Who Cares For What?

Australia's Largest For-Profit Nursing Home Chains

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Centre for International Corporate Tax Accountability and Research

Australia's largest for-profit aged care companies are not accountable for the billions in public funding they receive. These large companies prioritise returns to shareholders, investors and executives over providing care for Australia's elderly. As a matter of urgency, the government must put in place measures to ensure public accountability and rebuild public confidence and ensure safe, best practice care for all Australians.

More government funding for aged care will be needed, but without significant increases in transparency and public accountability companies may continue to prioritise financial interests over safe and effective care which elderly Australians deserve.

A Tax Justice Network – Australia (TJN-Aus) report helped instigate a Senate Inquiry into the tax practices of for-profit aged care companies. The evidence from the hearings and submissions has confirmed clear problems. Increasing accountability and transparency will help prevent a repeat of the revelations of failures in care from the ABC Four Corners program and other media exposes and now the focus of a Royal Commission. The final report from the Senate Inquiry has the opportunity to recommend simple but necessary measures to make sure those companies receiving government funding are both transparent and accountable.

If for-profit aged care companies – and others – were held accountable and paid the taxes they should be paying, there would be sufficient revenues to expand aged care funding. It is purely a matter of political will.

Restating the Facts & Support for Greater Accountability

As reported in the TJN-Aus Report, six of the largest for-profit providers continue to grow rapidly and consolidate market share. These companies operate over 20% of all residential aged care beds in Australia and get nearly $2.2 billion in annual government subsidies. While these companies reported combined annual profits of $210 million, that figure is after *hundreds of millions of dollars have been allocated in repayments to investors, executive compensation and dividends to shareholders*. Many of these companies use complex corporate structures and related party transactions to lower reported profits and thereby minimise or avoid tax payments.

Although the companies contested the analysis in the TJN Report, none of the facts in the report have been effectively challenged. Two of the six companies, Estia and Bupa, have supported the recommendations for increased transparency and public accountability.

New Evidence from the Senate Inquiry

Through the process of the Senate Inquiry, additional information about the financial structures and tax practices of some of these companies has emerged. Following are some examples.

Bupa, one of the largest companies operating in Australia, has refused to publicly acknowledge being audited by the ATO for offshore related party loans to reduce tax payments in Australia. Bupa's Australian partnership, which appears to be at the centre of the ATO investigation, is not required to make any filings in Australia.

Internationally, Bupa is also under audit by Spain's tax authority and its scheme of owning UK aged care facilities through a Spanish entity is the subject of an EU investigation into illegal state aid.

A 'simplified' version of Bupa's global ownership structure is shown in **Attachment A**.

Opal is half owned by AMP, which lost its Chairman and CEO after revelations of unscrupulous business practices in the Banking Royal Commission.

Opal paid $2.4 million in tax over two years while paying out an estimated $62 million in dividends. The AMP entities which own Opal do not make any public filings in Australia, but the Singapore filings of the investment company which owns the other half of Opal reveal $31 million in dividend payments over two years. It is alarming that there is more transparency in Singapore, a country frequently classified as a tax haven, than from one of Australia's largest publicly listed investment management companies.

When Opal was questioned about the dividend payments at the second hearing of the Senate Inquiry, the company did not provide a clear response, but did submit the chart of the corporate structure which is shown in **Attachment B**.

Allity, which has never paid any income tax, tried to argue at the first Senate hearing that the 15% interest rate loan from shareholders was "market rate". This was later challenged by the ATO at the second hearing. The repayment of this loan is one of the key tools the company used to eliminate its tax liabilities. After questioning, Allity did provide the chart **(Attachment C)** to show the corporate structure. However, Allity failed to disclose that one of the four investment funds that owns the company is registered in the tax haven of Jersey.

Regis and **Japara** have both recently faced shareholders who are angered over excessive executive pay while company shares have plummeted in the wake of the Four Corners expose and the announcement of a Royal Commission. Nearly 24% of Japara shareholders recently voted in protest against that company's remuneration report. At the Regis AGM nearly 24% of shareholders also voted against the company's remuneration report. That is a majority of the shares not owned by the company's founders.

In 2017, the company's founders and two largest shareholders received over $33 million in fully franked dividends. Executive and director pay was nearly $4.5 million and over 7% of net profit after tax. Excessive executive pay and dividends both reduce taxable income.

