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28 April 2021

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

Dear Senators,

Re: Aged Care Legislation Amendment (Financial Transparency) Bill 2020

Aged Care Crisis welcomes the opportunity to make a supplementary submission to the Senate Community Affairs Legislation Committee's inquiry into this Bill now that the Royal Commission into Aged Care Quality and Safety has released its final report.

In our first submission we supported the Bill describing how the absence of data had facilitated the development of a deeply flawed system that was harming citizens and how important it was to address that. We indicated that this Bill was an important first step but more was needed.

In this supplementary submission we build on that and address concerns that we have about the recommendations of the Royal Commission and explain why important reforms were omitted. More is required in regard to transparency and structural reform.

Contents

1 Executive Summary

The Royal Commission and this Bill

We describe our concern about the Royal Commission and explain that despite claims to transparency, it does not recommend the disclosure of the sort of obviously essential material that this Bill proposes. We urge the Committee to press ahead with the Bill, but to accept that much more will need to be done.

Speeches and submissions

We comment on the speeches made and express our disappointment at the nature of some of the debate. We have examined the submissions already made. We affirm our similar experiences and support for many of them including those who make proposals for improving the Bill.

The Royal Commission

To understand where and why the Royal Commission went wrong and what needs to be done now to address their omissions, we outline the social science that reveals and explains what has been happening and why this failed system survived for over 20 years.

We use this to identify the root causes of failure (the social disease) that the Royal Commission ignored as it dealt with the obvious manifestations (symptoms). We describe this as good palliation as there will be improvements but the underlying disease is likely to progress and create more problems in the future.

The root causes

We describe the ideological changes that became ascendant in the late 20th century. These profoundly altered the relationships and the balance of power between civil society, markets and government. Markets became ascendant and civil society, the source of the value systems and relationships on which care depends was pushed aside and eroded.

We describe the consequences for aged care. We go on to explain the well understood social science that explains how ideologies that deny existing knowledge maintain their legitimacy and address the tensions created by being repeatedly challenged with their failings.

These include the development of:

- new illusionary ‘truths’ to justify the actions taken,
- the establishment of systems for controlling and reinterpreting information to protect the belief system,
- the fabrication of claims to excellence, and
- an attack on the integrity and actions of critics and whistle-blowers.

There are many examples in aged care. Those who could not have been unaware of the abuse and neglect that was occurring were able to deny and hide it allowing a system that neglected and abused people to continue doing so for 20 years.

These widely understood strategies are used by the powerful in order to maintain their power and protect their beliefs. Systems like this do not change and beliefs are not challenged until the power of those responsible is challenged and broken.

This is important because the Royal Commission has not addressed these issues and critically, it has not changed the balance of power within the system. The same people and the same sort of system remain.

The Royal Commission's final report

Attempts to persuade the Royal Commission to address these issues are described, and we briefly explain where they went wrong. We describe the proposals in their report that will have a positive impact if adopted. But beyond that the essential structure of a market-led system that relies on limited government oversight and regulation to contain powerful perverse forces remains. This is not a long-term solution.

The next steps: We explain that real change must include the empowerment and involvement of communities and we explain how a community-led aged care system would work. It is the logical and relatively simple reform that was too challenging for Commissioners appointed from those committed to the free-market system. This is the logical path that we are urging your Committee and all politicians to follow.

Complex system analysis

Social scientists have studied complex social systems and developed models to explain why they become unbalanced and fail, and why attempts to reform them keep failing and only compound the problems. The models describe how regionalisation and community involvement has broken the cycles of recurrent failure in these complex systems and brought them back into balance.

In an attached document we have applied these models to aged care, which fits well. The models explain its recurrent failure in spite of attempts at reform. The strategies they show work are those that we are pressing for.

2 The Royal Commission and accountability

Royal Commission's final report

Our concern with the Royal Commission and its report is not what it has examined and recommended, but what it has avoided examining, who it has sought advice from in redesigning the system, and what it has not recommended, sometimes even after identifying a need to do so as in the case of full financial accountability for spending tax-payers money.

It is as if, like the government, the Royal Commission has not recommended anything that the economists and provider organisations that it has consulted with when redesigning the system, would not agree to. The final report does recommend that providers be required to meet minimum staffing levels and publish staffing and skills levels, but this is something that they could not credibly avoid.

