Consultation Paper No. 2:
A new model for regulating aged care

https://www.agedcareengagement.health.gov.au/regulatorymodel/

June 2023

Aged Care Crisis (ACC) is an independent community-based advocacy group that has closely examined the development of aged care policy over the years. It has seen and despaired about what has been happening on the ground to staff and residents. It was glaringly obvious yet it took a Royal Commission to reveal it. Its members were among the first in the community to warn that the policies adopted would not work - 23 years ago. ACC, and prior to its formation, its members have been collecting data and making submissions to aged care related inquiries for nearly two decades, urging real change.

We have been pressing for structural changes that would address the consequences of the damaging changes made in 1997. In particular, we have pressed for models of care and staffing that would address the dreadful conditions that are driving staff away from aged care and giving it a dreadful reputation. The system has been allowing profit-hungry providers to avoid employing more costly skilled staff or giving more work to part time staff even when they were available.

The changes made in 1997 created an unbalanced system where commercial interests and values became ascendant and the interests and values of communities and professional staff subservient. The large power imbalance that resulted has distorted the way the system operates and it has been failing as a result. Our submissions have advocated for restructuring, using models which restored that balance in favour of staff and residents.

Our analysis is informed by a long experience of and an interest in dysfunctional systems that harm citizens and sometimes whole societies. We have been particularly interested in their impact in health and aged care. Our analyses is influenced by the social science that explains why and how these situations arise and endure for so long in spite of the harm done.

Table of Contents

1 Summary 3
1.1 The purpose 3
1.2 Background 3
1.3 Addressing the Consultation paper (No 2) and the questions raised 5
1.4 Appendices 5
2 Background 7
2.1 The consequences 7
2.1.1 History of aged care 8
2.1.2 Our democracy: Disturbing revelations 8
2.1.3 Finding a way out of the mess 8
2.2 The Royal Commission into Aged Care 9
2.2.1 Investigating 9
2.2.2 Making recommendations 9
2.2.3 The judge's criticisms 10
2.3 The response to the Royal Commission 10
2.4 Regulatory failure 11
2.4.1 Regulatory failure in the early years 11
2.4.2 Regulation continues to fail 12
2.5 Just how bad is aged care 15
3 Reforming the aged care system 15
4 Responding to the proposed regulatory changes 18
4.1 Addressing the Consultation paper (No 2) and the questions raised 21
4.1.1 Raising the quality of aged care 22
4.1.2 Supporting quality care 24
4.1.3 Becoming a provider 25
4.1.4 Responsibilities of a provider 27
4.1.5 Holding providers accountable 28
4.1.6 Transitioning to the new model 29

Appendices to this document:

- Appendix A
- Appendix B
- Appendix C
- Appendix D
- Appendix E
- Appendix F
- Appendix G
- Appendix H
- Appendix I

NOTE July 2023

Our original June submission had to meet deadlines and we did not have time to check all links and sort out all typing errors. Extracts from old submissions were used in the Appendices to address issues. Many older links had changed or were no longer accessible on the internet.

In this version put on the web site links have been fixed when available, When not available they have been deleted, crossed out or a similar substitute inserted, When a link is missing or an additional link adds information it has been added as best possible.

CHANGES IN RED: New footnotes and reference as well as new relevant information as well as any significant edits in the text are in RED and most were not in the original.

1 Summary

1.1 The purpose

This submission argues that Australia's aged care system has been failing since 1997. It is deeply flawed because the philosophy, policies and the resulting structure of the system created in 1997 was deeply flawed. The new structure did not create the 'necessary conditions' needed for a market to work. The submission provides evidence to support this.

Huge efforts have been made over the last twenty-six years by the systems architects to make it work. Vast sums have been spent by them on inquiries, reforms, consultations and finally a Royal Commission. They simply cannot accept that their belief in markets, investment in time and money and the amount of effort and commitment was, and still is ineffective and the system they created is not working. They see the community and its expectations as the problem.

Instead of addressing the flaws they have controlled information and, after each review and claimed reform, focused on persuading our communities that the system is working by claiming it is world class. At a departmental webinar with industry in late 2022, the Royal Commission was blamed for *"diminished community confidence in the system"* and the focus was on *"rebuilding public confidence"*. It was suggested that star ratings would *"flip the switch on community confidence in aged care"*. If they are wise, they will take a 'customer beware' approach instead.

We argue that we are social animals and that care of the vulnerable is and always has been a community responsibility and cannot simply be handed to an unchecked and uncontrolled market. Civil society, our communities have every reason to be highly suspicious. They should not accept this sort of argument again. They should insist on taking overall responsibility themselves and so gain full access and insight into what is happening.

They should take control of what happens in their communities and work closely with providers of care and government in arranging services and supporting those in need. Governments are elected by citizens and their role is to empower and work with them and their communities. Instead, they have turned politics into a market selling citizens their beliefs and offering them incentives using a managerial approach. That undermines and weakens our democracy.

To address this the submission reviews what has been happening, describing briefly what happened and then backing it up with argument and data in appendices.

1.2 Background

System wide failure: We stress that aged care is a part of society and it is only one of multiple systems that have failed. Instead of serving citizens markets have been exploiting them as businesses 'followed the money' whenever they could. We refer to what has been happening and expand on this in Appendix A, showing how it impacted on aged care. We describe the way in which powerful groups have undermined and damaged our democracy to the extent that some critics claim that ministers are in office but not in power. Major political parties are trapped by the supporters of these free market policies.

We describe how deeply divided the Royal Commission into aged care was between those who realised what was happening and wanted to 'rebuild' the system and address the deep flaws and those who wanted to 'renovate' the existing system again. In its interim report the Royal Commission described just how badly the system had failed and promised to address the flaws. The commissioners then came under strong pressure and split making separate recommendations.

Both political parties seized on the ‘renovate’ model and ignored the rebuild option. Governments are once again making aspirational regulation, increasing regulatory effort and complexity, and trying to persuade citizens that this is reform. The structural flaws and the perverse unopposed commercial pressures in the system have not been addressed. The necessary conditions including a balance of power that are needed for a market to work are still absent.

We explain the extent of denial among the believers in this system over the last 26 years and show how those in control are still in denial. This is explored in more depth in Appendix B.

Regulatory failure: We describe how we became aware of what was happening to aged care between 1997 and 1999 and our interaction with the department as we tried to warn them that these policies had not worked elsewhere and would not work in Australia.

We briefly review the early failures in policy and regulation during the late 1990s and early 2000s and expand on this in Appendix C.

We then looked at what happened to regulation over the last 20 years and expand on this in Appendix D. We illustrate what had been happening to our political system by referring to the red flag ‘robodebt’ and the extent of denial in the system. We refer to our efforts to expose what has been happening over the years in Appendix D.

We conclude that adverse information about aged care was more threatening to the regulators than to the public. The worse it got, the harder they tried to conceal what was happening.

We understand just how challenged those who have been responsible for this failed system are and the extent of this denial. To directly challenge this, Appendix E contains sections from an appendix to our 2018 submission to the Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia’ by a House of Representatives committee. It shows just how badly the system had failed by describing what was happening. It quotes what nurses and others on the ground were saying and describes some of the many failures.

Reforming the Aged Care System: We explain the problem of market dominance and the absence of the balancing views, forces and power that are necessary to contain market excesses. We describe the Community-led changes that are necessary to create this balance and make the system work. Appendix F contains extracts from our submission to the Royal Commission pressing for the required structural changes.

The issues are not unique to aged care and social scientists have been writing about the problems in our society for years. Their alarm about the direction our societies have taken is reflected in recent books. We comment on this and support it by examining this in Appendix G.

Responding to the proposed regulatory changes: We comment on the response to the Royal Commission and the inappropriateness and inadequacy of what is being done. We explain how similar the approach is to reforms that have failed. The same people are still advising government and the governments close relationship with industry remains intact. As in the past lip service is paid to community and community discussions but there is no plan to empower them and give them any control.

The increased complexity and regulatory requirements will place even greater pressure on staff and so compound the problem. No one wants to work in a system like this. This greater burden is already driving local councils providing home care and smaller providers of residential care out of business. Both provide better care than the competitive market. Appendix H addresses this problem.

Quality Indicators and Star Ratings are major changes in the new regulatory system. We examine the way the department is still planning every change including these processes with the providers before taking them to the public in aspirational consultations like that we are responding to.

These essentially promote their solution and don't consider real alternatives which would be far more attractive to citizens.

In Appendix I we look at the way star ratings are being presented to industry as a way to *"flip the switch on community confidence in aged care".* We are very critical of the way that the star weighting is being weighted. While claiming otherwise this will ultimately give industry and the department greater ability to control information again. Requiring local communities to oversee QI's and other performance data on the ground would be a better way.

We comment of the way staff have and are still being driven from the system and suggest that regulatory reform should start locally in the communities and then build centrally as governments and other centralised services reach down, train, mentor, support and integrate. We describe how this would build morale and attract staff.

1.3 Addressing the Consultation paper (No 2) and the questions raised

We criticise the way the 'reforms' to regulation are promoted in the discussion as well as what is proposed. It states that *"the community require confidence in Australia's aged care system and in the people delivering services"* and promise this. The way to build confidence is to include and empower people so that they have roles to play in making the system work.

We respond to the questions included in the discussion paper explaining why they are unlikely to work and what a better alternative might be.

1.4 Appendices

Appendix A: This appendix examines the flawed policies commenced in 1997, and describes the consequences, including changes to the public service and the outsourcing of policy to conflicted multinational corporate market advisers, whose commercial interests were not those of the community. It summarises the way policy changes impacted negatively on aged care and undermined our democracy. It argues that aged care is well placed to initiate real change.

Appendix B: This appendix focuses on denial. This denial started in 1997 and has continued through the many subsequent inquiries and marketplace reforms as the system came apart. The appendix describes this as it occurred over the years as well as during and since the Royal Commission. It analyses the process and explains it as a form of social pathology that must be confronted and addressed.

Appendix C: This appendix draws on a web site developed by one of us in the late 1990s and early 2000s. It quotes critics of the new aged care regulations introduced after 1997. Additional extracts from reports describe failures in care as well as the major problems that developed in the regulations including the accreditation agency and the complaints system. We also use quotes to show how, at the same time markets enthused over the potential profits to be generated from services to retirees and from providing aged care – the expected Aged Care Bonanza.

Appendix D: This appendix deals with the ongoing problems in regulations by using extracts from our submissions between 2005 and 2016 and short notes to describe what was happening while focusing on the problems and failures in regulation.

By 2016 the sector was coming apart and the senate set up an inquiry into staffing. We gained access to Australian aged care staffing data for the first time and were able to show how poor they were when compared with the USA. The senate inquiry into staffing, the subsequent taskforce, several subsequent investigations as well as the Royal Commission all ignored or rejected this data.

The system fell apart after 2016 and we wrote numerous submissions to multiple inquiries and then to the Royal Commission. In these we collected data that showed just how badly regulation had been failing and how intractable it was. We use selected extracts from some of these documents to show exactly what was happening. We concluded that "**adverse information about aged care was more threatening to the regulators than to the public"** and that the regulator **"has played a pivotal role in ensuring that the aged care system would not work and that the elderly would be harmed".**

Appendix E: This Appendix contrasts what the industry and government have been saying with what citizens, nurses, and others who have more direct contact have been saying over the last 20 years. It also shows how critical the press coverage was in exposing failures and what we are still dealing with. Now that staffing and other data is available it is clear who was correct and who was living in an illusionary bubble.

Appendix F: This appendix contains multiple extracts from Aged Care Crisis' 4 August 2020 unpublished submission to the Royal Commission advocating for structural change and a community-led system. It describes why the system is failing. It suggests principles for reform and makes recommendations. It describes the broader movement to localism and looks at the recommendations made in the pre-neoliberal era that advised greater regional, local and community involvement in the system. These changes were abandoned during and after the 1990s.

Appendix G: This appendix describes books that help us to understand what has been happening in our societies as well as aged care. They focus on how we use ignorance in developing beliefs, on how we become wilfully blind when we are challenged, and on the way the powerful control the patterns of thinking of the less powerful. Then there is the way that managerialism has eroded our humanity and how belief has rendered society unconscious of the real would.

In looking for a path out of ideology books look at the importance of balance in complex social systems and the adverse consequences of unbalanced dominance, including market dominance on society.

Appendix H: The appendix quotes from and links to material that shows how the new complex funding and regulation is causing local councils who provide good home care as well as smaller residential care providers to vacate the sector.

Appendix I: This appendix is an analysis of a star rating webinar between the department and industry. The design of the star rating system by business advisors rather than carers is concerning. The aspirational language used is marketing language and not the language of care.

The obvious primary focus was on rebuilding community confidence rather than addressing failures. We disagree with the weighting adopted for developing the star rating and do not support it. The problems responsible for past failures have not been addressed and we consider that what is proposed is unlikely to be any more successful than it has been over the last 26 years.

2 Background

Aged Care Crisis and its members have a long experience of dysfunctional systems. Some recognised what was happening in health and aged care during the 1990s when a new ideology best described as neoliberalism finally became dominant in Australia. We warned of the consequences at the time.

A mistaken belief in markets as universally applicable and as an always successful way of dealing with society's problems, provided they were not interfered with in any way, had been spreading insidiously since the 1940's. It became a dominant ideology globally in the 1980s.

At its heart it was a libertarian ideology that saw any control by society and citizen movements as a threat to the freedom of individuals. This freedom was expressed through markets. Society and its values were pushed aside as a policy of small government, market dominance and unfettered competition was pursued.

Society's values were steadily undermined as success and survival in this new marketplace compelled businessmen to compete for money in any way they could regardless of the consequences for vulnerable citizens and even for society itself. Large numbers of people have been harmed.

If we are to successfully address the deep structural flaws in aged care, then we need to

- understand how the system and these forces operate and their consequences,
- know how they were introduced,
- understand where they went wrong and where we have failed in the past including why numerous previous attempts to address the recurrent problems failed so badly.

Attempts to contain the problems by regulation have failed repeatedly and we need to understand why.

We address these issues in Appendix A and B.

2.1 The consequences

In **Appendix A** we examine some of these developments and the way they impacted on multiple sectors in our society as well as aged care. The problems in each sector are interlinked and should not be examined in isolation as is being done. The banks invest in aged care and the VET training system trains the staff who provide care. In pursuing profits, both have exploited those they claimed to serve. Money making strategies are often highly infectious and both are potential sources of infection for aged care.

In the attachment we describe what has happened as these policies were adopted in the USA, the UK and Australia. We describe the central role that marketplace advisors have played in Australia and refer to the many sectors affected showing how some sectors overlap and influence aged care. We refer to our attempts to warn of the consequences and to use evidence to expose the problems that rapidly developed in aged care. Their extent was finally confirmed by the Royal Commission in its interim report.

We examine the conflicted role that marketplace advisors have played in advising both the government on policy and aged care regulation, while at the same time advising the aged care industry. We look at the key role that KPMG has played in aged care and refer to material raising concerns about the way it has operated elsewhere.

We refer to the recent revelations of the corrupt way in which PcW has advised the Australian government on tax policy laws to address tax evasion. At the same time, it was using the confidential information it gained to advise those multinationals how to evade these laws. We understand how markets follow the money and have seen the infectivity of corrupt practices that do this in other sectors. We ask whether the same sort of thing has been happening in aged care?

We describe how government responded to the Royal Commission's findings and final recommendations by spending large sums in further consultations with PcW, KPMG and others. The companies that government still depends on to make policy are the same companies that advise the industry in aged care. This creates a huge opportunity for them if they can find ways of exploiting the opportunity without it becoming public. PcW became overconfident and careless - even talking about it in their emails.

2.1.1 History of aged care

In appendix A we also briefly review the history of aged care to show how the growth of free market thinking influenced policy in Australia. Care by nonprofit community and religious groups was steadily replaced by for-profit providers when public funding was provided for them in the 1960s. We describe how attempts to address the problems that developed as a consequence in the 1980s, lost momentum in the 1990s. Neoliberal free market ideology became dominant and irresistible with the election of John Howard, an ardent believer in 1997.

We describe how under Howard, the public service was gutted and captured by industry. In health care the medical profession resisted government pressure and used their market power to put any company that behaving unethically out of business, so limiting the damage.

Aged care was restructured as a free market rather than a humanitarian service. We refer to the succession of scandals and failures in care that soon developed as staffing levels fell and care declined. Repeated inquiries followed by reforms did not challenge ideology and often made the situation worse. A Royal Commission was finally called in 2018.

2.1.2 Our democracy: Disturbing revelations

Also in **Appendix A**, we describe the serious concerns that have been raised about what happened to government and democracy as market thinking and market advice dominated. Government and market grew closer and closer.

An independent politician that helped to keep Labor in power during the development of the LLLB aged care reforms spoke out in 2014 about how wealthy businessmen were *"intimately involved with, and crawling all over, our democracy"*. He claimed that they sent *"many necessary policy reforms to the doghouse"*. Subsequent reports by the Grattan Institute and a senate inquiry looking at donations and lobbying support this assessment.

We look briefly at the many credible people who were analysing and reporting on the way our democracy was being eroded and how politicians were behaving. Many recent reports indicate that this is still happening. These analysts see little prospect of government acting to address this problem. They look to community to regroup and rebuild sufficiently to put an end to this.

2.1.3 Finding a way out of the mess

In considering this at the end of Appendix A, we look at what happened in health care where there were two customers and only one was vulnerable. The medical profession used its power to resist government and put those companies that did not behave responsibly out of business.

There is a message for society and our communities here. Since 2008, Aged Care Crisis has been pressing for structural changes that would rebuild society and empower communities to act as the second powerful customer. Together they could resist governments that did not represent them and put those providers who failed to care for their members out of business. Almost every family in our society will be impacted by what happens in aged care. It is a good place to start.

2.2 The Royal Commission into Aged Care

The Royal Commission was a response to the pressures generated by publicity and a rapidly uniting community. It was created by politicians within the complex and highly dysfunctional context we have just described. The government did their best to appoint commissioners who saw things their way as they were seen as credible.

Addressing this task and getting real reform in the face of the powerful dominant forces who did not believe that there were problems was going to be difficult for any inquiry. Aged Care Crisis tried to Counter this pressure with a Media Release[1] "**Structural Reform Needed – Not Patches"**

As we will see the Commissioners started well and promised to make real change. But they then became divided among themselves. The powerful forces succeeded in resisting real change. The failed system remains essentially intact.

2.2.1 Investigating

We need to understand what happened. The first two commissioners, a retired judge and a public servant started by looking at what was happening on the ground. They talked to staff, residents and their families. They were profoundly disturbed by what they found. They did not behave like the politicians and markets wanted and expected.

The Royal Commission into aged care's interim report released in October 2019 stated that it *"heard compelling evidence that the system designed to care for older Australians is woefully inadequate"*. It described a *"shocking system that diminishes Australia as a nation"*. It attributed this to *"deep and entrenched systemic flaws"* and indicated that these *"flaws of the aged care system as a whole are at the heart of this story"*.

It found that the *"system is failing and needs fundamental reform"*. It promised that its final report would advise *"whole-of- system reform and redesign"*.

That did not happen and the deeply entrenched flaws remain. It did not keep its promise. What we got was far from *"whole of system"*.

2.2.2 Making recommendations

One of the Commissioners (the judge) died and another retired judge was appointed to replace him.

In its subsequent deliberations the Royal Commission engaged with industry and government and not with critics of the system. It carefully avoided contentious issues. It ignored submissions that addressed the serious systemic flaws in the system and proposed structural changes that would address them.

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[1] Media release: Structural reform needed - not patches Aged Care Crisis 26 Sept 2018 https://www.agedcarecrisis.com/news/426-media-release-structural-reform-needed-not-patches

It was clear that the change in Commissioners was accompanied by a change in what was happening behind the scenes. The tension between the judge who tried to uphold the promise and the public servant was soon perceptible.

Instead of the "*whole-of-system reform and redesign*" we ended with plans for "*renovating*" the flawed existing system. Commissioner Pagone was very critical of this renovation approach. He wanted to '*rebuild'* the system. His made separate recommendations to change the structure of the system but they were ignored by government and industry. Aspirational legislation and more complex regulation in an attempt to contain the problems do not address the "*deep and entrenched systemic flaws".* They have been tried repeatedly before and have not worked. Major structural changes are required but they are not being legislated. They would challenge ideology.

We were disappointed but not surprised that the final report reneged on that promise to Australians. We feel that the promise was broken and that Australia was betrayed.

2.2.3 The judge's criticisms

The two Commissioners disagreed strongly and sometimes publicly. The Judge was the chair and in his preface to the Final report he wrote that *"we differ sharply on certain aspects"*. He wanted an *"Independent Commission model"* and not the *"Government Leadership model".*

He argued that *"Mere adjustments and improvements to the current system will not achieve what is required"* and that *"A profound shift is required"*- - - it *"does not 'need renovations, it needs a rebuild".*

In indicating what needed to be done the judge stressed the importance of *"understanding why the aged care system has been failing".* He acknowledged that those responsible for the system's failure *"did their best"* but the system *"has come to its present state in an entirely foreseeable manner, given its basic structure and the constraints and influences on its governance"*.

He described the many consequences of these policies including the poor funding blaming the government for this and commenting that care becomes *"merely transactional rather than based upon relationships"*.

While the report is critical of government free-market policies, it fails to appreciate the full power of the perverse pressures introduced in 1997 or the strong influence (capture) that the market had developed over the political and regulatory systems. It does not show just how corrosive this had been and still is.

The report admits that they were *"unable to consider market dynamics to any great extent in our inquiry".* We might ask why not, when the problems were so closely linked to marketplace behaviour and they were directly challenged about this in submissions.

2.3 The response to the Royal Commission

Control of information and denial of any problems is a feature of ideology and of dominated social systems. This system has been in crisis and failing ever more frequently since 1997. Believers were unable to accept the evidence leaking from the sector and could not accept that it was fundamentally flawed. Instead of addressing the obvious reason for failure 'reforms' made minor adjustments and tinkered with regulation.

Appendix B examines this process of denial over the years describing how it happened. It looks at the way the Royal Commission lost its way. It looks at the subsequent behaviour of the same people and groups responsible for the flawed system.

They are still powerful, remain in control and are still promoted to the public as credible authorities. None have acknowledged the *"deep and entrenched systemic flaws"* or taken any responsibility for what happened.

The Appendix describes the way that the believers in both major parties and in industry have continued to deny and are intent on simply renovating the system. They are not restructuring it to eliminate the perverse pressures created by the un-apposed free market.

In the appendix this denial is analysed as a form of social pathology using a particularly glaring example from the USA to show just how entrenched belief can become and how resistant it can be to change. It also explains how incentivisation, a feature of managerial practices under this system alters the characters of individuals so that they will follow the money and become impervious to the harm that they do.

The likelihood of any reform's creating a market system that works is remote if this issue is not addressed and acknowledged

2.4 Regulatory failure

When a US company Sun Healthcare, which provided aged care and was in the midst of a scandal entered Australia in 1997 buying some hospitals. Inquiries were made and information was supplied to the Foreign Investment and Review Board (FIRB). A FOI request in 1998 revealed that FIRB, an advisory body, had been very critical but the Howard government had allowed the company into Australia. The FIRB also disclosed correspondence from Sun Healthcare indicating that it planned to enter aged care in Australia.

In 1998, an objection to licenses was lodged with the department of health on probity grounds. Information about Sun Healthcare was supplied. The department refused to respond until pressure was applied. Subsequent engagement and inquiries revealed what had been done in 1997 and the policies that were being pursued including the repeal of probity requirements for new owners.

Large amounts of information about the extensive problems in care and ineffectiveness of regulation in the USA were readily available. A collection of data was supplied to the department and they were warned that the same problems would develop in Australia.

2.4.1 Regulatory failure in the early years

This data was used to write a large new section on US ~~Healthcare~~ Aged care on the Corporate Medicine web site making this data publicly available. An analysis of the US aged care system and the reasons for fraud and neglect were explored. The very different staffing levels and number of failures in profit focused and corporate owned aged care providers when compared with nonprofit owned providers of aged care was described.

At the same time data was collected in Australia and another set of web pages documented the extensive failures in care that followed the 1997 aged care act and the succession of scandals that started only 3 years after 1997. It analysed what was happening as the commercial pressures eroded staffing and care.

Appendix C is a collection of quotes taken from these early 2000 pages that show how soon regulation failed and how badly it did so. They describe the poor performance of the accreditation agency and the complaints system as well as the denial and rationalisations politicians used to justify what they were doing. Another set of quotes reveals the way the market approached aged care as a potential gravy train.

Significant for the new regulations proposed in 2023 is the way that the regulator responded to the Riverside scandal by ignoring the powerful market forces responsible for failure and instead increasing the processes of accreditation imposing far more paperwork and administrative requirements. This took staff away from caring for residents and caused more disgruntled staff to vacate the sector. Problems increased and continued to do so until 2018. The recent post Royal Commission regulatory changes seem to be doing that again.

Appendix C also links to key web overview pages on the web site describing what was happening in the USA and Australia and then linking to pages that explore in depth and supply sources. Different sectors of the aged care system can be explored in overview and verified in depth if desired. The problems remain 20 years later.

2.4.2 Regulation continues to fail

> *"When we raised the issue time and time again we were called 'trouble makers, wrecking balls', and asked why can't we just do as we are told, why do we have to keep bringing this up and bringing the whole vibe of the team down."*
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> *"Commissioner Holmes heard testimony of a years-long and elaborate cover-up by two sister departments that prolonged the misery of illegal debt collection, deliberately misled the public and other officials, including the Commonwealth Ombudsman, and, in the case of ministers, saw the weaponisation of private Centrelink records and a statement under oath that cabinet solidarity required lies to be told".*
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> *Time and again Greggery made references to the reckless, and possibly deliberate, indifference of key players who were warned by whistleblowers, advocates and concerned staff that something had gone horribly wrong.*

The shocking evidence (above) provided[2] to the Robo-dept Royal Commission whose report is about to be released will shock Australia. It appears that large numbers of people have been harmed and their lives destroyed simply "*to raise 'fresh' money from social security recipients to deploy for other, government purposes*".

A red flag to more: This is a graphic illustration of the way the government and the public service have collaborated to knowingly break the law and ruthlessly exploit particularly vulnerable citizens who were struggling.

This exposes the way government and departments controlled by government appointed managers too often operate. Those who have been watching closely will not be surprised.

Many have provided information about what has been happening in aged care. They have described the exploitation of the vulnerable elderly in Australia. Aged Care Crisis have been supplying information to government appointed inquiries for years challenging what was being done but have been ignored.

Denial: What is so intriguing is how dedicated people, who believe in something and spend a huge amount of energy pursuing their objectives, so often behave like this when those beliefs are shown to be illusionary and what they have done is actually causing harm. Their identities and status are tied to these efforts and it seems to be an instinctive defensive response.

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[2] Exclusive: Robo-debt findings delayed to allow NACC referrals The Saturday Paper 20-26 May 2023 https://www.thesaturdaypaper.com.au/news/politics/2023/05/20/exclusive-robo-debt-findings-delayed-allow-nacc-referrals

Instead of examining data the regulatory system has carefully avoided collecting it and controlled what it could not avoid. In this situation protecting belief and the government becomes more important than protecting those the system should have been protecting. The evidence shows how this happened as the failures in the system grew ever more threatening.

The department and government ignored data and warnings in 1999 and has continued to do so ever since.

The Royal Commission initially bucked the trend and its interim report recognised the deep flaws in the system and the extent of the problem. There was strong pressure from the industry, government figures and supporters who had all gained status and become credible by developing this system.

They dominated the witness list when developing the new recommendations. Strong critics were not included and criticisms in submissions were ignored. Internal divisions, prevented the inclusion of the effective recommendations and policy changes that were needed and promised in the interim report.

Our efforts: Aged Care Crisis was established in 2005. Over the years we have watched angry advocates and groups that have had bad experiences or been horrified by what they have seen rise up and demand that government do something – usually increase regulation. This anger drowned out carefully considered opinion and reflective examination of the problems. We have seen a cycle of scandals, community anger and reflexive but ill-considered regulatory responses to this. These have all failed. A more analytic approach to what is clearly social pathology is required.

As the interim report revealed our aged care system has serious systemic flaws. The sort of regulation we have relied on has been incapable of addressing the problems and the evidence shows it is itself seriously flawed and is compounding the problems.

These flaws need to be understood and addressed but this challenges deeply held beliefs so is not welcome. This makes it a particularly difficult problem to address but it has to be done – if not now then it will continue to haunt us until we do.

We have made multiple submissions into inquiries describing what was happening over the years.

We have spent the last 23 years collecting as much information as we could and providing it to inquiries and reviews. We have provided information about the regulator to inquiries and reviews going back to 2005

Appendix D contains information relevant to regulatory failure that we have supplied to many inquiries including the Royal Commission. It has largely been ignored.

Early submissions: The first section of Appendix D uses brief notes and extracts from our submissions prior to and including the 2011 Productivity Commission. This reaffirmed and invigorated the free-market reforms that Howard had introduced making the situation much worse.

In the Appendix we refer to a web page we wrote when we realised that Labor were likely to win the upcoming election. The web page describes the way industry and its fellow travelers, who had formed the National Aged Carew Alliance (NACA), persuaded the Labor minister for aged care at the time to adopt the unfortunate LLLB reforms. It also describes our efforts to warn that they would not work. That ‘reform’ created a platform that allowed the Abbott government to radically increase the perverse pressures in the system by developing a free-market based roadmap, gutting regulation and pressing for competitive consolidation.

These changes damaged the system so badly that there was no recovery and it continued to decline until the Royal Commission was called. The policies followed by both major parties were responsible yet neither have acknowledged any responsibility or culpability. They are now supporting open disclosure and 'restorative justice' in aged care, while setting a very poor example themselves.

Submissions 2016 to 2022: In **Appendix D** we move on to 2016 by which time the system was coming apart resulting in the senate inquiry into staffing. For the first time we became aware of real data about Australian staffing levels. We were able to compare it with international levels to show just how far we had fallen behind. We could also compare our regulatory outcomes with those in the USA and raise questions about both.

The senate avoided the data we supplied, as did the aged care taskforce and subsequent aged care inquiries to which it was provided. The Royal Commission refused to accept it was valid data. Much later the Royal Commission's own commissioned report largely confirmed it providing very similar data.

During 2017 things got much worse with revelations of regulatory failure as abuse and poor care was ignored over a ten-year period at the Oakden facility in South Australia. There were several inquiries and as publicity and reports of poor care and regulatory failure grew the Royal Commission was called in 2018.

We list our submissions during this period in the appendix.

Addressing the Issues: There is a lot of overlap so we use selected extracts from a few of those submissions and those to the Royal Commission that address problems in regulation. The second part of Appendix D focusses on observations of poor regulation, lack of transparency, concealment of information, publication of false data, evidence of regulatory capture, and of revolving doors between government and industry.

The extracts look at information that shows that regulators were not collecting data that would have challenged industry, government and ideology. Data from the agency itself showed a very poor capacity to detect failures in care.

The extracts examine the governance processes that have been a central part of the regulatory process and conclude that governance is not working and has not worked elsewhere because it is a self-regulatory process that is no match for the strong commercial pressures in the system.

We complete the analysis by showing that as the acuity of residents increased and the number of skilled staff fell, the success rate in meeting all regulatory standards increased to almost perfect scores. The worse the care got and the greater the publicity the better the performance of the providers in meeting the standards became. Comparison with US data raises further concern.

It is clear that the regulators were responding to the publicity, and the threat this created to providers and governments, rather than meeting their obligation to protect the elderly.

We concluded that adverse information about aged care was more threatening to the regulators than to the public. The worse it got, the harder they tried to conceal it.

The regulators were responsible for concealing and managing information. They were preventing citizens and civil society from controlling and managing the market and making it serve society and its older members.

In doing so, regulation played a pivotal role in ensuring that the aged care system did not work and that the elderly would continue to be harmed.

2.5 Just how bad is aged care

Exposures of failure have to compete with claims to world class care by ‘credible’ industry figures and politicians as well as the never-ending advertisements on television. The general public are confused and fail to understand what is actually happening. They have not got involved, and have not created the sort of movements that would build community and so create the powerful structures needed to hold the market to account.

In Appendix 1 of our 2018 submission to the Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia’ by the Standing Committee on Health, Aged Care and Sport, we showed just how poor the system was by quoting available comments by a very large number of staff, families and others who had direct experience of what was happening.

We included a section from an earlier 2016 submission in which we had referenced a large number of reports. They are easy to find if you simply look around. Things are bad.

We appreciate that many will be sceptical and unconvinced by the seriousness of the situation.

In Appendix E we have included the whole of the appendix from the submission to the Standing Committee on Health, Aged Care and Sport in 2018. We think that only the willfully blind can ignore the evidence.

3 Reforming the aged care system

It is clear that the industry and government including those proposing and supporting regulatory reform are mostly in denial and are ‘renovators’ who do not want to change the essential nature of the system. What is being proposed is simply more of the same. Its primary intent is to deal with the publicity and restore public confidence in what they are doing but without losing control themselves. That has not worked in the past and is unlikely to work this time either.

Before we come to the inquiry and get bogged down in what is proposed, we need to consider what actually needs to be done to address the deep structural flaws identified by the Interim report and which Commissioner Pagone valiantly fought to commence.

As the previous appendices show Aged Care Crisis and its members have been alarmed by the dominance and perverse problems created by free-market ideology. They have been pressing for a more balanced system in which civil society is rebuilt and empowered.

Community-led care: Civil Society is the generator and repository of our social values, our empathy for others and our sense of responsibility for our fellows, our society and ‘the common good’. These ‘paradigms’ are not those of the free-market and the two are often incompatible. In vulnerable sectors it is society that should hold the balance of power and be responsible for care. The aged care system should be community-led and not market-led.

In our 24 January 2020 submission to the Royal Commission re Aged Care Program Redesign we addressed this. We accused the Commission of *“addressing the symptoms but not the cause”* of the problems. We stressed the power imbalance and the incompatibility of paradigms to challenge the Commission (page 7).

There is a stark choice facing this Royal Commission

Will it allow the free market thinking and the policies based on it to continue to dominate the sector or will it restore humanitarian community thinking as the dominant pattern of thinking within the sector? These two patterns of thinking are contradictory and incompatible. This is the paradigmatic issue that we have focussed on. You cannot have one and then pretend you are providing the other. Sooner or later people will realise what is happening.

1. ***Free market thinking:*** *Analysis of the 2014 Aged Care Roadmap and government marketing since 1997, shows that the dominant pattern of thinking (ie paradigm or discourse) adopted in Australia in 1997 is based on free market principles. Relatively unregulated and uncontrolled markets have responsibility for care. This model offers choice, control and efficiency as enticements, but often falls short. Its claimed benefits are derived from competition for the patronage of those needing care. Providers are drawn to the sector by the profit they can make so its driving force is the self-interest of its investors. Relationships are based around services so are transactional. The services are process driven rather than empathic.*

   As the Commission has acknowledged, such a system requires informed and knowledgeable customers who have the power to insist on what they need in the face of the perverse pressures created by self-interest. The elderly and their families do not have knowledge or power. Evidence and hundreds of years of knowledge confirms that impaired customers will be exploited.

   The pressures are tied to profits, and studies have shown that across the world, on average, for-profit providers make more profit, staff more poorly and fail standards more often. Regulators have been unable to control that. The greater the pressure to be profitable, the greater the problem becomes.

   In our analysis of the aged care system submitted to the Commission on 8 October 2019, we described the development of this pattern of free market thinking, its application to aged care and exactly how and why the system continued to steadily deteriorate as repeated attempts were made to make it a more perfect market – culminating in the Royal Commission.

   The Morrison government and the Canberra bureaucracy remain firmly committed to this model.

2. ***Humanitarian thinking:*** *The second pattern of thinking is the traditional community one which has stood the test of time. In this one, communities and their members rise to the challenge of caring for those in need. It is based on empathy, caring relationships, cooperation, social responsibility and a long Samaritan tradition of "loving thy neighbour as thyself'. Its motivating force is altruism. Choice and control are not primary objectives but are integral to genuine caring relationships, so more effectively provided.*

ACC has been arguing for a move from the centralised controlling system that has failed so badly to a decentralised one in which central bodies and resources support, mentor and reach down to help local and regional structures to take control of their own affairs and in doing so rebuilding civil society. Markets work when they have to meet the expectations of the customer and operate within limits set by the community of which they are a part.

You cannot police a complex system like aged care from Canberra, nor can you watch over aged care from Canberra. You need policemen on the ground and the central managers need to mentor and support them.

We argue that local bodies supported by experts should make decisions about their aged care services including deciding on whom they will licence to provide care. It is their responsibility to change providers if they do not meet community expectations.

There is more complexity and evidence around this. We dealt with this in depth in our 4 August 2020 submission to the Royal Commission which addressed the need for major structural change.

In Appendix F we include relevant parts of that submission including background information and recommendations. The reasons for failure are addressed and what should be done. We write about civil society, the rising pressures for localism. We make detailed recommendations about guiding principles.

In appendices we expand on localism, civil society issues. We look at the recommendations made by aged care reviews in 1975, 1982, 1985 and 1989 which all advised decentralisation, local involvement and greater community involvement of some sort. We also look at the warnings at the time. Since 1997 some have continued to urge greater regional and local involvement.

Theoretical underpinnings

Aged care is not alone and many are writing about similar problems in other sectors and in the way our society operates. Social scientists have been warning for years and more and more of them are writing books. Politicians and the market seem to be blind and are unwilling to learn from past experience. Carmen Lawrence past premier of Western Australia then federal minister of health and president of the Labor party did not exclude her colleagues when she wrote[3]

> *"... Even more uncommon is any deep exploration of what we know about human behaviour and how social structures are likely to influence it. This deficiency is nowhere more obvious than in the political class, who seem to be rendered tongue-tied – or resort to soothing, infantilising babble – whenever uncomfortable truths are broached.*
>
> *- - - in order to judge what people are likely to do in the future, we need to know a little about where they've been, what forces are acting on them and how they see the world.*
>
> *No analysis of policy is possible without a thoroughgoing understanding of human psychology.*

In Appendix G we look at the thrust of recent work that throws a strong light on our behaviour.

These include the insights into the way those who embrace ideology ignore or reject knowledge that challenges by Lindsay McGoey as well as the strategies we use to ignore what is under our noses when it is confronting in 'Wilful Blindness' by Margaret Heffernan.

Many have used the insights of Philosopher Michel Foucault to help them understand the way the credible and the powerful control and persuade others, and the consequences when believers in an ideology dominate. Nurses have used Foucault's insights to investigate and explain the way market managers change the way nurses think and behave at the bedside.

In 1995 Rodley and Rees edited a book warning of the way neoliberal management was eroding our humanity and calling for change. Twenty-eight years later aged care is a grim reminder of our blindness to warnings.

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[3] Carmen Lawrence 'The denial, the infantilising babble, and the fantasies that permeate politics' The Guardian 30 Jan 2016 https://www.theguardian.com/commentisfree/2016/jan/30/the-denial-the-infantilising-babble-and-the-fantasies-that-permeate-politics

Two years later Canadian John Ralston Saul wrote The Unconscious Civilisation showing how this new belief system took us into an illusionary world where we were no longer consciousness of the real one around us. Heffernan and McGoey were exploring some of the nuts and bolts of that.

The work of Walker and Salt in 2006 looked at resilience and focused on environmental consequences. They describe the importance of a balance of power and insight in keeping complex social systems on track. They look at how systems fail when there is a power imbalance. They describe how this is followed by recurrent cycles of failure (as in Aged Care over the last 60 years). They look at what it takes to break the cycles and recover from that. These insights are applicable to other social systems.

Professor John Braithwaite has written an epic analysis of the adverse consequences of dominance of society by individuals or groups over the years and he also focuses on market dominance. There is a close relationship with distrust, fragmentation and break up of society as well as with warfare. Stability is restored and a well-functioning society re-established when citizens seize an opportunity to rebuild civil society and develop structures with the power to prevent any one group from becoming dominant.

There are common themes throughout these works that are relevant if we are to rebuild and rebalance our unbalanced aged care system and stop the cycles of repeated failure that have been responsible for steadily worse outcomes. These themes support regionalism, community engagement and a strong well balanced civil society.

4 Responding to the proposed regulatory changes

Essentially similar structure: Instead of addressing the paradigm conflicts and the power imbalance within the current market-led system, the proposed regulatory changes leave the market-led system largely intact. The pieces are simply being moved about and the processes adjusted.

Governments close relationship and reliance on the industry and its advisers remains intact. We see the same members of government, the same appointees to regulatory bodies, and the same industry and fellow-travelling community organisations advising government. These are the people, the groups and the government officials, who have built the present system, are in denial and unable to accept the deep flaws in the system.

They see the recommendations of the Royal Commission as simply another step in what was essentially a sound system and a continuation of the reform processes set up in 2012. This is well illustrated by a presentation[4] given to the International Federation on Ageing (IFA) by its Australian CEO on 29 Oct 2021.

Once again, the response has been to make aspirational regulations enshrining human rights and to beef up the fundings and the regulatory system in an attempt to persuade the industry to behave better. The system remains centralised and still essentially industry friendly. This is not the *"whole-of- system reform and redesign"* needed to address the *"deep and entrenched systemic flaws".* Commissioner Pagone made it clear that *"Mere adjustments and improvements to the current system will not achieve what is required"* and that *"A profound shift is required".*

[4] 'Royal Commission into Aged Care Quality and Safety' In Conversation with Mr Graeme Prior IFA Global Café 29 Oct 2021 at https://www.facebook.com/intfedageing/videos/566191738019077/
(Note that some of the initial repartee with Mark Brandon was edited out of the final version on the web site)

Driving good people out of the system: The new funding, the new requirements for providers and the greater regulatory burden in collecting Quality Indicators and Star Ratings will fall on local staff and management making the system more burdensome and providing less time for staff to work with and care for the residents. Not only will this make the sector less popular but it is likely to drive more staff way.

Many local governments that already provide good care serving their communities are unwilling to operate in this environment and are already contracting their home care services to marketplace providers. Smaller nursing home providers who usually provide better care have decided to close their facilities or offload them on larger operators.

Appendix H describes what is happening.

Quality Indicators and Star Ratings are being developed to help prospective recipients of care make choices. In their 2004 evaluation of a trial of quality indicators (QIs), the June 2004 report[5] by the Department of Human Services in Victoria warned that:

> *"Finally, while monitoring QIs will illuminate poor practice, a punitive approach will only result in low compliance and inaccurate recording. For the QIs to impact positively on care for older people in public sector RACS the emphasis must be on highlighting and sharing practice improvements*".

Making them available as markers of performance for prospective residents to use in the sort of competitive marketplace that we have makes them punitive for the providers. These are to be self-reported and experience in the USA showed just how unreliable self-reported data can be in this situation.

The Quality Indicator items are essential data that the providers should be collecting accurately to monitor their own performance but, in this system, they become a threat. In the community-led system we advocate for, the community would be responsible for ensuring that care was adequate. Their representatives would be working with the providers in collecting this information and verifying its accuracy.

Star Ratings: In developing star ratings in consultation with industry the primary focus seemed to be on rebuilding the public confidence that the Royal Commission had destroyed. When objectively collected and not self-reported, markers of good care like staffing levels and skills, and Quality Indicators are most valuable. But in developing star ratings they are being downgraded in favour of 'residence experience' and 'compliance' with the standards monitored by the regulator. These are to be rated more highly.

While this sounds attractive when the factors affecting the residents whose experience is being evaluated are considered and the track record of the regulator is examined then these two parameters are far less reliable than either staffing or Quality Indicators.

Appendix I examines the webinar run by the department for the industry on 28 November 2022 and criticises what was proposed.

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[5] Public Sector Residential Aged Care Quality of Care Performance Indicator Project Report: June 2004 Dept. Human Services Victoria https://www2.health.vic.gov.au/about/publications/policiesandguidelines/public-sector-residential-aged-care-quality-of-care-performance-indicator-project-report

In the community led system we advocate it would be the community who were regularly on sight talking to residents and staff and watching over the residents who would be assessing their experiences and observing whether standards were being met and maintained. This would make both QI's and Star Ratings more reliable.

Studies in Europe and the USA suggest that Quality Indicators and Star Rating are seen by a majority as complex and that most prospective residents and their families rely more heavily on local word of mouth.

The community-led system we advocate for involves members of the local community in this oversight. It ensures that the strong perverse pressures are neutralised at the bedside and that the sort of information and advice that residents need is not only accurate but is also readily available locally.

The staffing problem: The biggest problem in aged care is that it is not a place where anyone wants to work or to live. It has not been a place like that since it became a market driven by competitive commercial pressures. Staff are not going to encourage others to work there.

The focus has been strongly on nursing care yet the health and capacity of residents to lead a fulfilling life is as dependent on good medical and paramedical care. Doctors and allied health professionals have also been driven from the system and suffer in much the same way. They are all part of the caring community and both have an important role to play in maintaining our well-being as we get older.

Aged care is primarily a community service. It relies on community and professional values and the sort of trusting relationships that develop between caring people and the communities they serve. It needs to be a place where both management and staff are admired and are a part of this community. It should be a place where people build fulfilling social identities and are admired for what they do. They need to be role models for the young and so attract new staff.

Commercial operators need not be excluded and can be welcomed provided that their success depends on their embracing and working with community and their values. Their identities and worth would also be measured by their capacity to do so. Those unable to do so would not be welcomed.

Central restructuring: Community engagement and capacity cannot be legislated but it can be encouraged and facilitated by regionalising management and oversight and then including and building local communities. The current regulatory focus and centralised management structures increase complexity and place a greater burden on staff. This potentially makes the situation worse. This is putting the cart before the horse.

We should be building community involvement, engagement, empowerment and ultimately control. The regulations should follow that and support it. Aspirational human rights and other legislation is desirable because it creates a context, motivates and encourages. But it will not work in a system where unopposed commercial pressures ensure that claiming values while not actually embracing them makes the providers successful. This social pathology should be a primary focus of any reform agenda.

Regulatory reform should start locally and then build centrally from that. Quality Indicators and Star Ratings may well be very useful and not burdensome but they should be built on the information that community collects and has ownership of.

Relational Regulation: We have seen Prof Braithwaite's advocacy for this on the department's web site. We support that approach but in a competitive market dominated by market and government support (both in denial), we will continue to have a huge power imbalance and it will be continuously under pressure so suboptimal. The Walton review into complaints did this in 2009 and it failed. This requires decentralized, distributed regulation and justice with a balance of power and insights. As she indicates regulators should be on site regularly so local. It will work if the system is balanced by civil society power and the regulators work through and with local communities in a community-led system so that they are included as part of the regulatory team.

4.1 Addressing the Consultation paper (No 2) and the questions raised

The introductory paragraph almost echoes the failed Aged Care Roadmap in its focus on the power of individuals and their capacity to *"exercise their rights"* promising that *"strong action (is) able to be taken by the Regulator"* to support them and that *"pathways will also be made available"*. We have been reading about risk adjusted central regulation for years too. It has not worked.

The reality is that these people lack knowledge and power and are in a very vulnerable position. The regulator is essentially the same regulator that has failed them so badly in the past and the pressures and beliefs that were responsible for this failure have not been addressed. These regulators were walking past poor care and not seeing it. Creating a different set of accreditations standards and more stringent incident reporting does not address that problem. This is exactly the sort of thing that has been happening for the last 26 years. The regulatory changes proposed do not change this.

As is well illustrated by the Star Ratings, the department has engaged with industry and self-interested market advisors like PcW in developing new regulations before presenting them to the community in similar glowing terms for years. They get a rubber stamp while critical analysis and those who criticise are ignored. This is a community service and that is where reform and restructuring should start.

Aged care is not the sort of market that these ideas describe. Individuals and families do not have the power to confront huge corporate interests. This is a service provided to communities who have a critical role to play. It is their responsibility to ensure that their members are cared for. They are the effective customer and when well-structured and engaged they have the power to control what happens in their community. They are hardly mentioned.

The overview promises cultural change with new values and seeks to build public confidence and continuous improvement. But this is the same system, the same governments, the same public service, the same providers and the same regulators who have simply been shuffled around. They have not changed the basic structure of the system and are still excluding critics and our communities. None of them have accepted any responsibility for what happened in the past, there have been no apologies and many are in denial. They are making the same sort of claims they have been making for 26 years. We now know that they could not and should not be trusted yet they are asking us to trust them again.

The department, now called the 'system governor' did not lack powers in the past. Its flaws were described by Braithwaite in his 2007 book and in 2012 its own staff spoke out when it simply refused to do anything about the fraud they had uncovered. As the situation deteriorated over the years, they basked in the praise of a world class system and a world class regulator. They failed to protect the elderly then yet they expect us to accept their promises and give them a free hand again.

Offering '**key changes'** and promising *"workers, volunteers, older people, and the community"* a role will not be effective until they have the power needed to play that role in what remains a competitive market-led system. New codes of conduct require a rebalanced system with a new balance of power.

The claim to a new approach to *'provider suitability, viability, capability, and propriety'* carefully avoids any challenge to free market beliefs and maintains the illusion so forcefully asserted in the early 2000s that owners had no influence on the way the companies they owned operated.

It is the owners, the banks, private equity, the multinationals and more who hold the purse strings, appoint managers and decide how the business will operate. Prior to 1997, the propriety of owners and the capacity of owners to influence policy were central to probity regulations and assessments. In one instance in 1998 a 30% holding in a health care provider by a company with a very poor record was of sufficient to cause Victorian probity regulators to bar it from operating there. Howard abolished the rigorous probity regulators for owners in aged care in 1997. As extensive international studies show ownership is a critical determinant of staffing levels and care. This clearly shows how resistant the system still is to evidence and real change.

Calling provider responsibilities *"provider obligations"* is simply a change of words and not of policy. It leaves the responsibility for providing good care with those whose primary commercial interest places unrelenting pressure on them to reduce costs and find plausible ways of claiming that care is not impacted.

It is the responsibility of the community and in both their, and every citizen's interests, to see that their vulnerable fellows are well cared for. Instead of supporting and enabling communities to fill this important role in the marketplace, governments have taken that away from them and handed it to industry. Any effective reform must re-empower our communities and create a context where they can effectively control the market and exclude those who do not meet their expectations.

In talking about risk-based monitoring they claim that *"monitoring will be informed by data and intelligence".* But in 2003 they promised they would collect data and use it, then failed to do so and in spite of claims to the contrary and talk of transparency they maintained this for another 20 years. Why would we believe them now.

And so, the promises go on and on, but without the structural changes that are needed to actually change the system and create the necessary conditions needed for a market-based system to work.

4.1.1 Raising the quality of aged care

The paper promised that *"The new model will support the reform of Australia's aged care system. It is fundamental to enhancing the quality and safety of care provided to older people"* but this is not a new model. It is simply a rehashed version of the old model and the deep flaws in that model remain. It is not a new model at all.

The consultation spells out its intent on page 14:

> *"Older people, their representatives and the community require confidence in Australia's aged care system and in the people delivering services. They need to know the regulatory model will work to facilitate the delivery of high-quality care and prevent, detect, and correct poor performance. They also need to be confident that the Regulator has the powers to take quick and appropriate action in cases of poor performance and non-compliance".*

It is the same old model and this consultation's primary intent is clearly to restore trust in the same system that they don't really believe has failed. It will be a sad day for older Australians if our communities fall into this trap. This is an advertorial and not a discussion of the problems in the system. It is not seeking solutions but selling those it intends to adopt. A system that works does not need extensive regulation.

A system that requires more and more regulation to keep it from harming fellow citizens is a flawed system that is not working. Amidst all this hype about reform we learn that the Australian Primary Health Care Nurses Association (APNA) survey shows that one third of all aged care nurses are not being used to their full potential[6]. More evidence industry is still following the money not care.

Questions

1. What regulatory interventions are needed to raise the quality of aged care?

The system should be gradually regionalised and the community and its representatives should become part of the management, oversight and regulatory processes. They should be able to decide what services are needed for their older citizens, who they will trust to work with them in providing those service, and have the power to easily replace those who fail to do so satisfactorily. This creates the necessary conditions needed for a market to work and for caring community values to counter and restrain commercial pressures.

2. To raise the quality of care, what role should government and non- government stakeholders play? These include:

– the Regulator and the Department

They should have an important role in educating, mentoring, supporting and being there to help and integrate. Their regulatory efforts and data collection should be conducted by working with and through local community structures so ensuring transparency and being accountable to the communities they are there to serve.

– providers, workers, professional associations, advocacy groups, unions, volunteers, and community groups

Providers should learn to work with and serve the communities that licence or contract them.

Workers should be highly regarded and welcomed by the community who would protect them from corporate pressures. Together they would encourage the right sort of people to work in the sector.

Professional associations, advocacy groups, unions and other central organisations including **the health care system** would adopt a reach down, mentor and support role operating through and with local community organisations. Skilled specialists but particularly geriatricians might visit and support when needed.

Volunteers are a part of the community and will be the nucleus of **the community groups** and **local government** who would play a central role. This will include some employees with skills.

Missing from this list are the skilled **medical and allied health** specialist workers who play an important role in maintaining the wellbeing of older people.

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[6] Aged care nurses underutilised despite workforce shortage - national survey APNA 21 June 2023: https://www.apna.asn.au/about/media/aged-care-nurses-underutilised-despite-workforce-shortage---survey

– older people and their representatives

Older people and their representatives are a part of the community and would play a role in supporting and maintaining relationships between residents, community, staff and managers. They would gradually become recipients of care themselves so creating a community focused service in which people are continuously working together and supporting one another.

3. Culture change is key to raising the quality of aged care. Who can be the culture change champions, either at the local or the sector level? What support will they need to champion culture change?

As the father of economics, Adam Smith warned businessmen are 'an order of men' (and now women) whose interests are not those of the community and its citizens and are often the very opposite including exploiting those citizens. Their proposals should also be very carefully evaluated before being adopted.

As the philosopher Michel Foucault explained it was knowledge that gave power and power enabled the powerful to control the patterns of thinking (discourse) of those with less power. The market is driven by interests which are not those of the community.

If we are to change the culture to one of relationships and care then it is essential that communities and caring professionals who are a part of that community have the knowledge and power to control the discourse and so the way citizens think and behave. This is why we at Aged Care Crisis have been pressing so hard for a community-led system for such a long time.

Adam Smith himself made it clear that it was not in the interest of tradesmen to provide good service. It was because the customer ensured that doing so was in the interest of the tradesman that good service was provided. This same principle can be applied here both to the care provided and to embracing community's caring values and culture.

4.1.2 Supporting quality care

The suggestions all build on the current market model and aim to make a system that is fundamentally flawed behave in ways that will be resisted or undermined by the unbalanced and uncontained pressures in the system. As we explained in our introduction and in Appendix A industry is now so powerful and government is so reliant on advisory bodies from the marketplace that there is little prospect of them actually having the power to do what it claims here.

The Star Ratings webinar is a good example of the way government and the public service panders to the industry and its interests. Many of these regulatory requirements will fall on staff who are already stretched thin and disillusioned. This may well compound the problems. The approach to communities and recipients of care sounds like it is addressing this issue but without power and a measure of control this is likely to be tokenised and ineffective

Questions

1. What are your views on the proposed approach to supporting quality care?

They are not likely to work unless the community itself is in a far more powerful position than is contemplated here.

2. What challenges can you identify for implementing the proposed approach to engagement and capability building? What could be the solutions?

The conflicting cultural values and the imbalance in power will inhibit these attempts while this industry-led model is maintained. What is needed is a community-led system in which there will be a balance of power so that the interests of the providers will become aligned with those of the community and its frail members. Their interests will then also be in engaging and building capability. In fact open disclosure and transparency would be part of the structure because community representatives would be directly involved.

3. How else could provider capability be improved in aged care at the individual provider and sector wide levels?

By making it community-led.

4. What types of education or engagement do you think would support providers to continuously improve?

The support of the community they are serving and the likelihood that they will be replaced by someone else if they fail to do so. This is what makes markets work.

5. How could the Regulator, the Department and providers improve the provision of information to older people and their representatives so that they have access to the right information, at the right time, in the right way?

By working through and with them so that they participated and played a central role in collecting information and were included when enforcement was required.

This is critically important because the regulator, the department and the government would also be transparently accountable to the communities they serve. This would prevent the deceptive control of information and the other problems and failures in the department and the regulator that have plagued the sector for the last 26 years. Deceptive claims to being world class and having world leading regulation could not be made again.

4.1.3 Becoming a provider

This was surely what the Commonwealth was doing all these years. In fact, in 1999 one of us corresponded with the department who gave similar assurances and we got much the same after each regulatory reform that failed. We are being asked to rely on providers who have not met their obligations for the last 26 years to now do so. This is once again, tinkering with the regulations. Once again, we are asked to trust the public service that failed so badly in the past to ensure this happens.

Clearly providers cannot be trusted to effectively oversee subcontractors. Subcontractors if required, should be jointly appointed by the provider and the community and meet the same probity and other requirements and accountability as any other provider. The community should also be in a position to insist that anyone providing care be licensed to do so by that community.

Questions

1. What are your views on the proposed registration categories?

This introduces a level of complexity into the system making it very difficult to manage and doubly difficulty for community and recipients of care to understand. This is really only necessary because the system is so poor and because the providers and particularly the profit seeking owners including banks and private equity will follow the money and seek to exploit any loopholes. We would prefer a simpler model with central support and oversight. Common sense and some training might be better than complex regulation. What is required is a system that excludes those who cannot be trusted.

