

24 September 2018

Submission: Consultation to develop the detailed Terms of Reference for the Royal Commission into Aged Care Quality and Safety

6. Do you have feedback on issues the Royal Commission should consider in relation to the specific listed areas?

- The quality of care provided to older Australians, and the extent of substandard care;
- The challenge of providing care to Australians with disabilities living in residential aged care, particularly younger people with disabilities;
- The challenge of supporting the increasing number of Australians suffering dementia and addressing their care needs as they age;
- The future challenges and opportunities for delivering aged care services in the context of changing demographics, including in remote, rural and regional Australia;
- Any other matters that the Royal Commission considers necessary.

As indicated in our explanatory note, it is clear that there are major structural issues in aged care that have been ignored in the many previous inquiries. These need to be evaluated and addressed. The terms of reference need to reflect this.

We propose the following additional terms of reference:

1. Evaluation of structural issues in the aged care sector that might have led to past and present instances of failures in care. This should determine whether current structure and management practices are congruent with community values and with our knowledge of the behaviour of individuals, communities, society and market entities.
2. Evaluation of past and present policies including the Living Longer Living Better reforms and the Aged Care Roadmap to assess their effectiveness in the light of the ongoing problems in care, current and past research and the known behaviour of individuals, communities, society and market entities.
3. Evaluation of potential changes that would address any issues identified in these areas as well as any potential problems that need to be managed.
4. Examine the role of whistle blowers in the sector with attention to receiving the support they need, their protection and to suitable recompense when they suffer as a consequence of speaking out.

Interim Recommendations

The origins of many of the problems in aged care lie within the 1997 legislation. They have been exacerbated by the policies underpinning the Living Longer Living Better reforms and the Aged Care Roadmap. Pressing on with them will compound the problems.

Recommendation 1: Further implementation of these reforms should be put on hold until the Commission has reported.

In the meantime and because of the urgency of the situation:

Recommendation 2: That urgent steps be taken to improve staffing by transparent disclosure, by setting recommended minimum safe levels with recommended increases based on acuity, then addressing Vocational training to bring standards of training back to those that existed prior to the removal of training from the TAFE's.

Recommendation 3: Accept the Accreditations Agency's forceful assertions, while it was an independent agency, when it emphasised its position in a heading *"Is the accreditation body a regulator? – No"* (*Accreditation Agency's response to the Productivity Commission's Draft Report - Caring for Older Australians Mar 2011*). It maintained that accreditation and regulation are incompatible and "inherently contradictory". The Quality Agency has been accrediting and NOT regulating. A separate independent regulator directly responsible to the community should be appointed.

Retirement And Disability Services

When the extent to which vulnerable sectors across society have been exploited is considered, then it is very likely that the same structural problems and the social dynamics that result from them are responsible for problems in retirement villages and in disability services. These structural problems will also need to be examined within our knowledge of community values and social structure.

Explanatory Note

Aged Care Crisis (ACC) notes the initial proposal was that the Commission will “*primarily look at the quality of care provided in residential and home aged care to senior Australians*”. It is then looking at services for particular groups and at plans for the future. Both are needed but fundamental to all this is that we have an effective system to build on that is capable of addressing the issues that have been identified. The evidence suggests that there are major problems in the current system that needs attention first.

We have had over 20 reviews and inquiries looking into the problems in aged care since the changes were made in 1997. ACC have made submissions to many of them. Instead of focusing primarily on the quality of care we should now also be directing far more attention to the structure of the sector and its mode of operation to see why it is not working and identify the underlying problems that are responsible.

The known

Submissions to these reviews have repeatedly identified the fact that too many failures in care are occurring, that staffing skills and numbers are seriously deficient and that the regulatory system is hopelessly inadequate. Confirming that this is so is simply the first step.

The submissions from credible sounding owners and managers, who have often had marginal if any personal experience in caring, have painted a very different picture of the system claiming it was world class. This has too often been accepted over the evidence of those who see what is happening first hand.

A Deeper Malaise

Both staffing and regulation clearly need immediate attention. That both the service and its regulation are problematic suggests that both are themselves symptoms of a much deeper malaise. The resistance to transparently collecting staff and care data that would permit analysis and readily resolve the very different understanding between managers and those at the coalface is characteristic of the reflex defensiveness you see in dysfunctional social systems that feel threatened.

Transparency

This defensive approach is reflected in the reluctance of some inquiries and consultations to publish submissions. We note that the proforma for this consultation does not seek agreement that our submission can be published suggesting it will be another behind closed-door process.