In their executive summary on page 134, the Commissioners indicate *"Approved providers should be required to provide ready access to information about their staffing and operations to enable proper scrutiny"*. On page 154: *"Transparency and accountability should be embedded in the new aged care system"*.

On page 160 it states *"A rigorous system of prudential regulation and financial oversight of service providers should be a critical component of the Australian Government's oversight of the aged care sector. Effective financial oversight provides protection for taxpayers' investment in aged care services and a means of identifying* ***potential risks to the quality and safety of care".***

Recommendation 112 does require disclosure of some of the details of expenditure on basic consumables, but this is temporary and only for those providers who apply for the additional $10 per resident per day immediate relief that the report recommends. It is not universal nor permanent.

In the sections on prudential regulation and financial oversight, the Commission is primarily concerned with the financial viability of providers and their ability to provide care rather than whether they actually use the money to do so.

There can be no doubt that regular disclosure of expenditure of how taxpayer and individual contributions are spent *"should be embedded in the new aged care system"* so that we have a *"means of identifying* ***potential risks to the quality and safety of care****"*. The Committee should not be deterred by this omission and we urge the Committee to accept that the intent was there. They should address this omission by the Royal Commission by proceeding with the legislation immediately.

The Royal Commission has recommended a massive boost to funding and government has already promised an additional $10 billion. Transparency is required now. We need this legislation so that we can see what has been happening and where the money is going. The last major funding bonanza was between 2013 to 2015 when Morrison and Fifield were in charge and it did not go to staffing or care.

Recommendation: We urge the Committee not to be deterred by the Royal Commission's decision not to require regular disclosure of how funding is spent and to proceed urgently with the Bill. When a new Act is eventually drafted to replace the 1997 Act, then these changes should be included.

3 Debate and submissions

Senate debate: Senator Griff correctly states that we have a system designed around transactions and that this Bill is only one bit of what needs to be done. It is a necessary condition for reform, but not a sufficient one. We strongly support this Bill but urge the Committee to build on this and keep up the pressure for fundamental reform.

While important changes and recommendations are made in the final report of the Royal Commission, it fails to identify and address the root causes of the problems and these will need attention if their recommendations are to become a long-term solution.

We share Senator Siewert's gall at having *"to sit here and listen to the excuses from government".* We are equally galled by the endless point scoring from both major parties as they blame one another for an aged care system for which they are equally responsible. While they squabble, elderly citizens continue to be harmed. This is the *"infantilising babble"* that Carmen Lawrence accuses[1] current politicians of engaging in *"whenever uncomfortable truths are broached".* It is long past time that both major parties took responsibility for what was done and engage in constructive discussion on needed change.

The submissions: Aged Care Crisis has closely followed the aged care sector over the last two decades. It has listened to what families and staff have been saying and for several years operated a discussion forum where staff described their experiences. We can vouch for the validity of submissions made by the nurses (sub20 V2) and families who have looked at what is happening (sub02_Brown[2], sub08_Airoldi[3], sub12_Nguyen[4], sub15_Mullen[5], sub16_Lenton[6]) as we have heard many similar stories. Our assessments of the impact of policies on staffing are similar to those of the unions. We note that there are several suggestions for improving the legislation to make the data collected more informative.

Like dela Rama (sub01_dela Rama[7]) we are very critical of the manner in which a humanitarian service that relies on community values and caring community relationships has been converted into a free market based on self-interest and impersonal transactional relationships.

We too have been writing submissions about revolving doors, regulatory capture, lobbying and donations that all bind political parties to the interests of vested interests in the sector.

We have written about our eroded bureaucracy and the outsourcing of research and policy to vested interests. The causes of policy failure are only too clear. Policy has been set within a single pattern of thought that is based on a misunderstanding of humankind and of democracy.

