate over 20% of residential aged care beds in Australia.
- In the most recent year (mostly the 2017 financial year) the six largest for-profit companies were given over $2.17 billion AUD via government subsidies. This was 72% of their total revenue of over $3 billion. These companies also reported profits of $210 million AUD (2016-2018).
- Companies can use various accounting methods to avoid paying tax. One method is when a company links (staples) two or more businesses (securities) they own together, each security is treated separately for tax purposes to reduce the amount of tax the company has to pay. Aged care companies are known to use this method as well as other tax avoiding practices. Another practice is by "renting" their aged care homes from themselves (one security rents to another) or by providing loans between securities and shareholders.
- The six largest for-profit aged care providers have enormous incomes and profits:
  - The largest company, BUPA, had almost $7.5 billion in total income in Australia (2015-16) but paid only $105 million in tax on a taxable income of only $352 million.
    - BUPA's Australian aged care business made over $663 million in 2017 and over 70% ($468 million) of this was from government funding.
    - Funding from government and resident fees increased in 2017, but BUPA paid almost $3 million less to their employees and suppliers.
    - The second largest, Opal, had total income of $527.2 million in 2015-16 but paid only $2.4 million in tax on a taxable income of only $7.9 million.
    - 76% ($441 million) was from government funding in 2016.
  - Allity had total income of $315.6 million in 2015-16 and paid no tax.
    - 67% ($224 million) of Allity's revenue was from government funding in 2016-17.

1 Australian Bureau of Statistics (ABS) 2013. Population projections, Australia, 2012 (base) to 2101. ABS cat. no. 3222.0. Canberra: ABS.

2 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

3 Productivity Commission (2018). Report on Government Services 2018: part f, chapter 14 aged care services report and attachment tables [online]. Available: https://www.gen-agedcaredata.gov.au/Resources/Reports-and-publications/2018/January/Report-on-Government-Services-2018-part-f,-chapte

  - Regis, Estia, and Japara are listed on the Australian Securities Exchange (ASX) but appear to be using methods to reduce the amount of tax they pay while earning large profits from over $1 billion of government subsidies.
  - Family owned aged care companies (Arcare, TriCare, and Signature) receive between $42-$160 million each in annual government subsidies but provide very little public information on their operations and financial performance and may use accounting methods to avoid paying tax.
  - (All figures quoted above are in AUD)
- The Australian Government and the Federal Opposition (the Australian Labor Party) have proposed several ways to fix the problems with companies avoiding tax by using trust structures and other methods but there are still loopholes.
- It is difficult to get a detailed and complete picture of the full extent to which these heavily subsidised aged care companies are avoiding paying as much tax as they should, because Australian law is not currently strong enough to ensure that their financial records and accounting practices are publicly available and fully transparent.

Conclusion

The six largest for-profit aged care providers in Australia received over $2.17 billion AUD in annual tax payer funded subsidies which provided after tax profits of $210 million AUD. The actual operating profits were much larger. These providers only paid around $154 million AUD in tax in 2015-16. Companies that receive millions of tax payer dollars via Australian government subsidies must be required by law to meet higher standards of transparency in financial reports and be publicly accountable. The report calls upon the Government, Opposition, and cross-bench Senators to work together to make laws to stop aged care providers from avoiding the taxes they should pay and provide clear records of their business dealings.

The Tax Justice Network – Australia strongly supports recent government legislation that has been introduced to close loopholes in the Multinational Anti-Avoidance Law and government reforms to stapled structures. However, there is still a need for additional transparency measures. The Tax Justice Network – Australia also strongly supports a policy proposed by the Australian Labor Party to introduce minimum taxation of discretionary trusts. These reform measures are examined in more detail by this report in the section: *Current Reform Measures.*

This analysis of tax payments and corporate structures of the largest for-profit aged care companies provides clear evidence that simple common-sense reforms are needed immediately to restore integrity to the tax system and to ensure public accountability on billions of dollars in government spending.

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.

2. INTRODUCTION

This report examines the tax practices of Australia's largest for-profit aged care companies based on available public information. The evidence suggests that in this growing sector, which is highly dependent on government subsidies, for-profit companies have been deploying aggressive tax avoidance strategies. While both the Federal Government and Federal Opposition have put forward proposals that begin to address some key tax avoidance concerns in the sector, further steps must be taken to increase transparency and ensure that companies are fully accountable for public funds received.

The report begins with a brief overview of for-profit aged care companies and tax avoidance as a key issue of public concern and an explanation of the sources and methods for this analysis. This is followed by an extensive discussion of Bupa, the largest aged care company, and detailed case studies of Opal and Allity, which both appear to utilise corporate structures and related party transactions to actively minimise tax payments in Australia.

There is also a review of tax issues with the three Australian Securities Exchange (ASX) listed aged care companies and three family-owned aged care companies. After a review of findings and a review of recent relevant tax reform proposals by both the Federal Government and the Federal Opposition, the report concludes with simple recommendations to increase transparency and ensure public accountability.

Australia's Largest For-Profit Aged Care Companies

In Australia, non-profit providers collectively operate a majority of residential aged care beds. However, the market share of large for-profit providers continues to grow rapidly. Likewise, the influence of for-profit providers on shaping government policy and influencing broader trends in the aged care sector has never been greater.

Ranked by the number of government allocated residential aged care places (beds) in 2017, the six largest for-profit aged care companies in Australia are; Bupa, Opal, Regis, Estia, Japara, and Allity. Combined, they operate over 20% of all residential aged care beds in the country. These companies continue to expand market share through new developments and acquisitions. These companies are also expanding to provide more retirement living and home care services, which allow access to additional government funding.

In the most recent financial year (2016-2017), these six for-profit aged care companies combined received over $2.17 billion in government subsidies.[4] This made up 72% of their combined total revenue of over $3 billion.[5] Combined annual profit from aged care for these companies was $210 million, but profits may not be the best indicator of financial performance.[6] Companies that pursue complex tax avoidance strategies may seek to reduce taxable profits through

4 The sources of this information are detailed in each company section of the report below. This covers the 2017 calendar year for Bupa, the 2016 calendar year for Opal and the 2017 financial year for the 4 other companies. A table with this data is on page 11.

5 Ibid.

6 Ibid.

contrived corporate structures and transactions. A close examination of these companies and the corporate structures that may be used to avoid tax obligations in Australia is outlined below.

COMPANY SNAPSHOT

Bupa: A United Kingdom-based mutual insurance company with global operations including aged care services. Australia is Bupa's largest and most profitable market.

Regis, Estia, and Japara:

Public aged care companies listed on the ASX.

Opal:

A private aged care company owned by subsidiaries of two listed companies, AMP Capital and Singapore-based G.K. Goh.

Allity:

controlled by Archer Capital, an Australian private equity firm with large foreign pension fund investors.

Arcare, TriCare and Signature

(formerly Innovative Care): three family-owned, for-profit aged care companies.

Corporate Tax Avoidance

Corporate tax avoidance has become a major political, economic, and social issue in Australia and around the world in recent years. Most global trade is now between subsidiaries of multinational corporations and not between separate companies. This has enabled multinational corporations to structure their businesses in ways that allow them to shift profits from where they are generated to low or no tax jurisdictions. As a result, government budgets have been depleted and public services have been cut or are under pressure despite growing needs. This is the case with aged care funding and other public services in Australia.

Global and regional bodies - such as the Organisation for Economic Co-operation and Development (OECD), the Group of Twenty (G20), and the European Union (EU) - have all taken steps to address tax avoidance at a global level, but much more needs to be done. In Australia, the Federal Government has also taken several important steps to combat aggressive corporate tax avoidance, but again, further work is needed.

In Australia and globally, there has been a significant media focus on tax avoidance by multinational resources companies, such as Chevron and Exxon, and on technology companies, such as Apple and Google, but little focus on companies providing social services. This report reveals that companies providing social services, and benefitting from government funding, are also using complex tax avoidance schemes.

Tax Avoidance and Current Reform Measures

One common method of tax avoidance is the creation of complex corporate structures and related party transactions to shift profits into jurisdictions and entities that allow for a reduction in tax payments. In Australia, stapled securities and related corporate structures are one way that companies, including for-profit aged care companies, have shifted profits and reduced tax payments.

Stapled securities are created when two or more related securities are 'stapled' together and traded as one security. The most common form of stapled securities involves real estate companies where a property management company is 'stapled' to a trust which holds the property. The trust distributes rental income as dividends to shareholders. The trust is not taxed; shareholders are responsible for any income tax payments on dividends from the trust. This can create tax advantages for companies and shareholders.

The management company in a stapled security is taxed at the 30% corporate rate. If rental income, or other payments to trusts, are from third parties then there may not be a tax avoidance issue. However, when payments to the trust are from related parties within the same 'stapled' structure there is an opportunity to shift income to the trust to avoid corporate income tax payments. The use of stapled securities outside of traditional Real Estate Investment Trusts (REITs) is somewhat unique to Australia. Other corporate structures that include trusts, but are not officially stapled securities, can also produce similar tax advantages.

Corporate tax avoidance through stapled securities and related corporate structures has attracted recent attention from both the Australian Taxation Office (ATO) and Treasury. In January 2017 the ATO issued a taxpayer alert, in March 2017 Treasury issued a consultation paper and in March 2018 Treasury announced a package of reforms related to stapled structures. At the end of March 2018, Treasurer Scott Morrison announced a package of reforms to tighten the rules on stapled structures and close "down an unintended concession that was only available to foreign investors."[7]

The Federal Opposition, the Australian Labor Party (ALP), has also adopted policy positions which could address some tax avoidance issues in the for-profit aged care sector, including standard minimum tax rates for discretionary trust distributions and measures related to requirements for government tenders.

What's needed now

The ATO's alert, the Government's reforms and the ALP's proposed policies are positive steps in the right direction, but they don't go far enough. The current reform package may address some of the concerns raised by this report in the aged care sector, but it falls short of closing all the loopholes available. Additionally, current measures fail to include any requirements for greater transparency and disclosure of transactions within stapled structures, which is an essential first step. [8]

The fact that these companies derive profits from services provided by tax payments of other individuals and companies and then avoid tax payments, makes this tax avoidance particularly egregious and must be addressed as a matter of urgency.

7 The Honourable Scott Morrison MP, Treasurer of the Commonwealth of Australia, 27 March 2018, Media Release, "Levelling the playing field for Australian investors: Taxation of Stapled Securities". http://sjm.ministers.treasury.gov.au/media-release/024-2018/

8 The full details of the integrity package on Stapled Structures can be found here: https://static.treasury.gov.au/uploads/sites/1/2018/03/FINAL_Stapled_Structures_Integrity_Package.docx

3. SOURCES AND METHODS

The analysis in this report is based on detailed examination of the most recent publicly available financial information on the largest for-profit aged care providers. As ASX-listed companies, analysis of Estia, Regis and Japara is primarily based on an examination of annual reports to shareholders and other reports, presentations, and publications available through corporate websites.

The analysis of Bupa was based on annual reports and other information on Bupa's global business from the company website and from recent annual financial statements of United Kingdom (UK) subsidiaries in the Australian ownership structure which are publicly available from the UK Government's Companies House website. The most recent annual financial statements of several key Australian subsidiaries were purchased from Australian Securities and Investments Commission (ASIC).

The analysis of Opal was primarily from the most recent financial statements purchased from ASIC, from annual reports, and other public information from the website of the listed parent company in Singapore and from annual financial statements of private Singapore companies in the Australian ownership structure. The latter documents were purchased from the Singapore Commercial Credit Bureau, which sells financial statements filed with the government regulator.

The analysis of Allity was primarily based on recent annual financial statements purchased from ASIC.

The company financial analysis was supplemented by relevant government data on total income and tax paid, when available, and by government data on aged care funding. Relevant media articles have also been cited.

There are many family-owned for-profit aged care companies. The three family-owned for-profit aged care companies analysed in this report were selected because there was some available public information and/or media commentary on them.

The analysis of tax issues related to stapled securities and related corporate structures is primarily based on information from Treasury and ATO reports and other recent government statements. Some Federal Opposition (ALP) policies on relevant tax issues have also been referenced.

Every reasonable effort has been made to obtain and correctly analyse the most current and relevant publicly available information.

Snapshot of government funding to for-profit aged care providers

The six largest for-profit aged care providers in Australia received over $2.17 billion AUD in annual tax payer funded subsidies which provided after tax profits of $210 million AUD. The actual operating profits were much larger. These providers only paid around $154 million AUD in tax in 2015-16.

Table 1 provides an overview of the government subsidies received by the six largest for-profit aged care providers as a percentage of total revenue and their after tax profits for the most recent financial year.[9] Table 2 provides a breakdown of each company's total income, their reported taxable income and their tax payable for the years: 2014/15 and 2015/16.

The next section of this report then examines the government subsidies received and the profits reported by each company in detail.

