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Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Response to Questions on Notice

Aged Care Legislation Amendment (Financial Transparency) Bill 2020

Glossary and abbreviations

Term	Description
AACC	**A**ustralian **A**ged **C**are **C**ollaboration: recently formed industry association.
ACSA	**A**ged & **C**ommunity **S**ervices **A**ustralia (industry representative group)
Aged Care Roadmap	The Australian Government set up the *Aged Care Sector Committee* in April 2015. It was tasked with the creation of the 'Aged Care Roadmap' for the progression of the market-driven and controlled, centrally structured and organised Living Longer Living Better (LLLB) aged care reforms that commenced in 2013[1].
ACSC	The **A**ged **C**are **S**ector **C**ommittee[2] provides advice to the Government on aged care policy development and implementation. It also acts as the mechanism for consultation between the Australian Government and the aged care sector. Committee members consult within their own memberships and constituencies to ensure stakeholder views inform the policy development process.
COTA	**C**ouncil **o**f **t**he **A**geing
LASA	**L**eading **A**ged **S**ervices **A**ustralia (industry representative group)
LLLB	Living Longer Living Better: The industry's contribution to government's roadmap through NACA (National Aged Care Alliance) is a long one. It started with the joint development of the Living Longer Living Better (LLLB) reforms. This was based on the recommendations of the 2011 Productivity Commission Report *"Caring for Older Australians"*. In addition, individual members of the industry consulted and worked closely with government. They were appointed to government bodies.
NACA	**N**ational **A**ged **C**are **A**lliance
OPAN	The **O**lder **P**ersons **A**dvocacy **N**etwork[3] (OPAN) is a national network comprised of nine state and territory organisations that have been delivering advocacy, information and education services to older people in metropolitan, regional, rural and remote Australia for over 25 years. From 1 July 2017, the Older Persons Advocacy Network (OPAN) has been engaged to deliver the National Aged Care Advocacy Program[4] (NACAP) as a single national provider. OPAN delivers NACAP through its network of nine service delivery organisations across Australia. Each provides a nationally consistent model of independent advocacy, information and education focused on the rights of older Australians in need of care.

1 Aged Care (Living Longer Living Better) Bill 2013: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1213a/13bd106

2 Aged Care Sector Committee: https://www.health.gov.au/committees-and-groups/aged-care-sector-committee

3 Older Persons Advocacy Network: https://opan.com.au/

4 The National Aged Care Advocacy Program: https://www.health.gov.au/initiatives-and-programs/national-aged-care-advocacy-program-nacap

Question - Senator Polley: Both with this legislation that's before us and with the government's budget, how much direct benefit will there be for the delivery of better care for vulnerable older Australians?

A. Response regarding this legislation:

By itself this Bill will make it far more difficult for providers to profit by underfunding care, but unless a still disinterested community is engaged in the process in some way, it will have much less impact on the choices made by citizens or on the actual care they receive.

Its real importance lies in the early establishment of the principle and the extent of transparency. This is an essential first step to the more important structural reform necessary to address the root causes and create a system that functions well and does not depend on government regulation to make it work.

We agree with the strong criticisms by Professor Kathy Eager who undertook a study of staffing for the Royal Commission[5]. While acknowledging the positives, she is critical of the failure of the Royal Commission[6] to address core problems and concluded that *"the solution to the wicked problem of aged care will have to wait until next time."* Our experience at Aged Care Crisis is that this might well take another 20 years and we are still pressing hard for real change now.

There has been an elephant standing in the room for all of this period. As Eager explained, this was the treatment of aged care as a competitive market rather than a public good[7] - a civil society issue. There has been a failure *"to address the underlying structural and ideological factors that have shaped the aged care system we have today"*. The Royal Commission has not done so either. As a consequence, we agree that those who are looking for an *"elegant blueprint for how to fix aged care, they will not find it here"*. Until we address this elephant the *"wicked problems"* will persist.

