COTA
For older Australians

Submission to the Senate Economics References Committee

Financial and tax practices of for-profit aged care providers

Prepared by

COTA Australia

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About COTA Australia

COTA Australia is the national consumer peak body for older Australians. Its members are the State and Territory COTAs (Councils on the Ageing) in each of the eight States and Territories of Australia. The State and Territory COTAs have around 30,000 individual members and more than 1,000 seniors' organisation members, which jointly represent over 500,000 older Australians.

COTA Australia's focus is on national policy issues from the perspective of older people as citizens and consumers and we seek to promote, improve and protect the circumstances and wellbeing of older people in Australia. Information about, and the views of, our constituents and members are gathered through a wide variety of consultative and engagement mechanisms and processes.

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Permission is provided to publish the full response of COTA Australia.

Inquiry Terms of Reference

On 10 May 2018 the following matter was referred to the Economics References Committee for inquiry and report by 14 August 2018.

The financial and tax practices of for-profit aged care providers, with particular reference to:

a) the use of any tax avoidance or aggressive tax minimisation strategies;
b) the associated impacts on the quality of service delivery, the sustainability of the sector, or value for money for government;
c) the adequacy of accountability and probity mechanisms for the expenditure of taxpayer money;
d) whether current practices meet public expectations; and
e) any other related matters

Introduction

COTA Australia welcomes the opportunity to provide brief comments to the Senate inquiry into the financial and tax practices of for-profit aged care providers.

COTA Australia is at the forefront of advocating for a radically improved aged care system for older Australians and has been for many years. At the core of COTA Australia's advocacy is supporting a sustainable aged care system in which consumers are at the centre of decision making and service delivery and where older Australians have control and choice in their all aspects of their care.

Definition of "for-profit"

COTA notes the terms of reference specifically refers to the "financial and tax practices of **for-profit** aged care providers" (emphasis added). There is no definition of what the inquiry has determined to fall within their meaning of "for-profit".

COTA notes this term is used to refer to the ownership structure of the organisations that the Aged Care Financing Authority reports[1] categorise as "for-profit", "not-for-profit" (including religious, charitable and community based organisations) and "government". COTA understands these categorisations are entirely based on a provider's nomination with minimal verification of whether every provider's legal structures are consistently categorised in the same category. That is, a privately-owned family based small business may choose to identify themselves as either "for-profit" or say "community based".

Within the "for-profit" category it may be important for the committee to consider whether its report intends to focus mainly on "publicly listed" aged care providers, or also include other large multi-facility investor-owned providers, or also include other large privately directly owned providers, or whether their intention is to include the broadest category of self-nominated "for-

[1] Aged Care Financing Authority (July 2017) *2017 Report on the Funding and Financing of the Aged Care Industry*, Canberra. Available at: https://agedcare.health.gov.au/reform/aged-care-financing-authority/2017-report-on-the-funding-and-financing-of-the-aged-care-industry

profit" down to single facility family owned small businesses operating in aged care. There will be significant differences in these subcategories of "for profit", as well as within each sub-category.

Should the committee receive evidence from the Department of Health or indeed the Aged Care Financing Authority, the committee may seek further, unpublished information, around how these ownership categories are classified and verified, or could be improved on into the future to ensure consistent and accurate definitions.

Historical context of aged care system

In the past, aged care provision, like many other community and social services, was largely dominated by the church and charitable sector with shared funding from Government, the sector and consumers. However, there was always a significant for-profit sector, predominantly small to medium sized, often family businesses, with a few larger players. This has changed over the last couple of decades due to a variety of factors, including the introduction of Accreditation and Standards, and Prudential Standards, both of which led to some smaller players exiting; counterbalanced by increased awareness of the size of the market for aged care and its growth trajectory in terms of numbers and funding, which has led to increased investment from the private sector, both on the stock market and through private investors. The ACAR process has also been a challenge for smaller privates and a 'way in' for larger and more professional companies.

At the same time the aged care industry has been going through significant change as a result of reforms by successive governments going back to the mid 2000's and including the Living Longer Living Better reforms in 2012 and now the major reforms announced in the 2018 Budget as part of the More Choice for Longer Lives ageing package, building on the Carnell/Paterson Review and the Legislated Review of Aged Care Reform by Tune. These are taking the sector into a much more consumer-focused and eventually consumer-controlled space both in terms of service choice and control and the requirement of the new Aged Care Standards in the Single Quality Framework.

