

# ALL IN THE FAMILY: TAX AND FINANCIAL PRACTICES OF AUSTRALIA'S LARGEST FAMILY OWNED AGED CARE COMPANIES

MAY 2019

By Jason Ward, CICTAR Principal Analyst

A Tax Justice Network – Australia and  
Centre for International Corporate Tax  
Accountability & Research (CICTAR) Report



Centre for  
International  
Corporate Tax  
Accountability  
and Research



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**A Tax Justice Network – Australia and Centre for International Corporate Tax Accountability & Research (CICTAR) Report**

**Prepared by Jason Ward  
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## **Centre for International Corporate Tax Accountability & Research (CICTAR)**

CICTAR is a global corporate tax research centre that produces information and analysis about corporate taxation. The Centre is a collective resource for workers and the wider public to understand how multinational tax policy and practice affects their daily lives. CICTAR's work supports public participation in the tax debate so that everybody can take part in decision-making that affects their communities. [www.cictar.org](http://www.cictar.org)

## **Jason Ward, Author & CICTAR Principal Analyst**

Mr Ward has been a frequent commentator on corporate tax issues as an analyst and spokesperson for the Tax Justice Network – Australia (TJN-Aus). He is currently an adjunct senior researcher with the University of Tasmania's Institute for the Study of Social Change. Over the last several years Jason Ward has conducted in-depth research on Chevron, Exxon, the Petroleum Resource Rent Tax (PRRT) and is the author of a 2018 TJN-Aus report on the tax practices of the largest for-profit aged care companies and a report on the tax practices of outsourced service and labour hire corporations in the ATO.

# 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



# EXECUTIVE SUMMARY

Australia's six largest family-owned aged care companies make up a significant and growing portion of the aged care sector and warrant greater scrutiny. These six companies received over \$711 million in annual federal funding to operate 130 facilities, with almost 12,000 beds.

Several of the largest family-owned aged care companies, owned by some of Australia's richest families, have complex corporate structures, intertwined with trusts, that appear specifically designed to avoid tax. Despite receiving an average of nearly \$60,000 per year per resident there is very limited public information available on these companies.

These family-owned aged care companies highlight the lack of transparency and accountability on public funding in the aged care sector and provide clear examples of why simple reforms are needed to restore public integrity in both aged care and the broader tax system.

While there is no doubt that the aged care sector will require an increase in public funding, there is also no doubt that these families have made considerable profits from a publicly-funded industry. Before any increase in funding, measures must be put in place to ensure that money is directly spent on improving staffing levels and the quality of care.

The lack of transparency and accountability on public funding must also be examined and addressed by the ongoing Royal Commission into Aged Care.

Very little public information is available on three of the companies, Aegis, McKenzie and Hall & Prior, but enough information exists to understand that they have complex corporate structures that could be used to avoid income tax liabilities.

Enough information on two companies, Tricare and Arcare, was found to do a more detailed analysis which raises serious questions about aggressive tax minimisation strategies on publicly-funded businesses.

TriCare, one of the largest residential aged care providers in Queensland, is owned by the O'Shea family through Norfolk Island, which was until 2016 a tax haven and an overseas territory of Australia. Pre-existing Norfolk Island companies may continue to be exempt from capital gains tax which may partially explain the use of at least three unlisted public companies and a dazzling array of related party transactions. Aged care, and related businesses, have made the family one of Australia's richest and the largest contributor to the Liberal National Party in Queensland in 2016-17.

Arcare, the largest family-owned aged care company, is controlled by the Knowles family, another of Australia's wealthiest families, through layers of trusts. Tax avoidance from interest free loans from the trusts to directors and family members have caught the attention of the ATO in the past but appear to continue into the present. The family businesses continue to grow rapidly along with related party transactions in intertwined trust structures which appear to minimise tax payments.

Thompson appears to be relatively transparent and pays company income tax, demonstrating that it is possible to operate with transparency and accountability and still make a profit.

The report recommends:

- all entities receiving over \$10 million in annual federal funding, must file full and complete financial statements with ASIC, with no exceptions;
- immediate formation of a public register of beneficial ownership, including trusts; and
- a minimum tax of 30% on distributions from discretionary trusts and an examination of further trust reforms to bring Australia in line with global standards.

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# INTRODUCTION & OVERVIEW

Current and future aged care residents have made significant contributions to Australian society, including paying taxes throughout their lives, and deserve to receive the best care possible. The public must be assured that government funding is not enriching company owners, while leaving residents with sub-standard levels of care.

Over the last several decades, as aged care is increasingly run by for-profit companies, questions have been raised about the financial practices, tax payments and the overall lack of transparency. These issues have received more intense scrutiny over the last year following a Tax Justice Network report into the six largest for-profit aged care companies, which resulted in a Senate Inquiry.<sup>1</sup> The final report of the Senate Inquiry recommended that these issues must be further examined by the Royal Commission into Aged Care.<sup>2</sup> Subsequently, Bupa, the largest for-profit aged care provider, reached a settlement with the Australian Taxation Office (ATO) for \$157 million.<sup>3</sup>

This report analyses the tax practices and financial structures of Australia's six largest private family owned aged care companies using the limited public information that is available. These six companies in 2017-18, the most recent financial year, received over \$711 million in federal funding for residential aged care.<sup>4</sup>

Following is a summary chart of the six companies ranked in order of the annual federal funding received for residential aged care, the number of facilities, the number of residential places (aged care beds) and the average federal funding per place.

## Federal Funding for Residential Aged Care 2017-18

Company	\$ millions	# of facilities	# of places	\$ per places
Arcare	\$194.29	35	3,325	\$58,433
Aegis	\$158.15	26	2,589	\$61,085
McKenzie	\$112.31	16	1,749	\$64,211
Hall & Prior	\$105.26	25	1,537	\$68,482
TriCare	\$77.73	15	1,568	\$49,574
Thompson	\$63.68	12	1,143	\$55,717
<b>Total</b>	<b>\$711.42</b>	<b>129</b>	<b>11,911</b>	<b>\$59,728</b>

<sup>1</sup> The Tax Justice Network report was written by the author of this report and can be found here: <http://cictar.org/for-profit-aged-care-report/>, a brief with some additional findings on the tax practices of the largest for-profit aged care companies can be found here: <http://cictar.org/australias-largest-for-profit-nursing-home-chains/>

<sup>2</sup> The final report of the Senate Inquiry can be found here: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Taxpractices-agedcare/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Taxpractices-agedcare/Report)

<sup>3</sup> Christopher Knaus, 8 March 2019, *The Guardian*, "Bupa reaches \$157m settlement with tax office after decade-long dispute". <https://www.theguardian.com/australia-news/2019/mar/08/bupa-reaches-157m-settlement-with-tax-office-after-decade-long-dispute>

<sup>4</sup> Australian Government, Australian Institute of Health and Welfare, Aged care service list: 30 June 2018, released September 2018 by the Department of Health. [https://www.gen-agedcaredata.gov.au/www\\_aihwwgen/media/2018\\_service\\_data/Australia-service-list-at-30-June-2018.xlsx](https://www.gen-agedcaredata.gov.au/www_aihwwgen/media/2018_service_data/Australia-service-list-at-30-June-2018.xlsx). All further references to federal funding for residential aged care are from the same source.

This funding does not include other federal or state funding or income from resident fees or other related family businesses. For some of these companies, other sources of public funding and fees from residents or related business income are substantial. These companies represent a significant and growing part of the residential aged care market and collectively operate 129 facilities, with nearly 12,000 places and averaged nearly \$60,000 in federal funding per bed.<sup>5</sup>

Many of these businesses, heavily dependent on government subsidies, appear to be structured to minimise income tax payments from the companies and/or the family ownership structures. The analysis in this report may provide insights into how multi-million-dollar family-run business in other sectors use trust structures to avoid tax as well. However, with public funding there should be greater public accountability on both finances and the quality of care provided to Australia's elderly and vulnerable aged care residents.

There is an urgent need to increase the transparency and accountability of all entities that receive federal funding to provide aged care services. The government must take simple measures to require greater transparency on government spending and to ensure that money spent is, first and foremost, providing high-quality care to Australia's elderly residents as intended.

There is little doubt that the aged care sector will require an increase in public funding over the coming years, but it is imperative that there is an increase in financial transparency and accountability. These issues must be addressed in order to restore integrity to the residential aged care sector.

This report reviews the available and relevant information on each of the six largest family-owned aged care companies. The lack of any substantive public information on three of the companies, and limited information on two others demonstrates a clear need for greater transparency in relation to public funding in aged care. Following the company case studies, starting with the largest, are recommendations on necessary changes to ensure public accountability.

Prior to the individual company analyses, there is a brief review of the methodology, historical allegations of tax avoidance in the aged care sector, a current analysis of the use of trusts, particularly by families and high net-worth individuals, to avoid income tax in Australia and an preliminary overview of recommendations to restore integrity to the aged care sector.

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<sup>5</sup> Ibid.

## Methodology

The six largest family-owned aged care providers were identified through an analysis of the most recent publicly available government data on funding for residential aged care.<sup>6</sup> The six companies, in order of federal funding received for residential aged care, are: Arcare, Aegis, McKenzie, Hall & Prior, TriCare and Thompson.

Provider names were cross-checked with information on individual company websites to ensure that all facilities receiving federal funding in 2017-18 were captured. Some facilities were licensed under names un-related to the operating name of the company and were manually identified in the Department of Health data.

Other financial information on these companies was largely obtained through purchases of available financial statements and company extracts from the Australian Securities and Investments Commission (ASIC) and searches for other available ASIC filings. Company websites, media reports and other public information were also utilised.