Missing from this regulatory system is a probity requirement for owners because they have a far greater influence than any other party on the staffing and care provided. A probity check is required for every provider and owner entering the sector for the first time. Their intention to enter the sector should be published because experience shows that it is often citizens who have knowledge and an interest who collect and supply information.

Each community would also look very critically at the probity of each applicant for licenses to care for their citizens and its owners before approving them. They would speak to other communities where the providers already provided services.

A central or state based integrating body drawn from communities would keep a record of performance so that they would be able to advise a community of any failures or issues encountered by a potential provider in other communities.

2. Which registration category should care management and personal care be in and why?

This should be located within the community and be directly accountable whatever category it is in.

3. How should online platforms that connect older people to aged care services (but are not themselves Approved Providers) be regulated under the proposed new model?

They should be replaced by local advisory services managed by the community and local government. Commercial operators are too susceptible to advice being tainted by some form of kickback or payment from providers. This can be very difficult to monitor.

4. What are your views on how the proposed model will allow other business types, such as sole traders and partnerships, to enter the sector?

We think the proposed model should be rejected in favour of a community-led one which would work with these groups and license them.

5. What, if any, alternatives are there to 3-year re-registration periods, and why would they be appropriate?

In a community-led system ongoing oversight and data collection would be integral to the system and make regulatory visits easier and more effective. Yearly visits to check and mentor would be appropriate, but three yearly re-registration would be wise.

6. What challenges can you identify for implementing the proposed registration model? What could be the solutions?

Too complex and too onerous for staff and the smaller provider groups who usually provide better care. This and the new funding model are likely to drive many away.

Decentralisation and a locally managed and regulated model supported and mentored from above would work better. We have suggested how this might be done.

4.1.4 Responsibilities of a provider

Once again, this has become hugely complex and this is because both providers and sadly the regulators have been shown to be untrustworthy. This is simply more of the same.

The obligation for ensuring that recipients of care are well cared for must lie with the community. Everyone's future depends on their doing that well. They need to have the power and develop the organisational capacity to hold both providers and central regulators to account.

Questions

1. What are your views on the proposed approach to provider obligations?

They are very unlikely to be effective and are burdensome. The must be accountable to the community who work with and monitor their performance.

2. What challenges can you identify for implementing the proposed approach? What could be the solutions?

They are too complex and the distant regulator does not have the capacity or the motivation to regulate and control effectively.

3. Do you think there are any key areas of risks that are not addressed by the core conditions proposed to apply to all providers?

They are not what is needed and the perverse incentives in the system will exert continuous pressures on the regulator.

4. Are there any other category-specific obligations that you think should apply?

A requirement that they work with and are directly accountable to communities.

5. What are your views on the proposed application and audit of the Quality Standards to categories 4 to 6 ?

Not hopeful.

6. What does high quality care mean to you?

Relationship based care that embraces community caring values, has access to the skills needed to maintain quality of life and where the person remains a part of a supportive and caring community.

4.1.5 Holding providers accountable

The intentions all look great but you are expecting us to accept that providers who have failed so badly and regulators who have protected them for years will suddenly change tack and do what is claimed. That is not likely to happen.

Way back in 1985, the Giles report advised that community representatives be directly involved in supporting residents and in investigation their complaints. In 2009, Aged Care Crisis also pressed the Walton review of the complaints system to adopt local complaints resolution with direct support and involvement of a community support system. That did not happen. We believe its time has come. Expecting residents and their families to do this without powerful protection and support is a big ask.

Questions

1. What are your views on the proposed features of this safeguard that seek to hold providers accountable?

Ineffective.

2. Do you think the proposed new complaints model will help older people to raise concerns about the standard of services and have them addressed? Please include your reasons for this view.

Unless the power imbalance is addressed, and there is strong local involvement, this will remain problematic. A very recent US report shows just how extensive fear of retribution is in the much more intensely regulated US system.

3. Do you think the proposed enforcement mechanisms will be sufficient to address poor performance by providers where required?

Unlikely. The perverse pressures responsible for poor performance should be eliminated first

4. How should restorative justice outcomes be reflected in the new Act?

Restorative justice is something the community and the victim will do when the perpetrator is truly and genuinely remorseful and makes reparations for the harm done. That requires an empowered community and an arbitration system. We support both but for it to work the system needs to be community led. It will not work when the perpetrator, who is often in denial and not genuinely remorseful, has all the power.

The failure of governments, the public service and the industry to honestly and genuinely acknowledge their failures over the last 23 years and seek forgiveness from the community illustrates the problem. If they did so it is unlikely that it would be sincere.

5. How and when do you think access to financial compensation should be available?

There should be an arbitration system like that advised by Rodney Lewis from legal firm ElderLaw in several past submissions. The community-based complaints system would feed into that.

6. What role should the Regulator have in seeking compensation on behalf of older people?

Be supportive.

4.1.6 Transitioning to the new model

We do not think that this is really a new model. It is an attempt to renovate the previous model without addressing the ideological issues underlying current policy that are responsible for the flaws that will continue to undermine regulatory effort.

Questions

What are your views on the proposed transition arrangements?

They are technical mechanisms to facilitate the renovation. To undo 26 years of flawed policy and the harm it has done by moving to a community led system will take much longer. It cannot be done precipitately. It will need to be trialed and introduced in stages as communities learn to reengage and rebuild. The need to realise the benefits, rewards and importance of being in control of the services to their members.

2. What challenges can you identify for implementing the proposed transition arrangements? What could be the solutions?

It is simply a temporising measure and the problems will recur in the future. The best we could hope for will be an uneasy equilibrium between regulators and providers, where the worst excesses are contained in a poor and uncomfortable compromise where the problems remain unresolved. The US health system is a good example of this.

3. What support do you need as a provider to help you with a smooth transition to the new model?

Not something we can help with!

4. What other transitional arrangements need to be considered?

Real reform of the system.

Appendix A

Aged Care and the Society we live in

Appendix A:

Aged Care and the Society we live in

Members of Aged Care Crisis had prior direct experience of dysfunctional social systems and ideology going back into the first half of the 20th century. We have tracked the impact of free market (neoliberal) ideology and its impact 'as businesses followed the money' in multiple vulnerable sectors over the last 40 years. This appendix describes what was happening.

If we are to address the problems in aged care, we must know what has happened, how this situation developed and why it happened if we are to resolve the problems and protect the elderly.

June 2023

Summary

This appendix examines the flawed neoliberal policies, describing the consequences for vulnerable citizens in other sectors including those closely linked to aged care. It focuses on changes to the public service and the way policy including aged care policy has been outsourced to large multinational corporate businesses who are also advisors to industry and in a good position to advise them how to exploit weaknesses in the regulations they have designed. This has recently been exposed and is likely to be widespread.

The appendix summarises policy changes impacting aged care over the years leading to the changes made in 1996/7 and then to the Royal Commission. The consequences of these policies for our democracy are reviewed. The control that market leaders have over government and policy is described. The Appendix ends by arguing that aged care is particularly well placed to lead the way out of the mess that has been created.

Table of Contents

Summary 2

Background 4

1.1 Neoliberalism and free markets 4

1.1.1 The consequences 4

1.1.2 Taking action 5

1.2 The role of market leaders and advisors 6

In the USA 6

The UK 6

Other International 7

1.2.1 Government also blind 8

1.3 Politics and market policy - a reminder 10

1.3.1 Early history 10

1.3.2 Major political change in 1996 11

1.4 Our democracy: Disturbing revelations 12

1.4.1 Finding a way out of the mess 14

Background

1.1 Neoliberalism and free markets

We have documented the fraud and exploitation of vulnerable citizens as government removed restrictions on the way markets operated and encouraged unrestrained competition in vulnerable markets in the USA, the UK and then Australia. Enthusiastic businesses blindly followed the money without attention to the consequences. Community values and social responsibility were early victims of the belief system.

Vulnerable citizens whom a community sense of fairness and empathy would have protected, became easy targets. Their interests and wellbeing have been traded for profit.

Giving advice to help these businesses make money and succeed, soon became a lucrative business itself. In the pursuit of small government, the public service that advised government was gutted and rendered incapable. Governments then employed these business advisors to give them advice and make policy. They became hugely influential. The dystopian consequences that critics had warned about became real.

In spite of the failures revealed by the recent Royal Commission into Aged Care, marketplace advisers in Australia are still being accused of encouraging providers to follow the money in aged care. They still seem to be unaware of the consequences. Some politicians and lawyers are alarmed[1].

1.1.1 The consequences

Citizens have been neglected, abused, and deceived as their interests and rights were neglected by corporate providers. The banks, health and aged care, sectors that we trust with our financial security and our lives, have been easy targets.

Privatised government funded services are particularly attractive. In Australia we have seen extensive fraud and many were harmed in the Job Services sector and in the Vocation Education and Training (VET) sectors[2].

But many other sectors have been involved[3]. Cartels who colluded in price fixing have defrauded citizens in trucking, in the packaging industry, in cement and probably many more sectors. Banks, financial advisers and insurers of all sorts have made huge profits fleecing their vulnerable customers. Allegations have been made about health insurers.

Foreign students and other workers on Visas are very vulnerable and this has created a huge feeding frenzy particularly in franchising businesses like 7-Eleven and similar operators, as well as those in many parts of the food industry and even nurses particularly in aged care.

Targeting the vulnerable who should be helped has become a national sport with some targeting the poor needing financial help, those with a betting addiction and even the trucking industry.

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[1] **'Get your money now': consultants encourage aged care providers to exploit the system** The Guardian 12 May 2023. https://bit.ly/3qhti3b
Outrage over flaw that may encourage Australia's aged care homes to select residents based on profit margin The Guardian 17 May 2023 https://bit.ly/3WGoKz6

[2] **Contracting government services to the market** Inside Aged Care 2016 https://www.insideagedcare.com/aged-care-analysis/cultural-perspectives/contracting-government-services-to-the-market

[3] **Failed markets and culturopathy** Inside Aged Care 2016 https://bit.ly/3MHLVVq

Wage theft is widespread and VISA holders are easy targets. This happens in aged care too[4]. The internet has encouraged innovation exploitation and many millions of dollars have been scammed from the trusting.

The problems are infectious. The banks are seen as credible. They invest in aged care, sit on boards and contribute to policy. Nurses are trained in the VET system and many of them are VISA holders. Problems are imported into aged care and they have consequences for staffing and care.

As the ideology spreads, believers become successful and influential. Many citizens and even community and religious groups were seduced by the success and the credibility of those who prospered. Many behaved similarly. They were all blind to the consequences. Failures were brushed aside as rare exceptions and not seen as red flags to the systemic problems that plagued our societies.

Civil society, whose role is to foster our empathic values and our sense of responsibility, has been undermined and eroded. Human values have been eroded and our society has changed dramatically[5,6].

1.1.2 Taking action

We have tracked the consequences of these policies in other sectors while focusing on the recurrent failures first in health care in the USA and then in aged care in both countries over the years[7]. We have supplied information to Australian regulators and governments and repeatedly warned of the consequences for our health system in the early 1990s and for our aged care sector in the late 1990s. One of the striking features has been how durable these policies and practices have been and how ineffective repeated attempts to regulate them have been[8].

As this case reveals these people believe in what they are doing. They build their successful lives, their identity and their reputation and simply cannot accept that this is harming others. This is a strange but widely studied pattern of behaviour.

We have made large numbers of submissions to the many aged care inquiries, analysing and criticising policy, looking at the evidence and pressing for structural change.[9]

The findings of the Royal Commission into Aged Care were predictable and were predicted. Aged care is probably the most vulnerable of the sectors that have failed so badly.

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4 **Nightmare for nu**rses The Age 31 Jan 2007 https://www.theage.com.au/national/nightmare-for-nurses-20070131-ge43zr.html

Recruitment firm fined over 457 visa exploitation. 2008 https://bit.ly/3xWjnlh

'Exploitation' of graduate and overseas nurses Aged Care Guide 22 June 2015 https://bit.ly/3MC4cl8

Australian graduates and 457 workers exploited under current laws ANMF 19 June 2015 https://bit.ly/3OKbd5x

A National Disgrace: The Exploitation of Temporary Work Visa Holders report. the Senate Education and Employment References Committee March 2016 https://bit.ly/3MyZV3E

Systemic, sustained and shameful Unlawful underpayment of employees' remuneration The Senate Economics References Committee March 2022. https://apo.org.au/sites/default/files/resource-files/2022-03/apo-nid317205.pdf

5 **Why society has withered: The consequences of policy failure**. Aged Care Crisis 2021 https://bit.ly/3IMO4Oq

6 For an analysis of the social processes see **Why our society and human services are in trouble** Aged Care Crisis 2021 https://www.agedcarecrisis.com/images/whysocietyandhumanservicesareintrouble.pdf

7 **The Health Care Marketplace in the USA,** Corporate Medicine 2001-2008 http://www.corpmedinfo.com/corporate_overview.html

Critical Condition: How Health Care in America Became Big Business & Bad Medicine by Bartlett & Steele (Doubleday Nov 2004)

8 A US company is a good example see '**Culturopathy: A for-profit example'** on Inside Aged Care 2015 https://bit.ly/3MDLqK6

9 **Aged Care Crisis publications** https://www.agedcarecrisis.com/publications

1.2 The role of market leaders and advisors

The big four global accounting firms should be above reproach yet a little research shows they have been closely associated with unsavoury conduct around the world. Some senior staff have gone to prison. Yet our governments continue to trust them and similar groups, to advise on policies that affect every citizen. There are many potential conflicts of interest. Smaller global and local market advisors must compete to remain viable and must behave in the same way to do so.

KPMG is a good example as illustrated by the reports below. It has been a central consultant in aged care where it has provided reports or other forms of consultation to government at least 20 times between 2003 and 2018. It has been very close to the department. Like PwC (see later) it has also audited and provided advice to many businesses in aged care. There is a potential conflict of interest. Because of this we did some research in 2018. We found many articles that were worrying. We list some of them below. Along the way we saw several reports expressing concerns about the other members of the 'big four'.

In the USA

- KPMG tax shelter fraud Wikipedia https://en.wikipedia.org/wiki/KPMG_tax_shelter_fraud
- U.S. Report Details KPMG's Odd Dual Role New York Times 1 Dec 2000
  https://www.nytimes.com/2000/12/01/business/us-report-details-kpmg-s-odd-dual-role.html
- Justice Department Joining in Lawsuit Against KPMG New York Times 5 Dec 2000
  https://www.nytimes.com/2000/12/05/business/justice-department-joining-in-lawsuit-against-kpmg.html
- Healing Thyself Forbes Magazine 28 Feb 2003
- SEC settles with ex-KPMG auditors Market Watch 30 March 2006
  https://www.marketwatch.com/story/sec-settles-with-three-former-kpmg-auditors-for-tenet-health
- Tenet dumps longtime auditor KPMG Modern Healthcare 10 Jan 2007
  https://www.modernhealthcare.com/article/20070110/NEWS/70110016/tenet-dumps-longtime-auditor-kpmg
- HealthSouth probe expands, KPMG role scrutinized. Reuters 28 April 2003
- Auditors vie for moral high ground in a post-Enron era. Financial Times 2 May 2003

The UK

- KPMG Audits of Collapsed Builder Carillion Probed by FRC Bloomberg 29 Jan 2018
  https://www.bloomberg.com/news/articles/2018-01-29/kpmg-audits-of-collapsed-builder-carillion-to-be-probed-by-frc
  - KPMG to be investigated over Carillion auditing The Guardian 30 Jan 2018 http://bit.ly/2KWiAW3
    Why didn't anyone working with Carillion say it was going to fail? The Independent 30 Jan 2018
    https://ind.pn/2ziy4Cv
  - KPMG increasingly comes under spotlight after high-profile scandals see share of UK public sector contracts fall sharply Transceltic 13 Feb 2018 http://bit.ly/2KHd6Tf
    Britain's accounting watchdog increases fines and turns up heat on KPMG Business Day 19 June 2018 http://bit.ly/2KGCJ6o
    KPMG is under fire in the UK over its audit quality Australian Financial Review 19 June 2018
    http://bit.ly/2uba3re
- MPs call for another investigation into KPMG over HBOS Economia 25 Jun 2018 ~~http://bit.ly/2KVdbSf~~
  UK Treasury faces calls to disclose handling of HBOS fraud report SNL European Financials Daily 27 Jun 2018
  MPs seek report into HBOS Reading probe by Lloyds, BBC, 27 June 2018 https://bbc.in/2uc5ywC
- The UK's financial regulators are presiding over widespread corporate failure. Left Foot Forward 22 June 2018 http://bit.ly/2u0iFBL

- Director leaves embattled watchdog. The Times 30 June 2018
  https://www.thetimes.co.uk/article/melanie-mclaren-leaves-embattled-financial-reporting-council-5m9vt2mtk
- KPMG accused of 'unacceptable deterioration' in audits. Australian Financial Review 19 June 2018
  http://bit.ly/2uba3re
- Watchdog blasted for 'inadequate' PwC fine Scottish Daily Mail 14 June 2018
  https://www.pressreader.com/uk/daily-mail/20180614/284945315730815
- UK audit regulator finds KPMG's audit quality `unacceptable http://bit.ly/2NAMyRk
- BT chief denies audit conflict. The Times 23 June 2018
  https://www.thetimes.co.uk/article/bt-chief-denies-audit-conflict-h60vsmq9c
- Quite a gravy train. The Guardian 1 June 2001
  https://www.theguardian.com/society/2001/jun/01/publicservices
  Private sector lured by £30bn public gold rush, The Guardian, 8 July 2001
  https://www.theguardian.com/business/2001/jul/08/theobserver.observerbusiness14

Other International

- KPMG hit by Hong Kong High Court in $400 million China Medical fraud, Reuters, 30 Mar 2018
  http://bit.ly/2unNFuX
- Ex-KPMG exec arrested in Cobb for alleged role in audit fraud scheme. AJC News
  https://on-ajc.com/2KCbUjQ
  KPMG turned to Palantir to help predict which audits would be inspected; Palantir was hired to leverage former regulators willing to steal confidential inspection data in exchange for KPMG job, bonuses. Marketwatch 26 June 2018
  https://www.marketwatch.com/story/kpmg-turned-to-palantir-to-help-predict-which-audits-would-be-inspected-2018-06-26
- **KPMG won BBVA audit with stolen data about rival's inspections; Former regulatory executive used access to Deloitte inspection information to successfully pitch BBVA** Marketwatch 22 June 2018 https://on.mktw.net/2zdlLGi
- KPMG insider trading scandal caused by 'lapse of judgment' The Guardian 11 April 2013
  https://www.theguardian.com/business/2013/apr/10/kpmg-insider-trading-scandal-judgment
- KPMG South Africa Fights for Survival. Bloomberg 18 Apr 2018
  https://www.bloomberg.com/news/articles/2018-04-17/kpmg-south-africa-fights-for-survival-as-public-image-shattered
- KPMG South Africa Expects 400 Job Cuts Amid Gupta Scandals Bloomberg 4 June 2018
  https://www.bloomberg.com/news/articles/2018-06-04/kpmg-south-africa-says-as-many-as-400-people-seen-leaving-firm
- KPMG rethinking its future in South Africa, Eyewitness News May, 2018 http://bit.ly/2lZ1oEs
  KPMG's strategy to regain South Africa's trust failed before it even got started Quartz Media q8 Apr 2018, http://bit.ly/2KQAY5L
  Gauteng govt has cut ties with KPMG, McKinsey – Makhura The Citizen 29 June 2018 http://bit.ly/2u2B9Bx
- More shocks for auditors? The Financial Mail, 21 June 2018
  https://www.pressreader.com/south-africa/financial-mail/20180621/281560881514242
- KPMG says audits for scandal-hit Malaysian 1MDB fund not 'true and fair' assessment CITYA.M 26 June 2018 http://bit.ly/2MT6vle

Some have expressed concern in Australia

Big Five Insist Low Audit Fees Are Not Baits Business Review Weekly 7 July 2000

KPMG partners may face consulting inquiry spotlight over ABS work *Australian Financial Review* 2 Jul 2018 http://bit.ly/2KV8hS5
KPMG review of ABS census IT systems 'compromised', whistleblower says *Australian Financial Review* 28 Jun 2018 http://bit.ly/2MWmwXs

Inquiry could kick big four consultants off the federal government gravy train Australian Financial Review 30 Jan 2018 http://bit.ly/2zk9gKo

An experienced CEO of an aged care provider has worked for the Department of Health during two periods several years apart. He was scathing and on Linkedin[10] he called for others to speak out to *"Expose the waste of money in our government departments who add no value and the millions of dollars KPMG gets to write appalling clinical indicators because our own Department of Health is incapable of doing so".*

It should be no surprise that it has just been revealed that one of the big four PwC (**PriceWaterhouseCoopers**), which advised government on tax fraud legislation is using the information it obtained doing that to advise multinationals how to outwit the regulations that it had designed[11].

PcW, KPMG and multiple other similar groups have been contracted to provide advice to government including on aged care on multiple occasions. This unacceptable behaviour is almost impossible to detect and we wonder how often it occurs. The two marketwatch articles referenced in the 'other international' section of the list of articles about KPMG above suggests very similar behaviour might have occurred in KPMG in 2018.

1.2.1 Government also blind

One of the first things that the Morrison government did in response to the Royal Commission was to set $10 million aside for consulting and then enter into six lucrative contracts with PwC, KPMG, Deloite and Boston Consulting[12].

These are the same businesses that have been advising the aged care industry for years.

A few months after the Royal Commission's final report KPMG was contracted by the large industry groups AACC (comprising LASA and ACSA) and ACRN (comprising several of the large most profitable corporate providers whose conduct was exposed by the Royal Commission).

KPMG was to advise on "*the best practice representation models*" and *"opportunities to develop member services*[13]. AACC and ACRN then amalgamated to form a single aged care group ACCPA (Aged & Community Care Providers Association) to manage the sector's interests.

But KPMG has already had serious issues raised about its conduct in Australia:

1. In 2005, Westpoint a property investment business collapsed. ASIC chairman Jeffrey Lucy described[14] it *"as a scheme where money from new investors was used to pay existing ones, a classic Ponzi scheme".* It was reported[15] that its success in getting investment was because it *"kicked back an average up-front commission to planners of 10 per cent out of the money that they raised"* .

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[10] **The Challenge to Speak Out about Aged Care in Australia** LinkedIn 24 Feb 2017 http://bit.ly/2zjpcMQ

[11] '**Disgraceful breach of trust': how PwC, one of the world's biggest accountancy firms, became mired in a tax scandal** The Guardian 13 May 2023 https://www.theguardian.com/business/2023/may/12/disgraceful-breach-of-trust-how-pwc-one-of-the-worlds-biggest-accountancy-firms-became-mired-in-a-tax-scandal

Our government is being privatised by stealth: PwC scandal shows how SMH 16 May 2023 https://www.smh.com.au/business/companies/our-government-is-being-privatised-by-stealth-pwc-scandal-shows-how-20230515-p5d8jz.html

PwC scandal shows consultants, like church officials, are best kept out of state affairs The Conversation 17 May 2023 https://theconversation.com/pwc-scandal-shows-consultants-like-church-officials-are-best-kept-out-of-state-affairs-205560

[12] **Government outsources aged care reform to management consultants** Rick Morton The Saturday Paper 27 Nov 2021 https://www.thesaturdaypaper.com.au/news/politics/2021/11/27/government-outsources-aged-care-reform-management-consultants

[13] **More change at peak bodies as super peak, made up of smaller peaks and providers, hires KPMG to look at how best to be a peak** Aged Care Insite Oct 2021 https://www.agedcareinsite.com.au/2021/10/more-change-at-peak-bodies-as-super-peak-made-up-of-smaller-peaks-and-providers-hires-kpmg-to-look-at-how-best-to-be-a-peak/

[14] Pie in sky costs investors $72m The Courier-Mail February 9, 2006

[15] Westpoint wreck shows how deep commissions can cut The Age February 4, 2006

The AFR reported[16] *"The Westpoint property group's collapse is a national shame. National because so many family investors across this land trusted the advice from their financial planners. It appears that juicy commissions tempted them to place clients' money into situations where clients were in effect banks, lending their hard-earned super money without taking meaningful security."*

KPMG was its auditor. The financial planners[17] claimed that *"errors have been found in KPMG's audit reports"* and that it *"put out positive audit reports on [Westpoint] and clearly it was wrong"* and they spoke about taking *"a class action"*.

ASIC took action[18] against KPMG for *"for failing to raise the alarm about the finances at the failed property developer Westpoint"*. In West Australia[19] *"Three partners from KPMG's Perth office will step down for up to two years as part of the corporate watchdog's investigations into the accounting firm over its role as auditor of failed property empire Westpoint"*.

It was a drawn-out lawsuit and KPMG appealed it to the high court. It was finally settled for $67 million in 2011 instead.[20] KPMG indicated the settlement was *"no admission of liability by KPMG"*. The investors who had lost far more[21] than this *" slammed the corporate watchdog as ineffective and unaccountable"*.

2. Then more recently in 2021 KPMG Australia was *"fined US450,000 (A$615.000) by the US audit watchdog over 'widespread' cheating on online training tests"* and *"more than 1,100 staff including 250 auditors were involved in "improper answer sharing"*. It *"occurred at 'all levels' of the firm and was 'widespread' within the firm's audit practice, with at least 277 personnel engaged in providing or receiving answers"*. In addition *"Two partners have departed the firm as a result of the investigation, and 46 people have had their pay docked, including 16 partners"*.

   The same month, the *Australian Financial Review* reported all of the firm's 600 partners and more than 5,900 client-facing staff were being forced to resit an internal independence exam after whistleblower complaints.

The Guardian reports[22] that *"the Aged Care Safety and Quality Commission has been paying KPMG staff to undertake audits of residential aged care facilities"*. It reports that at the same time (KPMG) seems to be *"advising aged care providers"*. That looks like a conflict of interest that ambitious businessmen might find difficult to resist.

KPMG is well placed to give the sort of profit making advise that PwC and even more recently Mirus Australia[1] is being accused of in aged care. They have had an intimate and ongoing involvement in designing our aged care system so know where the weaknesses and loopholes are.

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[16] Westpoint a national shame Australian Financial Review February 9, 2006

[17] Snapshots : KPMG law suit BRW February 9, 2006

[18] KPMG pursued over collapse Sydney Morning Herald October 14, 2008

[19] KPMG auditors step down over Westpoint role The West Australian 17 August 2009

[20] ASIC settles with KPMG over Westpoint The West Australian 1 February 2011 https://thewest.com.au/business/finance/asic-settles-with-kpmg-over-westpoint-ng-ya-182364

[21] ASIC slammed for settling in Westpoint case The West Australian 2 Feb 2011 https://thewest.com.au/news/wa/asic-slammed-for-settling-in-westpoint-case-ng-ya-182297

[22] Consulting firm KPMG paid to audit Australian aged care homes while also advising providers The Guardian 4 May 2023 https://www.theguardian.com/australia-news/2023/may/04/firm-performing-australian-aged-care-audit-also-charging-providers-for-expertise

In highly competitive markets (eg health and aged care in the USA), unacceptable and unethical practices that give a competitive advantage have been highly infectious and a majority of participants soon adopt them[23]. Those who do not embrace them fall behind, and either go under or are acquired.

We must ask if what has been exposed at PwC is a reflection of what has been happening across the world and in aged care in Australia? Could it still be happening? If this was so, it would go a long way to explain why the system has failed repeatedly in spite of multiple inquiries and many attempts at regulatory reform over the years. We find KPMG's record in Australia and internationally worrying.

1.3 Politics and market policy[24] - a reminder

1.3.1 Early history

Neoliberal free market policies have increasingly influenced the governing liberal government since the mid 1960s. At the time free market policies created friction with their partner the Country Party (now Nationals).

Prior to this, care for the aged and infirm had been provided primarily by government and charitable bodies. Funding was provided for nonprofit nursing home providers in the 1950s. When free market factions developed in the 1960s, additional funding was provided to for-profit providers, who were encouraged. This was followed by the rapid expansion in for-profit care and problems soon developed. Labor, briefly in power under Gough Whitlam, tried to tip the system in favour of nonprofit providers, but this was not successful.

Neoliberal policies were rejected by Liberal Prime Minister Malcolm Fraser in the 1970s, causing friction with his treasurer John Howard, a strong supporter. Inquiries had concluded that the complexity of care and its geographic variability made central management difficult. They favoured greater regionalism. Attempts by Fraser to decentralise aged care and hand it to the states and so align it with health care, were rejected by the states.

Globalisation in the 1980s led by Reagan in the USA and Thatcher in the UK was structured along free market principles. In government, Labor under Bob Hawke complied with these policies but in a more limited and balanced manner. In response to the rise in the power of unions under Hawke, liberal politicians and market leaders formed the HR Nichols society which was strongly anti-union and pro-market.

The 1985 Giles report exposed the sort of problems in for-profit nursing homes that are reminiscent of the 2019 Royal Commission's Interim Report, and there was public concern. The Hawke government commenced a 10-year reform program that protected care from profit taking and introduced ever more frequent on-site reviews by state regulators which probed failures to identify causes and were successful.

There was friction between Hawke and his treasurer Paul Keating who embraced neoliberal ideas. Keating replaced Hawke in the 1990s. He introduced more neoliberal free market policies.

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[23] For Example see item '1.3 The USA as an example:' - in **THE IMPACT OF FINANCIAL PRESSURES ON CLINICAL CARE LESSONS FROM CORPORATE MEDICINE Corporate Medicine web site** 1996 http://www.corpmedinfo.com/corpmed.html

[24] Wynne M, Saltarelli L , and Winkler D. Chapter 2 '**Policies Influencing Aged Care in Australia: Past Present and Future**' in '**Healthy Ageing and Aged care**'. 2nd Edition Edited by Bernoth B and Winkler D. Oxford University Press 2022

National Competition Policies were passed into law and government bodies were set up to manage this. Marketisation of health care was commenced.

The for-profit aged care industry were strongly opposed to the Hawke reforms and rallied under the leadership of industry baron Doug Moran. Keating did not support the Hawke ten-year plan and the reforms stagnated.

Keating wanted to abolish the restrictions on profit taking and increase labour market efficiencies in aged care using the new reform processes including workplace bargaining, multiskilling, incentivising to securing greater efficiencies as well as rewarding managers who maximised efficiencies. He did not do so when his economist Bob Gregory warned that neither the current standards monitoring system or any alternatives considered, would be able to prevent the diversion of funding from nursing and personal care to profit if this happened.

1.3.2 Major political change in 1996

Strong support from the market and Keatings unpopularity swept the liberals under Howard to power in 1996. The policy of small government was now pursued more aggressively. The public service was gutted by markedly reducing staff numbers and appointing industry figures to senior positions.

Everything was treated as a market and as revealed above, marketplace consultants largely replaced the public service in investigating issues and in advising on policy. Government and market have grown closer and closer ever since. Both major parties adopted neoliberal ideas and followed these policies.

In health and aged care, all warnings were ignored and neoliberal free market ideology was pursued energetically. The policies for health care were strongly opposed by the medical profession and relations with the minister for health broke down entirely.

Mayne Health, Australia's largest hospital owner worked closely with government. When it adopted these managerial practices and started cherry picking patients who were more profitable, doctors took their patients elsewhere and put it out of business. As the second customer they exerted their market power to establish a more balanced system. Free market policy has been less harmful in Australian health care than in the USA – an example that we can learn from in aged care.

In aged care, the Howard government ignored all warnings and abandoned the Hawke reforms. In 1997 all restrictions on profit taking and staffing were removed. Probity requirements were abandoned and all investors were welcomed regardless of their past conduct. The successful oversite by state regulators, which so upset the for-profit sector was replaced with a provider friendly accreditation process designed to help providers but not police or regulate them. Accreditation had already failed repeatedly to contain problems in the US health system and a proposal to introduce it into aged care had been rejected.

The predictions and warnings soon came true and a succession of failures and scandals commenced within 3 years. They continued in spite of multiple reviews and regulatory adjustment, which usually made the system worse. The market model was not challenged.

Particularly harmful were the 2004 Hogan Review and the 2011 Productivity Commission review which were strongly market focussed. Both major parties followed these policies and we saw a succession of governments through Labor with Rudd and Gillard, then the Liberal/National Coalition with Abbott, Turnbull and Morrison. By 2018, the flood of failures reported in the media and public anger forced Morrison to call a Royal Commission.

1.4 Our democracy: Disturbing revelations

Throughout this period the bonds between government and market grew closer and closer as a revolving door of industry leaders were appointed to government roles or became advisors, and as retiring public service personnel and retiring politicians were offered senior roles in industry. Multiple reports reveal what has happened. Financial deals and donations saw these golden handshakes tighten into golden handcuffs binding government ever more tightly to the market.

This was a global phenomenon and in jesting about this and taxes in December 2012, the New Yorker joked *"a consortium of billionaires today warned that if their taxes are raised they will no longer have enough money to buy politicians".*

In a 2014 expose, Rob Oakeshott, one of the independents that kept the minority Gillard Labor government in power between 2010 and 2013' wrote[25] an expose *"How big business hijacked parliament"*. He described the extensive access that the wealthiest businessmen had to politicians and how the money they donated to political parties created *"the policy inertia of Australia today".*

This allowed big business to influence the political agenda and send *"many necessary policy reforms to the doghouse"*. He described them as *"intimately involved with, and crawling all over, our democracy"*. He called it *"a sold out democracy bent to the will of big business"* as *"political parties took the money and ran"*. He was talking about the influence of political donations and lobbying.

This was the period when the industry dominated body NACA (National Aged Care Alliance), comprising aged care market leaders and community supporters of government market policies, persuaded then Labor minister Mark Butler to adopt the strongly market focused LLLB (Living Longer Living Better) aged care 'reforms' they had developed, based on the 2011 Productivity Commission report. Could Oakeshott have been referring to this?

In 2018 a report from the Grattan Institute into donations also described what was happening[26] and a senate inquiry made recommendations[27] that were largely ignored. Donations from large donors were higher than ever during the 2019 election[28]. In spite of this, both major parties joined forces to weaken the laws around donations[29]. Aged care companies are active there too[30].

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25 Rob Oakeshott: How big business hijacked parliament The Saturday Paper 9-15 August 2014 https://www.thesaturdaypaper.com.au/topic/politics/2014/08/09/rob-oakeshott-how-big-business-hijacked-parliament/1407506400834

26 Who's in the room? Access and influence in Australian politics Grattan Institute Report 23 Sept 2018 https://grattan.edu.au/report/whos-in-the-room/

27 Political Influence of Donations Senate Report 2018 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Political_Influence_of_Donations/PoliticalDonations/Report_1

28 How big money influenced the 2019 federal election – and what we can do to fix the system The Conversation 4 Feb 2020 https://theconversation.com/how-big-money-influenced-the-2019-federal-election-and-what-we-can-do-to-fix-the-system-131141

29 Federal parliament just weakened political donations laws while you weren't watching The Conversation 4 Nov 2020 https://theconversation.com/federal-parliament-just-weakened-political-donations-laws-while-you-werent-watching-149171
Push to reform political donations The Saturday Paper 6-12 Feb 2021 https://www.thesaturdaypaper.com.au/news/politics/2021/02/06/push-reform-political-donations/161253000011050

30 Lobby Groups and the Australian Aged Care Sector Lobbywatch 1 Oct 2019 https://medium.com/lobbywatch/lobby-groups-and-the-australian-aged-care-sector-ced7d9babf18

We examined many of these issues on our web site in 2015 when those with experience were speaking out about what was happening[31].

Briefly we wrote about:

> Judge Tony Fitzgerald who had exposed the widespread fraud and corruption in Queensland under the Bjelke Petersen government in the 1980s was alarmed to see it happening again. In 2009 he spoke about *"a drift back towards the state's dark past. - - - Access to government could now be purchased, patronage dispensed, mates and supporters appointed, with retired politicians exploiting their connections for success fees from business ."*
>
> By 2015 it was much worse and he spoke out again saying *"the political parties of today see it rather as a contest in which whichever one wins does pretty much what it likes. - - - if we're ever going to get back to the proper representative democracy, it will have to come through pressure from the public".*
>
> Another analyst Professor Joseph Camilleri wrote about our '*Democracy in Crisis'* in 2014 describing the way global developments had contributed to this. He argued that *"There is a way out of this impasse, but it won't be easy. - - - To recognise the problem is a necessary first step".* He remarked on *"the inability of our leading politicians to articulate a thoughtful let alone imaginative approach to policy".*
>
> It was *"a multifaceted worldwide phenomenon with deep currents that insert themselves into economy, society and culture in mutually reinforcing ways within and between countries -- - dialogue needs to be international in scope and inspiration - - - - - Political reform in Australia cannot proceed in isolation from the rest of the world."* We need *"to fashion a new understanding of citizenship and with it institutions and practices better equipped for effective and humane governance."*
>
> The press criticised Tony Abbott for running the country like a business. He clamped down on FOI and abandoned Australia's involvement in the global open government movement. Journalists analysed how both Howard and Abbott had succeeded in keeping issues out of the public eye.
>
> The success of almost every ideology depends on either censorship or controlling information and how it is presented to the public. Morrison took personal control of information in almost every ministerial post he held. We will describe how this happened in aged care later.
>
> In 2014 and 2015 two legal bodies explored the way in which *"fundamental legal rights are abrogated in current acts of the federal parliament".*
>
> In 2015 John Menadue, once a private secretary to a prime minister but now a strong critic wrote about the barriers to health care reform citing *"the power of providers or at least their assumed power."* He indicated that*:*
>
>> *- - - - A succession of Australian health ministers may have been in office but they have not been in power. - - - a generic problem in public policy today. The Ministerial/Departmental model in health has failed. It is incapable of contesting the power of the rent seekers. The community is effectively excluded."*

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[31] Politics is broken Aged Care Crisis 2015 https://www.agedcarecrisis.com/solving-aged-care/part-4/politics-is-broken

That sums up what has been happening pretty well but there is much more on the web page 'Politics is Broken'[31].

Many are still writing about the way governments have been captured and controlled by the market, society kidnapped and democracy eroded by market power.

In a typical example in 2018 Feenstra wrote:

> *- - - - - we live in amputated and kidnapped democracies that no longer protect citizens' interests. - - - - its main institutions and basic structures – parliaments, political parties, trade unions, mass media and NGOs – are held hostage - - - - citizens become victims of the whole process. - - - Is there any way to free democracy and citizens from their stealthy, wealthy, elite captors?*
>
> - - - - - - - - -
>
> *But the key to renewal surely lies in new democratic mechanisms and forms of citizen participation that are capable of ending the concentrations of power that are kidnapping our democracies and victimising their citizen*
>
> **Source:** '**Kidnapped democracy: how can citizens escape?'** By R A Feenstra in The Conversation 28 Apr 2018 https://theconversation.com/kidnapped-democracy-how-can-citizens-escape-90011

The vast majority of these articles see little prospect of the political system itself addressing these problems. They look to society rising up and asserting itself and taking control so restoring a balance of power that can put government and markets back in the box and ensure that both serve and support the society of which they are a part. They realise what has happened to society and how difficult this will be.

1.4.1 Finding a way out of the mess

Aged care is part of this captured society and we need to find a way out of this mess. We have a good example in what happened in health care in Australia, where there were two customers.

When acting together at the end of the twentieth century, the doctors' knowledge and critical role in providing care, gave them the power to act for and prevent their patients from being exploited and harmed. They used that power to resist government and put those who breeched our trust out of business. In the wider society it is citizens working together as a society who have the power to confront markets and politicians. As a community we can build on this model.

Aged Care Crisis argues that we have to start somewhere and aged care is by far the best place to start because it is provided in our communities and in our homes, where we can see exactly what is happening. The recipients of care are our loved family members, parents, spouses and friends. A majority of us will eventually become old and need care ourselves.

It is in all our interests to start working together to ensure that we see and understand what is happening in aged care and ensure that we have the power to put those who betray our trust out of business.

The best way to do that is to restructure aged care so that community organisations are involved in aged care locally so that they can see what is happening. They need to become the second customer with knowledge and power who can put the unsuitable and untrustworthy out of business. Most of us still have years of active life after retirement and by becoming involved we can protect our own futures, creating meaning and build identities during our later years.

For the last 15 years Aged Care Crisis has been looking at different ways of doing this. It has made many submissions explaining what is happening and pressing for structural change along these lines. That could be a giant step. Other vulnerable sectors could build on it.

Appendix B

Denial Before

and then after

the Royal Commission

into

Aged Care, Quality and Safety

June 2023

As indicated in Appendix A, Members of Aged Care Crisis had prior direct experience of dysfunctional social systems and ideology going back into the first half of the 20th century. We have seen the way believers ignore and deny existing knowledge and ignore the consequences of what they are doing.

If we are to address the problems in aged care, we must understand how this happens. We need to confront and overcome this problem if we are to resolve the problems in aged care and protect the elderly.

1 Summary

This appendix focuses on denial. It shows this by contrasting the claims of believers with those who work in nursing homes. A long forgotten 1997 senate report recognised this and its predictions were prophetic.

This denial continued through the many subsequent inquiries and marketplace reforms as the system came apart. We describe what happened and refer to some of the submissions we made particularly to the Caring for Older Australian review in 2011/12 and the consequences of the policies that followed. Our warnings were ignored.

The system started imploding in 2016/17 and a series of inquiries followed. We describe the 2016/17 workforce inquiry and the way staffing data we supplied here, to subsequent inquiries and to the Royal Commission, showing how poorly Australia compared with the USA, was ignored. We describe the way industry denied the problems in regulation when these were exposed by the Oakden scandal.

We were disturbed by the way issues were avoided by the Royal Commission during the development of recommendations and wrote submissions criticising them. It avoided the 'paradigm conflicts' that exposed these flaws and we criticised this.

We use an extreme example of denial by a US company to illustrate this sort of behaviour and describe how incentivisation contributes to this. We explain that this sort of 'social pathology' is common and show how government and industry continued to deny what was happening during and after the final report of the Royal Commission.

Table of Contents

1 **Summary** 2
2 **Denial in the past** 4
2.1 Red flags ignored 6
2.2 The Inquiries 6
2.3 Submissions 7
2.4 Conclusion 9
3 **The Royal Commission** 9
4 **Continued denial after the Royal Commission** 9
4.1 A form of social pathology 9
4.2 Incentivisation 10
4.3 Understanding the pathology 11
4.4 As it happened 11
4.5 Conclusion 12

2 Denial in the past

The creators of this system have been in denial for a long time.

Until 2012, Aged Care Crisis operated an online forum that was used by nurses to discuss what was happening in their nursing homes.

This is readily apparent when we compare what industry have been saying about the system with the comments of nurses on our discussion group, those who made submissions to the 2016 Senate Inquiry into Staffing and those who commented critically in response to articles in the media.

Some examples illustrate the problem below:

Incompatible Views	
A 'World Class' aged care system	**A system to be ashamed of**
• **Politicians -** a very, very thorough accreditation system **(2000)** • **Industry -** the **most robust quality systems anywhere in the world (2012)** • **The AusTrade website** - A global benchmark for best practice - strong government funding - robust framework for accreditation, quality and regulation **(2015)** • **Federal minister Ken Wyatt** says we have **a world-class system (2018)** • **Industry** - a good system - delivering high standards of care **(2018)**	• **Nurses -** the tragedy of our nursing homes - **a huge indictment on our society**.- many acts of brutality and cruelty - care falls short by most facilities **(2005)** • **Nurses -** some mind boggling disgraceful care. - **open their eyes to the horror that exists** - It is a disgraceful situation **(2008-12)** • **Nurses -** Please, please change things. - **truly a hidden humanitarian crisis**. **(2016)** • **Chairman AMA Council of General Practice -** It's definitely worse now than it was 20 years ago **(2018)**

The depth of this belief in a 'world class system' and 'world class regulation' explains the anger of converts who believe deeply in what they are doing when others expose what is happening under their noses.

One of us explored this on a web page[1] *'Is this culturopathy'* in 2015. He illustrated this with what happened to Dr De Bellis in 2006 when she spoke out about her findings calling for a public inquiry, with Professor Maree Bernoth's account of her experiences in 2011 and with what happened in 2014 when she spoke out about what she had experienced on ABC News.

- In 2006 de Bellis described her findings and argued that *"urgent public attention was needed to end the suffering of neglected elderly patients"*. The local arm of ACSA in South Australia referred to *"situations are taken out of context"* and *"gross generalisations"* complaining that *"media might not be interested in learning about the facts - unfortunately that doesn't sell newspapers!"* They complained to her university and were *"working with them to develop an appropriate strategy to ensure that we cooperatively work towards achieving positive publicity for the industry"* and trying to ensure that *"researchers and students entering the work place are better educated about aged care issues."*

[1] Is this culturopathy? Inside Aged Care April 2015 https://www.insideagedcare.com/aged-care-analysis/widely-contrasting-views/is-this-culturopathy

- In evidence to the 2011 Caring for Older Australians Inquiry, Bernoth spoke about the problems for researchers who spoke out about aged care. She indicated that *"I have been subjected threats of violence, verbal abuse, constructive dismissal"* and *"I've had contracts terminated and we sold our home and moved to another town because of the professional bullying that I was undergoing because I was revealing the outcomes of that PhD research".*
- In 2014 Bernoth described what she had seen on ABC News and said *"If we continue with our accreditation and standards monitoring system the way it is and we will continue to have people in residential aged care dying of malnutrition, pressure areas and sexual abuse."* and claimed that *"despite numerous cases of abuse, complaints and deaths, nothing's been done to fix the inconsistent and broken system".*

  The CEO of ACSA responded by accusing her of *"a number of unsubstantiated claims"* describing her work as *"shoddy research and trashy journalism"* then *"This unsubstantiated scaremongering unreasonably erodes the trust that exists uniformly across the age care sector between providers and their residents".*

Later in Appendix 1 - *'Contrasting industry with families and staff'* of our 2018 submission[2] to the inquiry into residential care we filled 14 pages with quotes showing what those who had experience of care were saying and contrasting it with public claims by industry and government. We have included these in Appendix E

We can only imagine the suffering, the neglect, and the abuse that would have been avoided had these distinguished health professionals who should have been seen as credible, been heeded and the obvious *"deep and entrenched systemic flaws"* created by a competitive and dominant free market been recognised and addressed.

But there was much more: The 1997 report on Funding of Aged Care institutions[3] noted that:

- A large number of organisations during the inquiry expressed concerns that the aged care reforms have the potential to compromise the standards of care in aged care facilities. (Section 4.1)
- *"Evidence to the Committee suggested that ensuring quality of care in nursing homes will be a major challenge for the new Aged Care Standards Agency,"* (Section 4.38)
- *"Residential Care Rights also noted that there is a strong perception among consumers and their representatives that `a significant focus of the Agency will be the needs of service providers' to the detriment of consumer interests'."* (Section 4.42)

It concluded that:

- The Committee believes that that the Government's aged care reform proposals have the potential to compromise the standards of care in aged care facilities. (Section 4.48)
- The Committee also has particular concerns at the proposed abolition of CAM funding and the introduction of a single nonacquitable payment system and the fact that the proposed reform package does not contain adequate provisions to ensure that proper levels of care will be delivered by appropriately skilled and trained staff to residents of aged care facilities; (Section 4.49)

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[2] Appendix 1 'Contrasting industry with families and staff' (page 69 in Aged Care Crisis Submission to Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia by Standing Committee on Health, Aged Care and Sport https://www.aph.gov.au/DocumentStore.ashx?id=7ee65a97-5cb3-4de1-8cfd-26cb377408be&subId=564157

[3] Report on Funding of Aged Care Institutions, June 1997: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/1996-99/aged/report/index

It did not take long for the system to start failing.

2.1 Red flags ignored

The Riverside (kerosene baths) scandal in 2000, followed a year later by the problems at the Ritz and Yagoona nursing homes were red flags that were ignored. The rape scandals in 2006 and the many other problems that occurred at this time did not result in real change.

There were more and more failures exposed and the Labor government finally set up the Productivity Commission Inquiry, Caring for Older Australians. The LLLB (Living Longer Living Better) reforms followed its market focused solutions and the situation soon deteriorated further.

The many scandals were summarised and links were provided to individual instances of failure on a 2016 web page[4] *"Scandal after scandal".* Multiple inquiries and legislation tinkered with the regulations, but did not address the real problems.

2.2 The Inquiries

We had hoped that the 'Caring for older Australians' inquiry by the Productivity Commission set up by Labor might bring change. To expose previous failed inquiries we wrote[5] an analysis *"Oh No ! - Not Another Aged Care Inquiry But This Time It Might Really Matter".* In this we described the many previous inquiries and the failure to address the problems.

> The early inquiries had documented the declining number of trained nurses and noted the failures in care but they did not result in any action. A 2005 Senate report had been very critical of the accreditation process and quoted those who called it a farce. Aged Care Crisis started making submissions to inquiries and reviews at this time.

Our hopes were dashed and we were very disappointed in the Productivity Commission's *'Caring for older Australian's report'*. We criticised it strongly at the time[6] writing:

> The Report is created within the economic rationalist system of belief and the many assertions made in regard to the self-evident validity of these beliefs are not supported with evidence or reasoned arguments.
> -------------------------
> There is consequently a deeply divisive fissure running through the new structure that the commission is recommending. It is likely to give rise to tensions, disturbances and undesirable practices.
> ------------------------
> The AACC is designed to protect the new aged care system and the AACC from the sort of criticism and exposure of recurrent failures that has dogged the present system. This is a format that has self-deception and inflexibility built into it, and so ultimate failure.

We were also very critical of the LLLB reforms that were based on this report. NACA (National Aged Care Alliance) and COTA (Council of the Ageing) developed the reforms and then persuaded government and the parliament to introduce them[7].

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[4] [4]Scandal after scandal Inside Aged Care https://www.insideagedcare.com/aged-care-analysis/19-years-of-care/scandal-after-scandal

[5] "Oh No ! - Not Another Aged Care Inquiry But This Time It Might Really Matter" Corporate web site 2010 http://www.corpmedinfo.com/agereport.html

[6] A Critical Examination of the Productivity Commission Report Released June 2011 http://www.corpmedinfo.com/pccritique.pdf

[7] Why the appointment of Mark Butler as Shadow Minister for Health and Ageing is significant. Aged Care Crisis, February 2021 https://www.agedcarecrisis.com/opinion/articles/453-why-appt-of-mark-butler-is-significant

As we predicted the pressures in the market were ramped up and it proved to be a disaster. The new system was used by the Abbott government when Morrison was minister to develop an Aged Care Roadmap, reduce regulation and markedly increase the competitive pressures on staffing and care by pursuing a policy of competitive consolidation. The rapid increase in pressure on staffing and care that followed led to a growing number of failures and to the Royal Commission in 2018.

2.3 Submissions

We have a list of submissions and links on our web site[8]. We published 5 submissions to the 2010/11 Caring for older Australians including one addressing the *"multiple consequences of"* the policies introduced in 1997 and indicating *"that care of the elderly is primarily a community responsibility and that the community should have a key role in the provision of aged cares services in each region"*. We suggested ways of doing this.

Since 2010 we have written multiple submissions and in some analysed and explained what was happening in depth, particularly as the system started falling apart in 2016. All of this was ignored.

The most relevant are:

Future of Australia's aged care sector workforce (2016/17):

We made a submission with 3 attachments and then two supplementary submissions. We indicated that the reason why *"this system was introduced and no changes have been made is because our democracy and our political system are failing. A major reason for this is the hollowing out and decline of civil society as a controlling entity in capitalist democracies. - - - - we are going to look at why nothing ever happens and suggest ways of making them happen"*.

In 2017, we gained access to staffing levels in Australia for the first time as Stewart Brown were collecting data and had made claims on social media that suggested they were similar to the USA. We realised that this was not correct. We made a supplementary submission describing what StewartBrown had done and then compared Australian staffing levels with international staffing data, mainly from the USA.

We showed for the first time just how poor Australian staffing was when compared with the USA and other countries, particularly for trained nurses. The figures were easily verifiable on StewardBrown's website and in the USA.

Data ignored: The Senate did not refer to this submission or the figures in their report. We gave the data to Professor Pollaers who was appointed to lead the Aged Care Workforce Task Force. No staffing figures were presented at the public discussions that he held. Staffing levels did not appear in his report.

The figures were given to the Royal Commission prior to its first public session where we were asked to appear. Counsel refused to accept the figures and challenged our credibility. We were not included in that or subsequent consultations. The Commission's own delegated research did a similar comparison of staffing with the USA and drew the same conclusions. StewartBrown had no difficulty in being heard by the Royal Commission in spite of its rubbery figures!

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[8] Publications by Aged Care Crisis https://www.agedcarecrisis.com/publications

Shortly after he retired as Chair of the Aged Care Sector Committee and joined Opal Healthcare, Peter Shergold addressed a behind closed door industry workshop in Singapore[9] in 2015. He told the audience that *"government is concerned about a public backlash from people who believe that aged care should be a community service and not motivated by profit"*. We wonder how many of those who read our submissions thought the same way.

Submissions about regulatory failure:

The revelations of the glaring failures of the accreditation agency when accrediting the Oakden facility in South Australia created enormous interest and inquiries were initiated by the department (Carnell/ Patterson Review) and the Senate. We made detailed submissions once again describing the longstanding problems in the regulatory process. Neither inquiry recommended any significant changes to the system. We will examine regulation in another section of this submission.

Incredibly, in the midst of all this as the evidence of regulatory failure grew and grew the industry responded. ACSA, trotted out the industry's justification for its claims to excellence by claiming[10] that:

> "Aged care is a highly regulated industry and subject to rigorous accreditation standards by the Australian Aged Care Quality Agency (AACQA). This includes both regular scheduled site visits and unscheduled 'spot-checks' to ensure that providers are meeting high standards".

On ABC 7.30 Report on 29 May 2017, when under pressure about the many failures, Sean Rooney, the CEO of LASA defended the regulator[11] with *"the accreditation system is quite robust"*. In its submission to the subsequent Senate Inquiry, it maintained that *we have a "high performing and professional sector, supported by a workforce that is passionate about providing quality care for older Australians"*. It maintains that it is internationally *"recognised as being of good quality. Australia's aged care system is highly regulated when compared internationally."* It argues that *"the industry's quality system is not broken"* and uses success in accreditation to justify this. This position is maintained in the face of a rising tide of information and experience that tells a very different story – something they are unable to acknowledge.

Submission to the Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia 2018: In this submission we pointed out how widespread the concerns about care now were, referring to the many comments about it and then looking again at the flawed system and the consequent staffing and regulatory failures explaining how all this had happened. We stressed the importance of rebuilding and reinvolving community.

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[9] IPS Closed-Door Workshop on "Aged Care Service Models: Challenges, Trade-offs and Policy Responses" Workshop Report May 2016 https://lkyspp.nus.edu.sg/docs/default-source/ips/report_aged-care-service-models_1005161.pdf

[10] Statement regarding Oakden Older Persons Mental Health Service - ACSA media release - 21 Apr 2017 - http://bit.ly/2rxJuNA

[11] Daughter says mum died in nursing home due to lack of staff, former nurses say care standards not improving ABC News 29 May 2017 http://www.abc.net.au/news/2017-05-29/preventable-nursing-home-deaths-skyrocket-care-standards-falling/8570096

2.4 Conclusion

The way in which evidence and arguments were avoided, disregarded or discredited over the years can only lead to the conclusion that the ideological beliefs were deeply held and that the wilful blindness, strategic ignorance and other strategies employed by societies trapped in ideology were at play. Those responsible were in denial and anything that challenged belief was avoided and discounted.

3 The Royal Commission

We contributed to the terms of reference and was one of the groups who met with the minister. We were disappointed when we were not asked to appear. We nevertheless made submissions. After the Interim report's damning findings and its reference to underlying structural issues, we dared to hope. But as we watched proceedings, we realised that like previous inquiries, evidence and issues that might challenge the beliefs, were being avoided. We challenged this in our submissions but that was ignored. The final report made many recommendations addressing the symptoms but avoiding the social pathology. We were disappointed.

We became more and more disappointed as we watched how government, industry and the even the public responded and ignored the genuine attempt that Commissioner Pagone had made to make real change and his criticisms of what his fellow Commissioner was recommending.

4 Continued denial after the Royal Commission

It is clear that few if any of the major political parties, the public service, the marketplace, or the like-minded community groups that supported these aged care policies so strongly are able to accept that the system they believed in and the reforms they have spent so much time creating were deeply flawed and harmful.

Their success in this world, the power this gave them and the identity they developed in doing this is tied to these free market policies. If the policies are discredited then so are they.

The previous aged care system set up in 1997 was based on them as are the multiple subsequent reforms, which tried to make it a better market. They truly believed these reforms had created a world class system, when they had actually created an aged care system with *"deep and entrenched systemic flaws"* and it was *"woefully inadequate"*. They have been unable to accept that.

4.1 A form of social pathology

We have seen responses like this in the past and written about it often. We have illustrated this by describing an extreme corporate example of this denial in health care in the USA during the 1990s to illustrate the problem. We called this problem culturopathy because it is a common form of cultural pathology.

Example[12]: National Medical Enterprises (NME), a huge, very credible and profitable US health care company had adopted market policies that had exploited the vulnerability of many patients. It went looking for patients and treated them whether they were ill or just gullible. After its failings were exposed, it angrily denied them. But when it was prosecuted, it pleaded guilty to criminal conduct, paid huge fines, reached settlements with those it had defrauded, was required to sell well over half of its hospitals, sold its international empire, changed its name to Tenet Healthcare and created ethical and other structures to oversee its future conduct. Its conduct was so confronting that at the end of this it was subjected to 5 years of close supervision by the US department of justice.