Today we are operating in an environment where private "for profit" providers are an integral part of the landscape of service delivery across the spectrum of community and social services, not just in aged care but, for example, tertiary and vocational education, early years services, refugee and asylum seeker supports, and employment support. As noted above, the existence of for profit aged care providers is not new. Small and medium sized owner operated aged care facilities have always been present. What is evident, is a change in the scale of private operator businesses and the various corporate structures employed to operate the business. The rapid change within the aged care sector and the need to attract the consumer's attention in an increasingly competitive market has meant that traditional not-for-profit aged care providers have also shifted their approach, often by increasing size and adopting increasingly aggressive business models.

TOR a) the use of any tax avoidance or aggressive tax minimisation strategies;

All organisations, for-profit and not-for-profit, manage their operational environments to achieve strategic outcomes and this is expected by accountable and strategic Boards. Achieving strategic objectives may include maximising the benefits of company structures or current government

policy to minimise tax to achieve a surplus. However, the use of tax minimisation schemes and concessions may hide the real cost of care and the effectiveness of the expenditure in delivering outcomes from a given government program is harder to measure.

At 30 June 2016, there were 949 residential care providers operating 195,825 residential care places in Australia. "The largest provider group remains the not-for-profit providers (religious, charitable and community-based organisations). They represent 54 per cent of providers and operate 56 per cent of all residential aged care places. For-profit providers account for 35 per cent of providers and 39 per cent of places. The remaining providers and places are state and territory and local government-owned providers." [2] This dominance of the not-for profit (including church, charitable, community based) is more evident in the provision of Home Care Packages. Only 10% of places were provided by the for-profit sector, with the balance provided by not-for profit and government owned organisations (82% not-for profit, 8% government).[3]

It is important to note here that for-profit providers operate at a financial disadvantage to non-for-profit providers that have charitable status, as the latter usually operate without paying payroll tax, income tax and sometimes local government rates (or receive reduced rates), and can attract tax deductible donations. Yet as the Annual Reports of the Aged Care Financing Authority (ACFA) report, financial performance does not correlate with a provider being for-profit or non-profit, both are found in the high performing and lower performing quartiles of financial performance and those between.

The 2017 Annual Report on the Funding and Financing of the Aged Care Sector from the Aged Care Financing Authority (ACFA) compares the EBITDA performance of aged care facilities in by ownership type. [4] In the top quartile, Government owned residential care facilities outperform those owned by for-profit and not-for profit providers (while also noting that in other quartiles and overall government-owned providers perform worse). For COTA, this perhaps demonstrates that ownership type, "for-profit" or not-for-profit, or indeed Government run, is not the defining factor to good staffing, quality or indeed value for money to the Government.

TOR b) the associated impacts on the quality of service delivery, the sustainability of the sector, or value for money for government;

Consistent feedback from older Australians to COTA Australia tells us that quality of care is usually closely linked to the quality and adequacy of staff. Where staff numbers are reduced or staffing is inappropriate we see, for example, slower staff response times to requests for assistance from residents which in turn increase risk for residents, for example, they may try to go out or to toilet unaided and end up falling. Lower than required staff numbers are also likely to lead to higher staff turnover due to burnout leading to lack of consistency of care or consistency of carers for residents. Lack of regular staffing will lead to poor connections between residents and staff. In some cases, residents may be admitted to hospital more frequently as staff lack skills or capacity to respond to chronic or end of life conditions. The Nous Group independent review of Opal Aged

[2] ibid, p84
[3] ibid, p 72
[4] ibid, p105

Care recommended adequate investment in human resources. "Providers should be ensuring that staff have the necessary skills to care for this cohort. Investment in technology can augment labour requirements. Providers should be investing in assistive devices and skilling their workforce in preparation of the increasing and changing needs of consumers." [5]

Providers are operating in an increasingly complex care environment, particularly in residential aged care. As the older population grows we will see increasing numbers of people over the age of 85 with multi-morbidities[6] and an increased incidence of dementia. It is reasonable to conclude that aged care providers will be caring for consumers with increased needs, physical and mental limitations and who may require palliative care. This increases the requirement on aged care providers to ensure quality of care with adequate and appropriately qualified staff.

Ii is COTA's experience that - as in financial performance - in matters like levels of staff remuneration, staff to resident ratios, rates of staff turnover, staff training, etc. variance does not correlate with for-profit and non-profit status. Indeed, there are significant variances between providers within each sector.

Quality of care and service is also impacted by other environmental factors. COTA Australia regularly receives feedback about provider failure to invest in goods and equipment, particularly in residential aged care. We also see cheaper, more generic equipment purchased, lower quality food and fewer goods such as continence products provided. Once again, we see differences in use of funds for reinvestment by providers within both profit and non-profit sectors of the industry.