Eager criticised both the report and the government's response for their failure to address the need for fundamental structural reform saying:

> "... The three big strategic reforms that were required to really fix aged care were not addressed adequately by the ACRC[8] and they have not been addressed in the government response. We cannot fix the aged care system until we recognise that aged care must be a public good and not just a competitive market".

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5 Research Paper 1: How Australian residential aged care staffing levels compare with international and national benchmarks: http://bit.ly/RC-Staffing-Compared

6 Kathy Eagar and Anita Westera, Fundamental failure: Aged care a public good or competitive market? RC fails to address role of private providers, 2 Mar 2021: https://bit.ly/3oBWc8W

7 Westera, A and Eagar, K, The Aged Care Royal Commission: the government responds with more money but the structural problems remain. 18 May 2021 https://johnmenadue.com/the-aged-care-royal-commission-the-government-responds-and-we-all-move-on/

8 ACRC: Aged Care Royal Commission

When the Royal Commission was announced, Aged Care Crisis issued a media release emphasising the need for structural changes[9] followed by a submission to the Minister pressing for structural issues to be included in the terms of reference and for the selection of Commissioners who would not be challenged by the need to do this[10].

Explanation: Delay will see industry regroup as they did after similar exposures in 1985. They will take back control as they did when the similar community backlash in the 1980s lost momentum. Industry members will use lobbying, donations and strong influence through consultancies, and revolving door appointments to secure the sort of transparency and regulatory outcomes that favours them.

Eager sees the same problem writing:

> "... For aged care providers, the outcome is largely business as usual, albeit with better funding. While more regulation and oversight is proposed, the sector has a history of successfully watering down such measures within no time at all. There is no reason to assume it will be any different this time".

Industry have already formed the **A**ustralian **A**ged **C**are **C**ollaboration (AACC) with the object of lobbying and marketing the new system. Their members have boasted about the influence they had on the Royal Commission. Our information is that provider organisations have already been successful in securing the outcome they wanted working on some legislation with the department. They are hopeful that they will be participating in the development of several aspects of the new Act.

Several members have and still do belong to the **N**ational **A**ged **C**are **A**lliance (NACA) and the Aged Care Sector Committee where they have worked closely with **C**ouncil **o**n **t**he **A**geing (COTA) in advising government on policy over the years. NACA correctly claims that the **L**iving **L**onger **L**iving **B**etter (LLLB) reforms introduced in 2012 was a direct result of the advice they gave to the Minister. COTA urged parliamentarians to support the changes.

The National Press Club presentation to promote the LLLB reforms was led by COTA. Its title, *"The Aged Care Time Bomb is ticking"* was apt. These 'reforms' set the system spiralling out of control[11].

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9 **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

10 See representative extracts in 'Aged Care Crisis and the Royal Commission', May 2021
https://www.agedcarecrisis.com/resources/make-aged-care-accountable/aged-care-crisis-and-the-royal-commission

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

Aged Care Crisis was critical of the Productivity Commission report[12] and of the LLLB reforms writing to the minister on his appointment explaining the problems he was facing in aged care. When these were not addressed and his LLLB 'reforms' resulted in many more failures being reported in the press, we wrote again[13].

A member of COTA's reform team was appointed as adviser to government after the change of government in 2013. The spiral of failure then accelerated further under the influence of the ***Red Tape Reduction*** program, the ***Aged Care Roadmap*** and a policy of competitive consolidation. That government adviser became CEO of **A**ged & **C**ommunity **S**ervices **A**ustralia (ACSA) and is now a leader in the AACC and on the Aged Care Sector Committee.

We were surprised that neither COTA nor OPAN, the only two other organisations specifically representing all community and senior's interests made a submission to this inquiry. As a consequence, those in the wider community they were representing had no in depth understanding of what their assessments of the Bill and reasons for their assessments and comments were. These could not be rigorously debated by others appearing at this and other sessions. If they made confidential submissions, we would consider this to reflect the disconnect between them and those they claim to represent. If even the fact that they did this was concealed, we would consider this a sad reflection on the system.