Its leaders had never accepted that its beliefs and policies were at fault and found ways of explaining it all away. Three years after this strict oversight by the department of justice was lifted, the company was making huge profits all over again and behaving in much the same way.

The US government had responded to a problem with DRG payments. Hospitals were following the money and not operating on people at risk of complications after surgery because they were not profitable. Government addressed this by creating a separate well-paid category which made it profitable to do so.

The situation rapidly reversed as hospitals followed the money again by targeting people who could be squeezed into this new category. This company was once again the worst offender. They went looking for patients again. Among its several problem hospitals was one that did between seven and eight hundred major unnecessary open-heart operations.

4.2 Incentivisation

This example also reveals how blunt a tool the use of incentives, which appeal to our self-interest in order to obtain social objectives, is – particularly when it is financial. The first experimental work on incentives was done on rats in the early 20th century. When first used in education it was found to change the character of the children who pursued the incentives. They adopted rote learning and not deep learning. They lost their sense of social responsibility and did not notice when what they did was harmful. Cynical critics explained that it turned children into rats.

Market enthusiasts paid no attention to this and ignored the findings. Incentivisation is an important tool used by neoliberal style management. There are many examples of incentivised managers in health care in the USA behaving like rats. The very successful company in the example above is only one. Managers in that company could increase their incomes by 50% if they met the targets set by the company.

Its business policies relied heavily on incentivisation. Its Australian subsidiary paid a large sum annually for access to these very successful business practices and the services of one of its most successful managers as CEO. Large promised investments and loans were conditional on this contract continuing.

The West Australian public service warned its minister that Australia was at risk if these policies were introduced and in 1993 wanted to withdraw the company's licenses.

Years later this CEO was in overall charge of the hospital that did the unnecessary heart operations in the USA. This might have been Australia.

Aged care companies in Australia certainly followed the money particularly when it came to reducing staff costs. We can only speculate on the extent to which incentivisation might have contributed to what happened in aged care in Australia. In businesses, promotion is often tied to profit generation so can act as a strong incentive in vulnerable sectors.

---

12 ' **Culturopathy: A for-profit example'** Inside Aged Care 2015 https://bit.ly/3MDLqK6

Structural reforms that decentralise and empower communities would drastically limit these opportunities to incentivize and as a consequence company managers at all levels are likely to strongly resist them.

4.3 Understanding the pathology

The psychological and sociological strategies we use to delude ourselves and behave like this are well recognised. Books and articles have been written (see Appendix G). They explain why systems that are dysfunctional due to this sort of social pathology are so difficult to address and are so enduring.

We have recently updated our December 2021 analysis of what is happening to society and aged care[13]. This looks at what has been happening and gives examples of similar behaviour by industry leaders speaking at international webinars since the Royal Commission reported.

Earlier in January 2021 we attached a '**Root Cause Analysis of failures in aged care**' to one of our submissions. This explored the social science in more depth and looked more closely at the processes at work in aged care[14].

4.4 As it happened

The behaviour of the previous minister for aged care when questioned in parliament, and the failure of those ministers and other politicians who were responsible for this system to acknowledge any responsibility or apologise, is all significant. That both parties have ignored Commissioner Pagone's proposals and his criticisms and are now working closely with industry to 'renovate' the system speaks for itself.

During the Royal Commission the for-profit sector stayed low key and ACSA representing the nonprofit providers led the fight back, informing its members on progress regularly. By the time the Royal Commission reported, ACSA and LASA, the group with the largest number of mostly for-profit members, had merged to form the Australian Aged Care Collaboration and had employed crisis and reputation management firm Apollo Communications to help them recover their reputations and their influence. Restoring trust and recovering their reputations were their first priority.

They had prepared a report *"Its time to care about aged care"* and a media release[15]. Both were directed to absolving industry of responsibility and enlisting community support for their campaign to be given more money. They shifted the blame to government.

Aged Care Crisis responded by writing to politicians to warn them and by publishing its own Accountability Report *'Its time to make aged care accountable'* in March 2021 describing what was happening[16].

---

13 Why our society and human services are in trouble Aged Care Crisis 2021 https://www.agedcarecrisis.com/images/whysocietyandhumanservicesareintrouble.pdf

14 Appendix 1: Root Cause Analysis of failures in Aged Care https://www.agedcarecrisis.com/images/pdf/root-cause-analysis.pdf

15 Report: It's time to care about aged care AACC Feb 2021 https://www.careaboutagedcare.org.au/report/

16 Accountability Report. Aged Care Crisis March 2021 https://www.agedcarecrisis.com/images/accountability-report.pdf

4.5 Conclusion

Commissioner Pagone, who had once studied the social sciences, understood the problem in aged care when he indicated that those responsible for the system's failure *"did their best"* but the system *"has come to its present state in an entirely foreseeable manner, given its basic structure and the constraints and influences on its governance"*.

Those responsible simply cannot conceive that what they were doing was deeply flawed. They cannot see themselves as the problem. Not only was this foreseeable, it was glaringly obvious to anyone who had seen it happen before. Many who did, tried to warn politicians what would happen. They were ignored.

For example, economist Professor Bob Gregory warned[17] of the consequences when this free-market approach was first considered for aged care in 1993. Senator Brenda Gibbs speech[18] in response to the 1997 Bill warning of the consequences, was prophetic.

Instead of addressing the problems, the focus of the industry and government in 2022 and 2023 is on restoring trust in the community rather than addressing the problems responsible for failure. That would be too challenging. This is readily apparent when you listen to what they are saying when they talk about reforms. There is nothing unusual about this. It has happened many times before. This is how humans behave. This is a problem that we have to confront if we want real change.

---

17 Aged Care Reform Strategy Mid-Term Review. Stage 2 Report. Gregory, R. (1993) Looking Glass Press (Chapters 1 & 9)

18 Gibbs, B. Senator (1997 Jun 24). Aged Care Bill 1997. Hansard p 5042 http://bit.ly/2rfThau

Appendix C

Regulatory failure

Early experience

June 2023

Table of Contents

1 Summary 2
2 The USA...3
3 Accreditation in Australia 3
4 The Complaints system in Australia...7
5 The Ageing Bonanza 8
6 Problems would soon develop...10
7 More on that web site 11

1 Summary

This appendix draws on a web site developed by one of us in the late 1990s and early 2000s. It quotes critics of the new aged care regulations introduced after 1997.

Additional extracts describe failures in care as well as the problems that developed in the regulations including the accreditation agency and the complaints system.

We also use quotes to show how the market enthused over the potential profits to be generated from services to retirees and from providing aged care – The expected Aged Care Bonanza.

2 The USA

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) was established in the USA to assist hospitals and practitioners in developing good safe practices.

It was not the only regulator and the CMS (Centers for Medicare & Medicaid Services) collected far more information on the provision of care and was the prime regulator. Both visited hospitals and looked at what was happening there.

By 1993, one of us was already collecting information about the corporatisation of medicine in the USA. The vulnerable including large numbers of children were being exploited and harmed in the pursuit of profit. During the 1990s, both regulators were singularly ineffective[1] at detecting and addressing the serious problems that developed in sections of the US health system.

Accreditation was captured by a revolving door of industry leaders. On occasions the JCAHO even reported doctors who lodged complaints to the hospitals they were complaining of. The hospital then sanctioned the doctors for doing so. Much as in aged care in Australia there was very public exposure of accreditation failures followed by claimed 'reforms'. The CMS collected more material than the JCAHO and claimed that there was little oversight over the accreditation process[2].

President Reagan wanted to introduce accreditation as the only regulator in aged care but there was a public backlash and congress blocked it. Howard had no difficulty in doing just this in Australia in 1997. He had a large parliamentary majority.

3 Accreditation in Australia

The impact of the new free market reforms introduced in aged care in 1997 soon became evident. The mythical nature of the belief that regulation inhibited markets and prevented them from correcting themselves was evident when Minister Judy Moylan the minister at the time claimed that:

> *"in place of a rigid policing style system, we will have a system that will work to assist residential aged care facilities to improve service delivery and, indeed, the social and physical environment by the process of continuous education".*

Criticism: Within a few years everyone who was watching realised that this was the only regulator we had and it was failing.

Regulatory expert Professor John Braithwaite had directly studied and compared the regulation of aged care with the USA and the UK in 1993. He found that the new regulations introduced in Australia in the 1980s were superior to those in the USA and the UK. The industry were strongly opposed to this. He was very concerned about what was happening in Australia when accreditation replaced this effective regulation in 1997. He wrote about this in the British Medical Journal in 2001 and said[3]:

> *"In the United States, as the Reagan administration cut back on welfare it came under enormous pressure from the healthcare industry to deregulate nursing homes by dismantling inspection in favour of implementing accreditation schemes*

---

1 Information collected on Corporate Health web pages (early 2000s) **Note**: Accreditation was not used in aged care in USA as described here.
HOSPITAL ACCREDITATION (USA) (2000) http://www.corpmedinfo.com/hospital_accreditation.html
Tenet Healthcare Accreditation and oversight page (2007) http://www.corpmedinfo.com/tenet_accredit.html

2 CMS Needs Additional Authority to Adequately Oversee Patient Safety in Hospitals July 2004 https://www.gao.gov/assets/gao-04-850.pdf

3 The challenge of regulating care for older people in Australia by John Braithwaite BMJ 2001;323:443-6 ---- 25 AUGUST 2001

> *administered by the Joint Commission on Accreditation of Healthcare Organizations. Accreditation would have replaced public inspection with a form of privatised peer review or self-regulation. As tempted as the Reagan administration was by deregulation, public outcry ultimately persuaded them that it would be a mistake.*
> ====================
> *The current Australian government, led by Prime Minister John Howard, is the only example of a simultaneous attempt to cut welfare, encourage rapid growth of private care by large corporate organisations, and deregulate nursing homes.*
> ====================
> *Once in government, he (Prime Minister Howard) also ended public funding of the Australian Pensioners' and Superannuants' Federation, which had been the leading advocacy group for improving standards in nursing homes, and cut funding to other nongovernmental organisations in the belief that this would silence criticism of the accreditation scheme.*
> ====================
> *The biggest worry in Australia is that accreditation teams, which mostly consist of two people, one of whom can be nominated by the facility, are not conducting rigorous inspections before giving facilities a clean bill of health for three years.*
> ====================
> *Another worry is that accreditation is a manifestation of "the audit society": a triumph of methods from the discipline of accounting over those of other fields that have superior evaluation methods. Auditors tend to check outputs, such as financial or medical records, rather than outcomes, such as health and welfare. Audit is a "ritual of verification" designed to give shareholders "comfort"; audit is actually no more useful in evaluating the quality of investments than it is in assessing the quality of nursing homes.*

The many warnings about the sort of regulatory changes planned were clearly valid. The Riverside scandal in 2000 exposed the regulator's deficiencies and in describing, recording and analysing[4] what happened one of us wrote:

> *"Politicians had learned nothing from the US experience but could not claim ignorance. During the previous 7 to 10 years I had personally circulated vast numbers of reports to them. These described the problems in the US market system and the failure of similar regulatory structures"*

[4] Illawong Retirement Equity Pty Ltd The Riverside Scandal 2006 http://www.corpmedinfo.com/nh_riverside.html

What was being said: One of us looked at what was being said and described what was happening[5] as more and more people spoke out during and after Riverside. The sources of the quotes selected from that link below are there. As we know now, the only way for those who see what is happening to expose problems since 1997 has been to talk to the press:

> *Mrs Bishop said the industry could forget about the Government boosting funding, as the system was working well despite concerns over the adequacy of subsidies and the state of some nursing homes. (Feb 2000)*
> ====================
> *"There has not been a home closed by deliberate action," she (Bishop) told ABC Radio. ------The whole aim of the reforms is to work with providers who are not meeting the best standards that we want to bring them up to that standard (March 2000)*
> ====================
> *The agency, responsible for overseeing the industry, has attracted criticism for its failure to maintain proper controls through regular monitoring and surprise inspections.------- The (Australian Nurses) federation complains the agency is hopelessly under-resourced for the job. "It's supposed to pick up all the pieces and sort out all the problems, and I don't believe it's designed to do that or has that capacity," says the federation's aged care officer, Jill Clutterbuck.(March 2000)*
> ====================
> *But frankly, it is the whistleblower nurses and the nursing home ``assessors" I would pay more attention to. This new monitoring and accreditation system was introduced by the Howard Government in 1997 to please the industry, who loathed the old regime of nitpicking government inspectors. If the new assessors, whose brief is to work co-operatively with proprietors, deem a home "unacceptable", or of "serious risk", you can believe it. (March 2000)*
> ====================
> *- - general manager of the accreditation agency, Tim Burns, remained defiant, claiming Mrs Bishop declared in February nursing home spot checks were "a last resort" - - - - just to turn up on site and barge into somebody's home was not appropriate," (May 2000).*
> ====================
> *The former head of the national nursing home watchdog, Penny Flett, claimed public confidence had been "shattered" in the Aged Care Standard Accreditation Agency because it was unable to do its job independently of government.---- - - "The minister's style is very controlling," Dr Flett said in Perth. "She certainly doesn't step outside the rules and regulations, but the agency is not free to decide how it is going to do things." - - - - - Dr Flett's comments came as aged care groups demanded an inquiry into the agency over concerns of political interference.- - -*
> *- - - - The independence of the standards agency is under question, following revelations that John Lang, the 1998 campaign manager for the Aged Care Minister, Bronwyn Bishop, is on the board. The former board chair, Dr Penelope Flett, has also said that the agency was gagged by the minister, and was not independent enough. - - -*
> *This might explain the defensive, siege mentality reporters have come to expect of the agency. - - - - And this week the Opposition alleged in Parliament that at least one operator, Yagoona's long-time proprietor, XXXXXX, had received favourable treatment because of her support for the Liberal Party. (June 2001)*
> ====================

[5] The Accreditation and Complaint Processes Australian Nursing Homes https://www.bmartin.cc/dissent/documents/health/nh_accreditation%20.html

> *Staff from the Belmore Nursing Home, Chow Cho-Poon Nursing Home at Earlwood, Hume Nursing Home at Greenacre and the Wallgrove Nursing Home at Lakemba will demand A Fair Share For Aged Care by wearing pink outfits. - - - This is the traditional colour of good health.- -*
> *- -- - Wallgrove Nursing Home's director of nursing, Christine Christie, who has been a nurse for 28 years, said nurses had been lumbered with more paperwork under the accreditation system introduced by the Federal Government in 2000. - - - - She said this was having a negative impact on the amount of time nurses got to spend with patients. - - - -*
> *-------- "The critical issues nurses face every day include a chronic nursing shortage, a lack of recognition through fair pay and no time for real nursing," Ms Christie said. "We have so much paperwork to fill out now. - - We have to write a 12-page plan for each of our residents which reflects the type of care they get but by the time we fill out the reports, we have no time to give them the care described in the plans.- - - -*
> *- - - - "I love working with the frail and aged and getting the chance to listen and learn from them. But now anyone becoming a frail aged care nurse would become extremely disillusioned because of the amount of paperwork and fleeting amounts of time we actually get to see the residents." (November 2002)*
> *====================*
> *Enraged aged-care staff have told the Herald Sun the accreditation system is a farce, with homes hurriedly employing extra staff, changing menus and improving cleaning standards before inspections. (March 2004)*
> *====================*
> *UNETHICAL Queensland nursing homes were easily rorting a system designed to monitor standards of aged care, whistleblower staff and former accreditors claim. - - - - - Nurses at several Queensland homes have told The Courier-Mail that supervisors asked them to change records and claim training they never received to fool teams working for The Aged Care Standards and Accreditation Agency. -----------To beat the system, extra equipment and staff are added before visits and supervisors coach staff on answers, and roster off staff that might give negative answers. -------------- One former nursing home care worker, who asked not be identified for fear of being blacklisted by employers, said The Courier-Mail's story only touched the tip of corruption within the aged care sector. - - - - -During the accreditation of her home, 10 extra staff were rostered, with extra cleaning duties. Menus were changed and residents received extra baths to impress family members, he said. - - - - - But after accreditation, residents were sometimes left in their beds for two weeks at a time, resident belongings were stolen, and staff ignored the buzzers of residents they didn't like. - - - The nurse, who formerly worked in a NSW prison, said she saw better care for prisoners. (Sept 2004)*
> *====================*
> *Or as a veteran aged-care industry insider who is contracted to conduct audits for the agency puts it: "They are very keen on you supplying reports of homes that are done in the correct font and typeface and where all the boxes have been ticked. Whether they are as concerned about the care on the ground is another thing. As long as it looks good on paper, no one can accuse them of not doing their job." (Aug 2004)*

4 The Complaints system in Australia

As was startlingly revealed in the Riverside scandal, the complaints unit was required to mediate between the complainant and the nursing home. A serious complaint did not result in surprise visits. The home was consequently in a position to alter records, develop justifications, hide evidence, deny what happened and put pressure on staff, the resident and the family to drop the matter.

When the Ombudsman issued a critical report, the minister's department delayed its release while they tried to have it watered down.

Press extracts:

> *THE Commonwealth Ombudsman has attacked the Federal Government's aged care complaints resolution process. A report prepared by the Ombudsman is due to be handed to Aged Care Minister Bronwyn Bishop and the Secretary of the Department of Health and Aged Care Andrew Podger. ---------*
> *----------Deputy secretary Mary Murnane (the agency) told the hearing (Australian senate) the emphasis was now on officers erring on the side of seriousness when evaluating a complaint. - - - - - - - - She said she had had many conversations with the Melbourne staff since then to try to understand why they had not recognised the seriousness of the complaints. (May 2000)*
> ====================
> *According to staff in the ombudsman's office, the report's release has been repeatedly delayed because of the department's objections to criticisms made by the ombudsman, Ron McLeod.*
> *---- - - He initiated the inquiry last February after receiving complaints about the resolution scheme, including its inordinate slowness. (Ombudsman Muzzled 23 July 2000)*
> ====================
> *In the wake of the kerosene baths scandal, an investigation by the Commonwealth Ombudsman has found federal public servants running the scheme were confused and did not know how to deal with complaints. There was little guidance as to when they should be referred for further investigation and incidents of assault and harassment were given as examples of "urgent" complaints but not health care matters. The report also found:*
>
> - *A lack of information on the complaints scheme for the public and poor staff training.*
> - *Poor record-keeping of past complaints.*
> - *A lack of surprise nursing home inspections when serious complaints had been made.*
> - *A potential lack of impartiality in some areas of the complaints scheme. (25 July 2000)*
>
> ====================
> *The ombudsman's damning report found the department had written off Ms A and another witness as "serial complainants". But the ombudsman found both were credible witnesses, and concluded the complaints procedure failed to rectify cases of neglect. (25 July 2000)*

This was only the first time the complaints system failed. It had more problems later.

5 The Ageing Bonanza

At the same time as this was happening the market was enthusing about the opportunities for them as the wealthy aged. We described *"its wildly enthusiastic response to the opportunities presented by an aging population"* on a web[6] page 'The Aging Bonanza '

We include some quotes below. The sources are referenced on the linked web page.

> *Listed Australian companies with sizable funds management arms include the four major retail banks, St George, AMP, Macquarie Bank, Perpetual Trustees and insurers such as Axa Australia Pacific. ---------The volume of people approaching retirement means that post-retirement savings will grow by a compound 18.2 per cent to $208 billion by 2010 as retirees draw down their superannuation, says Rice Kachor (Ageing Bubble Redraws Map For Investors December 2001)*
> ====================
> *Consolidation has started to wash through the age-care sector with large players, such as Regis and DCA Group (which has a majority stake in the Amity Group) steadily chewing up more of the total pie. - - - - This in turn has sharpened practices within the sector and apparently caught the eye of several institutions that, according to some of the larger nursing-home operators, are showing increasing interest in taking large stakes in the proceedings. Furthermore, ambitious new players, such as Bridgewater Lake Estate Ltd, are emerging to help pry open the arena to public investment.*
>
> *- - - - - - "Age care offers good diversification away from standard asset classes because it's driven by completely different fundamentals," says Mark Wist, director of independent group Property Investment Research.- - - - - - Those public companies that have already taken the plunge claim to be reaping rewards. (Nov 2003)*
> ====================
> *The retirement and aged care market is probably the most overlooked sub sector in health care. With an aging population, we believe that it will be the next fad for the sector. Currently, Primelife Corporation is the only pure player, but has struggled to be considered as investment grade. Other players have begun to emerge, such as DCA Group. However, at the moment no clear jewel is present. (Nov 2003)*
> ====================
> *Investors are beginning to see the ageing population as a market offering them the Midas touch, James Dunn reports - - - - THE ageing of the Australian population is not only a demographic phenomenon: it has the appearance of the economic equivalent of seismic shift. (Feb 2004)*
> ====================
> *But for investors, there's perhaps another way of looking at it. Which are the stocks that ought to benefit from these inescapable economic trends? Whose business models are underpinned and boosted by a population that lives longer in retirement? (Grey Power Can Line Your Pockets April 2004)*
> ====================
> *Ramsay Health Care's managing director, Pat Grier, happily acknowledges that "aged-care services have been the ugly duckling of the health-care sector to date". Bedpans, rubber gloves and incontinence pads hardly capture the imagination of even the most cynical blue-chip investor. But, as many of the players in this industry start nudging retirement themselves, the ugly duckling is turning into a golden goose. What was once regarded as a defensive investment zone is turning growth sector. ---- -----*

[6] The Aging Bonanza - Business View in Australia. Corporate Medicine web site 2006 http://www.corpmedinfo.com/aus_age_bonanza.html

> *--------Next year, the first of the baby-boom generation will hit 60. By 2011 they'll start turning 65, a point beyond which the Productivity Commission says health-care spending per head of population rises to nearly four times that of younger Australians.------- But it is not just that there are more people getting older. There are more people getting richer, too. ABS figures show the median weekly income for those aged over 60 rose 32 per cent in the five years to 2001. - - - - In the same time frame, the number of people aged over 60 in the highest income bracket of $1500-plus per week more than doubled to 47,025. This trend is forecast to continue.- - - - ----------- A startling estimate in the recent Productivity Commission draft report on ageing is that total expenditure on health as a proportion of GDP is expected to nearly double in the next 40 years to between 16 and 20 per cent that's about the current size of the whole residential housing sector. - - Investment bankers and health-care providers alike are predicting the boomers will do for aged care what they have already done for the nation's coastal real estate. ('Rich Pickings' March 2005)*
> ====================
> *But the smart folks at Macquarie are not the first to notice that the developed world is ageing. Ramsay Health Care, DCA Group and Babcock & Brown vehicle, Prime Life, have all piled into the business in Australia and internationally there is plenty of competition too. (March 2005)*
> ====================
> *THE ageing population and how we are going to deal with it is receiving a lot of attention of late. And so it should the Australian Bureau of Statistics predicts that the over-70s age group will double over the next 40 years to represent 18 per cent of the population. - - - - As a savvy investor, this presents a remarkable opportunity to target the providers of goods and services for these ageing Australians, particularly in the areas of retirement living and health care. (April 2005).*
> ====================
> *But for investors, there's perhaps another way of looking at it. Which are the stocks that ought to benefit from these inescapable economic trends? Whose business models are underpinned and boosted by a population that lives longer in retirement? (Grey Power Can Line Your Pockets April 2004)*
> ====================
> *KPMG demographer Bernard Salt says the 4.1 million baby boomers approaching retirement will be "rapacious consumers". (July 2996)*

While comments like this also referred to caravans and travel, the comments show that aged care was not seen differently. The focus would soon turn away from care to building palatial facilities to attract the wealthy and *'hotel services'* became the key to success. It would not be long before many were suggesting a *'travel adviser style service'* to help the elderly choose their nursing homes.

The enthusiasm and expectations were obvious. This would put huge pressures on the regulators when these companies needed to bend the rules and ignore our values to make the expected profits. The regulators were also put under pressure to do some bending too – and did so.

6 Problems would soon develop

But all was not as it seemed. DCA had invested large amounts in building an empire but had not factored in the cost of skilled nursing or government's unwillingness to pay for it. The nursing unions were resisting staff cuts. DCA was not doing well financially. Banks and private equity did not invest as the government wanted because they realised they would not be able to control their major cost - nursing.

Howard appointed economist Warren Hogan to carry out a review. Hogan found that some providers were making much more money than others and were performing equally well with the accreditation process. He did not examine their staffing levels or realise how deeply flawed the accreditation process was. Hogan's report blamed the difference on inefficiency and urged greater efficiency.

In 1997 this government had met with and been impressed by a very successful and charismatic US aged care businessman who claimed that care was very inefficient confirming free market beliefs. He insisted that you did not need trained nurses to do many of the nursing talks. He believed that, given a free hand the market world soon fix this.

But his company, which planned to enter Australia was already in trouble in the USA. A probity review in Victoria was supplied with information and found its conduct unacceptable. It entered bankruptcy in both countries and his own company fired him. But belief trumped evidence yet again and politicians liked those ideas as they reinforced belief.

Government would have understood DCA's plight and seen the unions insistence on unnecessary trained nurses as the problem and as an explanation for Hogans findings. They came to the rescue in 2005 and passed work choices legislation, which markedly reduced the power of the unions. Banks and Private equity invested. Staffing continued to fall. Press reports of failures grew in number and by 2010 the situation was so bad that another economist and the Productivity Commission were asked to investigate it.

What happened is described in Appendix D.

7 More on that web site

Note The Corporate Medicine web site gathered a large amount of data about ageing and aged care in the USA and then Australia during the early 2000s. The pages have not been updated since 2011. Our knowledge has increased and so some opinions have changed since then.

Australia:

- **Markets and the Aging Bonanza** is the root page introducing the Australian aged care sector http://www.corpmedinfo.com/aged_aus_intro.html
    - **NURSING HOMES INTRODUCTORY PAGE** root page introducing the nursing home sector http://www.corpmedinfo.com/nh_intro.html
        - **From humanitarianism to markets - Not for profit nursing homes** describes what happened to nonprofits **-** note at the time BUPA was mistakenly viewed as a not-for-profit who had lost its way. http://www.corpmedinfo.com/nh_notforprofit.html
        - **FOR PROFIT NURSING HOME COMPANIES** access page with links to analyses of the companies and describing their failures http://www.corpmedinfo.com/nh_comp.html

USA:

At the end of the 1990s the USA was in the midst of a nursing home crisis with multiple failures. The pages were written in the early 2000s, describe what was happening. They examine the conduct of the big aged care companies in the USA

- **AGED CARE & NURSING HOMES -** the entry page for US nursing homes http://www.corpmedinfo.com/access_aged.html

Appendix D:

Persistent Regulatory failure

In this document, we start by looking at what we said about regulation and regulatory failure over the years and then bring what we have said in our recent submissions together using a succession of extracts.

June 2023

Table of Contents

1 Summary 2

2 Summary of submissions: 2005-2011 3

3 Summary of ACC Submissions: 2011-2016 12

4 ACC Submissions: 2017-2022 16

5 The Regulatory Process in a failed market 19

5.1 Data – a broken promise 20

5.2 Regulatory Capture 23

5.3 Detecting failures in care 25

5.4 Data and the Accreditation process 29

5.5 Quality Agency assessments 30

5.6 Complaints handling 39

5.7 Conclusions 40

6 Final Proof 45

6.1 Lessons from Pennsylvania 47

7 Conclusion 50

1 Summary

This appendix deals with the ongoing problems in regulations by using extracts from our submissions between 2005 and 2016 and short notes to describe what was happening while focusing on the problems and failures in regulation.

By 2016 the sector was coming apart and the senate set up an inquiry into staffing. We gained access to Australian aged care staffing data for the first time and were able to show how poor they were when compared with the USA. The senate inquiry into staffing, the subsequent taskforce, several subsequent investigations as well as the Royal Commission all ignored or rejected the data.

The system fell apart after 2016 and we wrote numerous submissions to multiple inquiries and then to the Royal Commission. In these we collected data that showed just how badly regulation had been failing and how intractable it was. We used selected extracts form some of these documents to show exactly what was happening. We concluded that *"adverse information about aged care was more threatening to the regulators than to the public"* and that the regulator *"has played a pivotal role in ensuring that the aged care system would not work and that the elderly would be harmed".*

2 Summary of submissions: 2005-2011

Aged Care Crisis (ACC) and its members have been making submissions to inquiries since 2005. In our more recent submissions, we have drawn all this information together and offered insights into what was happening suggesting how the flaws in the system and so in regulation might be addressed. We select key features in the outlines below.

2005 Submissions:

ACC Submission to Senate Inquiry into aged care: Quality and equity in aged care[1]

Staffing was already a key problem and the heavy burden of the accreditation process was interfering with care. We gave examples and concluded:

> *What an indictment of the system if we allow this non-clinical load to take staff away from the bedside. Surely we are not going to banish to the history books sitting with someone and providing comfort if they are scared, or in pain?*

In addressing accreditation, we quoted a nurse:

> "... When accreditation was introduced, I thought at last the residents would have the quality of care they deserved and were entitled to. How wrong could I have been - it was a total farce:
>
> - the nursing home hired an expert to bring them up to standard so they'd pass;
> - equipment was hired for the duration of the inspection;
> - the medical trolley was fully equipped with new bandages, gloves, etc, (but most of these were for show – we were under strict instructions not to use them and if so, only sparingly otherwise we were lectured severely).
>
> This was all so appalling. Accreditation was going to change nothing and we were basically lying. Having worked there for 18 months I had to quit for I couldn't be a part of this charade."

We considered that *"Secrecy, power and control appears to be predominant features of a system which purports to care".*

We ended with 25 accounts from staff and residents/families describing what was already happening in nursing homes and being overlooked by the regulator. This was before the Howard government's work choices legislation reduced staffing even further.

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[1] ACC Submission to Senate Inquiry into aged care: Quality and equity in aged care https://www.agedcarecrisis.com/images/subs/sub243.pdf

2007 Submissions:

ACC submission to Aged Care Amendment (Security and Protection) Bill 2007[2]

We stressed the inadequacy of the planned legislation for dealing with the situation that already existed.

Submission by JMW to the Inquiry into the Private Equity Investment and its Effects on Capital Markets and the Australian Economy 2007

This submission starts with a warning:

> "This submission asserts that the explosion in private equity will potentiate and exacerbate serious problems existing in vulnerable sectors of Australian society. It also addresses deeper problems across Australian society and the consequences for these.
>
> It urges that the threat posed by the private equity phenomenon be the trigger for a change in strategy and a re-evaluation of the direction in which we are going. It uses developments in health and aged care to illustrate the problems that already exist and the likely consequences of these new developments.
>
> Anxiety is expressed about the narrow economic terms of reference which fail to specifically invite comments about critical issues for society and its members".

In its August 2007 report, the committee rejected the arguments made and the warning. Only one month later, the *New York Times* exposed what was happening in aged care companies that had been acquired by private equity, how it had impacted on staffing and how much more difficult this had made it for regulators[3]. The commercial pressures and the strategies to avoid regulatory effort and paying taxes were markedly intensified. Private equity became a huge problem in aged care in the USA, the UK and then in Australia[4].

2008 Submissions:

ACC Submission to Aged Care Amendment (2008 Measures No. 2) Bill 2008[5]

We had hoped that a change of government would finally see problems addressed. The submission stressed the importance of assessing owners prior conduct because of their control stating:

> "The importance of the owners to the system is well illustrated by the revelations, in 2007, in the USA, that the acquisition of nursing homes by private equity has been associated with a decrease in staffing and deterioration in care"

and concluding:

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2 ACC submission to Aged Care Amendment (Security and Protection) Bill 2007 https://bit.ly/3XpHIe0

3 At Many Homes, More Profit and Less Nursing New York Times 27 Sept 2007

4 Private Equity Inside Aged Care 2015/18 https://bit.ly/2l4AcDU
See 'Aged Care failures in the UK' on web page 'Aged Care failures' Inside Aged Care 2015 https://bit.ly/2Mj9lAu
ACC Response to 2nd Question by Senator Dean Smith: in Response to Questions on Notice during hearing on Aged Care Legislation Amendment (Financial Transparency) Bill 2020 24 May 2021 https://bit.ly/4499AF7
ACC Letter 31May 2021 to Senate Standing Committees on Community Affairs inquiry into Aged Care Legislation Amendment (Financial Transparency) Bill 2020 https://bit.ly/3JmQyDe

5 CC Submission to Aged Care Amendment (2008 Measures No. 2) Bill 2008 https://bit.ly/2thKM14

> "The Aged Care Crisis Team is of the view that caring for frail, older people is a collective responsibility which guards and protects the welfare of one of the most vulnerable groups in our society. This view of collective responsibility is at odds with current policies whereby aged-care services are open to the market economy, and frail old people become customers who, in theory, but not in reality, are able to pick and choose from a range of commercial providers. We therefore deplore the current move towards placing the well-being of our family members at the mercy of market forces".

JMW separate submission to the Senate Community Affairs Committee re Aged Care Amendment (2008 Measures No. 2) Bill 2008[6]

A new government and promises from the minister were very encouraging but if those intentions were real, then something happened to those good intentions along the way because it was a damp squibb:

> "To understand what has happened and how we can fix aged care we need to clearly understand what has happened, where we have gone wrong, how bad the situation is and the personal and social processes that have made it so bad".

And

> "(We have) made a more realistic assessment of where we are today and the possibility of moving to something better without disrupting the system we have and harming residents. - - -(regarding) the changes proposed to the approved provider process – my impression is that the bill falls short of the promises suggested in the minister's press release. - - - - If my reading of the explanation is correct, the bill falls well short of what is required. - - - - - concern at the failure to properly address the un-sustainability and recurrent failures in accreditation, and in resolving complaints - - - -noted the failure to deliver on the governments promise of real transparency - - - disappointment at the failure to adequately address the critical problem of adequate staffing ratios- - - - - This bill is potentially an important first step in addressing the major paradigm conflicts that sap the system and undermine it. I was not persuaded that it did so adequately."
> --------------------
> The problems in aged care should be understood from within the wider context of social processes at the time when legislation was passed. Change should be informed by a realistic analysis of how we came to where we are and why we should not be here at all"
> ---------------------
> The failures in the USA and Australia are because we have not properly analysed or learned the lessons of 20th century history and applied them to aged care. To move forward we need a realistic grasp of what has and is happening"
> --------------------

> **I would like to suggest that much of the accreditation and complaints processes be progressively moved into the local community and into the nursing homes. The current accreditation and complaints bodies should**

[6] JMW Submission to the Senate Community Affairs Committee re Aged Care Amendment (2008 Measures No. 2) Bill 2008 https://bit.ly/2oS1NKb

> **act as coordinators, supervisors, trainers, overseers and collators of information ensuring that it is working properly.**

2009 Submissions:

ACC Submission to the Review of the residential aged care accreditation process[7]

It is interesting that none of the submissions nor the report of this departmental review were ever made public. When the 2010 Productivity Commission was asked to delay its closing date until after the report was available so that those making submissions would be informed by its conclusions, it refused to do so. It's not difficult to imagine why.

> *"We receive much feedback on accreditation issues. The tenor of the feed back indicates a high level of community concern. Many family members and carers believe that accreditation teams often miss critical health and care issues, and are deeply concerned about the standard of care provided to family members*
> *--------------------*
> *Until it is recognised that the accreditation process (as it now stands), and the ability of a facility to deliver compassionate and professional care to residents, are two fundamentally different things then aged care will remain in the chaotic state that it is already in.- - - - -*
> *--------------------*
> *- - - - (the Agency) as it is currently structured, has two conflicting roles. It has a regulatory function and an educative function. These two roles are not compatible. - - - - some facilities prepare for site audits or assessments with the help of outside contractors - - - a conflict of interest - - - - one consultancy, whose core business is in providing "quality and legislative compliance services", openly markets it's links as an assessor, advertising it's experiences as an assessor with the Agency. - - -*
> *--------------------*
> *- - - - most common criticism received by the ACCT of the current accreditation system relates to its undue emphasis on documentation - rather than what is actually done. - - - - - numerous complaints from aged-care workers and from the families of residents about the extensive notice given to providers prior to a site audit.- - - the lack of consistency in the audit."- - - - - The pool of trained staff to monitor and assess aged-care homes comes from within the aged-care sector and from aged-care bureaucrats – generally middle level professionals*
> *--------------------*
> *It is time now for the reform of aged care. The solutions required are not rocket science- - - -they include acknowledging that the care of vulnerable people at the end of life is a responsibility that belongs to all of us.*

[7] ACC Submission to the Review of the residential aged care accreditation process https://www.agedcarecrisis.com/images/subs/acc_sub_review_accreditation.pdf

JMW Submission to the Review of the residential aged care accreditation process 2009[8]

The covering email expressed the hope that it would *"stimulate discussion that moves beyond patching the present system".* The submission indicated an intention to *"critically examine what has happened to the nursing home sector over the last 12 years and to identify what appear to be key and very fundamental problems not only in the whole sector but particularly in the accreditation and complaint handling processes. It is clear that there is insufficient information and that the accreditation and complaints processes are not working for the community".*

It identified four key problems:

1. The disenfranchisement and disempowerment of the community
2. Conflicting roles for the agency.
3. A failure to collect useful information
4. An almost total lack of transparency

It is suggested that the key to redesigning accreditation and complaint handling is to place the community at the centre of both processes and give them responsibility - - - - The options they (the discussion paper) canvas will do little more than tinker with the problems.

The submission described the *"disenfranchisement, distrust, disbelief and suspicion as a consequence of the lack of transparency and the unsuitable and often meaningless nature of the information that is publicly available".*

It refers to the *"exaggerated claims that are made about it."* It suggested that *"The community have been disenfranchised, disempowered and deprived of information. The accreditation and complaints system are responsible for this".* It suggested that it could be argued that it was *"set up by the government in 1997 to counter criticisms that financial pressures in the market would compromise the quality of care".*

Key reforms required include:

1. *Splitting the accreditation agency*
2. *Re-enfranchising and re-empowering the local community by placing them at the centre of the oversight and complaints processes. They must be in a position where they can mediate and negotiate outcomes with nursing homes and their owners.*
3. *Collecting the sort of information that is useful to the community, that will indicate when problems are developing long before we have a crisis, and that will form the basis for accreditation, ongoing debate and research.*

- - -- - deficiencies in the accreditation and complaints processes can be best addressed by moving the focus of both into the local communities. - - - - the market -- must accommodate to the values, norms and requirements of a balanced community when serving them. To ensure this the involvement of the broad community is essential.

Ten pages describe how a system that embraced community and worked with them could be structured and the potential benefits.

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[8] JMW Submission to the Review of the residential aged care accreditation process https://www.agedcarecrisis.com/images/subs/wynne_accredsubfinal_web.pdf

ACC submission to Complaints Investigation Scheme (CIS) (Walton Review 2009)[9]

The concerns addressed include:

> *The need for a truly independent CIS. - - - - Fear of reprisals. Complaints - - - - - Lack of timeliness.- - - - Dependence on documentation by the home as the primary source of evidence – ignoring residents accounts - - - - the extreme power imbalance - - - - Lack of transparency. - - - - Responsiveness of the CIS at first contact.*

The submission makes recommendations indicating that *“An independent, effective complaints scheme which inspires public confidence is an essential component of our aged-care system”.*

JMW Submission to Complaints Investigation Scheme (Walton Review 2009)[10]

“A very similar submission has already been submitted to the review of the accreditation agency. The problems in the accreditation agency and in the complaints scheme are similar and interrelated”.

> *Four key problems for the Complaints Scheme:*
>
> *1. The disenfranchisement and disempowerment of the community*
>
> *2. A lack of on site empathic person to person communication*
>
> *3. An excessive emphasis on process rather than resolution for the parties*
>
> *4. An almost total lack of transparency*
>
> *It is suggested that the key to redesigning both accreditation and complaint handling is to place the community at the centre of both processes and give them responsibility.*
>
> *-----------------*
>
> *The exaggerated claims from politicians and the industry must be set against the concerns expressed by the nurses, by the press and by those members of the public who have adverse experiences*
>
> *-----------------------------*
>
> *In the provision of empathic person to person communication, and in pursuing resolution for the parties rather than process the scheme fails miserably.*

The Walton Report: The report was very critical of the centralised complaints system. It advised that the complaints should be resolved locally with the providers in the first instance. It did not advise any local support for the residents and families. The residents and their families had to face and deal with the more powerful providers without any support other than the also criticised advocacy service. Following this report, the number of visits to nursing homes to investigate by the complaints system declined rapidly making the situation worse.

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9 ACC submission to Complaints Investigation Scheme (CIS) (Walton Review 2009) https://www.agedcarecrisis.com/images/subs/sub_CIS_Aug09.pdf

10 JMW Submission to Complaints Investigation Scheme (Walton Review 2009) https://www.agedcarecrisis.com/images/subs/wynne_cis_reviewfinal_web-Jul2009.pdf

Aged Care Complaints Scheme: Proposed Complaints Management Framework[11] (2011)

Lawyer Rodney Lewis (from Elderlaw) worked closely with ACC. Because of the frailty, vulnerability, age and huge costs of legal action, he has advocated for an arbitration system to be set up for resolving serious complaints and we have strongly supported this. He made a submission on behalf of ACC to this inquiry pressing for an arbitration system so that families could hold providers to account and be compensated when they were harmed. It has not happened.

2010 Submissions:

ACC Submission to Productivity Commission Inquiry: Caring for Older Australians[12] (2010)

The submission focused on:

- *Shortcomings in the current system of aged care are leading to widespread lack of confidence within the broader community.*
- *Frail older people across Australia are at risk because aged-care providers are not required to adhere to mandated minimum staff/resident ratios.*
- *Consultation with independent consumer groups on all aspects of aged care should be paramount. For too long the voice of the aged-care consumer has been neglected.*
- *We draw attention to the current reliance on the market economy for the provision of care to a significant proportion of frail, older Australians. This increasing dependence is creating serious problems within the sector. In particular, the pressures associated with cost cutting are driving many of those staff who seek to provide humanitarian and personal empathic care out of the sector.*
- *ACC asks that there be real transparency, accountability and disclosure in all aspects of aged care.*

A central focus is the conflicts of interest within the system. Professor Walton had said *"it's very difficult for the department because it has so many conflicting interests"*.

The submission then looks at what is happening across the many parts of the aged care system.

> *- - - - - deeply concerned about the conflict of interest inherent within our aged-care system -- the Department of Health and Ageing has a multi-faceted role - - - - final decisions regarding regulation and compliance ultimately rest with DOHA.- - - This issue of conflicted interest was raised as a matter of concern in Professor Merrilyn Walton's Report - - - - - The Agency, as it is currently structured, has two conflicting roles - a regulatory function and an educative function. - - - - Measuring processes – and not the delivery of care - - - Undue emphasis on documentation - -*
> *---------------------*
> *The current Complaints Investigation Scheme is the third complaints scheme - - - the current complaints scheme is as ineffective as the previous two. - - - (Issues with)- - advocacy groups - - - The Aged Care Commissioner - - - - fear of retribution ---- Private equity - - - - for-profit providers - - - building - - - - Residential aged care buildings - - - probity - - - accommodation bonds - - - Cherry picking and bounty hunting - - - staffing - - doctors – nurses -Allied health --- staffing ratios - - training - - clinical care - -*

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[11] Aged Care Complaints Scheme: Proposed Complaints Management Framework 2011 https://www.agedcarecrisis.com/images/subs/sub-cis-response-Mar2011.pdf

[12] ACC Submission to Productivity Commission Inquiry: Caring for Older Australians (2010) https://www.pc.gov.au/inquiries/completed/aged-care/submissions/sub433.pdf

> *technology - - Ageing in place - - - ACAT - - - home care- -*
> *---------------------*
> *ACC believes that caring for frail, older people is a collective responsibility which guards and protects the welfare of one of the most vulnerable groups in our society - - - Dr Michael Wynne is making a submission in regard to providing greater community involvement and participation in aged care – which we also support. - - - acknowledge Rodney Lewis, our Legal Issues Columnist, for his advice and contributions*
> *---------------------*
> *It is time now for the reform of aged care. The solutions required are not rocket science. They include the meaningful involvement of politicians and health bureaucrats with consumers and relevant health professionals.*

JMW Submission to Productivity Commission Inquiry: Caring for Older Australians[13] (2010)

This submission:

> *- - examines what has gone wrong in the care of the vulnerable aged by looking at the social dynamics and belief patterns adopted by different participants in the system – particularly in nursing homes.*
>
> *The Aged Care Act of 1997 established corporate competitive marketplace paradigms and commercial managerialism as dominant patterns of thought in aged care. These were prevailing political ideologies. As a consequence, inappropriate patterns of thought became legitimate. There have been multiple consequences of this but a number stand out.*
>
> 1. *The exploitation and misuse of vulnerable senior citizens - wrinkle ranching*
> 2. *Alienation of the work force and groups in the community.*
> 3. *The detachment of the community from their responsibility to the elderly with consequent disengagement and disempowerment.*
> 4. *The creation of oversight processes that hid the sort of information that might have exposed the new system to criticism.*

This submission proposes two core solutions:

> 1. *The proper collection and analysis of information about financing, staffing, care and quality of life.*
> 2. *Giving local communities leverage by involving them more closely in nursing home care, in the resolution of complaints, in oversight, and critically in the collection of financial information, staffing information and in measuring standards of care and quality of life*

The body of the submission sets out suggestions about how the system might be restructured in order to make it work. This was a direct challenge to neoliberal beliefs and probably to the Commissioner who has been involved in Productivity Commission inquiries that have taken a purely market based approach to human services including health and aged care:

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[13] JMW Submission to Productivity Commission Inquiry: Caring for Older Australians (2010) https://www.pc.gov.au/inquiries/completed/aged-care/submissions/sub368.pdf

It is suggested that care of the elderly is primarily a community responsibility and that the community should have a key role in the provision of aged cares services in each region.

It is suggested that the persons responsible for oversight, data collection, complaints resolution, and a number of other support and integrative responsibilities be sited locally in the communities where community and residential care are provided. These processes should be closely tied to the local community.

The employees and a community group would be structured as a local organization. The employees would work with and be jointly responsible to this group. The community group will be in a position to negotiate directly with the providers of care when there are issues they feel should be addressed and the employees would be in a position to monitor the outcome of this.

There would be a strong central representative and independent umbrella group. This would have important responsibilities and functions. Employees would be jointly responsible to this body. A central mentor and supervisor, to whom employees would report, would provide backup. Mentors would visit and supervise to be sure that oversight was appropriate and data collection uniform. The central organization would provide training. It would represent communities in negotiations with other large groups and with government.

Employees would be supported by their mentors as well as by a local community member. They would work closely with this local person who would be in a position to promptly mediate any disputes that arise locally and support the employees in their work with providers.

The central organization would collect information, collate it and make it available. It would report directly to government, to the accreditation agency and back to the communities. It would have an important roll in recommending increased support by the accreditation agency, sanctions, or closure to government. It would represent the community in matters such as the approved provider status of organizations

2011 Supplementary submissions[14] - response to the Draft Report

- ACC Supplementary Submission March 2011
- JMW Supplementary Submission March 2011
- ACC Letter to Commissioners May 2011

We were very critical of the increased marketisation recommended and the greater centralisation of regulation which would make the system more vulnerable to regulatory capture and at the same time make it easier to control information and keep it away from the public.

[14] ACC Supplementary Submission March 2011 https://www.pc.gov.au/inquiries/completed/aged-care/submissions/subdr520.pdf
JMW Supplementary Submission March 2011 https://www.pc.gov.au/inquiries/completed/aged-care/submissions/subdr568.pdf
ACC Letter to Commissioners May 2011 https://www.pc.gov.au/inquiries/completed/aged-care/submissions/subdr0902.pdf

In referring to the recommendations ACC indicated that *"we do not see how these, in themselves, will improve the quality of care for those residents who are approaching the end of life. In fact, we believe that several of the Commission's recommendations make achieving that goal even more difficult"*. The submission indicated that the claim to be *"providing increased choice and diversity, fails to give real protection and security for vulnerable frail, older people"*.

ACC also drew attention to the inquiries key terms of reference to *'... systematically examine the social, clinical and institutional aspects of aged care in Australia, building on the substantial base of existing reviews into this sector ...'* and asked why *"the Review of the Accreditation Process for Residential Aged Care, conducted by the Department of Health and Ageing did not inform the deliberations of the Commission"* A copy of our March 2011 letter calling on the commissioners to extend their review so that it would include the missing accreditation report.

JMW quoted the US critic Robert Kuttner who in 1997 wrote that *"Big money has crowded out authentic participation. Commercial values have encroached on civic values"*. In commenting on the recommendations he said *"while seeking to make the aged care system more market like it does so on behalf of the providers and not the consumers (residents and families) and customers (the local communities)"*. He indicated:

> *Unless the necessary conditions are met a market will not work. Unless the buyer has market power the market will fail to work for the buyer and society. The argument against a market in decrepitude is that the necessary conditions cannot be met. - - - - Aged care will only succeed as a market to the extent that the necessary conditions for market theory to operate can be created by restructuring the system - - - - This is a 'responsive' report as contrasted with the 'constructivist' one that was called for".*

ACC made a further submission in May 2011 after the Accreditation agency itself made a submission asserting strongly *"Is the accreditation body a regulator? – No"*. The conflict within regulation was exposed. In 2007 DOHA had clearly stated *".. Accreditation is a key component of a robust regulatory framework ... "*

The issue and the implications were examined. The agency strongly opposed the amalgamation of the regulatory bodies that the final report recommended and this was only done in 2018 when the Morrison government attempted to control the wave of unrest that would soon precipitate a Royal Commission.

3 Summary of ACC Submissions: 2011-2016

The LLLB (Living Longer Living Better) Reforms

In our view the market focused Productivity Commission report did even more harm than the 2004 review by Warren Hogan, an economist that John Howard admired. ACC were very critical of the final report but it was welcomed by the industry.

NACA: The National Aged Care Alliance (NACA), an industry dominated body, had been formed to advise government in 2000. Its constitution contained provisions that prevented members from criticising its final decisions. Two of the three bodies representing seniors were very critical of what had been happening in aged care and would not accept this. They resigned.

Council of the Ageing (COTA) was more supportive of government policies, particularly the South Australian contingent who seemed to dominate. It soon became a leading member of NACA, promoting their and government policies publicly so suggesting to the community that policies that others criticised had community support. It was funded by government to engage with the community and get their feedback on reforms. Critics were drowned out.

LLLB reforms: After the During the 2011 Productivity Commission report NACA and COTA designed the Living Longer Living Better (LLLB) reforms based on the Productivity Commission's report. COTA proudly claimed that they had persuaded the then minister Mark Butler to adopt their model, one member commenting that *"A lot of work went into Mark Butler"*.

At a parliamentary hearing, COTA's CEO strongly urged parliament to adopt the reforms and then gave a speech at the National Press Club promoting the new reforms titled *"A time bomb is ticking'*. It certainly had been since 1997 and these new policies lit the fuse. ACC was very critical of the LLLB reforms and the report on which it was based.

When Mark Butler was given a senior position as Shadow Minister in 2021, we realised that Labor was unlikely to address the problems in the system. We wrote an article describing what happened in 2011/12 and the consequences of that[15].

Care deteriorates and keeps deteriorating

As we had predicted in our press releases, there were soon many more press reports describing poor care and nurses working for the Department of Health examining payments, blew the whistle and spoke out about the way they were told to look the other way when they encountered fraud. It was not their money. It is clear, in retrospect that there is nothing unusual to the shocking way critics within the Robodebt scheme were treated. This is how people whose illusions rely on being wilfully blind behave.

We wrote a strong letter to Minister Butler.

2012

Letter to Mark Butler[16] (21 August 2012)

> *The consequences were graphically described on ABC Lateline the same evening. - - - These allegations are so serious that anything short of total transparency is now unthinkable. - - - We are worried that overzealous but dedicated staff in previous ministers' offices- - may have applied pressure on the Department to gloss over financial and quality of care issues. - - - the Department can ignore and override rulings by both the Aged Care Commissioner and the Ombudsman*

We referred to a copy of a letter we had complaining of this:

> *No one can blame Mr ZZZZZ if, when he finds out that government legislation permits the Department to override those appointed to review its decisions, he concludes that the current legislation was designed to keep a lid on what the Government knew was happening in aged care - and that the new recommendations from the Productivity Commission would make it easy to do the same.*

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15 Why the appointment of Mark Butler as Shadow Minister for Health and Ageing is significant 2021 https://www.agedcarecrisis.com/opinion/articles/453-why-appt-of-mark-butler-is-significant

16 Letter to Mark Butler (21 August 2012) https://www.agedcarecrisis.com/images/pdf/let_mb_21aug2012.pdf

We wrote *"on behalf of all Australians we demand"*. The list of twelve demands included:

> *- - - total and radical overhaul of the aged care system - - - - - the seriously-flawed recommendations of the Productivity Commission be radically restructured - - (particularly) - - all of the pieces of the aged care system be under the umbrella of a single organisation be scrapped. This lends itself to ongoing cover-ups*

The Abbott government. The Productivity Commission report and the LLLB reforms set the stage for the coalition Liberal/National government (with Ministers Morrison and Fifield in charge of aged care) to drive free market policies far more energetically.

Elsewhere we have described the appointment of COTA's 'reform officer' as the official aged care advisor to government and the creation of the Aged Care Sector Committee (with NACA and COTA dominating) to advise government.

A market based 'Aged Care Roadmap' was developed and supported by NACA and COTA, as was a "Red Tape Reduction" program which radically reduced oversight and regulation even further.

The sector was considered to be an immature market and fragmented[17]. Additional funding drove a competitive consolidation model. Analysts predicted that the number of providers would be halved in six years and then halved again in the next ten. In a frantic effort to survive and grow providers boosted income by rorting the funding system[18], reduced costs and entered debt in a takeover frenzy. The pressures on costly staffing increased ~~increased~~.

When Turnbull replaced Abbott as Prime Minister, he stopped the rorting and reduced funding so putting an end to the frenzy of takeovers. But it was much too late and the companies now too indebted so this made the situation worse. He was replaced by Morrison, who was, as we now know, incapable of addressing the issues. The momentum was unstoppable and he eventually called a Royal Commission in 2018.

Further Submissions

During this period Aged Care Crisis continued to make another eleven submissions to state and federal inquiries into aged related matters pressing many of the same issues including empowering community. There are links on our publications page[19].

Significant submissions included the Productivity Commission's 2016 Inquiry into Human Services. This had been promised by Abbott and was called to identify additional human services that would benefit from competitive restructuring. We were critical of the agenda and made the point that community involvement was considered to be essential for indigenous and other special groups, but it was being denied for the rest of Australia – all those sectors where the big profits were made.

By 2016, the sector was coming apart and the opposition dominated senate set up the Workforce inquiry.

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[17] Aged Care Roadmap Inside Aged Care 2016 https://www.insideagedcare.com/introduction/aged-care-roadmap

[18] Consequences of marketplace thinking Inside Aged Care 2016 https://bit.ly/46g9FbV

[19] Publications Aged Care Crisis https://www.agedcarecrisis.com/publications

Future of Australia's aged care sector workforce inquiry[20,19]

We made a detailed submission addressing all the issues related to staffing in depth supporting it with three attachments (see ACC Publications web page). During the hearings a senior member of StewartBrown who had previously been CEO of the aged care lobby group LASA responded on social media to claims of poor direct care staffing by quoting direct care figures that closely approximated those in the USA that we had studied.

Australian staffing data becomes available: We were aware that the Accreditation Agency had been collecting staffing data but not publishing them but did not know that StewartBrown were collecting financial and staffing data from a large number of providers and using it to set staffing benchmarks, advise providers and lobby government on their behalf. Two charts in their June 2016 report were labelled 'Direct care' and the one chosen was not direct care, the one not chosen was.

We challenged them on this but they would not acknowledge an error. We warned the senate committee. We now had data that we could compare directly with the USA figures we were aware of. These showed.

The minimum safe level of direct care nursing recommended in the USA after years of research was 4.1 hours per resident per day (hprd). StewartBrown's benchmark that providers aspired to was only 2.9 hprd. The US figure was similar to a study done in Victoria in 1985 (allowing for changes in acuity) as well as figures developed by a union funded study in South Australia during 2016.

When the figures were compared, on average, US nursing home residents received twice as much care from trained nurses as Australian residents and a third more direct nursing care overall. Australian nursing care could not be safe. We later discovered that Pennsylvania was dividing staffing into five levels based on numbers and skills to help citizens choose. Over half of Australia's nursing homes fell into the lowest group described as *'dangerously low'*. There could be no doubt about what was happening in Australia. There were still many problem nursing homes in the USA so we must be much worse.

The senate inquiry was interrupted by the 2016 election and the new senate committee allowed more submissions to be made and we were one of the few who did so.

In our 28 Nov 2016 **'Future of Australia's aged care sector workforce - Supplementary[20] submission'** we challenged StewartBrown's claims and then charted the large staffing differences between the USA and Australia. We also charted and referred to the many US studies showing the large differences in staffing levels and failures in care between for-profit and not-for-profit ownership as well as the degree of corporatisation. The figures were much the same as those that the Royal Commission's own commissioned research by Professor Eager's team and Wollongong University obtained in 2020.

Denial triumphs: The figures were not included in the senate report and we discovered that they had decided not to consider the extra submissions after the election – we wondered why! The government set up an *Aged Care Workforce Taskforce* under a leading business figure and we were invited to one of the first public meetings to address staffing. We spoke to him personally and sent him the figures.