There is currently so much political distrust and suspicion, including that resulting from the sudden about face in calling the Royal Commission, that it is essential that the process be transparent. We ask that our submission be published.

If we are to trust the process then we need to know what proposed terms of reference have been proposed but then rejected.

Whistleblowers

With so little transparency, whistle blowers are the only on-site source of information about failures in the system. We depend on them to tell us what is happening when the regulators are not there. They pay a terrible price for their courage in speaking out on behalf of us all.

Financial Bias

One of the defining features of political debate and these inquiries has been the focus on financial data and outcomes, in contrast with the almost total absence of any data about staffing and about readily measurable failures in care.

Misconceptions are perpetuated by financial analyses that invariably call profitable performance good, even when that performance comes from cost cutting and efficiencies that impact adversely on the care, which is not adequately evaluated.

The appealing misconception by owners and management that financial performance is a measure of care has been a rationalised belief underpinning corporate and even public perceptions in many health and aged care marketplace scandals (*The Impact Of Financial Pressures On Clinical Care Lessons From Corporate Medicine* <http://bit.ly/2PVKBiH> ; *The Health Care Marketplace in the USA* <http://bit.ly/2FfaRzm>) Politicians and the public including patients internalised the strong assertions made. It was often outsiders who saw what was actually happening.

Previous Reports Ignored

Without any other data, reports have been largely based on economic considerations as well as ideological preconceptions and wishful thinking. Not only have the reports from these inquiries often been highly selective in the matters they have chosen to address but, when they have been critical, many of their recommendations have not been implemented. Those who have struggled to expose the problems have become cynical.

Choice Of Commissioner

When supposedly independent and objective inquiries have been commissioned, Commissioners have been drawn from what were seen as credible candidates. This was because they came from an economic or other background that aligned with policy. Believers were generally disparaging of alternate points of view and of those who thought differently. They had little clinical insight or experience in caring.

They did not comment on and displayed little insight into the psychological and social/societal consequences of their proposals for individual and social behaviour, nor did they consult or seek submissions from social scientists with this expertise.

Contributors need to be persuaded that the proposed commissioner is not biased by preconceptions that undervalue their contributions.

Structural Problems That Impact All Vulnerable Services

It is clear from the recent 4-Corners programs that the recurrent scandals during the 20 years of adverse publicity starting in 1997 have been red flags to structural problems. These have been ignored by the inquiries that followed. As a consequence reforms have repeatedly failed. These structural problems are likely to be due to the application of an underlying philosophy that is not congruent with the requirements of successful human services.

The exposure of major problems in services provided by the banks, who are major investors and mentors to the aged care industry as well as the exploitation of vulnerabilities in human services and of vulnerable employees in many other sectors, is further evidence of major structural problems common to all these sectors.

Vulnerabilities exploited include (*Failed markets and culturopathy* <http://bit.ly/2ryheHr> ; *Contracting government services to the market* <http://bit.ly/2byL9ld>) financial advice, bank services, Job Services Australia, Vocational Training, international students by 7-Eleven and other franchising companies, working holiday visa holders, 457 Visa holders, the poor exploited by high interest loan sharks, on line betting and even the health insurance companies we should be able to trust. Aged Care in the most vulnerable of them all.

Conclusion

It is essential that this Royal Commission explore the sector in the required depth and that a broad range of academic expertise with insight into our human condition and the nature of society be encouraged to contribute to the analysis. The terms of reference should make this explicit. The terms of reference we suggest do that.

Carmen Lawrence a seasoned politician with a broad experience and now a Professor of psychology recently wrote:

If we continue to airbrush our past and ignore human psychology in favour of glib sloganeering, how will we ever devise policies that succeed?

- - - asking serious questions about what the past can tell us about the likely effectiveness of proposed policies is rare. Even more uncommon is any deep exploration of what we know about human behaviour and how social structures are likely to influence it

Carmen Lawrence. The denial, the infantilising babble, and the fantasies that permeate politics - The Guardian, 30 Jan 2017 <http://bit.ly/2y1R3Ao>

Michael Fine, Professor of Sociology has studied the Nature of care and the relationships that underpin caring. In writing about the 'Cultures of care' (Fine, Michael (2015) 'Cultures of Care' in J. Twigg and W. Martin (eds) Routledge Handbook of Cultural Gerontology, Routledge: Abingdon UK: 269-276), he commented that "the richness of academic discussion on the topic stands in contrast to its limited use in policy".

It would be a culpable betrayal of our elderly if our politicians once again fail to heed the warnings and continue to repeat the mistakes of the past. The first step is to recognise them. There can be no excuses this time.