As another example – not from the Senate Inquiry – of f***or-profit aged care putting profit before care***, an investment firm acquired a relatively small aged care company in late 2017 and stated a target of "a total return to third party co-investors of 20%+ per annum over a 4 year term" and would "provide investors with exposure to the attractive fundamentals of the Australian aged care sector". While the for-profit companies attempted to argue before the Senate Inquiry that more funding was desperately needed, there is a very different message for potential investors.

For-profit aged care companies are generating significant returns for investors, shareholders and executives from the billions in public funding they receive. There must be clear requirements for financial transparency and public accountability if government subsidies for the growing for-profit sector are to be maintained or increased. Reforms are required to ensure that taxpayers are getting the safe and effective aged care services that elderly Australians deserve and that companies follow acceptable tax practices.

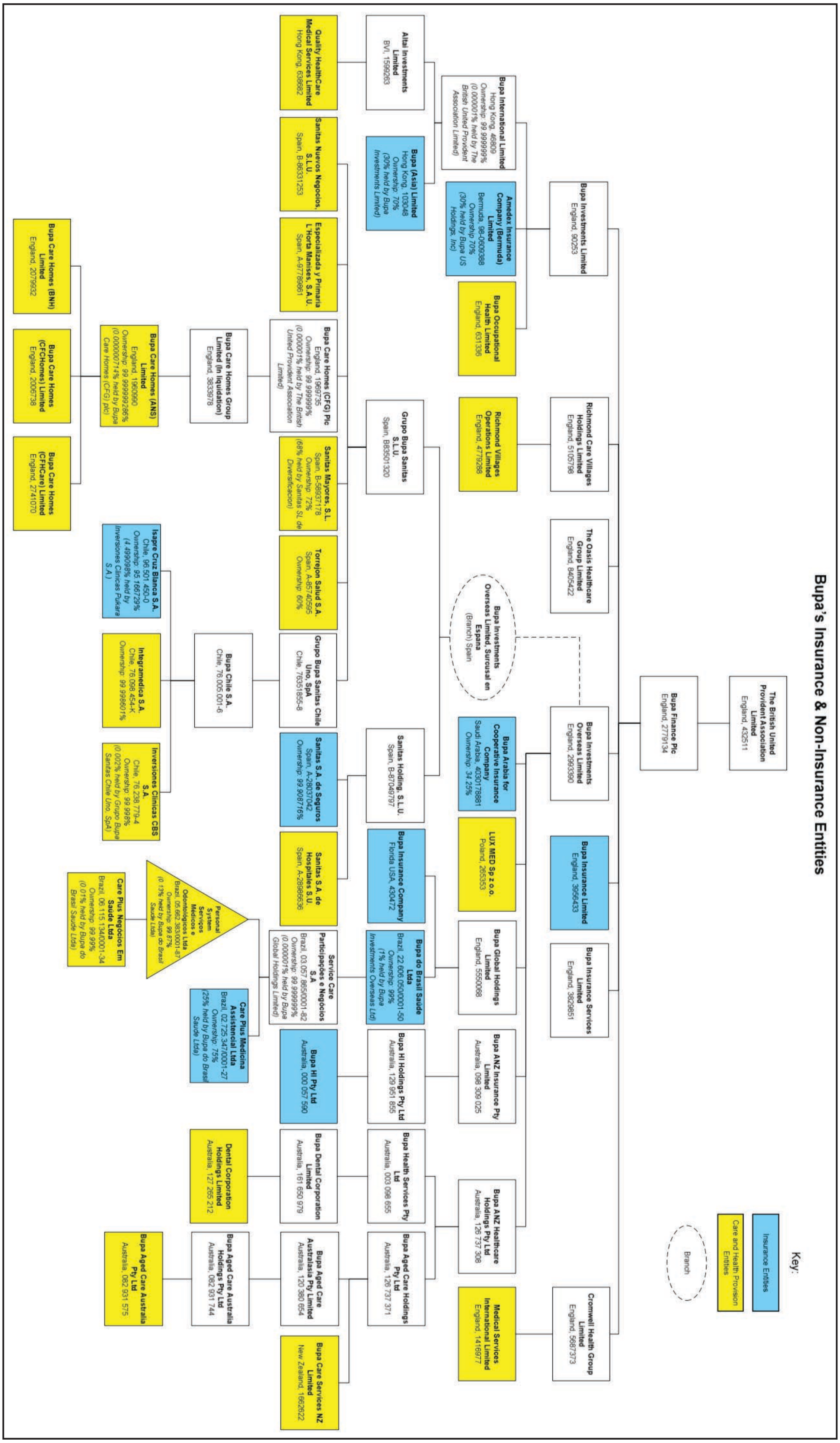
Recommendations

The final report of the Senate Inquiry should endorse the TJN-Aus recommendations which have the support of two of the largest for-profit aged care companies. The Government should adopt these recommendations and take immediate and concrete actions to prioritise safe and effective care for Australians over excessive returns for tax avoiding companies.