### Family-Owned Age Care Companies: Locations and Public Information

Company	Locations	Available public information
Arcare	VIC, QLD, NSW	ATO history, partial financials
Aegis	WA	no financials, ASIC extracts
McKenzie	QLD, VIC, NSW	no financials, ASIC extracts
Hall & Prior	WA, NSW	no financials, ASIC extracts
TriCare	QLD	Unlisted public companies, partial financials
Thompson	NSW	full financials

The lack of transparency and the lack of publicly available information on these companies appears to represent the broader aged care sector which receives billions of dollars in annual public funding with limited accountability.

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<sup>6</sup> Ibid.

## A History of Alleged Tax Avoidance in Aged Care

Allegations of tax avoidance by for profit companies in aged care are not new. *Private nursing homes in Australia: their conduct, administration and ownership*, a 1984 Australian Senate Report, noted a previous investigation into the private ownership of nursing homes that found that a large group “where the ownership records are extremely imprecise. Most are listed as being owned by nominee companies. Like many of the private hospitals the arrangements appear to be made to minimise or avoid taxation, to maximise benefits (both financial and fringe) to the people behind the companies and to minimise accountability of real persons....”<sup>7</sup>

The Senate Report concluded that even though allegations “made that the sophisticated company ownership structures...are so arranged for tax avoidance and/or evasion minimisation purposes have not been substantiated. ...the Committee is more concerned by the lack of accountability that exists if the proprietor is a holding company that acts as a trustee for the various trusts.”<sup>8</sup>

The extensive use of trust structures in aged care continues to be a cause for concern and is analysed below. The Senate Report did list several examples of tax avoidance by private aged care providers that were provided by the Commonwealth Department of Health and the South Australian Shadow Minister for Health.<sup>9</sup>

Concerns about aged care companies structured to minimise tax payments were also raised by the Commonwealth Department of Health and Ageing in a 2009 Senate Inquiry into Residential and Community Aged Care.<sup>10</sup> Officials identified that the lack of information available to Department prevented any deeper analysis or actions being taken.<sup>11</sup> (discussed in more detail in the TriCare section below)

## The Abuse of Trusts

While there are legitimate uses for trusts, they are often abused to avoid taxation. The ATO states that a trust “is an obligation imposed on a person or other entity to hold property for the benefit of beneficiaries” and is “a relationship not a legal entity”, but “treated as taxpayer entities for the purpose of tax administration.”<sup>12</sup>

The abuse of trusts goes far beyond the aged care sector, but family-owned for-profit aged care companies may provide some concrete examples of how trusts are used to minimise taxes. Estimates suggest that Australia may lose \$2 billion in income tax payments per year due to abuse of all discretionary trusts, but actual losses could be significantly higher.<sup>13</sup>

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<sup>7</sup> Senate Select Committee on Private Hospitals and Nursing Homes, 18 October 1984, “Private nursing homes in Australia: their conduct, administration and ownership”, p.91-92.

<sup>8</sup> Ibid p.92.

<sup>9</sup> Ibid, p.97, 100.

<sup>10</sup> Standing Committee on Finance and Public Administration, 21/04/2009, “Residential and community aged care in Australia <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:committees/commsen/11916/0001>

<sup>11</sup> Ibid.

<sup>12</sup> <https://www.ato.gov.au/General/Trusts/>

<sup>13</sup> Dale Boccabella, Associate Professor of Taxation Law, UNSW, 26 July 2017, The Conversation, “Family trusts often cause more harm than good”. <http://theconversation.com/family-trusts-often-cause-more-harm-than-good-81551>

The use of trust structures in family owned aged care companies is common. The Tax Justice Network - Australia report discussed the use of trusts by large corporate aged care companies and called for greater transparency on trusts, while applauding recent reforms to curtail the abuse of stapled (trust) structures for aggressive tax avoidance.<sup>14</sup>

A 2017 Tax Justice Network report, *Trusts: Weapons of Mass Injustice?*, examined the abuse of trusts to provide secrecy, enable financial crimes and shield assets.<sup>15</sup> The report demonstrated that trust structures have been abused for tax avoidance worldwide.

*Trusts and tax avoidance*, a discussion paper by The Australia Institute concluded that the “main attraction of trusts seems to be tax avoidance” and the benefits from trusts “are highly biased towards the very rich.”<sup>16</sup> A policy briefing by the Australian Council of Social Services (ACOSS) outlined a number of ways in which private trusts are used for tax avoidance, evasion, and money laundering.<sup>17</sup>

ACOSS stated that:

“Private trusts, along with super, negative gearing, and loopholes in Capital Gains Tax, are popular ways for people with higher incomes – and their well-paid financial advisers – to avoid paying tax.

Tax avoidance through trusts means the rest of us must contribute more in order to fund essential services.

It is unacceptable that while most people pay income tax at their marginal rate, a minority can use private trusts and companies to avoid paying their fair share.”<sup>18</sup>

In order to tackle the abuse of trusts for tax avoidance, the Australian Labor Party (ALP) has adopted a policy to tax distributions from discretionary trusts. A minimum tax rate of 30% would apply to distributions and is estimated to raise \$4.1 billion over four years and \$17 billion over a decade.<sup>19</sup> This policy would remove the incentive to funnel money through discretionary trusts in ways that artificially reduce taxation.

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<sup>14</sup> Jason Ward, Tax Justice Network, May 2018, “Tax Avoidance by For-Profit Aged Care Companies: Profit Shifting on Public Funds, Proposals for Transparency on Government Spending”.

<sup>15</sup> Andres Knobel, Tax Justice Network, 13 February 2017, “Trusts: Weapons of Mass Injustice”. <http://www.taxjustice.net/wp-content/uploads/2017/02/Trusts-Weapons-of-Mass-Injustice-Final-12-FEB-2017.pdf>

<sup>16</sup> David Richardson, The Australia Institute, July 2017, “Trusts and tax avoidance”, p.12. <http://www.tai.org.au/sites/default/files/P428%20Trusts%20and%20Tax%20Avoidance%20-%20Richardson%20-%20FINAL.pdf>

<sup>17</sup> ACOSS Policy Briefing, November 2017, “Ending tax avoidance, evasion and money laundering through private trusts”. <https://www.acoss.org.au/ending-tax-avoidance-evasion-and-money-laundering-through-private-trusts/>

<sup>18</sup> Ibid.

<sup>19</sup> Shane Wright, 21 December 2018, The Sydney Morning Herald, “Income tax shuffle’ through trusts costing Australia billions”. <https://www.smh.com.au/politics/federal/income-tax-shuffle-through-trusts-costing-australia-billions-20181221-p50nn8.html>

## The ATO's Tax Avoidance Taskforce - Trusts

The ATO has created a Tax Avoidance Taskforce “focused on those trusts engaged in high risk tax avoidance and evasion arrangements.”<sup>20</sup> Over the past six years the taskforce has completed more than 95 audits, collected more than \$467 million in revenue, had two successful convictions for serious tax fraud and referred four cases to law enforcement for criminal investigation.<sup>21</sup>

As part of the Taskforce the ATO commissioned a report, “Current issues with trusts and the tax system”, from RMIT University.<sup>22</sup>

Two of the key highlights of the report were that:

- “The interactions between the trust and tax laws are being manipulated which could contribute to the sheltering of significant amounts of tax.”
- “Chains of trusts and interlinking trusts are common which may reflect a deliberate intent to create a degree of opacity with relation to trust income.”<sup>23</sup>

The RMIT analysis focussed on four key areas, the income tax shuffle, complex distributions, non-lodgement and transparency. The income tax shuffle was defined as creating and utilising structures to exploit inconsistencies “between income for tax law purposes (net income) and income under trust law purposes (distributable income)”.<sup>24</sup>

The analysis found that recent “case investigations by the ATO reveal the ease with which wealthy taxpayers can utilise trusts in private groups and reduce their tax liabilities.”<sup>25</sup> The authors further commented that the data clearly showed the potential for widespread abuse under the current regime of the taxation of trusts.<sup>26</sup>

Through complex distributions, involving multiple trust structures, “taxpayers can derive income from trusts in convoluted ways in order to defer, reduce or extinguish tax liabilities”. The analysis also suggested that “there was a significant administrative challenge for the ATO, particularly in levying the correct tax burden on the appropriate ultimate beneficiary or entity.”<sup>27</sup>

In relation to a lack of ATO resources and non-lodgement of trust tax returns, the ATO had “limited sources of information on trusts and these are insufficient given the increasing complexity surrounding the use (and misuse) of trusts.”<sup>28</sup> Additionally, the report noted that Australia had a lack of transparency regarding trusts, was an outlier in relation to several other jurisdictions, and would have a hard time meeting international obligations to stop money-laundering, terrorist financing and other threats without implementing a central registry of trusts and trust assets.<sup>29</sup>

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<sup>20</sup> <https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/General-research/Current-issues-with-trusts-and-the-tax-system/>

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Associate Professor Ashton de Silva, Professor John Glover, Dr Venkateshwaran Narayanan, Dr My Nguyen, Associate Professor Kate Westberg, RMIT University, “Current issues with trusts and the tax system: Examining the operation and performance of the tax system in relation to trusts, with a particular focus on discretionary trusts linked to high net worth individuals”, Executive Summary, p.3. <https://iorder.com.au/publication/Download.aspx?ProdID=1-GJ16CAC-P1>

<sup>24</sup> Ibid, p.4.

<sup>25</sup> Ibid, p.5.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid, p.6.

<sup>28</sup> Ibid, p.7.

<sup>29</sup> Ibid.

The Australian government, to further compliance with global efforts, committed to explore enhanced disclosure of beneficial ownership but has recently backed away.<sup>30</sup> The ALP has committed to establish a public register of beneficial ownership, including trusts. Transparency on ownership would help to limit the abuse of trusts.

