

ANMF

Tasmanian Branch

AUSTRALIAN NURSING & MIDWIFERY
FEDERATION (TASMANIAN BRANCH)

SUBMISSION

**Financial and Tax
Practices of For-Profit
Aged Care Providers**

8 June 2018

Australian Nursing & Midwifery Federation (Tasmanian Branch)

Organisation Overview

The Australian Nursing and Midwifery Federation (ANMF) is both the largest nursing and midwifery union and the largest professional body for the nursing and midwifery teams in Tasmania. We operate as the State Branch of the federally registered Australian Nursing and Midwifery Federation. The Tasmanian Branch represents over 8000 members and in total the ANMF across Australia represents over 268,500 nurses, midwives and care staff. ANMF members are employed in a wide range of workplaces (private and public, urban and remote) such as health and community services, aged care facilities, universities, the armed forces, statutory authorities, local government, offshore territories and more.

The core business of the ANMF is the industrial and professional representation of nurses, midwives and the broader nursing team, through the activities of a national office and branches in every state and territory. The role of the ANMF is to provide a high standard of leadership, industrial, educational and professional representation and service to members. This includes concentrating on topics such as education, policy and practice, industrial issues such as wages and professional matters and broader issues which affect health such as policy, funding and care delivery. ANMF also actively advocates for the community where decisions and policy is perceived to be detrimental to good, safe patient care.

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1. Introduction

The Australian Nursing and Midwifery Federation (Tasmanian) Branch have a significant interest in the Aged Care Industry in Tasmania and represent Registered Nurses, Enrolled Nurses and Care Workers in Tasmania working in both not-for-profit and for profit aged care facilities.

Tasmania has the highest population of people over the age of sixty-five in Australia with nearly 19 (18.7) percent of the Tasmanian population being sixty-five or older.¹ The age demographic increases the need for access to residential aged care facilities.

There are six for profit providers in Tasmania:

1. Aged Care Services Australia Group Pty Ltd (ACSAG/Japara)
2. Bupa Care Services Pty Ltd (BUPA)
3. Menarock Aged Care Services (Claremont) Pty Ltd (Menarock)
4. Regis Aged Care Pty Ltd (Regis)
5. IBIS no 3 Pty Ltd (Synovum)
6. The Trustee for Cormiston Village Unit Trust (Cadorna House)

The ANMF (Tas) Branch have members in all six for profit residential aged care organisations across all their facilities in Tasmania. Members consistently report to ANMF (Tas) the challenges they face, due to poor staffing levels, in providing the quality care that they wish to their elderly and vulnerable residents.

2. Executive Summary & Key Responses

Key Responses:

1. The ANMF (Tasmanian Branch) (ANMF) has a significant interest in the tax practices and avoidance of the for profit aged care industry with six for profit aged care providers operating in Tasmania.
2. The ANMF have members working in every for profit aged care facility in Tasmania. The membership in across these facilities includes, Registered Nurses, Enrolled Nurses and Care Workers.
3. The for profit aged care industry does employ the use of tax avoidance strategies and aggressive tax minimisation practices including stapled structures and rental and leasing to themselves.
4. ANMF support taxation reform in the for profit aged care industry that will provide great transparency of how commonwealth funds are being used. This can be achieved by:
 - Mandatory submission of annual financial statement with Australian Securities and Investments Commission (ASIC) in full compliance with all Australian Accounting Standards with no eligibility for Reduced Disclosure Requirements afforded.
 - That where public and private companies are part of a stapled structure they must fully disclose all transactions between trusts or similar parties where most or all the 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.

5. The negative impact that tax avoidance and aggressive tax minimisation has on the quality of resident care is profound. Not only is tax avoidance overt, the priority to increase profits by cutting care hours results in poor quality of care of residents simply because there are insufficient staffing levels.
6. The sustainability of the sector is at risk due to the lack of recognition and valuing of staff and residents due to the focus of for profit providers being tax avoidance and profit generation.
7. The current probity mechanisms and accountability on for profit providers is inadequate due to the overt cost shifting and tax avoidance of the providers.
8. Current practices do not meet public expectations and ANMF (Tas) have heard from many nurses and care workers leaving for profit providers due to the pressures by providers to participate in unethical practices. The flow on effect of providers focus on profit generation is also experienced by residents and their families who feel powerless to improve the care of their loved ones.
9. Not only is more transparent reporting and accountability required regarding financial practices, legislation must ensure that government funding allocated to for profit providers based on ACFI assessments is quarantined and used to deliver care. This can be achieved through legislating care to resident ratios.

3. Use of any tax avoidance or aggressive tax minimisation strategies

The for profit aged care industry generates substantial profits and pays minimal tax. In research conducted by the Tax Justice Network² which examines the for profit aged care industry and focusses on the largest for profit aged facilities; Bupa, Opal, Regis, Estia, Japara and Allity. The report shows that these top six providers received over \$2.17 billion dollars in annual taxpayer subsidies and made substantial additional operating profits, yet only paid \$154 million dollars in tax in the 2015-2016 financial year.