Those responsible for this flawed system still dominate NACA and the Aged Care Sector Committee. They and not the critics of this system, will have a profound influence on the way aged care responds. If they succeed, we are very unlikely to see fundamental change. This will remain an inappropriate centralised inflexibly managed out of touch top/down system that does little more than move the pieces about and then once again manages community perceptions.

We also note that this widespread neglect and abuse occurred in spite of the government funded advocacy system that was there to support residents. They could hardly have missed it yet they did not speak out strongly about it. The 10 years of abuse and neglect at Oakden in South Australia, was finally exposed by state regulators and not the advocates who visited. OPAN is represented on the Aged Care Sector Committee.

While industry leaders responsible for this deeply flawed system remain credible advisors to governments, long-term critics from within the industry were not even invited to discuss reform with the Royal Commission. One whom we have spoken to and is willing to put it on the public record has worked within the department and within the industry as a regulator, as a provider and as a trainer for over 20 years. He has been a strong critic of the regulator and of the failure of the system. He understands why it failed and has written about it. He would have been in an excellent position to advise the Royal Commission. He was not given an opportunity to do so. We are aware of another critic with many years of experience who was not asked to appear.

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12 **Media Release:** Productivity Commission fails frail, older Australians, Aged Care Crisis, 24 Jan 2011: https://www.agedcarecrisis.com/news/235-media-release-productivity-commission-fails-frail-older-australians

Media release: Caring for older Australians - an opportunity lost. Aged Care Crisis, 8 Aug 2011: https://www.agedcarecrisis.com/news/234-media-release-caring-for-older-australians-an-opportunity-lost

13 **Welcome letter to Minister,** Mark Butler MP, Aged Care Crisis, 24 Sep 2010: https://www.agedcarecrisis.com/news/452-welcome-letter-to-mark-butler-mp

Letter to Minister for Aged Care, Mark Butler, Aged Care Crisis, 21 Aug 2012: https://www.agedcarecrisis.com/opinion/your-say/443-letter-to-mark-butler

Letter to Minister for Aged Care, Mark Butler: *"No staff for 10.5 hours per day"*, Aged Care Crisis, 18 Dec 2012: https://www.agedcarecrisis.com/opinion/articles/213-no-staff-for-10-5-hours-per-day

Please note that we are not questioning the dedication, commitment and sincerity of all those who created this flawed system in 1997, then accelerated its decline in 2012 and 2014/15. They believed in what they were doing and were sincere and convincing when they argued for it.

There are many examples of similar situations. Wise men have repeatedly observed that it is good men who are motivated by often irrational belief who do the most harm in the world. It becomes difficult to criticise them.

While their extensive involvement in and support of this system suggests that these organisations credibility should be in tatters, the presence, conviction and malleability in responding with glib explanations of their leaders sees them go unscathed by scandals. Their beliefs and blindness to failures go unchallenged. There are other examples where even criminal convictions have not dented their credibility for long. They have no doubts and are adept at justifying their positions, while their critics are seen as lacking in credibility and are ignored.

Dysfunctional systems survive for so long because they are driven by genuine people who believe, have no doubts, are charismatic and persuasive, and can discredit their critics. Their perceived power and credibility are compelling.