One specific way trusts are abused, which appears common in family-owned aged care companies, is through loans from trusts to companies or individuals. In 2018, the ATO had “concerns about a number of arrangements involving one or both of unpaid present entitlements and unit trusts.”<sup>31</sup> The ATO had “identified a case where a private group seeks to extinguish unpaid present entitlements (UPEs)... by implementing an arrangement where a private company subscribes for units in a unit trust. The unit trust may then provide payments or loans to other entities within the private group.”<sup>32</sup>

## Required Reforms to Restore Integrity

While the ATO is doing what it can to address tax avoidance through the misuse of trusts, there is a clear need for changing laws and increasing transparency. The largest family-owned aged care companies provide concrete examples of broader tax avoidance schemes in Australia which can be addressed with some clear and simple solutions. Any entity receiving millions of dollars in federal funding must be publicly accountable.

This report recommends:

- Any entity, or combinations of connected entities, that receive over \$10 million in annual federal funding must be required to file full and complete annual financial statements with ASIC, with no recourse to reduced disclosure filings, special purpose filings or other exemptions.
- The Australian government must implement a public register of beneficial ownership, which includes trusts.
- A minimum 30% income tax rate should be applied to distributions of discretionary trusts.

Despite aged care companies receiving tens of millions in annual public funding, the following case studies demonstrate a disturbing lack of accountability and limited or no public information available on company operations. The available information raises serious concerns about tax avoidance. Federal funding, and to a lesser extent resident fees, have generated significant wealth for the largest family owned aged care companies. The public needs assurance that companies receiving future federal funding are transparent, accountable and providing high-quality care for Australia’s elderly.

<sup>30</sup> Christopher Knaus, 11 February 2019, The Guardian, “Union asks who lobbied Coalition to drop tax transparency measure”. <https://www.theguardian.com/australia-news/2019/feb/11/union-asks-who-lobbied-coalition-to-drop-tax-transparency-measure>

<sup>31</sup> <https://www.ato.gov.au/general/tax-planning/in-detail/unit-trust-arrangements/>

<sup>32</sup> Ibid.

# COMPANY CASE STUDIES

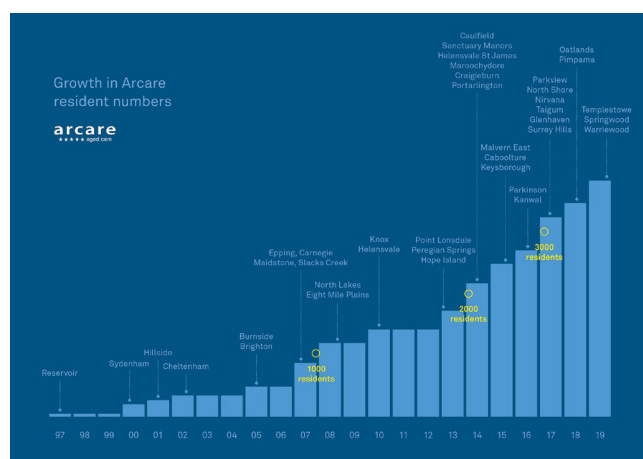
## ARCARE: THE KNOWLES FAMILY

Arcare is the largest family-owned aged care business with 35 federally-funded and operational aged care facilities in 2017-18, 19 in Victoria, 13 in Queensland and 3 in New South Wales. In 2017-18 these facilities, with 3,325 residential aged care places, received \$194.3 million in federal funds. The average funding per place was \$58,433. Arcare is one of the current 7 members of the Aged Care Guild, which represents Australia's largest for-profit aged care companies.<sup>33</sup>

Arcare's website states that the first facility was built in 1997 and that they have grown to 36 facilities as "a proudly family-owned business".<sup>34</sup> The three brothers John, Russell and Graham and their partner Ian Ball were contractors on building retirement villages and created their own company, Australian Retirement Communities (ARC). ARC became the largest private retirement village operator in Australia but was sold to Stockland in 2007 for \$329 million.<sup>35</sup>

While Arcare's aged care business has continued to grow, the family is now expanding back into retirement living through a new company. Sencia, like Arcare, is part of the Knowles Group, "a privately-owned group of companies with particular interests in aged care and property. The Group's property investments span office, retail, industrial and residential markets."<sup>36</sup> The Sencia web-site has a chart demonstrating the growth of the Arcare business.

### Arcare: Growth in Resident Numbers



According to the 2015 BRW Rich Families list, the Knowles family ranked as the 24th richest family in Australia with an estimated wealth of \$562 million, significantly up from the estimate of \$397 million in the previous year.<sup>37</sup> The Knowles family has done well for itself in the aged care business.

### Arcare's Corporate (Trust) Structure

The licensed entity for all but three of Arcare's facilities is Arcare Pty Ltd. Despite Arcare receiving over \$194 million in annual federal funding for residential aged care, Arcare Pty Ltd does not file current financial statements with ASIC. The apparent lack of a requirement to file annual financial statements means that very little public information is available. Graham, Russell and John Knowles and their partner Ian Ball are all directors and shareholders.<sup>38</sup>

Two Arcare residential aged care facilities are operated by K & M Healthcare Pty Ltd. For some reason, this company filed 2017 financial statements with ASIC.<sup>39</sup> Information in that report is revealing about the broader family business.

<sup>33</sup> <https://www.agedcareguild.com.au/About-Us>

<sup>34</sup> <https://arcare.com.au/about-arcare/>

<sup>35</sup> <https://arcare.com.au/arcare-history/> ; Australian Financial Review, BRW Rich Families 2015, 4 March 2016 <https://www.afr.com/leadership/afr-lists/rich-families/brw-rich-families-2015-20160303-gn9flu>

<sup>36</sup> <https://sencia.com.au/overview/>

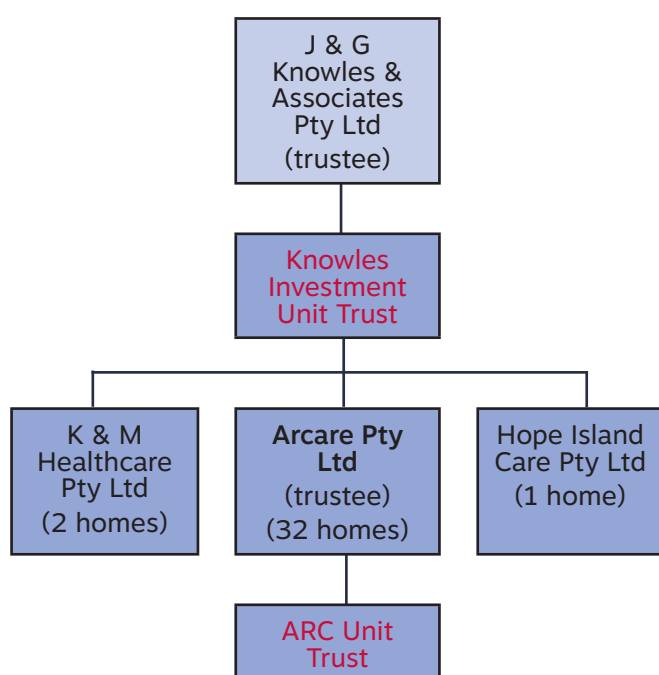
<sup>37</sup> Australian Financial Review, BRW Rich Families 2015, 4 March 2016.

<sup>38</sup> ASIC Current Company Extract on Arcare Pty Ltd purchased on 13 February 2019.

<sup>39</sup> K&M Healthcare Pty Ltd (ABN 13 064 218 622), Financial Report for the Year Ended 30 June 2017, purchased from ASIC on 28 February 2019 as the most recent annual report.

K & M Healthcare Pty Ltd has the same directors as Arcare and the head office is listed as J & G Knowles and Associates Pty Ltd.<sup>40</sup> The company manages two Arcare aged care facilities with 228 beds. The report explains that the company was purchased in 2007 “by Arcare Pty Ltd (“Arcare”) as trustee for ARC Unit Trust” and that the “ultimate parent entity is J&G Knowles and Associates Pty Ltd as trustee for Knowles Investment Unit Trust.”<sup>41</sup>

### Arcare Corporate Structure with Two Unit Trusts



This is an example of multiple-layered trusts that have raised concerns with the ATO about opacity and tax avoidance. There are no ASIC filings available for the ARC Unit Trust, J & G Knowles or the Knowles Investment Unit Trust; however, J & G Knowles was the subject of a full court ruling with the ATO in 2000. Information from that case is revealing.

## ATO Attempts to Tax Interest Free Loans from Trust

The Commissioner of Taxation attempted to assess fringe benefit tax payments on interest free loans provided to the same four directors who were the beneficiaries of the trust. “The beneficial interest in the trust fund is divided into units. Each director established a discretionary trust in which he and his family are beneficiaries. The trustee of each family trust holds 25 per cent of the units in the unit trust.”<sup>42</sup> J & G Knowles maintained a checking account which each director was authorised to use. “Certain of the funds in that account, including funds provided on overdraft, were used by the directors to meet their, or their family’s, private expenses.”<sup>43</sup>

Despite no connection between the directors’ roles and the use of interest free loans for personal family use, the full court overturned a lower court decision and allowed J & G Knowles to set aside the previous decision of the Administrative Appeals Tribunal and have the matter remitted.<sup>44</sup> The Commissioner was obliged to pay the legal costs. The full court upheld that the interest free loans from the Trust to the directors, for personal family use, were not subject to the fringe benefits tax. The interest free loans for the personal benefit of the directors or their families would presumably have reduced income tax liabilities for the trust’s beneficiaries.

<sup>40</sup> Ibid, Corporate Directory, p.2.

<sup>41</sup> Ibid, Directors’ Report, p.3.

<sup>42</sup> J & G KNOWLES & ASSOCIATES PTY LTD v FC of T, Federal Court of Australia, Full Court, 03 March 2000, Background Facts, #3 <https://iknow.cch.com.au/document/atagUio537895sl16693252/j-g-knowles-associates-pty-ltd-v-fc-of-t>

<sup>43</sup> Ibid, Background Facts, #5.

<sup>44</sup> Ibid.

