



AUSTRALIAN NURSING & MIDWIFERY
FEDERATION (TASMANIAN BRANCH)

SUBMISSION

**Royal Commission into
Aged Care Quality &
Safety**

31 October 2019

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 around 8,000 members and in total the ANMF across Australia represents over 250,000 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 are perceived to be detrimental to good, safe patient care.

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Introduction

ANMF Tasmanian Branch members work in the public, private health and aged care, sectors across Tasmania.

Through our ANMF Tasmanian Branch Health Education and Research Centre, the Branch offers a Certificate III in Individual Support and Disability and Community Care as well as the Diploma of Nursing. These roles are ones which are sought after in the aged care industry and the ANMF HERC graduates are sought after by industry due to their comprehensive and holistic skills and knowledge.

ANMF Tasmanian Branch represents over 2000 nurses and care workers in the aged care sector in Tasmania. The ANMF and its members in the aged care sector consider that those accessing aged care services must have a comprehensive assessment of their holistic care needs to ensure that these needs are met in a safe and quality way.

Nurses and care workers are pivotal in the delivery of care to the elderly across all health settings in Tasmania, however especially so in the community and in residential 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.

Nurses and care workers provide clinical and functional assessments and assistance and support with activities of daily living. This includes health promotion, prevention of illness and injury, care of the ill, disabled and dying. Care should be evidence-based, person-centred, and holistic in addressing physical, mental, social and emotional wellbeing and should also be delivered in a manner that is appropriate and consistent with the individual preferences, values, and beliefs of each person.

Executive Summary & Key Responses

The following submission is provided for consideration by staff of the Royal Commission in response to the matters the Royal Commission will inquire into at the public hearing to be held in Hobart between Monday 11 November 2019 and Friday 15 November 2019.

The Royal Commission will explore the operations of selected Approved Providers that operate residential aged care facilities in Tasmania and elsewhere in Australia.

This submission focuses on selected approved providers from the perspective of Australian Nursing and Midwifery Federation (ANMF) members' delivery and/or involvement in care.

The ANMF Tasmanian Branch supports all submissions made by the Australian Nursing and Midwifery Federation to the Royal Commission.

This submission will address:

1. The inadequacy of care provision to residents.
2. The ineffectiveness of the accreditation process in addressing quality and safety concerns at residential aged care facilities.
3. How the complaints process does not support nurses, care workers, residents or their families in addressing significant concerns related to quality of care or safety issues in residential aged care facilities.
4. The tax avoidance of selected residential aged care providers in Tasmania while generating significant profits from federal government funds for resident care provision.

Key Responses

- i. The quality of care for residents and their safety is at risk due to the lack of legislated ratios to ensure minimum staffing level and skill mix.
- ii. If Federal Government funding is not used by providers to deliver care, then the funds should be returned to the Federal Government.
- iii. In order to ensure that resident care needs are met in a safe and quality way in line with the resident's and family's expectations, as well as with the nursing and care staff expectations, legislated ratios must be implemented as a matter of urgency.
- iv. The safety and quality audit process for accreditation must include review of staffing levels, including skill mix in conjunction with the implementation of legislated ratios.
- v. The current process for having safety and quality concerns addressed is inadequate. Supporting those making a complaint should be an absolute priority

during the complaints process with protections for those making the complaint to ensure safety concerns are raised through the required avenues.

- vi. ANMF Tasmanian Branch 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.

1. The reduction in quality of care provision to residents from members' perspective

- 1.1 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. Most residents in aged care facilities are there because they are unable to care for their own needs, including activities of daily living and complex medical conditions, and require support. While members report that they enjoy working with residents, they consistently raise concerns about their inability to provide quality (or even reasonable) care and treatment to residents due to severe financial limitations put in place by their employers and notably the for-profit providers. Members indicate their distress where they are consistently unable to provide adequate basic support for residents.
- 1.2 ANMF members who work in for-profit aged care facilities firmly believe that their employers' priority is to generate profits at the expense of providing quality resident care. An example provided by a Registered Nurse who works in a for-profit facility in Tasmania illustrates this point:
- a) The Clinical Care Manager when employed by a not-for-profit provider continually advised all staff in staff meetings that they needed to do the best that they could for residents. After being taken over by a for-profit provider, 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. No mention was made regarding the quality of care residents were receiving.
- 1.3 Members employed by a for-profit provider 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:

- a) Nursing staff at for-profit facilities as well as those at a large not-for-profit aged care provider, 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.
 - b) 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 to happen despite providing no additional staff.
 - c) 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.
 - d) Food quality has significantly reduced at an aged care facility in Tasmania since a for-profit provider took over the facility from a not-for-profit facility. At the time of takeover by the for-profit provider, portion sizes were reduced despite meals coming from the same provider. Residents have regularly expressed their unhappiness with the quality of the food, with some reporting hunger to nursing and care staff as the overall quantity of food was considerably less.
 - e) 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 dietitians to give residents cream and/or ice cream with every dessert and meal where possible to increase their calorie (and fluid) intake.
 - f) 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.
- 1.4 There is widespread concern among ANMF members about the negative impact that staffing levels have on the residents in terms of their inability to meet their care requirements in a safe and quality way across the sector but especially so in 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.
- a) 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. 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) were employed in each of these units and sick leave was always replaced.

- b) In less than 12 months, 32 staff have resigned due to concerns over the poor staffing levels and practices at one for-profit facility in Northern Tasmania since it took over from a not-for-profit facility. 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 the for-profit provider.
- 1.5 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. 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.
- 1.6 In Tasmania all six for-profit aged care providers, aside from one, 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.
- 1.7 A most recent example involved a for-profit provider applying to the Fair Work Commission for approval of a statewide enterprise agreement that was intended to 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 ongoing staffing of the sector which is currently relying upon the goodwill and desire of nursing staff and care workers to ensure that residents are protected and given the best nursing care possible despite current insufficient staffing levels. Members are frequently faced with the prospect or threat of reductions in staffing as a trade-off for improvements in wages or conditions, a trade-off they are reluctant to make.
- 1.8 An example of where nursing staff and care staff has been highlighted is by a large not-for-profit aged care provider in Tasmania, where care hours have been consistently reduced over the last 18 months. Members reported that they regularly attend their workplaces in their own time during special holidays, such as Easter and Christmas to support their colleagues in performing showers, dressing, toileting and feeding so that residents' families do not have to see their loved ones on these occasions in a dishevelled state. Unfortunately, it's not uncommon for some residents to have their care needs not attended to till 3 o'clock in the afternoon, if it all, on some days due to inadequate staffing levels.
- 1.9 It is the view of the ANMF Tasmanian Branch that in order to ensure that resident care needs are met in a safe and quality way in line with the residents and families expectations, as well as with the nursing and care staff expectations, that legislated ratios are implemented as a matter of urgency to

address the suboptimal care that many residents receive due to providers valuing profit over care provision.

2. The ineffectiveness of the accreditation process in addressing quality and safety concerns at residential aged care facilities

2.1 ANMF members across the aged care sector in Tasmania regularly report that the accreditation process has been ineffective in addressing quality and safety issues, especially those related to staffing levels and skill mix.

- a) Members from a for-profit provider's facilities across the State and a large not-for-profit provider have reported across the residential aged care sector that during times of accreditation staffing numbers will be routinely increased over the period of which the auditors are on site at that particular facility and then are quickly reduced following in order to project a false impression that the facility is well staffed.
- b) Members at two aged care facilities have reported that despite Tasmanian legislation providing a requirement to have a Registered Nurse on site at all times, that there have been a significant number of instances where the Enrolled Nurses have been left in charge of facilities and have been placed in a very difficult position of having to choose between leaving residents in pain and not administering Schedule 8 medication or risking their registration by acting outside of their scope of practice and administering the drug without a Registered Nurse.