In regard to this criticism, we make the following points:

1. A system whose success relies on regulation is a system that is not working. In such a system there are pressures (e.g., un-confronted commercial pressures) continually pressing against the regulations looking for loopholes and stretching the limits. While the worst and visible excesses may sometimes be controlled, the mode of operation continues to undermine the intent and the social fabric of the system. It does not work well.
2. Regulation is important even in a good system because it objectifies and reinforces values. It stigmatises those who ignore them. Those in the system identify with the objectives of the regulation and support it. In a system that works well, regulation rests lightly and it is seldom necessary to use it. We need a system where those who manage and work in the system identify with the intention of the regulations and are not prevented from expressing that in their actions.
3. Belief is closely tied to power. Change to dysfunctional systems requires restructuring that changes the balance of power and the people who hold it. Aged care is a system that depends on the values of civil society and the professions that support it. We are unlikely to get a functioning system until civil society re-engages and has the capacity and the power to hold those who serve it to account. Government cannot do this alone.
4. The most effective form of regulatory control is the social control we exert over one another as a society or a community. We form relationships and work together on our problems. Engagement builds capacity and trust. It makes society work. A well-functioning civil society brings many eyes to every problem. It increases our resilience, immunises us against dysfunctional and irrational beliefs, and responds immediately to unacceptable conduct.
5. Decentralisation of management and regulation together with the creation, integration and support of a community-led system would address the deep flaws and perverse incentives in the aged care system. Individuals working within the system would be shielded from perverse pressures and so be able to express their humanity.

B. Response regarding the budget:

Benefits: The extra funding, support for care finders and changes to the funding mechanism are welcomed and will result in improvement, but this will take time. It falls a long way short of the funding recommended by the Royal Commission as well as the Grattan Institute, and it fails to clear the huge backlog in home care.

Omissions: It does not address the deep flaws and the perverse incentives in the system. As the dust settles, uncontained and unopposed competitive pressures and regulatory ritualism will once again dictate outcomes. Rewording regulations and adding more regulatory processes and committees does not address this.

The budget does not give staffing numbers, salaries and education the amount of support or the funding that is urgently needed. It is 5 years since the Senate's ***Future of Australia's Aged Care Sector Workforce*** inquiry, which was given data showing just how bad the staffing situation was[14]. There has been no action, only more procrastination and token changes. The hands off approach taken to staff salaries by government is underwhelming.

Much of the education will still be provided by the privatised VET system that has exploited students, defrauded government and provided sub-standard training. Such a system undermines and diminishes the altruism and the values of the staff on whom resident's care depends.

> The problem in providing and funding adequate allied health care described by Nguyen (sub 12) in her supplementary submission[15] to this Committee has not received the attention it deserves. Neither the Royal Commission nor government have addressed and acted to control the way in which providers have saved money by not providing the services the Act requires them to[16]. Instead, some have pressured residents to use Medicare or self-fund needed allied health.

Contentious issues - bed licenses: We note that COTA, in an 11 May 2021 media release responding to the budget, welcomed the in principle freeing up of bed licenses, something it has long supported. It supports this by claiming that restricting them has *"protected poorer quality providers from competitive pressure from high quality providers"*. This is another free market illusion used extensively to support the belief in free uncontrolled markets. COTA played a critical role in persuading Aged Care Minister Mark Butler and Social Services Ministers Morrison/Fifield to accelerate free market competition in 2012 and again in 2014/15.

Like us, Professor Eager is also critical of this change to bed licenses. The evidence in fact shows the opposite is true. Freeing up bed licenses has failed on many occasions. The freeing up of bed licenses in vulnerable sectors like psychiatry and substance abuse in the USA in the 1980s using similar justifications saw a large excess of beds created. The industry then competed to fill them with people by aggressive marketing, misinformation, incentives, kickbacks, bounty payments and many other unethical practices.

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14 Supplementary submission 302.2, Future of Australia's aged care sector workforce, Aged Care Crisis: http://bit.ly/2BHoOrc

15 Supplementary submission 12 to Financial Transparency Bill 2020: https://bit.ly/3udA85X

16 Allied Health Services in Residential Aged Care, Aged Care Crisis, 17 Apr 2019: https://www.agedcarecrisis.com/resources/allied-health-services-in-residential-aged-care
Care and services in aged care homes, Aged Care Crisis, 3 Mar 2018 updated May 2020: https://www.agedcarecrisis.com/resources/care-and-services

Patients were kept in hospital for the duration of their insurance as the **DRG** (**D**iagnostic **R**elated **G**roup) type funding was systematically milked by providing unneeded treatment. Many were harmed, particularly children who were covered for much longer periods by their insurers. They were specifically targeted. Even criminal convictions did not change behaviour permanently.