## Arcare's Current Related Party Loans

The annual report of K & M Healthcare suggests a continuing use of loans between related trust entities. The cash flow statement shows advances to related parties in 2017 of \$2.8 million, for which there is no further explanation.<sup>45</sup> In 2017, the company showed related party receivables of \$45.4 million in the form of a loan to the ARC Unit Trust, or Arcare Pty Ltd as trustee.<sup>46</sup> There was also a \$1.8 million loan to the Knowles Investment Unit Trust.<sup>47</sup> The note to the financial statement on related party balances also states that:

“K&M Healthcare must deal at arms length with intercompany entities under Division 7A of the Income Tax Assessment Act 1936. ‘Dealing at arms length’ means that the parties to the transaction are dealing with each other in a manner as independent parties would normally do, so that the outcome of their dealing is a matter of real bargaining. An important element of an arms length transaction is that parties have acted severally and independently in forming their bargain so that there is no question of a conflict of interest.”<sup>48</sup>

While the claim of ‘arms length’ transactions is a legal necessity, the notion that these arrangements between trust entities controlled by the same family members acting “severally and independently” and the “matter of real bargaining” is difficult to take seriously. These related party transactions, loans to the trusts of \$45.4 million and \$1.8 million, are very significant in the context of K&M Healthcare’s reporting of revenues of only \$24.6 million and after-tax profit of \$3.8 million in 2017.<sup>49</sup>

The extensive use of trust structures appears to provide significant tax advantages and limits accountability and transparency on profits generated through nearly \$200 million in federal funding for residential aged care. There is no ability to know if any tax payments have been made by the aged care provider, the various trusts or the beneficiaries.

## Real Labour Costs for Front-line Workers?

In 2017-18, these two Arcare facilities received \$15.6 million in federal funds for residential aged care. K&M Healthcare reported aged care revenue of \$21.9 million and total employee expenses of \$12.1 million in the 2017 financial year.<sup>50</sup> This suggests that employee expenses were only 55% of aged care revenue. This is relatively low compared to reported labour costs of between 65% and 70% of total revenue for the three listed aged care providers.<sup>51</sup>

K & M Healthcare’s filing may provide a more accurate view of actual front-line employee costs as a percentage of revenues as no payments were made to key management or directors. A note to the financial statement indicates that no amount is paid to key management personnel as Executives were employed by “parent entity ARC Unit Trust” and Directors were employed by the “ultimate parent entity Knowles Investment Unit Trust.”<sup>52</sup>

While labour costs undoubtedly represent a high proportion of total revenue across the aged care sector, the inclusion of high payments to executives and directors may conceal lower payments to front-line aged care workers.

<sup>45</sup> K&M Healthcare Pty Ltd, Financial Report for the Year Ended 30 June 2017, Statement of Cash Flows, p.10

<sup>46</sup> Ibid, Statement of Financial Position, p.8; Note 12. Related Party Balances, p.27.

<sup>47</sup> Ibid, Note 12. Related Party Balances, p.27.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid, Statement of Profit or Loss and Other Comprehensive Income, p.7.

<sup>50</sup> Ibid, Note 3. Revenue and Expenses, p.21.

<sup>51</sup> Shalain Singh, 1 November 2017, Colliers International, “The Only Constant, Is Change: Aged care financial review, Listed aged care providers full-year financial analysis”. [https://www.colliers.com.au/-/media/Australia%20Website/Files/Research/HRL/Aged%20Care%20Financial%20Review\\_Combined%201.ashx](https://www.colliers.com.au/-/media/Australia%20Website/Files/Research/HRL/Aged%20Care%20Financial%20Review_Combined%201.ashx)

<sup>52</sup> K&M Healthcare Pty Ltd, Financial Report for the Year Ended 30 June 2017, Note 19. Director and Executive Disclosures, p.29.

# AEGIS: CROSS (AUSTRALIS) & TAYLOR (CULLODEN) FAMILIES

Aegis is the second largest family-owned for-profit aged care provider in Australia and the largest provider of residential aged care in Western Australia, but very little public information is available. In 2017-2018, Aegis received over \$158 million in federal funds for residential aged care at 26 facilities with 2,589 places. Aegis receives state government funding to operate two other small aged care facilities.

Aegis's website states that the business is "owned by two families with long standing experience in aged care".<sup>53</sup> None of the companies involved in the Aegis Aged Care Group file any current financial statements with ASIC which makes it extremely difficult to fully understand the corporate structure or finances of Aegis.

Aegis Aged Care Group Pty Ltd is presumed to be the controlling entity as it directly operates 20 of the 26 aged care facilities. The two directors are Michael Cross and Geoff Taylor.<sup>54</sup> Two of the 10 shares are owned by Geoff Taylor and the other 8 by Australis Equity Pty Ltd.<sup>55</sup> Australis Equity Pty Ltd is entirely owned by Michael Cross.<sup>56</sup> Balmoral Aged Care Group Pty Ltd, which operates 3 Aegis facilities, has an identical ownership structure to Aegis Aged Care Group Pty Ltd.<sup>57</sup>

Another company, Staff West Pty Ltd, located at the same address as Aegis's central office also has Michael Cross and Geoff Taylor as directors and has 8 shares owned by Australis Equity Pty Ltd and 2 shares owned by Culloden Investments Pty Ltd.<sup>58</sup> Two shares in Culloden are owned by Geoff Taylor and two additional shares are owned respectively by two other individuals; both directors sharing the Taylor surname.<sup>59</sup>

Culloden Investments Pty Ltd appears to be (or have been) a significant shareholder in several Western Australian based mining firms, including Antipa Minerals Ltd, Carnarvon Petroleum Ltd and Corazon Mining Limited.<sup>60</sup> This suggests that Culloden is a holding company for a broader set of family investments. Australis and Culloden may act as trustees for family trusts or there may be other layers of ownership. The Culloden shareholding in Antipa Minerals, suggests the holding is as custodian for "Geoff Taylor Family". The Australian Business Register lists a "Geoff Taylor Family Trust" as a discretionary investment trust in Western Australia in the same postcode as Mr Taylor's residential address.<sup>61</sup>

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<sup>53</sup> <https://aegiscare.com.au/about-us>

<sup>54</sup> Aegis Aged Care Group Pty Ltd, Current Company Extract, as purchased from ASIC on 13 February 2019.

<sup>55</sup> Ibid.

<sup>56</sup> Australis Equity Pty Ltd, Current Company Extract, as purchased from ASIC on 20 February 2019.

<sup>57</sup> Balmoral Aged Care Group Pty Ltd, Current Company Extract, as purchased from ASIC on 28 February 2019.

<sup>58</sup> Staffwest Pty Ltd, Current Company Extract, as purchased from ASIC on 12 March 2019.

<sup>59</sup> Culloden Investments Pty Ltd, Current Company Extract, as purchased from ASIC on 12 March 2019.

<sup>60</sup> [http://antipaminerals.com.au/wp-content/uploads/2018/11/AZY-Top-50-Holders\\_Report-18.pdf](http://antipaminerals.com.au/wp-content/uploads/2018/11/AZY-Top-50-Holders_Report-18.pdf) ; <https://www.lucapa.com.au/sites/default/files/Resources%20Quarterly%20June%202018%20-%20Euroz.pdf> ; <https://www.asx.com.au/asxpdf/20170915/pdf/43mcx8jh8q4nhc.pdf> ;

<sup>61</sup> <https://abr.business.gov.au/ABN/View?abn=57795920845>

Documents submitted in 2018 for development permits to expand Aegis's aged care facility in Bassendean, reveal another company in the Aegis corporate structure. These documents state that T & T Management Services Pty Ltd (T&T), part of the Aegis Aged Care Group, is the landowner and that "T&T own and operate the existing Bassendean Aged Care Facility".<sup>62</sup> The Department of Health data shows Aegis Aged Care Group Pty Ltd as the licensed provider for this facility. T&T has the same directors and ownership structure as StaffWest with Culloden owning 2 shares and Australis owning 8 shares.<sup>63</sup>

Despite Aegis receiving over \$158 million in federal funding for residential aged care in 2017-18, very little public information is available on Western Australia's largest aged care company.

## MCKENZIE: THE MCKENZIE SISTERS AND SPOUSES (JOLIMONT LODGE, BAY ST 2 & AUTUMN SUN)

In 2017-18 McKenzie had 16 federally funded aged care facilities, 8 in Queensland, 6 in Victoria and 2 in New South Wales. The 16 facilities with 1,749 residential aged care places received a total of over \$112 million in federal funding. An additional McKenzie aged care facility in Queensland did not receive federal funding in 2017-18.

McKenzie, like Arcare, is a member of the Aged Care Guild, which represents Australia's largest for-profit aged care companies and helps shape government policy.<sup>64</sup> McKenzie Aged Care Group Pty Ltd, the licensed provider for all 16 facilities, does not file any financial statements with ASIC. The company's "founders Mary-Ann and Sally have stepped back from day-to-day responsibilities, they and their partners, Michael Powell and Rob Hutchison, will still play active roles."<sup>65</sup> Through a convoluted ownership structure, the two sisters and their partners, along with their mother Annette McKenzie, own the business.

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<sup>62</sup> <https://www.bassendean.wa.gov.au/Profiles/bassendean/assets/moduledata/councilmeetings/ab2848cb-2df7-4a96-aa09-838e25985c52/1.6/Briefings-Session-17-April-18-Attachments-Part-1.pdf>

<sup>63</sup> T & T Management Services Pty Ltd, Current Company Extract, as purchased from ASIC on 12 March 2019.