In one instance at a for-profit facility where ANMF were supporting members to address this significant concern with management to ensure the practice did not continue, members reported feeling bullied by management and several members were anonymously reported to the Nursing and Midwifery Board via the Australian Health Practitioner Regulation Agency and investigated.

- c) Members have reported at a for-profit facility that due to the poor staffing levels, residents who have had falls and require regular nursing observations to monitor the effects of head injuries are not able to be met. They have reported pressure and bullying from management to complete observations on time or risk their employment, to the point members have reported that they have considered documenting incomplete assessment due to fear of losing their employment despite the staffing levels not at a level to realistically meet the frequency of observations required. This is clearly not good practice and places the resident at risk.

2.2 ANMF members report from two for-profit facilities and one large not-for-profit facility 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 is provided by a member working in the for-profit sector.

- a) 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 and value ensuring the safety of their residents, but it appears the employer doesn't value staff having up to date, safe and quality practice.

- b) ANMF members have recently reported at two facilities that the spot audits that have been undertaken without advanced notice has resulted in the facility receiving sanctions and a requirement to demonstrate improvements, however without these occurring on a regular basis, providers inevitably return to not valuing care and, in particular, not ensuring adequate staffing numbers.

- 2.3 It is the view of the ANMF that the safety and quality audit process for accreditation should include review of staffing levels, including skill mix in conjunction with the implementation of legislated ratios which will be an important benchmark for each facility to demonstrate via published rosters for the previous 12 month period as having met at the legislated minimum.

3. How the complaints process does not support nurses, care workers, residents or their families in addressing significant concerns related to quality of care or safety issues in residential aged care facilities

- 3.1 ANMF Tasmanian Branch members across the state in residential aged care facilities report regularly the concerns that they see as a safety risk for residents (see examples at paragraph 3. 2) and feel that while being a safety and quality issue, those with complex care needs are discriminated against by the providers by not ensuring there are enough staff to meet their complex health needs.
- 3.2 On a recent occasion while capital works were being undertaken at a for-profit facility, ANMF members reported to management their concern that the capital works had caused an ant infestation due to soil adjacent to the building being disturbed. This concern was not acted upon by management. ANMF members reported that on a night shift, where due to inadequate staffing levels, a resident near the ant infestation was not able to be checked upon. The morning staff, when going to assist the bed bound resident, found that the resident's bed and body was covered in ants to such a degree that it was reasonable to assume that the resident had been in that position for much, if not all, of the night.

Despite this, no further action was taken by management and ANMF members with the support of ANMF made a complaint to the Aged Care Complaints Commissioner. This resulted in members being bullied by management for making the complaint and has deterred members from acting on such concerns again in the future as they fear for their employment.

- 3.3 The current process for having safety and quality concerns addressed does not appear to be adequate. When a complaint is made, the resident and staff, along with their families, are at risk of being intimidated and bullied by the providers to the extent that it may deter a concern being acted upon. Supporting those making a complaint should be an absolute priority during the

complaints process with protections for those making the complaint to ensure safety concerns are raised through the required avenues.

4. The tax avoidance of selected residential aged care providers in Tasmania while generating significant profits from federal government funds for resident care provision

- 4.1 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.
- 4.2 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.
- 4.3 Bupa, which has an aged care facility in South Hobart, provides an 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
- 4.4 Japara, which has two facilities in Tasmania in the North of the State, highlights how complex corporate structures can be used as stapled securities to reduce taxable income. Japara report directly owning companies and dozens of in-direct 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
- 4.5 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.
- 4.6 It is the view of the ANMF Tasmanian Branch that if the Federal Government funding is not used by providers to deliver care then the funds should be returned to the Federal Government.

5. References

1. Department of Treasury and Finance (Tas), Population by Age and Sex, Regions of Australia (ABS Cat No 3236.0) latest data 30 June 2016 released 28 August 2018, p. 3. <http://www.treasury.tas.gov.au/Documents/Population-By-Age-And-Sex.pdf>
2. Tax Justice Network, tax avoidance by for profit aged care companies: profit shifting on public funds, 2018, <http://www.taxjustice.org.au/>
3. 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>
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