9 Data for Bupa is 2017, Opal is 2016 and all others are the 2017 financial year.

Table 1: Government Subsidies for the Six Largest For-Profit Aged Care Companies

($ millions)				
Company	**% Gov't Subsidy**	**Total Revenue**	**After-Tax Profit**	**Gov't Subsidy**
Bupa (aged care)	71%	$663	$22	$468
Opal	76%	$581	$36	$441
Regis	70%	$565	$61	$397
Estia	74%	$525	$41	$388
Japara	70%	$362	$30	$254
Allity	67%	$327	$20	$224
TOTAL	72%	$3,023	$210	$2,172

Table 2: ATO Corporate Tax Transparency Data 2015/16 & 2014/15

($ millions)	2015/16				2014/15			
Company	**Total income**	**Taxable income**	**% Taxable**	**Tax payable**	**Total income**	**Taxable income**	**% Taxable**	**Tax payable**
Bupa (total)	$7,484.9	$352.9	4.7%	$104.7	$6,743.4	$334.5	5.0%	$96.3
Opal	$527.2	$7.9	1.5%	$2.4	$236.9	$0.0	0.0%	$0.0
Regis	$484.4	$68.7	14.2%	$20.6	$481.5	$46.2	9.6%	$13.8
Estia	$447.4	$58.3	13.0%	$17.5	$285.8	$15.5	5.4%	$4.7
Japara	$333.9	$29.4	8.8%	$8.8	$285.6	$20.9	7.3%	$6.3
Allity	$315.6	$0.0	0.0%	$0.0	$298.8	$0.0	0.0%	$0.0
TOTALS	$9,593.0	$517.2	5.4%	$154.0	$8,332.0	$417.1	5.0%	$121.0

4. BUPA

Bupa is the largest aged care provider in Australia and one of the largest companies operating in Australia, with nearly $7.5 billion in total income, it is ranked as the 30th largest company in Australia in 2015/16.[10] Bupa's aged care business is part of a broader health care and insurance business in Australia.

THE FOLLOWING ANALYSIS OF BUPA'S BUSINESS ACTIVITIES REVEALS THAT:

- *The largest company, BUPA, had almost $7.5 billion in total income in Australia (2015-16) but paid only $105 million in tax on a taxable income of only $352 million.*
- *BUPA's Australian aged care business made over $663 million in 2017 and over 70% ($468 million) of this was from government funding.*
- *Funding from government and resident fees increased in 2017, but BUPA paid almost $3 million less to their employees and suppliers.*

Bupa's Australian Business and Minimal Tax Payments

In 2015/16 from nearly $7.5 billion in total income, taxable income was less than $352 million and tax paid was less than $105 million. According to the same ATO data, Medibank Private, the next largest health insurer, ranked 34th with $6.8 billion in total income. Medibank had a taxable income of $552 million and paid tax of $148 million, significantly higher than Bupa.

Bupa is, or has been, under audit by the ATO for thin capitalisation - the practice of using high interest offshore related party debt to artificially reduce taxable income. It is possible that this debt is related to Bupa's aged care business.

Bupa's Australian Operations in Global Context

Although Bupa is headquartered in the UK it makes more profit in Australia and New Zealand than in the UK or any other region. As a mutual company, Bupa has no shareholders and is required to reinvest profits back into its business. Bupa has issued bonds and therefore is required to make filings in the UK similar to a publicly listed company.

Bupa's 2017 annual report showed that Australia and New Zealand (ANZ), accounted for 40% of global revenue of £12.2 billion (AUD$22.38 billion) and 44% of underlying global profit of £805.3 million (AUD$1477.36 million).[11] ANZ revenue was £4,926.6 million (AUD$9,038.08 million) and underlying profit was £384.7 million (AUD$705.75 million).[12] The next largest global market was the UK which accounted for only 24% of revenue and 26% of profit.[13]

While Bupa complains that the Australian aged care business has been negatively impacted by reduced government funding, they also report "Solid growth in both revenue and profit".[14] Aged care and retirement villages account for 11% of Bupa's ANZ revenue.[15]

In Australia and New Zealand, revenue was up 4%

10 According to an analysis of the most recent ATO corporate tax transparency data. This data is referred to repeatedly in this report and can be found here: https://data.gov.au/dataset/corporate-transparency

11 2017 Market Unit performance. https://www.bupa.com/corporate/our-performance/financial-results (accessed 8 March 2018); currency conversion at 1 GBP = 1.83 AUD, exchange rate on 16 April 2018.

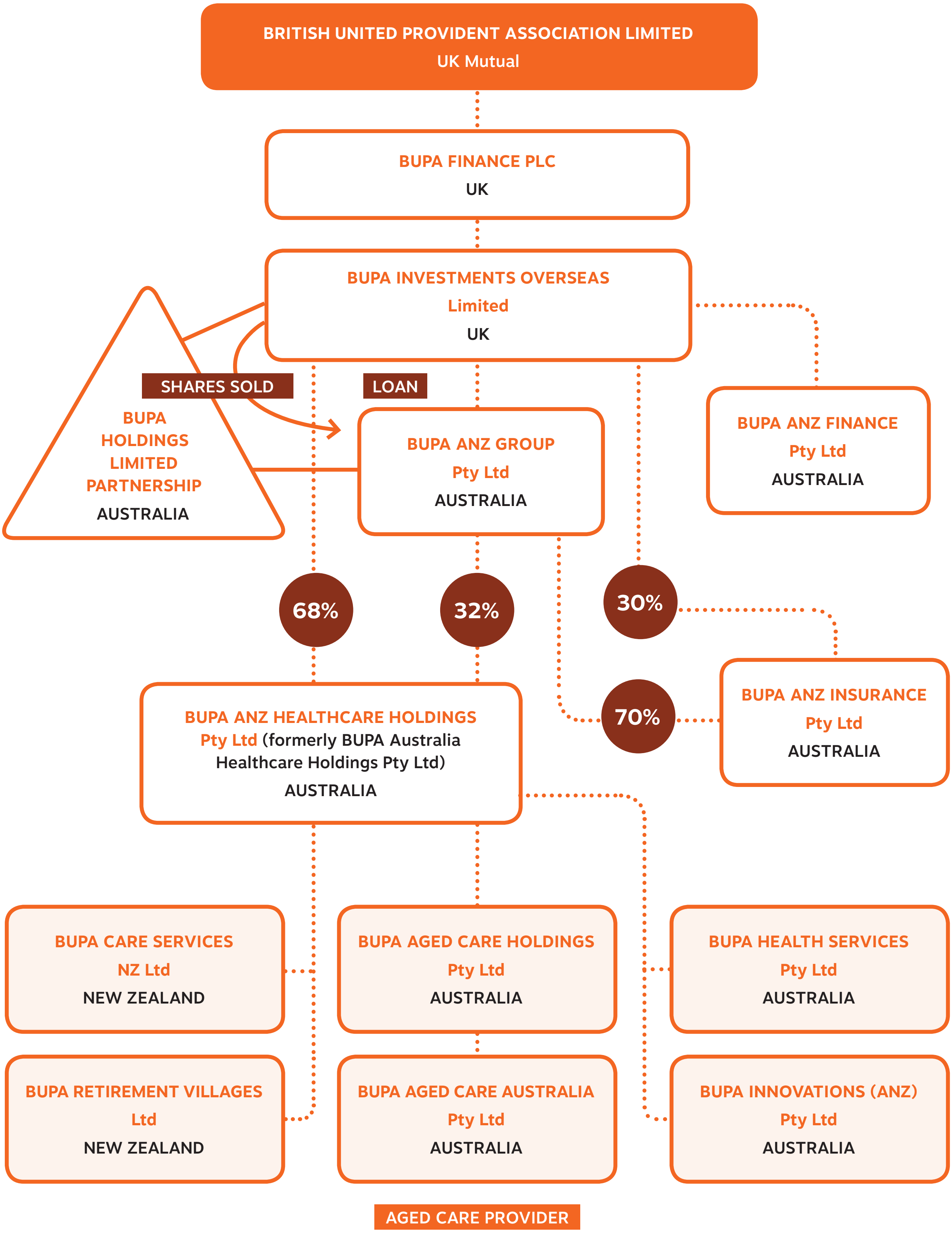
12 Ibid.

13 bid.

14 Bupa, Full year results presentation 12 months ended 31 December 2017, p.7. https://www.bupa.com/~/media/files/site-specific-files/our%20performance/pdfs/financial-results-2017/bupa-full-year-results-presentation-2017.pdf

15 Ibid.

BUPA ANZ SIMPLIFIED OWNERSHIP STRUCTURE



from 2016 and underlying profit was up 3%.[16] In the second half of 2017, Bupa announced the integration of aged care and retirement villages in Australia and New Zealand and announced the sale of 12 aged care facilities in New Zealand.[17]

Bupa opened or expanded 4 aged care facilities in Australia in 2017, which "boosted performances", "along with a renewed focus on costs in response to reductions in the Government's funding of aged care."[18] Bupa further commented that aged care operating costs increased in Australia, but "underlying profit remained stable year-on-year."[19]

Performance and Structure of Bupa's Australian Aged Care Business

Bupa's Aged Care business in Australia (Bupa Aged Care Australia Pty Ltd) reported revenue in 2017 of over $663 million, up by nearly 4% from $639 million in 2016.[20] After tax profit decreased to $22 million from $39 million.[21] However, the decrease in profit does not appear to be due to operations. Net cash flow from operations increased to $74 million from $22 million in the prior year.[22] While government funding and resident fees increased by over $27 million, payments to employees and suppliers decreased by nearly $3 million.[23]

Of total revenue, **over 70% ($468 million) came from government funding** and $196 million from resident fees.[24] Government funding increased by 2% and resident fees increased by 8% over the previous year.[25]

Bupa Aged Care Australia Pty Ltd is directly owned by Bupa Aged Care Australia Holdings Pty Ltd.[26] Both companies are part of a tax consolidated group and taxed as a single entity; Bupa ANZ Group Pty Ltd is the "head entity of the tax consolidated group".[27] Bupa's aged care business is a member of the "Bupa ANZ Group", "which includes Bupa Australia Healthcare Holdings Pty Limited and its controlled entities" and the "ultimate Australian parent entity" is Bupa ANZ Healthcare Holdings Pty Ltd.[28]

Bupa's corporate structure in Australia is highly complex. Complex corporate structures with extensive related party transactions are a hallmark of aggressive tax avoidance.[29] Related party transactions are frequently used to shift profits to jurisdictions or entities with lower tax rates or other tax benefits. Bupa's lease payments and multiple loans between related parties are significant, but limited information is provided in Australian filings. Information from Bupa's UK filings (discussed below) provide additional insights.

The aged care business reports that a "number of the care homes that the Company operates are leased on a long term basis from related entities under market based leases."[30] In 2017, total rental expense was over $35 million and lease payments to related parties were at least $28 million if not larger.[31] **The lease payments to a related party are significantly larger than the reported after tax profit.**

Other related party costs include nearly $11 million in interest expense on loans and borrowings and nearly $7 million in group expenses recharged to the company.[32] There was also $9 million in interest income from loans to related parties.[33] Total current payables to related parties were $89 million.[34]

16 Bupa, full year statement for the year ended 31 December 2017, p.1. https://www.bupa.com/~/media/files/site-specific-files/our%20performance/pdfs/financial-results-2017/bupa-full-year-results-announcement-and-financial-statements-2017.pdf

17 Ibid, p.3, Group CEO's review.

18 Ibid, p.4, Market Unit Performance, Australia and New Zealand.

19 Ibid, p.10, Financial Review, Underlying profit.

20 Bupa Aged Care Australia Pty Ltd, Financial Report for the Year Ended 31 December 2017, p.1, Directors' Report. (purchased from ASIC)

21 Ibid.

22 Ibid, p.9, Cash Flow Statement

23 Ibid.

24 Ibid, p.23, Note 7, Revenue.

25 bid.

26 bid, p.1, Directors' Report.

27 Ibid, p.18, Note 3, Significant accounting policies, (m) Income tax, (iv) Tax consolidation.

28 bid. p.19, Note 3, Significant accounting policies, (r) Going Concern.

29 The ATO provides details a range of international related party transactions that are of concern. https://www.ato.gov.au/General/Tax-and-Corporate-Australia/In-detail/Key-compliance-risks-for-large-corporate-groups/

30 Ibid, p.11, Note 1, Reporting entity.

31 Ibid, p.23, Note 10, Rental expenses (reports total of $35 m, only $5 m of which is "non related party"); p.32, Note 27 Related parties, (b) Other related party transactions reports $28 m in "Operating lease expense on properties under management".

32 Ibid, p.32, Note 27 Related parties, (b) Other related party transactions

33 Ibid.

34 Ibid, p.27, Note 19 Trade and other payables

Bupa ANZ Group under ATO audit (BAGPL)

Bupa ANZ Group Pty Limited (BAGPL) is at the core of Bupa's tax affairs in Australia and continues to be under scrutiny by the ATO. BAGPL operates "as the central financing company for the Bupa Australia and New Zealand group of companies" and acts "as the head entity of a multiple entry tax consolidated group".[35] The company "holds non-controlling investments in Bupa ANZ Insurance Pty Ltd ("BAIPL"), the parent entity of the health insurance business... and Bupa ANZ Healthcare Holdings Pty Ltd ("BAHH"), the parent entity of the retirement villages, aged care and health services businesses....''[36]

As a result of a sweeping corporate restructure of the Australian business in late 2016, BAGPL owns a 31.87% interest in BAHH and a 70% economic interest (30% voting interest) in BAIPL.[37] At the end of 2017, the investment in BAHH was valued at $968 million.[38] The share in profits for BAGPL was $29 million of the $91 million in after tax profits of BAHH on revenue of $1,482 million.[39] The 70% interest in the insurance business resulted in BAGPL receiving $274 million in dividends.[40]

Despite an increase in revenue for BAGPL of $179 million for total revenue of $225 million in 2017, and a pre-tax profit of $107 million, **the company reported an income tax benefit of $36 million**, increasing after tax profits to $142 million.[41] The cash flow statement shows income tax payments of $125 million and income tax receipts of $128 million, both "including tax funding agreement settlements".[42] BAGPL also holds "an unrecognised deferred tax asset in relation to carried forward capital losses of $45.6m", which could possibly be used to reduce future tax liabilities.[43]

So how does BAGPL produce an income tax benefit from Bupa's significant profits in Australia? It appears that Bupa's taxable profits in Australia were significantly reduced by transfers to BAGPL's direct parent company in the UK, Bupa Investments Overseas Limited (BIOL). BAGPL has a $3.4 billion loan facility with BIOL of which nearly $3.1 billion is outstanding.[44] Interest is currently "charged on the Facility every three months at 270 basis points above the prevailing BBSW [Bank Bill Swap Rate]."[45] This loan, and potentially other related party loans, resulted in interest payments to BIOL, and possibly other parties, of nearly $139 million in 2017.[46] Related party debt and the applicable interest rate between offshore entities and the Australian tax consolidated group are subject to Australian thin capitalisation and transfer pricing rules.