Evidence suggests that for profit aged care facilities in Australia are actively using tax avoidance and aggressive tax minimisation strategies.² These include the use of stapled securities and renting their aged care facilities from themselves.

Bupa provides a clear example of where aged care providers are utilising rental payments and leasing to avoid tax. In 2017 Bupa reported \$35 million dollars in rental expenses and \$28 million dollars in lease payments and the actual lease payments are much larger than the reported after-tax profit.³

Japara highlights how complex corporate structures can be used as stapled securities to reduce taxable income. Japara report directly owning companies and dozens of indirect companies³ and while they generated \$333.9 million dollars in total income during the 2015-2016 financial year, their reported taxable income was \$29.4 million dollars and only \$8.8 million dollars was paid in tax.²

Tax avoidance and aggressive tax minimisation strategies are used consistently by for profit aged care providers. Given that this results in substantial profits by these

companies which are derived in part from Federal Government funding and individual payments for care delivery, it is essential that greater transparency and accountability is placed upon providers to account for how federal government funding and individual payments are being used by for profit aged care providers.

4. The associated impacts on the quality of service delivery. The sustainability of the sector, or value for money for government

Quality of Service

The quality of service delivery, that is the care and treatment of residents in for profit aged care facilities is below the level that ANMF members believe should be available to residents in their care. The majority of residents in aged care facilities are there because they are unable to care for their own needs and require support with activities of daily living. While members report that they enjoy working with residents they consistently raise concerns about their inability to provide quality treatment to residents in their care due to severe financial limitations put in place by the for-profit providers. Members indicate their distress where they are consistently unable to provide adequate basic support for residents.

ANMF members who work in for profit aged care facilities firmly believe that their employers primary priority is to generate substantial profits rather than providing quality resident care. An example provided by a registered nurse who works in a for profit facility in Tasmania that illustrates this point:

- a) The Clinical Care Manager when employed by Presbyterian Care Tasmania continually advised all staff in staff meetings that they needed to do the best that they could for residents. After being taken over by Regis the same Clinical Care Manager advised all staff in the same staff meeting that they needed to remember that they were all there for the shareholders and if the facility didn't do well, the shareholders would not be happy.

Members also report concerted efforts by for profit providers to continually reduce staffing costs by actively reducing staffing numbers. The negative impact this has on the quality of care residents receive is significant. The following examples highlight the poor quality of care residents receive, simply because for profit aged care facilities actively and consistently reduce care hours:

- b) Nursing staff report increasing numbers of resident falls, increasing wait times for toileting, pain medication administration and pressure area care and a general lack of time to attend to anything in a methodical way.
- c) Nursing staff report that a resident recently called his daughter due to the wait time to be taken to the bathroom. The daughter complained to the facility manager who subsequently called the nursing staff to advise that they needed to improve their care, however management expected this despite providing no additional staff.
- d) Patients on blood thinning medication and who have a fall are required to have 30-minute observations attended post the fall for a period of 48 hours. Nursing staff report that this is impossible due to the lack of staff.
- e) Food quality has significantly reduced at an aged care facility in Tasmania since Regis took over the facility from Presbyterian Homes Tasmania (a not for profit facility). Portion sizes have reduced despite meals coming from the same provider. Residents have regularly expressed their unhappiness with the quality of the food.

- f) One aged care provider regularly issues memos to all staff instructing them not to give any resident ice cream if they request it due to associated costs. This often contradicts advice given by dieticians to give residents cream and/or ice cream with every dessert and meal where possible to increase their calorie (and fluid) intake. Instead of employing more staff to ensure that falls are prevented, nursing staff report more floor alarm mats are being used to monitor residents. These do not prevent a fall or assist when the resident has already fallen, rather the alarm simply alerts staff to the fall.

Sustainability of the Sector

There is wide spread concern among ANMF members about the sustainability of the for profit aged care industry. The concern is largely based around their view that for profit aged care providers do not value having Registered Nurses, Enrolled Nurses and qualified care workers in sufficient numbers to enable safe and quality resident care. Below are examples from ANMF members who work in for profit aged care facilities that highlights the impact poor staffing levels has on their decisions to remain in the sector and on resident care.

- g) In less than 12 months 32 staff have resigned due to concerns over the poor staffing levels and practices at one Regis facility in Northern Tasmania since it took over from Presbyterian Care Tasmania. Anecdotally, the nursing staff have mainly sought work in the Tasmanian Public Health System and Care Workers have moved to other residential care facilities that are not owned by Regis.
- h) Any sick leave taken by Registered and Enrolled Nurses or Care Workers is rarely replaced. For example, in a unit with 28 residents there is one Registered Nurse, and two care workers (BUPA). If one staff member is sick they are not replaced. This leaves two staff members left to care for 28 residents. If two staff members are sick in another unit and one unit has three staff on, one of them will redeployed to work in that unit so that both units are only staffed with 2 staff members. Previously when the facility was managed by a not for profit provider 4 staff (one Nurse and 3 care workers) would have been employed in each of these units and sick leave was always replaced.