<sup>64</sup> <https://www.agedcareguild.com.au/About-Us>

<sup>65</sup> [https://mckenzieacg.com/images/uploads/Documents/MCK1017-10335\\_Open\\_Door\\_Spring\\_2017.pdf](https://mckenzieacg.com/images/uploads/Documents/MCK1017-10335_Open_Door_Spring_2017.pdf)

The directors of McKenzie Aged Care are Mary-Ann McKenzie and Sally Anne McKenzie and shares are owned equally by Jolimont Lodge Pty Ltd, Bay St 2 Pty Ltd and Autumn Sun Pty Ltd.<sup>66</sup> Jolimont Lodge Pty Ltd is owned equally by Sally Anne Powell and Michael Powell who are both directors.<sup>67</sup> Sally Anne Powell appears to be the same person as Sally Anne McKenzie and married to Michael Powell.<sup>68</sup> Shares in Bay St 2 Pty Ltd are owned by Annette Joan McKenzie; Sally and Mary McKenzie are directors.<sup>69</sup> Shares in Autumn Sun Pty Ltd are owned equally by Robert Hutchinson and Mary-Ann McKenzie who are company directors.<sup>70</sup>

Another McKenzie family-controlled business, Bay Street Group Pty Ltd, made political donations to a Queensland mayor in 2012 while seeking approvals to develop two aged care facilities.<sup>71</sup> These donations have continued to raise local concerns.<sup>72</sup>

Jolimont Lodge Pty Ltd, as trustee for the Powell Superannuation Funds and Robert Hutchinson and Mary Ann McKenzie, as trustee for Inspiration Superannuation Fund, have both been significant investors in Simavita, an ASX listed company that “develops and markets advanced systems associated with smart, wearable and disposable sensors for the global diaper manufacturing industry and also for the aged and disabled care markets.”<sup>73</sup>

Shares of Simavita were “suspended from Official Quotation” on “1 March 2019, following failure to lodge the relevant periodic report by the due date.”<sup>74</sup> McKenzie Aged Care had contracted to pilot a Simavita product at 2 aged care facilities.<sup>75</sup>

These family-run superannuation funds are likely to be tied to the McKenzie Aged Care business. Like trusts, Self-Managed Super Funds (SMSFs) have also attracted the ATO’s attention for their use by trustees “as tax avoidance vehicles.”<sup>76</sup> No public information is available on the corporate structure or finances of McKenzie Aged Care, which received over \$112 million in federal funding for residential aged care.

<sup>66</sup> McKenzie Aged Care Group Pty Ltd, Current Company Extract, as purchased from ASIC on 13 February 2019.

<sup>67</sup> Jolimont Lodge Pty Ltd, Current Company Extract, as purchased from ASIC on 20 February 2019.

<sup>68</sup> Sally Anne Powell and Michael Powell share the same address along with Sally Anne McKenzie. In the Jolimont extract Sally Anne Powell’s birthday is listed at 25/08/1958, in the McKenzie extract Sally Anne McKenzie’s birthday is listed as 25/09/1958.

<sup>69</sup> Bay St 2 Pty Ltd, Current Company Extract, as purchased from ASIC on 20 February 2019.

<sup>70</sup> Autumn Sun Pty Ltd, Current Company Extract, as purchased from ASIC on 20 February 2019.

<sup>71</sup> Redlands 2030, 29 July 2016, “Mayor Williams gets a mysterious gift”. <https://redlands2030.net/mysterious-donation/>

<sup>72</sup> Redlands 2030, 14 November 2018, Misconduct finding against Mayor Williams”

<sup>73</sup> Simavita, ASX Announcement, 1 August 2018. [http://www.simavita.com/irm/PDF/1573\\_0/](http://www.simavita.com/irm/PDF/1573_0/)

Simavita announces change to top 20 security holders On 10 October, Robert Hutchinson and Mary Ann McKenzie atf Inspiration Superannuation Fund ceased to be substantial holders. [http://www.simavita.com/irm/PDF/1629\\_0/](http://www.simavita.com/irm/PDF/1629_0/)

Simavita announces changes in substantial shareholders

<sup>74</sup> ASX, Market Announcement, 1 March 2019, Suspension from Official Quotation. [http://www.simavita.com/irm/PDF/1673\\_0/](http://www.simavita.com/irm/PDF/1673_0/)

Suspension from Official Quotation

<sup>75</sup> Simavita, Market Update, 9 August 2017. [http://www.simavita.com/irm/PDF/1425\\_0/SimavitaMarketUpdate](http://www.simavita.com/irm/PDF/1425_0/SimavitaMarketUpdate)

<sup>76</sup> Dominic Beattie, 21 September 2015, Canstar, “ATO better equipped to crack down on SMSF tax rorting”. <https://www.canstar.com.au/self-managed-super/ato-better-equipped-to-crack-down-on-smsf-tax-rorting/>

# HALL & PRIOR: GOLDTRACE HOLDINGS & SHANGRI-LA

In 2017-18 Hall & Prior operated 24 federally funded residential aged care facilities, 14 in Western Australia and 10 in New South Wales. The 24 facilities had 1,484 places and received \$102 million in federal funds for residential aged care. One Hall and Prior aged care facility in New South Wales, Alloo Aged Care, is not listed as a Hall & Prior facility on the company's website and another, Shangri-La, that is listed as a Hall and Prior facility is connected to a major family tax scandal.

Hall and Prior Aged Care is a business name and not a registered company. No Hall and Prior related companies file any financial statements with ASIC. The primary operating entity appears to be Fresh Fields Aged Care Pty Ltd, which is the direct licensee for 7 of the facilities in Western Australia. Twelve other facilities operate under company names beginning with Fresh Fields. Fresh Fields Aged Care Pty Ltd has shares directly owned by Fresh Fields (WA) Pty Ltd and Michael Hall and Graeme Prior are directors.<sup>77</sup>

The ultimate holding company is Archmont Investments Pty Ltd.<sup>78</sup> Michael Hall and Graeme Prior are directors of Archmont and shares are held by Varna Pty Ltd as trustee for The Hall & Prior Nursing Home Group (Org No.: 080 787 668).<sup>79</sup> There is an entity called "The Hall & Prior Nursing Home Group Unit Trust" (ABN 73 830 629 049) which has been active since 1999 and is a fixed unit trust.<sup>80</sup> No other information is publicly available.

Varna Pty Ltd, listed as trustee for "The Hall & Prior Nursing Home Group", is the licensed provider for Hall & Prior's St Luke's Nursing Home in Shenton Park, Western Australia. Varna Pty Ltd has Michael Hall and Graeme Prior as directors; Michael & Joan Hall each own 1 share and another entity, Boston Way Pty Ltd owns 3 shares.<sup>81</sup> Graeme Prior is director of Boston Way Pty Ltd and shares are held by Goldtrace Holdings Pty Ltd.<sup>82</sup> Graeme Prior is the sole director and shareholder of Goldtrace Holdings Pty Ltd.<sup>83</sup> (see chart below)

The Department of Health data lists "Erma Nominees Pty Ltd & Milgerd Nominees Pty Ltd" as the provider for Hall & Prior's Shangri-La Nursing Home in Hurstville, New South Wales. These companies are both under external administration, according to ASIC, and are connected to one of Australia's largest family tax scandals involving the Binetter family, who owned Nudie Juice.<sup>84</sup> An *Australian Financial Review* article on the case described "a major family fortune, much of which - it now appears - was built on tax fraud. And it underlines just what the family was prepared to do to hold on to that wealth."<sup>85</sup> The ATO pursued the family over tax issues, involving offshore accounts, for many years and it was widely covered in the Australian media. Hall & Prior now manage this aged care facility and there is unlikely to be any ongoing connection with the Binetter family.

<sup>77</sup> Fresh Fields Aged Care Pty Ltd, Current Company Extract, as purchased from ASIC on 11 March 2019.

<sup>78</sup> Ibid.

<sup>79</sup> Archmont Investments Pty Ltd, Current Company Extract, as purchased from ASIC on 11 March 2019.

<sup>80</sup> <https://www.abr.business.gov.au/ABN/View?abn=73830629049>

<sup>81</sup> Varna Pty Ltd, Current Company Extract, as purchased from ASIC on 11 March 2019.

<sup>82</sup> Boston Way Pty Ltd, Current Company Extract, as purchased from ASIC on 12 March 2019.