For perspective, **related party interest payments were nearly 62% of total revenues and significantly greater than pre-tax profits**.

Part of the borrowings from the $3.4 billion loan facility from the UK may be on lent to BAHH as part of a $600 million loan facility, which has a loan receivable of $430 million under the same loan terms.[47] BAGPL also paid out $135 million in dividends to BIOL.[48]

The notes to BAGPL's financial statements reveal that the company "has contingent liabilities...due to unresolved issues associated with the application of Australian tax law in relation to cross border transactions and operations" which are ongoing.[49] This indicates a dispute with the ATO.

The statement in the 2016 filing for Bupa ANZ Healthcare Holdings Pty Ltd (BAHH) is a bit more explicit. It states that the company "has **thin capitalisation matters under audit by the Australian**

35 Bupa ANZ Group Pty Ltd, Financial Report for the Year Ended 31 December 2017, p.1, Directors' Report. (purchased from ASIC)
36 Ibid.
37 Ibid, p.29, Note 24 Transactions between commonly controlled entities – describes 2016 corporate refinancing transactions; p.20 Note 5 Investment in associates shows ownership of BAHH.
38 Ibid, p.20 Note 5 Investment in associates
39 Ibid.
40 Ibid, p.21 Note 5 Investment in associates, (b) Bupa ANZ Insurance Pty Ltd.
41 Ibid, p.1 Directors' Report and p.6 Income Statement.
42 Ibid, p.9 Cash Flow Statement.
43 Ibid, p.23 Note 9 Income tax.
44 Ibid, p.24 Note 13 Interest bearing liability.
45 Ibid.
46 Ibid, p.9 Cash Flow Statement.
47 Ibid, p.24 Note 11 Interest bearing receivable.
48 Ibid, p.1 Directors' Report.
49 Ibid, p.28 Contingent liabilities.

Taxation Office for which the timing of and resolution and potential economic outflow are uncertain. The Company considers the positions it has adopted are in accordance with the law. Due to the uncertainty of the outcome of these discussions, the company is unable to reliably estimate the amount of this contingent liability as at the date of authorising this financial report for issue."[50]

The language in the 2017 filing for BAHH on contingent liabilities is identical in the BAGPL 2017 filing.

The Australian Holding Company (BAHH)

BAHH is a holding company for many Australian and New Zealand subsidiaries, including the aged care business in Australia. Other key subsidiaries include **Bupa Care Services NZ Limited**, which operated care homes and a medical alarm business in New Zealand; **Bupa Retirement Villages Limited**, which operated retirement villages in New Zealand; **Bupa Health Services Pty Ltd** and subsidiaries, which operates health services in Australia, including primary health services, medical visa examination services, optometry, audiology and dentistry; and **Bupa Innovations (ANZ) Pty Ltd**, which conducts healthcare related innovation, research and development activities.[51]

BAHH was formerly known as Bupa Australia Healthcare Holdings Pty Ltd.[52] This is the entity reported on in the ATO corporate tax transparency data. Presumably the insurance business was under this entity but has now been separated. As discussed above BAGPL owns 31.87% of BAHH (which is 100% owned by BIOL) and the remaining 68.13% is owned directly by BIOL.[53]

BAHH's revenue's increased to $1,482 million, but profit after tax fell to $90 million.[54] However net cash from operations increased to $166 million and the cash flow statement shows income tax paid of $35 million.[55] Profit was reduced by $19 million in interest payments to related parties and by nearly $13 million in "Recharges from related parties".[56] While not effecting this year's profit, BAHH also reported nearly $45 million in "Foreign currency translation difference on foreign operations", "that may be subsequently reclassified to...loss".[57]

Of BAHH's many subsidiaries at least 4 are property trusts related to the aged care business and 2 other entities appear to be related to property holdings in Australia.[58]

The UK Global Holding Company (BIOL)

The 2016 filings of Bupa Investments Overseas Limited (BIOL) in the UK, appear to provide additional information on the Australian business that was not in the Australian filings that have been examined.

BIOL is directly owned by Bupa Finance PLC which is directly owned by the ultimate parent, British United Provident Association Ltd, both incorporated in the UK.[59] BIOL, directly and indirectly, owns the Australian operations of Bupa and other international businesses.

BIOL's pre-tax profits were nearly £1.7 billion (AUD$3.12 billion) up significantly from £253 million (AUD$464.14 million).[60] However, "tax on profit" was less than £2.8 million (AUD$5.14 million).[61] If the 20% UK corporate tax rate were applied taxes would have been over £338 million (AUD$620.08 million), but were reduced by £503 million (AUD$922.78 million) in non-taxable income, which likely included Australian property sales.[62]

It appears that the major driver of this increase in profit was related to the sale of aged care facilities in Australia.

50 Bupa ANZ Healthcare Holdings Pty Ltd, Special Purpose Financial Report for the Year Ended 31 December 2016, p.20 Note 17 Contingent liabilities.

51 Bupa ANZ Healthcare Holdings Pty Ltd and its controlled entities, Financial Report for the Year Ended 31 December 2017, p.1 Directors' Report.

52 Ibid, p.12 Note 1 Reporting entity.

53 bid.

54 Ibid, p.1 Directors' Report.

55 Ibid, p.10 Cash Flow Statement.

56 bid, p.26 Note 9 Finance income and finance costs; p.44 Note 28 Related parties, (b) Other related party transactions.

57 Ibid, p.7 Income Statement.

58 Ibid, p.45 Group entities, Controlled entities; Bupa Aged Care Property No.2 Trust, Bupa Aged Care Property No.3 Trust, Bupa Aged Care Property No.3A Trust, Bupa Aged Care Property Trust, Bupa ANZ Property 1 and 2 Limited & Bupa ANZ Property 3 and 3A Pty Ltd.

59 Bupa Investments Overseas Limited, Directors' Report and Financial Statements for the Year Ended 31 December 2016, p.14 Note 1 Immediate and ultimate parent company. https://beta.companieshouse.gov.uk/company/02993390/filing-history/MzE3MzQyMjE0NWFkaXF6a2N4/document?format=pdf&download=0 (as of mid-March 2018, the 2017 report was not yet available)

60 Ibid, p.1 Strategic report.

61 Ibid, p.7 Profit and loss account.

62 Ibid, p.16 Note 9 Taxation, Reconciliation of effective taxation rate.

BIOL "disposed of £1,161.5m [AUD$2,130.83m] B and C capital in Bupa Holdings Limited Partnership, a partnership registered in Australia."[63] The profit on the sale of the Australian partnership was nearly £323 million (AUD$592.56 million).[64] The shares were sold to Bupa ANZ Group Pty Ltd.[65] There is not a specific mention of this transaction in the 2016 or 2017 Australian filings of BAGPL. However, this presumably explains the purpose of BAGPL's $3.1 billion in loans from BIOL, even though the Australian partnership is still 100% indirectly owned by BIOL.[66]

BIOL had 100% direct ownership of 3 Australian companies, Bupa ANZ Finance Pty Ltd, Bupa ANZ Group Pty Ltd and Bupa ANZ Insurance Pty Ltd and 68.13% direct ownership (100% indirect) of Bupa ANZ Healthcare Holdings Pty Ltd.[67]

BIOL has many direct and indirect subsidiaries in tax havens, including 6 subsidiaries in Guernsey, 2 each in the Netherlands and the Dominican Republic and 1 each in Saint Kitts and Nevis, Panama and Singapore.[68]

Based on the facts outlined above, it seems likely that the sale of Bupa's partnership and the massive debt that it created are the focus of the ATO's dispute with Bupa.

Bupa's Approach to Tax

Bupa's practices in Australia described in depth above seem to contradict Bupa's "Approach to Tax" which was published in December 2017 as required by Schedule 19 of the UK Finance Act of 2016.[69] While the legal requirements of Schedule 19 related only to taxation in the UK, Bupa references its global tax practices.[70]

Bupa's state tax principles include statements that the company does *"not use contrived or artificial tax structures that are intended for tax avoidance or have limited commercial substance"* and the company seeks *"to establish constructive relationships with fiscal authorities based on transparency and mutual respect, and work positively with tax authorities to minimise the extent of disputes."*[71]

This does not seem to be the case in Australia. The policy further states that "Tax risks are monitored on a continuous basis and are formally reviewed by both the Bupa Board and Executive Risk Committees."[72] However, whether Bupa is "complying with tax laws responsibly" and "ensuring that tax is paid in the jurisdictions in which the Group operates"[73] as stated in the policy needs further examination. It appears that this is the area being challenged by the ATO and new legislation.

Massive debt from the corporate restructure and internal transfer of aged care properties could be used to reduce tax liabilities on the much larger insurance business in Australia. While the ATO is unable to publicly discuss Bupa's tax affairs, if the company wants to restore its public image it should be fully transparent about its corporate structure and live up to the principles in its own tax policy.

While it is up to Bupa to restore its own public image and convince the public that they will pay a fair share of tax in Australia, the government must also take further action to ensure that for-profit companies that receive huge government subsidies - $468 million a year in Bupa's case - are transparent and publicly accountable. This is clearly not the case now, even with proposed reforms and new legislation.

63 Ibid.
64 Ibid, p.15 Note 7 Profit on disposal of investments in Group companies.
65 Ibid, p.18 Note 11 Investments.
66 Ibid, p.36 Note 20 Investments in subsidiaries disclosure.
67 Ibid, pp.22-23 Note 20 Investments in subsidiaries disclosure.
68 Ibid, pp. 22-34 Note 20 Investments in subsidiaries disclosure.
69 Bupa, Bupa's Approach to Tax, December 2017. https://www.bupa.com/~/media/files/site-specific-files/legal%20notices/bupas-approach-to-tax.pdf
70 UK Finance Act 2016, C.24, Schedule 19. http://www.legislation.gov.uk/ukpga/2016/24/schedule/19/enacted
71 Bupa, Bupa's Approach to Tax, December 2017.
72 Ibid.
73 Ibid.

5. OPAL

Opal, Australia's second largest aged care business, has attracted headlines recently for shocking revelations about the quality of care for aged care residents, which resulted in the resignation of the CEO.[74] What has not yet made the headlines is Opal's apparent tax avoidance on significant profits from government subsidies to provide aged care for Australia's elderly citizens.

THE FOLLOWING ANALYSIS OF OPAL'S BUSINESS ACTIVITIES REVEALS THAT:

- ***Opal, had total income of $527.2 million in 2015-16 but paid only $2.4 million in tax on a taxable income of only $7.9 million.***
- ***76% ($441 million) was from government funding in 2016.***

In 2016, Opal's primary operating company, DAC Finance Pty Ltd, had total revenue of $581 million, up by 10% from the previous year.[75] Of the total revenue, **76% or $441 million was from government funding** and $121 million from resident fees.[76] The two sources of revenue were up by 10% and 8%, respectively.[77] After tax profit was $36 million, up significantly from $6 million in the previous year.[78]

According to the two most recent years of ATO corporate tax transparency data, Opal (DAC Finance Pty Ltd) had total income of $236.9 million in 2014/15 and zero in taxable income or tax paid. In 2015/16, Opal had $527.2 million in total income and taxable income of only $7.9 million and paid $2.4 million in corporate income tax. By comparison in 2015/16, Regis -the largest ASX-listed aged care business- had total income of $484.4, less than Opal, but had taxable income of $68.7 million and paid $20.6 million in corporate income tax.

Opal's Owners

Since 2013, Opal (formerly the Domain Principal Group) has been equally owned by AMP Capital and G. K. Goh Holdings Limited, with senior management owning a small number of shares.[79] AMP Capital is the investment management arm of AMP, an ASX-listed "leading wealth management company", which recently "on behalf of investors in its global infrastructure equity strategy", just bought 100% of one of the UK's largest aged care providers.[80]

G. K. Goh Holdings Limited (GKGoh) "is an investment holding company listed in Singapore with total assets in excess of S$600 million [AUD$594 million]."[81] GKGoh's ownership of nearly 50% of Opal is one of the Singapore company's largest investments and its filings contain additional details on Opal. More than 60% of the shares in GKGoh are held by a father and son (and other family members), who are the Executive Chairman and Managing Director of the company.[82]

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74 Alex McDonald, ABC News, 27 November 2017, "Opal Aged Care boss Gary Barnier quits ahead of company review results going public". http://www.abc.net.au/news/2017-11-27/opal-boss-gary-barnier-quits-after-review-into-aged-care-homes/9198440

75 DAC Finance Pty Ltd, Annual Report for the year ended 31 December 2016, p.5, Income Statement. (purchased from ASIC; the 2016 filing is the most recent available, the 2017 filing is expected at the end of March 2018)

76 Ibid, p.5, Income Statement.

77 Ibid.

78 Ibid, p.2, Directors' Report.

79 AMP Capital, 19 August 2013, "AMP Capital to grow residential aged care investment". http://www.ampcapital.com.au/article-detail?alias=%2Fsite-assets%2Farticles%2Fmedia-releases%2F2013%2F2013-08%2Famp-capital-to-grow-residential-aged-care-investme

80 https://corporate.amp.com.au/about-amp/what-we-do/what-we-do-key-facts-our-history; AMP, 20 December 2017, "AMP Capital acquires UK aged care provider, Regard". https://corporate.amp.com.au/newsroom/2017/december/amp-capital-enters-uk-specialist-care-market-with-acquisition-of

81 http://www.gkgoh.com/Groupbusiness ; currency converted at 1 S$ = 0.99 AUD$, exchange rate on 5 April 2018.