In the late 1990s, a similar situation developed in aged care when nursing homes and hospitals colluded. Patients whose rehabilitation was funded and already paid under DRG payments were transferred to nursing homes where DRG's did not apply and payment was on a much more profitable *'item of service'* basis. Therapists were recruited from around the world. The elderly nursing home residents who were less profitable were neglected. Huge corporate empires expanded rapidly by borrowing heavily, and then collapsed when the funding was changed to stop this double dipping. Care was compromised.

In the early 2000s an additional DRG hospital item which provided extra funding for major surgery and complex cases was similarly exploited. Facilities were built specifically to provide this type of service. One of the most profitable hospitals capitalising on this loophole built a new much larger heart unit for two doctors who did between 700 and 800 unnecessary major heart operations.

The company responsible for this had led the way in the psychiatry scandal. It had pleaded guilty only 8 years earlier, and been under close government supervision and oversight for the first 5 years after its criminal conviction and the forced sale of its large psychiatric and substance abuse subsidiaries. The intractability of patterns of thinking and the power of competitive pressure is well illustrated.

Information about all these developments was supplied to Australian health departments and both major political parties at the time. Policy and the strong beliefs on which it was based ensured that these dedicated believers turned a blind eye - a good example of strategic ignorance.

That COTA continue to make claims like this, further illustrates wilful blindness and the intractability of the beliefs around which people have built their lives. It shows why successful reform that changes belief requires the sort of restructuring that changes the balance of power in the sector.

Contentious issues - ACAT privatisation: Our concerns about intractability and paradigm paralysis (an inability to think outside narrow patterns of thought) has been fuelled by Eager's claim that *"The privatisation of **A**ged **C**are **A**ssessment **T**eams (ACATs) is back onto the agenda under the guise of a 'single assessment framework"* and her strong opposition.

Marketisation of the ACAT process has been debated and pressed for at several industry/government forums since 2014 and also strongly opposed by other groups. By late 2019 it was clear to many that this was being planned and on 30th December 2019 the *Sydney Morning Herald* indicated that Senator Colbeck had defended the decision claiming the Royal Commission supported this.

Aged Care Crisis immediately wrote an open letter to the Royal Commission[17] who denied this in a press release. The minister then issued a media statement on 15 Jan 2020, indicating that government *"has consistently refuted claims that our intention is to privatise the assessment process"*.

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[17] Open letter to the Royal Commission regarding ACAT privatisation, 8 Jan 2020, Aged Care Crisis: https://www.agedcarecrisis.com/opinion/your-say/431-open-letter-to-royal-commission-regarding-acat-privatisation

At a webinar conducted with industry by his health department only a month earlier on 11 December 2019, participants were clearly informed that the tender process would be a *"contestable market approach"* and that all would be eligible to tender. It would be a *'fee for service'* model with broad market participation and contestability. Contracts would be negotiated by November 2020. The word *"privatisation"* was used by questioners and not contested. This is what has happened to transparency and consultation in our 'democracy'.

Conclusion: The problem with this budget is that it does not do what is required to fix the system. It comes from a government that has had an ideological agenda that it is unable to escape. It will do *'whatever it takes'* to pursue that and to hide its intentions and deceive the public in doing so.

There will be some benefits, but the real issues will not be addressed unless there is a community groundswell supported by politicians. As Eager concluded they will *"remain on the table as key issues for the next election or beyond."*

Question - Senator Dean Smith: Associated entities and the concern that large proportions of public money are being siphoned to associated entities or parent entities

Response: Associated entities

We take this term as including related party transactions and corporate webs, issues that Aged Care Crisis has been concerned about for many years. There is a significant amount of material describing the problems in these arrangements which have been used to minimise tax, increase profits at the expense of residents, conceal ownership and hide data. The use of these strategies is associated with low staffing and poor care. Corporate webs were first introduced into aged care when private equity groups acquired aged care companies in the USA in the early 2000s.