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[20] Future of Australia's aged care sector workforce inquiry 2016 Senate Standing Committees on Community Affairs https://www.aph.gov.au/DocumentStore.ashx?id=2359e1e8-fc7f-49b9-a8b1-8ea6f2abab96&subId=414405
For Appendices see[19] For Supplementary submission see https://www.agedcarecrisis.com/images/pdf/sub302ss2_ACC.pdf

No figures at all were presented at the meeting to discuss our staffing problem. We challenged this and were not invited to subsequent meetings. The taskforce report did not give any figures either.

These figures appeared in the majority of our subsequent submissions to inquiries but were largely ignored.

As every whistle blower soon discovers the way believers address those who challenge, is to attack and discredit them. We wonder if the Royal Commission was more divided from the very beginning between believers who did this and the more objective who wrote their damning Interim Report. We understand that it was government that appointed the counsel who supported the Royal Commission.

We were contacted by the Royal Commission and asked for a statement before their first meeting in early 2019. We were critical and pressed for greater community involvement. We also supplied all of the staffing charts showing what was happening. In a telephone conversation counsel challenged our credibility and refused to accept the data as valid. We wonder who he consulted.

4 ACC Submissions: 2017-2022

The regulator exposed:

This was the period when the system came apart. The Oakden scandal at the end of 2016 showed how government regulators and advocacy services had walked past and fully accredited this facility over a 10-year period during which residents were neglected and abused. The number of failures in care was increasing and the press was exposing what was happening. When ABC Four Corners announced a two-part expose of aged care in 2018, the Prime Minister set up the Royal Commission.

By now we were becoming more analytic and learning more from what others were saying about what was happening. Our submissions had greater depth and explored the nature of the social pathology responsible. It opens a wider window of insight. They said many of the same things so we will address the regulatory issues and use the submissions as a resource. It was clear that the regulatory system was a major problem and we write about it in more depth.

We list the major inquiries.

2017 Submissions:

Single Aged Care Quality Framework (a departmental review): Accreditation staff and advocates had been walking past appalling care and neglect for years and had not looked at what was in front of them - poor food, malnutrition, pressure injuries and more.

Instead of addressing the structural issues responsible for this sort of behaviour the department decided to focus on the standards themselves and tightly controlled the format for responses. The standards were tinkered with and reduced from 44 to only eight claiming improvement. It was a distraction. We responded and criticised as best we could.

Responses to the revelations from Oakden in 2017:

- ACC Submission[21] to Review of National Aged Care Quality Regulatory Processes (2017) (Carnell/Patterson Review) -- (RNQRP&Pages) - A government appointed review.
- ACC 1st Submission[22] to Senate Review into the 'Effectiveness of the Aged Care Quality Assessment and accreditation framework' (Aug 2017) (EQAAF1&Pages)
- ACC 2nd Submission[23] to Senate Review into the 'Effectiveness of the Aged Care Quality Assessment and accreditation framework' (Dec 2018) (EQAAF2&Pages)

2018 Submissions:

ACC Submission[24] to the Inquiry into Quality of Care (QOC) in Residential Aged Care Facilities in Australiaby the House of Representatives Standing Committee on Health, Aged Care and Sport (QOC&pages)

'Community managed aged care' Attachment[25] to ACC Submission to the Inquiry into Quality of Care (QOC) in Residential Aged Care 2018 (QOCAtt&Pages)

In this we critically examined the recently released reports on Oakden including their findings and recommendations as well as what was revealed at a senate hearing. We addressed their failures arguing that the Community based system that we were advocating would have been far more successful

In this attachment we described our journey as an advocacy group (QOCATT page 93-114) and then later we briefly summarise the thrust of seventeen of the submissions that we made between 2005 and 2017/

While the Royal Commission's own review of the inquiries over the last 23 years done in 2020 described how ineffective they were, it made no attempt to analyse the reasons for this and nor did the Royal Commission itself. As a consequence. it made the same mistakes. We had done so and criticised them in several of our submissions.

ACC Submission[26] to Senate Inquiry into the Financial and tax practices of for-profit aged care providers June 2018 (TAX&Pages)

Supplementary Submission[27] to Senate Inquiry into the Financial and tax practices of for-profit aged care providers July 2018 (TAXSUP&Pages)

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[21] ACC Submission to Review of National Aged Care Quality Regulatory Processes (2017) (Carnell/Patterson Review) https://www.agedcarecrisis.com/images/pdf/Attach_RNQRP.pdf

[22] ACC 1st Submission to Senate Review into the 'Effectiveness of the Aged Care Quality Assessment and accreditation framework' (2017) https://www.agedcarecrisis.com/images/pdf/sub41_ACC.pdf

[23] ACC 2nd Submission to Senate Review into the 'Effectiveness of the Aged Care Quality Assessment and accreditation framework' (2018) https://www.agedcarecrisis.com/images/subs/sub41ss_ACC.pdf

[24] ACC Submission to the Inquiry into Quality of Care (QOC) in Residential Aged Care Facilities in Australia[1] by the House of Representatives Standing Committee on Health, Aged Care and Sport https://bit.ly/horsub90

[25] '**Community managed aged care'** Attachment to ACC Submission to the Inquiry into Quality of Care (QOC) in Residential Aged Care (2018) https://www.aph.gov.au/DocumentStore.ashx?id=04bdb6a4-52ac-4ac7-bd62-731b235f3abf&subId=564157

[26] ACC Submission to Senate Inquiry into the Financial and tax practices of for-profit aged care providers June 2018 https://www.agedcarecrisis.com/images/subs/32-AgedCareCrisisInc.pdf

[27] Supplementary Submission to Senate Inquiry into the Financial and tax practices of for-profit aged care providers July 2018 https://www.agedcarecrisis.com/images/subs/32_supp1.pdf

2019 Submissions:

Why aged care is failing: An analysis of the history of aged care and proposals for change Oct 2019 (RCAn&Page numbers)

Our first submission to the Royal Commission was a short one addressing the terms of reference and other guiding questions supplied by the Royal Commission. The submission stressed the importance of structural change and the need for greater community involvement and empowerment if the problems were to be addressed.

We had prepared this additional in depth analysis of the aged care system and the issues involved over the previous few months and we attached it to this submission. I t was 419 pages and listed almost 700 sources. Neither the submission nor the analysis were published but in the discussion below we quote from it. Because some issues were examined in greater depth, we have quoted from this more often but the same issues were addressed across the other submissions.

2022 Submissions:

Submission[28] responding to the Independent Health and Aged Care Pricing Authority (IHACPA) inquiry into AN-ACC funding 'Towards an Aged Care Pricing Framework Consultation Paper (AN-ACC&pages)

In this submission we examined the way that large health care corporations followed the money when Activity Based Funding was introduced into health care in the USA in the mid to late 1980s. They targeted more vulnerable sectors and many were harmed. We then looked at aged care in Australia. We showed how vulnerable our system and our regulations are to this sort of increased financial pressure. The market follows the money.

Our publication page lists another seven inquiries in 2018 and 2019 that we responded to. There were more in 2020 and 2021 as the government tried to jump ahead of the Royal Commission and states addressed issues like the Earle Haven scandal. We also responded to many Royal Commission discussion papers.

List of Royal Commission submissions and letters by ACC:

- **8th October 2019*:** Responding to terms of reference and to questions put to witnesses. **Attachment*:** Why aged care is failing: An analysis of the history of aged care and proposals for change (419 pages 697 references)
- **28 October 2019*** : We examined the problems created by inappropriate and conflicting paradigms by addressing the Melbourne hearing into staffing issues and the Research Paper prepared by Professor Eager.
  Attachment: Correspondence with Professor Pollaers and members of industry bodies
- **6 December 2019:** Workforce submission describing structural issues in the system responsible for poor staffing
- **8 January 2020:** Letter to Commissioners re privatisation of ACAT services
- **24 Jan 2020:** Aged Care Program Redesign. We are critical of the Commission for approaching redesign before addressing structural issues and paradigm conflicts. We addressed the questions as best we could.
- **18 March 2020***: Response to Counsel's proposed Program Design with criticisms

[28] ACC Submission responding to the Independent Health and Aged Care Pricing Authority (IHACPA) inquiry into AN-ACC funding 'Towards an Aged Care Pricing Framework Consultation Paper. https://bit.ly/3Joh3Z8

- **18 May 2020*:** Letter Aged Care Regulatory Framework expressed our anxiety about the failure to address regulation, and drawing attention to ideological intractability, issues surrounding the regulation of owners and the importance of an assessment of character
- **15 June 2020**: Impact of COVID-19 on aged care services
- **4 August 2020** : Structural issues pressing for changes
- **11 August 2020** : Response to Consultation Paper 2: Financing Aged Care
- **October 2020:** Capital Financing for Residential Aged Care
- **12 Nov 2020**: Response to Counsel's submission and recommendation

** = Submissions not published*

In the following discussion we will refer to the sources of quotes or of more information by using the codes in brackets in the selected submissions above with the page numbers.

5 The Regulatory Process in a failed market

There is nothing new or unexpected in what has happened in this 'free market'. Adam Smith the founder of modern economics described it in 1776, two hundred and fifty seven years ago,

Smith warned that:

> *"... The interest of [businessmen] is always in some respects different from, and even opposite to, that of the public ... The proposal of any new law or regulation of commerce which comes from this order ... ought never to be adopted, till after having been long and carefully examined ... with the most suspicious attention. It comes from an order of men ... who have generally an interest to deceive and even oppress the public."*
>
> \-----------------------
>
> *"...Again and again, Smith warned of the collusive nature of business interests, - - - - Smith also* ***warned that a business-dominated political system would allow a conspiracy of businesses and industry against consumers****, with the former scheming to influence politics and legislation*
>
> *Adam Smith Wikipedia comment on The Wealth of Nations, 1776.*

Smith, the founder of modern economics, warned that the delivery of good services depended on the customer being in a position to ensure that the provider of services interests are in serving him. That requires knowledge and power, something that the elderly and their families do not have and have been denied.

Put logically. There are necessary conditions for a market to work and these are:

1. An effective knowledgeable customer with power, which does not exist in aged care.
2. An active and involved civil society that sets and enforces the limits of acceptable conduct. Our civil society has been marginalized and weakened.

As Commissioner Pagone indicated, the situation we have is exactly what we should have known would happen. It *"has come to its present state in an entirely foreseeable manner, given its basic structure and the constraints and influences on its governance".*

Sociologist Lindsay McGoey has written a book, "The Unknowers" describing the way we strategically ignore knowledge in order to develop and maintain illusionary belief. She shows just how extensive this very human problem has been. Aged care is a good example.

The issue we need to address is the extent to which aged care regulation, as an arm of government in a 'business-dominated political system' has allowed and facilitated 'a conspiracy of businesses and industry against the frail and vulnerable elderly'.

Pagone stressed the importance of *"understanding why the aged care system has been failing"* if we wanted to fix it.

Regulatory Failure

In Appendix C we explained how inadequate the regulator set up in 1997 was and how government and industry controlled it. We noted that its bureaucratic response to an outcry about its failures was to create a maze of complex paperwork that placed a huge strain on staff and so compounded the quality of care further. It also stimulated providers to adopt corrupt practices to beat the system. These would soon have become entrenched.

The 1986 reforms had introduced a more rigorous investigative process which academics thought was superior to that in the USA where there were many problems. After studying the USA in 1993 Braithwaite concluded[29]:

> My view would be that **dialogic, local accountability** based on broad outcome-oriented standards and well-resourced local advocacy is a more hopeful strategy than national accountability based on demands for detailed documentation and a myriad of inputs. - - - This, indeed, is the path that nursing home regulation is heading down in Australia, with reasonably broad, if fragile, support from industry,

That support was eroded by pressure from industry and lack of support from government. Effective regulation was abandoned in 1997. Under pressure the department had resorted to *"detailed documentation and a myriad of inputs".* We seem to be doing that again in 2023 after the Royal Commission?

The problem of objective data and outcomes surfaced in 2003

====================Reproduced (RCAn pages 226-228)==================

5.1 Data – a broken promise

An audit of the Accreditation Agency by the Australian National Audit Office (ANAO) in May 2003 focused on the failure of the agency to collect data to evaluate its performance[30]. The agency promised to do so.

At a hearing of the Joint Committee of Public Accounts and Audit soon after in 2003, the industry undertook to collect data[31]. At the time, those of us who were critics were reassured that after so many early failures had been airbrushed, the industry was finally acting.

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[29] **The Nursing Home Industry** John Braithwaite Univ. Chicago Citation: 18 Crime & Just. 11 1993 http://bit.ly/2L8IRnR

[30] Managing Residential Aged Care Accreditation Auditor General by Aus Nat Audit Office (ANAO) 2003 http://bit.ly/2Qw1xwB

[31] **Joint Committee of Public Accounts and Audit** - Review of Auditor-General's reports, fourth quarter 2002-03 - 18 August 2003 http://bit.ly/2SexKNe

- The industry (Mr Mundy) indicated a willingness to use a *"resident-mix-adjusted basis - - (to) - look at the incidence of quality failures. For example, -- the incidence of ulcers from pressure sores and so on".*
- Another industry representative (Mr Young) indicated that they were already doing *"the sorts of things that Mr Mundy just mentioned — like the occurrence of infection rates, bed sore rates, medication errors and those sorts of things—are being recorded, in fact they form an integral part of those facilities' quality improvement systems for accreditation purposes".*
- The department (Mr Mersiades) indicated that those who were not tracking their performance were exiting the sector. He said *"Those who are left are signing up to a process of continuous improvement using the sorts of statistics that Mr Young was referring to in terms of tracking how they are performing against things like bedsores, falls and medication processes"* and *"we do need to be able to make a better fist of being able to demonstrate that the accreditation system is having a positive effect".*

Now that we know what was happening to staffing, we can imagine what was revealed when they collected data.

The senate inquiry report[32] in 2005 found that *"there is little systematic data that demonstrates how accreditation has impacted on quality of care".* It indicated that the ANAO recommendation to do *"an evaluation of the impact of accreditation on the quality of care in the residential care industry - - - - was accepted by both the Agency and the Department and the project is expected to be completed in 2006".* They said *"Evidence indicates that there is a need for improvements in accreditation processes".* We have not heard any more of the promised report and have been unable to find it.

We can understand why they would become alarmed at the consequences for industry and government and either reneged on this promise or buried the report. While this might not have been articulated and recognised openly, a variety of justifications would have been developed and then asserted strongly through the discourse to justify burying it.

Making it legitimate

Once we appreciate the extent to which the agency had been captured by industry and has been acting for it, we can also understand why it came to the rescue. We explain this in the section on regulation. They needed to find a way to make this look legitimate for both of them.

In 2007, the (then) Accreditation Agency employed Campbell Research & Consulting to review accreditation[33]. Campbell Research's report acknowledged that prior to 1997 data had been collected but, despite the 2003 undertakings, not since:

> "There was no baseline data to enable direct comparison of quality of care and quality of life of residents in aged care homes today, compared with that which existed prior to the introduction of the new regulatory framework in 1997 ..."

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[32] Quality and equity in aged care report. Community Affairs Reference Committee June 2005 http://bit.ly/2m4jHLN

[33] Review - **Evaluation of the impact of accreditation 2007** Corporate Medicine web site http://bit.ly/2AHQlol
Evaluation of the impact of accreditation on the delivery of quality of care and quality of life to residents in Australian Government subsidised residential aged care homes Final Report Oct 2007 http://bit.ly/2L8LFkY

The Campbell study relied heavily on 'stakeholders' and its conclusions lent support to the claims they made publicly.

> *Briefly, these findings reflect the views of stakeholders that accreditation has had a positive impact on the quality of care and the quality of life for residents in Australian Government subsidised aged care homes, and the high level of confidence that the overall quality of care and services provided to residents was of a high standard. The findings support the view that accreditation is part of a robust regulatory framework that is well grounded in good practice.*

This study was reported in the same year that Braithwaite published his book critically examining our regulatory system. He had reached opposite conclusions about the agency's accreditation processes. His book was published the same year but got much less attention. In 2019 it is clear he was correct.

The consultant's report advised the agency to inform the sector that failures in care were not to be used as a measure of performance. The manipulation of language played a major role in this report. Data about failures in care became 'indicators' and not a measure of performance and their report advised that the sector be informed of this.

> The purpose of the indicators should be **confirmed to the sector -** the basis for the indicator development **was the clear understanding that they were being developed not to measure performance,** but as tools to assist aged care homes to monitor and improve the quality of their care and services; (page 99)

The public were never told that the industry had reneged on its promise and that a government appointed regulator was supporting them in doing this. The jargon in the long report would have repelled anyone except the most dedicated. This is not necessarily a failure of the report because accreditation was designed to assist providers. Data collection and regulation created a conflict that made it less effective. It is a failure of policy.

Accreditation has its own theoretical underpinnings, its own concepts and understandings and these all focus on helping willing and motivated people to improve care. It was not designed to deal with a system driven by perverse incentives. It was intended to be cooperative and not coercive or regulatory. The process was never intended to measure outcomes or to regulate but clearly its success needed to be measured against data collected by others.

Since 1997 aged care has not had a regulator. Neoliberal belief made it clear that you did not need one and that regulatory control inhibited successful operation of the market. Government staff were there to support and help the market – not control it.

===================== End (RCAn pages 226-228)==================

Braithwaite in his 2007 book describes the way that the accreditation agency has been captured by market ideas and pressures as well as the consequences for care.

(See ***Regulating Aged Care Ritualism and the New Pyramid***. *Braithwaite J, Makkai A and Braithwaite V Edward Elgar 2007)*

====================== ((RCAn pages 262-264)====================

5.2 Regulatory Capture

The idea that regulation always protected citizens was exposed as flawed by George Stigler in a landmark paper[34] in 1971. He claimed that "*A central thesis of this paper is that, as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit*". Many have written about it since then. After the Banking Royal Commission Profesor Holden suggested that this was what had happened in the banking sector[35]. It is clear that the regulation of aged care has been captured for most of the last 20 years.

In a section *"The Politics of Capture"* on page 187 of their book, Braithwaite and his co-authors described the way in which aged care regulation in general, and accreditation in particular, has been captured by the political and market discourse so that it has become a servant of the neoliberal discourse rather than citizens.

Braithwaite et al indicated that the Department of Health in its annual report uses *"percentage compliance as a performance indicator that must be seen to improve each year, driving compliance to ridiculously, artificially high levels over the years*" (page 193). That means that as a regulator its performance is improved by its not acting when failures occur!

The authors indicated *"Senior officers of the department argued to us quite unselfconsciously that '98 per cent of homes are fully compliant, up from 92 per cent in 2004'"*.

Braithwaite's research team felt that *"This performance pressure helped make sense of our observation of indefensible ratings of compliance during our fieldwork"*.

They also quoted from comments by accreditation staff to show how accreditation had been dumbed down and their efforts to be effective frustrated by their superiors. They noted *"finding non-compliance would be changed by their supervisors without the reason being explained" and "cynicism was nurtured about the wisdom of forthrightly writing non-compliance*".

This was not a new problem in 2007. Braithwaite et al in their book referred to regulation when saying (Page 182) that *"new waves of nursing home scandals at the end of the 1990s and in 2006, as well as criticism of accreditation saw more funding devoted to more frequent in-between visits"*. They indicated that *"The media scandals were linked to failures of the accreditation regime to trigger any enforcement action against the nursing homes in the face of over-whelming evidence of reckless neglect"* (page 190).

It was not only accreditation that Braithwaite and his co-authors criticised. In regard to the complaints system he said *"Australian complaints mostly do not trigger visits to nursing homes and are universally steered to dispute resolution strategies, excluding enforcement and sanctions. A 2005 Senate inquiry concluded the complaints process was user-unfriendly and unresponsive, with the Aged Care Lobby Group, for example, arguing that family members have given up on complaining because 'their complaints are trivialised*'" (page 185). He was also critical of the advocacy system.

Braithwaite's warned *that "we fear from our observation of Australian business regulation over four decades that today business values are capturing regulatory values more than the reverse. When those regulatory values are about protecting the most vulnerable members of our society from abuse and neglect, the community should be concerned*".

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[34] The Theory of Economic Regulation by George J. Stigler The Bell Journal of Economics and Management Science Vol. 2, No. 1 (Spring, 1971), pp. 3-21

[35] Vital Signs: when watchdogs become pets – or the problem of 'regulatory capture' by Richard Holden The Conversation 15 Feb. 2019 https://theconversation.com/vital-signs-when-watchdogs-become-pets-or-the-problem-of-regulatory-capture-111170

He realised that the problem was industry wide but that the aged care sector was most at risk. Believers were not listening. The increasing publicity, the number of staff and families speaking out as well as the disturbing exposures on ABC Four Corners all show that the situation has continued to get steadily worse as business values have increasingly captured regulatory values.

The recent doctoral study by Louisa Trigg comparing the UK with Australia lends support to this[36]. She found that (page 121) the *"contextual difference between the two countries is the level of fragmentation or centralisation of the two systems".*

She pointed out (pg 122) that:

> *"Regulatory capture in Australia is also enabled by the centralisation of the system in Australia. This centralisation of the system has made it more susceptible to capture by provider organisations and by policy entrepreneurs, reinforced by a professionalised lobbying system which is more predominant generally in Australia.*
>
> *This monolithic, monopsony purchaser of care is far more targetable by providers than the myriad of different policymakers and purchasing bodies in England."*

She also said *"The interviews suggested an aura of quiet collusion in the sector in Australia."*

The response to failures in the system since Oakden has been to increase centralization by further concentrating regulation into a single body which will be easier to control and influence. It increases the risks of the revolving door and regulatory capture. It makes it easier to control information, keep failures out of view and give the appearance that problems are being addressed.

Opposition parties and the press have criticised the consequences of the revolving door and regulatory capture on many occasions.

========================= End (RCAn pages 262-264)====================

Revolving doors: In many of our submissions we have referred to the revolving door that occurs within regulatory bodies created by politicians and bureaucrats. They are colonised by industry managers via a revolving door of appointments to senior posts, regulating boards and committees. They dominate and set the discourse (patterns of thinking) that are accepted as real. We have a long list of examples.

The most glaring example was in 2014, after the election of the Abbott government when all pretense of regulatory independence was abandoned and the accreditation was brought back under the control of Ministers Morrison and Fifield. The CEO of LASA, the body representing mostly for-profit providers became CEO. It was renamed the Australian Aged Care Quality Agency (AACQA)

The gutting of the public service and the appointment of those from the industry to senior positions facilitate capture and the prospects of a lucrative life after politics adds a level of strong incentivisation to politicians.

Denial: We also need to understand that when policies are based on illusionary belief and huge efforts and time have been devoted to implementing them, when identities and status are tied to these efforts, then failure is simply not conceivable. The problem is seen as the publicity often the press and not the failures that are revealed. There are many examples of this.

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[36] Trigg L Doctoral Thesis **Improving the quality of residential care for older people**: a study of government approaches in England and Australia Thesis London School of Economics and Political Science July 2018

Undermining the necessary conditions: The response to this is to address the publicity and control the information if order to prevent it. Instead of empowering the community and the press and so enabling them to take action to hold industry to account and balance the perverse marketplace incentives this makes the situation much worse. Industry sees this regulatory success and uses it to reinforce their own illusions and embrace them even more tightly so doing even more harm.

It is clear that this is happening here and when we examine the way industry and department are behaving in 2023 it is still happening.

5.3 Detecting failures in care

We understand that after all the exposures and publicity in the early 2000s the agency revised its web site and only published accreditation reports when there were failures. They then removed the reports as soon as the provider had addressed the problems, sometimes after only a few weeks. They reported poorer performance in rural and remote areas but no difference between different types of provider.

We wondered why for-profit providers across the world provided poorer care except in Australia and decided to look. We managed to download 108 before they were removed and examined them after excluding regional and remote. We discovered that the minister was underreporting failures in her annual report. In his doctoral thesis Baldwin overcame this problem by studying ~~inly~~ only the facilities that were sanctioned.

The quoted section below explains what happened and what we found. We concluded that the agency was hiding data and protecting the for-profit sector.

=======================(RCAn Pages 150-153)===================

The 1997 changes introduced a competitive market and a policy that promoted increased competition and marketization. At the same time the way it was structured made it impossible to collect the sort of data that enabled the sort of assessment done in the USA. Staffing levels were not reported and the accreditation process did not collect useful data for assessment.

While the threat of adverse publicity would have been the driving force in this, there must have been some rationalisation that they used to justify this. We need to remember that Frederick Hayek, the founding father of Neoliberalism had believed that markets were essential for the collection of data and without markets data was almost non-existent. That markets are averse to data because it threatens them was not congruent with belief.

In 2001 Braithwaite was very critical of what was happening in Australia[37]. He referred to his 1993 article comparing for-profits with nonprofits and then went on to say:

> "... There are even more fundamental reasons why depending on the rationality of the market will never work well for quality of care. Sensible policy for providing nursing home care requires a larger welfare state, a larger regulatory state, and encouragement of public, nonprofit providers. Australia's recent experience shows that to head in the opposite direction is medically, economically, and politically irrational ..."

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[37] **The challenge of regulating care for older people in Australia** by John Braithwaite BMJ 2001;323:443-6 ---- 25 AUGUST 2001 http://bit.ly/2YOUVh2

We have very little data and that data does not allow a proper assessment of what is happening in the sector. In 2004 Richardson and Martin[38] found that *"No single data source provides an accurate and detailed appraisal of direct care employment in residential aged care facilities in Australia, especially not of the kind that would inform complex workforce planning"*. Their own data did not permit a comparison of staffing between provider types.

They reported *"nearly 70 per cent of for-profits having only high care beds, compared to 50 per cent of publicly owned and 19 per cent of not-for-profit facilities - - - for-profit facilities have many more high care beds than the other ownership types,"*.

Without staffing data, it is not possible to see what the impact of this is on the poorer performance in care by for-profits. Internationally for-profits have sicker residents, lower staffing levels and poorer care.

In *Australian Ageing Agenda* in 2015 Baldwin bemoaned the limited data about staffing and wrote[39]

> "... The Australian Aged Care Quality Agency does not publish any data that would assist the assessment of the relationship between structural and regulatory reforms and the provision of quality services.
>
> ---------------
>
> Assessment of the impact of past and future reforms on quality is challenging in the absence of good baseline data ..."

There is evidence that nonprofits continued to perform better prior to the changes in 2014.

Baldwin et al examined all sanctions between 1999 and 2012. They found that for-profit owned facilities were more than twice as likely to be sanctioned as those owned by nonprofits[40] confirming a similar finding by Ellis and Howe[41] in 2010. They challenged government policy in their several articles.

Table 1: *Relative risk of experiencing a sanctions event by jurisdiction, location and ownership type, table developed from Baldwin's findings*

Structural factor	Relative risk of a sanction event	95 % confidence interval (CI)	P-value
For-profit	2.79	1.91, 4.07	<.0001
Government	0.58	0.28, 1.22	0.15
Not-for-profit	1	-------	

[38] Richardson, S. and Martin, B. (2004) The Care of Older Australians: A Picture of the Residential Aged Care Workforce, Adelaide, National Institute of Labour Studies, Flinders University. http://bit.ly/2YEwm6E

[39] Unfolding changes warrant greater scrutiny by Richard Baldwin in Australian Ageing Agenda May-June 2015 pages20-21. http://bit.ly/2YDJOaF

[40] **Quality failures in residential aged care in Australia: The relationship between structural factors and regulation imposed sanctions** Baldwin R et al, Australasian Journal on Ageing, 22 May 2014 http://bit.ly/2RG93F4

[41] **The role of sanctions in Australia's residential aged care quality assurance system** Ellis J M and Howe A Int. Journal for Quality in Health Care, Volume 22, Issue 6, December 2010, Pages 452–460, http://bit.ly/2YFBuYd

Baldwin has published articles calling for evidence-based policy[42]. He pointed out that the "*most researched structural factor is ownership as it is a predictor of other factors that may influence quality such as staffing levels, organisational culture and financial performance. - - - - - - - - most research studies using large samples have reported that residents in not-for-profit facilities enjoy better quality of care and have better outcomes than those in for-profit facilities. - - - The evidence on indicators of financial performance tends to favour the for-profit sector"*.

In another paper[43] he writes that the Australian government "*appears to be indifferent to other structural factors"*.

> *"... Neither the previous, nor the current, Australian Government has indicated a preference on the future mix of service providers, the growth of large providers, or the size of facilities. This suggests that policy makers, even in the light of the available evidence, have enabled these trends to continue through their silence, or are at least comfortable with the direction in which the industry is headed..."*

He also called for *"wider community debate on the future shape of the residential aged care industry in Australia*".

Accreditation data analysis

Data about adverse findings was kept under wraps in the early years. Only the most recent accreditation findings were made available on the agency's web site, sometimes with some delay. As soon as a facility had corrected any failed standards the failed accreditation standards were removed and replaced with the fully compliant one. The track record of facilities was hidden.

Agency figures that were released showed little difference between types of providers but rural and remote communities not unexpectedly did more poorly. But there were very few for-profit facilities in rural and remote communities at that time. To be equal nonprofits must be performing better in metropolitan areas.

In 2008 Aged Care Crisis managed to download 108 failed assessments before they were removed from the Accreditation Agency website[44]. When the minister proudly announced[45] *"The data speaks for itself. It shows the vast majority of nursing homes are providing a world class service, but there is a small group – 46 nursing homes"* (ie 1.6%) had failed a standard that year. We were able to correct her and the true figure of 199 (7%) was disclosed. The agency was only reporting facilities that had not corrected problems by the end of the year.

When rural and remote facilities were excluded we found that the private for-profit aged-care homes now had twice the number of homes failing one or more standard than the government operators, three times that of any of the not-for-profit operators and almost 4 times the religious based subgroup.

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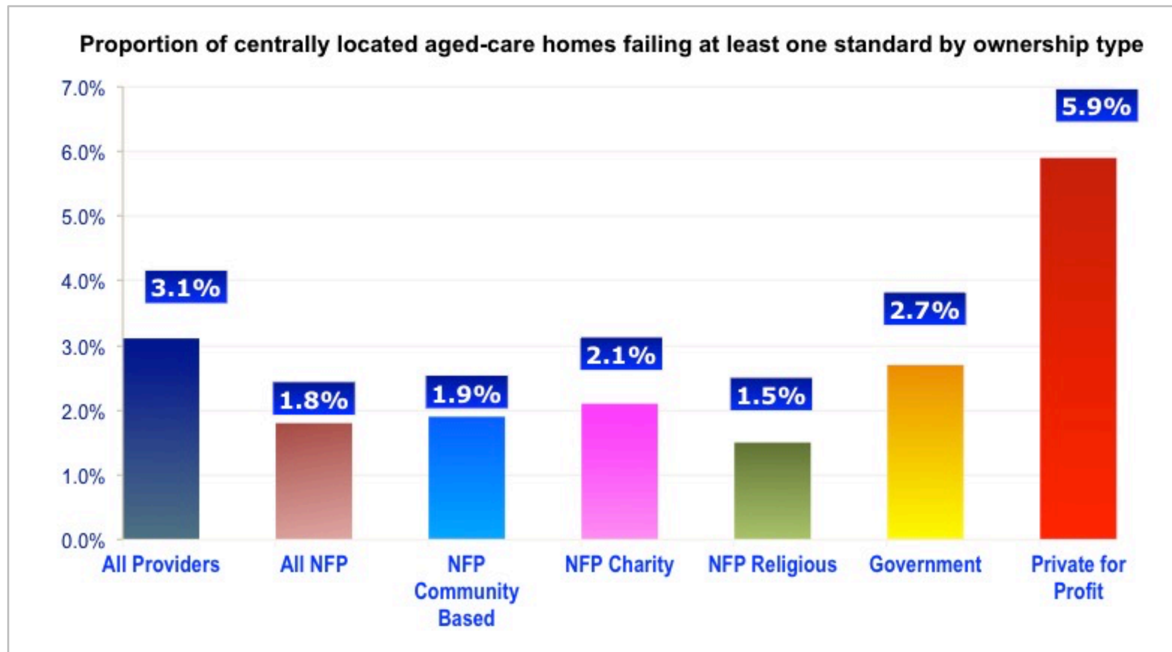
[42] The Future of Aged Care in Australia: A Call for Evidence Based Policy by Richard Baldwin, The Policy Space, 22 Sep 2015 https://www.thepolicyspace.com.au/2015/22/55-the-future-of-aged-care-in-australia-a-call-for-evidence-based-policy

[43] **Residential Aged Care Policy in Australia - Are We Learning from Evidence**? - Baldwin R et al Australian Journal of Public Administration, vol. 00, no. 0, pp. 1-14 http://onlinelibrary.wiley.com/doi/10.1111/1467-8500.12131/abstract

[44] Aged care report card, Aged Care Crisis, 2008, https://www.agedcarecrisis.com/news/research/108-aged-care-report-card

[45] **Working together to protect older Australians – annual report** 26 November 2008 http://bit.ly/2kZvaMp

***Figure 1**: Analysis of centrally located nursing homes failing at least one accreditation standard by ownership type*



This was a very small sample of poor-quality data but that is all that was available. Like Baldwin's study it is an indicator that international findings would be replicated if objective data was collected.

The entire privatization and marketization process had been introduced without any oversight, data or research evaluating how well the market-focused providers entering the sector were performing.

In response to Baldwin et al's 2014 paper showing for profits were sanctioned more often, the Accreditation Agency challenged this in a presentation at an industry conference insisting that *"We know remote services have difficulty meeting the accreditation standards more than, for example, providers in the cities and that has a lot to do with workforce. But certainly we are seeing no discernible difference between the for-profit and not-for-profit sector."*

When this was published[46] we challenged it, spoke to the presenter and asked about the figures and whether variables had been properly assessed. They supplied some figures but refused to respond when asked if variables such as remoteness had been taken into account.

Jilek does not address the issue of ownership but he recognizes that it is the senior executives who control the money who are primarily responsible for failures in care:

> "... In fact, a lot of these places instead choose to put the blame for these sorts of things on the DON (Director of Nursing) but the organization is responsible for putting the Don there, and they are also responsible to monitor what is actually happening."
>
> There may be something like basic care issues that you look at and think, 'what the hell was the DON thinking? But it's the senior executives that control the money, who also control the staff and dictate the training, and they control the purchasing of equipment."

It is the owners who appoint the senior executives and those senior executives must do what the owners expect – so it goes all the way back to the owners too

======================= END (RCAn Pages 150-153)===================

[46] **Quality Agency rejects ownership factor on accreditation** (Comments) Australian Ageing Agenda 25 mar 2015 http://bit.ly/2YOVjfu

In our Analysis we speculate on the reasons for poor performance in detection clinical failures.

========================= (RCAn pages 234-235)====================

5.4 Data and the Accreditation process

To understand the problem, we need to remember the illusion that has been a part of aged care for the last 21 years **'*Age is not a Disease' and 'Aged Care is NOT Healthcare***. As a consequence, health is not a responsibility of the aged care providers and they have their own regulator. They should not be regulated by aged care regulators. As we will explain later our regulatory system was created by government and businessmen and not by professionals with insight.

It did not believe in regulation and we can understand why so little attention was given to clinical issues as time went on. There has been a revolving door from industry and the agency has been captured by the neoliberal discourse. Many complain about the lack of clinical skill not only of the agency assessors, but of the voices at the end of the phone when making complaints to the complaints system.

We concentrate here on important clinical indicators because there seems to be so little interest in and knowledge of clinical issues at all levels of the regulatory process.

There are claims that assessors have little, if any clinical knowledge, th*at "dozens of aged-care executives are moonlighting as inspectors"* and that many others assessors are also consultants to the industry[47]. We wondered why the Quality Agency had recently removed assessor's names from their public reports but suspect that it was becoming embarrassing.

In 2011 Professor Bernoth told the Productivity Commission Inquiry[48]:

> *I also am aware that people doing the accreditation don't necessarily have the clinical skills to assess clinical care. So an accreditor can be looking at something that's happening and not aware of the significance of that.*
>
> *------------------*
>
> *It's part of the neo-liberalist approach where we're into auditing and accreditation and filling in the squares but not necessarily looking at the actuality. So we can have folders, we can present systems, we can say we're doing the best care, but when you go and look, when you're actually in the bedrooms, when you're in the toilets, when you're watching people being fed or not fed, it's very different.*

========================= END (RCAn pages 234-235)====================

The agency's own analysis reveals the agency's difficulties in detecting failures in care. We addressed this in our 2018 Submission to the Quality of Care Review. We look at what is actually happening in some clinical situations.

=========================== (QOC Pages 27-37 **)==========================**

[47] Aged-care executives two-timing as auditors, in potential conflict of interest Courier Mail 20 Feb 2018 (paywall) http://bit.ly/2oHwzVF

[48] Productivity Commission Inquiry - Caring for Older Australians: - evidence of Dr Bernoth: Transcript of Proceedings - Canberra see page 1371, 5 Apr 2011 http://www.pc.gov.au/inquiries/completed/aged-care/public-hearings/20110405-canberra.pdf

5.5 Quality Agency assessments

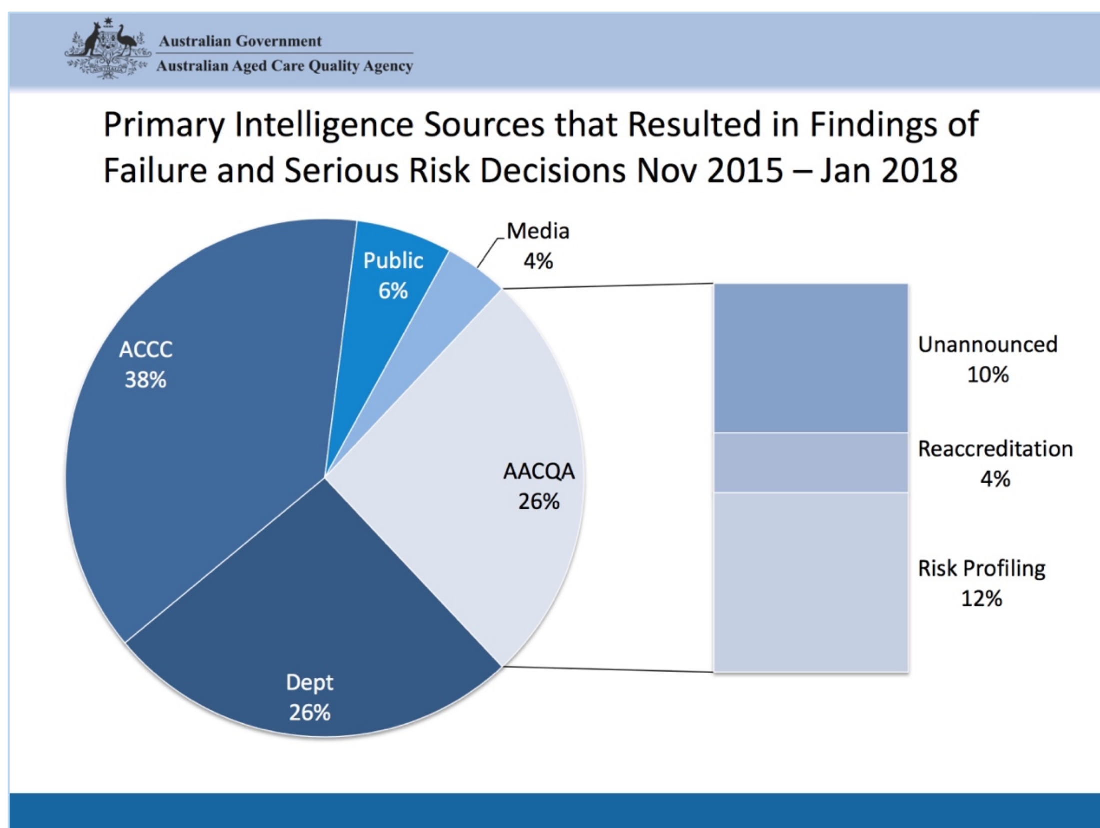
The Quality Agency's own data shows the lack of utility of the inspections performed by the Agency.

The source of information that resulted in adverse findings

Data drawn from Nov 2015 to Jan 2018 (just over 2 years) were presented to industry at a LASA conference by the Quality Agency in 2018[49]. This shows that in the vast majority of cases problems were only found when the agency had been told about a problem. They did not discover it themselves.

The **Primary Intelligence Source** for 74% of *the "findings of failures and serious risk decisions"* came from other outside sources including the Complaints Commissioner (38%), the department (26%), directly from the public (6%) and the Media (4%).

All of this information would have come indirectly from someone (families, friends, staff etc.) who knew or saw what was happening and who lodged a complaint, spoke to the department or perhaps to a politician.



Source: *Lessons from Regulatory Case Studies, Quality Agency, presentation to LASA conference Feb 2018 http://bit.ly/2FeMeWT*

Only 26% of the findings were initially identified by the agency. In 12%, risk profiling and not their inspection alerted them to problems. Only 4% were detected at re-accreditation visits and 10% at unannounced visits.

[49] Presentation: Lessons from Regulatory Case Studies - Ann Wunsch, Quality Agency to LASA conference, Feb 2018: http://bit.ly/2FeMeWT

The loudly trumpeted Carnell/Paterson reform to move all oversight to unannounced visits, which discovers only 10% of failures is not convincing.

Detection of problems by agency visits

Data from this same presentation gave the number of visits and the number of occasions when a problem was identified.

Another report titled *Regulatory Performance Data*[50] supplied to the Senate inquiry into Oakden gave more information for the financial years 2013/14 to April 2017 - just under 4 years so almost double the time although the two sets of data overlap. The percentage of failures found has been calculated for both in the table below:

	Presentation (Nov 2015 to Jan 2018)		Report (2013/14 fin yr to Apr 2017)	
Type of visit	Number	Failure detected	Number	Failure detected
Reaccreditation	1001	33 (3.3%)	3146	69 (2.2%)
Review audits	70	40 (57%)	90	70 (78%)
Announced contacts	816	11 (1.3%)	3507	46 (1.3%)
Unannounced contacts	4616	84 (1.8%)	11362	169 (1.5%)

- Note that ***Review audits*** are performed in response to information supplied to the agency and here the finding of failure was much higher 57% and 78% respectively.
- In contrast, re-accreditation audits yielded 3.3% and 2.2%
- Announced assessment contacts yielded 1.3% in both
- Unannounced assessment contacts yielded 1.8% and 1.5%

When visits were unannounced this increased the chances of detecting problems by only 0.5% and 0.2%. Compare these figures with the 93% detection annually in the USA - and 20% were serious.

The *Regulatory Performance Data* report also gave the number who had failed each standard. We have expressed them as a percentage of the total of all assessment visits made including audits (18,105) during the four-year period.

We concentrate here on important clinical indicators because there seems to be so little interest in and knowledge of clinical issues at all levels of the regulatory process. There are claims that assessors have little, if any clinical knowledge, that *"dozens of aged-care executives are moonlighting as inspectors"* and that many others assessors are also consultants to the industry[51]. We wondered why the Quality Agency had recently removed assessor's names from their public reports.

50 "Regulatory performance data" part of AACQA submission (number 42) Aug 2017 to Senate Inquiry "Effectiveness of the Aged Care Quality Assessment and accreditation" http://bit.ly/2Fex0Bk

51 Aged-care executives two-timing as auditors, in potential conflict of interest Courier Mail 20 Feb 2018 (paywall) http://bit.ly/2oHwzVF

There is no data about clinical outcomes that these untrained assessors can use as a benchmark when deciding what is acceptable. Clinical issues and clinical outcomes are simply ignored and there seems to be a dearth of clinical knowledge and skills. Some examples illustrate this.

Standard	Number in 18,105 assessments	Percent detecting a problem	Clinical incidence
Medication Management	86	0.47%	
Pain Management	29	0.16%	
Nutrition and Hydration	24	0.13%	40 to 80% malnourished
Skin Care	31	0.17%	Pressure injuries in 2005 = 26 and 44%

Medication and pain management are two of the most criticised outcomes and are dependent on staffing skills and numbers, which we know are deficient. This claimed low incidence of failures (0.47% and 0.16%) if real would be way beyond any other country - world-class care beyond what is possible.

But this is not what is being measured here and one wonders at the utility of these measurements – other than as a marketing and branding exercise for the industry.

Pressure injuries and malnutrition are interdependent clinical issues. Malnutrition predisposes to pressure injuries and the loss of fluid, inflammation and sepsis associated with pressure injuries have a "catabolic" effect (breaking down tissues) which increases malnutrition and makes it much more difficult to treat. Both have a devastating impact on quality of life and mortality. The incidence of both can be markedly reduced by sufficient staff with knowledge and motivation.

Pressure injuries are largely preventable with adequate trained staffing and **Malnutrition** can be kept to a minimum with good tasty food and enough attentive staff. Clearly the assessors are not looking at the residents or their charts and/or have not got the basic clinical nous to look at what is happening. To be even remotely credible, an assessment of care must include a clinical assessment of the residents receiving it and that cannot be happening.

Example: Pressure injuries

To appreciate the problem, we need only ask about the incidence of pressure injuries, one of the strongest indicators showing that nursing care is deficient.

In giving a speech in 2017, the Minister quoted an incidence of 32%[52]. When his speech was transcribed on the department website, it appeared as 10.3%[53]. When his advisers were asked for the source of these varying figures, the 10% figure was removed from the transcript[54].

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[52] Minister's speech - AACQA - Better Practice Conference, Oct 2017 - **find video excerpt**: http://bit.ly/2CFnkQ1

[53] Minister's speech - AACQA - Better Practice Conference, Oct 2017 - **original publication (pg 4):** http://bit.ly/2AozvdL

[54] Minister's speech - AACQA - Better Practice Conference, Oct 2017 - **updated speech transcript**: ~~http://bit.ly/2lU6iDj~~

When pressed, they then referred to figures between 3.4 and 5.4%[55] that were quoted in 2006. These were in fact, figures taken from the 1990s when staffing was better (and tied to funding) and state regulators were rigorous.

The most recent figures Aged Care Crisis could find were quoted in 2009 but came from studies done in 2004 and 2006 that examined data from 2003 and 2005. The actual figures 8 years after the 1997 reforms were 26 and 46% (average 34% close to the minister's figure of 32%).

If these figures are correct, then the 8 times jump from 4.4% to 34% only 8 years after the system was changed is alarming. We can only wonder what they are now. But alarm bells did not ring and instead of addressing it and monitoring progress it was ignored.

In the USA they collect data from 15,000 nursing homes each year and the average is currently 6%. There is a vast database of information in the USA that we can learn from but we need to know what our own figures are to do that. The only conclusion a sensible person can reach is that the industry knows but is not telling.

Pressure injuries are one of the voluntary quality indicators being collected but not published. It depends on enough staff who recognise its significance and know how to prevent it which can be done most of the time. Someone must know what the average number in this selected group are, but no one is saying. The nurses are telling us about it but no one is listening.

For example, in a submission to the Carnell/Paterson Inquiry a nurse who was a clinical consultant was very critical of the care given and of the failure of the accreditation process, which was described as '*deeply flawed'* [56].

The consultant wrote *"I witness appalling standards of care on a daily basis".*

In writing about Skin Care:

> ***I attended a recently accredited facility.*** *While all their wound care documentation was satisfactorily completed, further investigation revealed that:*
>
> - ***Over 60% of bed-bound residents had serious pressure injuries***
> - *Over 90% of incontinent residents had skin rashes and fungal infections*
> - *They were using inappropriate wound care products and techniques*
> - *All wounds had deteriorated since they were first identified due to incorrect care practices*
> - *Simple skin tears became chronic ulcers. Pressure injuries deteriorated into wounds that are commonly found in third world environments.*
> - *The facility simply accepted their high rate of these preventable injuries and had not actioned any alternative strategies*
> - *I'll wager $1000 that in any facility I attend, at least 50% of the air pressure mattresses will be either set incorrectly or malfunctioning. Most of them will have broken parts and have not been serviced for many years. Care staff have not been trained in their correct use.*

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[55] 2006 RACGP Silver Book: ~~https://www.racgp.org.au/your-practice/guidelines/silverbook/common-clinical-conditions/pressure-ulcers/#216~~

[56] Submission Response 617437173 to Carnell/Paterson Review: http://bit.ly/2DZ6hrT

The Agency's own data reveals that in a little under four years from the 2013/14 financial year to April 2017 the Quality Agency did 18,105 assessments of nursing homes.[57] During this period the Agency detected 31 problems in skin care – just 0.17% of visits.

Pressure injuries have dressings on them and are recorded in the notes so are easy to detect and evaluate. Facilities are accredited without looking at either. This is a vast amount of effort and money wasted for no purpose.

Example: Malnutrition

Malnutrition is a good example of what is happening and the ineffectiveness of our regulation. There has been recent publicity about malnutrition and research to support its incidence.

The importance of malnutrition in undermining wellbeing, predisposing to multiple medical problems and limiting quality of life has been largely ignored. In 2010 the Dieticians Association of Australia indicated[58] that:

> Nutrition status largely determines quality of life, independence and overall health of older adults - - - -. Despite the importance of nutrition, there is no current food and nutrition policy for Australians, let alone for older Australians.
> -----------------
> - - unintentional weight loss places individuals at greater risk for clinical complications such as increased risk of falls and fractures; increased risk of osteoporosis, infections and pressure ulcers; increased rates of depression; decreased mobility, morbidity and mortality; delayed healing from acute episodic events, prolonged and increased frequency of hospitalisation and decreased quality of life

The association indicated that *"Malnutrition is recognised by DAA as the major nutritional concern amongst older Australians"* and that it was *"associated with adverse clinical outcomes and costs".* In spite of this *"there is no coordinated approach to addressing the issues of older Australians".* They recommended that *"the Commonwealth monitor nutritional status across the aged care system and report on the prevalence of malnutrition".* This has not happened.

Measuring Malnutrition: The incidence of malnutrition varies with the type of assessment used but the most reliable seems to be to record the *"percentage of weight loss over a specific period"*[59] with over 5% in a month or 10% in 6 months raising concern. That should be readily accomplished. A literature review shows wide variation in incidence but indicates that approximately 20% of residents in nursing homes have malnutrition[60].

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57 **Regulatory Performance Data April 2017** attached to Quality Agency submission to Senate Committee Inquiry into the Effectiveness of the Aged Care Quality Assessment and accreditation framework. . August 2017 http://bit.ly/2Fex0Bk

58 **Submission from the Dietitians Association of Australia** to the Productivity Commission: Caring for Older Australians 10 Aug 2010 https://www.pc.gov.au/inquiries/completed/aged-care/submissions/sub371.pdf

59 **Prevalence and Measures of Nutritional Compromise Among Nursing Home Patients: Weight Loss, Low Body Mass Index, Malnutrition, and Feeding Dependency, A Systematic Review of the Literature** C.L. Bell et al. / JAMDA 14 (2013) 94e100

60 **Malnutrition in the nursing home** Bell C L, Lee A S W, Tamura B K www.co-clinicalnutrition.com Volume 18 Number 1 January 2015

Factors influencing malnutrition included *"food budget, staffing, social activities, and family bringing meals to residents"*. The *"association between malnutrition and mortality among nursing home residents is especially clear"* and the literature *"clearly indicates that malnutrition leads to earlier mortality"*. In addition *"staff training studies demonstrated clear benefits on malnutrition indices."*. Low staffing levels are associated with malnutrition[61].

Incidence in Australia: The incidence varies across Australia. Most accept that about half (50%) are malnourished. A poster presentation in 2005[62] suggested a prevalence *"of malnutrition in the elderly appears to be disturbingly high: between 40% to 60% and as high as 85% has been reported"*. Those recently hospitalized, living alone or in residential care are at most risk. They found that *"Less than 10% of residents were seen by a dietician and 19% were seen by a speech pathologist"* and *"only 20% were weighed monthly"*. They commented on the lack of skill among staff and time pressures as problems.

A 2007 study of 6 nursing homes in Queensland found *"a median of 50.0% and 49.2% of residents of aged care facilities were found to be malnourished"* in two separate audits. Another in 2008 of 8 nursing homes and 350 residents found *"43.1% moderately malnourished and 6.4% severely malnourished"* [63].

A 2014 study of nursing homes in Canberra[64] found a lower figure reporting *"20% as moderately malnourished, and 2% severely malnourished"* but this study excluded high-risk residents including those who were cognitively impaired and medically unfit. This is a significant proportion of residents who are likely to be malnourished, so that the studies are not really comparable. What is clear is that the incidence in Australia is higher than the 20% found in comparable countries.

Profit, food and nutrition: Groups of dieticians and citizens such as The Lantern Project[65] have taken a proactive approach by trying to encourage and persuade providers to do the right thing and motivate them to improve the diet for residents by making it more nutritious and attractive. They are well aware that motivation is constrained by commercial imperatives. Their own study[66] working with SB has examined just this issue. It reveals that in Australia nursing homes on average spend only $6.08 on *"the raw food and ingredients budget"*. This was much less than in other countries as well as the budget for food in prisons.

As cost of living and so food increased over the two years of the study the budget for fresh food had decreased by 30 cents per person per day. This has been accompanied by an increase in food supplements which are less effective in addressing malnutrition. The authors indicate that *"Increasing the aged care profit margin by reducing food spend impacts the quality of resident care and can contribute to malnutrition rates in aged care"*.

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[61] **Low staffing level is associated with malnutrition in long-term residential care homes** J Woo, I Chi, E Hui, F Chan and A Sham European Journal of Clinical Nutrition (2005) 59, 474–479

[62] **Aged Care Nursing and Nutrition Issues** Gaskill D et al. (2005) Aged care nursing and nutrition issues. [poster]

[63] **Prevalence of malnutrition in adults in Queensland public hospitals and residential aged care facilities** Banks M et al Nutrition & Dietetics Volume 64, Issue 3 September 2007 Pages 172–178
Malnutrition prevalence and nutrition issues in residential aged care facilities Gaskill D et al, Australasian Journal on Ageing Volume 27, Issue 4 December 2008 Pages 189–19

[64] **Malnutrition prevalence and nutrition issues in five Australian Residential Aged Care Facilities**. Kellett J et al 13th National Conderence of Emerging Researchers in Ageing Conference Paper Nov 2014

[65] **The Lantern Project** http://thelanternproject.com.au/

[66] **The Lantern Project's Value Study** https://vimeo.com/237917664
What does it cost to feed aged care residents in Australia? HUGO C et al, Nutrition & Dietetics 2018; 75: 6–10

The incidence can be reduced: In another study[67] affirming that half of all residents were malnourished and that this was in part due to inadequate dietary intake, the authors showed that a variety of strategies *"can help prevent decline in residents' nutritional status. Food and nutritional issues should be identified early and managed on admission and regularly in the RAC setting".* They affirmed that nursing staff's inability to *"identify and recognise malnutrition as a formidable problem in the RAC setting results in them not prioritising nutrition care for the residents".*

Publicity: The report that only $6.08 was spent on food each day was picked up and ran in the press[68] stimulating the president of the AMA to comment that *"My children's guinea pigs get fresh ingredients and more money spent on them. It's a national disgrace the way we treat our aged."* Others compared this with company profits.

Many supplied photos which were published. Some family members described their own experiences including their first meal.

> *"Then the evening meal arrived. It comprised two cheerios, with nothing else on the plate. Perhaps Mum no longer cared much about what she was given to eat. Certainly, she did not complain.*
>
> *I saw many other woeful meal offerings there, but the image of that first dinner still brings me to tears. Food to meet the nutritional needs of residents? Hardly.*
>
> *Despite our efforts to find an appropriate facility, I felt we had failed Mum".*

The response: The industry response[69] was interesting drawing on the infallibility of the Quality Agency where *"nutrition is a key consideration in this process"*, indicating that *"Malnutrition Screening Tool (MST) is employed in all facilities"*, that elderly women *"have a much lower calorie requirement"* than prisoners, and that it is *"not true to say that aged care providers are making huge profits".* We have repeatedly stressed the very different interpretations put on facts by those whose view of the same events is based on very different 'discourses' (patterns of thought). This illustrates the point well.

The Quality Agency and regulation: So where was the Quality Agency during all of this and what was it doing about this? During the just under 4 years when they performed 18,105 assessments of one sort or another, they only found 24 failures in hydration and nutrition. Although 50% of residents were malnourished, they found a problem in only 0.13 of these visits. This does not sound like a rigorous process that anyone could depend on! Was this because their staff have no clinical knowledge, because it was tick and flick, or because their job was to keep a lid on things and not rock the boat?

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[67] Agarwal E. **Optimising nutrition in residential aged care: A narrative review**: Retrieved from http://dx.doi.org/doi:10.1016/j.maturitas.2016.06.013

[68] **Prisoners and pets fed better than people in aged care homes** Courier Mail 11 Feb 2018
Nutrition in aged care facilities. AMA President, Dr Michael Gannon, Channel Nine, Today Show with Louise Momber, 12 February 2018 https://ama.com.au/media/transcript-dr-gannon-channel-9-today-nutrition-aged-care-facilities
Fish nuggets, sloppy beef stew, liquid lemon jelly and chunks of sausage with gravy: Nursing home workers share appalling photos of $6 meals dished out to elderly residents Daily Mail 13 Feb 2018 http://dailym.ai/2CB779v
Weighing Up The Aged Care Costs Letters to the editor Courier Mail 15 Feb 2018
Aged care providers must prioritise care over cash The Daily Telegraph 20 Feb 2018: (paywall) http://bit.ly/2sIuLkC

[69] **Aged Care Peak Body Says Food Claims Are Misleading** LASA Media Release 12 Feb 2018 http://bit.ly/2EJAigp
Aged-care residents 'need less food' than prisoners The Courier Mail 13 Feb 2018

Explaining it to parliament: The issue of food, nutrition and cost cutting has been going on for years. There were university studies and press reports in 2010. The previous CEO of the agency was grilled about this by the Community Affairs Legislation Committee[70]. When asked about *"accreditation standards for food"* he indicated that in the previous year *"we identified 40 homes with noncompliance in nutrition and hydration"*. When pressed he admitted that ***"No-one actually regulates what they can and cannot do eat".*** When pressed about *"who regulates foods, and who is responsible for this in nursing homes that receive subsidies"* the answer was that it was not the department or federal government.