82 http://www.gkgoh.com/Announcements/15454/171114%20FORM1%20GYL.pdf (most recent ownership announcement); G.K. Goh Holdings Limited, Financial Statements and Related Announcement for the Year Ended 31 December 2017, p.18 Disclosure of Persons Occupying Managerial Positions Who Are Related to a Director, CEO or Substantial Shareholder. http://www.gkgoh.com/Reports/10039/GKGH%204Q2017.pdf

According to Bloomberg, in 2016 the father and son received an estimated AUD$5.8 million in total compensation.[83] According to GKGoh's most recent filing, Opal's net profits were $38 million in 2017.[84]

According to GKGoh's most recent filing, Opal's net profits were $38 million in 2017.[85]

Where do the profits go?

The Opal corporate structure and extensive related party loans may explain how taxable profits disappear from Australia.

GKGoh's holdings in Opal are held through Allium Holding Pty Limited in Australia.[86] This Australian entity is held directly by Allium Investments Pte Ltd in Singapore, which is a subsidiary of Allium Healthcare Holdings Pte Ltd (formerly known as Canistel Pte Ltd), a direct subsidiary of GKGoh "and the ultimate holding company is GKG Investment Holdings Pte Ltd."[87] Allium Investments Pte Ltd, the direct owner of the Australian entity received S$15.9 (AUD$15.8) million and S$15.3 (AUD$15.2) million in dividend income in 2016 and 2015, respectively, from its Australian subsidiary.[88] While the income statement and the notes show a tax expense of S$951,899 (AUD$942,746) in 2016, there is no indication of any income tax paid in the cash flow statement.[89]

AMP Capital's interest is held equally through Aged Care Investment Trust No. 1 and Aged Care Investment Trust No. 2 and the remaining interests (4.76%) are held "by management and AJS LTIP Discretionary Trust."[90] AMP's trust structures may be indicative of foreign investors taking ownership stakes in the property assets.

Principal Healthcare Finance Trust, which owns 3 other companies, is owned in the same proportions as DAC Finance Pty Ltd (Opal). ACIT Finance Pty Limited, owned by the GKGoh and AMP entities, are all involved in extensive financial transactions with DAC Finance Pty Ltd.[91] While loans and loan payments flowed to and from Opal and related entities the biggest impact was the **$88 million in the "Repayment of subordinated related party loan" in 2016 and $83 million in 2015**, as reported in the cash flow statement.[92] This related party loan payment was likely the largest factor in reducing taxable income in Australia.

The income statement also reports rental expense of nearly $24 million.[93] While it is not disclosed, it is likely that the majority of rental payments, if not all, are paid to a trust entity that is a related party. It is disclosed in the notes to the financial statements that Opal has "entered into commercial leases on 40 nursing homes and 4 assisted living apartment facilities", with "an average life of 21 years with a renewal option for a further 10 years".[94] There are minimum rent increases of 2% per year and "minimum rents payable under non-cancellable operating leases" are $19 million within one year and $101 million after one year, but within 5 years.[95] There is no disclosure of who the lease payments are to, but it seems that they are to another entity in the same corporate group.

83 Bloomberg, Executive Profile of Geok Khim Goh, https://www.bloomberg.com/research/stocks/people/person.asp?personId=8439654&privcapId=878822 ; Bloomber, Executive Profile of Goh Yew Lin, https://www.bloomberg.com/research/stocks/people/person.asp?personId=8439656&privcapId=878822 ; the combined total calculated compensation is US$4,448,000 is converted at 1 USD = 1.30 AUD, exchange rate on 8 April 2018.

84 G.K. Goh Holdings Limited, Financial Statements and Related Announcement for the Year Ended 31 December 2017, p.3, Review of Performance of the Group, Results for the Year. "In 2017, Opal contributed S$18.5 million to our net profits." Calculation made for Opal based on 48% ownership and exchange rate of S$ 1 = $AUD 0.98.

85 G.K. Goh Holdings Limited, Financial Statements and Related Announcement for the Year Ended 31 December 2017, p.3, Review of Performance of the Group, Results for the Year. "In 2017, Opal contributed S$18.5 million to our net profits." Calculation made for Opal based on 48% ownership and exchange rate of S$ 1 = $AUD 0.98.

86 DAC Finance Pty Ltd, Annual Report for the year ended 31 December 2016, p.37 Note 25 Related Party Disclosures, Parent entities.

87 G. K. Goh Holdings Limited, Summary Report 2016, p.24 Note 1 Corporate information, Major subsidiaries.... http://www.gkgoh.com/Announcements/14424/170324%20Summary%20Report%202016.pdf ; Allium Investments Pte. Ltd, Financial Statements Year ended 31 December 2016, p.13 Note 1 Corporate information.

88 Allium Investments Pte. Ltd, Financial Statements Year ended 31 December 2016, p.9 Income Statement; currency converted at 1 S$ = 0.99 AUD$, exchange rate on 5 April 2018.

89 Ibid, p.9 Income Statement, p.12 Cash Flow Statement & p.22 Note 3 Taxation, currency converted at 1 S$ = 0.99 AUD$, exchange rate on 5 April 2018.

90 DAC Finance Pty Ltd, Annual Report for the year ended 31 December 2016, p.37 Note 25 Related Party Disclosures, Parent entities.

91 Ibid, p.37 Note 25 Related Party Disclosures, Related entities.

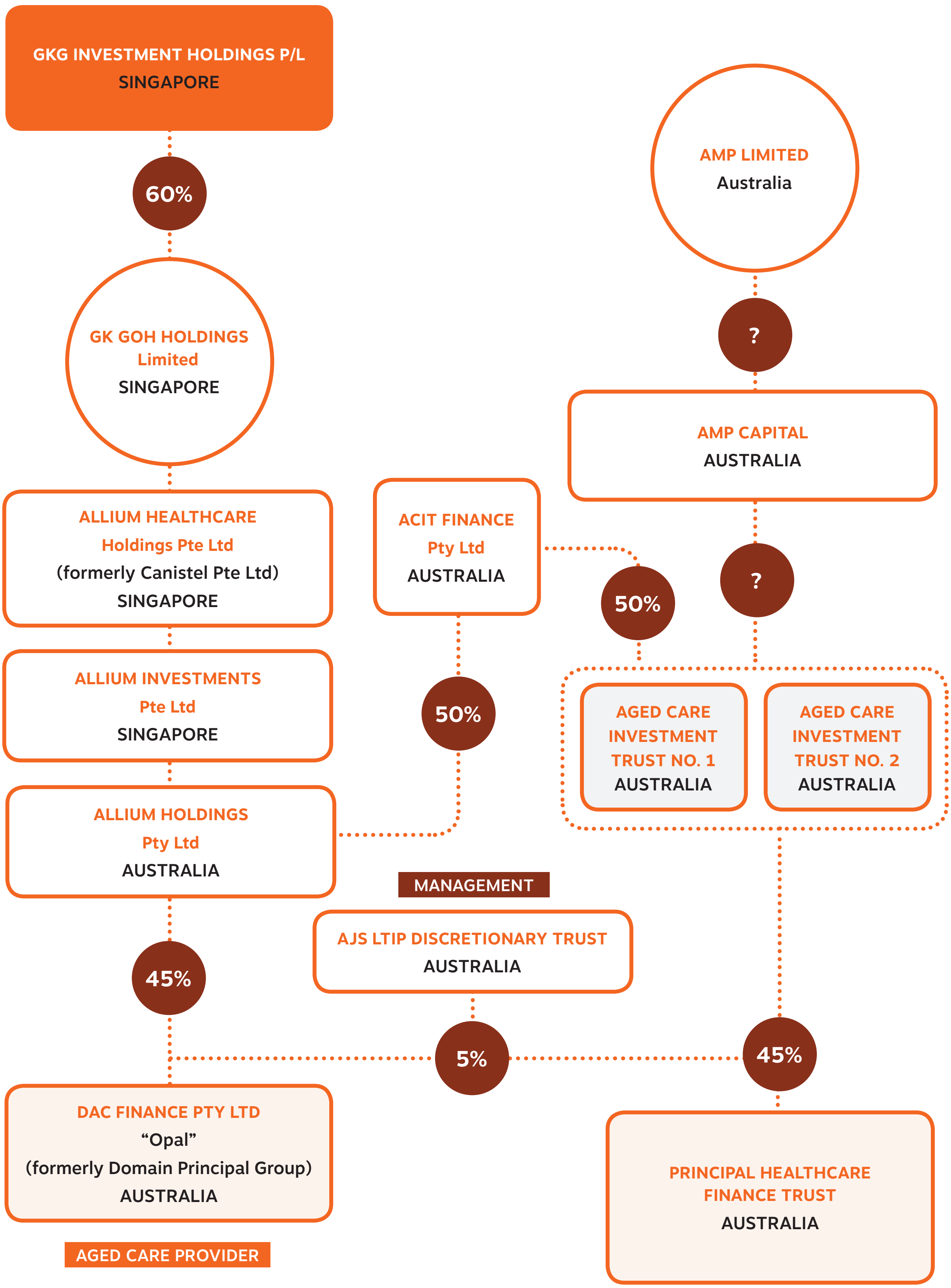
92 Ibid, p.8 Cash Flow Statement.

93 Ibid, p.5 Income Statement.

94 Ibid, p.35 Note 24 Commitments and Contingencies, (c) Operating lease commitments – Group as lessee.

95 Ibid.

OPAL SIMPLIFIED OWNERSHIP



Dividends were paid to the private shareholders of the company, $19 million in 2016 and $24 million in 2015.[96] In 2016, GKGoh reported that the "48% share of Opal's net profits amounted to S$17.5 [AUD$17.3] million, compared with S$12.3 [AUD$12.2] million in 2015, out of which S$16.1 million [AUD$16] was received as dividends from Opal."[97] This profit did not include a net gain of S$10.3 (AUD$10.2) million from Opal as a result of regulatory changes that allowed Opal to reverse a provision for deferred tax.[98]

GkGoh further commented that, "Despite unexpected shifts in government policies, Opal's earnings before interest, depreciation and tax have increased significantly in the three years since our investment from approximately A$60 million to more than A$100 million."[99]

While Opal's reported profit of $36 million in 2016 was reduced from $56 million by an income tax expense of $20 million in the income statement, the cash flow statement shows income tax paid of under $5 million and no income tax paid in 2015.[100]

Even though Opal receives hundreds of millions of dollars in government subsidies, it "is a for-profit, private sector entity which is not publicly accountable."[101] Furthermore, the company has adopted "Reduced Disclosure Requirements" under Australian accounting standards which require far less disclosure and in the financial statements "all intercompany balances and transactions, income and expenses and profit and losses resulting from intra-group transactions have been eliminated in full."[102]

Opal, which received over $440 million in Australian Government subsidies in the most recent year, has made substantial profits but is not required to provide clear, transparent and comprehensive reporting of its finances. The filings from Singapore parent company provide some insight into the taxation of the foreign owners, which may be impacted by recent regulatory changes and proposed legislation. However, the Australian public has no information on the taxation of profits due to the other owners through AMP's Trust structures and investment vehicles. Transparency and accountability of Opal's publicly subsidised business is long overdue.

96 bid, p.8 Cash Flow Statement.

97 G. K. Goh Holdings Limited, Summary Report 2016, p.3 Chairman's Statement, Aged Care – Australia, currency converted at 1 S$ = 0.99 AUD$, exchange rate on 5 April 2018.

98 Ibid, p.2 Chairman's Statement, (ii) Opal Aged Care Group, currency converted at 1 S$ = 0.99 AUD$, exchange rate on 5 April 2018.

99 bid, p.3 Chairman's Statement, Aged Care – Australia.

100 bid, p.5 Income Statement; p.8 Cash Flow Statement.

101 Ibid, p.10 Note 2 Statement of Significant Accounting Policies, (d) Statement of compliance.

102 Ibid, p.10 Note 2 Statement of Significant Accounting Policies, (d) Statement of compliance and (e) Basis of consolidation.

6. ALLITY

Allity is controlled by Archer Capital, "one of Australia's leading private equity firms, with $1.2 billion in funds under management" and "an established market leader in leveraged buyouts in Australia and New Zealand."[103] Until recently, the same private equity fund owned Aerocare, an airline contractor that was caught up in serious allegations of worker abuse and underpayments.[104]

THE FOLLOWING ANALYSIS OF ALLITY'S BUSINESS ACTIVITIES REVEALS THAT:

- *Allity had total income of $315.6 million in 2015-16 and paid no tax.*
- *67% ($224 million) of Allity's revenue was from government funding in 2016-17.*

Private equity firms have recently been linked with aggressive tax avoidance strategies and it appears that Archer's investment in Allity may provide an example of such a strategy. In 2016, Tax Commissioner Chris Jordan "warned private equity groups that their fondness for complex ownership structures will 'trigger some red flags' – and ATO attention."[105] The article reporting on the tax commissioner's warning noted that another company then owned by Archer, Australian Hospital Partners, was also "on the "ATO's list of non-payers".[106]

The article stated, "Private equity funds typically use ownership structures that load their investment targets with debt, enabling them to efficiently strip out profits and return them to their investors. With tax calculated on profit, investment losses can depress taxable income."[107] This appears to be exactly what Archer Capital has done with Allity.

Of the top six for-profit aged care businesses, Allity (Australian Aged Care Partners Holdings Pty Ltd) is the only one to have paid zero in corporate tax in the last two years according to the publicly available ATO corporate tax transparency data. Allity had zero in taxable income on $298.8 million in total income in 2014/15 and $315.6 million in 2015/16.