Complex webs, complex relationships and complex contracts between corporations and subsidiaries, play a key role in the high risk strategies that are central to the commercial operations adopted by private equity. The commercial pressures and the need to remain competitive force others to adopt the same strategies and risks. Private equity sets the pace and others must follow. While not all providers are driven by such strong commercial competitiveness, the risks of these arrangements in market-led free markets always remains. This is illustrated by what happened at Earle Haven in Queensland.

There are large winners and large losers. In aged care, the interests of the unsuspecting elderly residents, trapped within what readily becomes a feeding frenzy, are very much secondary. They are simply the profit parcels who are traded within the facilities bought and sold in this market. The money to pay interest on the large loans needed to buy overpriced nursing homes comes from the money they have paid for care. They have few choices or real options and are always losers. To understand the consequences of associated entities we need only examine the way private equity operates.

In a submission to the 2007 Senate Economics Committee Inquiry into Private Equity Investments[18], one of us warned that *"the explosion in private equity will potentate and exacerbate serious problems existing in vulnerable sectors of Australian society*". He used *"developments in health and aged care to illustrate the problems that already exist and the likely consequences of these new developments"*. He urged *"a rethink of the sort of society we want to be"* and the *"quarantining of at risk sectors like health and aged care"*. The UTS Centre for Corporate Governance also made a submission[19] warning of the consequences of private equity in aged care. The committee rejected the arguments made.

The USA: Only a month after the committee released its report, the *New York Times* wrote an exposure of the negative impact of private equity ownership on aged care[20]. They explained how the creation of complex corporate structures had obscured ownership and *"made it very difficult for plaintiffs to succeed in court and for regulators to levy chainwide fines"*.

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18 Wynne JM Submission to "Inquiry into the Private Equity Investment and its Effects on Capital Markets and the Australian Economy" 2007 https://www.agedcarecrisis.com/images/subs/sub03.pdf

19 dela Rama, M. UTS Centre for Corporate Governance Submission to "Inquiry into the Private Equity Investment and its Effects on Capital Markets and the Australian Economy" 2007 https://www.agedcarecrisis.com/images/subs/sub05_private-equity.pdf

20 At Many Homes, More Profit and Less Nursing, *New York Times*, 23 Sep 2007 https://www.nytimes.com/2007/09/23/business/23nursing.html?pagewanted=all&_r=0

They were able to bypass rules and required reporting. Several studies since then have shown poorer staffing and many more failures in private equity owned nursing homes.

The development of complex webs and relationships in the sector was so successful that it soon spread to other for-profit companies and then to the non-profits that emulated them. The strategies were adopted globally[21].

In 2014 the *Sacromento Bee* in the USA wrote a series of articles[22] exposing the way many providers were exploiting the system and its residents, making themselves rich by using these complex structures.

By 2017, almost three quarters of all nursing homes (over 11,000) in the USA were using these corporate webs and indulging in 'related party transactions'[23]. Companies using these webs employed fewer staff, were more likely to harm residents, have complaints validated, to be fined and to pay higher fines.

Private Equity in the UK[24]: In the UK, US based private equity group Blackstone has been accused of buying the UK's largest nursing home group Southern Cross, stripping it of assets, reducing expenditure on care and splitting it into two related groups tied together with long term rental contracts. It then sold both with Southern Cross listing on the share market. It was claimed that these rentals drove Southern Cross into bankruptcy creating a huge crisis for the care of thousands of residents.