ANMF members working in the for profit aged care industry regularly report not being valued by their employers despite being the care and treatment providers to the residents in their facilities. Given the significant pay gap between public sector nurses and aged care sector nurses, retaining enough nurse and care workers in the for profit aged care sector to provide sustainable services is problematic. This risk to retaining and recruiting to the aged care sector was acknowledged by the 2017 senate inquiry into the future of the aged care workforce with poor staffing ratios and remuneration cited as key challenges for the industry.⁴ Yet it appears that the for profit aged care industry, instead of working to address this challenge, continue to perpetuate the stressors on staff by consistently reducing staffing levels as well as failing to fairly address remuneration. The solution is not to increase funding to the sector but rather to quarantine funding for care purposes.

In Tasmania all six for profit aged care providers, aside from Cadorna which does not employ staff under an enterprise agreement but instead under applicable modern awards (with members having less beneficial employment conditions) have negotiated forcefully to reduce employment conditions with some providers putting agreements out to ballot that have been strongly opposed by ANMF and members.

Most recently Regis applied to the Fair Work Commission for approval of an enterprise agreement that will reduce personal leave, reduce Sunday penalty rates and remove paid meal breaks. These calculated attempts to reduce the overall employment conditions of members working in for profit aged care highlights the significant risk that for profit aged care providers pose to the sustainability of the sector ongoing staffing

of the sector is currently relying upon the goodwill and desire of nursing staff and care workers to ensure that residents are protected and given the best care possible with current insufficient staffing levels.

ANMF members report that even compulsory training that the employer is required to provide for staff to comply with safety and quality standards relies upon the goodwill of staff to be completed. The following example provided by a member working in the for-profit sector.

- i) Nursing and care staff undertaking mandatory training are not paid for the time taken to undertake the training. For example, manual handling training which staff complete on site as it is mandatory, is not recognised as paid work by the employer. When staff submit a payroll query it is rejected with query closed and no explanation is given. Staff continue to complete the training as they understand how important it is to stay up to date with best practice, but clearly the employer doesn't value staff having up to date, safe and quality practice.

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

The current accountability and probity mechanism for the expenditure of taxpayer money is not sufficient given the overt tax avoidance and minimisation strategies used by the for profit aged care sector.

ANMF (Tas) support the Tax Justice Network recommendation that the current tax avoidance and minimisation strategies be addressed by:

1. Mandatory filing, by any company who receives over \$10 million dollars in Commonwealth funding in any year, a complete audited annual financial statement with Australian Securities and Investments Commission (ASIC) in full compliance with all Australian Accounting Standards and not be eligible for Reduced Disclosure Requirements.
2. That where public and private companies are part of a stapled structure they must fully disclose all transactions between trusts or similar parties where most or all the 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

6. Whether current practices meet public expectations

ANMF members are firmly of the view that current practices of for profit aged care providers do not meet public expectations. It is the view of ANMF (Tas) that funds that are generated from the ACFI assessments based on individual care requirements should be used to provide care to residents. However, the opposite appears to be true of for profit aged care providers with concerted effort placed upon generating additional Government funding through ACFI assessments while utilising tax avoidance strategies while cutting care hours and generating substantial profits.

The below examples are from members who work in for profit aged care facilities regarding practices which are far from meeting public expectation and a report from one family member whose husband passed away in a for profit aged care facility.

- j) Nursing staff report that since Regis took over the facility, incident reports are submitted and sent to Queensland to be reviewed by the legal team to ensure that the 'wording is correct' to ensure that there is no accountability on the organisation.
- k) Nursing and Care staff are regularly noticing items in resident's care plans that are reported on through ACFI, hence attracting funding, that are not true or accurate. For example, a resident who is fully independent with activities of daily living is noted in their care plan as needing assistance with mobilising, showering etc.
- l) An ACFI co-ordinator who recently resigned from a Regis facility indicated that she could not continue in the role as the pressure from Regis management to alter ACFI assessments to generate additional funding which did not reflect residents actual care needs was immense and she feared for her registration as a Registered Nurse. Importantly she knew that the additional funds were not being directed to resident care.
- m) A community member recently relayed to ANMF (Tas) that her husband had passed away in Regis facility. She stated that she had significant concerns about the insufficient numbers of staff at the facility since Regis had taken over. She said that she regularly attended the facility to provide care to her husband as she knew the staff would often find it difficult to shower, dress and toilet her husband in a timely way, not because they didn't try their hardest but simply because it was impossible to do so with such a small amount of staff.

7. Other related matters

As previously stated, the ANMF (Tas) support increased transparency and accountability on for profit aged care providers to demonstrate how government funding is being used in the sector.

Additionally, to support the sustainability of the sector, the safety of staff and importantly residents, legislated ratios must be implemented to ensure that government funding delivered to for profit aged care facilities through ACFI is being used as intended, which is to deliver care to residents rather than generating profit. This can only be achieved by having sufficient Registered Nurses, Enrolled Nurses and Care Workers to deliver the care and a legislative requirement is what is required to ensure this occurs.

8. References

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