The accreditation process assessed ***"performance against the standards which take into account nutrition and hydration".*** The questioning senator stressed that the research findings were quite explicit and revealed *"very serious circumstances."* She asked specifically *"Do you measure nutrition levels as part of the accreditation process, Mr Brandon?"*.

The answer was:

> ***"No, we do not measure nutrition levels. We look at the standards which we expect will stop malnutrition actually happening"***.

Promises made to be broken: Only 3 years earlier in 2007, a consultant had advised the agency that measurable outcomes like nutritional state were "indicators" and not to be used as a measure of performance. The industry had promised parliament that they would collect this data but parliament had already forgotten this.

The senator had earlier asked *"What are you actually doing to make sure that stories like this do not appear in the newspaper?"* As cynics who have researched the regulatory background our answer would be *"making sure no one knows about it."*

In spite of all this attention in 2010, not much has changed in the last 7 years. It is still business as usual. Unless we change the regulator, we will have to go through it all over again in another 7 years.

The CEO of a nonprofit, who resigned from the Health Department, struggles to provide good care and manages to provide 4.3 hours of nursing per resident per day, is critical of SB's benchmarks. He wrote in LinkedIn[71] *"I have worked for providers that hit the SB benchmark for food and I would not eat there".* He added that *"the accreditation process for ensuring meals are appropriate has been a joke for years and its about time we stop trying to defend the indefensible".*

The lack of data: Oversight without data is like being in a dark room without a light. Without measuring nutrition and assessing its progress there is no means of telling whether the processes in place are working or whether the measures the agency requires providers to meet or the assessments done are of any value at all. The limited data available suggests that there is a large investment of people, time and money in these processes and that all of it is being wasted. It would be better spent elsewhere.

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[70] Community Affairs Legislation Committee 02/06/2010 Health And Ageing Portfolio Aged Care and Standards and Accreditation Agency http://bit.ly/2otvzET

[71] LinkedIn: ~~http://bit.ly/2F0tlm4~~

A local community solution: Most communities have trained nurses, doctors even dieticians and nutritionists who could help the empowered community visitors that we are pressing for to assess nutritional state. It does not require a university degree to check that residents are weighed and how much they are losing, see what is being done to maintain nutrition and then discuss it with a mentor to see if more can be done. This is what we believe should be happening.

We have a government that talks up innovation without having a system of data collection that can determine whether an innovation is beneficial or harmful. Managers can and do 'innovate' in aged care in order to 'improve performance' which is measured in cost savings while consequences for residents are ignored.

In our proposal we would be harnessing the skills of the local community to look at the actual failures in these areas and insisting that providers organize staffing and training. They would be reporting to community and government, and when needed calling on the accreditation agency to assist the providers which is their proper role.

Comment on the Quality Agency

The agency's own data shows that the Quality Agency's oversight process during accreditation is singularly ineffective. Vast amounts are spent with little regulatory benefit. Unannounced visits resulted in only minor benefit. The utility of the Carnell recommendation to move to only unannounced visits and its adoption by the minister is not supported by the Quality Agency's data. It is no more than an attempt to placate critics and it reduces the burden for the industry, something they have wanted for years.

The data shows that unless alerted to problems the accreditation process was an exceptionally ineffective regulator. The vast majority of problems were not detected by accreditation audits or assessment contacts. The assessors had to be told what to look for in 76 + 12(from risk profiling) = 88% of instances. The accreditation processes themselves detected only 14% of the problem cases – a vast waste of resources that could be devoted to care.

It takes knowledge, great courage and dedication for residents, families and staff to speak out and it is clear that they do not think that the problems they complain about are being addressed by the agency.

The agency's own data when set against staffing data shows that failures in care are likely to be widespread and that only a fraction of this is detected. This data has been collectable for 20 years. Why has it taken so long and only become available when public anger demanded it?

The accreditation data shows quite clearly that as a regulator of care and quality of life the Quality Agency is not fit for purpose. What is needed is a much better system that detects failures in care and then does something about them. The changes we suggest are intended to do just that. Far more problems would be identified and only review audits would be needed. These could be done by another agency or even the department itself after consultation with the community group. The agency could focus on training and support. The community organisation we propose would work with them to evaluate implementation and success. We do not know if accreditation is useful and if so how useful. We need data to set against what it is costing us.

The problem has been that making it a regulator has introduced incentives that undermine the entire process and encourage gaming. Our proposal seeks to relieve accreditation of its regulatory role and create a context which strongly motivates providers and makes gaming impossible. We can then see how well it works.

5.6 Complaints handling

The Carnell/Paterson report shows (Pg 41) that probably roughly 0.35% of about 3,500 formal complaints in a year result in a review audit by the Quality Agency.

The report documents (Pg 174) that in the 2016/17 year only 50 site visits (1.4% of 3500) were made by the complaints system.

This does not suggest that information supplied by staff and families is being vigorously followed up. A constant complaint about the complaints system over the years has been its failure to achieve any outcomes.

The report itself indicated that *"Many respondents had no confidence in the complaints-handling processes".* (Pg 171)

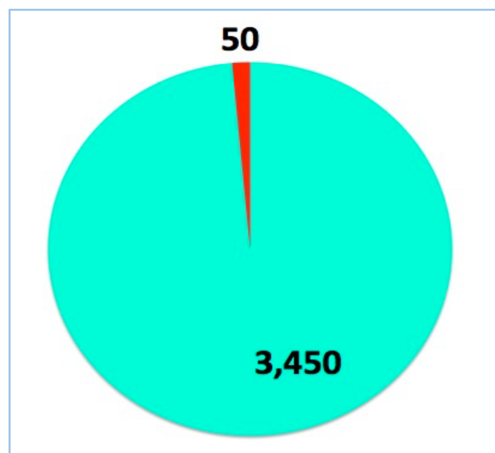

***Figure**: 1.4% of complaints resulted in site visits by Complaints system*

In addition *"the lack of staff was a major contributor to the number of complaints made around quality of care. It was noted that this situation negatively impacts staff morale"* (Pg 173).

A lack of clinical expertise: In a submission to the Carnell/Paterson review, a clinical consultant who complained to the complaints system about the care being given described the experience[72]:

> *"It took ten days for the complaints officer to contact me. They showed little insight into the situation we were alerting them to and were reluctant to take any immediate action. The complaints scheme provided details of the complainant to the provider which resulted in us losing our service contract with the provider. Frustrated with the process, we withdrew our involvement in the case and the matter was not pursued further by the department".*
>
> *The scheme divulged - - - - all the details of the complaint to the provider. They also arranged for an onsite visit in two weeks! This gave the provider ample time to address the issues presented..."*

Once again the problem is a lack of knowledge and experience among those responsible for responding to complaints and the patterns of thinking adopted in both the industry and the regulator.

In a recent case, the coroner was very critical of the Complaints system's investigation of the death of a patient beaten to death by a fellow resident with dementia[73] where a nurse behaved inappropriately then claimed the injury was self-inflicted and failed to act properly. While the full report is not yet available, it is likely that this is another example of a lack of clinical skill and knowledge.

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[72] **Submission Response 617437173** to Carnell/Paterson Review: http://bit.ly/2DZ6hrT

[73] **Nursing home resident lay dying in her bed for hours after attack by patient** 9 News 26 Feb 2018 http://bit.ly/2GQD9Rk

Nurses making complaints have complained about the lack of clinical knowledge in the complaints system for years. For example, an experienced nurse was phoned by a complaints officer who *"began lecturing me about bed sores not being preventable[74]"* – an attitude that comes from the free market managerialist discourse. Those who think otherwise are not credible and can be disregarded.

The difficulty for families: Problems for families include the complexity, the distance from the facility, fear of personal consequences and that the family member will be victimized discourage families from complaining. They lack power and confidence in a system created by turning care into a commodity and a discourse that promotes it's excellence and discredits those who challenge that.

Family members of residents at Oakden described the difficulties in making a complaint *"- the confusion experienced about where to lodge a complaint, how to lodge a complaint and whether it's safe to lodge a complaint"* ***During the 10 years of abuse and neglect not one family member complained to the complaints system**.* A clinical consultant described how a nurse who wanted to complain was deterred from doing so by intimidation and said *"'Look, I don't want to make any more troubles, it's bad enough."*

Many simply give up and do not pursue their complaints. ACC has repeatedly raised the issue of retribution including to the Royal Commission, but ignored. There is no one there to support the residents and families when they really need help and support in building confidence, advice when taking action and backing from those with clinical expertise when they confront those who have none. This is the sort of change that Aged Care Crisis is pressing for.

5.7 Conclusions

The available indirect data indicates that we would find extensive problems in the care provided to residents in nursing homes if we collected data transparently and did a thorough assessment. We simply do not know quite how extensive serious failures in care have been in the past or are now but there can be no doubt that they are widespread.

What these figures do show is that regulation in Australia has been totally ineffective and that care has generally been inadequate. They tell us why it has been so poor.

We have a system that has deceived us. It is protecting an industry that is not delivering and as a community we should be furious.

If we at Aged Care Crisis had not seen and studied similar situations, we would be angry too. It is important to understand that this is not a unique situation. It is not about evil people but about the way normal, well-intentioned people behave when they are trapped in a system they believe in but which is flawed.

We have written more and at length in other submissions. We have shown that attempts to address the problems by tinkering with the system do not address core problems in the patterns of belief on which it is based and the processes that are based on them. Proposals such as more unannounced visits, Quality Indicators and Star ratings (both of which are self-reported so easily gamed) will have marginal if any benefit unless the underlying problems in the system are addressed.

======================= End (QOC Pages 27-37)========================

[74] Aged Care complaints kept secret (Sydney Morning Herald, 27 Sep 2014) http://bit.ly/2CQQAOQ

Governance and Regulatory Capitalism

Regulatory policy relies heavily on what is called governance – based on the Greek word ‘kubernaein’ meaning ‘to steer’. In its modern implementation it has been the go to solution for market problems in Australia since the 2005 Royal Commission into the HIH and One-Tel scandals.

Professor Mike Woods who has conducted aged care reviews and Commissioner Briggs are senior members of the Governance Institutes and Briggs was responsible for introducing governance into the public service.

The extracts here are drawn from our lengthy discussion of this in our unpublished 4 August 2020 submission to the Royal Commission into Aged Care pressing for structural change.

======================(Extracts pages 59-72)========================

Encyclopedia Britanica: Mark Bevir has written[75] a comprehensive and critical analysis for Encyclopedia Britanica. He indicates that the term governance is used *“to describe changes in the nature and role of the state following the public-sector reforms of the 1980s and 1990s. This involves a shift from a hierarchic bureaucracy toward a greater use of markets, quasi-markets, and networks, especially in the delivery of public services”. As a result “the state increasingly depends on other organizations to secure its intentions, deliver its policies, and establish a pattern of rule.”*

This poses problems for democracy because of the *“increased role of nonelected actors”* and *“the extent of their democratic accountability”.*

He describes the problems created by neoliberalism explaining that because *“neoliberals deride government, many of them look for another term to describe the kind of entrepreneurial pattern of rule they favour”.* Rational Choice Theory sees everyone acting in their own self-interest and this *“undermines the idea that policy makers act benevolently to promote a public interest”* and *“casts doubt on the idea of a public interest”.*

Governance becomes a proliferation of networks and reduces the ability of the state *“even to steer effectively”.* He describes what he calls a *“neoliberal narrative of governance”* that still focuses on Rational Choice theory and individual actions. He looks at it from different theoretical perspectives and makes different criticisms.

He comments that despite these criticisms *“citizen involvement - - is surely a necessary requisite of good, democratic governance”* which should *“reflect the values of the citizenry”.* A *“strong civil society”* is important. Both are absent in the neoliberal model.

The Governance Institute of Australia claims a *“membership of over 7,500 company secretaries, governance leaders and risk managers from some of Australia’s largest organisations”* It has written large numbers of ‘how to’ guides to help those involved meet their governance objectives.

A corporate culture is considered to be an important goal and is addressed in a 2017 guide[76], ‘Managing Culture A good practice guide’.

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[75] Governance politics and power Mark Bevir Encyclopedia Britanica https://www.britannica.com/topic/governance

[76] Managing Culture A good practice guide First Edition, Governance Institute of Australia December 2017 https://www.governanceinstitute.com.au/resources/resource-centre/?Keywords=Managing+culture+A

Culture it is suggested *"can be viewed as a deal made between executives and their staff, between the company and its customers and investors, and with the broader public'"*.

This is surely the sort of dry definition that Ayn Rand might have used, a relationship of mutual self-interest based on Rational Choice theory. It effectively removes genuine empathic relationships and a sense of moral or social responsibility, the public good and selflessness from the definition.

But then markets are driven by self-interest and in many sectors selflessness and consideration of the public good would be unprofitable and even compromise survival.

The guide refers particularly to *"organisation's risk culture"*. A cynic might see this as the risk of being found out although that is hopefully not what is intended.

The risk framework too is conceived as *"An ethical framework enables the delegation of authority to a distributed network of responsible decision-makers while maintaining organisational integrity"*. It is a process that is delegated.

The Centre for Strategy and Governance, to which Commissioner Briggs and the two people (David Tune and Michael Woods), who have done most to drive the government's free-market aged care 'reforms' belong, also does coaching. It has a focus on nonprofits and has a special "Competition Policy Advisor Panel". It does reviews and reports on governance. We do not know how long it has been in existence but the first report on its web site was in 2011. It is clearly influential.

Governance is not working

If we look at the ever-increasing volume of fraud, misconduct and the never-ending exploitation of vulnerable citizens it is clear that after 30 years of repeated reinvigoration and rejuvenation governance is not working. It is no match for the power of the neoliberal discourse and the perverse competitive pressures it creates.

In ***Appendix 7*** we have included a long list of scandals, which are clear governance failures in private corporations[77] and in bodies that have been appointed or contracted by government to carry out what were once done by the public service[78].

The footnotes are to articles we have written about this problem. We have also written about the pressure on nonprofits and how they have changed[79]. Every day we hear of more. Look as well at the global record of KPMG, and yet it continues to be used by government. The failure in aged care speaks for itself and there are similar problems in disability care where there is another Royal Commission. Governance is not controlling any of this,

Government conduct: We need only look at government's own behaviour to see how ineffective governance really is.

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77 Failed markets and culturopathy Inside Aged Care 2016 https://www.insideagedcare.com/aged-care-analysis/cultural-perspectives/failed-markets-and-culturopathy

78 Contracting government services to the market Inside Aged Care 2016. https://bit.ly/3EV1xR4

79 ~~Contracting government services to the market~~ Dilemma for not-for-profits Inside Aged Care 2016. https://www.insideagedcare.com/aged-care-analysis/cultural-perspectives/dilemma-for-not-for-profits

In 1990s the Australian Wheat Board breeched United Nations sanctions[80] on Iraq in a complex fraud involving oil and wheat. This was finally detected when Iraq was invaded. In 2006 the Federal Court revealed[81] that *"Howard government officials and ministers were repeatedly warned that AWB was rorting the UN's oil-for-food program"*. It had not sought its own independent opinion and accept contrary advice from an industry lawyer. The prosecution of the offenders was dragged out with minimal penalties.

In 2004 when the Australian government was embracing governance so enthusiastically and Commissioner Briggs was appointed to manage this in the public service, the Australian (government) was setting an example to the market by illegally bugging the East Timor government in order to gain a massive advantage in a trade negotiation[82]. For the last 16 years it has been setting an example of governance for industry by pursuing the whistleblower who told Australians how corrupt its government was[83]. A seminal example of how to deter the whistleblowers, who have become our major source of information about corruption. It has done the same with other whistle blowers in government run organisations like customs and the tax office.

Government subsidiaries: Over a 10-year period until it was exposed by whistleblowers two subsidiaries of the Australian Reserve Bank were paying large sums to corrupt intermediaries that were used to bribe government officials in other countries to award lucrative money printing contracts to these subsidiaries. There was strong resistance to investigation, and to prosecution of the companies and the directors involved, most of whom moved to senior positions elsewhere.

During this period the senior public servant Ken Henry whom Commissioner Briggs would have known and worked with was Secretary of the Treasury and would have been expected to have oversight. He was one of the advisory group that investigated the public service and produced the 'Ahead of the Game' reform program in 2010. He would have been well versed in governance requirements. He later became chairman of the Australian Securities Exchange and chairman of the National Australia Bank whose nefarious conduct was exposed by the Banking Royal Commission.

In 2016 there was a report[84] of *"multiple cases of alleged corruption involving staff from the Australian Border Force and the Department of Agriculture, along with maritime industry employees with government clearances"*. It was claimed that they were engaged in smuggling with organized criminals. In 2017 there was another $144 million scandal[85] at the tax office as staff defrauded[86] citizens.

Wherever you look you find more. Federal politicians own conduct often leaves a great deal to be desired and the many scandals in state governments all speak for the ineffectiveness of a process that tries to steer but has no bite when it is faced by powerful forces that are looking for easy money.

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80 AWB oil-for-wheat scandal – Wikipedia (CORRRECTED) https://en.wikipedia.org/wiki/AWB_oil-for-wheat_scandal

81 AWB tricked the UN: Federal Court judge The Australian 19 Sept 2006 https://bit.ly/44cLsBs **(Paywall)**

82 Australia–East Timor spying scandal Wikipedia https://en.wikipedia.org/wiki/Australia–East_Timor_spying_scandal

83 Secret whistleblower trial will only add to Australia's shame over spying cover-up Sydney Morning Herald 29 August 2019 https://bit.ly/3pdX2xw

84 Customs officials allegedly involved in drug and tobacco smuggling Sydney Morning Herald 19 May 2016 https://www.smh.com.au/national/customs-officials-involved-in-drug-and-tobacco-smuggling-20160518-goy672.html

85 New scandal hits the Australian Taxation Office News.com 12 July 2017 https://bit.ly/2XsiaiB

86 How the alleged $165 million tax scam worked 18 May 2017 https://www.smh.com.au/national/how-the-alleged-165-million-tax-scam-worked-20170518-gw7wuz.html

======================End (pages 59-72)========================

Professor Braithwaite and his REGNET group have described this as "Regulatory Capitalism" claiming that while neoliberalism claims to reduce regulation, the response has been to increase regulation but this is largely self-regulation. He writes about it at length.

======================(Extracts pages 73-84)========================

Braithwaite presented a paper to a conference on government accountability in 1999 that can now be seen to be prophetic[87].

Braithwaite described the 'New Regulatory State' saying *"the state might be doing less rowing, but it is doing more steering"*. He indicates that:

> Foucault's (1991) governmentality lectures get us closer to an understanding of the way government is no longer a unified set of state instrumentalities. The sovereign is not dead, but it is just one source of power. Moreover, the state is an object as well as subject of regulation. (by international organisations)

He indicates that *"We live in a world where many centres of power both steer and row"*. He indicates that the *"new regulatory state pose severe accountability problems"*. The government could for instance avoid legal responsibility and trample on the rights of other countries or even their own citizens by contracting what it wanted to do to others.

He also warned that *"accumulations of private power pose the greater threats to our freedom"*. This was particularly so where major government responsibilities (eg telecommunications) that were monopolies were contracted to the market - particularly to foreign multinationals.

As the networks of responsibility grew *"in the long run, everyone will be accountable for everything, but no one will take responsibility for anything"*. He stressed the need to avoid a situations *"that cause regulated actors to work defensively to avoid blame"*.

Braithwaite stressed the need to *"enable community participation in government; the latent function is that the outsider is more likely to blow the whistle on impropriety. - - Above all else, a republican architecture of trust requires the abandonment of hierarchical architectures of trust"*. In many of the scandals it is outsiders looking in who see what is happening.

In advocating a 'republican democracy' he says *"The institutional embodiments of circular guardianship in business regulation, for example, are multiparty (ie including community groups) dialogic regulatory institutions where the actions of those in the circle are transparent and contestable from outside the circle"*.

That is quite close to what Aged Care Crisis is advocating when we talk about a constructivist local management and regulatory process – It is essential that multiple points of view are not restricted by disparities in power.

====================== End (pages 73-84)========================

This group looks for opportunities and ways to make this work and that very much includes including multiple points of view and community as controlling influenced and we can talk about 'Community governance' which is not far from what we have been aiming for.

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[87] Braithwaite J. Accountability and Governance under the New Regulatory State Accountability In Australian Government Symposium 1999 Australian Journal of Public Administration · December 2002 https://bit.ly/43S5bGU

Comment: What is clear is that whether we call it governance or regulatory capitalism, it has not worked and has effectively marginalised civil society.

In his 2022 book 'Criminality and Freedom' Braithwaite stresses the importance of balanced power and perspective and the importance of civil society in providing this. He writes extensively about the role that dominance including market dominance in particular plays in creating pathological states – he calls them 'criminalised states.'

6 Final Proof

The data when it is collected and examined shows that over the years since 2000 the acuity of residents has steadily increased at the same time the number of trained nurses required to care for these frailer and sicker residents has fallen. As we now know there were more and more failures yet during that period the rate of perfect scores increased from only 60% to an almost perfect 98% by 2016, when it started falling apart. Comparison with the USA is revealing. It has a far from perfect system but it does collect data.

This data has been used in different ways in most of our major submissions since 2016 and was supplied to the Royal Commission in February 2019. The extract below is concise and sources are supplied in the earlier submissions.

=====================(AN-ACC pages 41-45)=====================

Recent history

Gregory's warning that staffing and care could not be protected proved prophetic. The Riverside kerosene baths scandal in 2000 after only three years, was the first of many involving failures in care. Since then, there have been ongoing problems with recurrent scandals, followed by a multitude of reviews, inquiries and consultations. These were followed by reforms that claimed to have addressed the issues.

None have worked and some made the situation worse. Staffing and care have deteriorated progressively. This has accelerated over the last 10 years as the focus on reforming the market when it had problems led to more marketplace solutions that ignored past knowledge. Whistle blowers have been attacked, families disbelieved and those who persisted threatened with defamation. The press investigated and published.

Aged care is not the only market that has suffered from these problems and Australia is not the only country that has adopted these policies with similar results. In 2015 we wrote about and collected a long list of links to articles describing failed markets and then of failures in aged care in the UK, USA and Australia over the years[88]. By 2018 it was much worse and there were so many problems that Four Corners did a two-part exposure forcing the government to call a Royal Commission.

Aged care has not met anyone's expectations except the providers who entered the sector to make money and become wealthy.

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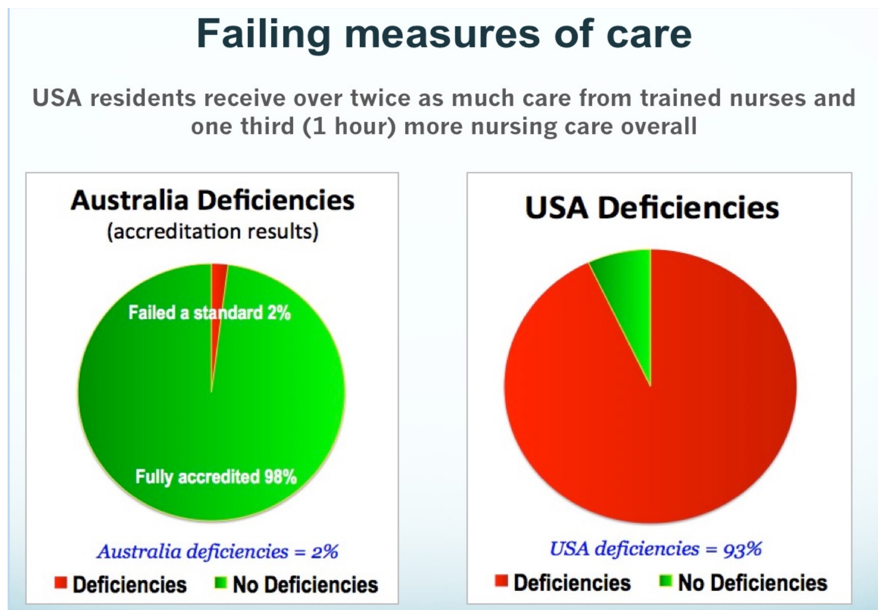
[88] Further Reading Aged Care Crisis 2015 https://agedcarecrisis.com/solving-aged-care/part-4/further-reading
Aged Care failures Inside Aged Care 2015 (updated 2018). https://bit.ly/2Mj9lAu
International aged care Aged Care Crisis 2015 https://agedcarecrisis.com/solving-aged-care/part-4/international-aged-care

In spite of this government ministers and industry have regularly boasted that Australia had a 'world class' system confirmed by a rigorous regulatory system, which showed that care was improving steadily.

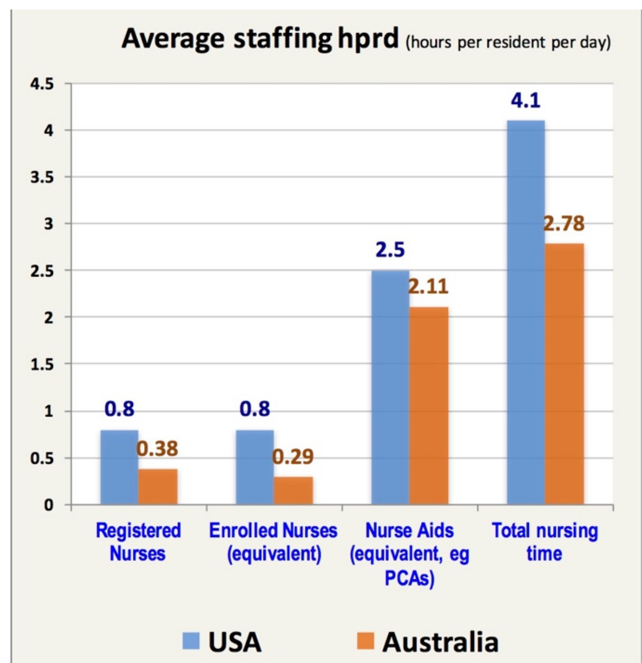
During the last 23 years there have multiple 'reforms' instituted by the 'industry' and government working together. Each, like that in 2012, and those in 2014 and 2015, were promoted to the public in glowing terms, once again reaffirming that the system was world class. Yet each was followed by further more rapid deterioration and more scandals.

Some charts show what was happening.

Failing measures of care: By 2016, almost 98% of Residential Aged Care Facilities in Australia were getting perfect scores - something that should have been contrasted with the better staffed US system where only 7% got perfect scores and 20% had serious failures. This readily available information recorded over the years should have set red flags waving but it was not examined.



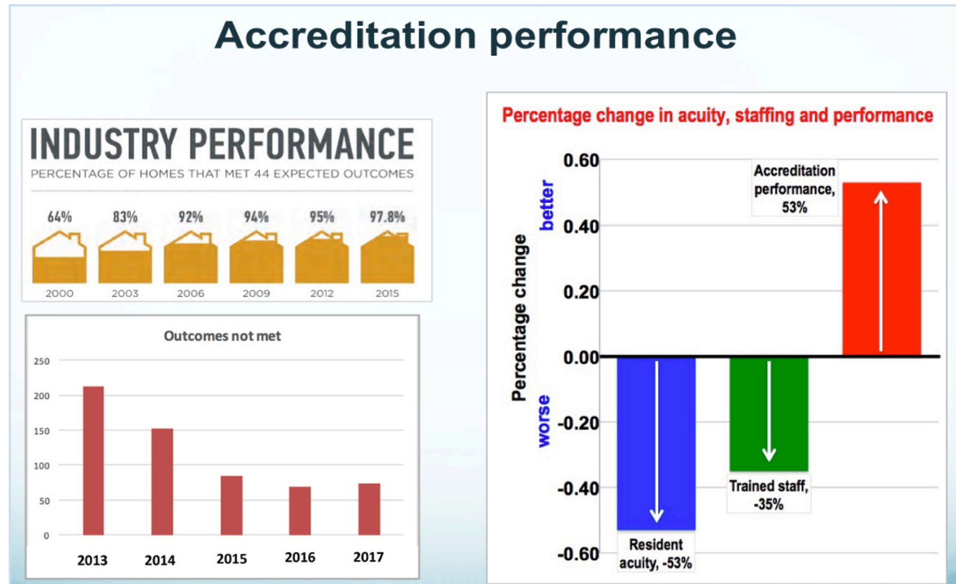
Average staffing hprd (hours per resident per day):
This success in meeting all the standards set was achieved even though residents in US nursing homes received more than twice the amount of care time from trained nurses and a third more care time overall than Australian residents. Comparisons were never made.



We are not suggesting that the US has a good or successful system. Its system has been flawed since the 1980s. It has had serious problems over the years. Their regulatory system has revealed them, and regulatory effort has contained them better than in Australia but the system remains suboptimal.

The argument is that systems that depend on regulation are dysfunctional and need restructuring if they are to work well.

Accreditation performance: Even more remarkably, this success rate in Australia was achieved as the percentage of sicker and frailer residents (revealed by the number of high care residents) increased by over 50% and the percentage of trained nurses needed to care for them fell by 35%.



We now know that far from being world class, this was a system that had been neglecting residents and often harming them for years – one to be ashamed of.

It is now clear that whatever explanation is offered, the regulators that visited these facilities regularly were protecting the industry and the government from bad publicity instead of the frail elderly they were supposed to be protecting. We need to look at what was happening.

======================End (AN-ACC pages 41-45)======================

The data suggests that the worse care became, the harder they tried to conceal it.

6.1 Lessons from Pennsylvania

A little more information reinforces all this. Pennsylvania in the USA has had a lot of problems in aged care and their elected members have been active in exposing their regulator when it was hiding information about poor providers. It is interesting that the same thing was happening in Australia.

========================(RCAn pages 164-196)==================

The USA has a Special Focus Facility (SFF) program which identifies those facilities who require increased oversight because they *“persistently underperform in required inspections conducted by state survey agencies”*. These were publicly disclosed so that prospective residents could choose to avoid them.

Senators Casey and Toomey in Pennsylvania, where there have been several problem providers, discovered that *“only 0.6% (a maximum of 88 facilities)”* of the 15,700 in the USA had been made public because of their high risk so that families could avoid them. Pennsylvania has been active in advising families making choices about care and staffing.

They inquired and discovered that *“An additional 2.5% of facilities (approximately 400 facilities) qualify for the program because they are identified as having a “persistent record of poor care”.* They were not selected for participation. This is because of limited resources at the Centers for Medicare and Medicaid Services (CMS).

The CMS were not funded to watch so many closely. This was not public. The CMS protected government and the industry by not disclosing that information to the public. This and the names of the additional 400 problem facilities were hidden from the families who needed to know.

These two US senators promptly published[89] a list of the facilities to ensure that the public would know. There was wide publicity.

When we consider the greatly reduced number of accreditation visits and the almost total abandonment of visits by the Complaints agency in Australia after 2013, we have to suspect something similar. Regulation was markedly reduced between 2014 and 2017 under the pretext of the $6 billion red tape reduction~~Error! Bookmark not defined~~. program. Our senators did not tell u s that the regulators were no longer there for us and we could not depend on them!

LISTS: Homes of Concern, Homes of Interest, Service Providers of Concern:

Homes of Concern list (HoC): Similar to the USA, in Australia, at least prior to 2009, regulators kept a similar "Homes of Concern" list. This initiative comprises *"a list that identifies those aged care services/approved providers about which OACQC has identified a high risk of significant non-compliance. The distribution of the Homes of Concern list within DoHA is intended to promote the sharing of regulatory information and cooperation in responding to emerging compliance risks between: branches within Central Office with regulatory responsibilities; and Central Office and STOs"* (State/Territory offices)[90]. It would facilitate cooperation in responding to emerging compliance risks.

Service Providers of Concern list (SPoC): Another list in circulation since around 2010, the Service Providers of Concern (SPoC), comprises aged care homes or Approved Providers which the department has identified as representing a high risk of significant non-compliance. This initiative was acknowledged in the ANAO's 2009-10 performance audit of DoHA's administration of prudential arrangements for the *Protection of Residential Aged Care Accommodation Bonds*.

The *"Homes of Concern/Interest"* and *"Service Providers of Concern"* lists would have been considered crucial information for those seeking to make an informed choice when choosing a nursing home, but like most other information, this too was not publicly disclosed. The current focus on risk assessment, rather than frequent and careful oversight as recommended by the Nous review and adopted by the Quality Agency, is likely to have refined this list further.

This information would be invaluable not only to prospective residents in choosing, but also to family and friends who watch over residents and need to increase their vigilance when there is a greater risk. They have been kept secret.

Despite vast amounts of time, effort and money, the assistant director of the Department of Health when questioned about the utility of SPoC at the Royal Commission in August this year, *"agrees with the assertion that there isn't a very robust process to determine if a service provider is added to the list."*

========================End (RCAn pages 164-196)==================

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[89] Families' And Residents' Right To Know: Uncovering Poor Care In America's Nursing Homes, Senators B Casey and P Toomey June 2019 http://bit.ly/2YOrVGB
See Metro Denver Nursing Homes on Senators' Poor Care List 5 June 2019 http://bit.ly/2YDKYmx

[90] Auditor-General Audit reports for 2009-10 No. 05 Performance audit Protection of residential aged care accommodation bonds: Department of Health and Ageing: http://bit.ly/30ye9YR

Pennsylvania made a greater effort to help citizens avoid these bad nursing homes. Their web site shows just how bad things are in Australia.

=======================(RCAn pages 195-196)==================

One US web site in Pennsylvania in the USA analyzing services and advising prospective families about nursing homes drew up a 5 step classification level for staffing from very good through good, low, very low and finally to dangerously low. They based this on a paper[91] by Professor Charlene Harrington, a US authority on staffing in aged care. They were selected in consultation with her.

PennLive[92] defined a facility with 'dangerously low' staffing as one that provided less than 3.5 HPRD total direct care staffing and, within that, provided less than 0.53 HPRD from registered nurses.

The classification used was:

- If total staffing hours <=3.5 and RN staffing <0.53: "Dangerously low"
- If total staffing hours <= 3.5: "Very low"
- If total staffing hours <=4.1 and>3.5: "Low"
- If total staffing hours <=5 and>4.1: "Good"
- If total staffing hours >5 and <12: "Very good"

The average staffing levels in Australia are below 3 hours and RNs are 0.38 hours. It is clear that a significant majority of Australian nursing homes fall into the 'dangerously low' category where there is a significant likelihood of adverse outcomes.

The StewartBrown benchmarks also fall into the dangerously low group. With this level of staffing the US regulators would expect a large number of failures to occur. A list of US nursing homes and the sort of data collected and made available can be found on the PennLive website[93].

Studies done in Australia in 1985[94] and again in 2016 showed that levels similar to those in the USA are needed but these studies have been ignored.

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Conclusion: It is impossible not to conclude that the many complaints are valid and that care in Australia is very poor. Even though we do not have any data about outcomes, it is very clear that we have been deceived by the regulatory body that is supposed to ensure that staffing is adequate and whose job it was to protect us from harm. We are not suggesting that this deceit was deliberate.

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[91] **The Need for Higher Minimum Staffing Standards in U.S. Nursing Homes** Harington C et al Health Serv Insights. 2016; 9: 13–19. http://bit.ly/2La0weJ

[92] Still Failing the Frail: The data and records behind our reporting and our database Penn Live 14 Oct 2018 http://bit.ly/2LaD3uc

[93] STILL FAILING THE FRAIL http://stillfailingthefrail.pennlive.com/

[94] Patient Care Analysis, Extended Care Society Of Victoria, V Hardy et al 1985

Had those selected to oversee aged care been properly qualified for the job and motivated, they would have explored this issue and the vast amount of international data available. If we are to address this problem, we need to understand why this is happening and how people come to deceive themselves in this way.

Multiple efforts to get the industry and regulators to address the decline in staffing as acuity increased have not worked. Nurses have been calling for ratios for years and so have the doctors who see what is happening.

=======================(RCAn pages 195-196)==================

7 Conclusion

When we look at what is happening it seems clear that adverse information about aged care was more threatening to the regulators than to the public. The worse it got, the harder they tried to conceal it. That must have taken a lot of wilful blindness and strategic ignorance as well as rationalisation.

We can understand that this is how people behave when they believe in a system and have no doubts that what it is doing is world class. It is a system that cannot acknowledge failure.

If we consider that the necessary conditions for the market to work are firstly an informed and effective customer and secondly an empowered, knowledgeable and involved civil society, then the regulatory system in aged care has effectively neutralised both and rendered them ineffective. It is responsible for preventing citizens and society from controlling and managing the market that should be serving society. It has played a pivotal role in ensuring that the aged care system would not work and that the elderly would be harmed.

Appendix E

What families and staff have to say about care

This attachment is a copy of Appendix 1 of Aged Care Crisis Submission to '**Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia' by the Standing Committee on Health, Aged Care and Sport**

March 2018

The Appendix contrasts what the industry and government have been saying with what citizens, nurses, and others who have more direct contact have been saying over the last 20 years. It also shows how extensive and critical the press has become and what we are still dealing with. Now that staffing and other data is available it is clear who was correct and who was living in an illusionary bubble

June 2023

Table of Contents

1 What staff and family members told us in 2005 4
2 Subsequent similar comments 9
3 Inquiry by Senate Community Affairs References Committee 2016 10
4 Comments on articles 13
5 Lawyers who deal with family members are aware of the problems. Eg, staffing 15
6 Comments by nurses to the 2017 Carnell/Paterson Review 15
7 Additional sources with multiple links 17
8 Partial extract from submission to ALRC Issues Paper (2016) 17

Appendix 1 - Contrasting industry with families and staff

"… The Australian aged care system is a global benchmark for best practice, thanks to strong government funding, a robust framework for accreditation, quality and regulation, and a long history of cooperation between government, service providers and the community ..." [1]

Contrast the comments made by staff and families at various times over the last roughly 15 years with the government and industry's idealised view as revealed above on the Austrade web site. Yet most of the leaders in the sector seem to think this way. We have seen similar inflated assessment by market and industry providers preceding major scandals in corporate hospitals and in aged care in the USA. It sets alarm bells ringing.

In another example, after experiencing the system as a family member Lynda Saltarelli made extensive inquiries and then wrote a newspaper article in 2007 describing her findings[2]. The then chief executive of Aged and Community Care Victoria, Gerard Mansour responded:

> *LYNDA Saltarelli (Opinion, 19/11) has unfortunately missed the central point - Australia has one of the most robust accreditation and complaints systems anywhere in the world.*
>
> *The aged-care industry is highly regulated and accountable. The introduction of legislation to deal with elder abuse, our 44 accreditation standards, police checking and new complaints system demonstrate it isn't regulation or accreditation that is the failure in aged care[3].*

Later in 2012 as CEO of LASA, Gerard Mansour was reported as responded to a report of assaults in aged care homes[4]:

> *Gerard Mansour, the chief executive of the peak body representing providers, Leading Aged Services Australia, denied that quality was declining.*
>
> *"Overall the industry has an outstanding quality record as measured by our independent accreditation scheme, under one of the most robust quality systems anywhere in the world," he said.*
>
> *"Where there are isolated incidents, these are treated seriously and acted on promptly by providers even when it means reporting allegations or suspicions. The data reveals that many assertions may not ever be substantiated."*

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1 **Aged Care: Setting the Global Standard for care - The Austrade website 2015** https://www.austrade.gov.au/aged-care/

2 Vulnerable elderly deserve better care - Lynda Saltarelli in The Age - Opinion, 19 Nov 2007 http://bit.ly/25tw54Q

3 We must prepare for the future The Age, Letters, 20 Nov 2007 http://bit.ly/2Gx1yMr

4 Aged-care assaults increase - Sydney Morning Herald, 30 Nov 2012 http://bit.ly/25txfNV

Those who have studied society over the last 2-300 years have recognised that the most difficult situations to deal with are those in which the perpetrators believe implicitly in what they are doing, so implicitly that they are unable to see what is happening in front of their noses. Because they believe in what they are doing they are not restrained by their consciences. This phenomenon is now well recognised and there are a number of ways of understanding the psychological strategies used and the way in which groups reinforce each other in deceiving themselves. (See Appendix 7)

> "virtue is more to be feared than vice, because its excesses are not subject to conscience" (Adam Smith 18th century)
>
> "It's always the good men who do the most harm in the world" (Henry Adams 19th century)

1 What staff and family members told us in 2005

The following snippets are a small collection only, of extracts of emails and letters sent to Aged Care Crisis. These short quotes were part of a submission made to the Senate Community Affairs References Committee - Inquiry into Aged Care, in June 2005.

Ten years later in 2015 there was another of the recurrent cycles of allegations of abuse and neglect in the aged care system with similar allegations. Aged Care Crisis published these 2005 comments on a web page to show that despite all the reviews and inquiries and token regulation, nothing had changed.

Feedback 1. "…As a PCA8 or Nurse's Aid, one doesn't have a voice. You are considered quite lowly and no respect is given. So I decided to go to Uni and study to become an Enrolled Nurse (Div 2). I only lasted for half the course due to my disillusionment of the industry.

The class was supposed to consist of 22 students, but had 39. You were taught some things once and then considered qualified in that area. When we were sent to placement at a Nursing Home/Hostel, they were understaffed so us, the students, were left to shower, bandage and feed with no assistance or supervision. Because I'd had some experience, the other students would come to me for help and advice.

This is what they called training… The government have a lot to answer for…"

Feedback 2. "…there seems to be an influx of untrained and unsuitable staff who, because of the unemployment rules, take on any job because Centrelink tell them they have to. Companies want to take on Division 2 Trainee to make money, then ask them to leave when their traineeship is over, causing loss of trained staff. Many of the PCA10 trainees have come into aged care because they are not able to find employment elsewhere and companies are desperate for staff take them on with very limited skills putting the residents and other staff at risk…"

Feedback 3. "… Mum is in her mid fifties, yet it is not unusual for her to work double shifts and she routinely stays back two and three hours after her shift ends to catch up on documentation. In fact, although her official working hours have been cut back recently, the hours she actually spends at work have not. She is a highly dedicated nurse and does everything she can to give the residents the best care possible under very poor conditions…"

Feedback 4. "… it is difficult to "care" for residents with the present staffing levels. I burnt out within twelve months of commencing work in a Nursing Home, because of what I saw and as a result of not having the time to spend with people who so desperately needed me to just be there for them.

As a Nursing Home employee I treasure the time when I can speak to a resident, and listen to what they have to say. That only happens when they are naked on a chair, in a shower. This is their quality, one to one time.

I have 15 minutes maximum to get that person out of bed, often with a lifter, get them to the bathroom, shower them, dress them and transfer them into another chair. I also should have the bed made in that time. If someone needs to use a pan while I am in the shower, they have to wait. I can't leave the person I am with. Then we wonder why the majority of residents are incontinent. Most aren't when they are first admitted.

I am going to university to study so I can escape the tragedy of our nursing homes. They are a huge indictment on our society. I challenge anyone, who knows the reality of life in a Nursing Home, to say that they would like to spend the last years of their life in one.

We couldn't come up with a better way to strip aged people of all their dignity and humanity…"

Feedback 5. "… I am now in my mid 40s (a baby boomer) and for most of my working life have worked as a trained nurse (now no longer). During my initial years as a nurse, I worked as an untrained nursing assistant in the area of aged care, and I must say I found it difficult and depressing to say the least.

I witnessed many acts of brutality and cruelty from more senior registered nursing staff and doctors alike, but due to my low rank at that time (felt) I wasn't able to do anything about it.

The thought of me having to rely on strangers to take care of my personal needs (like bathing and toileting), for me, is simply out of the question. My feelings would be the same if I were to ever need the services of a nursing home…"

Feedback 6. "As a nurse in an aged care facility, it is very frustrating to have a resident returned from a hospital visit of only a few days, return to us with pressure sores that did not exist before the hospital admission. Let me tell you - the hospital nurse/patient ratios are FAR less than what we nurses in aged care deal with. I was in hospital myself recently and the ratio was 1 nurse to 4 or 5 patients, compared with the ratios I work with at present 1 carer/nurse to a minimum of 12 residents on an afternoon shift. Sometimes it is more, if you are short staffed. Morning shift is worse because the workload is even heavier, and the night shift is 2 carers for 45 high care residents, with one RN Div 1 for almost 100 residents - this is a lot of responsibility for the RN Div 1. Not only is the RN responsible for the residents, but the care staff as well, and including the building itself.

Based on the hospital nurse ratio's one has to wonder how they cannot give adequate pressure area care required to avoid pressure sores…"

Feedback 7. "… I work in an aged care facility as a nurse/carer. It is a lovely facility but it has many problems. I specifically see problems in the delivery of quality and best practice care to residents.

I get very frustrated working alongside people who call themselves carers who do not have experience, and some have no formal training/skills. Unfortunately, the government let aged care facilities employ such people. I believe the elderly deserve to be looked after respectfully and with dignity, but the delivery of care falls short by most facilities when employing staff who basically 'do not know what they are doing' and do not have the passion and dedication to perform and deliver quality care…"

Feedback 8. "… I have been a personal carer for several years now, and for the last few months working in nursing homes.

I care deeply for my residents and treat every one of them as I would my own grandparent and I am disappointed that many people believe that Personal Carers (PC's) are careless or abusive. I guess there are people like that out there, but given that where I work I am pressured to carry out the ADL's with speed... (aim for 15 minutes/ resident), I am not surprised that residents are injured at times.

I have been instructed through communications (at my work) that if we cannot fulfil our tasks in the allotted time, then maybe we should not be working here (place of employment). We are short

staffed and apparently 'under funded'.. something I find very hard to believe, but that is what I am told.

On average, each employee would stay on the shift (unpaid) for up to half an hour just to complete tasks and make sure that the residents are comfortable. All my work colleagues are compassionate and caring individuals. It is the management and owners of the nursing homes that need to be accountable for the funding they receive.

My understanding is that as long as a nursing home meets the accreditation standard, they continue to get funding to be spent in whatever way they choose. We bear the brunt of abuse, a career that very few others would choose to pursue and get paid very little for a job very few of us would swap for another career. We don't work for the money.... we work for the love of our elderly citizens.

Would someone please help us, to help our elderly live out their remaining years with dignity and comfort?"

Feedback 9. "… I have in the past had expressed concerns about the level of aged care but have not been heard. I worked in a large aged care facility for the best part of a decade many years ago and not a great deal has changed. In the industries where accreditation is implemented I see fundamental flaws. I see agencies given accreditation status in aged care and child care facilities and I often wonder how they achieved this standard. The only way accreditation will work is if spot accreditation is applied. A set schedule for the process only provides the organisation the opportunity to dress up the "facade" for the occasion. It is a farce and always has been. I could tell you many a story about accreditation!"

Feedback 10. "… have just left employment with a categorised Low Care Hostel employed as a PCA. Over the 6 months I was there, I was a silent partner in out and out deception regarding accreditation:

- I was told to complete 18 months worth of bowel assessments before (accreditation);
- the staff were hand-picked for the day the on spot review happened (the roster was changed to accommodate this);
- the residents who may of spoke of concerns where sent on a bus trip to local RSL for the day (a first I might add), unbeknown to them the accreditation team were coming in;
- the ratio of staff was upped for the day; and
- the menu changed to something very palatable the residents did not normally receive.

Of course, the home passed with flying colours. I was lucky in the respect I was not stopped and asked any questions, saving me an ethical dilemma, due to the fact 3 weeks earlier, had been rushed through my medication competency - to the extent I arrived for a shift at 6am and found I was giving medication out, and at 9.00am the R.N arrived and then signed me off for 3 previous supervised medication rounds that had not happened.

I was working that day with one other carer who had no experience in aged care and had only worked one shift the evening before. She (no buddy shift/no competency passed) walked in and had to shower 9 residents before 8.00am and burst into tears when faced with a colostomy bag. *(The poor woman had called 2 days previously on the off chance looking for domestic work and had been employed on spot as a carer.)*

I was lucky that day, as no incidents/accidents occurred. When I queried the fact I was not conversant with the medication I was giving to the cognitively impaired (as per regulations), and (asked) 'when would education happen for that', I was told 'you have a MIMS11 in the clinic, read that'.

My next shift as the Carer giving out medication was over the long weekend, no R.N is rostered on for 4 days, and unfortunately for me she also was not answering her phone or mobile so I had to make my own judgement calls re PRN medication12. When I brought my concerns up, I found they were not addressed - leaving me no choice but to leave before they fabricated a reason to get rid of me as happened to previous staff members."

Feedback 11. "…Speaking with other relatives today, there are still ongoing issues. One resident asked to go to the toilet and was told to wait until after she had finished her breakfast. Staff did not return and she soiled the bed. It seems they are still not adequately staffed, either quantity or quality…"

Feedback 12. "… A nurse wheeled Mum into the disabled toilet and went away. The nurse then went off duty. Unable to see any buttons (blind) Mum called out until her voice was gone. She was found 3 hours later at meal time by a staff member searching for her.."

11 MIMS – A handbook containing medicine information from Australian pharmaceutical companies 12 PRN Medication - the name given to'when required' medications. PRN medications are defined by the Australian Pharmaceutical Advisory Council (APAC) as being those which are ordered by a medical practitioner for a specific person on that person's medicine records and when the registered nurse, using clinical judgment, initiates, or delegates to an authorised enrolled nurse, when necessary. The administration of PRN medicines must be recorded on the person's medicine record (APAC 2002). Staff should record the times and dosage for which that medication is administered on the resident's medication chart and record why the medication is given and the outcome (for example, pain relieved, resident settled) in the progress notes.

Feedback 13. "… Lack of surprise inspections: I worked in a Nursing Home, which was privately owned for nearly two years. In this time the proprietor sacked over 18 D.O.N's (Directors).

Food for residents was locked with a padlock in a fridge because the owner felt we might steal her milk or margarine or jam. So, hungry residents couldn't get a snack after 7.30pm when kitchen staff went off duty. We once had two chickens to feed to 30 residents because she wouldn't purchase more food. If we ran out of stuff, we had to buy milk or bread for the people.

Sure, we complained, and complained about so many things you could never believe. Nothing ever was done. All in a very affluent Melbourne suburb too!"

Feedback 14. "… Self regulation is a joke. Why would a proprietor, who most often is an absentee landlord with no emotional bonds with the patients, expend extra money if he does not have to? Philosophically how many people invest in aged care homes to provide good quality care as the first objective? Surely the main objective is to make a profit. The two are contradictory.

How many inspections take place at "dinner time" at 4pm when the bread and butter and cup of tea are handed out with nothing else until 7am the following morning?"

Feedback 15. "… This home has had sanctions placed since and one of the biggest flaws was that they have one qualified RN on each shift and sometimes none at night time. When my husband spoke with the RN on Sunday, the RN had no idea that MIL13 had been sick. The report on the accreditation stated that often care assistants were in charge of residents and did not report illnesses back to the RN's (Registered Nurse). She was showing signs of flu and maybe the assistants didn't think it was bad enough - who knows.

The doctor had not been called for her. My MIL (Mother in Law) was just under the impression that that was the case as she had commented on her unwell feeling to the staff. When we bought it to the RN's attention, a Dr was arranged for the next day. Unfortunately, the infection had already hit the brain causing hallucinations and 4 days later, despite antibiotics, she had deteriorated enough to be admitted to hospital with pneumonia.

The poor RN's have way too much responsibility - medication records, changes in resident's health/appetite, etc and often don't get to actually spend time with the residents. If they had, they might have picked up her illness and acted upon it earlier."

Feedback 16. "… Due to staff shortages my mother (totally blind and with dementia) had several bad falls, one when she fell out of bed suffering bruising, cuts, and a broken collar bone and

resulting in extensive hospital treatment. The relieving staff member was unaware my mother was blind and forgot to put the restraining sides up on her bed".”

Feedback 17. “…Are you aware, to reach Accreditation nursing homes have to tender an application, at the cost of thousands. Nursing Homes have to be accountable for care given, we have to prove we do what we say we do. Hospitals do not have to do this…”

Feedback 18. “… My grandmother, a dementia sufferer was often put in the humiliating position of being left on a commode chair in full view of other patients and their families.

She was harnessed into the chair by a piece of cloth tied around her waist to the arms of the chair. One day she wriggled down and was trapped by the cloth around her neck. Had it not been for one of the other residents, she would have choked.

She was admitted to hospital, bruised and very ill. She was left too long without supervision…”

Feedback 19. “… My mother was in a nightmare of a nursing home....a broken walker that no-one knows how that came about; items that go missing never to be returned; a lady that empties her bowels in my mother's room - faeces all over her things.

I complained to staff and management. I was told they don't have enough staff or money to look after them properly. If it was the RSPCA, they would have closed them up!”

Feedback 20. “… My mother in law had lots of falls and was often there for some time as the nurses rounds are only every few house through the evening and she seemed to manage to fall between checks. One morning I found her on the floor at 8am. Never knew how long she had been there. She had a dislocated shoulder. The ambulance took hours to come as she was not an ‘urgent case’.

I do really feel for the staff though the good ones are just run off their feet. and most do care it is just the insufficient funds for good care and supervision…”

Feedback 21. "… The domestic staff were doing most of the caring with only one qualified nurse for 65 patients. My mother was often left to sit for hours, on a vinyl chair, not properly clothed or covered. One day she fell off this chair and broke her hip. She was sent home from hospital 48 hours after her hip replacement and untrained domestic staff were used to bathe and move her. Within two days .her hip had dislocated. This happened again - twice. Once it was dislocated for nearly a week but the doctor had not been called.

A physiotherapist was supposed to train staff, but the one nurse there told me ‘she didn't have the time’.”

Feedback 22. “…We actually verbally discussed our concerns regarding the medication with both the DON (Director of Nursing) in January and the Managers/Owners on several occasions during February and March. They were meant to "look into it" and get back to us and we heard nothing. After several discussions with the pharmacy, we informed the Compliance part of the Department who after investigating our comments, strongly advised us to place a formal complaint. It was only after this that something was done by the nursing home. The fact that we had not put our concerns in writing, gave the owners a chance to claim that we went straight to the department.

The home does have a written communication book to write concerns but part of the assessment found that none of these were being followed up…(we are concerned that there is no) proof that they have received the complaint…”

Feedback 23. “…I'm more concerned about their "sneakiness" in not providing information when requested and lying about what is going on in the facility (missing medication) and only supplying information and admitting the truth when the Department became involved upon our complaint. This

leads me to wonder what will happen after their sanctions are lifted and the department is no longer watching…"

Feedback 24. "…Nurses in a hospital setting have little or no understanding of aged care and how to manage any person over 70 years of age.. We hate sending our folk to hospital, they return with pressure sores (very little are known in a nursing home setting) their behaviours have usually exacerbated and are out of control, they are malnourished and to put it bluntly - are worse than when they were transferred for a said 'acute illness'... It just makes me sad, angry and quite disgusted that elderly people nearing the end of a good life are enforced to go through this debilitating treatment…"

Feedback 25. "…My 88 year old mother, highly educated, has just been dumped by a hospital in Sydney into a respite facility without any further plan in place. Whilst she has minor cognitive impairment she does not have dementia - yet the private facility, operated by a religious charity, is insisting that we take out power of attorney or they apply for guardianship and insist that I am responsible for all form filling in. I contacted a legal service who told me this is incorrect and she is fully responsible as she has full legal capacity. The emotional pressure and emotional blackmail employed by these places and by the hospital social workers has been nothing short of immoral and they are willing to treat the elderly like children and take away their rights just to ensure their money comes in. The system is broken, completely. The aged are treated like cash cows, toddlers and nuisances instead of with respect …"

Source: *Ten years - what's changed? Aged Care Crisis* http://bit.ly/2rQ5wg0

2 Subsequent similar comments

Aged Care Crisis ran a discussion forum for staff and families between 2008 and 2012. Here are a few snippets:

Principles? Principles? What have principles got to do with aged care? There are NO principles in aged care, it's all about money, one way or another. Saving money, cutting costs, cutting corners, cutting staff, cutting quality care, that's what aged care is about, and I doubt if you will find any principles involved in that lot!! And, as XXXX is constantly pointing out, it is actually getting worse. Over my 9 years of continuous involvement with aged care, it had declined hugely.

The current accreditation system with its emphasis on measuring against Providers' benchmarks has resulted in inconsistent and inaccurate findings; good nursing homes are punished while bad ones continue to be allowed to operate.

Care is much more than glossy posters stating that they respect the dignity of the Elderly. A ridiculous statement when they allow this kind of neglect to go on with absolute disrespect of an Elder person's dignity. I am tired of the excuse - not enough staff. If they don't have enough staff then they shouldn't be accredited.

The Nursing homes in Australia dispense some mind boggling disgraceful care.

And the onus is not on the staff, the DON and the RN and all the others in the mix. The onus is on the owners to stop treating the elderly like cash cows. And the onus is on the government to enforce much better compliance to proper standards. And the onus is on the Accreditation people to make more spot checks and open their eyes to the horror that exists in these homes and the misery inflicted on so many vulnerable old people. It is a disgraceful situations. And I am sick of the false

rhetoric that passes off as caring words but is just window dressing, spin and PR speak. Not good enough.

I can go on and on, years of frustration and angst against a system of systems that are so different and uncaring, and the only reason I stay is because I look at my clients and KNOW they deserve better than what they are getting.