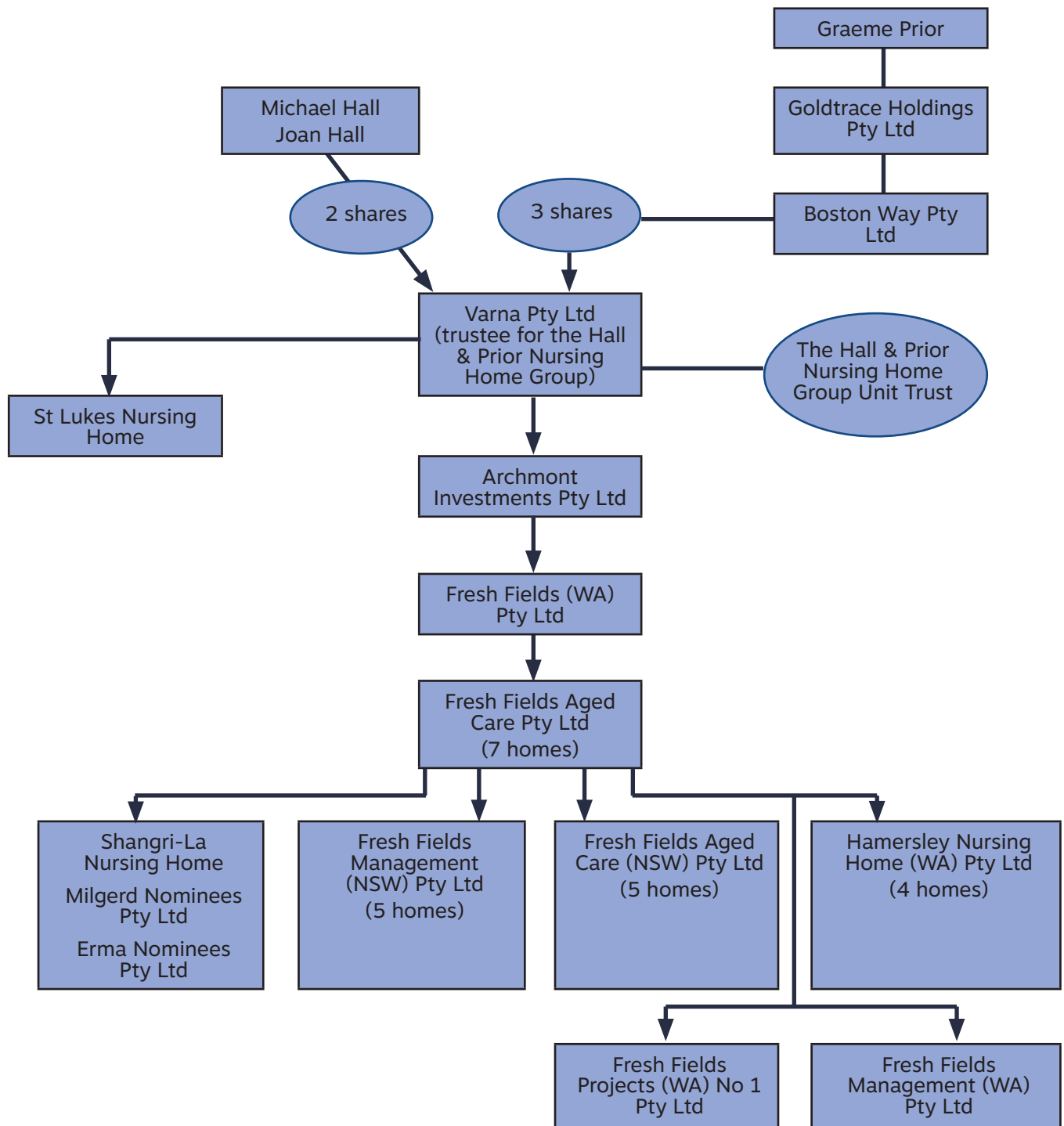
<sup>83</sup> Goldtrace Holdings Pty Ltd, Current Company Extract, as purchased from ASIC on 12 March 2019.

<sup>84</sup> The connection of these two entities to the Binetter family is spelt out clearly in this Federal Court document [https://www.ato.gov.au/law/view/pdf/misc-case/rdr\\_2016fca1351.pdf](https://www.ato.gov.au/law/view/pdf/misc-case/rdr_2016fca1351.pdf)

<sup>85</sup> Neil Chenoweth, 19 October 2018, *Australian Financial Review*, "How a fight between nudie juice founders and the ATO tore a Sydney family apart". <https://www.afr.com/news/policy/tax/the-tax-scheme-that-tore-a-family-apart-20181015-h16mya>

No public information is available on any of the entities involved in the Hall & Prior aged care business, despite receiving over \$100 million in federal funds for residential aged care. The reason why the Hall & Prior business has such a complex ownership structure is unclear.

### Ownership Structure of Entities Trading as The Hall & Prior Nursing Home Group



# TRICARE: THE OFFSHORE FAMILY-OWNED AGED CARE BUSINESS

TriCare, owned by the O'Shea family, is one of Queensland's largest for-profit aged care companies. In 2017-18, TriCare operated 15 residential aged care facilities in Queensland with 1,568 places and received \$77.7 million in federal funds. TriCare may generate higher revenues from resident fees as average federal funding per place was only \$49,574, lower than the other five family-owned aged care companies.

TriCare operates 7 retirement villages in Queensland and one each in New South Wales and Victoria.<sup>86</sup> Other O'Shea family businesses are also closely connected to aged care. NutriFresh supplies prepared food to TriCare, other aged care facilities, state hospitals, retirement villages, Meals on Wheels and other customers.<sup>87</sup>

The family has a 13.4% interest in Aveo Healthcare Limited, a subsidiary of the ASX-listed retirement living company Aveo, valued at \$30.4 million in 2018.<sup>88</sup> Aveo Healthcare Limited (f/k/a Forest Place Limited) had revenues of \$32 million in 2018 and profit after tax of \$22.5 million from operating retirement villages in Queensland.<sup>89</sup> FKP Limited, a predecessor to Aveo, took over a majority of shares of Forest Place in 2004 in a contentious battle with John and Peter O'Shea, who remained minority shareholders.<sup>90</sup>

In 2014, the O'Sheas with \$342 million were ranked as the 31st wealthiest family in Queensland.<sup>91</sup> The family wealth, with complex ownership structures leading offshore to Norfolk Island, has not been estimated more recently.

In the 2016-17 financial year, the two O'Shea brothers each gave a total of \$35,000 to the Liberal National Party of Queensland making the family the largest political donor in the state.<sup>92</sup> The brothers donated \$30,000 each in 2015-16, to make total donations to the LNP of at least \$130,000 in two years.<sup>93</sup>

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<sup>86</sup> <https://www.tricare.com.au/retirement/>

<sup>87</sup> <http://www.nutrifresh.com.au/about-us>

<sup>88</sup> Aveo, Annual Report 2018, Note 25 Material Partly-Owned Subsidiaries, p.109. <https://www.aveo.com.au/wp-content/uploads/2018/09/AVEO-Annual-Report-2018-web-sml.pdf>

<sup>89</sup> Ibid, p.110.

<sup>90</sup> The Age, 4 February 2004, "Forest Place shares lost in the woods". <https://www.theage.com.au/business/forest-place-shares-lost-in-the-woods-20040204-gdx8nj.html> ; Daryl Passmore, 25 August 2013, "QLD Rich List 2013: O'Shea Family". <https://www.couriermail.com.au/business/rich-list/oshea-family/news-story/f233b582d5645261fea541bb2af3de91>

<sup>91</sup> <https://www.couriermail.com.au/business/rich-list/queenslands-top-150-rich-list/news-story/b09dd674f01ad23f90f825db5c3539df>

<sup>92</sup> Laura Polson, 2 February 2018, The Newcastle Herald, "No apologies from Labor's top donor Trad". <https://www.theherald.com.au/story/5205574/no-apologies-from-labors-top-donor-trad/> ; The actual disclosure statements are here: <https://periodicdisclosures.aec.gov.au>Returns/64/XQDH8.pdf> ;

<sup>93</sup> <https://periodicdisclosures.aec.gov.au/Donor.aspx?SubmissionId=60&ClientId=36585>  
<https://periodicdisclosures.aec.gov.au/Donor.aspx?SubmissionId=60&ClientId=36593>

## Offshore: Norfolk Island

The TriCare aged care business is owned through an unlisted public company, TriCare Limited. There are several other unlisted public companies in the TriCare business structure, but the ultimate holding company for TriCare Limited and all of the other family owned businesses is TriCare Group Pty Ltd. This entity has an ABN, but no filings with ASIC, and is classified as an “Other Unincorporated Entity” registered on Norfolk Island.<sup>94</sup> As previously mentioned, Norfolk Island is a territory of Australia but was a tax haven until 2016 when it became part of Australia’s income tax and benefits systems.<sup>95</sup>

Officers from the Department of Health and Ageing first revealed that TriCare Group Pty Ltd was registered in Norfolk Island during a Senate Inquiry into Residential and Community Aged Care in 2009.<sup>96</sup> An answer in response to a question on notice further clarified that “All 6 approved providers in the TriCare Group... are subsidiaries of TRICARE GROUP PTY LTD of Norfolk Island.... The 6 approved providers in this group are responsible for 14 residential aged care homes with 1,189 places.”<sup>97</sup>

When Department of Health and Ageing health officers were asked why the financial headquarters would be on Norfolk Island, the response was:

“You could imagine a structure in which the domestically taxpaying entities make a loss and the foreign based body makes substantial profits because of the fees paid to it by the domestic entity. Under those circumstances, headquarters can make a decent living and less tax can be paid.”<sup>98</sup>

It was necessary to clarify that no accusation was being made about any specific provider, but the Department was aware of other similar structures in the industry using foreign entities that provided similar advantages. Officers stated that it “is not the only example, but it is the only example we are aware of on Norfolk Island, and I say ‘aware’ because we have limited information.”<sup>99</sup> The ‘limited information’ is an ongoing concern.

The Australian Parliament passed Norfolk Island legislation in 2015 which went into effect in 2016 to abolish self-government and introduce Australian income taxation.<sup>100</sup> Prior to 2016, Australian income tax would not have been assessed on businesses registered on Norfolk Island. However, there are still some taxation benefits for companies registered on Norfolk Island. In particular, “Capital gains tax (CGT) won’t apply to Norfolk Island assets held by Norfolk Island residents before 24 October 2015.”<sup>101</sup> This may help explain the unlisted public company structures in the TriCare Group with all shares ultimately owned on Norfolk Island. According to ASIC’s information page, the “law for Norfolk Island companies has not changed, companies currently registered under Norfolk Island law will remain and any new companies will continue to be registered with the Norfolk Island Companies Office.”<sup>102</sup>

<sup>94</sup> NutriFresh Pty Ltd, Current Company Extract, as purchased from ASIC on 15 March 2019. The extract shows that the company is half owned by Tricare Ltd and half owned by TriCare Group Pty Ltd with an address of Cascade Road, Norfolk Island, NSW 2899.

<sup>95</sup> <https://onlinelibrary.wiley.com/doi/10.1111/1467-8497.00259>

<sup>96</sup> Standing Committee on Finance and Public Administration, 21/04/2009, “Residential and community aged care in Australia

<sup>97</sup> [https://www.aph.gov.au/binaries/senate/committee/fapa\\_ctte/aged\\_care/additional\\_info/question22.pdf](https://www.aph.gov.au/binaries/senate/committee/fapa_ctte/aged_care/additional_info/question22.pdf)

<sup>98</sup> <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:committees/commsen/11916/0001>

<sup>99</sup> Ibid.