Allity's Australian Aged Care Partners Holdings paid no Australian tax between 2014/15 -2015-16 but reported after tax profits of $15 million (2014-15) and $20 million (2015-16)

American public pension and investment management funds are major investors in Archer Capital Fund V, which owns Allity.[108] These funds include: Canadian Public Pension Investment Board (CPPIB), British Columbia Investment Management Corporation, State of Hawaii Employee's Retirement System, Alaska Retirement Management Board and the Alaska Permanent Fund Corporation.[109]

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103 http://www.archercapital.com.au/ ; http://www.archercapital.com.au/investments/current-investments

104 James Thomas, 31 August 2017, ABC News, "Fair Work Commission rejects Aerocare worker agreement, union calls out 'poverty-line wages'"; related stories. http://www.abc.net.au/news/2017-08-31/fair-work-commission-rejects-aerocare-worker-agreement/8861148

105 Ben Butler, Leo Shanahan, 23 March 2016, The Australian, "Tax Commissioner Chris Jordan warns private equity firms". http://www.theaustralian.com.au/business/tax-commissioner-chris-jordan-warns-equity-firms/news-story/b0b37b4cfcbaea3a7a302fb8c8f218a9

106 Ibid.

107 Ibid.

108 Prequin, Archer Capital profile. (obtained 14 July 2017)

109 Ibid.

Other investors, which appear to also have a strong focus on environmental, social and corporate governance (ESG) issues or are signatories to the U.N. Principles for Responsible Investment (UNPRI) include: Adams Street Partners in the US, ATP in Denmark and ACG Capital in France.[110] The UNPRI has a significant focus on corporate tax avoidance as a major issue for investors.[111] It is an open question as to whether the trustees of these investors would consider Archer Capital's tax avoidance on income earned from government subsidies for aged care to be in compliance with their responsible investment policies.

Allity's Financial Performance & Shareholder Loan

While the most recent annual financial statements (FY17) indicate that some of the company's most aggressive tax avoidance tactics may have been curtailed, the cash flow statement still does not indicate any tax was actually paid.[112] It is possible that the ATO forced the company to abandon some of its most aggressive tax avoidance efforts, but these could still reduce future tax payments.

Allity's primary operating company (FY17), Australian Aged Care Partners Holdings Pty Ltd, reported after tax profits of $20 million, up from $15 million in the previous year.[113] However, a better indicator of company performance is earnings before interest, tax, depreciation & amortisation (EBITDA) which was $64 million, down by half a million from the previous year.[114] Allity's total revenue was $327 million of which **$224 million was from government funding (67%)** and $96 million from resident fees, both up by 4% and 5%, respectively.[115]

As one indication, of reduced tax avoidance, the company's interest expense fell from over $33 million in the previous year to under $18 million.[116] This was driven by a fall in interest and fees on borrowings from $31.6 million to $15.5 million.[117] Likewise, in the previous year the company returned nearly $42 million to the owners of the company, compared to under $1 million in the most recent year.[118] This return of capital to shareholders was done by returning "52 cents for each share on issue on 15 December 2015".[119]

While some of the investors in the Archer fund which owns Allity are identified above, the Allity filing identifies that the "equity in the Allity Group" is held through "Archer 5A, Archer 5B, Archer 5C and Archer OLP funds."[120] "Archer Capital Pty Limited provides board representation and management services" to these funds.[121] It is likely that these entities are set up as trusts.

In the 2016 financial year, the company also repaid nearly $196 million in shareholder loans, compared to zero in the following year.[122] It appears the shareholder loans were replaced by a $375 million loan from ANZ Bank which expires on 31 December 2018.[123]

The 2016 filings reveal more about the shareholder loans and their even greater impact on the 2015 financial year.

The cash flow statement shows interest paid of $90.7 million in 2015.[124] Despite reporting EBITDA of nearly $58 million in 2015, the interest payments drove Allity to $26 million loss.[125] This artificially created loss -and perhaps losses from previous years- very likely created carried forward losses that have been used as

110 Ibid.

111 https://www.unpri.org/esg-issues/governance-issues/tax-avoidance

112 Australian Aged Care Partners Holdings Pty Ltd, Annual Financial Report for the Year Ended 30 June 2017, p.11, Cash Flow Statement. There is no listing of income tax paid. Note 5 Income Tax (p.29) does show an income tax expense of $10.8 million in 2017 and $5.6 million in 2016.

113 Ibid, p.3, Directors' Report.

114 Ibid.

115 Ibid, p.8, Income Statement.

116 Ibid, p.4, Directors' Report.

117 Ibid, p.29, Note 4 Expenses.

118 Ibid, p.10, Statement of Changes in Equity.

119 Ibid, p.37, Note 17 Issued Capital.

120 Ibid, p.41, Note 19 Related Party Transactions, (c) Transactions with related parties.

121 Ibid.

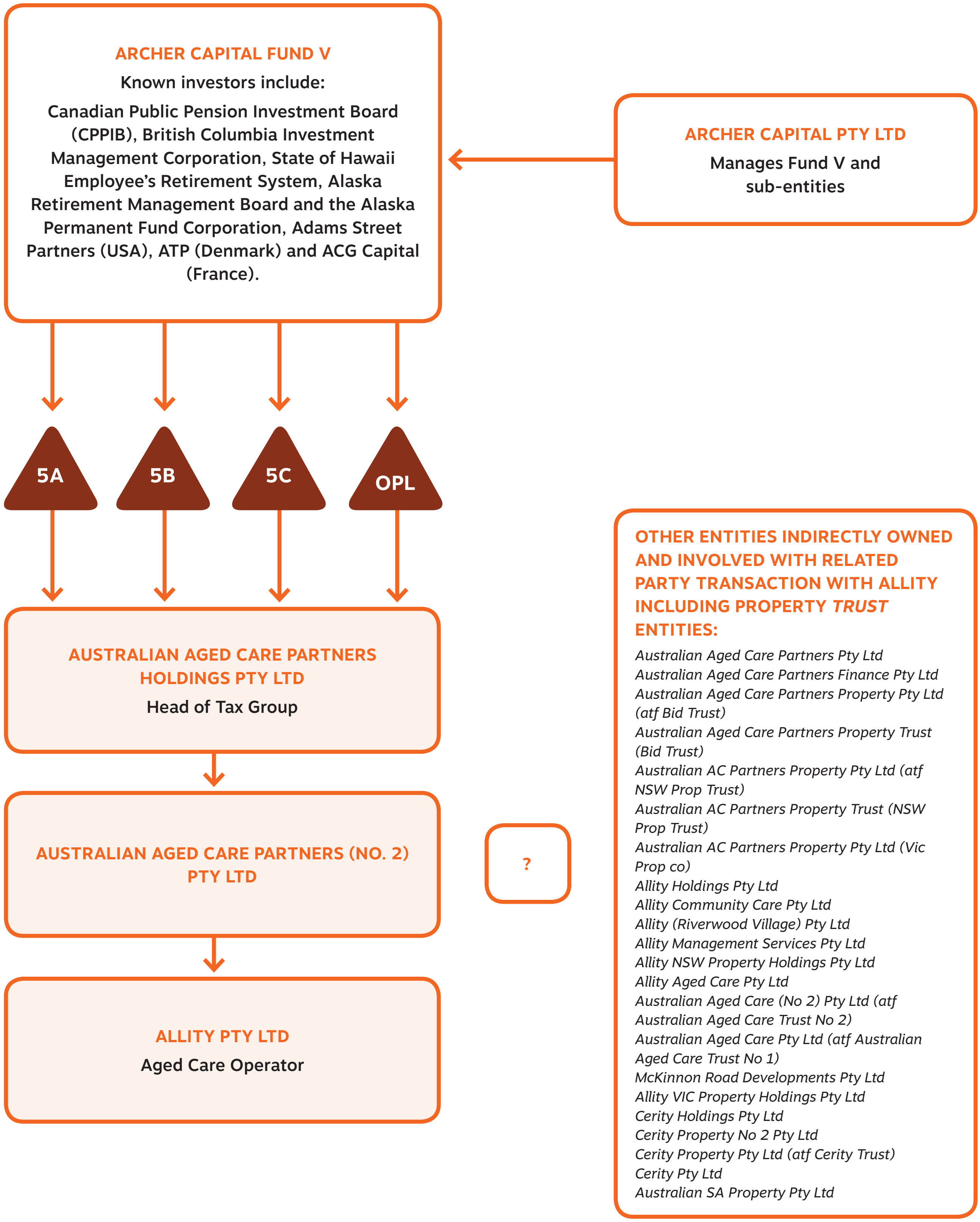
122 Ibid, p.11, Cash Flow Statement.

123 Ibid, p.36, Note 16 Other Financial Assets and Liabilities, Bank loans.

124 Australian Aged Care Partners Holdings Pty Ltd, Annual Financial Report for the Year Ended 30 June 2016, p.11, Cash Flow Statement

125 Ibid, p.3, Directors' Report.

ALLITY SIMPLIFIED OWNERSHIP STRUCTURE



tax shelters and may explain the lack of tax payments even when profits are reported.

A note to the 2016 financial statement reports that the "balance of shareholder loan including capitalised interest ($18,738,581) with an interest rate of 15%, was extinguished on 15 December 2015 as part of the refinance of the Allity Group."[126] To put this interest rate in context, the company also reports a $15 million "Zero Real Interest Loan… provided by the Commonwealth of Australia Department of Health and Ageing" and the margin in the new bank loan "cannot be greater than 2.75%".[127]

Based on the evidence above, it appears there is little doubt that the sole purpose of this shareholder loan at a 15% interest was to reduce taxable income on profits made in Australia from Australian government subsidies. While the loan may be extinguished, it appears that the impact on avoiding tax payments in Australia may be ongoing. Two critical questions need to answered:

How many millions in income tax have been avoided by a company profiting on government subsidies intended to provide care for the elderly?

Is this in compliance with the responsible investment policies of Archer's investors?

Allity's Related Party Rent Payments

The company's filings are prepared in accordance to "Reduced Disclosure Requirements" under Australian Accounting Standards as the company and its auditor consider it to be "a for-profit, private sector entity which is not publicly accountable."[128] The company structure includes several trusts, but there is no disclosure of how the trusts interact with the parent company.[129]

Allity Pty Ltd is the operator of the Allity Group aged care facilities and is 100% owned by Australian Aged Care Partners Holdings Pty Ltd.[130] The filings of this entity have some additional and revealing information, even though it also utilises Reduced Disclosure Requirements.[131]

While Allity Pty Ltd is part of a tax consolidated group of the parent company, the 2016 financial statements reported a pre-tax of loss of $18.3 million with an income tax benefit of $5.5 million reducing the after-tax loss to $12.8 million.[132] However, the loss was driven by back dated rental payments to a related party. The normalised results (removing the impact of back dated costs) would have resulted in "a profit after tax of $24.7m."[133]

The filing explains that during "FY16, the Company entered into rental agreements for the use of each Residential Aged Care premises. The lessors in the rental agreements are Related Parties. Rental costs incurred in the FY16 year include rental expenditure from the date of initial ownership by the related parties, which includes $53.5m of backdated costs associated with the period from 28 March 2013 to 30 June 2015 in addition to costs for the current year."[134] This structure may possibly be impacted by the Government's reforms to stapled securities.

126 Ibid, p.37, Note 17 Other Financial Assets and Liabilities, Shareholder loans.

127 Ibid, p.37, Note 17 Other Financial Assets and Liabilities, Zero Real Interest Facility & Bank loans.

128 Australian Aged Care Partners Holdings Pty Ltd, Annual Financial Report for the Year Ended 30 June 2017, p.12, Note 2 Summary of Significant Accounting Policies.

129 Ibid, p.40, Note 19 Related Party Transactions, (b) Subsidiaries.

130 Allity Pty Limited, Annual Financial Report for the Year Ended 30 June 2016, p.4, Directors' Report and p.41, Note 19 Related Party Transactions, (a) Parent entity.

131 Ibid, p.12, Note 1 Summary of Significant Accounting Policies.

132 Ibid, p.4, Directors' Report.

133 Ibid.

134 Ibid.

The company's cash flow statement shows that **in 2016 payments to related parties from financing activities were $96.3 million and an astounding $171 million in 2015**.[135] The vast bulk of these financing activities were nearly $90.1 million in rent payments, including $53.5 million in prior periods and $37.5 million for the current year.[136]

The notes to the financial statements explain that "a number of 100% controlled entities of Australian Aged Care Partners Holdings Pty Ltd are property owners of the Residential Aged Care Homes operated by Allity Pty Ltd. Allity Pty Ltd has entered into a lease agreement for the ongoing use of these homes and provides funding to the owning entities for capital improvement projects at these Homes."[137]

These leases have "an initial term of 25 years" and are "non-cancellable and have a remaining term of between 7 and 10 years."[138] Future minimum rent payable under these related party leases are $31.7 million within one year and $130.4 million after one year, but not later than 5 years, and $653.7 million greater than 5 years.[139]

Allity Pty Ltd's 2017 filings show EBIDTA of $33.6 million, pre-tax profit of $31.8 million and profit of $22.6 million after a tax expense of $9.2 million.[140] According to the cash flow statement, payments to related parties rose from $96.3 million in 2016 to $146.7 million in 2017.[141] According to the segment analysis, rent, rates & taxes from residential aged care were $36.5 million in 2017.[142] It is not clear what the remainder of related party payments were for other than broadly for "financing activities".[143]

The ATO may have determined that the 15% interest rate loan from shareholders was not at 'arm's length' and may have forced Allity to refinance. However, it is not publicly known if the ATO recouped potential tax revenue losses or if carried forward losses from this and other schemes continue to provide tax shelters. Recent government reforms may impact Allity's future tax planning but are unlikely to have any impact on previous tax avoidance.