Well, thanks for 'listening". I am sorry it is a long post. I am in tears as I write this as I just feel I have let the poor residents down with the shocking non existent care that they receive at night because we just cannot possibly get through the workload. The powers that be just don't give a stuff. Shocking to the core.

I don't blame you in the least for resigning. I've done the rounds of Aged Care Complaints and it wasn't worth the 20 cent phone call for all the good it did. Absolutely useless. Accreditation is a joke.

Source: *snippets from discussions on the Aged Care Crisis Forum between 2008 and 2012*

3 Inquiry by Senate Community Affairs References Committee 2016

To see what has happened and is currently happening in aged care today we need only look at submissions to the 2016 Senate Community Affairs References Committee Workforce Inquiry. Of the 315 submissions there are approximately 73 (25%) from staff or family members with direct experience of what is actually happening in aged care. Many of them are nurses with many years of experience.

While the inquiry was about workforce the impact of what these people are saying on the lives of residents is glaringly apparent. As the Centre for Sustainable Organisations and Work indicated in their submission *“job quality is a necessary precondition to the provision of good quality aged care services”* also expressed as *“the conditions of work are the conditions of care”*.

Job quality is largely determined by the context within which the work is carried out. These submissions describe the context within which aged care workers carry out their work and it is a dreadful indictment not only of our aged care system but of the society that has stood by while this happened.

The following submissions many of them quite short show exactly what is happening in our aged care system.

Submission Numbers: 3, 6, 8, 9, 10, 18, 21, 23, 25, 29, 34, 40, 42, 55, 69, 74, 79, 80, 81, 82, 88, 93, 98, 111, 113, 115, 117, 123, 124, 126, 129, 130, 132, 141, 156, 157, 159, 1 61, 164, 166, 167, 173, 176, 177, 181, 182, 186, 192, 196, 198, 207, 216, 218, 224, 231, 234, 252, 257, 258, 259, 260, 261, 262, 264, 265, 266, 267, 271, 274, 286, 287, 288

We have selected short illustrative quotes from some but there is much more in these submissions. The submission number precedes the quote:

129: If there was anything that I could say to the senate. Something that I hope they would listen too. Is please, please open your eyes, your hearts, your minds and really look at aged care in Australia.

132: We are now an industry that has been highjacked by big business. Care of our residents and staff come a very distant second. It is all about the bottom line not the care of our residents or our staff. - - - In services that talk about “person centred care”, the organisation talks the talk but does not walk the walk.

156: Please, please change things. At the risk of sounding melodramatic, the aged care system is truly a hidden humanitarian crisis.

198: I have been a nurse for 48 years and have seen nursing care for the elderly decline to an abhorrent level - - .

216: I do not want to ever be put in to a nursing home!! - - - - due to the low staffing levels I was concerned and regularly dismayed at the treatment endured by the residents of these high level care facilities.

218: - - - - the litany of distress and needless suffering might make any of us wonder if we really want to get old.

231: I hope you will also hear the voices of many individual aged care workers, aged care clients and their families because statistics and data rarely shed light on the real impact of policy decisions.

233 (family member): The aged care sector needs a massive overhaul.

234: I have been in number of meetings with General and care managers at these homes to inform them that this was the wrong skill set for safe practice in nursing homes but are repeatedly shot down by the corporate bureaucrats at these large aged care providers and training organisations.

257: I do not believe that the residents receive adequate care, and more staff are required in order to make sure that the care is given properly The employers always say that they cannot afford to hire more staff, but at the end of the financial year, they have millions of dollars in profit (even if they are a not-for-profit business).
---- The accreditation process is useless. Management usually puts on more staff (or ensures staffing is covered) when a visit is scheduled.
—— Legislation needs to be tightened to stop facility managers cutting corners and using loopholes to save money

258: What I have found is that no matter where you work in aged care the staffing per client ratio is really bad.
---- The food in these places is really really bad. - - Most of these clients have dentures and are unable to eat the rubbery toast and that goes for a lot of the meat in roast etc as well
---- Some staff in these facilities should not be there. There is no care what so ever and I include management in that statement. In fact management is the worst.

259: The workforce in aged care is ill prepared to deal with the issues around dementia, and aged care facilities are not appropriately designed to meet the specific needs of people with dementia.

260: Aged care is a dangerous field to begin your nursing career. You are provided with little supplies, bare minimum knowledge of the elderly and completely unrealistic expectations. - - - I feel stressed at work. I feel unappreciated by my managers - - - .Our elderly are being neglected.

261: I have also worked with people that should have left the industry years ago. The one constant in the time I have been in the industry is staff shortages and the constant cutting of corners due to time and financial constraints.

271: Speaking from experience working in aged care facilities I am disappointed with the quality of care provided to this sector. - - - residents left in wet/dirty continence aids for far too long, - - - left sitting in day rooms or bedrooms with little or no stimulation.- - - - - - malnourished because they are unable to feed themselves and there is insufficient staffing to assist all residents who require help with meals.- - - going from resident to resident with little or no hand hygiene

273: The system is in disrepute. I do not blame the nurses. They are overworked and underpaid.- - - - Some staff simply "do not know what they don't know".

279: I am a retired Professor of Aged Care Nursing. - - - - it must be blindingly obvious from all reports that Aged Care is in crisis. - - - - What concerns me is that people die after years of criminal neglect, without adequate nursing care.

280: Aged care is like a monster that devours vast resources & finances, but with our population ageing, it must be addressed.

286: WAS EXCITED TO BE AT THE FORE FRONT OF PIONEERING 'A BETTER WAY'!! Now, 30+ years later, I am very disappointed with how I see aged care going in our society. I always thought that integral to care provision, was to demonstrate to our frail elderly, that they were VALUABLE individuals, worthy of quality care and respect. Sadly, we are failing miserably in achieving this!
---- we have a system which DEVALUES residents, tricks their families and loved one's by selling them poor staffing ratios and access to professionals in caring for their loved ones.
---- It is horrendous the deceit that prevails and anyone who is prepared to speak up to uncover it, is quickly 'short shrifted' out of the home, something that has happened to me personally a couple of times during my journey. IT DOESN'T PAY TO ROCK THE BOAT – - - - most are constantly looking for ways of reducing their costs.
---- most organisations, be they for profit or not, have hugely 'top heavy' hierarchies which consist of many very well paid executives who are 'once removed' from the realities occurring at the coal face.
---- I am - - - just someone who sees gross injustices occurring every day.

287: I am baffled by 'aged care palaces' that I worked in; facilities with magnificent interior design and no staff! - - - -Please can we focus on humanity for residents, rather than 'glamour'

288: Over the years I have watched the industry move from a care industry where christian agencies were trying to care for their community to a business whereby private operators are concerned about share profits rather than provision of care.
---- Everyone talks about a person centred approach to care but these are words only as our research demonstrates that the work is task focused
The system is broken and needs a complete overhaul

Source: *Future of Australia's aged care sector workforce. Inquiry by Senate Community Affairs References Committee 2016:* http://bit.ly/1U3wvM0

The extracts above are taken from a web page "Those who know". There is a large amount of additional information from other enquiries as well as other sources illustrating the way staff and families see and experience the aged care sector.

Those who know Inside Aged Care 2016 http://bit.ly/2H1ryPp

4 Comments on articles

Australian Ageing Agenda is a digital publication where those involved can add comment. Much of that is very critical not only of some industry articles but about what is happening and the direction the government is taking the sector. For example:

> *I worked as an agency worker for many years and the things I saw in nursing homes will haunt me forever*
> ***Source: Comment on Frontline workers can help clients achieve adequate food intake Australian Ageing Agenda Aug 29, 2015*** *http://bit.ly/2rXpeq9*

A 2015 article "*Aged care staffing requirements 'too vague' NSW inquiry finds*" in Australian Ageing Agenda described the heated parliamentary review in NSW into the requirement to have registered staff on duty at all times. The comments about the article made by staff and residents are revealing

In regard to the Quality Agency the article indicated

> *The report noted there was "deep division" over the effectiveness of the Commonwealth's aged care regulatory framework among the inquiry participants, which included providers and their peaks, GPs, nurses, unions, seniors advocates and researchers.*
> -----------------
> *The accreditation standards did not prescribe the type of staff, qualifications required by staff or the number of staff who work in an aged care facility, the report noted. The way residential facilities were described by inquiry participants as being monitored and assessed against the accreditation standards was "troublesome," it concluded.*

Comments on this article:

By an AIN: In that 30 year period I have seen the ratio of six residents to one nurse (AIN) deteriorate to ten residents per AIN. The problem in aged care has always been the ratio of AIN's to residents. The professionalism in aged care has also disappeared with the down grading of training.
Aged care 'on the floor' work has always been unfortunately production line work and it has got worse, where there is often no time to even ensure your resident's get a drink of water regularly through the day. In the 1980's we had time to ensure people got a drink and exercise.
The large turn over of staff and difficulty of getting staff would be due to the very nature of the pressure to move increasingly heavier people get their basic needs met and poor wages. In fact the pay is so poor there really should be more AIN's on the floor.

The 'hidden' world of aged care is rife to elderly abuse and that can be as mild as pretending to shower someone to physical harm etc. Now that RN's no longer 'run' their wards/wings there is no continuity of care, with AINs/PCA/s making up the care and changing it at will.

Basically it's the old bottom line about money. No such thing as not-for-profit organisations, it's an oxymoron and insulting. It's about slight of hand, a hidden world away from the public eye.

Another AIN: Incidents occur regularly. It is literally impossible to keep on top of our workload and prevent incidents with our usual ratio of just under 1:10 which apparently we aren't entitled to, we are just lucky to get it. When we brought up the fact that the impending shift had unsafe ratios we were

basically told to suck it up. Despite the fact that the policy ratio for afternoons is an unsafe, but apparently “carefully researched” ratio of 1:12.

So I find myself apologising to the next shift (whose ratio is worse) and to families and residents when things aren’t done, or an incident happens. And I feel guilty for not providing the care these people deserve. And I go home exhausted and guilty and sore from trying to complete everything.

Then the next day I get talked to about paperwork I have left undone because I was too exhausted to remember all the parts of paperwork needed for so-and-so’s ACFI.

So many of my workmates are considering quitting aged care. There’s better pay in the home care sector. One’s thinking of studying to be an accountant. I’ve seen at least 4 people who’ve been there for a couple of years quit, and 2 more are working their notice.
Aged care is in crisis. It shouldn’t be for profit. It should be for best possible care.

An Aged Care staff critic: How else could one explain their (*provider representatives at the inquiry*) unwaivering conviction that the AACQA is diligently monitoring the care standards of residential facilities?

The public have been treated to yet another example of our peak bodies sabotaging their own credibility. What they say just doesn’t match the way it is. Aren’t they even just a little embarrassed by their suggestion that residents don’t need RNs 24/7 ? Or do they really believe emergency situations only occur during office hours?

Your track record indicates that you can’t be trusted to do the right thing. Unskilled care staff, dangerously high resident to staff ratios and rosters that schedule one RN to oversee up to 180 residents are proof that we need more legislative intervention and less self-congratulatory backslapping from representatives with no understanding of what it’s really like on the floor.

And another: It makes me feel sick to think that people believe in accreditation … people who swoop in once in, tell you all is good with your nursing home, while your heart breaks as you know that the elderly deserve far better than they get. Its even more sad that we are so time poor, that we are like robots, injuries occur daily for staff and residents and you get please explain. This is not how our elderly should be treated.

And again: I have been in aged care for 10 years, starting as carer and moving on to nursing also in aged care. I now teach cert 111 and 4 and facilitate students on their placement. With all the students who go on placement the main feed back is always time, or lack of. Having been through the surprise visits by the accreditation teams at both levels, carer and nurse its amazing that the company always know a couple of weeks before they turn up;;; and surprise surprise we have more staff on the floor. My fellow teachers and I are doing the utmost to train good carers but its hard to beat the system that is currently out there. - - - - - as most of us in the industry say I hope I do not have to go into a nursing home when I am old, how sad.

And from an anonymous resident in a nursing home: Thank you for a very thought provoking read. I am the a resident in an Aged care facility. I was looking for proof to back the conclusions I have formed while just sitting and watching. I intend to take my thoughts to the next residents meeting, not that they will listen to me and they will talk loudly over the top of me but I want to be sure that what I have to say is minuted. What I am looking for is to establish a paper trail. The staff here is over worked and in danger of burn out. I just hope I can help in some small way to get them the support they need.

Source: *Aged care staffing requirements ‘too vague’ NSW inquiry finds*” Australian Ageing Agenda 4 November 2015 http://bit.ly/2nuYCau

5 Lawyers who deal with family members are aware of the problems. Eg, staffing

"Often there are too many patients to staff. The patients need constant attention and if they are neglected they can put staff at risk," he said.

"We're finding the staff are undertrained for this sort of thing and you'll find a 60-year-old slightly built woman looking after big and sometimes disruptive men.

"I'm hearing about injuries every day."

Source: Lawyer speaks out on 'unspoken crisis' in rest homes - Lawyers Weekly: https://www.lawyersweekly.com.au/sme-law/22514-lawyer-speaks-out-on-unspoken-crisis-in-rest-homes

6 Comments by nurses to the 2017 Carnell/Paterson Review

Comment about the care of a nurse's parent in a chosen nursing home:

Anyway, 2 weeks after going into my last choice (of nursing home) and not a very good one, I attended on a Saturday morning and the RN asked would I like to check out the wound as she was going to dress it. She knew I was an RN too.

She took the dressing down and out dropped maggots and they kept coming, he was transferred back to a private hospital and once ok back to palliative care where they could not believe how much he had gone down hill in such a short time.

A clinical consultant described breeches in infection control:

- High rates of wound infections
- No special identification or specific care systems in place for infectious residents (MRSA, C Difficile, VRE, ESBL, etc)
- High percentages of residents (up to 90%) with fungal infections, dermatitis and eczema. (A quick look in the medication trolley would reveal appalling rates of skin infections at many facilities)
- These are often the result of poor infection control practices from care staff. (Communal showers and shared equipment not being correctly sanitised between use)
- Untrained/unsupervised care staff using gloves instead of washing their hands. It is common to see staff using the same gloves as they attend multiple residents. Infection control knowledge and education is universally poor.
- Several new facilities in Sydney have dispensed with fundamental infection control strategies because it doesn't fit their 5 star hotel image. Hand washing stations are hidden or non-existent.
- I have recently seen wash stations that use air blow-dryers instead of paper towels! (apart from being noisy and ineffective , its also time consuming to dry your hands this way so staff just use alcohol rub instead...or nothing at all)
- One new facility's wash stations have the waste bin mounted next to the sink...staff have to manually remove the lid to dispose the hand towels and then replace the lid. The 'bin' in only 20cm deep so it is always overflowing with used paper towels.
- A cursory check of any medication trolley or clinical fridge will identify a range of creams, eye drops and other preparations that are either past their 'use by' date or have not been marked with a 'date of opening'.

- Last month I attended a large provider's facility that was accredited in May. Every needle and syringe in their clinical room had an expiry date of 2012. The main store room contained equipment with expiry dates as far back as 2001.
- It is common practice in many residential facilities that 'care rounds' are done by staff that go from room to room without adhering to any accepted infection control procedures. Continence pads are simply changed without washing or moisturising the incontinent resident when the soiled pad is removed. (There's no special skill required to assess this practice...all you need to do is smell the poor residents...but then I suppose you actually have to get close to them to do this)

and in Nutrition and Hydration:

- The majority of frail residents are chronically dehydrated. A cursory check of the Urinary tract infection rates will confirm this. Surely the assessors should notice when water jugs are placed out of reach of frail residents or that there are no fresh snacks available at all times. And surely they should notice when residents are all put into bed by 4pm each afternoon...this means that instead of at least having everyone that requires assistance in the one place, the two or three care staff available to assist with feeding twenty residents have to rush from room to room, usually only having a cursory attempt at feeding a resistive resident their cold food.
- There are facilities that have over 80% of their residents on nutritional supplements. The agency will check they are prescribed and signed for but they don't ask why so many residents need them (Poor food, not enough staff to assist with feeds, etc.) And the list goes on...and on

A personal carer describes the result of impossible work loads:

What you are not seeing is the tasks not being done. Showers are left to residents to do - people who really require supervision. There are residents who will report they have showered when they haven't or have just washed their faces. Residents who don't buzz don't get assistance. They simply fly under the radar. Dirty clothes are worn again. Rooms are not cleaned properly. Rooms are filled with hazards.

No one checks jobs are being done or done properly. Important information is not handed over. The PCs are mostly trying hard to juggle tasks and provide care. We have residents listed as HHH ACFI who get almost no time or assistance from staff as they don't make a fuss and there is not time to get back to address their needs.

We need more resources to perform the tasks required and provide the care XXX is paid to deliver for residents and to keep staff safe.

The frustrating thing is the lack of linen, the poor cleaning, the poor maintenance, the phones not working, the hearing aids left with batteries in them, the fallout mats, and room hazards - have all been brought to the attention of various managers over many months. Repeatedly.

Eventually you don't bother reporting things anymore as it seems to fall on deaf ears. Instead we chastise PCs for asking for a brief prayer during Handover when the YYYY was going on or tell PCs to *"get a job at Coles if you're unhappy".* Hardly inspiring management practices and not what you expect when XXX push the Code of Conduct down our throats all the time. It is time for managers to start living the core values and earning the respect from the staff rather than demanding it.

7 Additional sources with multiple links

- **19 years of care** Inside Aged Care 2016 < http://bit.ly/2a4hiXE >
  This page provides an overview of what is happening and links to a web page **"Scandal after Scandal**" < http://bit.ly/2aFe4dg > which examines the recurrent failures in the aged care system in more detail with links to the sources.
- **Further reading** Aged Care Crisis 2015 < http://bit.ly/2FmANwm > contains links to more material about various aspects and problems in aged care
- **Corporate Medicine web site** A site with over 500 pages dealing with the corporatisation of health and aged care in the USA from the late 1980s and Australia from the early years after the changes in 1997. The problems that developed are documented, examined and analysed. A short note on the Australian < http://bit.ly/2oDbWeo > and US site maps < http://bit.ly/2FcDoFM > indicates the content of each web page.

  There are 100 pages on Australian Aged Care. They can be accessed from the *"Wrinkle ranching - the aged care bonanza"* section of the main Australian web page. < http://bit.ly/2F96Alo > or from *"Markets and the Aging Bonanza"* < http://bit.ly/2H1WlpU >

  There are 66 pages on the US aged care system during the 1990s. These can be accessed from the "AGED CARE AND SUBACUTE CARE" section of the main US page. < http://bit.ly/2FfaRzm >. An update page "Nursing Homes Update June 2001 to August 2003" < http://bit.ly/2I3ZjkC > could be describing Australia today.

8 Partial extract from submission to ALRC Issues Paper (2016)

(ALRC Inquiry into Elder Abuse https://www.agedcarecrisis.com/images/pdf/165_aged_care_crisis.pdf)

5. Elder abuse: speak out … if you dare

For most of the 18 years (since 1997) of the reformed aged care system, the victimisation of whistleblowers and the fear of retribution against family members in care have served to hide what has been happening.

This is a problem in almost every sector where people are vulnerable[5]. Under the new 'Consumer Directed Care' (CDC) model, much of the care currently provided in nursing homes will be provided in the resident's own homes. Will providing care at home when the person receiving care will be alone with the person the family have complained about be any different?

Elder abuse and market forces: Under the new regime, where aged care will be exposed to much greater market forces, elder abuse may not be immediately obvious to uninitiated and inexperienced family members. Many are unaware of the real human costs involved for frail residents and the impact on their lives.

Feb 2016: Report - *'Who will keep me safe? Elder Abuse in Residential Aged Care'* In October 2015, the NSW Nurses and Midwives' Association (NSWNMA) invited members to complete a survey regarding elder abuse[6]. The report raised major concerns about the prevalence and management of elder abuse in residential aged care settings.

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[5] 'Voiceless' disabled 'raped, bitten, burned' while in care (The Australian, 11 Apr 2015):

[6] Report - 'Who will keep me safe? https://www.nswnma.asn.au/wp-content/uploads/2016/02/Elder-Abuse-in-Residential-Aged-Care-FINAL.pdf
(a) http://www.abc.net.au/news/2015-02-16/bundaberg-nursing-home-assaults-prompt-aged-care-review-call/6119456
(b) http://www.brisbanetimes.com.au/queensland/woman-89-dies-after-nursing-home-assault-20130603-2nmpq.html
(c) https://www.adelaidenow.com.au/news/south-australia/south-australian-nursing-home-death-85-year-old-quizzed/news-story/7cef0323a34e9332ddd96cf35ba43cd1

When survey respondents were asked what they thought increased the risk of elder abuse in their workplace, almost 76% of respondents cited inadequate staffing as a precursor for elder abuse. In addition, 61% of staff feared repercussions if they reported elder abuse[7]. Information we receive is congruent with this report.

In a competitive, corporate marketplace the vulnerable too often become simply 'beds' - in effect, depersonalised profit vehicles being managed for profit and when market forces dictate, traded on an impersonal corporate market[8]. Businesses are sold to the highest bidder, the one who feels they can extract the most profit from these vehicles who, despite all the rhetoric about choice, still have no say in this.

These frail, older people need stability and do not shop around. This impersonal exploitation can in itself be a form of inadvertent elder abuse - integral to the market system. The instability inherent in a competitive market system places stresses on the services provided, creating a context where abuse more readily occurs but is less easily exposed.

A revolving door between providers, government, accreditation agencies, complaints schemes and the various programs implemented ensures that alternate views are marginalised and deficiencies consequently overlooked. Despite multiple changes, it is clear that problems in aged care persist and these regulatory structures have been singularly ineffective[9].

Aged care failures

Over the years, aged care residents in nursing homes have been raped[10], robbed[11], bathed in kerosene[12], attacked by rodents[13], suffered injuries or death from other residents[14], burnt to death[15], strangled[16], cooked[17], melted[18], sedated to death[19], overmedicated[20] [21], endured horrific infected pressure sores[22] or choked to death[23].

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[7] http://www.agedcarecrisis.com/opinion/your-say/211-i-am-sorry-mary-i-could-not-help-you
[8] http://www.smh.com.au/national/officials-asleep-on-nursing-care-20130212-2eb6d.html
[9] ~~https://bit.ly/3Nk27fV~~
[10] Shocking numbers of elderly women being abused in aged care homes (7 Jul 2014) http://www.theage.com.au/victoria/shocking-numbers-of-elderly-women-being-abused-in-aged-care-homes-20140706-3bg9w.html
[11] (a) https://bit.ly/3fecX4l
(b) http://www.news.com.au/national/breaking-news/former-nurse-avoids-jail-over-fraud/news-story/fb5bbeacb36b8b99e314d99208f151de
(c) Carer stole wedding rings from elderly https://www.news.com.au/national/victoria/carer-stole-wedding-rings-from-elderly/news-story/c17e09460e2144bc3cd508b9943bdac2
[12] Parliament hears kerosene bath led to death (ABC-PM) (8 Mar 2000)
[13] Nursing home mouse infestation was present for months (CPSA): https://web.archive.org/web/20180419082009/http://www.cpsa.org.au/aged-care/aged-care-media-releases/130-nursing-home-mouse-infestation-was-present-for-months
[14] Residential aged care report says people are being shackled, assaulted and turned into 'zombies' (12 Nov 2013): https://www.news.com.au/national/residential-aged-care-report-says-people-are-being-shackled-assaulted-and-turned-into-zombies/news-story/deac4e76a7703647dc71d9c2d4d3637d
http://www.theage.com.au/articles/2002/10/31/1036026978735.html
[15] Elderly nursing home resident died of burns in 'horrific circumstances', coroner to investigate (ABC - 8 May 2015) http://www.abc.net.au/news/2015-05-08/coroner-to-investigate-horrific-death-nursing-home-resident/6455368
[16] http://www.smh.com.au/nsw/strangled-by-a-shower-cord-20110402-1csd2.html
[17] Nursing home blamed for patient's death (ABC - 1 Aug 2012) http://www.abc.net.au/news/2012-08-01/nursing-home-blamed-for-patient27s-death/4169466
Coroner's written findings: ~~http://www.coronerscourt.vic.gov.au/home/coroners+written+findings/findings+-+071109+joan+ambrose~~
[18] Nursing home probe after woman 'melted to death' by a heater (Herald Sun - 8 May 2015). https://bit.ly/3iFmgN4
[19] Premature deaths linked to drugs in nursing homes: http://www.abc.net.au/news/2012-08-17/dementia-patients-dying-as-anti-psychotic-drugs-over-prescribed/4204536
[20] Death by medicine: http://www.smh.com.au/news/national/death-by-medicine/2007/08/17/1186857771586.html?page=fullpage#contentSwap1
[21] Aged care drug abuse that points to scandal - Amanda Vanstone http://www.theage.com.au/comment/aged-care-drug-abuse-that-points-to-scandal-20140105-30bni.html
[22] ~~Vaucluse Gardens Aged Care facility 'understaffed' on night 85yo Barbara Westcott died, inquest told (ABC - 15 Dec 2015): http://www.abc.net.au/news/2015-12-15/barbara-westcott-vaucluse-gardens-aged-care-inquest/7029220~~
[23] Vaucluse Gardens Aged Care facility 'understaffed' on night 85yo Barbara Westcott died, inquest told (ABC - 15 Dec 2015): http://www.abc.net.au/news/2015-12-15/barbara-westcott-vaucluse-gardens-aged-care-inquest/7029220

Some staff have amused themselves by taunting, teasing[24] or mocking residents and playing demeaning games on them like 'spot the body part' (photos)[25], or rolled in tomato sauce[26]. Some have endured DIY staffing *(no staff rostered on for over 10 hours at night)* in a fully accredited nursing home, resulting in recurring incidents of patients absconding, wandering and falling[27].

Family members have been kept in the dark[28] [29] , banned from visiting loved ones[30] [31] or bullied by facility staff after complaining about care[32]. Some Coroner's reports are particularly revealing[33] [34].

Some family members (out of desperation) have taken their concerns to media[35], setup websites (or blogs) [36], established social media[37] [38] presences, published diaries of care online[39] or setup online petitions to have their concerns heard[40] [41] [42] [43]. Other family members have published detailed reviews, one commenting on the difficulties in obtaining records from an aged care home regarding the care of their father, who died after 4 weeks in respite:

> " ... I, as a relative, cannot get a hard copy of (my father's notes) but an independent body is able to, read them on my behalf and decide whether my father was treated with respect and dignity. There is no legislation, which can make a care home give this information to a family. I will be advocating for this and feel that Aged Care Facilities need to be more transparent and accountable ..."
>
> ***Source:*** *Why can't I get the records regarding my father's care? (Patient Opinion Australia):* ~~https://www.patientopinion.org.au/opinions/62204~~

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24 Nurse made aged patients 'beg and suck his thumb' (SMH - 27 Sep 2013): http://www.smh.com.au/national/health/nurse-made-aged-patients-beg-and-suck-his-thumb-20130926-2ugz8.html

25 Body parts used in sickening 'game' at nursing home (Herald Sun - 13 Dec 2007)

26 Sacked nurse back at aged care home (The Advertiser, 17 Sep 2007):

27 (a) ~~http://bit.ly/1KtuS6J~~
(b) http://www.agedcarecrisis.com/opinion/articles/213-no-staff-for-10-5-hours-per-day

28 Aged Care complaints kept secret (The Age, 27 Sep 2014): http://www.smh.com.au/national/aged-care-complaints-kept-secret-20140927-10myjn.html

29 John Curtin Aged Care investigated after 89yo receives serious burns during sponge bath (ABC, 2 Aug 2016): http://www.abc.net.au/news/2016-08-02/john-curtin-aged-care-investigated-89-year-old-receives-burns/7683616

30 Loved ones 'locked out' of nursing homes (ABC Lateline, 21 May 2013): https://www.youtube.com/watch?v=rV76MKCxEaQ

31 Woman denied access to dying mother condemns 'monstrous display of evil' by nursing homes (ABC, 9 Oct 2015): http://www.abc.net.au/news/2015-10-08/woman-says-nursing-homes-denied-her-access-to-dying-mum/6838448

32 Aged care residents and families 'bullied by facility staff' after complaining about treatment, advocacy group says problem widespread (ABC, 28 Sep 2015) http://www.abc.net.au/news/2015-09-28/aged-care-bullying-a-widespread-problem-says-advocate-group/6808234

33 http://www.theage.com.au/victoria/aged-care-home-covered-up-death-of-resident-20131218-2zl0p.html

34 https://bit.ly/3NjVcDh

35 Anger at quality of Canberra nursing home food, hygiene (13 Sep 2014) http://www.canberratimes.com.au/act-news/anger-at-quality-of-canberra-nursing-home-food-hygiene-20140912-10g5ir.html

36 Stand Up 4 Better Aged Care - Abuse and neglect in Australian nursing homes: ~~http://www.standup4betteragedcare.com~~

37 **facebook**: Nursing Homes in Australia - Time For Change: https://www.facebook.com/pages/Nursing-Homes-in-Australia-Time-For-Change/409772765798275

38 **YouTube:** Story following four families who try to discover what happened to their loved ones in nursing homes in Australia: https://www.youtube.com/watch?v=8t03IoPwSLk

39 Online diary relates the experience of 82yo "Jean" as she attempted to ensure that her husband received adequate aged care during the last years of his life: http://www.agedcarecrisis.com/opinion/your-say/318-a-fly-on-the-wall-in-hell

40 **change.org** petition by family members concerned about employment process of hiring staff in aged care: https://www.change.org/p/health-minister-stop-ignoring-aged-care-safety-don-t-let-opal-s-negligence-kill-more-victims

41 **change.org** petition by family member concerned about accreditation of aged care homes: https://www.change.org/p/prime-minister-malcolm-turnbull-pm-turnbull-the-life-of-a-nursing-home-resident-is-often-one-of-misery-will-you-help

42 **change.org** petition by staff member concerned about staffing https://www.change.org/p/bupa-aged-care-encourage-bupa-aged-care-worldwide-to-focus-on-residents-not-154-profits

43 **change.org** petition by devastated family member whose mother died in a nursing home https://www.change.org/p/health-minister-stop-ignoring-aged-care-safety-don-t-let-opal-s-negligence-kill-more-victims

Some have been threatened with letters of legal action[44] and a few of these have refused to buckle. One health care worker who says she was sacked after blowing the whistle on severe understaffing and appalling patient conditions at a nursing home is suing her former employer for unfair dismissal:

> Ms xxxxx told of shocking incidents she saw, including patients not being given -adequate pain relief and going days without showers.
>
> "I'd come home from work distraught about the care the residents hadn't received," she said.
>
> "Someone needs to stand up and say, 'That's enough'."
>
> ***Source:*** *Health care worker says she was sacked for blowing whistle on nursing home launches legal action, Gold Coast Bulletin, 3 Aug 2016*

http://www.goldcoastbulletin.com.au/news/crime-court/health-care-worker-says-she-was-sacked-for-blowing-whistle-on-nursing-home-launches-legal-action/news-story/c2e25294d4909b9f093c1efa946b8fb8

At one public meeting, family members recanted allegations that frail residents were mistreated at a nursing home already connected to claims a lady (twice) had to have maggots removed from a wound[45].

In another home, staff complained of *"maggots crawling over the floor and a lack of basic infection control equipment such as gloves and liquid soap"*[46]*.* We have also seen stories of overgrown nails, untreated infections, medication mix-ups, and research showing up to 80% of aged care residents are malnourished and reports of dehydration[47].

There are cases of residents dying prematurely because of over-prescription of anti-psychotic medication[48]. Many are suffering needlessly from untreated infections, urinary tract conditions[49] and pressure injuries, lying in soaked pads brimming with urine and faeces (compromising skin condition) for hours[50] on end because there are not enough care staff to clean or turn them regularly. Then there are the cases of rationing of incontinence pads[51] with a daily 'limit', to save on costs.

The majority of correspondence we receive is due to a critical lack of trained staff, leaving many to die unnecessarily, in great pain[52], or without proper palliative care[53]. One partly blind frail patient admitted to a NSW hospital from her aged care home after a serious fall, was forced out of the hospital with an eviction notice (which was read out loud to her in a crowded ward, which must have been quite humiliating). This was despite protestations from her low-care home that she needed acute care[54].

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[44] Care crusade: http://www.smh.com.au/national/care-crusade-20130824-2sijs.html

[45] Nursing home in the spotlight over abuse claims: http://www.abc.net.au/local/stories/2013/10/09/3865387.htm
YouTube: https://www.youtube.com/watch?v=TQiqbN1fLec

[46] Scabies found in nursing home: http://www.smh.com.au/articles/2003/05/21/1053196640611.html

[47] Shining the light on nutrition in aged care facilities: (Alzheimer's Australia, 9 May 2014)

[48] Doctors could face prison over drug prescriptions (ABC Lateline, 29 Aug 2012):
see YouTube https://www.youtube.com/watch?v=rEz7DSNQEhA

[49] http://www.smh.com.au/nsw/elite-nursing-home-under-investigation-20121110-294u4.html

[50] Nursing home care in crisis ~~http://www.couriermail.com.au/news/nursing-home-care-in-crisis/story-e6freow6-1111115005107~~

[51] This open letter was written by a person with a family member in a nursing home (9 Nov 2015):
http://www.agedcarecrisis.com/opinion/your-say/360-the-oleander-project

[52] https://www.news.com.au/lifestyle/health/hospital-complaint-about-wwii-veteran-posted-to-youtube/news-story/c066634a4e41bf5f6521bca8365c94e8#:~:text=torture%3F,after%20being%20denied%20pain%20relief
Australian War Veteran dies in pain: https://www.youtube.com/watch?v=xn_KOlfK0Rc

[53] Aged care crisis (ABC Lateline, 15 Jul 2013): Related https://www.abc.net.au/news/2013-07-16/shocking-claims-elderly-being-mistreated-in-nursing-homes/4821492

[54] http://www.smh.com.au/comment/agedcare-response-a-true-test-of-societys-caring-20150824-gj6a8b.html

Research has indicated that many resident transfers might be avoidable with better primary care in place including staff skill mix, primary care services[55] and that inadequate documentation negatively impacts on the resident's journey through emergency departments[56].

It is also of considerable concern that the sector now relies, to a large extent, on the employment of inexperienced carers; some have poor English language skills and are unable to communicate effectively with residents.

One recent case in this instance included the death of an older woman who had difficulty communicating with her carers[57]. Her son at the inquest contended that as his mother did not speak fluent English, the language barrier might have seemed like she was being uncooperative with carers. This illustrates the potentially dangerous consequences of communication barriers and the need for multilingual staff working in the sector.

Other family members have appealed to their local or state-based politicians around Australia for support or help. Although rare, some politicians have recorded the concerns of their constituents in parliament[58].

ABC Lateline has exposed widespread human rights abuses in Australia's aged-care industry. The series found many vulnerable people are suffering abuse and neglect in Commonwealth-accredited facilities with little accountability[59].

There is an abundance of information for those who want to look[60] [61] [62].

Residents acting themselves

Residents and their families are at an even greater disadvantage. If they are unhappy about anything or make allegations, they are considered to have dementia and discounted. If they or their families do speak out publicly, then staff and management see them as troublemakers and treat them accordingly. The lady in the quote below knew she was being robbed and had contacts in the surveillance industry. With a hidden "grannycam", video footage was soon in the hands of police. She is leading the way by doing this in Australia.

In countries with market systems like ours (UK and the USA) CCTV is increasingly being seen as the answer to the problems of elder abuse we are having in nursing homes. The regulator in the UK, the Care Quality Commission, publishes guidelines on how to do so[63].

> "... When the disabled 75-year-old attempted to report the incident to retirement village company (xxxxx), they dismissed her claims. "They thought I had dementia - and for that reason I was a trouble-maker and I would have been making it up," Ms (xyz) said.
>
> ***Source:*** *Victorian retiree sets up hidden camera to catch thieving aged care worker - Channel 9 News, 2 Jul 2015* *http://bit.ly/1CcHCdV*

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55 Resident transfers from aged care facilities to emergency departments: can they be avoided? *Faculty of Medicine, Nursing and Health Sciences, Monash University:* http://www.ncbi.nlm.nih.gov/pubmed/26095333

56 Shortfalls in residents' transfer documentation: challenges for emergency department staff *School of Nursing & Midwifery, Monash University*: http://www.ncbi.nlm.nih.gov/pubmed/25113312

57 ABC News: Home care examined after 75yo Perth woman died with infected pressure wounds(4 Jul 2016) http://www.abc.net.au/news/2016-07-04/inquest-into-death-of-perth-woman-maria-niceforo-kincare/7567784

58 The Need to Improve the Accreditation Standards for Aged Care Facilities Speech (Anthony Byrne MP – 5 Jun 2014: https://www.openaustralia.org.au/debates/?id=2014-06-05.119.2&s=Accreditation+speaker%3A10088#g119.3

59 Aged care crisis (excerpt) - Human Rights Awards 2013: https://www.youtube.com/watch?v=w1DVpMPxno0

60 19 Years of care: https://www.insideagedcare.com/aged-care-analysis/19-years-of-care

61 Scandal after scandal: https://www.insideagedcare.com/aged-care-analysis/19-years-of-care/scandal-after-scandal

62 Those who know: https://www.insideagedcare.com/aged-care-analysis/19-years-of-care/those-who-know

63 **Care Quality Commission** - Using hidden cameras to monitor care: http://www.cqc.org.uk/content/using-hidden-cameras-monitor-care

Family members ignored

When family members reported their father was being abused to management, their concerns were dismissed. Distraught for their father's safety, they installed a video camera in his private room and caught the suspect abusing their father in broad daylight when a video camera was recording for 48 hours. The perpetrator was charged with several criminal assault charges ranging from recurrent torment, physical abuse and attempted suffocation.

If that is what is revealed in 48 hours, what would we find if everyone had this option?

As a result of their experience, the family are petitioning for video surveillance cameras in residents rooms in aged care[64]. The change.org petition has accumulated nearly 43,000 signatures, with thousands of comments by concerned supporters. This has been an ongoing concern[65].

> **change.org** petition:
>
> **Without a voice and evidence** elderly people have **no ability to protect themselves from abhorrent abuse, assault and neglect.**
>
> My father (89y.o. with dementia, bedridden, non verbal and frail) was physically/mentally abused and tormented in Residential High Care facility by a male staff carer over many months.
>
> I became suspicious of my father being abused. My **concerns were dismissed** by Management. Frustrated and distraught for the safety of my father I installed a video camera in his private room and caught the suspect abusing my father in broad daylight while he was feeding him lunch.
>
> ***Source:* *https://www.change.org/p/australian-human-rights-commissioner-advocate-rights-video-surveillance-cameras-vulnerable-peoples-safety***

The daughter when interviewed, commented that she felt she had no option to protect her father and was prepared to go to jail:

> (nursing home's) response when South Australian Police detectives showed the secret footage to management was to forbid Ms Hxxx from any further recordings.
>
> "Instead of offering Ms Hxxx empathy, they instead sent her a letter to cease and desist from filming, as if she was the problem," Mr Dxxx, lawyer for the (family), told 7.30.
>
> "[nursing home] said that I had breached [the] Privacy Act, the Aged Care Act and Video Surveillance Act," Ms Hxxx said.
>
> Mr Dxxx said Ms Hxxx was fortunate the evidence she collected was found admissible and that it led to the successful conviction of Lxxx.
>
> -----------------------------------
>
> **"I was prepared to go to jail for whatever I did and if I'd breached whatever [nursing home] said I'd breached, I would be responsible for all that," Ms Hxxx said.**
>
> **"But to me I had no option but to do what I did to protect my father.".**
>
> ***Source:*** *http://ab.co/2a9PNeg*

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[64] https://www.change.org/p/australian-human-rights-commissioner-advocate-rights-video-surveillance-cameras-vulnerable-peoples-safety

[65] Santoro admits flawed response to nursing home abuse: https://www.abc.net.au/radio/programs/am/minister-for-ageing-santo-santoro-responds-to/803538

Despite both the complaints system and accreditation of aged care homes being updated, renamed, claims of 'independence' or 'strengthened' in response to pressures from the community or after recurrent scandals in the sector, **at no stage have the underlying problems or the disenfranchisement of the community been addressed**.

As a consequence, the system of oversight has become ever more onerous for nursing home staff and the community ever more disenchanted with the information provided and the way complaints are addressed.

The importance of whistleblowers: The vast majority of reports are based on or consequent of tip-offs by whistleblowers - either nurses in the system, or the relatives of residents. Staff who tried to complain to their superiors have been ignored[66] [67]or fired[68]. Others were fired after speaking out or going to the media. They are seen as troublemakers and struggle to find another job in the sector.

Speaking out about failures and institutional elder abuse is always stressful and confronting. Because the only oversight system, "accreditation" is failing so badly, we have no choice but to depend on whistleblowers for the information we get.

The Aged Care Complaints system has not been productive in resolving these types of issues, leaving many family members and staff traumatised. Sadly, the system frustrates the exposure of deficiencies instead of supporting it.

The stories below, are further examples of situations where vulnerable people experience elder abuse and neglect, family or staff were not listened to, were disregarded and discredited, or blatantly bullied:

- **18 Mar 2016: Disabled people experience violence, elder abuse and neglect in 'epidemic proportions', says rights group**: "… *Other case studies outlined in the submission include allegations of staff at an aged care group home stuffing tissues into the mouth of a resident to prevent them from calling out and multiple claims of boarding house proprietors sedating and drugging disabled residents ..."*

  http://www.abc.net.au/news/2016-03-18/disabled-people-experience-violence-abuse-and-neglect/7256198

- **7 Mar 2016 : Newcastle nursing home accused of failing to deliver care, resulting in elderly resident's death: "…** *The Newcastle nursing home at the centre of a year-long police investigation, where a staff member was charged with poisoning three elderly residents in late 2013, has now been accused of failing to deliver the proper standard of care in another elderly resident's unrelated death earlier that year … I think the failures in care that we believe have occurred in this facility broadly reflect the failures in care that we have seen up and down the state and across the country …"* http://ab.co/1p1JnEz

- **7 Mar 2016: Former aged carer speaks out at parliament meeting:** *The carer said she witnessed failures of duty of care "on a daily basis and when I lodged formal complaints to supervisors I was told leave it with them, but they only went through the motions". The carer resigned in 2015 in heartbreak and frustration after just under 12 months. "If some of the staff took a set against a client, they would neglect them, for example deliberately make them miss out on a bath or a shower, or not perform other care tasks," "People like me who were prepared to stand up got bullied and ostracised," she said.*

  http://www.ulladullatimes.com.au/story/3767475/resigned-in-heartbreak-and-frustration/

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[66] Care allegedly turned to crime (The Age, 15 Jul 2006) http://bit.ly/2I196YE

[67] I am sorry Mary, I could not help you: http://www.agedcarecrisis.com/opinion/your-say/211-i-am-sorry-mary-i-could-not-help-you

[68] Death in a five star nursing home (ABC Radio National, 21 Sep 2014): http://ab.co/Z3RSCH

- **6 Mar 2016: My Dad was given drugs 'like potato chips': how the elderly are being restrained:** *A palliative care clinical nurse consultant and lecturer in nursing, said her dad was given a lot of olanzapine, a lot of risperidone. "He just kept getting it like potato chips," she said. She said it took 10 days to detox her father when he was moved to another health facility that took a different approach to the use of drugs.* http://bit.ly/1Qzum7M

Further examples below, are from disability care where a similar situation exists. In one, it is only coming to light 20 years later:

> "...People with disabilities have been found severely neglected, repeatedly raped, with broken bones and left humiliated in their own faeces for hours at a time, a Senate inquiry has been told.
>
> ----------------------------------
>
> Ms Richards said people with disabilities often did not report abuse because they feared retribution from people within the facility they lived in.
>
> "They are very vulnerable and unable, more often than not, to speak up for themselves," she said.
>
> "They are worried about retribution ..."
>
> ***Source:*** *People with disabilities raped, beaten, neglected while in care, hearing told ABC News 10 April 2015 http://www.abc.net.au/news/2015-04-10/disabilty-hearings-in-perth-report-rape-neglect/6384308*

Illustrative of the way in which these things are swept under the carpet and ignored is something that happened 20 years ago, which those involved, are only now speaking out about. There are many more examples.

> "... The wheels of the self-protecting Victorian bureaucracy were turning, making sure that the complete story of the shameful treatment of the Mornington Peninsula residents would stay hidden ..."
>
> ***Source:*** *Disabled were abused in house of horrors and governments covered it up The Age, 11 April 2015 http://bit.ly/2FnA7qH*

Speaking out about failures and institutional elder abuse is always stressful and confronting. Because the only oversight system, "accreditation" is failing so badly we have no choice but to depend on whistleblowers for the information we get.

Despite the criticism and evidence of failures, government and industry continue to describe accreditation and the equally criticised complaints system as "robust". They use it to discredit critics. This is intolerable and both need to be replaced by fully transparent systems where civil society itself has control and oversight.

November 2015: A Senate Committee Inquiry (below) found a royal commission is needed into the abuse of people with disabilities in care, including aged care[69] [70], after the inquiry called the evidence "shocking" and "cruel" examples of violence and neglect around Australia[71].

The Inquiry report[72] found existing abuse reporting mechanisms did not provide adequate protection, and in some cases could cause abuse[73].

Senator Siewert presented the report of the *Community Affairs References Committee on the treatment of people with disability in institutional and residential settings*, together with the Hansard record of the proceedings and documents presented to the committee:

> **Senator Siewert:** We heard accounts of violence, abuse and neglect in institutional settings, in residential conglomerate settings, in schools, in aged care — across the board. **Nobody at all in this country can say that this is not happening. This report clearly articulates that...**
>
> ----------------------------------
>
> ... The other issue that came up really strongly and repeatedly was the need for national workforce and workplace regulation to address some of the systemic workforce and workplace issues that increase the prevalence of violence, abuse and neglect. There is a need for ongoing training, so we are calling on the government to consider the implementation of such a process.
>
> **One of the key things here was access to justice and the denial of justice for people with disability.**
>
> **Not only were people scared to report assault, abuse and violence,** but when they had the strength to and could report it **they were not believed** by the police, by the service provider, by the judicial system.
>
> People were told: 'No, this would never stand up in court. People wouldn't believe you as a witness because you've got a disability,' and this was particularly so for those people with a cognitive impairment.
>
> **So, even when people could report it, they were not believed.**
>
> ----------------------------------
>
> ... We need to be working at a national level, and our states and territories also need to be working on this issue. **I will come back to the issue of data because it came up again and again**. I am sure Senator Moore will also address the issue around data, because it comes up for us again and again...
>
> ***Source:*** *Community Affairs References Committee - (25 Nov 2015)* *http://bit.ly/2tcpLoQ*

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[69] Senate Community Affairs References Committee: 11 Feb 2015
Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report

[70] Senate calls for royal commission into assaults in care (1 Dec 2015):
https://www.thesenior.com.au/news/senate-calls-for-royal-commission-into-assaults-in-care/

[71] Inquiry calls for royal commission into widespread institutional abuse of people with disability in institutional and residential settings: (ABC, 26 Nov 2015), http://ab.co/1KLKhz8
http://www.abc.net.au/news/2015-11-26/widespread-violence-of-people-with-disability-in-institutions/6974798

[72] **Report:** Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability:
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report

[73] Senate to hold inquiry into abuse of disabled people following Yooralla case: http://bit.ly/21cfGyJ

Nurse academics speak out: Nurse academics from university departments have written theses and articles on their findings. They have accepted their responsibility as academics and spoken out about what they have seen and found. Instead of addressing their findings and criticisms, like Gillian Triggs[74], they have been attacked, their research criticised and their universities asked to discipline them.

This is one example - there are others:

> "... The other thing that I wanted to talk to you about was the issue of research in aged care and the issue of researching in residential aged care. When Prof ... published her PhD in the mid 90s she was banned from residential aged care facilities on the mid north coast because her findings were adverse to those wanted by the industry**.**
>
> **"... I have been subjected to threats of violence, verbal abuse, constructive dismissal. I've had contracts terminated and we sold our home and moved to another town because of the professional bullying that I was undergoing because I was revealing the outcomes of that PhD research ..."**
>
> ***Source:*** *Productivity Commission Inquiry - Caring for Older Australians: - evidence of Dr Bernoth: Transcript of Proceedings - see pages (39) 1371 (Canberra, 5 Apr 2011)*
> *http://www.pc.gov.au/inquiries/completed/aged-care/public-hearings/20110405-canberra.pdf*

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[74] http://www.abc.net.au/news/2015-06-12/gillian-triggs-says-she-'has-not-considered-resigning'/6540862

Appendix F:

Aged Care Structure

June 2023

Extracts only from Aged Care Crisis' submission to the Royal Commission on 4 August 2020

Table of Contents

1 Aged Care Structure....3

1.1 Why aged care is failing and what to do about it? 3

1.2 Broad recommendations 4

1.3 Outline of the remainder of this submission 4

2 Restructuring aged care - developing principles 5

2.1 A greater role for citizens and democracy 5

2.2 Continuing support for regional and local government and community from 2001 to 2020 8

3 Recommendations for restructuring aged care 8

4 Extracts from Appendices to Royal Commission submission on restructuring 13

4.1 Localism 13

4.2 Previous inquiries and advocacy 16

4.2.1 The 1975 Coleman Report 16

4.2.2 The 1982 Macleay Report 16

4.2.3 The 1985 Giles Report....17

4.2.4 The 1989 Ronalds Report....21

4.2.5 The Gregory report 1993 22

4.3 Professor Kendig 23

4.3.1 The Royal Commissions Research Paper 2 24

Summary

This appendix contains multiple extracts from Aged Care Crisis' 4 August 2020 unpublished submission to the Royal Commission advocating for structural change and a community-led system. It describes why the system is failing. It suggests principles for reform and makes recommendations.

It describes the broader movement to localism and looks at the recommendations made in the pre-neoliberal era that advised greater regional, local and community involvement in the system. These changes were abandoned during and after the 1990s.

Pages 7-9

1 Aged Care Structure

1.1 Why aged care is failing and what to do about it?

There is a simple but valid explanation for why aged care is failing.

Explanation: As part of a belief system that became ascendant in the late 20th century, the aged care system has become part of a one size fits all, strongly competitive free market and has been structured as such. This exerts very strong perverse commercial pressures on all of those involved in this market. The community values on which care depend have been lost in the process. The community has been pushed aside and disempowered.

The powerful communitarian pressures that citizens exert on one another to confront and control inappropriate ideas by confronting them at source and to stop harmful behavior as soon as it occurs by ostracising offenders have been lost.

The new structure has abandoned traditional methods of oversight and regulation. They cannot be accommodated within it. They have been replaced by governance. This is derived from the Greek word "steer". This process of steering is manifestly inadequate. It is incapable of countering the perverse incentives generated by this new system. It has not addressed the decline into a substandard system that has been characterised by repeated and recurrent failures. This is despite multiple attempts to improve it.

Note: We dealt with the power of this social control in depth in *'Section 1.3.2: Social Control'* (pg 327 to 328) of our analysis *'Why Aged Care is failing'*. We sent this as an attachment to our first submission to the Royal Commission on 8 October 2019. If the Commission does not understand this and the power it gives citizens to control unacceptable conduct when it occurs then it should refer to that analysis. That powerful restraint was lost when neoliberalism and managerialism imposed their patterns of thinking and pushed civil society aside.

The real problem is not governance but the strong perverse incentives that are integral to the structure of the new competitive system. Similar beliefs, market structures and governance processes have been introduced into most other sectors of society. They have failed on multiple occasions, particularly in sectors where there is any vulnerability in the customers, the workers or the funding system. The failures in aged care, the most vulnerable of all, are only a part of the problem.

There is an equally simple explanation of what needs to be done.

Explanation: All humans go through times when they are frail and vulnerable. We relate to and empathise with others when they are frail and in need. As individuals and as a society we are responsible for supporting and helping one other and we work together to do that. We have developed, norms and values which motivate us and lead us to be altruistic and make sacrifices for others. This is one of the reasons why we have been such a successful species.

Every one of us and every community is and has always been responsible for the care and the wellbeing of our vulnerable fellow citizens. Anyone providing that care is doing it on our behalf and they are our agents. Our agents are responsible to us and it is our responsibility to watch over them and ensure that our agents are caring for our fellows, as we would, were we in a position to do so.

As citizens and communities we need to be able to choose who will look after our vulnerable fellows to be sure that they can be trusted. We must be able to replace any of our agents who do not live up to our expectations. The structure of the market model introduced in the 20th century has excluded us and we are no longer able to meet our responsibilities to our vulnerable citizens.

The market needs to be restructured to limit or even abolish the perverse incentives. The new structure must empower each one of us and our communities to closely examine the record of those we select as our agents to ensure that they are trustworthy, that they embrace our norms and values, share our altruism and will resist perverse incentives. We need to work closely with our agents on a day by day bases and have the power to replace them if and when they do not meet our expectations.

Aged Care Crisis has been making submissions to aged care inquiries since 2005. For over 10 years it has been urging inquiries to restructure aged care along these lines. The rapid deterioration of the system and the calling of the Royal Commission has shown how important this is and sharpened our interest.

We have discovered that prior to the 1990's when the new belief system took hold of Australia, inquiries were recommending and steps were being taken to make reforms similar to ours in aged care. Clear warnings about the consequences of the proposed changes introduced in the 1990s were ignored. Others have been pressing for similar changes over the last 20 years.

We have discovered that there is a growing volume of literature analysing the many similar failures and the problems in society that have resulted from the late 20th century beliefs. The erosion of civil society, the communities and the 'responsible citizens' that comprise it has been identified as a key problem that needs to be addressed. Many have been seeking changes in other sectors. These also seek ways of re-empowering the community.

1.2 Broad recommendations

a) Direct care and staffing should be protected from perverse pressures within the system.

b) Responsibility for management and oversight of care should be returned to local and regional government and their communities so that they can appoint their agents and work transparently with them and replace those who fail to deliver.

c) Those who do this arduous and demanding work, whether as staff or as providers from any of the sectors doing it on our behalf, should be admired and well rewarded financially for their altruism and dedication. Clearly if they betray our trust we should be able to easily replace them.

d) Communities will need a great deal of support to do this. A network of support services should reach down to support and work with these communities to build capacity, mentor, support, empower and be there to take over and help when there is insufficient capacity.

A longer list of recommendations and suggestions to meet these objectives has been included at the end of this submission.

1.3 Outline of the remainder of this submission

1. We address our concern that the Commission is not addressing its terms of reference fully and as a consequence their recommendations will be an ineffective long term solution.

2. We expand on the simple but true explanations and enter into the complexity of real life to show that the recommendations have validity.

- **a.** To do so we address the knowledge we have that enables us to understand the nature of ourselves, our society, our vulnerability to ideology and how we respond to it.
- **b.** We show that the efforts to contain the extensive market failures and their social consequences are the way society responds when in the grip of an ideology it dare not challenge. These include a new form of 'governance' and what others have called 'Regulatory Capitalism'. These attempts have not worked in aged care or elsewhere. We explain that they are no match for ideology and no replacement for the social control exerted by civil society.
- **c.** We explain the strategies a society that is in the grip of ideology adopts in order to convince itself that these suboptimal regulatory efforts are working, when exposing this would destroy the legitimacy of the ideology.
- **d.** We examine the criticisms being made of neoliberalism and the proposals that others have been making to address the same problems in the wider society. They too are seeking to empower and involve civil society in order to generate the societal power to confront ideology and bring about needed change.

  We examine the recommendations that were made by inquiries into aged care prior to neoliberalism and find that these are very similar to those we are pressing for.
- **e.** We expand on the four simple recommendations above to show how they might be implemented.

Because we have dealt with the more theoretical aspects in previous submissions and in our detailed analysis, and because we suspect that some will already have a reasonable grasp of these issues, we address much of this in appendices. We indicate the matters in the appendices that need to be understood in the argument. Those who don't understand the concepts can refer to the appendices.

Pages 36 - 38

2 Restructuring aged care - developing principles

2.1 A greater role for citizens and democracy

There is growing criticism of neoliberalism and many are looking for ways to rebuild and empower civil society and its citizens so that Civil Society replaces the market as the central most powerful controlling domain. The market should be prevented from cannibalising society and preying on citizens. Instead, it should resume its primary role of supporting and enabling society.

The erosion of civil society

A. The problem: We have seen a progressive erosion of civil society over the last 30 to 40 years - and with it our altruistic values and our humanity. Academics warned of what was happening in the 1990s but no one listened. The Appendix looks at two examples of efforts to counter what was happening to civil society in the 1990s by pressing for it to be addressed and describing what a real civil society would look like.

B. The mechanisms: Nonprofit's are the groups that arose within society in order for civil society to serve citizens. They drew citizens together to develop them, run them and support them.

They built relationships, reinforced values and built social capital. In many ways they were the beating heart of civil society. They have been radically compromised and altered and society is poorer and undermined as a result. The Appendix looks at this global problem, and refers to our exploration of how this happened in 2006 and 2015/16. The Appendix examines the mechanisms through which civil society was eroded– Kidnapping and brainwashing civil institutions, particularly nonprofits.

Remediation – the rise of localism

The Cultural Development Network Victoria tried to take up the issue of civic erosion and loss of culture in 2001. They commissioned a book[1] at a time when communities and local governments were coming under pressure as society fragmented and managerialism took control. This book addressed culture and community in order to add *"potential value of a specifically cultural perspective to the planning, service delivery and evaluation activities of local government"*. It stresses that:

> "A society's values are the basis upon which all else is built. These values and the ways they are expressed are a society's culture. The way a society governs itself cannot be fully democratic without there being clear avenues for the expression of community values, and unless these expressions directly affect the directions society takes".