<sup>100</sup> <https://www.abc.net.au/news/2015-03-19/norfolk-island-to-lose-parliament-will-pay-income-tax/6330620> ; <https://www.ato.gov.au/general/new-legislation/in-detail/direct-taxes/income-tax-for-businesses/norfolk-island-reforms/>

<sup>101</sup> <https://www.ato.gov.au/misc/downloads/pdf/qc47351.pdf>

<sup>102</sup> <https://asic.gov.au/nireform>

At least one other TriCare company – and possibly others – is registered in Norfolk Island. TriCare Australia Limited, a public unlisted retirement village company, also has TriCare Group Pty Ltd as the ultimate controlling entity.<sup>103</sup> The largest shareholder in TriCare Australia Limited is TriCare (Queensland) Pty Ltd, which ASIC lists as a “Foreign Company (Overseas)” registered in Norfolk Island.<sup>104</sup>

TriCare (Queensland) Pty Ltd did file financial statements with ASIC for the year ended 30 June 2018 which report investment as the principal activity and profit of zero in both 2017 and 2018.<sup>105</sup> With no profits, there are no taxes. Net assets “were \$11,244,640 and are unchanged from 2017. During the year the company received the proceeds of \$4,824,700 from sale of preference shares which were offset by loans to related entities.”<sup>106</sup> The cash flow statement shows that revenue of \$8.8 million in 2017 was also offset to zero by repayments of loans to related parties for exactly the same amount as income from the sale of shares.<sup>107</sup> This appears to be a clear case of artificial financial engineering, on Norfolk Island, to reduce any income tax liability.

TriCare (Queensland) Pty Ltd had total assets of \$1.328 billion and liabilities of \$1.317 billion leaving \$11.2 million in net assets for both 2018 and 2017; the numbers for both years are identical.<sup>108</sup> The company had \$88.7 million in loans to related parties in 2018 and held \$1.2 billion in shares of unlisted entities, at cost.<sup>109</sup> The company owed \$1.3 billion to related entities in both 2018 and 2017 in “unsecured at call interest free loans”.<sup>110</sup> The TriCare group appears to be able to shift equity and debt throughout the complex corporate structure, taking advantage of zero capital gains tax in Norfolk Island, in order to minimize all tax liabilities.

A note to the financial statements explains that the “management of the parent entity, TriCare Group Pty Ltd, controls the capital of its controlled entities in order to maintain an appropriate mix of debt and equity.... The management of the parent entity effectively manages each controlled entity’s capital by assessing the entity’s financial risks and adjusting its capital structure in response to changes in these risks. These responses include the management of debt levels.”<sup>111</sup> This language is repeated in other filings and makes it clear that the entire family business is managed through the parent entity. On Norfolk Island and a key objective appears to be to shift profits, equity and debt to minimise tax payments.<sup>112</sup> There is no way of knowing what tax payments, if any, are made by TriCare Group Pty Ltd, the parent entity.

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<sup>103</sup> TriCare Australia Limited, Financial Statements for the Year Ended 30 June 2018, as purchased from ASIC, Directors’ Report Principal Activities, p.1; Note 20 Ultimate Holding Entity, p.28.

<sup>104</sup> Ibid, Note 14 Issued Capital, pp.25-26; At least 83% of the value of the shares are held by TriCare (Queensland) Pty Ltd based on calculations from information provided in this note; TriCare (Queensland) Pty Limited, Current Foreign Company Extract, purchased from ASIC 5 March 2019.

<sup>105</sup> TriCare (Queensland) Pty Ltd, Financial Statements for the Year Ended 30 June 2018, purchased from ASIC and filed as “Statement to verify financial statements of a foreign company”, p.1 and Note 4 Income tax expense, p.16.

<sup>106</sup> Ibid, p.1.

<sup>107</sup> Ibid, Statement of Cash Flows, p.9.

<sup>108</sup> Ibid, Statement of Financial Position, p.7.

<sup>109</sup> Ibid, Note 6 Trade and other receivables, p.17, Note 7 Financial assets, p.18.

<sup>110</sup> Ibid, Note 8 Trade and other payables, p.18.

<sup>111</sup> Ibid, Note 9 Issued Capital (c) Capital Management, p.19.

<sup>112</sup> TriCare Australia Limited, Financial Statements for the Year Ended 30 June 2018, Note 14 Issued Capital (e) Capital Management, p.26.

## TriCare Australia Limited: More Family Affairs

TriCare Australia Limited, the public unlisted retirement village company that is owned largely through at least two Norfolk Island companies, has an array of related party transactions. These transactions appear to significantly reduce tax liabilities. TriCare Australia Limited paid \$3,200 in income tax on total revenue of \$4.3 million and profit before income tax of \$1.7 million.<sup>113</sup> This equates to an effective tax rate of under 0.2%. While there are other factors, this is a very low effective tax rate in comparison to the statutory corporate income tax rate of 30%.

TriCare Australia Limited's income tax expense, not the actual tax paid, was reduced by more than half due to "permanent differences between accounting expenditure and items allowable as tax deductions".<sup>114</sup> The company reported a tax benefit of \$2.2 million from a loss on the revaluation of land and buildings.<sup>115</sup> Franking credits of \$1.5 million, "which represent dividends able to be franked and available for the subsequent financial year" were also reported.<sup>116</sup>

Related party transactions for TriCare Australia Limited include:

- \$218 million in non-current unsecured at call interest free loans to related entities.<sup>117</sup>
- \$10 million in shares, at cost, in unlisted controlled entities.<sup>118</sup>
- \$11 million in loans to related entities that receive 8% interest.<sup>119</sup>
- \$15 million in non-current unsecured at call interest free loans from related entities.<sup>120</sup>
- \$8 million in unsecured loans from related entities at a 7% interest rate.<sup>121</sup>

Significant amounts of debt and equity move around the TriCare Group structure in ways that appear to be engineered to artificially minimise tax payments of the group as a whole.

<sup>113</sup> Ibid, Statement of Cash Flows, p.9; Statement of Profit or Loss and Other Comprehensive Income, p.6. The tax paid is taken from the cash flow statement as that reflects actual tax payments. The income tax expense in the income statement is shown as \$257,240; However, even using this number the effective tax rate is below 15%.

<sup>114</sup> Ibid, Note 4 Income tax expense, p.19.

<sup>115</sup> Ibid, p.20.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid, Note 6 Trade and other receivables, p.21.

<sup>118</sup> Ibid, Note 8 Financial Assets, p.21.

<sup>119</sup> Ibid, Note 8 Financial Assets, pp.21-22

<sup>120</sup> Ibid, Note 11 Trade and other payables, p.24.

<sup>121</sup> Ibid, Note 12 Borrowings, pp.24-25.

## TriCare Limited: The Aged Care Company

TriCare Limited, another unlisted public company, is at the core of TriCare's aged care operations. The company reported net profit after tax of only \$482,506 in the 2018 financial year from its principal activities of "group administration and maintenance services".<sup>122</sup>

TriCare Limited's financial statements, like all other filings in the TriCare Group, are prepared "on the basis that the Company is a non-reporting entity because there are no users dependent on general purpose financial statements. The financial statements are therefore special purpose financial statements..."<sup>123</sup> Since the company's shares are not publicly traded and entirely owned by the family business, this qualifies the companies for special purpose filings which have far less disclosure than general purpose filings. The Australian Accounting Standards Board has conducted consultations with the intent to remove the option of companies to file special purpose financial statements to maintain Australia's compliance with International Financial Reporting Standards.

As reported in other TriCare Group company filings, the notes state that "TriCare Group Pty Ltd and its wholly-owned Australian controlled entities have formed an income tax consolidated group.... Current tax liabilities (assets) and deferred tax assets arising from unused tax losses and tax credits in the subsidiaries are immediately transferred to the head entity. ...Differences between the amounts of net tax assets and liabilities derecognised and the net amounts recognised pursuant to the funding arrangement are recognised as either a contribution by, or distribution to the head entity."<sup>124</sup>

Once again, the complex corporate structure, under one consolidated tax group on Norfolk Island, is able to minimise tax liabilities through various accounting techniques and exchanges between related parties. The limited disclosure and the consolidation within the TriCare Group make these "public" companies extremely opaque.

Despite TriCare Limited as the apparent indirect intermediary owner of all of the licensed residential aged care entities which received nearly \$78 million in annual federal funding, the cash flow statement only shows \$19.6 million in receipts from customers.<sup>125</sup> There is no breakdown of federal funding or resident fees for aged care in TriCare Limited's filings. Federal funding is received by subsidiary companies, which are the licensed providers, but don't file financial statements with ASIC. The federal funding and resident fee income is likely obscured when the accounts of subsidiaries are consolidated in TriCare Limited's filings.

There are plenty of other unexplained items in the financial statement including an "Income tax contribution" of nearly \$3 million in the cash flow statement for 2018, compared to less than \$0.4 million in 2017.<sup>126</sup> The 2018 "income tax contribution" is more than 8 times larger than the previous year. TriCare Limited could have been subject to an ATO audit resulting in the payment of back taxes in 2018. However, no explanation is provided and it is not known whether any income tax was paid to the ATO by the Norfolk Island-based parent company which is head of the tax consolidated group. The income tax expense, for accounting purposes, was only \$224,750 in 2018 and \$244,658 in 2017.<sup>127</sup> The company also reports, with no further explanation, over \$8 million in current tax listed as an asset.<sup>128</sup>

<sup>122</sup> TriCare Limited, Financial Statements for the Year Ended 30 June 2018, Directors' Report, pp.1-2.

<sup>123</sup> Ibid, Note 1 Accounting policies (b) Basis of preparation, p.10.

<sup>124</sup> Ibid, Note 1 Accounting policies (c) Income taxes, p.11.

<sup>125</sup> Ibid, Statement of Cash Flows, p.9.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid, Statement of Profit or Loss and Other Comprehensive Income, p.6.