Additionally, the rental payments to related parties are exactly the type of transactions that have raised the concerns of both the ATO and Treasury. However, it is not clear that the recent reforms to stapled structures or amendments to the MAAL will have any impact on these practices. It is also worth noting that the Allity Pty Ltd filings with ASIC contain more disclosure on related party rent payments than the annual reports of the 3 ASX-listed aged care companies discussed below.

Allity received $224 million in government subsidies in the most recent year and should be held accountable for public funds received and required to be fully transparent in its annual financial statements.

135 Ibid, p.11, Cash Flow Statement.
136 Ibid. p.34, Note 5 Expenses.
137 Ibid. p.43, Note 19 Related Party Transactions, (c) Balances with related parties.
138 Ibid, p.44, Note 20 Commitments and Contingencies.
139 Ibid.
140 Allity Pty Ltd, Annual Financial Report for the Year Ended 30 June 2017, p.4 Directors' Report.
141 Ibid, p.11 Cash Flow Statement.
142 Ibid, p.29 Note 2 Segment Information.
143 Ibid, p.11 Cash Flow Statement.

7.
ASX LISTED AGED CARE COMPANIES

There are 3 ASX-listed aged care companies - Regis, Estia and Japara - that continue to grow. These companies have made tax payments in the last 2 years and appear to have higher effective tax rates than the other for-profit aged care providers. However, these companies may also be reducing their taxable income while making substantial profits from government subsidies.

THE FOLLOWING ANALYSIS OF THE 3 ASX LISTED COMPANIES' BUSINESS ACTIVITIES REVEALS THAT:

Regis, Estia, and Japara are listed on the Australian Securities Exchange (ASX) but appear to be using methods to reduce the amount of tax they pay while earning large profits from over $1 billion of government subsidies.

While these companies are not officially structured as stapled securities the internal ownership of properties through trust structures may provide the same tax advantages. Government reforms on stapled structures may not have any impact on these public listed companies and the current level of disclosure to shareholders on related party transactions with trust structures is extremely poor.

Additionally, significant shares in these companies are also owned through discretionary trust structures which may provide significant personal income tax benefits for the owners.

These 3 listed companies received over $1 billion dollars in government subsidies in the most recent year. However, there is limited disclosure to shareholders or the general public on the internal trust structures that may have been used to reduce corporate income tax payments. The evidence presented below demonstrates that there is a clear need to mandate greater transparency. Recent government reforms are not likely to impact on these companies and have not required increased transparency.

Regis

Regis is the largest ASX listed aged care provider. For the financial year ending 30 June 2017 (FY17), Regis reported revenues of $565 million, up by 18% from the prior year, and net profit after tax of $61 million.[144] Of total revenue, $397 million was from government funding (70%) and $158 million from resident fees.[145] Revenue per day from occupied beds was $281, up from $272.[146]

For the half year ended in December 2017, Regis reported total revenue of $297 million, up by 4% from the previous half year and normalised profit (adjusted for an acquisition) after tax of $31 million.[147] Government funding and resident fees continued to grow.[148]

According to the ATO corporate tax transparency data, in 2014/15 Regis had total income of $481.5 million, taxable income of $46.2 million and paid tax of $13.8 million. In 2015/16, Regis has total income of $484.4 million, taxable income of $68.7 million and paid $20.6 million in corporate income tax. These figures indicate that Regis is likely to be the largest taxpayer of any for-profit aged care company. Taxable income was a higher percentage of total income for Regis than any other aged care company, 9.6% in 2014/15 and 14.2% in 2015/16.

There are at least 11 trust structures disclosed in the list of Regis's "significant wholly owned subsidiaries".[149] However, there is very limited disclosure of the relationships between property owning entities and operating subsidiaries.

The company was listed in 2014, but still majority owned by the two founders, Bryan Dorman and Ian Roberts.[150] Proceeds from the listing immediately put the two owners on the BRW Rich List and delivered the pair a reported $734 million fortune.[151] Each retained a 27.3% stake in the company worth a combined $658 million after the first day of trade and received $76 million of the $486 million raised.[152] With roughly $600 million each in wealth in 2016, Bryan Dorman and Ian Roberts were ranked #99 and #100 on the BRW Rich List.[153]

The 2017 Regis annual report shows that the two owners have maintained their holdings in the company and discloses that their shares are held through trust structures.

An equal number of shares is held by "Ashburn Pty Ltd as trustee of the Dorman Family Trust" and by "Galabay Pty Ltd as trustee of the GRAIL Trust".[154] It appears that both entities are discretionary trusts.[155] The full year dividend of 20.34 cents per share in 2017 would have provided the two shareholders with over $33 million in fully franked dividends.[156]

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144 Regis Healthcare Limited, Annual Financial Report for the Year Ended 30 June 2017, p.5, Directors' Report, Review and Results of Operations.

145 Ibid, p.37, Setion2: Current Performance, 2.1 Revenue and other expenses.

146 Regis Healthcare Limited, ASX Announcement, 25 August 2017, "Regis Healthcare Reports NPAT of $61.1 million for FY17 and Declares a Final Dividend of 10.04 cents per Share", p.2.

147 Regis Healthcare Limited, Financial Report of the Half-Year Ended 31 December 2017, p.3, Directors' Report.

148 Ibid, p.11, Section 2: Current Performance, 2.1 Revenue and Other Expenses.

149 Regis Healthcare, Annual Report 2017, p.85, Section 6: 6.1 Subsidiaries. http://investors.regis.com.au/site/wp-content/uploads/2017/09/Regis-Healthcare-Annual-Report-2017.pdf

150 Nick Lenaghan & Jessica Gardner, 8 October 2014, Australian Financial Review, "Regis Healthcare float finds favour". http://www.afr.com/business/health/pharmaceuticals/regis-healthcare-float-finds-favour-20141007-k2dni

151 Ibid.

152 Ibid.

153 John Stensholt, 25 May 2016, Australian Financial Review, "Rich List 2016: Clive Palmer and James Packer lead stock portfolio winners". http://www.afr.com/news/special-reports/resources/rich-list-2016-clive-palmer-and-james-packer-lead-stock-portfolio-winners-20160518-goxt6a

154 Regis Healthcare, Annual Report 2017, p.95.

155 The ABN profile of Galaby Pty Ltd, as a discretionary trust, can be found here: https://www.abr.business.gov.au/SearchByAbn.aspx?abn=65388358791 ; There is no active ABN match for Ashburn Pty Ltd, but there are several matches for the Dorman Family Trust, most of which are listed as discretionary trusts, https://www.abr.business.gov.au/SearchByName.aspx?SearchText=Dorman+Family+Trust

156 Regis Healthcare, Annual Report 2017, p.5 Chairman's Report. Discloses full year dividend of 20.34 cents per share; Calculation based on shares held by the two largest shareholders.

Estia

Estia was previously owned by Quadrant, another Australian private equity company, but was listed in 2014.[157] Estia has generally had weaker performance than its listed peers and is now facing the threat of a class action lawsuit over allegations that it misled shareholders in 2016.[158] However, after significant board and management changes and the implementation of recommendations from a strategic review, financial performance appears to be improving.[159]

In 2017, an investor secured a significant stake in the company and proposed splitting the property from operations and bringing in a new operator to manage existing Estia properties.[160] Perpetual investment management and Kerry Stokes' Seven Network Holdings now own nearly a quarter of the company's total shares.[161]

In the 2016/2017 financial year, Estia reported revenues of $525 million, operating profit of $69 million and net profit after tax of $41 million, significantly up from $28 million in the previous year.[162] Of total revenue, **$388 million was from government funding (74%)** and $137 million from resident fees, both up by 18%.[163]

For the half year ended in December 2017, Estia reported total revenue of $272 million, up by 3% from the previous half year and net profit after tax of $20 million, up by 3%.[164] Government funding and resident fees continued to grow.[165]

According to the ATO corporate tax transparency data, in 2014/15 Estia had $285.8 million in total income, $15.5 million in taxable income and paid $4.7 million in corporate income tax. In 2015/16, Estia had $447.4 million in total income, $58.3 million in taxable income and paid $17.5 million in corporate income tax. Estia's taxable income as a percentage of total income went up from only 5.5% to 13%.

157 http://quadrantpe.com.au/Investments/Quadrant-Private-Equity-No-3/Portfolio/Estia-Health.aspx

158 Matthew Cranston & Nick Lenaghan, 8 February 2018, Australian Financial Review, "Estia Health faces threat of class action". http://www.afr.com/real-estate/estia-health-faces-threat-of-class-action-20180207-h0vqz1

159 Sarah-Jane Tasker, 25 August 2017, The Australian, "Estia Health marks $41m turnaround with acquisition trail return".

160 Jessica Gardner, 7 April 2017, Australian Financial Review, "Estia Health predator Sentinel strikes agreement with RSL Care". http://www.afr.com/business/health/aged-care/estia-health-predator-sentinel-strikes-agreement-with-rsl-care-20170407-gvg4bb

161 Matthew Cranston & Nick Lenaghan, 8 February 2018, Australian Financial Review, "Estia Health faces threat of class action".

162 Estia Health Limited, Annual Financial Report for the Year Ended 30 June 2017, p.5, Directors' Report.

163 Ibid, p.51, Notes to the Financial Statements, Note 6. Revenues and other income.

164 Estia Health Limited, Consolidated Interim Financial Report for the Half-Year Ended 31 December 2017, p.3, Directors' Report.

165 Ibid, p.9, Cash Flow Statement.

Japara

Japara is the smallest of the listed aged care companies but continues to grow. This is evident considering recently announced $39 million aged care portfolio acquisition in NSW.[166]

Interestingly, Japara's 2016 annual report made the following statement on tax.[167]

"A significant portion of our revenue is sourced from Government through the payment and contributions and supplements for residents' care and facility maintenance. We have a responsibility to use these monies in a socially responsible manner, as governed by legislation, for the betterment of the provision of care to the community.... We are a socially responsible taxpayer and have adopted a tax risk management policy, which provides a governance structure to comply with our tax obligations."[168]

While the acknowledgment of the importance of government revenue and the need to comply with tax obligations is significant, it does not seem that the outcome in terms of tax paid is any better than the other listed aged care companies. According to the ATO corporate tax transparency data, Japara's total income in 2014/15 was $285.6 million, taxable income was $20.9 million and tax paid was $6.3 million. In 2015/16 total income was $333.9 million, taxable income was $29.4 million and corporate income tax payments were $8.8 million. Taxable income as a percentage of total income rose modestly from 7.3% to 8.8%.

Japara's corporate structure includes 3 directly owned companies, including the Japara Aged Care Property Trust and Japara Property Holdings Pty Ltd, and dozens of indirectly owned companies.[169] There is no disclosure of the financial relationships between the property-owning entities and the operating subsidiaries.

It appears that Japara's second largest shareholder, with nearly 6% of the issued capital, is Ashens Properties Pty Ltd, acting as a trustee for the Sudholz Family Discretionary Trust.[170] This is a trust controlled by the CEO Andrew Sudholz who in 2017 received remuneration of over $1.1 million and nearly $1.8 million in franked dividends.[171]

In the 2017 financial year, Japara had total revenue of $362 million, up nearly 11% from the previous year, and net profit after tax was $30 million, down slightly due to prior year tax benefits.[172] Of total revenue, **$254 million was from government funding (70%)** and $100 million from resident fees, up by 8% and 12%, respectively.[173] Revenue per day from occupied beds -including government funding of $198- increased by 3% to $282.[174]

For the half year ended in December 2017, Japara reported total revenue of $183 million, up by $4 million from the previous half year and profit of $10 million, down by 4%.[175]

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166 Nick Lenaghan, 27 March 2018, Australian Financial Review, "Japara coasts into Riviera aged care portfolio for $39m". http://www.afr.com/real-estate/japara-coasts-into-riviera-aged-care-portfolio-for-39m-20180327-h0y0z9

167 Japara Healthcare, Annual Report 2016, p.8.

168 Ibid, pp.8-9.

169 Japara Healthcare, Annual Report 2017, pp.64-65, Notes to the Financial Statements, F. Group structure F1. Subsidiaries.

170 Ibid, p.75, (d) Substantial shareholders.

171 Ibid, p.29, 16.3 FY2017 remuneration outcomes; Dividends based on Andrew Sudholz holding 15,757,009 shares at 30 June 2017 (p.39, 16.7.3 KMP shareholdings in the Company) and franked dividends of 11.25 cents per share (p.5, Chairman's Review).

172 Japara Healthcare Limited, Annual Financial Report for the Year Ended 30 June 2017, p.5, Managing Director & CEO's Review.

173 Ibid, p.49, Notes to the Financial Statements, B2 Revenue and other income.

174 Japara Healthcare Limited, FY Full Year Results Presentation, p.9, Key operational metrics.

175 Japara Healthcare Limited, Consolidated Interim Financial Report for the Half Year Ended 31 December 2017, p.1, Directors' Report.

8.

FAMILY-OWNED AGED CARE COMPANIES

There are a number of for-profit large family-owned aged care companies operating in Australia. While little information is publicly available for many of these companies, from what little information is available: Arcare, Tricare and Signature receive between $42 million and $160 million in annual government subsidies but provide very little public information on their operations and financial performance.

Family owned aged care companies (Arcare, TriCare, and Signature) receive between $42-$160 million each in annual government subsidies but provide very little public information on their operations and financial performance and may use accounting methods to avoid paying tax.

These family-owned aged care companies are examples of how trust structures may be used to avoid personal income tax payments on income generated from publicly funded services. Clearly, increased disclosure and transparency are required for private for-profit companies that receive tens of millions of dollars in annual government subsidies.