They noted that *"the growing awareness that social values have a critical function in governance is made clear"* and that *"more people are feeling disengaged from 'their' society"*. This is worrying because *"the meaning we make of our lives is something we do together, not an activity to be left to others, no matter how skilled, or representative, they may claim to be"*. Without meaning we become rudderless and unstable.

They stress that *"local government is best placed to address this issue. It is the tier of governance closest to the citizenry"*. Many issues *"deserve specific public initiatives designed to stimulate community debate and to move towards more democratic forms of governance"*. They feel that *"as the level of governance closest to the people, they play a vital role in educating, mobilising and responding to the public"*.

Community-Level Governance: In 2014 Local governments are still pressing for greater local involvement in governance and a report[2] was prepared for Australian state and New Zealand local government representative bodies. They focus on community governance. They claim:

> "Community engagement can also increase accountability and help ensure that services are delivered efficiently and effectively and meet the needs of the communities they are designed to serve. It can also increase opportunities for voluntary effort and enhance social capital and community trust".

In England and New Zealand community are more involved than Australia. There is a focus on 'co-governance'. *"Developing co-governance therefore crucially involves increasing capacity on the 'lower' scale in order to counteract this tendency to hierarchical governance"*. The intent is for

[1] The Fourth Pillar Of Sustainability Culture's essential role in public planning Jon Hawkes For The Cultural Development Network Victoria 2001 https://apo.org.au/sites/default/files/resource-files/2001-06/apo-nid253826.pdf

[2] Community-Level Governance :What provision should be made in local government legislation? https://www.lgnz.co.nz/assets/In-background/bf38e040f4/Community-Governance-Report-.pdf

community to be involved in planning. Power disparities between participants are being addressed to create a more constructivist situation.

Interest in local control, management co-development and more continues to grow in Australia but with New Zealand leading the way. One 2019 paper[3] asked 'Is Australian Local Government Ready for Localism?'

Warning: The danger is that what should be a project to rebuild and develop civil society could too easily become an exercise in extending neoliberal principles and ideas ever deeper into our social fabric under the pretext of efficiency and so be counterproductive. This needs to be guarded against because current government policies and the neoliberal discourse will seek to do so.

Deliberative democracy: Interest is reviving in decision making and management in close cooperation with community and where their decisions and desires are informed by expertise.

Democracy 2025 is a group that is pressing for urgent action on our failing democracy and the loss of trust and disengagement in society. They are pressing for changes that include[4] 'Co-design and Deliberative Democracy'.

These include six key factors:

1. inclusive representation
2. autonomy and equality of all participants
3. plurality of viewpoints and engagement methods
4. quality of process design and facilitation
5. transmission of citizen generated recommendations, and
6. citizen participation as a democratic value.

This is what we mean when we refer to a context that is constructivist. It stimulates citizens and encourages them to study, grow and develop. It will only work if citizens are empowered, can build social selves and their decisions accepted.

Localism: Logonet is another group that is pressing for local involvement in addressing the issues of our failing democracy and it stresses the importance of place[5] – taking control locally.

> "The central issue for the LogoNet Dialogue has been whether, how and to what extent Australian local government can and should do more to strengthen our democracy – in particular by advancing 'place-based', collaborative governance. The genesis of this question is now widely acknowledged across the 'western' world".

These changes are relevant to aged care because its plight is a consequence of the same social pathology and requires the same sort of solutions.

Before Neoliberalism: Aged Care Reviews and Inquiries 1975 to 1997

========== HISTORY pages 38 to 40 OMITTED as in other appendices ==========

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[3] Is Australian Local Government Ready for Localism? Graham Sansom Policy Quarterly – Volume 15, Issue 2 – May 2019 – Page 25 https://apo.org.au/sites/default/files/resource-files/2019-05/apo-nid239116.pdf

[4] Co-design and deliberative engagement: what works? Democracy 2025 Report No 3 30 May 2019 https://apo.org.au/sites/default/files/resource-files/2019-05/apo-nid239236.pdf

[5] Place Based Governance And Local Democracy: Will Australian Local Government Deliver? Fresh thinking about the future of local government and governance Logonet 2019 https://logonetdotorgdotau.wordpress.com/
Report: https://logonetdotorgdotau.files.wordpress.com/2019/06/the-logonet-dialogue-2017-19-report-final-designed.pdf

Pages 40-41

2.2 Continuing support for regional and local government and community from 2001 to 2020

Professor Hal Kendig has been a lone voice over the last 20 years, pressing for the management of funding and the provision of aged care to be returned to local and regional governments and their communities. He described the serious problems that were developing in 2001 and advocated for going local.

In his submission to the 2010/11 Productivity Commission Inquiry he indicated that the *"most important challenge, is for the Commonwealth to appreciate fully the capacities in local service systems necessary to provide high quality care".* He recommended ways of doing this. We have given more detail in previous submissions.

In the Review of International systems, prepared for the Royal Commission, Professor Dyer and her group found that the majority of countries had gone in the opposite direction to Australia and had a decentralized regulatory system.

Pages 41-45

3 Recommendations for restructuring aged care

Recommendation 1: Overarching Principles

That the Commission accept as overarching guiding principles that:

a. Care and staffing in the aged care sector must be protected from perverse pressures and incentives in the system.

b. Aged care is the responsibility of every citizen and of every community. Any person or entity providing that care is acting as the agent of that community and is expected to work closely with that community, act on their behalf and provide the service they and their members expect to the best of their ability. They are directly accountable and responsible to that community.

c. It is essential that communities and their members have effective oversight of their agents and that activities be fully transparent and that they be directly involved in decision making. If their agents fail to provide satisfaction then there must be a mechanism in place whereby the community can readily find another agent to replace the one that has not been satisfactory, and do so without disrupting the care that their fellow citizens are receiving.

   Keeping in mind that:

   I. the 19th and 20th century have seen enormous technological advances that have radically altered the world we live in and the way we live, increased the risks we face and created enormous problems we need to overcome. At the same time these technological advances have created enormous opportunities for an enhanced life and for developing the capacity of citizens, growing society and creating a more fulfilling and productive life as humanity grows and develops its intellectual and physical capacities.

II. at the same time the development of society as an intelligent, vibrant and responsive civilization that can capitalize on all this has been neglected and languished over the 20th century. This has been compounded and exacerbated by a succession of ideologies that have set man against man, country against country and created huge suffering, loss of life and loss of capacity.

III. In many ways Neoliberalism has been the most destructive of the ideologies for civil society because it has marginalised the society it should be serving. It has created in its place a system that fosters self-interest. In the narrow pursuit of financial objectives it ignores the societal values that focus on citizenship and the common good.

The technology that promised to release us from the burdens of labour has instead been used to bind more and more of us to endless labour. It has limited our societal horizons and forced us to try to find meaning within its limited self-centred boundaries. We have been trained for the market and not been educated to become the responsible and effective citizens required at this time.

IV. Civil society has ceased to be the heart of society and the source of our strength. Our politicians and our public services should be drawn from civil society. At the time when both are needed, their horizons and their capacity as responsible citizens serving their peers has been eroded by ideological narrowness. They can only be as good as the society from which they are drawn.

V. There is a desperate need to rebuild, restructure, re-engage, re-educate and open new horizons for civil society and its members by giving them a central role in managing their affairs and stimulating them to engage, seek knowledge and learn to use it. We can then draw people from it to lead and work with us, as we confront the risks and seize the opportunities.

VI. Aged care and the vulnerable people who work in it and receive care there are trapped and have suffered most from this. Aged care is the responsibility of every citizen and civil society, is provided in our communities, and involves every one of us in one way or another. It is well placed to re-engage, take control and lead the way along the long and difficult path of rebuilding and refining civil society so that we can realise our full potential.

Recommendation 2: Consequent further principles for aged care

That the Commission accept that:

a. aged care is the responsibility of every citizen living in a civil society and of very community that has aged care members.

b. aged care should not be industry driven or market driven but be driven by civil society and its values.

c. any industry, government, individual or other entity providing care is doing it as the agent of that community and is responsible to them for what it does

d. it is essential to protect funding for staffing and care from competitive market pressures.

e. funding should follow the needs of the community and its elderly members and, while funding will inevitably limit what is possible, funding should follow the care and should not be forced to follow the funding.

f. aged care is dependent on civil society values directed to the 'common good' and uncontrolled and unrestricted market values are incompatible with this.

g. the system will need to be restructured in such a way that power lies in the hands of the community that is being served so that it can control the paradigms and discourse used in the sector, as well as the practical provision of care

h. the motivation for working in aged care should be driven by paradigms and discourses underpinned by altruistic community and professional values

i. those who provide this sort of care should be well rewarded for their altruism, so affirming the value that society places on the extra service they give and the sacrifices they make to do so.

j. aged care should be based on a Bottom/Up rather than a Top/Down integrated system.

k. as far as possible aged care should be based in communities and regions and that local governments and their communities be assisted to create the structures needed for local management, control and oversight of services.

l. within society there be an integrated web of other wider systems and services designed to reach down into, support, educate, mentor, and empower the local governments, the communities and the citizens that are providing care to the vulnerable. These would include the health system, government, advocacy support, complaints system support, regulatory and oversight support, financial help in managing money, data handling, research and more.

m. The full breadth of the market should be welcomed to provide services, support and advice in the same way, provided they engage with and support community values. They should be well rewarded for providing services ethically and well – welcomed and encouraged to do so.

n. Opportunities should be available for the market to provide additional services and care and to take profits from them but because of the vulnerability of the sector the community should have oversight of what is being done and ensure that the vulnerable are not being exploited.

o. Aged care should provide a secure and stable investment for the market and for those who invest in it. Investors should be welcomed.

p. It should however be protected from entrepreneurial financial opportunists. It is not suited to those looking for opportunities and system vulnerabilities that allow them to make a quick fortune.

q. Funding is not unlimited and the elderly are not entitled to the unlimited use of resources. The current coronavirus pandemic will leave a long shadow. In such a difficult sector rationing is inevitable. The system should be designed to stretch available resources for maximum benefit. That can only be done locally where individual situations can be properly assessed, and volunteers enlisted in a crisis.

Recommendation 3: Central organisation

That it be accepted that McLeay was correct and that the Commonwealth has failed and is poorly placed to manage and regulate aged care. In restructuring serious consideration should be given to progressively transferring the management and regulation to the states.

At the same time the states should create a coordinating body and seek to develop similar assessment processes, similar data standards and learn from each other. The sector should be driven by data and the many eyes of experience. It should be shielded from one size fits all political ideologies. The Commonwealth could be represented on that and would uses its resources to support and guide,

Recommendation 4: Local management and empowerment

That local community and regional councils be empowered to provide the services to their communities. In doing so:

a. Each local government and its citizens create an organising group drawn from local council members as well as the community and its organisations. It should include those who are strongly motivated as well as those with relevant expertise. Some will require funding but much of it should be altruistic. Altruism and volunteerism should be encouraged in the community and they should set an example.

b. It should be structured to have the capacity to:

I. Organise the community, residential, respite, re-ablement, rehabilitation and social aged care services, and anything else required to meet the needs of that community as best they can with adjacent communities sharing and supporting when needed.

II. Contract services to providers as their agents and ensure that they provide those services. If problems occur and are not remediated then they need the capacity and support to assess the track record and probity (character) of other providers and work with more central structures to replace their agent with another who will meet their requirements.

III. Manage the funds available to support and provide the services as best they can.

IV. Assess the needs of those requiring services, advise them and guide them to the services that they need and want, watch over and work with those actually providing services to upgrade or downgrade the services as required and to ensure that when rationing is required, it is done without compromising essential care.

V. Create and support local empowered visitors who have access to local data and records to work with providers in all areas. They should build relationships and have regular contact with those receiving care, their families, staff and management watching over care, collecting data, doing research, assessing services and participating in the investigation of any failures in care they or others detect. The intention is that they work cooperatively.

   Where needed issues would be escalated to the main community body or the council to take up with management – and if necessary to central regulators for action. This should ensure open disclosure and full accountability to the whole community. It should empower local managers to resist pressures that would compromise care from their corporate masters when this is necessary.

VI. All those receiving care should be asked to agree to their records being available to the empowered visitors for evaluation of services, for action, data collection and/or research.

VII. Provide a local advocacy service and build capacity for responsive regulation and restorative justice. When someone has been seriously harmed by negligence then they could, if they desired it be assisted in escalating disputes to arbitration and if needed the courts.

VIII. Organise aged-related activities that take the community to aged care and the elderly into the community. This should ensure that the elderly remain involved in and with the community so that they can continue to find meaning and identity be being members of families and society.

IX. Local community organisations should form a central representative body to liaise with the supporting services at a higher level and work with industry and government bodies to address issues and facilitate the Bottom/Up flow of information and ideas, and contribute to the development of policy. They would collect data and support their constituents helping them to improve their service to their communities. This would fill the gap in the regulatory capitalism model by creating the necessary community contribution that they wanted but could not find.

Recommendation 5: Integrating and support services

a. As indicated the role of civil society more broadly as well as other sectors and government should be to form a network of support services that reach down, relate with and support the community and the services they provide. They should be around and ready to step in and provide services and take stronger regulatory action when this is beyond local capacity. They should support and deal with unfamiliar issues as required. Health care would be particularly important as it would support general practice and be providing geriatric and other specialist services (including training) in senior centres, residential facilities and in geriatric departments in hospitals.

Recommendation 6: Funding

a. The needs of each community should be assessed on the number and nature of the community, age distribution, socio-economic status, health as well as the assessments of acuity made. As Kendig suggested in 2001, each local community should then be funded to provide those services. They should be fully accountable to the community and the funding bodies for how they do that.

b. They should be responsible for organizing and paying for the services the community needs.

c. Funding however generated should have a protected, transparent and fully accounted for stream, specifically directed to direct care and staffing and any funds not spent returned to the community.

d. To provide a market reward, providers should be contracted and paid an agreed fee for managing and providing direct care and nursing services and it should reward the good work they do.

e. Other services can reasonably be provided for profit but should be accountable so that community and other regulators can ensure that the elderly are not being exploited.

Recommendation 9: Making the market work

a. Contributions by individuals should be means tested to protect the poor and these should be capped.

b. The local community organisation would contract with potential agents (ie providers) who provide nursing and other direct care and, as the money would be protected, they would pay them a salary to provide the required service under the contract.

c. The provision of non-direct services would also be overseen by the community to ensure the vulnerable were not exploited but providers could be permitted to generate income from them.

d. Probity would be a key consideration and citizens should be given the opportunity to submit information before awarding a license or contract to operate in their region.

e. This remains a market and steps should be taken to make it easy for communities to dismiss an agent and replace it. To facilitate this it is suggested that businesses that require large permanent facilities either become a Real Estate Investment Trust (REIT) or a Provider – alternately have two separate divisions. The facility if not owned by council could then be leased by either the council or the provider and those leases paid for as part of the general payment received from those receiving care.

f. This would permit the community council to terminate a contract for services and find another agent to provide the services without disrupting the staffing or the services provided to the residents. This would empower the local managers to resist pressures from above when these might compromise services.

Recommendation 10: Sources of funds

This is being addressed in a separate submission but for the record:

a. We draw attention to the unfairness created by a user pays system that is not protected by some sort of insurance that spreads the unpredictable risks. The sums are large and what any person will need in the future is quite unpredictable. We support some sort of insurance cover for aged care expenses tied to superannuation services or Medicare payments – but with a copayment.

b. We are very concerned at the generational inequity created for succeeding generations by the failure of past governments to plan ahead. We support some sort of cross subsidisation that is fair and will address this without relying on totally unpredictable large user pays fees.

c. We accept that Australians are prepared to pay more for their care, but that needs to be equitable.

4 Extracts from Appendices to Royal Commission submission on restructuring

PAGES 85-87

4.1 Localism

(Appendix 5 of the Submission to the Royal Commission)

A global movement to localism

A. The problem: We have seen a progressive erosion of civil society over the last 30 to 40 years - and with it our altruistic values and our humanity. Academics warned of what was happening in the 1990s but no one listened.

B. The mechanisms: Nonprofits are the groups that arose within society in order for civil society to serve citizens. They drew citizens together to develop them, run them and support them. They built relationships, reinforced values and built social capital. In many ways they were the beating heart of civil society. They have been radically compromised and altered and society is poorer and undermined as a result.

C. Remediation – the rise of localism: As a result of these processes society has started to fragment and our democracy undermined. Many more realise what is happening are trying to keep these issues alive. Attempts to rebuild society under a dominant neoliberal establishment have failed. It seems that any leader that tried to move in that direction was quickly deposed. There is now growing pressure towards localism, deliberative democracy and a number of 'co-processes' of various sorts that re-empower citizens and build civil society.

These changes are relevant to aged care because its plight is a consequence of the same social pathology and requires the same sort of solutions.

In this attachment we simply provide extracts which illustrates what has been happening.

A. The problem: Erosion of civil society and responsible citizenship

Civil society: By the mid 1990s the fragmentation of civil society was already accelerating. In Introducing Sociologist Eva Cox's 1995 Boyer lectures[6], Diana Gribble, Deputy Chair of the ABC Board said:

> In these Boyer lectures, which she has called A TRULY CIVIL SOCIETY, Eva Cox will take a radical look at the collection of somewhat forgotten values - such as trust, co-operation and goodwill - that hold society together. She argues that we are losing that important social glue and that current debates about citizenship are narrowly focussed on citizens as competitive individuals rather than as social beings.

She commenced her lectures saying:

> When Margaret Thatcher said 'There's no such thing as society', she lost the plot! Society is the myriad of ways people connect, linked by some common interests or characteristics. Over the next six weeks, I want to explore what holds society together, what may cause us to come apart and what constitutes a truly civil society in which we trust each other and face our futures optimistically.

She indicated that *"I believe we are responsible for each other, as well as ourselves. I act for others so I can live with myself. - - - - I believe it is up to us, all of us, to make up our minds about the world we want and to take some responsibility to make this world happen".*

In her lectures she goes on to describe what a civil society is all about and how people build meaning and can play an important role in creating social capital and a vibrant society by working together for society. It was something to aspire to and it was being undermined.

Our humanity: The same year Rees and Rodley edited a multi-author work[7] *"The Human Costs of Managerialism: Advocating the recovery of humanity"* warning about what was happening as neoliberalism and managerialism shredded our society. We quote some fragments that illustrate the message:

- **(Page 231**) *"A picture emerges of contrived policy yielding profound human costs and lasting damage to the social fabric. What is needed is nothing less than a recovery of humanity"*. And then a few pages later later *"society is losing its collective soul"*.
- **(Page 261)** *"- despite its promises of greater economic efficiency and material wellbeing, is reducing economic security, generating economic inequality and fracturing social cohesion"*.
- **(Page 277)** *" - - the failure to acknowledge and include the breadth of human cultures and values in envisioning the economic organization of society inevitably leads to the fragmentation of human communities and values".*

Keating was driving these policies and Australians were angered by what was happening so they elected Howard – from the frying pan into the fire. In spite of some rhetoric from ministers about civil society, they accelerated this policy and we are now paying the price of not listening.

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6 A Truly Civil Society ABC Boyer Lectures 1995 http://ldb.org/evacox.htm

7 The human costs of managerialism: Advocating the recovery of humanity Edited by Stuart Rees and Gordon Rodley Pluto Press Australia (1995)

B. The mechanisms – Kidnapping and brainwashing civil institutions

Marketisation has dramatically changed the nature of the nonprofits that form part of civil society, have a mission and serve the community. Traditionally they have been built around community support, drawn funding from charitable activities, been managed by community-minded citizens, and relied on community volunteers in many ways. They were a part of the glue that held society together and built social capital.

Being forced to operate in a competitive market and compete with for profits has forced them to adopt a different discourse, bring in market style managers and compromise their community mission. This becomes a race to the bottom. The call for volunteers is less and citizens become less motivated. Civil society has been eroded.

We first described the problem for nonprofits in Australia and how they were responding to this threat[8] in 2006. In 2015/16 we wrote web pages describing how this was happening in aged care[9,10] and the way in which the discourse of care among the nonprofits had gradually adapted to the dominant neoliberal discourse in discussions that were publicly available.

This as we explained in our Appendix A is a good example of how individuals and organisations bend before dominant discourses and adopt their thinking – or as Foucault called it were governed by the discourse. It's a very subtle way of being brainwashed and then kidnapped!

In addition, government contracting has seen the rise of Big Charity[11] as government favours larger contractors. This has additional consequences.

This is a global problem and a study in Canada[12] showed:

> "In various forms, the state has introduced quasi-markets or, at a minimum, required NPO's to engage in more competitive practices with negative consequences for nonprofit mission, culture and labour-management practices. The result is a growing level of instability within the sector".

The United Kingdom is having the similar problems[13]. A recent paper alleges *"it appears that governmental agencies in the UK have been actively and deliberately encroaching on civil society, eroding its ability to act independently of the state or voice dissent, and trying to harness it to the governmental agenda"*.

Like Australia there are *"ongoing attempts to restrict advocacy and lobbying and to encourage the third sector to confine itself to providing services, especially services seen as important by governmental agencies. Most recently, the distaste of governmental politicians for public airing of views different from their own has been manifested in a series of new laws and new regulations"*.

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8 The Not-for Profit Dilemma. Corporate Medicine web site 2006 http://www.corpmedinfo.com/notforprof.html

9 Dilemma for not-for-profits Inside Aged Care 2015/16 https://www.insideagedcare.com/aged-care-analysis/cultural-perspectives/dilemma-for-not-for-profits

10 Views among not-for-profits Inside Aged Care 2015/18 https://www.insideagedcare.com/aged-care-analysis/widely-contrasting-views/views-among-not-for-profits

11 Oligopoly in Monopsony: The rise of Australian Big Charity in the delivery of services to people with a disability BM DALTON 2014 https://opus.lib.uts.edu.au/bitstream/10453/87286/4/DALTON%20DARCY%20GREENANZAM1579_1579_ANZAM-2014-015.PDF

12 Structuring Neoliberal Governance: The Nonprofit Sector, Emerging New Modes of Control and the Marketisation of Service Delivery - Bryan Evans, Ted Richmond, John Shields Policy and Society Volume 24, Issue 1, 2005, Pages 73-97 https://www.sciencedirect.com/science/article/pii/S1449403505700503

13 UK Civil Society: Changes and Challenges in the Age of New Public Governance and the Marketized Welfare State Nonprofit Policy Forum Volume 8, Issue 4 https://www.degruyter.com/view/j/npf.2018.8.issue-4/npf-2017-0017/npf-2017-0017.xml

Clearly this *"is not a positive one for those who value civil society as an essential constituent of democracy - - - - It also suggests that small nonprofits and volunteers are struggling to maintain some of the characteristics which have been most valued by political philosophers in the past"*.

This is a global problem even in the more socialist Scandinavian countries[14] where *"residential care is proving to be a lucrative opportunity for large international companies"*. This speaks for the power that big multinationals who dominate world trade forums now have over the government of states.

4.2 Previous inquiries and advocacy

PAGES 89-99 Extracts only

4.2.1 The 1975 Coleman Report[15]

The Coleman Report (1975) pressed for increased community services of all types including skilled geriatric medical care, increased choice offered through a community care program based in Seniors Community Centres with maximum local public participation as well as local volunteer and organizational support.

It pressed for more options locally and for nursing homes to be part of the health system and integrated with regional hospitals providing geriatric support and rehabilitation. Nursing homes needed qualified people with a real knowledge of the patient and the nursing home. There needed to be an intimate connection between health, welfare and hospital services. There should be specialist assessment teams for rehabilitation, nursing homes and hostels. Oversight should be by ongoing assessment rather than policing and there should be minimum standards.

It wanted local and regional involvement in a Bottom/Up system with integration through public participation in planning at the local level then through regions and states using Joint Coordinating Committees - with the Commonwealth coordinating centrally.

The report indicated the need for flexibility of funding to meet the highly individual needs of residents.

4.2.2 The 1982 Macleay Report

The 1982 Macleay report considered that the poorer care provided by for-profits was because the nonprofits received more money. It did a far more penetrating analysis of the same problems recommending far reaching changes. Future Prime Minister John Howard was a member of that committee.

The McLeay report found that in spite of previous reports advising it, home care was still underfunded and 90% of funding was going to nursing homes, which were more profitable. Many who were subsidised could afford to pay. There was no organized group to lobby for home care.

Some local government authorities were doing an exemplary job but there was poor integration, maldistribution and a mismatch between the care needed and that provided.

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[14] Marketization from within: changing governance of care services Anneli Anttonen and Olli Karsio in Social Services Disrupted Changes, Challenges and Policy Implications for Europe in Times of Austerity. Edward Elgar. http://www.transforming-care.net/wp-content/uploads/2017/06/TP26_c-Anttonen.pdf

[15] Coleman - Care Of The Aged Social Welfare Commission Report August 1975 *Parliamentary Paper No. 180* https://bit.ly/3gswzT8

The report considered that more local organisation was required to manage the wide variety of services needed and to accommodate differing needs and levels of services in local areas and regions. It indicated that *"planning and delivery of programs should be conducted at the regional level"*.

Because of this complexity and other difficulties, the report considered that the Commonwealth government was incapable of managing and regulating such a complex system. The Committee considered that *"major progress will only come with changes in financial procedures and Commonwealth-State Financial Arrangements"*.

While the committee made many recommendations its primary one was a 5 year program to transfer all responsibility for funding and management of aged care to the states. It considered that nursing home care was an extension of State hospital services. The Commonwealth would fund it through annual tax process based on the number of aged persons in each State much as was done with health care. The states would be better placed to support and integrate the diverse system.

The Committee described the complexity and wide variation between the requirements of individuals, ethnic and cultural groups, regions and even states. Care had been driven by the funding rather than the needs of the aged citizens.

Like the 1975 Coleman report the committee felt that *"planning and delivery of programs should be conducted at the regional level"*. All services should be planned and delivered on a regional basis, probably involving the active participation of local Government.

4.2.3 The 1985 Giles Report[16]

The 1985 Giles Report into *'Private Nursing Homes in Australia: their conduct, administration and ownership'* reads like the Royal Commission's interim report 'Neglect'. It describes neglect, abuse, understaffing, maladministration and regulatory failure.

It's as if after 35 years very little has changed and yet the McLeay and Giles reports were the basis for a 10 year program to address these problems – but that reform was never fully implemented. Politicians bowed before pressure from the industry and then a new ideology which gave the industry everything they wanted.

(Page 119) Indicators of poor care *"have been held to be subjective, nebulous and difficult to enforce"*. The many allegations of abuse and neglect have been *"often difficult to substantiate or deny"*. This was because of the very nature of formal regulation.

(Page 143) More difficult to assess standards of care and quality of life outputs had been neglected as regulation focused on easier to assess inputs and *"whether a facility is capable of delivering required services"*. They were not assessing whether care and quality of life had *"actually been received. Instead they followed "the letter of the law rather than of implementing the law's intent, which is to ensure that high quality nursing care is delivered"*.

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[16] Private Nursing Homes in Australia: their conduct, administration and ownership Senate Select Committee On Private Hospitals And Nursing Homes Parliamentary Paper No. 159/1985

The report rejected the argument that providing better medical care created an institutional model with a poor quality of life indicating that *"a more medical model in Australia would not necessarily be detrimental - - - that improvements in social areas should not be at the expense of medical care"*.

Comment: In our view it is clear that a far better subjective assessment of quality of care and quality of life can be made by members of a community regulator that is often on site. As we explained in the section on 'Social Control' in our analysis of aged care (pages 327-9), the local direct social pressure we exert on one another is by far the most effective way of controlling unacceptable practices and stigmatizing those responsible. Formal regulation is there to support this.

While the Giles report did not explain it in quite this way it realised the importance of local involvement. It realised that in a sector like this regulation needed to be a part of the ongoing operation of the system at the bedside, in the nursing homes and in the community. Formal regulation was there to reach down, support, monitor and step in when needed. We include extracts from the relevant section of the Giles report below

(Page xvii) The Committee also recommends the establishment of a number of other bodies to monitor quality of care including community councils and resident groups.

Community involvement (page 133):

> A consistent complaint put to the Committee was that nursing home inspectors spent an insufficient amount of time at the nursing home and often did not thoroughly ascertain the quality of care received by patients.
>
> One solution is to establish a nursing homes standards committee within the community. This Committee could formally report annually or as necessary, to the Commonwealth Nursing Home Inspectorate Section.
> ---------------------
> The proposed Community Standards Committee would provide an alternative body to which complaints could be made by staff members, patients, patients' relatives, social workers, and members of the community. Although its powers would be limited to inspecting the nursing home and reporting, it could become involved in mediation between patients and the nursing home on minor matters.
>
> It would be expected that serious complaints raised by the body would be thoroughly investigated. Such community involvement would have the effect of opening nursing homes to public view, and this openness is already a feature of better nursing, with involvement of volunteer groups and outside contact.
>
> Another avenue open to nursing home residents is the establishment of residents' action in the form of resident Councils. These Councils already exist in a number of religious and charitable nursing homes and some have considerable involvement with management.
>
> These groups enable residents to defend their rights and to regulate their environment. It is hoped that these Residents' Councils and the Community Council will make nursing homes more accountable to the residents.

Comment: And we would argue to the community that supports them.

Giles Report Recommendations:

(a) *That the proposed Commonwealth Nursing Home Standards Committee establish **Community Standards Committees** in each region, with the task of monitoring the quality of care in nursing home(s) within the region, and reporting to the proposed Commonwealth Nursing Homes Inspectorate Section on a regular basis, or as necessary.*

(b) *That these Committees encourage the formation of **Residents' Councils** within each nursing home and provide support services to these Councils once they are established.*

The report made it clear that aged care was a whole of society activity with each level involved and contributing.

> **(Page 132)** The Committee believes that the State and local government authorities play an important role in the maintenance of standards. However, attempts should be made to standardise all State and local government legislation or regulations concerning standards in nursing homes. It is also essential that action be taken against the proprietor as well as the matron-licensee for any breaches of State or local government regulations.

Giles was describing the control from 'the collective' that the neoliberal free market ideology already entering Australia had condemned as 'socialist' because it would impede individual freedom and result in totalitarianism.

It was also the sort of thing that managerialism saw as inefficient and in need of efficient management along marketplace lines. It depended on cooperation and would inhibit competition, whose benefits would not be realised.

The Report did not condemn self-regulation (using accreditation and control by industry associations). It thought that it *"can be effective"* but did not *"believe that any industry or group can or should be controlled entirely by self-regulation"*.

The report indicated *(page 130)* that *"The Committee is not in favour of reducing the number of inspections and believes that all homes should be inspected at least annually"*.

Our concern: We have urged the Commission to consider changes that closely resemble that which the Giles report recommended 35 years ago. In spite of several submissions, it has carefully avoided openly discussing anything like this. It is difficult not to conclude, that like previous inquiries it is still deeply wedded and unable to break free from neoliberal ideology and its deep distrust of community.

The Royal Commission must surely realise that these ideas make sense and are what an informed community would identify with and want. We can understand that this is challenging and anathema to those who have developed the system within a neoliberal context and become credible because of this. But ultimately common sense and evidence must prevail

With a growing population of older citizens real change is now essential and the neoliberal experiment has failed. In 2009, Prime Minister Rudd wrote[17] "the great neoliberal experiment of the past 30 years has failed, that the emperor has no clothes".

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[17] The global financial crisis Kevin Rudd The Monthly February 2009 http://bit.ly/32cWveV

Data and data collection

The Giles report (Page xxv)) noted the lack of knowledge about the private sector which received so much government funding. It saw that *"the future of the nursing home industry lies in the development of a more diversified, flexible and integrated system with links between different specialised components of the industry and of community care services"*. Managing this would require the collection of data and the development of an adequate data base. The report recommended the development of Quality Indicators as a basis for oversight. Giles asked

> "For instance, what is the general standard of care in nursing homes throughout Australia? How does it compare with services provided in other countries? Are there different levels of care between the various types of nursing homes in Australia? Finally, are there different levels of care between the various States or by similar nursing homes within States?"

The 1997 legislation went in the opposite direction creating a complex centralised and managed system, abolishing all accountability and hiding data from the public. Thirty-five years since Giles recommended them, we are still 'only talking about' Quality Indicators. This is a graphic illustration of just how threatening real data is to neoliberalism and its supporters.

Complaints Handling

In Giles recommendations the '*Community Standards Committees'* would be supporting and handling complaints locally but there would also be a supporting *"Aged Care Complaints Office in each State to receive and investigate complaints concerning the care of the aged"*

Ownership issues *(page xvi):* Even in 1985 *"Allegations were made that records of ownership are often obscured by networks of nominee companies for tax minimisation purposes and concern was expressed about the ownership of nursing homes by doctors and their families."*

Giles suggested that *"all private enterprise nursing homes be required to provide the Commonwealth with full details of all owners of the nursing home, and if the owners are companies, full details including the names, occupation and addresses of all directors, shareholders and trustees and to prominently display the names of the owners of the nursing home in the foyer of the nursing home"*. Equally stringent requirements would be required when selling aged care businesses.

Giles considered ***(page xx)*** that staffing level should be *"determined by each patient's dependency level and need for nursing care and/or rehabilitation"*. The report recommended ***(page xxiii)*** introducing *"uniform minimum staffing levels progressively throughout Australia"*. The report thought ***(page 143)*** that *"the HASAC levels provide an inadequate level of staffing and hence patient care"* but there was no information to indicate what was needed.

There were also recommendations ***(page xxiii)*** about an *"approach to the availability and cost of paramedical and diversional therapy services"* and *"methods of assessing appropriate staffing levels"*.

4.2.4 The 1989 Ronalds Report[18]

In his forward to the 1989 Ronald's Report on protecting the rights of residents, the Minister for Housing and Aged Care, the Hon Peter Staples MP wrote

> The report clearly demonstrates that the future of aged care is not simply a matter for Government, staff or service providers - it rests with the whole Australian community. I hope that this report will be read with an open mind - looking for ways in which we can all contribute to the quality of life, quality of care and respect for the dignity and rights of our aged Australians.

Chris Ronalds recommended a Community Visitors Scheme as well as independent advocates. Both would be regularly on site. The visitor would have the same right of entry and *"arrangements as part of the government monitoring processes"*. They would be responsible for watching over the residents and sorting out issues for them, guiding them when needed, helping them seek redress or make formal complaints.

> In some instances, situations will arise which will warrant the visitor taking an interventionist role, and the training of the visitors will include special attention to that potential development. **(page 70)**
>
> ---------------------
>
> It will provide advice and assistance directly to residents, their supporters, and community workers and any others involved with residents or potential residents. It will provide advice and assistance and provide access to other appropriate avenues, such a legal assistance and advice where that appears to be an appropriate remedy. (page 71)

Comment: In 2017 Several submissions were made to the senate review into the failure of regulation at Oakden, urging a similar empowered visitors scheme - and also to the Royal Commission. We have strongly supported that. Thirty years after it was first suggested and it is still not being seriously discussed by the Royal Commission.

This can only be because the industry and not civil society or communities hold the real power in Australia and nothing can be done unless they agree to it. Anyone advocating for the public good would surely support this.

The report (page 100) addresses responsibilities indicating that *"the major responsibility belongs to Australian society in general"*. This in turn *"feeds into a more specific one of the family and friends of residents to ensure that they accept and develop their responsibility towards resident and see them as still being part of the general community"*.

And then again in regard to the responsibility of government *"there needs to be broad political support for changes in aged care and for clear demonstrations of community leadership from governments in these areas, and a continuing focus to meet the expectations of the community, particularly of older people"*.

The responsibility of the management of individual homes was *"to consider and accept the principles on which this report is based as well as the proposals to implement these principles - - - in the spirit in which they are intended"*.

Finally there was the responsibility of the regional and local *"assessment teams, advocacy services,*

[18] Residents Rights in Nursing Homes and Hostels Final Report Chris Ronalds May 1989 Australian Government Publishing Service Canberra

information services or visitors. Each of these services has the responsibility of ensuring that each resident achieves the best residential care outcome that is possible".

Such a scheme would have given local government and local communities and their members who participated an important role and responsibility for the system. They would have given local communities ownership and responsibility.

4.2.5 The Gregory report 1993[19]

- - - - - - - When Keating became Prime Minister he appointed Gregory to examine *""the structure of nursing home funding"* and to assess *"the efficiency and effectiveness of the present funding arrangements - - - - and to put forward options for structural reform"*.

He was to consider:

- Labour market efficiencies through current reforms in industrial relations (eg. workplace bargaining, multiskilling)
- Provide incentives and scope for greater efficiencies in the operation of nursing homes
- Facilitating industry viability by rewarding nursing home proprietors that maximise efficiencies
- Funding arrangements - -(that) - can be easily understood and are not prone to dispute

In other words he was to try to introduce neoliberal style management strategies and incentives. But at the same time he had to *"ensure that funding provided for direct care is used for that purpose".*

Gregory found that to implement these practices he would have to remove the protection of care from profit pressures offered by the CAM funding. He concluded:

> The current standards monitoring system is designed for a nursing home funding environment in which there is no incentive to reduce nursing and personal care staffing. The basic dilemma is that neither the current monitoring system, nor any of the alternatives considered, are sufficiently reliable and definitive in gradations of scoring, and sufficiently precise in the penalties provided, to prevent the diversion of funding from care in a non-acquitted funding system. These alternatives, - - - are therefore likely to be ineffective or to introduce worse rigidities and inflexibilities than currently exist.

In other words, you could not introduce these practices and still *"ensure that funding provided for direct care is used for that purpose"*.

----

[19] Aged Care Reform Strategy Mid-Term Review Stage 2 Report 1993 Looking Glass Press (see Chapters 1 and 9)

Pages 100 -101

4.3 Professor Kendig

The late eminent gastroenterologist Professor Hal Kendig has been a lone voice over the last 20 years speaking up for an aged care system where local and regional bodies play a central role.

2001: In their 2001 paper[20] for the Australian Health Policy Institute, 'Australian directions in aged care: the generation of policies for generations of older people' Kendig and Duckett described what was happening in aged care.

Only 4 years after the 1997 marketisation of aged care they wrote that the *"prominence of nursing home scandals reflects a deep and longstanding public concern for vulnerable older people"*. They indicated *"major improvements require diagnosis of reasons behind difficulties in the current system and a feasible vision for new directions - - - - - The past needs to be understood because present policies, with all their flaws, are difficult to change given the interest groups that benefit from them and the way in which current provision structures public expectations".*

They give a long and detailed history of aged care but, like most Australians they failed to appreciate the extent of the ideological changes that were occurring. Although they are positive about some changes made they identify a number of the problems including the disconnect between Commonwealth and states.

They suggest that these issues be addressed by regional pooling of funds. They described the many advantages of allocating funding to regions and involving local communities so that they could allocate them to provide the actual services needed and verify that they had been provided.

In a submission to the Productivity Commission Inquiry 'Caring for Older Australians' in 2010, Kendig[21] said:

> "- - - the most important challenge, is for the Commonwealth to appreciate fully the capacities in local service systems necessary to provide high quality care and support for frail older people and their carers. - - - - - It is essential that national action is based on a deep understanding of what it takes to develop and deliver integrated care and support systems on the ground - and to ensure that Commonwealth actions enable (rather than frustrate) its delivery".

He went on to suggest how this could be done.

In our 20 January 2020 submission in response to the Royal Commission's 'Aged Care Program Redesign' we pressed for a redesigned system built around local government and local community management and control. We advocated for a reach down model to support, mentor and build local capacity, stepping in where additional skills or regulatory action was required. To support our arguments we included many extracts from Professor Kendig's 2001 report and his 2010 submission (see pages 11, 14, 21-22, 59 and in ***Appendix 6*** on pages 63-67) **[NB appendix 6 of an earlier submission]**

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[20] Australian directions in aged care: the generation of policies for generations of older people Kendig H and Duckett S Australian Health Policy Institute Commissioned Paper Series 2001/05 National Library of Australia Australian Government Web Archive (ebook on searching)

[21] Professor Hal Kendig Submission to the Productivity Commission Inquiry into Caring for Older Australian July 2010 https://www.pc.gov.au/inquiries/completed/aged-care/submissions/sub431.pdf

4.3.1 The Royal Commissions Research Paper 2

The 'Review of international systems for long-term care of older people' was prepared by Dyer SM et al from the Rehabilitation, Aged and Extended Care Group, Flinders University and THEMA[22]. They found that unlike Australia *"The majority of countries analysed have a decentralised responsibility for quality regulation, with multiple players responsible for regulating quality - - - - professionalism-based quality regulation systems, all - - - have multiple levels of responsibility and decentralised regulatory responsibilities"*.

They confirmed the poor staffing in Australia writing that *"overall total staffing levels and nurse workforce at the lower end of the range internationally"* and that Australians *"reported the highest rates of dissatisfaction with the quality of health care and second highest levels of economic difficulties."* Denmark and Sweden *"have high-quality LTC-systems"* and both *"fund LTC through local authorities"*.

They made a number of suggestions, all of which we support but specifically *"Increased involvement of local or regional authorities (decentralisation) in the regulation and monitoring of LTC services."*

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[22] Dyer SM, Valeri M, Arora N, Ross T, Winsall M, Tilden D, Crotty M (2019). Review of International Systems for Long-Term Care of Older People. Flinders University, Adelaide, Australia (Research Paper 2)

Appendix G

Books and people who analyse what is happening

June 2023

Table of Contents:

1 Books and people who analyse what is happening ... 3

1.1 McGoey ... 3

1.2 Foucault ... 4

1.3 Rees and Rodley ... 7

1.4 John Ralston Saul ... 8

1.5 Walker and Salt ... 10

1.6 Braithwaite ... 12

1.7 Conclusion ... 14

Summary

This appendix describes books that help us to understand what has been happening in our societies as well as aged care. It focuses on McGoey's analysis of how we use ignorance in developing beliefs, on Heffernan's analysis of Wilful blindness when we are challenged and on Foucault's analysis of the way the powerful control the patterns of thinking of the less powerful. We look at the research into caring services including aged care that have used Foucault's insights to understand how neoliberal managerialism impacts on nursing and care.

We comment on Rees and Rodley's 1995 warnings about the consequences of managerialism for our humanity. And Saul's 1997 book explaining how belief can render society unconscious of the real world.

In looking for a path out of ideology we look to Walker and Salts analysis of the importance of balancing forces and power in complex social systems and then Braithwaite's sweeping historical analysis of the negative impact of dominance by individuals or groups, including market dominance on society. He stresses the role that a balance of power in a strong civil society plays in controlling dominance.

1 Books and people who analyse what is happening

Many are critical of what is happening in western societies today and it is clear that there are huge problems. Aged care is only one of them. We have already referred to two of our own analyses in which we look at what has been happening in aged care. We also highlighted these issues in submissions to the Royal Commission.

Social scientists are well aware of the problems in our societies and some are writing critical analyses. While these authors have different points of view they all identify similar problems.

When it comes to addressing the issues that they describe and analyse there is a common theme of responsible citizens coming together, an involved civil society and a balance of views and this is getting stronger in the more recent works.

Those responsible for the problems have been deaf to their critics. We include some information about some of the books in this appendix.

The first two examine the psychology and sociological forces and processes that underpin the development of ideologies, maintain them and protect them from challenge. Many have used the insights of the philosopher Michel Foucault in analysing what is happening in society and aged care when powerful groups are in control. We look at two books from the 1990s by authors who realised what was happening and wrote about it. Finally we look at two books that look at society and the way the balance of forces that make society work well are disrupted when powerful groups gain control. Aged care is a part of this society and a victim of these forces.

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1.1 McGoey

In her 2019 book, '**The Unknowers: How Strategic Ignorance Rules the World '** McGoey has described the way powerful dominant ideologies ignore or distort existing knowledge in order to support their beliefs and prevent them from challenge. She examines the history of Western society to show how ignorance was used and is still being used by the powerful to justify their actions. When looking for a better way, like others, she goes back to ancient Greece to see where we have deviated from their greater understanding of democracy by being strategically ignorant and what we can do instead.

Quotes

> *This is especially true when it comes to isegoria, a word for which there is no equivalent today in common western political vocabulary. Isegoria 'means not just freedom of speech in the sense we understand it in modern democracies but rather equality of public speech. (Page 296)*
>
> *The ancient Athenians saw that democracy's great value rested in its perpetual check on the knowledge of the powerful. It thwarted the entrenchment of power monopolies by people with an incentive not to learn about the weaknesses or errors of their own decision-making. (Page 297)*
>
> *But in general, the most influential economists of the past 50 years have tended to share Hayek's anti-government, pro-market bias. The evenhandedness of their 18th and 19th-century heroes - thinkers such as Smith and Tocqueville who saw that both 'big' government and 'big' industry can lead to despotic concentrations of power - fell to the wayside of the economics academic mainstream. (page 303)*

Review

> *The Unknowers is a fascinating exploration of the many ways in which our societies are built on strategic lack of knowledge*
>
> *-----------------------------*
>
> *McGoey leaves the reader with the need to honestly confront the limitless scale of our ignorance but also gives the reader an excellent set of tools for deconstructing the ways in which powerful people manipulate ignorance to keep themselves on top.*
>
> ***Source*** *Counterfire Review by Josh Newman 21 May 2020*
>
> https://www.counterfire.org/article/the-unknowers-how-strategic-ignorance-rules-the-world-book-review/

****

B. In her 2011 (updated 2019) book 'W**illful Blindness**: **Why We Ignore the Obvious at Our Peril',** Heffernan describes the many ways we maintain our beliefs by ignoring what is happening in full view.

Reviews

> *Why we overlook red flags may seem obvious, Heffernan argues in this riveting, important book: it feels better not to know; we don't want to rock the boat or have our value system shattered. But the underlying mechanisms fuelling denial are more complex, and far more dangerous in that they put us at even greater risk.*
>
> Source Anne Kingston, McLeans
>
> https://macleans.ca/culture/books/review-willful-blindness-why-we-ignore-the-obvious-at-our-peril/
>
> *Heffernan examines the intricate, pervasive cognitive and emotional mechanisms by which we choose, sometimes consciously but mostly not, to remain unseeing in situations where "we could know, and should know, but don't know because it makes us feel better not to know."*
>
> *--------------------*
>
> *So what we choose to let through and to leave out is crucial. We mostly admit the information that makes us feel great about ourselves, while conveniently filtering whatever unsettles our fragile egos and most vital beliefs*.
>
> **Source:** Maria Popova. BrainPicking
>
> https://www.brainpickings.org/2014/08/27/willful-blindness-margaret-heffernan/

****

1.2 Foucault

The late 20th century French **philosopher Michel Foucault** explored the way in which powerful dominant groups control knowledge and its interpretation. They are able to control the discourse in our society, determining what is seen as credible and can be said and what is off limits and not credible. This allows them to 'govern' (ie control) citizens thinking and behaviour. He used the terms 'power/knowledge', 'discourse' and 'governmentality' to explain what happens.

Review

> *Foucault argued that knowledge and power are intimately bound up. So much so, that he coined the term "power/knowledge" to point out that one is not separate from the other.*
>
> *---------------------*
>
> *Every exercise of power depends on a scaffold of knowledge that supports it. And claims to knowledge advance the interests and power of certain groups while marginalising others. In*

Every exercise of power depends on a scaffold of knowledge that supports it. And claims to knowledge advance the interests and power of certain groups while marginalising others. In practice, this often legitimises the mistreatment of these others in the name of correcting and helping them.

But it is only through a deepened understanding of the origin and structure of our present social order that we will be able to grasp and seize future possibilities for social change.

Explainer: the ideas of Foucault The Conversation 27 August 2019
https://theconversation.com/explainer-the-ideas-of-foucault-99758

We use his (Foucault) concept of discourse. He describes how those who have power control the interpretation and flow of knowledge. This enables them to define what is acceptable and credible in the discourse and what is off limits and unacceptable. By doing this they are able to control the way citizens think and behave. Using the strongly asserted illusion that ageing is not a disease and a nursing home is not a hospital to avoid providing costly but needed care is a good example.
Aged Care Crisis submission and analysis to the Royal Commission 8 October 2019 (Not published)

There is a fundamental mismatch between the culture of caring as a vocation and that of profit focused neoliberal markets.

In their 2007 analysis of aged care Brathwaite et al identified with Foucault although they were more optimistic that community activism would contain this than Foucault. They recognised that community movements lost momentum once narrow targets were achieved. (eg. getting a reform process in aged care as in 1986 or a Royal Commission with aspirational reforms as in 2018). They clearly did not realise the extent to which neoliberal beliefs, dominant markets and managerialism would marginalise communities. Sixteen years later and the community is still captive. In 2007 Braithwaite et al wrote:

Our theoretical interpretations also owe a lot to Michel Foucault because we find many of the regulatory rituals that have grown are rituals of discipline that oppress vulnerable actors. Our intellectual style is not nihilistic. In the face of a rising tide of regulatory ritualism, we document actors at many levels of the regulatory game effectively resisting and transcending ritualism. Our text abounds with stories of inspiring activism to transform aged care, advancing freedom as non-domination (Pettit 1997) and improving quality of care. (page vii)

-------- (In comparing nursing homes in the more institutionalised USA with that in the and USA they said) ----------

They are mostly disciplinary institutions in many of the senses Michel Foucault (1977) evocatively described prisons to be. Prisoners in maximum security prisons are not tied into chairs and beds, and most have freedom to roam larger indoor and outdoor spaces than residents in locked dementia wings of nursing homes. (Page 74)
Source: *Regulating Aged Care Ritualism and the New Pyramid. Braithwaite J, Makkai A and Braithwaite V Edward Elgar 2007*

LuisaToffoli used Foucault's insights to explain the way in which nurses think and behave in doing their work, is influenced by neoliberal management in a private hospital.

Using Foucault's (1972) archaeological approach and drawing upon governmentality theory as the analytical framework, I will argue that within the political rationality of neo-liberalism, „care" in nursing is a technology of governance. --

----

> *to work within a competitive business environment*
> --------------------
> *I argue that the neo-liberal political rationalities of healthcare lead to nursing „care" becoming a technology employed in the government of private health. The thesis considers how the business of private healthcare governs nurses' souls. It explores the problems of nursing within the private healthcare arena- -*
> -----------------------
> *(Quoting Foucault, 1983, p. 221) "To govern, in this sense, is to structure the possible field of action of others".*
>
> *This thesis considers the structuring of the field of action of nurses in private healthcare within the political rationality of neo-liberalism.*
> ----------------------
> *As we will read in this thesis, discourses that nurses use are not necessarily those of the widely reported nursing „shortage" but those of „business", amongst others. These discourses govern the manner in which nurses conduct their work in this hospital.*
> ---------------------
> *- - discourses of care are operationalised despite the uneasy tensions between the business management of the hospital and nursing, particularly around cost and importantly around reducing nurse labour costs as nurses make their nursing hours „work".*
> -------------------
> *The representation of nursing in a particular way has implications for how nursing is thought about and how it is practised.*
> ----------------
> *In the business of private healthcare in Australia, nurses work for the viability of the organisation where they work.*
>
> **Source: 'Nursing Hours' or 'Nursing' Hours: a discourse analysis.** Doctoral Thesis L P Toff0li The University of Sydney April 2011

In her doctoral thesis, Dr **Anita de Bellis** used Foucault's insights to analyse and describe the way nursing and care had been eroded over the years by dominant neoliberalism and how appalling care came to be provided in the residential aged care facility she studied in her doctoral thesis.

She and her colleagues were teaching students and saw what was happening in other facilities. They spoke out publicly[1] about the "*degrading treatment residents were subjected to*" and an "*environment of neglect*". The industry could not accept this and instead complained to the university about their conduct wanting to ensure that *"researchers and students entering the work place are better educated about aged care issues".*

> *Although nursing practice can be termed as a discipline in Foucauldian terms in its own right, it is a profession that is weak, powerless, and eroded under the dominant discourses in aged care. As such, gerontological nursing practice is controlled inside the discipline of aged care. It is demonstrated that nursing care is dominated by external discourses inherent in the aged care discipline and not provided according to nursing discourses, evidence, and knowledge. The disciplinary mechanisms used, by their very nature, have had a profound effect on nursing practice at the bedside for highly dependent residents in an aged care facility (Page 6).*

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[1] Fears over aged care abuse The Advertiser, 6 Feb 2007
https://www.adelaidenow.com.au/news/south-australia/fears-over-aged-care-abuse/news-story/7c7394642083792a0acdb44e4a6baf5d

Experts agree on aged abuse The Advertiser, 7 Feb 2007
https://www.adelaidenow.com.au/news/experts-agree-on-aged-abuse/news-story/0ff0f1c9a3b2a68bbdc6d85ca48d23d0

This facility was an environment that was incapacitating and where hours and staffing levels were at a bare minimum in maintaining a custodial level of care. Untrained, unlicensed, unregulated, uneducated, and unqualified nursing staff carried out the nursing care and also made decisions about nursing care. These non-nurses were supervised by RNs from a distance and the nursing practices were in part controlled by the disciplinary means employed to monitor the system, as well as the CWs' experiences and capabilities. The resident was at the end of this governmentality that was affecting nursing care provision (Conclusion page 294).

The claim was one of residents being protected through their legislated rights, the accreditation process, and the complaints mechanism, however, the disciplined nature of aged care in Australia has given rise to dissonances, conflicts, and agonisms in nursing practices that are realised at the bedside, as evidenced in this aged care facility. The management, nursing staff, residents, and relatives reinforced the system and the mechanisms of control and this was to the detriment of the residents, their relatives, and ultimately the nursing care they received. All were docile and silenced by the system through mechanisms of panopticism, normalisation, subjectivation, domination, and self governance (Conclusion page 294).

BEHIND OPEN DOORS A Construct of Nursing Practice in an Australian Residential Aged Care Facility Doctoral thesis Anita De Bellis Flinders University 2006

****

1.3 Rees and Rodley

Stuart Rees, Gordon Rodley and other social scientists soon realised the impact that neoliberal management strategies were having on our society. ***"The Human Costs of Managerialism: advocating the recovery of humanity"***, the multi-authored book Rees and Rodley edited was published in 1995. One of us had studied a US multinational hospital corporation (National Medical Enterprises or NME) in depth. It had been welcomed into Australia in depth and supplied information to Australian authorities.

He had some knowledge of linguistics and was intrigued by the use of associative meanings rather than denotative content and the exaggerated and unjustified assertions made in the face of incontestable evidence. He was surprised at how gullible regulators had been in accepting it. He called this NMEspeak because of its similarity to George Orwell's term "newspeak".

It took him some time to realise that the language was "real" and not intentionally deceptive. It was part of the unconscious civilisation Ralston John Saul described 3 years later. They lived in a different artificial world they had created and were blind to the real one around them.

Corporate staff had developed a language, distant from reality whose links with the real world were tenuous but to them it was real. Sets of ideas which could be linked by flights of imagination were considered to be real and were real in their consequences. I later found that this was the language of corporate health care in the USA.

Over the years NMEspeak had become the language used by businessmen, politicians and sadly many doctors when making decisions about health care. Rees and Rodley's book was one of several that had addressed the arrival of this problem in our corporate and political world. It warned of the consequences.

> *"(Managers) - - - waiting in the wings for the call to demonstrate their toughness and efficiency, their willingness to disparage old professional practices and traditions in the interests of a new corporatism."*
>
> *"Associated with this promotion and educational expansion is a corporate language and accompanying attitudes. These are the outcomes of preoccupation with management as the panacea for governments and organisations." p 16*
>
> -----------------------------
>
> *"The claim to moral neutrality and scientific objectivity suits an age in which economy has come to be regarded as more important than society and in which a brand of economics has claimed scientific qualities."*
>
> *"In private corporations and in public sector services there are numerous examples of assumptions about the universal value of management." p 17*
>
> ----------------------------
>
> *" - - - - the all inclusive claims of "culture management" with its emphasis on changing the culture of an organisation by paying attention to language, symbolism and ritual. p 17*
>
> -----------------------
>
> *"Even as claims are made about democracy in organisations, the style of decision-making is towards secrecy and control. Even as the rhetoric about greater devolution is heard, the tendency is to control decisions from the centre, to set managers apart, to develop their own cultures, language, symbols and networks." p 21-22*
>
> Stuart Rees in "The Fraud and the Fiction" from "The Human Costs of Managerialism: advocating the recovery of humanity" Edited by Rees and Rodley. Pluto Press 1995

****

1.4 John Ralston Saul

In his 1997 book '**The Unconscious Civilisation'** Canadian John Ralston Saul describes how deeply held beliefs take control of our thinking and render our civilisation unconscious of what is actually happening around us. In his later 2001 book '**On Equilibrium'** he writes about the need for a more balanced approach.