In Home Care, funding has been individualised and we are beginning to see greater accountability from providers to the consumer. This applies in both profit and non-profit sectors. In residential aged care where funding is pooled, this is much more rarely evident. COTA Australia argues that consumer control and choice through individualised funding should be extended across the care continuum.

Furthermore, the current method of allocating residential care place, or "bed licences", through an annual Aged Care Approval Round (ACAR) only has created a government imposed restraint of trade on high quality providers who would otherwise expand and develop in response to consumer demand and preference. And it means that poorer quality providers stay in business because people come to them because their provider of choice is unable to take them. That is why COTA has strongly advocated for the end of the ACAR process and placing residential care funding in the control of consumers and families, as proposed by the Productivity Commission, the Tune Legislated Review, the Aged Care Roadmap and National Aged Care Alliance Blueprints.

The Aged Care Funding Instrument(ACFI) is currently used in residential aged care and is tied to need. People with higher needs and dependencies attract more funding. However, this does not equate to individualised funding. The ACFI also does not measure quality or quality of life, so there is no financial incentive for providers to deliver services that would support independence and reablement or improve the quality of life. Arguably, the Aged Care Quality Standards set the

[5] Nous Group independent review; Opal Aged Care, 31 January 2018

[6] General Practice Activity in Australia 2014-15, University of Sydney Press, p. 9

bar for expectations of quality. However, whilst the new single set of quality standards take a significant step in the right direction standards by framing the standards from a consumer perspective, the guidance materials are not clear enough for providers to understand what is expected of them to achieve a quality outcome.

It is COTA Australia's contention that it is not the question of surplus, as both for-profit and not-for-profit aged care providers aim to achieve this goal, and indeed must do so to survive, the concern is about the impact on consumers of aged care services. If the inquiry is of the view that the surpluses directed to shareholders or reinvestment are in some cases too large and do not deliver the quality of service expected, one of the remedies may be to ensure that Government clearly articulates what quality means, and what consumers of aged care services should expect.

The new Single Quality Framework is underpinned by Standards Guidance Materials. Providers of aged care services will look to the Standards Guidance Materials to provide clarity on what good practice in service delivery looks like and what the Quality Agency will look for in accreditation visits. The inquiry should consider recommending that the expectations of what constitutes quality are better and more clearly articulated in the Standards Guidance Materials and that the Aged Care Funding Instrument provides the ability to deliver the funding.

TOR c) the adequacy of accountability and probity mechanisms for the expenditure of taxpayer money;

In COTA's view any organisation receiving tax-payer dollars must be held to standards of transparency in financial reporting and be publicly accountable. While providers are required to report to government the quality of that information has often been less than perfect. Over recent years the ACFA has worked with government to develop new reporting tools that provide greater transparency, consistency and comparability, as reflected in ACFA Annual Reports on the industry.

The Government also has a prudential compliance scheme that governs aged care providers who are required to complete an "Annual Prudential Compliance Statement"[7]. COTA has for some time been concerned that prudential requirements are not robust enough and this was the view of a report from Ernst and Young to government and the Tune Review and is leading to stronger requirements.

TOR d) whether current practices meet public expectations; and

Information is a key for the taxpayer and community to form an expectation. One of the key pieces of information that is missing in the current landscape of aged care service delivery is a clear understanding of the cost of care across the service continuum. COTA has consistently advocated for a cost of care study to be undertaken by the Productivity Commission. A comprehensive cost of care study must be undertaken to determine whether public expectations

[7] https://agedcare.health.gov.au/programs-and-services/residential-care/annual-prudential-compliance-statement-apcs

are being funded or not. Additionally, a cost of care study would inform the development of a national fees policy informing any new fees, charges, or means testing frameworks.

TOR e) any other related matters

Government has an important role to play as a market steward. The Productivity Commission's recent study paper on introducing competition and informed user choice into human services found that government stewardship is critical to successful outcomes for consumers[8]. As a regulator, Government should clearly articulate the standard to which providers will be held to and the possible penalties for not reaching that standard.

When the drive to deliver a surplus impacts on the quality of care and the service provided to the consumer or if it infringes on the consumer's ability to have control and choice, this becomes a concern for COTA Australia, whether the provider is for-profit or not.

[8] Productivity Commission 2016, Introducing Competition and Informed User Choice into Human Services: Identifying Sectors for Reform, Study Report, Canberra.