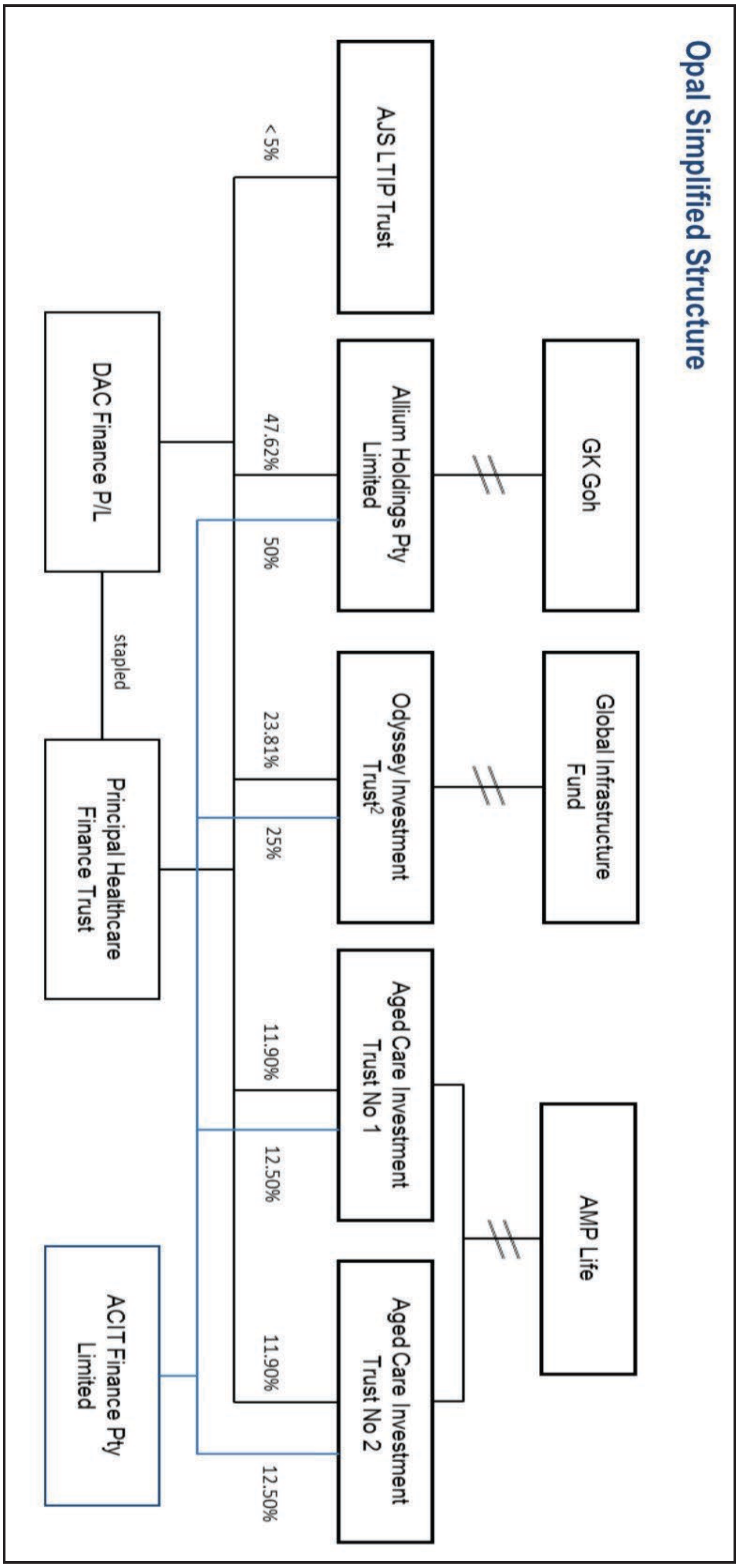
The recommendations are to require:

- Any company that receives over $10 million in Commonwealth funds, to file full financial statements with ASIC, with no recourse to special purpose filings or reduced disclosure requirements.
- Full disclosure of all transactions with trusts or partnerships that are part of a corporate structure where the majority of income is earned from a related party and where operating income is substantially reduced by lease and/or finance payments to trusts or partnerships.