Arcare

Arcare is the largest private family owned aged care company in Australia and operates 34 aged care facilities.[176] Arcare is owned by the Knowles family, including three brothers Graham, John and Russell, who ranked #33 on the 2014 BRW Rich families list.[177] They had reported wealth of $397 million, $329 million of which was made from the sale of a retirement village operator in 2007.[178]

According to government data, **Arcare received nearly $160 million in government funding for the 2016-17 year**.[179] However, as a private for-profit family business, no other public information on the company is available. Arcare Pty Ltd is the trading name for the "Trustee for the ARC Unit Trust" which is a fixed unit trust.[180] Neither Arcare, nor the Trust which owns it, file any annual financial statements with ASIC.

It is possible that the trust structure provides significant tax advantages for the Knowles family from the profits generate through government subsidies for aged care.

176 https://arcare.com.au/

177 *Australian Financial Review,* 21 August 2014, "BRW Rich Families list 2014: 33. Knowles family".

178 Ibid.

179 Government funding for aged care can be found here: https://www.gen-agedcaredata.gov.au/www_aihwgen/media/2017_New_Service_List/Australia_Service_List_2017.xlsx Data sorted by provider and totalled.

180 https://www.abr.business.gov.au/SearchByAbn.aspx?abn=96443678906

TriCare

TriCare is one of the largest aged care providers in Queensland and is owned by the O'Shea family. In the Courier Mail's 2013 Queensland Rich List, the O'Shea family were ranked #31 with $335 million in wealth, up $73 million from the previous year.[181] In addition to the aged care and retirement village business, the "family also owns NutriFresh, a catering business which supplies more than three million pre-cooked, chilled meals a year for their own and other aged care facilities, hospitals and meals-on-wheels services."[182] Paul O'Shea is the founder and his three sons, Peter, John and Damien are directors along with other family members.[183]

Based on government data, **the 14 Queensland aged care facilities received over $66 million in government subsidies in 2016/17**.[184]

The TriCare business is owned through TriCare Limited, an unlisted public company, of which TriCare Group Pty Ltd is the ultimate holding company.[185] TriCare Group Pty Ltd is classified as an "Other Unincorporated Entity" and has no filings with ASIC.[186] While unverifiable based on the available information, it appears that the O'Shea family own, directly or indirectly, the various types of shares in Tricare Limited and also control Tricare Group Pty Ltd. This highlights the necessity of greater transparency in financial reporting requirements.

Many, if not all, of the TriCare entities that received the $66 million in government aged care subsidiaries are direct or indirect subsidiaries of TriCare Limited.[187] However, the annual financial statements only cover "TriCare Limited as an individual entity" and only show total revenues of $17.2 million and $17.9 million in financial years 2017 and 2016, respectively.[188] The financial statements provide very little meaningful information, but do indicate significant related party transactions which could be used to minimise taxable profits.

Interest revenue from related parties was $2.4 million and $2.1 million in 2017 and 2016, respectively.[189] Trade and other receivables were overwhelmingly with related parties. Current receivables from related parties were $5.6 million, out of a total of $6.7 million, and non-current receivables from related parties were $28.9 million, out of a total of $29.9 million.[190] Based on the available evidence these non-current receivables presumably include $26 million in unsecured loans "made from director related entities with interest at 7%."[191]

181 Daryl Passmore, 25 August 2013, The Courier Mail, "QLD Rich List 2013: O'Shea Family". http://www.couriermail.com.au/business/rich-list/oshea-family/news-story/f233b582d5645261fea541bb2af3de91 ; Charlotte Durut, 14 November 2014, *The Courier Mail*, "No price too high for Tri-Care founder in bidding battle over luxury home". http://www.news.com.au/finance/real-estate/brisbane-qld/no-price-too-high-for-tricare-founder-in-bidding-battle-over-luxury-home/news-story/0872316b9b55fb60c1984d517e11c266

182 Ibid.

183 Ibid.

184 Government funding for aged care can be found here: https://www.gen-agedcaredata.gov.au/www_aihwgen/media/2017_New_Service_List/Australia_Service_List_2017.xlsx Data sorted by provider and totalled.

185 ASIC Current Company Extract of Tricare Ltd, purchased 4 April 2018.

186 https://abr.business.gov.au/SearchByAbn.aspx?abn=97915120975

187 TriCare Limited, Financial Statements for the Year Ended 30 June 2017, pp.29-30, Note 19 Controlled Entities. (purchased from ASIC)

188 Ibid, p.10 Note 1 Accounting policies (a) General information; p.6 Income Statement.

189 Ibid, p.19 Note 2 Revenue.

190 Ibid, p.21 Note 6 Trade and other receivables.

191 Ibid, p.24 Note 12 Borrowings NON-CURRENT.

Examination of the company's 2017 cash flow statement revealed a payment of an "income tax contribution" of $365,774 in 2017 and a tax credit of $656,868 in 2016.[192] The notes to the financial statements explain that "Tricare Group Pty Ltd and its wholly-owned Australian controlled entities have formed an income tax consolidated group.... Each entity in the group recognises its own current and deferred tax assets and liabilities. Such taxes are measured using the 'stand-alone taxpayer approach to allocation."[193]

The notes show a current income tax liability of nearly $3 million and a current payable "Head entity tax loan account" of nearly $3.2 million which "represents the amount owing to the head entity, TriCare Group Pty Ltd arising from tax consolidation."[194]

It is alarming that a major aged care provider in receipt of at least $66 million in government subsidies is not required to have clear and concise public available reports and may have structured its various businesses to minimise income tax payments.

Signature

Signature Care, formerly known as Innovative Care, is another family-owned aged care provider. Signature Care is relatively small following the sale of 10 aged care facilities with more than 1,100 beds to Bupa in 2012.[195] Signature Care is owned by the Croft family. Graeme Croft is the CEO and son Ramsay and daughter Amal are directors.[196] A related family company, Croft Developments Pty Ltd, continues to develop new homes for Bupa and other aged care companies.[197]

Signature continues to build new aged care facilities which it will manage as well. In the Australian Government's most recent Aged Care Approvals Round, Signature Care was awarded the second largest number of new aged care places of any provider.[198] Signature's 640 new aged care places have **an estimated annual recurrent funding value from government of approximately $42 million.**[199]

Signature Care has not filed any annual financial statements with ASIC since 2000.[200] The most recent financial statements from Innovative Care, the predecessor company, cover the 2015 financial year. At that time, Innovative Care was an unlisted public company, but converted to a private company in 2016 and has not filed any subsequent financial statements with ASIC.[201]

192 Ibid, p.9 Cash Flow Statement.

193 Ibid, p.11 Note 1 Accounting policies (c) Income taxes.

194 Ibid, p.22 Note 9 Tax (a) Liabilities CURRENT Income tax; pp.23-24 Note 11 Trade and other payables CURRENT.

195 Madeleine Heffernan, 22 December 2012, Sydney Morning Herald, "Bupa goes on $500m health kick". https://www.smh.com.au/business/bupa-goes-on-500m-health-kick-20121221-2brk2.html

196 Sarah Thompson, Anthony Macdonald & Joyce Moullakis, 23 May 2016, Australian Financial Review, "Aged care operator Allity ahead of Estia, Bupa in race for Croft portfolio". http://www.afr.com/street-talk/aged-care-operator-allity-ahead-of-estia-bupa-in-race-for-croft-portfolio-20160522-gp18kr

197 Ibid.

198 https://agedcare.health.gov.au/2016-17acar/results

199 Ibid, Signature received 640 aged care places out of a total of 9,911. The total estimated annual recurrent funding value for all new places is $649 million.

200 https://connectonline.asic.gov.au/RegistrySearch/faces/landing/SearchRegisters.jspx?_adf.ctrl-state=tydva6yz5_4

201 https://connectonline.asic.gov.au/RegistrySearch/faces/landing/SearchRegisters.jspx?_adf.ctrl-state=tydva6yz5_21

The 2015 statements report a “consolidated loss of the Group” of $4.2 million and $3.6 million in financial years 2015 and 2014, respectively.[202] However, in 2014 distributions totalling nearly $8.9 million were declared to 3 trusts, presumably representing the three family members. Distributions were $4.4 million to GRCroft Investments Trust and $2.2 million each to AMCroft Investments Trust and Ramcorp Developments Trust.[203] It appears that these are all discretionary trusts.[204]

In 2015, the company also reported nearly $22.8 million in current related party receivables and $7.8 million in related party payables.[205] The company disclosed 100% ownership of 6 subsidiaries, including 4 trusts: Innovative Care Trust, Pacific Renaissance Trust, Woodend Community Aged Care Trust and Innisfree Trust.[206] These trusts are also discretionary trusts.[207]

It appears that this company that has received - and will continue to receive - millions in government subsidies for aged care services is able to operate without transparency and accountability for how tax payer money is spent. Whether appropriate tax obligations have been met through the personal income tax payments of trust beneficiaries is unknown. However, given the current ability of individuals to use trust structures to minimise person income tax payments there remain serious doubts.

9. CURRENT TAX AVOIDANCE REFORM MEASURES

This section provides a brief overview of the Australian Tax Office’s (ATO), the Australian Government’s and the Federal Opposition’s consideration of corporate tax avoidance and the reforms that are being implemented and proposed to address this issue.

The ATO’s Consideration of Corporate Tax Avoidance

Corporate tax avoidance through stapled securities and related corporate structures has attracted recent attention from both the ATO and the Australian Treasury. In January 2017 the ATO issued a taxpayer alert, which stated:

“*reviewing arrangements which attempt to fragment integrated trading businesses in order to re-characterise trading income into more favourably taxed passive income* [see figure 1]. *Our concern arises where a single business is divided in a contrived way into separate businesses. The income that might be expected to be subject to company tax is artificially diverted into a trust where, on distribution from the trust, that income is ultimately subject to no tax or a lesser rate than the corporate rate of tax. These arrangements have the potential to erode the corporate tax base*”[208]

202 Innovative Care Ltd and Controlled Entities, Financial Statements for the Year Ended 30 June 2015, p.1 Directors’ Report.

203 Ibid, p.17 Note 3 Distributions.

204 There are 2 separate entities that appear as The Trustee for GR Croft Investments Trust, the first is a discretionary investment trust and the second is a discretionary trading trust, https://www.abr.business.gov.au/SearchByAbn.aspx?abn=42768700884 ; https://www.abr.business.gov.au/SearchByAbn.aspx?abn=95370983259 ; The trustee for AM Croft Investments Trust is a discretionary investment trust, https://www.abr.business.gov.au/SearchByAbn.aspx?abn=49663465488 ; The trustee for Ramcorp Developments Trust is a discretionary trading trust, https://www.abr.business.gov.au/SearchByAbn.aspx?abn=42789580843

205 Innovative Care Ltd and Controlled Entities, Financial Statements for the Year Ended 30 June 2015, p.17 Note 5 Trade and Other Receivables CURRENT; p.18 Note 7 Trade and Other Payables CURRENT.

206 Ibid, p.19 Note 12 Controlled Entities.

207 The Trustee of Innovative Care Trust is a discretionary trading trust, https://www.abr.business.gov.au/SearchByAbn.aspx?abn=16286212873 ; no exact match was found for Pacific Renaissance Trust, but The Trustee for Pacific Renaissance Corporation Unit Trust is a fixed unit trust, which briefly had business names of Tugun aged care and Bupa Tugun in 2013-2014, https://www.abr.business.gov.au/SearchByAbn.aspx?abn=93438892894 ; The Trustee for Woodend Community Aged Care Trust was a discretionary services management trust, but was cancelled in October 2017, https://www.abr.business.gov.au/SearchByAbn.aspx?abn=69619821132 ; The Trustee for Innisfree Trust is a discretionary investment trust, https://www.abr.business.gov.au/SearchByAbn.aspx?abn=90726563198

208 ATO, 31 January 2017, “Taxpayer Alert TA 2017/1”. https://www.ato.gov.au/law/view/document?Mode=type&TOC=%2203:TPA:2017:%2300001%23TA%20 2017/1%20-%20Re-characterisation%20of%20income%20from%20trading%20businesses;%22&DOCID=%22TPA/TA20171/NAT/ATO/00001%22