> *- - - - we are very close to having shifted the legitimacy inside Western society. Real power today lies with neo-corporatism, which is in fact old fashioned corporatism. p18*
>
> *We suffer from an addictive weakness for large illusions. a weakness for ideology. Power in our civilization is repeatedly tied to the pursuit of all inclusive truths and utopias. p 19*
>
> *In a society of ideological believers, nothing is more ridiculous than the individual who doubts and does not conform. p 20*
>
> *How is it then that we have fallen into taking seriously someone like the economist Milton Friedman who walks about equating, in a silly, indeed an immature manner, democracy with capitalism? p87*

Referring to corporatist and market theorists

> *That is their inability to see the human as anything more than interest driven made it impossible for them to imagine an actively organised pool of disinterest called the public good. p89*
>
> *Because increasingly our society does not see social obligation as the primary obligation of the individual. The primary obligation is loyalty to the corporation. p95*

> *The corporatist idea that elected representatives are merely representing interests has led them to apply pressures directly on politicians ----- ----- ---- lobbyists are in the business of corrupting the people's representatives and servants away from the public good. p 97*

Saul indicates that those who become aware of what is happening tend to develop a conspiratorial view of the banks or the transnationals. That is what many have done in aged care as well. It is only when your look at their internal documents and what they say that you realise that these practices are the reality of the world they have built. It is this world and the words which give it reality which is the real problem. Saul says

> *But there is no need for a conspiracy. These are structures managed by servants. Their logic is public and self-evident. Complex long-range conspiracies require conscious leaders. To treat the technocrats as such is to give credence to their illusions about themselves. p 126*

The market is an important part of society and functions well when subjected to the values and the will of society. The criticism is of an ideology which sees the market as universal and society as a subservient part of the marketplace controlled by marketplace values. The marketplace is not a democratic structure but functions well when controlled by the structures of democracy*. Saul says*

> *Our essential difficulty is that we are seeking in a mechanism, which is necessary, qualities it simply does not possess. The market does not lead, balance or encourage democracy. However properly regulated it is the most effective way to conduct business. p 138*
>
> *Trade, like any other economic mechanism, can be extremely helpful in the right circumstances. It cannot in and of itself solve societal problems. p 146*
>
> *We know that the universities are in crisis and are attempting to ride out the storm by aligning themselves with various corporate interests. That is short sighted and self destructive. From the point of view of their obligation to society, it is simply irresponsible. p177*
>
> *Let me quote for a last time that most important of anti-democratic, anti-humanist voices Emile Durkheim: "The other task for the corporation consists in the delegitimization of common sense." p189*

Like Rees and Rodley, Saul understood that the way language and words were used were the tools that made it possible to delegitimise the real world and creates an illusionary one.

> *For the ideologue, language itself becomes the message because there is no doubt. In a more sensible society, language is just the tool of communication. p 42*
>
> *Yet in a corporatist society, most people in positions of responsibility -- public or private -- are rewarded for controlling language. "Knowledge is Power." p44*
>
> *I would put it this way. Our language has been separated into two parts. There is public language -- enormous, rich, varied and more or less powerless. Then there is corporatist language, attached to power and action. Corporatist language breaks down into three types. Rhetoric, propaganda and dialect. p48*
>
> *This splitting of language into a public domain versus a corporatist domain makes it very difficult for anyone -- outsider or insider -- to grasp reality. Without a language that functions as a general means of useful communication, civilizations slip off into self-delusion and romanticism, both of which are aspects of ideology, both aspects of unconsciousness. p50*
>
> *The sign of a sick civilization is the growth of an obscure, closed language that seeks to prevent communication. p 57*

> *It is the intent that is in question -- the intent to use language to communicate, or alternately, through control of it, to use language as a weapon of power. p57*
>
> *Rhetoric describes the public face of ideology. Propaganda sells it. They are both aimed at normalization of the untrue p 63*
>
> *"The crowd doesn't have to know," Mussolini often said. "it must believe - - - - If only we can give them faith that mountains can be moved, they will accept the illusion that mountains are movable, and thus an illusion may become reality." Always he said, be "electric and explosive." Belief over knowledge. Emotion over thought. p65*
>
> *What I am saying is that we are faced by a crisis in language and communication. This crisis is being accentuated, not eased, by the universities. p 73*
>
> *It is through language that we will find our way out of our current dilemma, -------- ---------. But language when it works, is the tool that makes it possible to invoke reality. p176*

In Summary

> *What I have described in these five chapters is a civilization -- our civilisation -- locked in the grip of an ideology --- corporatism. An ideology that denies and undermines the legitimacy of the individual as the citizen in a democracy. The particular imbalance of this ideology leads to a worship of self-interest and a denial of the public good. The quality that corporatism claims as its own is rationality. The practical effects on the individual are passivity and conformism in the areas that matter and non-conformism in the areas that don't. p 191*

Saul realised that to address this citizens needed to see through the words and start criticising but that they would be the marginalised outsider when they did.

> *Now the very essence of corporatism is minding your own business. And the very essence of individualism is the refusal to mind your own business. This is not a particularly pleasant or easy style of life. It is not profitable, efficient, competitive or rewarded. It often consists of being persistently annoying to others as well as being stubborn and repetitive. The German voice of the Enlightenment, Friedrich Nicolia, put it clearly: "Criticism is the only helpmate we have which, while disclosing our inadequacies, can at the same time awake us to the desire for greater improvement." p 169*
>
> John Raulston Saul "**The Unconscious Civilization"-**The Massey lectures Penguin books 1997

****

1.5 Walker and Salt

In their 2006 book '**Resilience Thinking: Sustaining Ecosystems and People in a Changing World' (published by Island Press.** Walker and Salt look at the importance of a balance of views and power in complex social systems describing how dominance by one group or point of view can destroy that balance and result in dysfunctional systems which cause environmental damage and resist change as they go through repeated cycles of centralised control and failure.

Change only comes when the system is decentralised, multiple players with different experiences and points of view become involved and a new balance of power is created. Those insights can be applied to other complex systems including aged care. Aged Care Crisis has analysed aged care using this model. We have used these insights to stress the need to seize the opportunity offered by the release and reorganisation phases of the cycle created by the Royal Commission before the window of opportunity is lost.

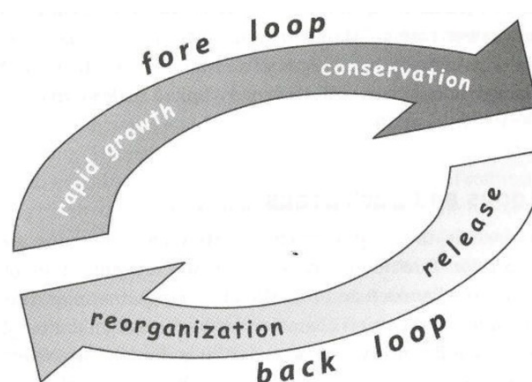
Social scientists, like Walker and Salt[2], studying the resilience of complex social systems have been particularly interested in the ecological consequences of failures in complex social systems and their resistance to reform. This approach is equally applicable to non-ecological complex social systems such as aged care.

They show how a broad range of balanced and empowered insights from different involved groups keeps complex social systems in check and prevent any one force from pushing the system out of balance. There is a good range within which the systems operate successfully and can respond and function well. When the system is pushed too far by one group others block it. These balanced systems respond effectively and adapt to change. They are flexible and are resilient to unexpected shocks.

When any particular pressure group becomes dominant and overcomes the others the whole system is pushed right out of the zone of effective operation. It becomes dysfunctional and damages the environment, citizens or society itself. This situation is very difficult to address.

The authors explain how when this happens and the failures are recognised and exposed, the system collapses (release phase). A program of reform is commenced (reorganisation) and at this stage there is a window of opportunity during which an actively involved community can take control and reform the system differently.

If they miss the opportunity, then the powerful vested interests take control again and 'reform' the system by centralising and tightly managing it making it more efficient (rapid growth) but less resilient and adaptable. It becomes very difficult to make any changes (conservation) until the next crisis of serious failures occur. Systems often go through recurrent cycles of failure before effective changes are made.



Reproduced from Walker and Salt 2006 pg 82

Successful reform is usually accomplished when the opportunity is seized by community groups to decentralise the system and manage it locally in collaboration with multiple different interested groups in society. Balance is created and stability restored.

Aged Care Crisis has analysed aged care using this model[3] showing how it became unbalanced during the 1970s and attempts to reform it and involve community in the late 1980s lost momentum. This allowed the powerful vested interests to take control again in 1996 and the opportunity was lost. A new cycle started as they centralised and managed. The ongoing failures were dramatically exposed again in 2017/18.

The community were angry again and wanted change, but they were distracted by other crises and attention waned. The long, drawn out Royal Commission and its recommendations pacified them. The same powerful vested interests have once again taken control and the window of opportunity is rapidly disappearing.

---

2 Walker, B. & Salt, D. (2006) Resilience thinking: Sustaining Ecosystems and People in a Changing World. Island press

3 Attachment D: Analysis of aged care as a failed complex social system' (Jan 2021 updated 2022). Aged Care Crisis Submission to Productivity Commission inquiry into 'Aged Care Employment' April 2022 https://www.pc.gov.au/__data/assets/pdf_file/0010/339940/sub039-aged-care-employment-attachmentd.pdf

This analysis meshes with Braithwaite's sweeping analysis of dominance. It explains the cascades of criminality, the potential tipping points and the importance of a strong and stable civil society with balanced power

Source: **Exploring more closely- social systems (page 57)** in Aged Care Crisis October 2022 submission in response to the IHACPA's 'Towards an Aged Care Pricing Framework' Consultation Paper

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1.6 Braithwaite

Professor John Braithwaite, an eminent criminologist and the founder of the international group REGNET, has brought a lifetime of work together in his book '**Criminology and Freedom'**(published by ANU Press, Feb 2022). In this he takes an historical approach showing how dominance by individuals or groups within countries has resulted in dysfunctional societies where many citizens are exploited and harmed. It is associated with high rates of crime, leads to societal breakdown with loss of trust (called anomie) and often wars. These 'cascades of criminality' are also very resistant to change. In contrast 'cascades of freedom' occur when society asserts itself and rebuilds civil society so that there is a network of balancing power within which the many different views are heard and debated. He writes specifically about market dominance stating that *"Criminalised states and criminalised markets evolve when there is no networked governance of their dominations".*

He (Braithwaite) and his international peers have spent many years studying human history to identify recurrent patterns of human misbehaviour and criminality. They have explored them to identify patterns that enable us to understand what is happening. He has brought this large volume of research together in a detailed in depth analysis in an extensively referenced book[4] *'Macro criminology and freedom'* published in February 2022.

The book explores the complex relationships between dominance of society by groups within it, anomie *(referring to societal breakdown and fragmentation often referred to as 'truth decay' or 'post-truth' today)*, the exploitation of citizens, criminal behaviour both by the powerful and the disempowered, and the association of these phenomena with warfare.

He finds that because of the way these developments influence one another, there are cascades of criminality and also cascades of virtue when society works well. Dominance is closely associated with exploitation and criminality. He writes at length about political and market dominance and criminality including when government and society are captured by the market.

Cascades of virtue are associated with a balanced society in which there is a balance of power within a well-structured civil society. Dominance is prevented by a strong civil society in which anomie has been replaced by a strong 'normative order'.

The balance of powers ensures that dominance and excesses by any group is checked by a network of others. Braithwaite says *"Criminalised states and criminalised markets evolve when there is no networked governance of their dominations".*

Cascades of criminality are eventually terminated and changed to cascades of virtue when citizens rise up and take back control of their societies, re-build a normative order and establish a balance of power. He writes about 'tipping points' when there are opportunities for society to interrupt the cascades.

[4] Macrocriminology And Freedom By John Braithwaite ANU Press, Feb 2022

Relevance

Braithwaite's insights seem to be particularly relevant to the USA, the UK and Australia today. The war in Ukraine by Russia and the aggressive behaviour of China are ominous.

The recent community backlash against major political parties and the dramatic success of the Teals and the Greens at the recent election reflects a strong desire for change within our society. This is a tipping point. It is an opportunity to rebuild and re-empower our civil society and re-establish a balance of power.

Additional Comment

At ACC we prefer to talk about social pathology rather than criminology because, too often, it is genuine people who believe that are responsible. The reasons why they so readily slide over into frank criminality are interesting, but as Braithwaite realises, regulatory effort and criminal penalties do not address the problems.

The outline of Braithwaite's book above does not do justice to the depth and length of his 600 page book. He advocates for a strong government, a strong market and strong civil society organisations so that there is a balance of power. That will certainly be necessary to reset the system and restore balance. But a balance of competing powers fighting for supremacy in our view, might, if that is all that is done, creates a number of waring states each fighting for supremacy until one gets an advantage.

That sort of balance where groups compete to get their way is not a good way to examine data, and use logic and real experience to follow the best path forward. In 1995 when she warned about what was happening and what was needed, Eva Cox wrote about a Truly Civil Society[5] in which people worked together, put power aside and rarely used it. In education, a constructivist approach which sets power aside and opens discussion to students also does that. Students come with fresh minds that challenge convention, widen horizons and build understanding.

Instead of advocating and fighting for one's own solutions, we set them aside and engage with others collegially exploring their lives, their experiences and their views, and then when they are ready expose them to our knowledge and established views and see how they all stack up.

By sharing we bring many eyes to our problems and can reach an informed position. We also build critical thinking, a vitally important asset for a functioning civil society.

Braithwaite also writes about non-financial capital. This includes human capital, social capital, CHIME, bonding capital, recovery capital, restorative capital, restorative justice, societal capital. CHIME stands for Connectedness, Hope, Identity, Meaning and Empowerment. He is going there using many eyes. These are integral to building a truly collegial civil society of which the market and political system are a part - as well as a deliberative democracy which he supports.

This is the alternative to dominance and should surely be our ultimate objective. Power is held in reserve to check those who attempt to subvert this and use their power to dominate

Source: **The Macro perspective – a broad view (page 55)** in Aged Care Crisis October 2022 submission in response to the IHACPA's 'Towards an Aged Care Pricing Framework' Consultation Paper

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[5] A Truly Civil Society Eva Cox Boyer Lectures 1995 http://ldb.org/evacox.htm

1.7 Conclusion

There are common themes of citizen and community disempowerment and empowerment throughout these works in spite of their different analysis of the system. These are relevant if we are to rebuild and rebalance our unbalanced society and aged care system, and so stop the cycle of repeated failures.

We must engage citizens in what is happening so that they cannot be blind to the consequences and give them a role. We need to rebuild civil society and create a balance of views and power to control and prevent dominance. We need to build critical thinking and analytical skills.

Aged Care Crisis and its members have been advocating for changes along these lines for 15 years - since 2008. In a November 2008 Submission[6] to the Senate Community Affairs Committee review of the 'Aged Care Amendment (2008 Measures No. 2) Bill' one of us indicated:

> *To be effective any reform process must reverse the dominance of the market paradigm over the community/professional paradigm. Regardless of how it is structured or paid for, the provision of services to the frail aged is a service provided by the community to its vulnerable members. Government agencies, community groups, churches, individuals and corporate entities are providing those services as agents of, and on behalf of the community of which they are a part. The bill should emphasise this.*

We concluded with a section 'Giving the community paradigm more weight' in which we made some suggestions for doing this including that *"much of the accreditation and complaints processes be progressively moved into the local community and into the nursing homes"*.

In July 2009. submissions to both the Walton 'Review of the Aged Care Complaints Investigation Scheme' and the Department of Health and Ageing's *'Review of the residential aged care accreditation process',* advocated for greater community control and described how this could be done in more detail. A submission to the 2010 Productivity Commission Review 'Caring for Older Australians' did so in greater depth. We have refined and developed our ideas and arguments for a community led system in most of our submissions since then - including to the Royal Commission.

---

6 Wynne J M Submission to the Senate Community Affairs Committee re Re: Aged Care Amendment (2008 Measures No. 2) Bill 9 Nov 2008 https://bit.ly/2oS1NKb

Appendix H

Regulatory changes are driving the best providers out of aged care

June 2023

Summary

Regulatory changes and ever more complex regulatory processes can have adverse consequences and much of that burden can fall on already stressed and over worked staff. Change needs to be introduced incrementally and commenced in regions and its consequences carefully monitored.

As the Royal Commission has so clearly demonstrated the free-market model has failed staff and residents. Yet the complex reforms recommended and government action make no changes to this market and continue to marketise those sections like home care where vestiges of community-led care remain.

The huge uncertainties and the complex changes being made are driving some of the smaller providers, who have a low staff turnover and provide better more person-centred and relationship-based care, out of the aged care sector. Here we focus on the consequences for home care in Victoria and smaller nonprofit providers.

Local councils and state governments have been providing good aged care services, sometimes since the 1950s. As government have underfunded the system and others have reduced payment, councils have supplemented salaries and provided far better working conditions for staff so retaining those who have a sense of vocation. Victoria has led the way in this. This difference and the superior care was reflected in the low rate of COVID and low death rate in government owned aged care homes in Victoria compared with the competitive private sector.

When they vacate the sector, it is government and not local council who select the marketplace providers who will take over.

Smaller nonprofits providers of residential care have little appetite for commercial competitiveness and the catchphrases that accompany them. They have provided a better working environment and better more personalised care. They too are finding the new changes too threatening and are vacating the sector.

The linked articles below describe what has been happening. We include extracts that illustrate what is happening.

Updates July 2023: Additional Sources

Aged care workers affected by Victorian councils scrapping services. Hellocare 12 Aug 2022
https://hellocare.com.au/aged-care-workers-affected-by-victorian-councils-scrapping-services/

> Ratepayers Victoria “predicts as many as 80% of Victoria’s 79 councils will discontinue their in home care programs”

Op Ed - Work with councils on in-home care evolution
Municipal Association of Victoria 19 Aug 2022
https://www.mav.asn.au/news/OpEd-work-with-councils-on-in-home-care-evolution

> - - - the Municipal Association of Victoria (MAV), have spent years warning both State and Federal Governments about how the move to marketise in-home aged care would put the strength of Victoria’s system at risk. - - - - - Councils have no say or control over the subsequent providers contracted by the Commonwealth

1 At least 23 of 79 local councils in Victoria are planning to leave home care to the market

Corrected figure July 2023 of 23 (not 33) see: More councils to ditch in-home help, sparking fears aged care will 'implode'
https://www.theage.com.au/national/victoria/more-councils-to-ditch-in-home-help-sparking-fears-aged-care-will-implode-20220811-p5b8yc.html

Local governments are being pushed out of aged care. But at what cost?
Eureka Street 5 April 2022
https://www.eurekastreet.com.au/article/local-governments-are-being-pushed-out-of-aged-care--but-at-what-cost

> Caught between these conflicting objectives are Victorian local councils, where a long- term partnership with the Federal government has been undermined by the process of reform. Since the 1980s — and to some extent even earlier — Victorian local councils have played a central role as providers of in-home aged care.
>
> ---------------------
>
> - - block funding is being supplanted by a new consumer-directed model, under which clients are allocated a set amount of money and then choose among a selection of competing providers. - - - - Over the last few years, many local councils have decided that there is no place for them in the new structure. - - - at least five had stopped providing home care services in the last five years and six more have announced that their exit this year. - - - Casey City Council - - -Mildura Rural City Council - - - councils provide better wages and working conditions than private providers - - - - private providers generally paid close to the 'rock bottom' industry minimum award wage - - - - superior work conditions at local councils help to maintain a long-term workforce - - - - matching in-home aged care workers to the individual needs of older people is a feature of council provide care
>
> When moving to a private provider "the other company is hard to contact by phone, workers not experienced, charge higher rates and missed services due to staff availability issues,' - - - -'Most council aged care services are currently too small and inefficient to operate in the Federal government's regulated market model.

Expanding Aged Care Service | Bayside City Council
https://www.bayside.vic.gov.au/news/expanding-aged-care-service

17 March 2022 --- Has decided to continue to operate under the new arrangements.

Aged care: Big contracts, little staff amid 'Uberisation' of in-home aged care in Victoria | The Age 2022
https://www.theage.com.au/national/victoria/big-contracts-little-staff-amid-uberisation-of-in-home-aged-care-20220809-p5b8ca.html

> Private providers (Mecwacare and Bolton Clarke) have taken over from two Melbourne councils (Mornington Peninsula and Booondara) to provide in-home aged care despite lacking the staff to service all the additional clients as low wages and poor conditions fail to attract workers.
>
> Council, aged care staff were paid around $34 an hour, received a travel allowance to get to homes, and were paid to receive training and attend meetings. - - - - - - Mecwacare and Bolton Clarke pay award wages of $24 to $25 an hour and workers have to pay for travel and other costs
>
> 23 councils around the state were discontinuing their aged care services or had already done so. - - - former council in-home aged care workers were reluctant to work for private providers due to the lower wages - - - etc, - - - some providers not even paying workers for the time they spend driving from one elderly client to another,

Aged care: Boroondara elderly residents abandoned by private aged care provider after council exit
https://www.theage.com.au/national/victoria/elderly-residents-abandoned-by-private-aged-care-provider-after-council-exit-20220804-p5b7e1.html

(The Age 6 August 2022)

> - - - - the council's 60 aged care staff were made redundant.
>
> Elderly residents in Boroondara are without in-home care, after a privatised aged care provider failed to supply staff for the services after taking over from the council. - - - - In a letter sent to hundreds of elderly residents this week mecwacare informed them that care services would not be available for "some weeks" due to staff shortages.
>
> --------------------
>
> Boroondara said it made the switch because of the introduction of the government's Support at Home program, which requires providers to offer specialist services such as occupational therapy and physiotherapy. - - - - many elderly residents at the time, who said they were not properly consulted and did not want to change carers.

Aged care services on Mornington Peninsula: Elderly residents left without care
https://www.theage.com.au/national/victoria/nobody-s-checked-i-m-alive-more-than-1000-stranded-as-council-retreats-from-aged-care-20220808-p5b81l.html

('Nobody's checked I'm alive': More than 1000 stranded as council retreats from aged care) 9 Aug 2022

> Mornington Peninsula --- Private providers Mecwacare and Bolton Clarke took over the in-home service, but many residents have been left without care for the past month. - - - - more than 110 council staff were made redundant.- - - "The council said they are monitoring," she said. "Pig's arse they are. Nobody has contacted me to see if I am still alive."- - - - "Mecwacare has had months and months to prepare for this," he said. "It is typical of the former federal government they want to give everything over to private enterprise."
>
> - - - - - - the council decided to "transition" to new providers this year, away from its own staff, to prepare for the federal government's open-market system. "The peninsula had no provider other than council delivering these services and we needed to ensure our residents had a choice and the advantage of a competitive market environment," he said. "We did not get a say in the appointment of new providers; that was done by the federal government." - - - - council was given assurances by both providers and the government that all essential services would continue to be delivered from the July 1 transition date. "We offered to keep some staff on to help with the transition, but that offer was turned down,"

New home care providers appointed | City of Casey
https://www.casey.vic.gov.au/news/new-home-care-providers-appointed

City of Casey 24 Jun 2022 A positive article from the council itself

> The Commonwealth Government has appointed MiCare, mecwacare and Uniting AgeWell to deliver home and community care to the City of Casey's residents in response to Commonwealth Aged and Disability funding reforms.

City of Casey: Council set to shed hundreds of workers

Herald Sun 12 Feb 2022 (Paywall)

> The City of Casey will slash more than 200 aged care workers from its roster, in a move a union has called a "scandal". The City of Casey has been savaged by the Australian Services Union for a "secret" decision to outsource its aged care program — at the possible cost of more than 200 jobs.

Hepburn Shire to Stop Providing Aged Care Services -
https://thewombatpost.com.au/2021/11/26/hepburn-shire-to-stop-providing-aged-care-services/

Wombat Post 26 Nov 2021

> The recent Royal Commission into Aged Care Quality and Safety showed huge problems - - - - - In response, the Commonwealth is dramatically expanding and rearranging home care. It is likely this will see a dramatic expansion of private and non-government home care.- - - - it is not clear what the impact - - will be on the long term future of aged care services for residents.

Hepburn Shire Council votes to drop home support aged care services after Commonwealth reforms -
https://www.abc.net.au/news/2022-03-16/hepburn-shire-to-drop-home-support-aged-care/100913046

ABC News 16 Mar 2022

> - - - the council said "significant Commonwealth reforms" had been implemented in the past decade and the changes meant the council would not be suited to continuing as a provider. - - a challenge over the
>
> past decade in terms of the uncertainty - - - must now decide whether to transition more than 300 clients to a privately-operated program overseen by the Commonwealth or to shift the services to a not-for-profit provider.

Benetas and mecwacare new providers Hepburn Shire Council.pdf
https://www.hepburn.vic.gov.au/Council/News/Latest-news/Benetas-and-mecwacare-new-providers

Hepburn Shire Council 30 May 22 A positive article from the council itself

> All clients will have an uninterrupted and seamless transition of care to the new provider. - - - -the Commonwealth's aged and health care reforms had made it unviable for Council to continue to deliver these services.

Wesley Mission to close Sylvania, Carlingford, Narrabeen aged care homes over workforce constraints -
https://www.abc.net.au/news/2023-04-13/wesley-mission-to-close-all-aged-care-homes-in-sydney/102216498

ABC News13 Apr 2023

> Last month VincentCare said they made the "difficult decision" to cease their involvement in Home Care Packages in Victoria due to "significant changes" to federal government aged-care funding.

2. Smaller nonprofit providers of residential care are selling up or closing

Wesley Mission to close Sylvania, Carlingford, Narrabeen aged care homes over workforce constraints
https://www.abc.net.au/news/2023-04-13/wesley-mission-to-close-all-aged-care-homes-in-sydney/102216498

ABC News13 Apr 2023

> Wesley Mission has announced the closure of all its Sydney aged care homes due to challenges in attracting and retaining staff. - - - upheaval for nearly 200 residents and their families.- - - - - necessary because of difficulties meeting new national staffing requirements. - - - The aged care sector is experiencing challenges to workforce and flow-on impacts from the national reforms to aged care.

More aged care facilities to close as Labor defends nurse staffing requirements | Aged care |
https://www.theguardian.com/australia-news/2023/apr/14/more-aged-care-facilities-to-close-as-labor-defends-nurse-staffing-requirements

The Guardian. 14Apr 2023

> Brightwater Care Group WA- - - citing problems meeting a new staffing mandate.-- - three of its Perth sites will close in the next 12 months.

Showdown looming as elderly residents refuse to leave Feros aged care facility slated for closure
https://www.abc.net.au/news/2023-05-11/deadline-for-feros-aged-care-evictees-byron-bay-housing/102332362#:~:text=Feros%20Care%20says%20its%20Byron,all%20the%20residents%20are%20rehoused

ABC News 11 May 2023

> - - - unable to meet the complex regulations required under law for aged care at that facility.

Sarina Aged Care transfers ownership as regulatory pressures mount .
https://hellocare.com.au/sarina-aged-care-transfers-ownership-as-regulatory-pressures-mount/

Hellocare 9 May 2023

> Sarina's Board identified legislative change and increased regulatory burden as two major obstacles for the small ownership group
>
> -----------------------
>
> "The actual viability of the company is not only a financial thing, and luckily we are profitable, it is also in the governance side of things, it is becoming absolutely a different level of difficulty to try to have the right governance for everybody to be able to sleep at night,"

Sarina Aged Care near Mackay, QLD, transfers its operations to Ozcare
https://www.theweeklysource.com.au/sarina-aged-care-near-mackay-qld-transfers-its-operations-to-ozcare/

The Weekly SOURCE. May 9, 2023

> The letter states that "increasing external pressures", the Australian Government's aged care reforms and increasing regulatory burdens, and the higher number of residents with complex needs are the reasons behind the decision.

Appendix I:

Analysis of the Star Ratings webinar for providers

What it reveals and how this relates to aged care policy in the past and future

J Michael Wynne

Table of Contents

1 Summary 2
2 Introduction..3
3 The Webinar: 28 Nov 2022 4
3.1 The consortium partners..4
3.2 The speakers..4
3.3 Our position 4
3.4 Impressions from the webinar 5
3.4.1 Overall impressions: 5
3.5 The star rating system itself..6
3.5.1 Weighting:..6
3.5.2 Self-reported ratings 7
3.5.3 The two independent star ratings 8
3.6 Myth Busting..14
3.7 Webinar - Question and Answer Session..15
3.8 Final Comment 15

1 Summary

This appendix is an analysis of a star rating webinar between the department and industry. The design of the star rating system by business advisors rather than carers is concerning. The aspirational language used is marketing language and not the language of care.

The obvious primary focus was on rebuilding community confidence rather than addressing failures. We disagree with the weighting adopted for developing the star rating and do not support it. The problems responsible for past failures have not been addressed and we consider that what is proposed is unlikely to be any more successful than it has been over the last 26 years.

2 Introduction

Reviewing the transcript of the webinar promoting star ratings in aged care[1] to providers published on 22 November 2022, created a sense of deja vu. The wording '*Choice and Transparency Branch of the Quality Assurance Division*' called to mind the aspirational claims and names used by industry and government over the years. The evidence and since then the Royal Commission's findings showed that during this period those making those claims were failing older Australians who were being neglected and harmed as a result.

Government and the public service have cooperated closely with industry and systematically concealed what was happening in aged care. Aspirational names and aspirational words promised much but they were hollow. Claims to being world class relied on a regulatory system that failed to deliver.

We have been bombarded with images and claims to quality, standards, rights, choice, control, accountability and more. At the same time, the systematic exploitation and neglect of our fellow citizens, our friends and our parents in the pursuit of profit has been hidden from us. The present reforms fall a long way short of what is needed, yet we are being treated in the same way.

Over the last 26 years there has been little transparency and hardly any choice. The assurances of quality and near perfect performance in meeting standards were hollow.

Society has every right to be angry and quite clearly should be profoundly distrustful of any similar aspirational claims especially when they come from a department that responds to failure with a name like that.

A problem that demands attention: That is harsh criticism for those who as the webinar correctly indicates *"put their expertise, their heart and soul into this initiative".* The problem created by dedicated people who believe deeply in what they are doing and have no doubts demands attention. Aged care shows what can happen.

Why people do this and seem unable to acknowledge their failings, when what they believe in deeply is flawed and harmful, is well understood. It is a feature of dysfunctional systems that are resistant to change. If we are to eventually get real change they must be forced to acknowledge where they went wrong and step aside. This is an extremely difficult and painful thing for them but it has to happen.

This analysis critically examines the star rating webinar for providers. What rationalisations are used to justify continuing on a path that has failed in the USA and Australia?

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[1] Star Ratings webinar Star Ratings information for residential aged care providers Dept of Health and Aged Care 22 Nov 2022 https://www.health.gov.au/resources/videos/star-ratings-webinar-star-ratings-information-for-residential-aged-care-providers

3 The Webinar: 28 Nov 2022

Like Quality Indicators which were first proposed in Australia 38 years ago, Star Ratings have been on the agenda for a long time. The industry has resisted and managed to avoid them. This webinar was part of a long process going on for many years. Industry were engaged along the way. They were given every opportunity to contribute. The webinar also addresses Quality Indicators which contribute of the star ratings.

3.1 The consortium partners

Those helping government design this system were:

1. the University of Queensland Centre for Health Services Research which "*delivers specialised consultancy services to a wide range of both national and international clients*" including governments.
2. the Giant global accounting firm PricewaterhouseCoopers (PwC), which is at the centre of a scandal in Australia involving unethical behaviour (see Appendix A) and
3. the Aged Care Industry IT Council.

3.2 The speakers

1. Joshua Maldon, Assistant Secretary of the Choice and Transparency Branch of the Quality Assurance Division of the Department of Health and Aged Care.
2. Emma Cook is the Director of the Star Ratings Section
3. Emma Jobson who's the Executive Director of Regulatory Policy and Intelligence at the Aged Care Quality and Safety Commission
4. Mark Richardson, Assistant Secretary of the Residential Care Funding and Reform Branch.

Maldon first thanked *"my team who have put their expertise, their heart and soul into this initiative"* and we understand how dedicated they have been to finding a way of doing what was asked of them without confronting government policy and the ideology on which it is based.

3.3 Our position

We are not opposed in principle to star systems or quality indicators or to well-structured markets but we have serious issues with what was proposed by the Royal Commission and the way this is being implemented by both governments. We do not doubt the sincerity of those involved and we understand why they behave like this.

As has happened repeatedly in aged care and other vulnerable sectors, the powerful competitive profit driven pressures created by an unbalanced fiercely competitive market system in vulnerable settings ensures that this strong market will dictate what it requires, politicians will oblige, and problems are very likely to recur.

We argue that these pressures must be balanced by restructuring the system so that there is a balance of power that restrains markets and governments so forcing them to behave responsibly and meet community expectations. That is not happening.

3.4 Impressions from the webinar

3.4.1 Overall impressions:

a) In introducing the system Mr Maldon, speaking for government, indicated that the Royal Commission had *"diminished community confidence in the system"*. The primary interest for this heavily criticised industry and government clearly was *"in rebuilding public confidence"*. *"Improving aged care quality"* was a part of this but secondary. The carrot to induce industry to embrace star ratings, was to *"flip the switch on community confidence in aged care"*.

b) The statement *"uncomfortable as the Star Ratings may be for some providers"* looks like an acknowledgement of just how uncomfortable an industry, which is deeply rooted in free market principles and accustomed to getting its own way is, with even the appearance of transparency and accountability.

   It is also a pointer to the ingenuity that providers might display in finding ways of subverting the intent and then devising ways of justifying this to themselves and others. The story of the last 26 years is a graphic illustration of what is likely. The carrot to entice these providers is to *"rebuild community confidence"*. They seem blind to their culpability in what has happened to the elderly.

   If PcW behaves in the same way as it did with tax avoidance it will use the knowledge it gained in advising on the star rating system to help industry game them.

c) Even the speakers admit that propping up this system using star ratings is a hugely complex process. It will be difficult to control and can be manipulated without this being apparent to those who need to hold the system to account. We have to trust those who have failed so badly in the past not to fail us again.

d) In spite of all the rhetoric and claims to protecting recipients of care, there are no plans to actually involve the on-site local communities served and make the system more accountable to them. They are on site and in a position to see what is happening day by day yet have no role in developing ratings and no power.

e) It is clear who has the power and who government is trying to appease in this webinar with a promise to *"communicate with you regularly"*. Fairness to providers was emphasised and they were to be given every opportunity to review and comment on the assessment before it was published and to appeal adverse assessments.

f) Conviction and not doubt is the way to *'flip the switch on community confidence'*. Doubt, engagement and giving credence to the perceptions of others is the path to genuine restructuring and reform but that is not on offer.

g) Like so many previously reforms that have failed citizens so badly this webinar promises that it *"will deliver a range of benefits"* without acknowledging or addressing the issues raised by its critics. It simply claims that older Australians *"will be able to easily compare the quality of residential aged care homes to easily make choices on care options"*.

3.5 The star rating system itself

The overall star rating is based on four subcategory ratings:

1. "Residents' Experience (33%),
2. Compliance (30%),
3. Staffing (22%) and
4. Quality Measures (15%)".

These are variously calculated on each services target, on various 'thresholds' and by making 'risk adjustments'. This complexity will make it very difficult if not impossible to work out just what has happened and verify its validity. This puts those who have failed us so badly back in charge of the information we get.

There are several issues that require critical attention.

3.5.1 Weighting:

The weighting of the four-subcategory star-ratings is worrying. It is justified by claiming that they are rejecting the 'myth' that our system is *"based on the United States system which has given way to a flawed system"* something those of us who study aged care have been well aware of for years. This is because data in the USA was *"self-reported by providers which makes up the majority of their ratings".*

Several years ago, some of the best performers on paper in the USA were exposed as seriously substandard.

The speakers at the webinar stress that resident feedback and compliance, are not self-reported while staffing and quality measures are. They claim that this weighting away from self-reporting adequately adjusted for this problem.

But this weighting de-emphasises and undervalues the most critical determinant of care (staffing) and the actual measurement of outcomes (quality measures). It overemphasises the more problematic and unreliable independent assessments from residents and the government-controlled compliance requirements that have failed so badly and repeatedly over the last 20 years. Instead of fixing the problem, this makes it easier to hide them and massage the outcomes.

We find the explanation offered for allocating staffing only a 22% weighting and Quality Measures only 15% disingenuous. We think there are likely to be other simpler explanations for this that are related to the power structure within the system and the need to appease the industry.

In the USA they now use other methods to check staffing levels. They also have a far more detailed and regularly on-site process for checking outcomes. State regulators assess over ten times more items than in Australia and do that at least three times as frequently. We suspect they no longer collect outcomes that are not readily verifiable.

The market dominated US system still has many problems. While superior to Australia the many similar free market associated problems in their system have not yet been solved.

3.5.2 Self-reported ratings

a. **Staffing star ratings (weighting only 22%):** In the literature and also in the Royal Commission's reports, staffing numbers, skill and morale are the factors that have the most impact on care.

That is a very sensitive matter for the industry and their supporters. They have consistently ignored staffing evidence and denied the harm that is being done under their noses. They have denied the importance of staffing numbers and skills, resisted the imposition of staffing ratios and in the past successfully opposed attempts to force them to disclose numbers and ratios. They find this requirement confronting. We can understand why they want staffing to have a reduced weighting.

b. **Quality Measures (weighting only15%):** While not without serious problems 'Quality measures' do measure outcomes. These are measured by Quality Indicators (QI's) which are to be self-reported. QI's put pressure on poor performers and providers have been very threatened by them. They showed what was happening in the industry.

In the USA Quality Indicators (QI's) showed[2] that for-profit owned facilities performed poorly compared with nonprofits. Smaller nursing homes performed three times as well as the large ones favoured by commercially driven facilities - another deterrent for providers in Australia.

QI's were first recommended by the Giles Report in 1985, 38 years ago. Discussion and trials have dragged on over the years - a reflection of industry's resistance to oversight and exposure.

QI's are where the failures in the USA due to self-reporting occurred. Poor providers looked for weaknesses and exploited them. The New York Times[3] indicated that in 2014 it was discovered that *"top-ranked nursing homes have been given a seal of approval that is based on incomplete information and that can seriously mislead consumers, investors and others about conditions at the homes"*.

The Australian system is very similar to that in the USA but probably at greater risk of exploitation as there is much closer and more frequent state oversight in the USA.

LaTrobe University investigated[4] QI's in the public sector for the Department of Human Services in Victoria and did a trial in 2004. The outcomes were good but they warned that *"a punitive approach will only result in low compliance and inaccurate recording. For the QIs to impact positively on care for older people in public sector RACS the emphasis must be on highlighting and sharing practice improvements"*.

But if, as proposed, it is going to become a marketplace for showcasing achievements, then it will certainly be punitive and self-reporting will be a problem.

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[2] Reading the Stars: Nursing Home Quality Star Ratings, Nationally & by State. Kaiser family Foundation May 2015 USA http://bit.ly/2L995Xg

[3] Medicare Star Ratings Allow Nursing Homes to Game the System New York Times 24 Aug 2014 https://www.nytimes.com/2014/08/25/business/medicare-star-ratings-allow-nursing-homes-to-game-the-system.html?_r=0

[4] Public sector residential aged care quality of care performance indicator project report https://content.health.vic.gov.au/sites/default/files/migrated/files/collections/policies-and-guidelines/p/public_sector-pdf.pdf

The concern of providers about the consequences for their businesses is reflected in the decision to employ KPMG, an accounting firm to investigate and advise on QI's rather than doctors and nurses. Providers have been wary of QI's and only small numbers enrolled in the most recent trials with very few for-profit groups doing so.

An examination of international data[5] showed that QI.s could have perverse outcomes such as *"diverting resources to monitored areas".* Providers readily divert funds and resources to addressing the QI.s and other care suffers as a consequence. The data also showed *'cherry picking'* or *'cream skimming'* of admissions where facilities selected *"healthier residents to improve their performance on published measures of quality".*

Our opinion about quality indicators: Reliable un-skewed measurements of outcome parameters are critical for any balanced social system reliably serving citizens. They enable the participants to debate the issues and adapt. When the system is unbalanced by the dominance of the market, powerful perverse forces are introduced. Information becomes threatening and the sorts of things described here happen.

We argue that the system that collects data should be local, regularly on site and independent so that QI's can be reliably collected. The oversight would be broad and not only focused on measurable outcomes.

As we have discussed elsewhere and summarise later the social science shows that the system needs to be rebalanced and decentralised by making it community led and making providers accountable to the communities they serve. Data collection would be verified and checked by ongoing local oversight. The many distractors described above would be untenable and so eliminated by a 'joint venture' approach between communities and providers to management and data collection.

3.5.3 The two independent star ratings

c. Compliance (double at 30%): Compliance with procedural standards is measured by the Aged Care Quality and Safety Commission, the body that let us down so badly.

This is the latest version of the many times 'reformed' and 'renamed' 1997 'accreditation agency'. The changed names were because all failed so badly and so often. They have all looked at standards to confirm that processes that would provide good care were in place, but as we now know these standards were not reflective of actual outcomes. Abuse and neglect were repeatedly overlooked as these agencies documented better and better performance in meeting all standards.

To form an opinion about new compliance requirements and the regulators we need to examine the evidence of the underperformance of its predecessors and the lack of any data to validate its current performance. We will need to look at what has actually changed to see if it stacks up.

We have collected data and informed opinion that illustrates the problem of regulatory failure. Comparisons with what is happening in the USA illustrate just how extensive the failures must be.

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[5] **Perverse effects of quality indicators raised.** Australian Ageing Agenda 20 Feb 2015 http://bit.ly/2LaGOji

During the last 23 years there have multiple 'reforms' of this accreditation process introduced by the 'industry' and government working together. The nature, structure and perverse forces at play were never examined addressed or changed.

Each set of changes, like that in 2012, and those in 2014 and 2015, were promoted to the public in glowing terms, once again reaffirming to them that this system was world class. Yet each was followed by further more rapid deterioration and more scandals.

We addressed this in Appendix D. As the residents got sicker and more frail over the years, and as the number of trained staff needed to care for them fell to "*dangerously low"* levels, and as the number of failures reported in the press increased (and this is confirmed by the Royal Commission), the performance in meeting all standards increased from 64% to 97.8%.

We concluded that *"adverse information about aged care was more threatening to the regulators than to the public. The worse it got, the harder they tried to conceal it".*

That has not changed in the new system and unless the system is restructured to remove these threatening pressures, compliance with standards should not be weighted in this way.

d. **Residents' Experience:** This contributes 33%, the most of all. What could be more obvious and more appropriate than to ask the people who are getting the service to tell us whether it is good or not?

The market depends on user satisfaction and this sort of survey tells them they are doing well and are going to make money. As we will explain it does not necessarily reflect care. Many nursing homes have been doing this for years and we have seen providers claim positive feedback in over 90% of responses.

This may be one of the reasons why they have been so confused by, and so disbelieving of the Royal Commissions findings in their Interim Report. Market theory is based on the idea that humans are rational beings. We can understand that the industry would want to give this the largest weighting and why government would support that.

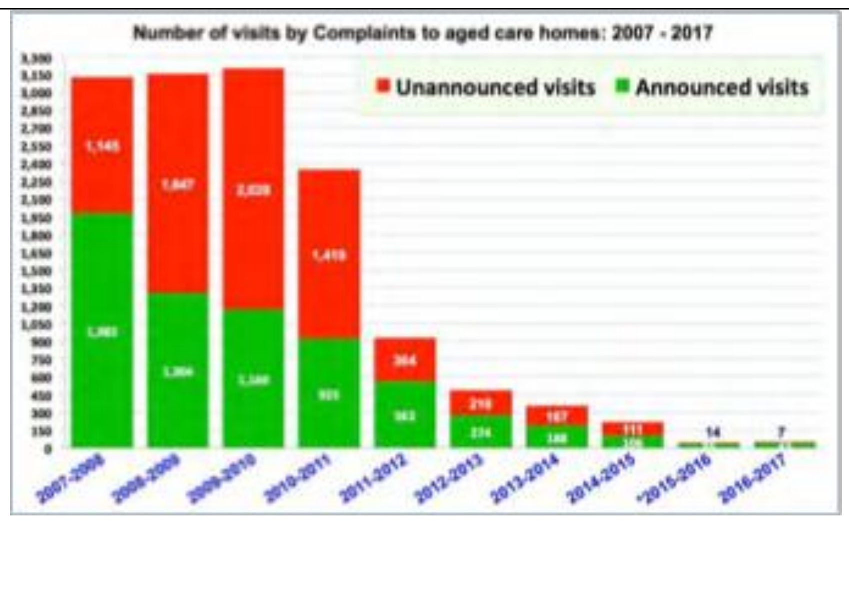
But perhaps we should question whether this feedback is really an accurate indicator of what is happening and whether we should not see this positive feedback in the past while the system was steadily deteriorating as evidence that we are not really rational beings. History and evidence, shows that this is not so.

But before we do that we might look more widely at the problems and the community feedback attempts that have been made and failed.

Responding to complaints: Obviously it is crucial *"to hear the voice of older Australians"* but at the same time we need to consider how representative they are of the care being given. Resident's and families' concerns and their complaints, as well as the concerns of nurse whistle blowers are of course important sources of information for those overseeing nursing homes as they show where to look. But Figure 7 shows that regulators seem to be reluctant to respond.

Figure 7: *Complaints system's annual reports[6]: 2007-2008 to 2016-2017*

The Walton Review in 2009 advised that resident's issues be resolved with the nursing home locally and in 2014 the Red Tape Reduction program was introduced. The steady decline in the number of visits by the federal complaints system to talk to the residents after they lodged a complaint is revealing. It was as if they did not want to know.



Fear of retribution: As Trigg indicated in her thesis *"residents may be worried about complaining in case it affects the way the resident is treated"*. Over the years in Australia there have been concerns about residents being treated badly after they or their families have complained. It's usually obvious who complained and so difficult to ensure confidentiality. Many elected to stay silent.

A Consultation Paper by the Dept of Human Services[7] in 2000 after the Riverside scandal was concerned by the power imbalance created by the new system in 1997. They indicated that *"Some residents (and their representatives) fear retaliation or retribution from those upon whom they depend for services, should they complain or otherwise attempt to enforce their rights"*. A 2005 Review[8] concluded that retribution is *"difficult to quantify, but acknowledge that a problem exists in the residential aged care industry"*. It identified the power imbalance, staffing skills and institutional culture as factors. Some who went to the media have complained about how they were treated.

The Royal Commission's interim report examined previous reviews and reports. It identified *"situations where people fear to make a complaint because of the risk of retaliation by the service provider"* as one of the *"problems, particularly with respect to quality and safety, which continue to plague the system"*.

A June 2023 report[9] *"They Make You Pay": How Fear of Retaliation Silences Residents in America's Nursing Homes"* in the USA reveals just how extensive this problem is in that country.

We note that the resident surveys in Australia will be done by a third party so will be independent. But any third party will depend on the providers when selecting suitable candidates to interview. They will know who is unhappy and steer away from them.

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6 Annual Reports available from https://www.agedcarecrisis.com/publications/annual-reports

7 High Care Residential Aged Care Facilities in Victoria Consultation Paper Department of Human Services Victoria July 2000 http://library.bsl.org.au/jspui/bitstream/1/3066/1/High%20Care%20Residential%20Aged%20Care%20Facilities%20in%20Victoria2000.pdf

8 RETRIBUTION IN RESIDENTIAL CARE A Literature Review The Commissioner for Complaints Department of Health and Ageing May 2005.

9 "They Make You Pay": How Fear of Retaliation Silences Residents in America's Nursing Homes June 2923 Long Term Care Community Coalition https://bit.ly/448qvru

A questioner at the webinar was told that the surveys would enable providers to start having *"that open discussion with older Australians and their representatives about what that improvement could look like"*. It won't take long to find out who gave the facility a poor star rating.

Commercial and other groups have developed various trip advisor-like rating systems. These have not been reliable. We notice that Trigg was interested in this in Europe but was not enthusiastic. She wrote *"Previous research says that relying on reviews from residents and their families might not be a good strategy"*. It was tried in the UK but the numbers were too small and it was abandoned.

The proposed independent surveys: People who are experiencing care and their families are clearly a valuable resource in helping to identify where things are going wrong.

> **History**
> After the 1986 reforms, the more frequently on-site regulators used information about failures from residents to bore down into services to identify underlying problems. Braithwaite researched this and compared it with oversight in the UK and the USA. They found the approach developed and used in Australia to be superior.
>
> This closer investigative oversight was resented by the for-profit providers and a group led by aged care mogul Doug Moran objected strongly. It was incompatible with the now dominant neoliberal free market belief in markets. Keating did not support it and allowed it to atrophy. Howard ignored the warnings of economist Bob Gregory, adopted free market principles and replaced it with industry friendly accreditation in 1997.
>
> As we explained above the opportunities for going to investigate and gaining information from people who complained were squandered after the 2009 Walton Review and the 2014 Red Tape reduction program co-designed with industry. Trip adviser and web-based interviews have not been a success and did nothing to curb the excesses that led to the Royal Commission.

Complaints provide a window into what is happening but the question is whether the survey of residents impressions will be a reliable source of information and will be a reflection of standards of care and quality of life.

It is clearly not intended to be a source that regulators use as a starting point for investigating problems. The industry would strongly oppose any attempt to do that again.

The providers themselves will, a questioner was told at the webinar, use the findings in order to negotiate with residents and address their problems. This raises the spectre that they will use this as an opportunity to contain and neutralise the problem rather than spend money to provide better care.

The value of surveys like this: There are a number of issues that are not being considered and a number of ways of looking at them.

- The primary concern of market providers and economists is in creating a positive response and securing sales. The accuracy of the assessments in terms of the product care comes second. This is a mindset that readily overlooks problems that are not relevant to their money-making objectives.
- The interviewers may be independent but they will be strangers to the resident and not someone they know and trust. They may well be hesitant in confiding or giving personal information.

- This is a sector where the lives of people are undergoing change so creating uncertainty and anxiety. They look for something or someone they can trust and will reassure them. There is an abundance of reassurance flooding the media and coming from government and industry that will influence them and they are susceptible.
- Those who are kind are the nurses and as a result of the flawed system we have, they are understaffed and struggling - often doing their best. Residents know that management will blame these nurses for any failure or criticisms. Many residents and their families will identify with the nurses and not want to criticise.
- Anxious people instinctively turn to those who are credible or in authority and put their trust in them. They can have no choice. Failing to do so is destabilising and creates anxiety.

  This is a situation that exists in health care where the 'placebo' effect is well recognised. Those who believe a fake tablet is real treatment will have fewer symptoms than those told there is no treatment for their ailment.

  The relationship between the doctor and the patient can have a major effect. The patients of a surgeon with a powerful and confident personality maybe inspiring and will have fewer symptoms afterwards than those of a colleague doing an identical operation but who engages and explains the problems that might develop to the patient.

  For all these reasons studies in medicine that are based on patient's experiences are not considered as valid unless both the doctor and the patient are unaware of who has had the treatment and who has had an identical but empty tablet (called a double blind trial). If this is not possible then objective measurable outcomes like survival must be measured. The sort of resident survey being proposed in aged care would be seen as flawed and rejected out of hand in health care.
- In a stable world citizens cooperate in developing ways of understanding their world and this is called a normative order. As French Philosopher Michel Foucault discovered and explained those with power or credibility have the power to control the discourse or discussion and so govern the way others think and behave - the normative order. The less powerful are persuaded.

  Those without power can come to accept a normative order in which they are exploited and harmed. They see it simply as the way the world is and good care becomes relative. The elderly need only turn on the television to be bombarded with market focused advertisements and elaborate claims to high quality by providers and politicians - a reassuring aged care normative order from the credible.

  If we look back we can see the way this happened during the colonial era. Patterns of stable relationships developed between master and servant which both accepted. This was a major problem and well recognised during apartheid in South Africa, where many citizens who were not white supported the apartheid normative order and opposed the uncertainty of change. The Black Consciousness movement recognised this and took steps specifically to counter it.

- This bias is likely to happen in any situation where there is a power disparity and a stable order based on it. An Australian psychologist put it like this[10]:

  "With psychological needs in mind, a system's greatest victims being its greatest supporters makes sense. The more that a person feels dependent, powerless and vulnerable, at the mercy of a system over which they have no control, the more terrifying it is to think that the system is deeply flawed'.

Resident Input Conclusion

Resident surveys intuitively resonate with the inexperienced. Providers have used them. They did not detect the steadily deteriorating situation over the last 20 years. Experience in related areas suggests that this sort of feedback is very unlikely to give reliable information.

Social science insights into the way power operates, human society and psychology explains why resident surveys are unlikely to give reliable information.

Talking to residents and their families provides useful information for those watching over care and they can be followed up to uncover systemic problems, but **surveys of residents are not reliable and they should not be highly weighted for star ratings.**

There are much better ways of harnessing the experience of the residents and their families.

Ways of utilising resident experiences and insights

History

The frequent onsite regulatory visits with access to residents in Australia in the 1980s was more effective but having external regulators regularly on site was onerous.

In addition to recommending Quality Indicators in 1985 (its taken 38 years to accept that), the Giles report recommended that local community should appoint suitable people to work with providers in investigating complaints and support those who complained so that community were well informed.

The Ronalds Review in 1989 addressed human rights. It pressed for an empowered aged care community visitors scheme where trained visitors would get to know the residents and watch over them and so have an oversight function. The industry derided this as a *"community busybody scheme"* and this did not fit with the new free-market beliefs.

Queensland and Victoria have successfully used empowered visitors in other areas. They have made submissions to senate inquiries and the Royal Commission suggesting their use in aged care.

These all brought community visitors and residents together in discussing and evaluating what was happening. Residents are old and sometimes demented. They can misinterpret what has happened to them. This has to be managed.

Aged Care Crisis has been pressing for greater community engagement and empowerment in complaints, visitors, advocacy, management and regulation. Informed community assessors working with residents are in a better position to evaluate what is happening.

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[10] Truth Hurts: The Science Behind Why People Don't Care About The Death Of Our Planet And Democracy New Matilda.com 19 Aug 2015 https://newmatilda.com/2015/08/19/truth-hurts-science-behind-why-people-dont-care-about-death-our-planet-and-democracy/

We have wanted to make ongoing local community involvement an essential part of the structure of the local service so that it was not onerous. This restructuring would rebalance the power structure within the sector and create the 'necessary conditions' needed for data to be collected from residents and a market to work effectively. Both quality indicators and compliance with standards could be more accurately verified.

Other parts of the webinar are worth thinking about.

3.6 Myth Busting

The webinar sets out to address what it claims are myths about star ratings.

a. Like Uber: The first myth busted is the claim that these are like Uber star ratings. But both are market tools designed to offer choice and control in a marketplace where success comes from making as much money as the system will bear. The illusion of choice encourages buyers so while Uber and aged care are different there are some similarities.

So the comparison is apt even though aged care is more complex. Han and Kim (2021) argue[11] the rhetoric about choice and control is deceptive because it moves discussion "*away from the creation of venues for negotiating power*". It is power that enables choice and control and it is a balance of power that controls the excesses of a dominating market.

In a vulnerable sector like aged care it is power that enables citizens to put those who fail them out of business. This is what makes the market work for society and its citizens.

b. **Care minutes incomplete:** The fact that the focus of care minutes is too narrow because it includes only nursing but does not include allied health is claimed to be a myth. That again is a legitimate question and not a myth. It has not been adequately dealt with.

The main reason for focussing on nursing related care is because it is a core activity needing separate analysis and doing this allows for comparison with research and internationally accepted levels that have been readily available for well over 20 years - a useful pointer to serious deficiencies.

We have been aware of international levels and the impact that levels had on care since 1994. Neither industry nor government could have been unaware of the many studies that were being done and what they showed.

Had this comparison been done, the extent to which care was being eroded would have become apparent 20 years ago. Alarm bells would have been ringing and resulted in real action long ago.

We warned but without local staffing data we could do little. The industry and government could not have been unaware. They have an appalling record for hiding information and this was the most bizarre.

Professor Richardson's justifications for excluding allied health at the webinar lack credibility. Allied health services and medical care are vital for re-enablement after the illnesses of ageing and for maintaining well-being and quality of life.

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[11] Civil Society, Realized: Equipping the Mass Public to Express Choice and Negotiate Power HAHRIE HAN and JAE YEON KIM ANNALS, AAPSS, 699, January 2022

We need to know the staffing numbers for each caring discipline, for medical attendance and for specialist attention so that they can be studied and their adequacy confirmed. They would only *"water down the intent"* as he claims if they were not properly collected.

The explanations around the claim that *"the Australian Star Ratings system is based on the United States system"* is a myth are not persuasive. The US have been doing this for years and, quite clearly they have been consulted.

The webinar claims that the problems created have been addressed by altering the weighting. The USA addressed this by eliminating those Quality Indicators that were self-reported if they could not find a way of verifying their accuracy. In Australia, they are being given less weight but they still contribute 15% and they are not being verified. It would be more sensible to use verifiable data.

In addition, QI's are the proportion that is most revealing of failures if properly collected. This weighting looks like an inferior way of addressing the problem.

We would be much better to learn from the mistakes made in the USA and fix them properly.

c. **That resident surveys are reliable system of assessment:** Perhaps this is an additional myth we need to consider. It is not clear who will be administering the survey 'independently', who will appoint them and to whom they will be accountable. If it is a government body or an industry advisory body like KPMG or PcW, then the entire star system will be controlled and managed by either government or industry. These are the groups who have so successfully hidden information and deceived the public for the last 20 years.

3.7 Webinar - Question and Answer Session

Q. How do compliance ratings benefit providers?

A. The answer that it *"promotes the importance of continuous quality improvement to provide assurance to consumers"* shows the weight that is given to rebuilding community confidence but this is not the way to do that. The best way to do it is to involve them in the process so they can see what is happening.

The claimed benefits in the reply may apply to an unstressed cooperative service but in a free market, the pressures of the market dictate behaviour. Those who do not bow to the pressure go under. As a consequence, these ratings are a threat to providers. It is more likely that providers will find ways of outwitting the system or go elsewhere.

3.8 Final Comment

The way this is done and the weighting in particular are inappropriate and create a context that will enable the cosy relationship between industry and regulator (regulatory capture) to continue. There are better ways of doing this. Data is essential and in the past industry and the regulator have both been data shy and connived in misrepresenting the situation. The Star Rating system proposed does not address this problem.