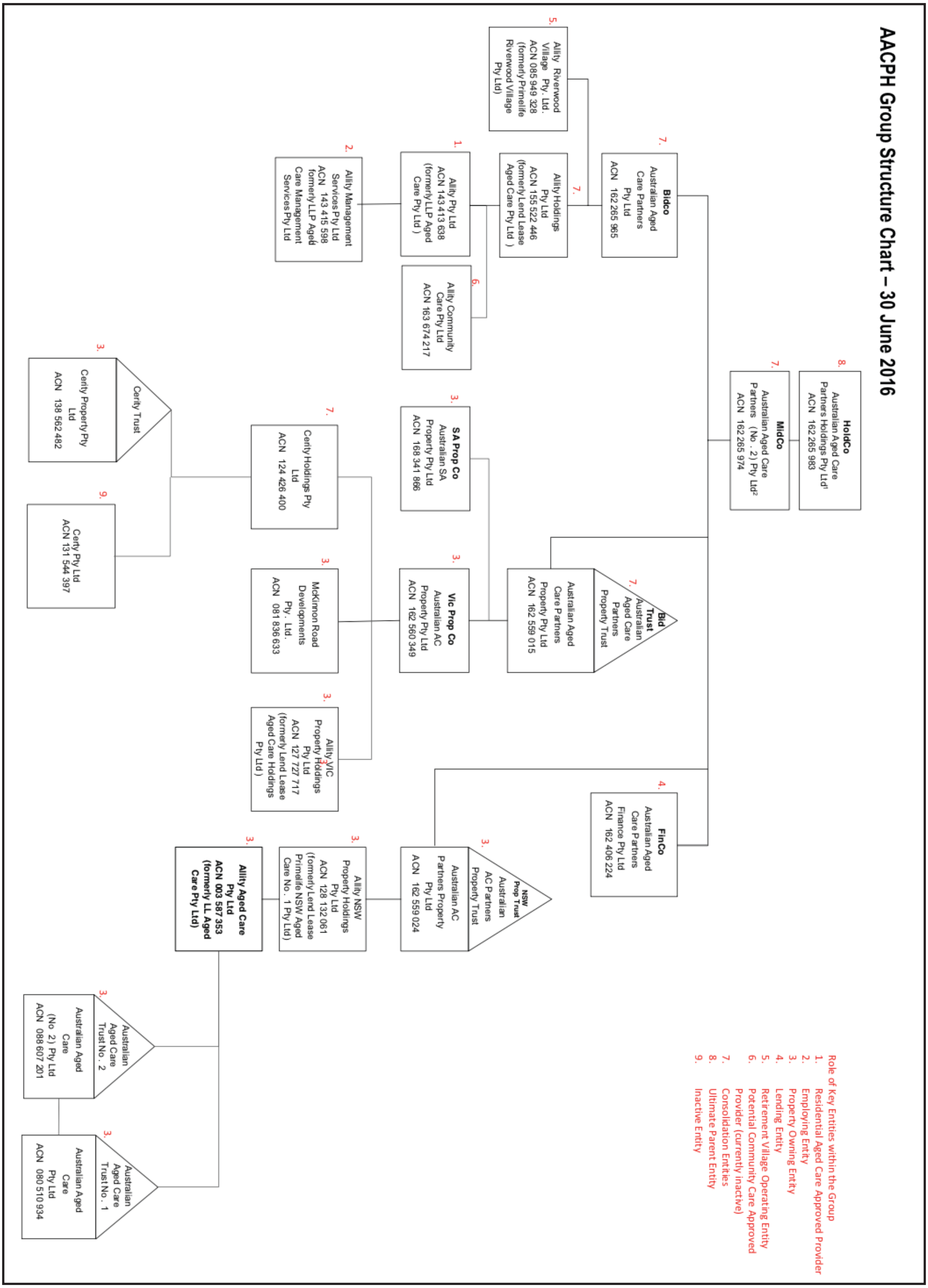
Attachment A



Attachment B



Attachment C



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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 the recent TJN-Aus report on the tax practices of the largest for-profit aged care companies.