<sup>128</sup> Ibid, Note 9 Tax, p.22.

The financial statements provide limited information but raise significant questions. Reported related party transactions for TriCare Limited include:

- \$2.3 million in current unsecured interest free loans receivable from related parties.
- \$52.1 million in non-current unsecured interest free loans receivable from related parties.<sup>129</sup>
- \$42.3 million in non-current financial assets in the form of a “director related loan” with interest charged at 7%.
- \$14.3 million in shares, at cost, in controlled entities.<sup>130</sup>
- \$5.5 million loan from “the head entity TriCare Group Pty Ltd arising from tax consolidation” currently owed.<sup>131</sup>
- \$40.1 million in non-current unsecured at call interest free loans from related entities.
- \$7.1 million in non-current unsecured at call interest free loans from “director related entities”.<sup>132</sup>
- \$26 million in non-current unsecured “loans from director related entities with interest at 8%.”<sup>133</sup>
- \$11.1 million in issued shares, ultimately owned on Norfolk Island by TriCare Group Pty Ltd.<sup>134</sup>

TriCare Australia (Holdings) Limited, another unlisted public company in the group structure, had zero in revenues and profits in 2017 and 2018 from its principal activity of “Investment”.<sup>135</sup> The company had \$10 million in non-current unsecured at call interest free loans to related parties and had \$10 million in issued shares.<sup>136</sup> The company did not appear to have any other activity. As with other TriCare Group companies, the ultimate holding company is TriCare Group Pty Ltd on Norfolk Island.<sup>137</sup>

The lack of transparency and public information on a company receiving nearly \$78 million in annual funding for residential aged care, not including other state and federal funding, resident fees and other business income, is astounding. Greater accountability is required to ensure that public funds are delivering high quality care and not being shifted offshore for private profit.

<sup>129</sup> Ibid, Note 6 Trade and other receivables, p.21.

<sup>130</sup> Ibid, Note 10 Financial assets, p.23.

<sup>131</sup> Ibid, Note 11 Trade and other payables, pp.23-24.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid, Note 12 Borrowings, p.24.

<sup>134</sup> Ibid, Note 14 Issued Capital, p.25. Although it is not known if there are intermediary companies holding the shares of the company, the Current & Historical Company Extract for TriCare Ltd, purchased from ASIC on 28 February 2019, confirms that TriCare Group Pty Ltd (Org No.: 081 630 597) is the ultimate holding company.

<sup>135</sup> TriCare Australia (Holdings) Limited, Financial Statements for the Year Ended 30 June 2018, as purchased from ASIC.

<sup>136</sup> Ibid, Note 3 Trade and other receivables, p.14; Note 4 Issued Capital, p.15.

<sup>137</sup> Ibid, Note 7 Ultimate Holding Entity, p.16.

# THOMPSON: RELATIVE TRANSPARENCY, HEALTHY PROFITS & TAXES PAID

Thompson Health Care Pty Ltd operates 12 residential aged care facilities in New South Wales. In 2017-18 these facilities, with 1,143 places, received \$63.7 million in federal funding. All facilities were licensed to the same entity which files annual financial statements with ASIC in full accordance with Australian and International standards.<sup>138</sup>

Total sales revenue from the provision of services was \$110.5 million in the 2018 financial year.<sup>139</sup> While there is no reporting of government revenue and resident fees, this suggests that roughly 58% of service revenue was government funding and that the other 42% was from resident fees. In addition to sales revenue, the company also reported nearly \$26 million in proceeds “from accommodation bonds and resident lease deposits” as part of cash flows from financing activities.<sup>140</sup>

The company made an after-tax profit of \$11 million and paid a fully franked dividend of \$20 million.<sup>141</sup> Key management personnel were paid \$211,150 and \$2.4 million in management fees were paid to Thompson Health Care Administration Pty Ltd.<sup>142</sup> Thompson Health Care Administration Pty Limited, along with Douglas John Thompson and D.J. Thompson Pty. Limited are the 3 shareholders of the company.<sup>143</sup>

Several other related party transactions were reported, but none seemed to have a significant impact on company tax payments, but possibly impacted personal income taxes.

Other related party transactions reported by Thompson Health Care Pty Ltd included:

- \$2.1 million in interest income received from “directors and related parties”;
- \$206,246 in interest expense paid to other related parties;
- \$56.4 million in total loans, current and non-current, to other related parties; and
- \$10 million in loans to Director (and owner) Douglas Thompson.<sup>144</sup>

The profit before income tax was \$15.6 million and a tax expense of \$4.6 million.<sup>145</sup>

The cash flow statement shows income tax paid of \$4.6 million.<sup>146</sup> The tax expense was increased by \$20,207 due to “other non-allowable items” and increased by \$120,986 in “capital profits not subject to income tax”.<sup>147</sup> The income tax paid is roughly 30% of the reported profit before income tax. The matching of the tax expense to the tax paid and the 30% statutory corporate tax rate are positive indications of responsible company practices.

Thompson Health Care appears to demonstrate that a private family-owned aged care company can make a decent profit and pay its fair share of tax while operating with relative transparency.

<sup>138</sup> Thompson Health Care Pty Limited, Financial Report for the Year Ended 30 June 2018, as purchased from ASIC, Note 1 Summary of Significant Accounting Policies, p.9.

<sup>139</sup> Ibid, Note 2 Revenue and Other Income, p.14.

<sup>140</sup> Ibid, Statement of Cash Flows, p.8.

<sup>141</sup> Ibid, Directors' Report, p.1.

<sup>142</sup> Ibid, Note 5 Key Management Personnel Compensation, p.15. & Note 21 Related Party Transactions, p.19.

<sup>143</sup> Thompson Health Care Pty. Ltd., Current Company Extract, purchased from ASIC on 12 March 2019.

<sup>144</sup> Thompson Health Care Pty Limited, Financial Report for the Year Ended 30 June 2018, Note 2 Revenue and Other Income, p.14; Note 3 Profit before Income Tax, p.14; Note 9 Trade and Other Receivables, p.16.

<sup>145</sup> Ibid, Statement of Profit or Loss and Other Comprehensive Income, p.5.

<sup>146</sup> Ibid, Statement of Cash Flows for the Year Ended 30 June 2018, p.8.

<sup>147</sup> Ibid, Note 4 Tax Expense, p.15.

# CONCLUSION & RECOMMENDATIONS

There is an urgent need for the government to address the lack of transparency and hold companies accountable for hundreds of millions of dollars in public funding. Any company, or entity, receiving large sums of federal funds must be fully accountable and transparent in how it uses those funds and must pay a fair share of taxes on profits made.

The large family-owned aged care companies demonstrate that significant profits are being made by some in the sector. While the aged care sector will need increased funding overall, measures must be put into place now to ensure that funding is going to improve staffing and quality of care and not further enrich families and companies that have already made a fortune from providing government funded services.

Large family-owned aged care companies provide clear and concrete examples of broader issues of tax avoidance in Australia, particularly with the abuse of trusts. However, there are some clear and simple solutions to address these issues and increase transparency and the accountability of entities receiving public funding.

The issues raised in this report – and the previous Tax Justice Network report on the largest for-profit aged care companies – must be fully explored by the current Royal Commission into Aged Care. The integrity of the aged care sector will not be improved unless there is accountability for both the quality of care and public funding of aged care services.

The analysis of Thompson shows that a large for-profit aged care company, with a good reputation, can operate transparently, pay a fair share of taxes and still make significant profits. There are probably many other for-profit providers like Thompson. However, the unaccountable behaviour of some of the largest aged care companies has harmed the aged care sector as a whole. All entities operating in the sector must be made fully transparent and accountable for the public funding received.

This report has three primary recommendations:

1. Any entity, or combination of connected entities, that receive over \$10 million in annual federal funding must be required to file full and complete annual financial statements with ASIC (or with the Australian Charities and Not-for-profits Commission), with no recourse to reduced disclosure filings, special purpose filings or other exemptions. This could be enacted through legislation or simply be made a requirement of receiving future federal funding. This measure would provide a basic level of transparency and not impose any significant burden on providers.

2. The Australian government must immediately implement a public register of beneficial ownership, which includes trusts. This ownership register should be hosted by the ATO and be free and publicly accessible. This would provide both the public and the ATO with a significant increase in transparency in relation to the use of trusts. This measure is needed for Australia to catch up to other countries – such as the United Kingdom and New Zealand – which already have a central registry of trusts and trust assets. A public register of beneficial ownership is also necessary for Australia to live up to international obligations and global initiatives such as the OECD's Standard for Automatic Exchange of Financial Account Information on Tax Matters and the Financial Action Task Force, which not only deals with tax issues, but money laundering, terrorist financing and other threats.
3. A standard minimum 30% tax rate, the same as the current corporate income tax rate, should be applied to distributions of discretionary trusts. This measure could raise significant revenues from incomes that are currently protected by the mis-use or abuse of trusts, help restore integrity to the tax system and increase fairness. This measure may also provide a dis-incentive for companies to integrate trusts into business structures or to own businesses through trusts. While there are clearly legitimate uses of trust structures, that should be protected, other reforms around the use of trusts should be considered to bring Australia more in line with international standards.

Large family-owned aged care companies provide clear examples of why these reforms are needed, but these clear and simple common-sense reforms would have positive impacts beyond the aged care sector and are broadly needed across Australia.

Responsible companies operating in the aged care sector – and in other sectors reliant on government funding – should embrace these recommendations to increase transparency, accountability and help level the playing field. These measures are necessary to restore public confidence and the integrity of government funding.

The Royal Commission into Aged Care must address financial transparency and accountability as an underlying issue in the repeated failure to deliver high-quality care, compassion and dignity to Australia's elderly. It should also provide an opportunity for broader reforms to increase transparency and accountability across other publicly funded services. While the solutions are clear, what has been lacking is the political will to implement much needed changes.