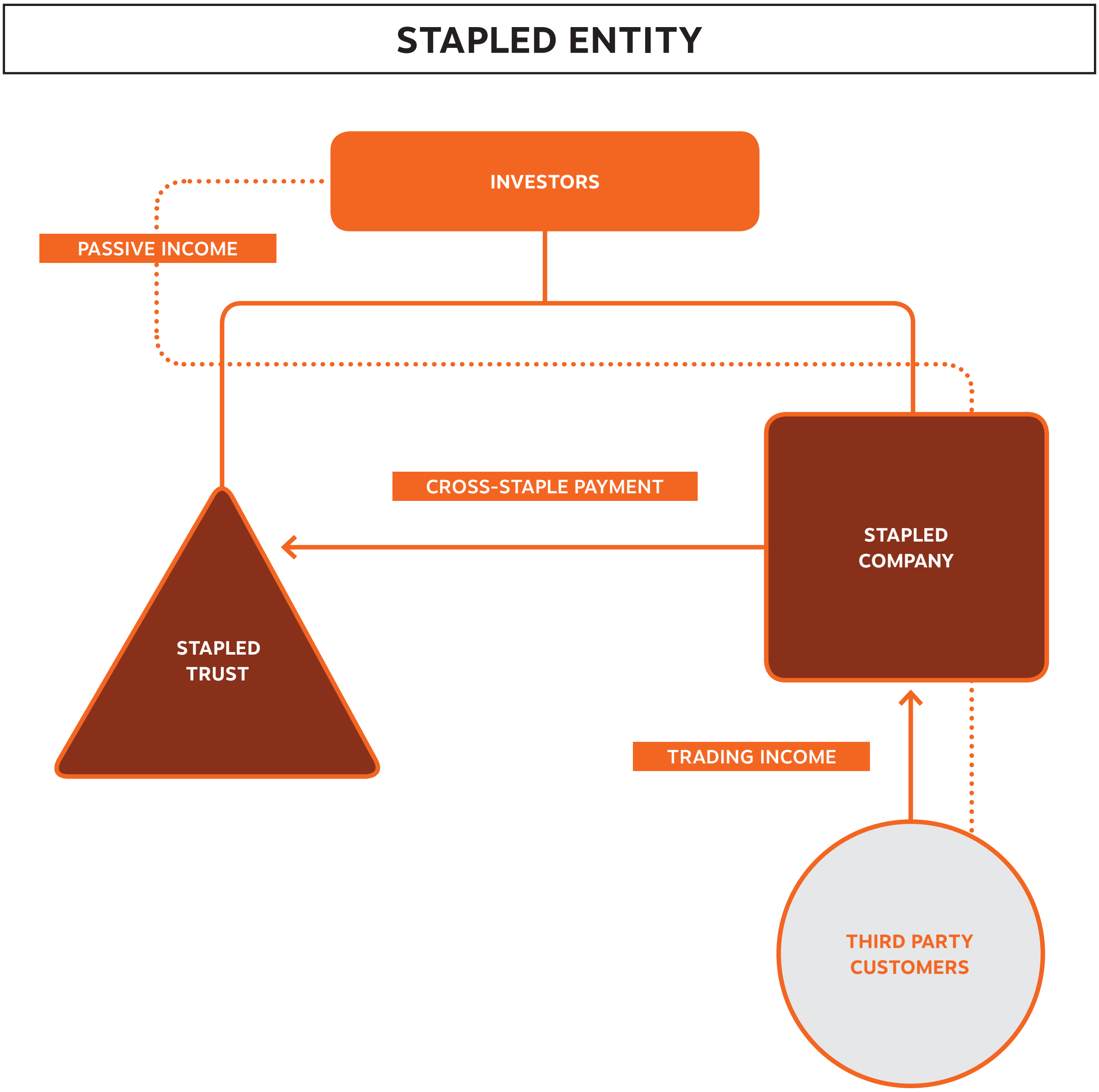

Figure 1: Stapled Entity[209]

The primary concerns of the ATO are when payments within a corporate structure, that are not third-party rent, divert income to an Asset Trust that "is assessed on a flow-through basis (that is, usually not taxed),

distributions from Asset Trust may be ultimately subject to taxation at a rate of commonly between 0 to 30%, and although Operating Entity would be taxed at the corporate rate of tax, it is unlikely to have significant taxable income, largely because of deductions in respect of payments to Asset Trust."[210]

The ATO explained that investments "using stapled structures often have effective tax rates for foreign investors of between 0-5% and rarely over 10%".[211]

The Treasury echoes the concerns of the ATO and states that stapled "structures may take different

209 The Australian Government the Treasury, March 2017, "Stapled Structures: Consultation Paper", p.3. https://static.treasury.gov.au/uploads/sites/1/2017/06/C2017-009_Stapled_Structures.pdf

210 Ibid.

211 ATO, 22 March 2017, "Taxpayer Alert 2017/1: Presentation to the Australian Taxation Office's Infrastructure Event", p.19. http://www.allenovery.com/SiteCollection-Documents/ATO%20Infrastructure%20Event.pdf

legal forms. Some may be contractually stapled using a stapling deed (typically used for listed staples), while others could be created through other types of contractual arrangements ensuring investors only deal with the securities together or are structurally stapled through common ownership or control of a company and related trust."[212]

The "re-characterising of trading income into a lower taxed passive income flow reduces overall tax revenue and presents a risk to the integrity of the corporate tax base. This undermines the ability of the Government to fund its activities and deliver services to the community."[213]

re-characterising of trading income into a lower taxed passive income flow reduces overall tax revenue and presents a risk to the integrity of the corporate tax base. This undermines the ability of the Government to fund its activities and deliver services to the community

Government Reforms of Stapled Securities and Related Corporate Structures

At the end of March 2018, following the release of a consultation paper by the Treasury on the matter, Treasurer Scott Morrison announced a package of reforms to tighten the rules on stapled structures and close "down an unintended concession that was only available to foreign investors."[214] The Treasurer stated that "Hundreds of millions in revenue is potentially being forgone because of staples and broader tax concessions. Left as is this could grow to be in the order of billions of dollars. The Government has developed a package of measures to address the sustainability and tax integrity risks posed by stapled structures and limit the broader concessions for foreign investors."[215]

The primary focus on abuse of stapled structures has been related to tax avoidance by foreign investors on large scale investments in privatised utilities and other infrastructure.

To date, very little attention has been paid to the use of these practices in the for-profit aged care sector. However, as the evidence presented in the previous sections of this report indicate, further analysis is urgently needed.

Government Multinational Tax Avoidance Reforms

On 28 March 2018, the day after the Government announced reforms to stapled structures, they also "introduced legislation to extend the reach of its successful Multinational Anti-Avoidance Law (MAAL)".[216]

The Treasury's consultation paper on proposed amendments to the legislation stated that "MAAL took effect from 1 January 2016 and prevents multinationals from escaping Australian tax by using artificial or contrived arrangements to avoid having a taxable presence in Australia.

212 The Australian Government the Treasury, March 2017, "Stapled Structures: Consultation Paper", p.3.

213 Ibid, p.8.

214 The Honourable Scott Morrison MP, Treasurer of the Commonwealth of Australia, 27 March 2018, Media Release, "Levelling the playing field for Australian investors: Taxation of Stapled Securities". http://sjm.ministers.treasury.gov.au/media-release/024-2018/

215 Ibid.

216 The Honourable Scott Morrison MP, Treasurer of the Commonwealth of Australia, 28 March 2018, Media Release, "Making sure multinationals pay their fair share". http://sjm.ministers.treasury.gov.au/media-release/026-2018/

This new legislation will strengthen the integrity of the MAAL by preventing large multinationals from using foreign trusts and partnerships in corporate structures to avoid the application of the MAAL. This will ensure that the MAAL will continue to operate as intended."[217]

The proposed amendment "ensures that the application of the multinational anti-avoidance law cannot be avoided by interposing an Australian trust or partnership between the foreign entity and its Australian customers."[218] Unlike the stapled structure reforms which provide for extended transitional arrangements, this amendment is retrospective to 1 January 2016, the original application date of the MAAL.[219] "Not making the law retrospective could reward entities that have engaged in deliberate tax avoidance and incentivise further attempts to undermine the Australian tax system."[220]

The Bill, Treasury Laws Amendment (Tax Integrity and Other Measures) Bill 2018, has been introduced in the House of Representatives and a second reading has been moved.[221]

Background on Other Relevant Reform Proposals

The Federal Opposition, the Australian Labor Party (ALP), has also adopted policy positions which could address some tax avoidance issues in the for-profit aged care sector.

In May 2017, the ALP announced a broad range of tax reforms, including a measure related to government tenders,[222] which would require all "firms tendering for Australian Government contracts worth more than $200,000" to state their country of domicile for tax purposes.[223] This policy would implement an important recommendation (Recommendation 8) of the interim report of the Senate Inquiry into Corporate Tax Avoidance, *Part 1: You cannot tax what you cannot see.*[224]

The ALP policy document explains that two options for this reform exist, the amendments that a Finance Minister is able to make to the *Commonwealth Procurement Rules* (CPRs) or the amendments that can be legislated to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).[225]

In July 2017, the ALP announced plans to "introduce a standard minimum 30 per cent tax rate for discretionary trust distributions".[226] The policy acknowledges that individuals and businesses "use trusts for a range of legitimate reasons", but "in some cases, trusts are used solely for tax minimisation."[227]

The ALP argues that a new minimum 30% "tax rate on distributions will make sure discretionary trusts cannot be used as a vehicle for aggressive tax minimisation".[228] The independent Parliamentary Budget Office estimated the policy would "raise $4.1 billion over the forward estimates to 2021-22 and $17.2 billion over the medium term."[229]

Given the evidence provided in this report, the Tax Justice Network – Australia strongly encourages the government, opposition and the cross-bench to work together to immediately implement these basic common-sense reform proposals.

217 Treasury, 12-23 February 2018, Consultation on Draft Legislation, "Toughening the Multinational Anti Avoidance Law", https://treasury.gov.au/consultation/c2018-t261444/

218 Treasury, 12 February 2018, "Treasury Laws Amendment (2018 Measures No. #) Bill 2018: Exposure Draft Explanatory Materials", pp.9-10, 1.15. https://static.treasury.gov.au/uploads/sites/1/2018/02/c2018-T261444-ExplanatoryMat-1.docx

219 Ibid, p.12, 1.34, 1.35.

220 Ibid, p.12, 1.36.

221 Further information on the Bill can be found here: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;page=0;query=BillId%3Ar6092%20Recstruct%3Abillhome#srs

222 Andrew Leigh MP, Shadow Assistant Treasurer, 13 May 2017, Media Release, "A Fairer Tax System for Millions, Not Millionaires". http://www.andrewleigh.com/a_fairer_tax_system_for_millions_not_millionaires

223 Ibid.

224 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporate_Tax_Avoidance/Report_part_1

225 ALP, 13 May 2017, Policy document, "A fairer tax system". https://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/7652/attachments/original/1494489451/170511_A_fairer_tax_system_Fact_Sheet.pdf?1494489451

226 The Honourable Bill Shorten MP, Leader of the Opposition, 30 July 2017, Media Release, "A Fairer Tax System for All Australians". http://www.billshorten.com.au/media_release_a_fairer_tax_system_for_all_australians_sunday_30_july_2017 ; the full policy document can be found here: https://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/7652/attachments/original/1501324995/170729_Shorten_Trusts_Fact_Sheet_FINAL.PDF?1501324995

227 Ibid.

228 Ibid.

229 Ibid.

10. DISCUSSION AND CONCLUSION

The report presents preliminary analysis demonstrating how for-profit aged care providers use known loopholes in the system and cleverly disguised corporate structures and tactics to maximise operating income and avoid tax, while taking advantage of generous, tax-payer funded government subsidies.

This occurs in the face of widespread and growing recognition of the crisis in Australia's aged care system, especially when faced with an ageing population and future strain on the health care system (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)).[230]

As the case studies presented in this report show, there is an alarming lack of transparency in the operations of large, for-profit aged care companies in Australia. The six largest for-profit aged care providers in Australia received over $2.17 billion AUD in annual tax payer funded subsidies which provided after tax profits of $210 million AUD. The actual operating profits were much larger. These providers only paid around $154 million AUD in tax in 2015-16. Companies that receive millions of tax payer dollars via Australian government subsidies must be required by law to meet higher standards of transparency in financial reports and be publicly accountable.

This must be a basic principle of a well functioning, responsible society, companies that receive millions of government subsidies must be held to a higher standard of transparency and must be publicly accountable.

As a basic principle, companies that receive millions of government subsidies must be held to a higher standard of transparency and must be publicly accountable.

The report calls upon the Government, Opposition, and cross-bench Senators to work together to make laws to stop aged care providers from avoiding the taxes they should pay and provide clear records of their business dealings.

230 Australian Bureau of Statistics (ABS) 2013. Population projections, Australia, 2012 (base) to 2101. ABS cat. no. 3222.0. Canberra: ABS.

11. PROPOSED REFORMS

In addition to the government reforms, proposed legislation and opposition party policies discussed above, The Tax Justice Network – Australia strongly recommends implementation of the following 2 reform measures that are desperately needed to ensure public accountability and transparency on government subsidies to for-profit companies.

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.

Any company that receives over $10 million in Commonwealth funds in any year must be required to file complete audited annual financial statements with ASIC in full compliance with all Australian Accounting Standards and is not eligible to for Reduced Disclosure Requirements. This would apply to Australian subsidiaries of foreign-owned companies, Australian subsidiaries of multinational enterprises and to large private or unlisted public Australian owned companies. This is a simple common-sense proposal that ensures a minimum level of transparency on public spending with for-profit government contractors. This measure could be accomplished through legislation and/or altering the terms of any future government contracts to include this provision.

Require full disclosure of transactions between trusts (or similar entities, i.e. partnerships) that are part of a stapled security structure or similar corporate structures where the trust derives all of its income (or a majority of income) from related parties. This should apply to both public companies and private companies in which operating income is substantially reduced by lease and/or finance payments to related parties with beneficial tax treatment.

While the government's recently announced reforms on stapled structures are a step in the right direction, there is greater need for immediate transparency measures on related party transactions that have the potential to reduce corporate income tax payments. Full disclosure of related party transactions with trust structures would provide shareholders with better information to assess risks and would help restore the integrity of companies using these corporate arrangements.

After a public review process and stakeholder engagement, disclosure measures should be mandated for all ASX-listed companies with trust structures that generate a majority of income from related parties. Stapled securities that generate third party rental income, including most A-REITS could be largely exempted. Mandatory disclosure for any company receiving more than $10 million in annual government subsidies could also be required in annual financial statements with ASIC as part of the government contracting and/or procurement process.

The Tax Justice Network – Australia strongly supports the Australian Government's reform measures discussed above in relation to stapled structures and the proposed Multinational Anti-Avoidance Law (MAAL) amendments but believes that additional transparency measures are necessary and should be an urgent priority to restore integrity to the tax system and ensure accountability on government spending.

The Tax Justice Network – Australia also strongly supports the Federal Opposition's policy proposal on minimum taxation of discretionary trusts. These measures would also help restore integrity to the tax system and increase fairness. Additional revenue generated could be used to help fund the increasing needs of Australia's ageing population.

Aged care will continue to be one of the fastest growing areas of government spending and will continue to be of growing importance in terms of jobs and employment. It is vital that all parties come together to push for additional reforms to ensure accountability of government spending and that for-profit companies fulfil their tax obligations.