Blackstone planned to buy Japara in 2011, but eventually did not do so. The department was advised of its alleged conduct. The department indicated that the Act *"would not require the Blackstone Group to seek to be approved as a provider of aged care".*

Terra Firma is a huge UK private equity company with a *"byzantine corporate structure".* It owns Four Seasons, now the largest in the UK. There have been a multitude of problems. Private Equity groups typically adopt high-risk financialising strategies and *"financial engineering of the chains hidden in complex corporate structures with hundreds of connected companies registered in multiple tax jurisdictions".*

These high risk purchasing strategies push up the price of nursing homes. To compete and maintain market share, other companies must cut services to increase cash flow and increase borrowing and then behave similarly. Private equity then sells quickly at the peak, prices collapse, and the remainder of the market is left with huge debts to pay off, putting even more pressure on care. We do not have enough information to know the extent to which this happened in Australia (eg Estia Health Aged Care) during the frenzied rush to list on the share market in 2014 to 2016. We suspect it played a role and may be a factor in the current financial problems in the industry.

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21 Marketization in Long-Term Care: A Cross-Country Comparison of Large For-Profit Nursing Home Chains Harrington C et al Health Services Insights Volume 10: 1–232017 (Similar practices across Canada, Norway, Sweden, United Kingdom, and the United States)
Britain's care homes are being turned into complex financial instruments Open Democracy UK 11 March 2016 http://bit.ly/2rG65FM

22 Unmasked: How California's largest nursing home chains perform Sacromento Bee 8 Nov 2014
http://media.sacbee.com/static/sinclair/Nursing1c/index.html

23 Care Suffers As More Nursing Homes Feed Money Into Corporate Webs. Kaiser Health News, 31 Dec 2017 (related party transactions in the USA): https://khn.org/news/care-suffers-as-more-nursing-homes-feed-money-into-corporate-webs/

24 Private equity issues are addressed on the Corporate Medicine website: Blackstone's attempted takeover of Japara Aged Care. (2011)
http://www.corpmedinfo.com/blackstone_japara.html
Private Equity: Inside Aged Care, 2015-18 https://www.insideagedcare.com/aged-care-analysis/aged-care-marketplace/private-equity

In Australia: Major private equity and banking investors that have been active in the Australian aged care marketplace have included Macquarie Bank, AMP (with the Singapore government), Citigroup's private equity subsidiary CVC Asia Pacific, ING, Westpac, Babcock and Brown and MFS. There have been financial and other problems in many of these operations. One of us examined this in 2008[25].

Since then, two major private equity investments have been made. Quadrant Private Equity invested in Estia Health Aged Care. It floated Estia on the share market then sold before the market collapsed. Archer Capital still owns 'Allity', one of our larger aged care providers. Archer missed the opportunity to float and is still waiting for the market to recover. Both aged care providers have received plenty of media coverage, much of it critical.

> The Earle Haven scandal where 70 residents had to be rescued, graphically exposed the problems when approved providers sub-contract care to an unsuitable commercially unscrupulous provider, a graphic illustration of the sort of operators that can and do operate within this failed system and the importance of probity and local oversight.

Corporate webs and tax evasion: We explored these issues and how these webs were used to reduce tax in our June 2018 submission[26] to the senate *"Inquiry into the Financial and tax practices of for-profit aged care providers"*. They were used to defraud the National Health System (NHS) and avoid tax in the UK and also in aged care in Australia. We describe the alleged conduct of several companies in Australia. *(pages 14 to 25)*

The Tax Justice Network has investigated tax avoidance by government funded aged care providers in Australia.[27] One of their reports describes the financial strategies, including related party transactions, used by each of the largest for-profit operators to avoid taxes in Australia. The other describes similar strategies used by the largest family owned corporations in Australia.

A report by the Centre for International Corporate Tax Accountability & Research (CICTAR)[28], describes the way in which some of Australia's largest non-profit aged care operators are moving funds into other investments such as property, rather than spending it on care.

Probity: The company BUPA is strongly criticised by the Tax Justice Network. There have been many reports of poor care and the Royal Commission investigated the way it operated and found it wanting.

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25 Private Equity Banks, Trusts and Financiers invest in Australian Aged Care http://www.corpmedinfo.com/austrbanks.html

26 Aged Care Crisis submission to "Inquiry into the Financial and tax practices of for-profit aged care providers, 1Jun 2018. https://www.agedcarecrisis.com/images/subs/32-AgedCareCrisisInc.pdf

27 Tax Justice Network, Submission, Inquiry into Financial & Tax Practices of For-Profit Aged Care Companies, Jun 2018

Tax Avoidance By For-Profit Aged Care Companies. A Tax Justice Network - Australia Report, May 2018 http://anmf.org.au/documents/reports/ANMF_Tax_Avoidance_Full_Report.pdf

All In The Family: Tax And Financial Practices Of Australia's Largest Family Owned Aged Care Companies, Tax Justice Network, May 2019 http://anmf.org.au/documents/reports/All_In_The_Family_Report.pdf

28 Caring For Growth Australia's Largest Non-Profit Aged Care Operators, Centre for International Corporate Tax Accountability & Research (CICTAR) Jul 2020 https://cictar.org/wp-content/uploads/2020/08/Caring_For_Growth_NP_Aged_Care_Report-2.pdf

One of us was so worried by the way BUPA operated in the UK that he lodged objections to its purchase of Australian nursing homes in 2007, questioning its probity[29]. Probity regulations were abolished in 1997 and the department did not examine the issue. The Royal Commissioners have recommended probity assessments be brought back, but have not applied it to new owners. Doing this would challenge the belief in global free markets.

[29] Will BUPA seek approved provider status Corporate Medicine web site, 2007 updated to 2011: http://www.corpmedinfo.com/bupa_approval.html

Conclusion

The Committee's concern about related party transactions is well founded and these practices create a huge problem for legislators and the regulators who attempt to enforce the laws they pass. There is no easy central solution.

In our view, the first step is to bring back good probity requirements for owners and so ensure that those who control and manage the finances of providers of care can be trusted. Providers and any subcontractors should also be assessed. Sub-contractors must be acceptable to the communities where they will operate.

The second is to introduce a regionally managed and community-led system in which decisions about the services needed and funding required are made. Overall management and oversight of the facilities including expenditure and quality should be implemented locally, and central structures should give them the support needed.

Providers should be directly accountable to the communities they serve, who should take responsibility for the welfare of their vulnerable members. Sub-contracting and relationships with related parties should also be assessed and approved by local management and the community that is being served. This would discourage the use of related party and associated entity transactions that are directed to anything other than efficient and effective provision of care.

Funds for care should be protected from profit-taking as they were prior to 1997, but providers should be paid a generous contracted salary for providing the sort of service that the community and professions expect. We have addressed the various options and mechanisms elsewhere.

The new *Aged Care Act*: There is little point in enshrining elderly Australians rights in a new Act if this leaves a system where those with power and influence can be more successful and more influential if they ignore these rights. In addition, competing successfully and even corporate survival can depend on doing this. As those who write about willful blindness or strategic ignorance realise, this sort of behaviour is usually instinctive and defensive and not deliberately planned. Well recognised psychological strategies allow even the motivated to do this.

If the rights of the elderly and their welfare is to be a real priority within the system, then those, whose primary interests are in the welfare of the elderly, must hold the balance of power. They should be in a position to exercise it by confronting these instinctive strategies as soon as they occur and before they become entrenched. These are the citizens and the communities whose future this will be. Those healthy and active retirees who are approaching this stage of their lives should be particularly interested.

To enable these changes, the civil society structures that have been eroded by current policy should be rebuilt and they should have a controlling role in a restructured system. This restructuring and rebalancing of relationships within the sector should be central to policy and so be incorporated as a central theme around which the new aged care act and the rights it enshrines is built.