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1 *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

2 Mrs Heather Brown: https://www.aph.gov.au/DocumentStore.ashx?id=5a8829e8-650d-4944-a96d-6045fbd800b6&subId=685508

3 Mrs Margaret Airoldi: https://www.aph.gov.au/DocumentStore.ashx?id=c9e117f6-0a2e-4c80-b417-09a156ca19ec&subId=690474

4 Mrs Hariklia Nguyen: https://www.aph.gov.au/DocumentStore.ashx?id=d5cc792a-c1d0-4788-bd81-f9e584dfccb1&subId=690534

5 Mr John Mullen: https://www.aph.gov.au/DocumentStore.ashx?id=fc9a06b3-5b3a-4415-a412-b252bfbd302e&subId=690620
Supplementary to submission: https://www.aph.gov.au/DocumentStore.ashx?id=5a1c39f1-bd5d-4230-a8fd-c4c306ddb269&subId=690620

6 Ms Marta Hodui Lenton: https://www.aph.gov.au/DocumentStore.ashx?id=4543fee5-a1f1-4f28-9c38-1499dae0451e&subId=691153

7 Dr Marie dela Rama: https://www.aph.gov.au/DocumentStore.ashx?id=e19da4ee-4b36-4c05-b88f-a0f8b159ac97&subId=691146

Aged Care Crisis made submissions and appeared before Queensland Government Inquiries on two occasions. It advocated strongly for a much greater role for local communities and clinicians. We are pleased to see that echoed in Queensland Health's support (sub19_QH) for policies that strengthen *"local decision-making and accountability, local consumer and community engagement, and local clinician engagement"*.

4 Ignoring social science

In her criticisms of politicians, Lawrence went further. She said *"Even more uncommon is any deep exploration of what we know about human behaviour and how social structures are likely to influence it".* That has been an even bigger problem because there is a large pool of historical knowledge and knowledge about the way humans behave as individuals and societies that has been ignored and particularly so over the last 30 to 40 years.

Sadly, the Royal Commission failed to critically examine what had been happening in the past and then took a single example out of context and used that to explain what was happening. To understand what has happened and where they went wrong, we need to consider the social science that addresses situations like this.

Strong criticism is not blaming: In using social science to criticize, it is important to understand that criticism is not blaming because we are examining how we all behave. Were we in the same position we would probably have behave similarly.

Most of us have very probably done so at various times in our lives without recognizing it. But, if not confronted, the consequences can be huge. It is long past time that we recognise our susceptibility to grand ideas that appeal but ignore what we already know. We might finally stop making similar mistakes and move forward to meet future challenges more sensibly.

4.1 A society that is failing

Aged care is only one of multiple failed systems where vulnerable people have been harmed over the last 20 to 30 years. Society itself is fragmenting in multiple ways and we struggle to deal with mental illness, drugs, domestic violence, radicalisation, the rise of populist leaders and more as if they are isolated phenomenon and not a reflection of fundamental changes in our society and the erosion of the supportive caring relationships that we all depend on.

The likelihood that these are all isolated unrelated events is remote yet we seem incapable of examining and reflecting on our past and our behaviour when that challenges the 'truths' that we use to structure our lives. We fail to challenge ourselves by looking for root causes and instead try to address each problem in isolation.

There is nothing new about this. Similar situations where attractive belief systems have replaced established knowledge have been studied by social scientists for many years. Yet our market and political establishment rejects the insight from this social science out of hand, seeks to discredit it and continues to promote its skewed view of the world.

Those who looked and those with the knowledge, understood what was happening and tried to warn us. They were simply discredited and ignored. This has been studied so we know why and how this happens. We know why the sort of introspection needed to examine this is so challenging. It has been particularly challenging for the two major political parties responsible and for the industry that was advising them.

4.1.1 Societal issues

We have examined the restructuring of the relationship between society, governments and markets during the second half of the 20th century. This has resulted in the ascendency of markets, the shredding of government and the marginalisation of society. This belief system became ascendant in the USA and UK in the early 1980s and was soon globalised.

The ideological beliefs (called neoliberalism, free markets and economic rationalism) that underpinned these changes have dominated Australian thinking and underpinned policy since the early 1990s. Many understood what was happening including a member of Aged Care Crisis. They spoke out but they were ignored. The huge problems we are seeing can be understood as the logical consequences but we have avoided examining this closely.

- **Why society has withered: The consequences of policy failure**
  https://www.agedcarecrisis.com/resources/make-aged-care-accountable/consequences-of-policy-failure

Since the 1990s governments of both major parties have relied on a revolving door of market advisors and consultants. They have outsourced policy decisions to the same groups. In doing so, they chose those they considered to be credible because they thought in the same way as they did.

As a consequence, government aged care policy during this period has been based on ongoing advice from industry, consultants, contracted 'market experts' and others who adopted a similar approach.

Over 30 inquiries have failed to challenge and change policies and so had no impact on the neglect and abuse that was occurring.

Industry have recently formed the 'Australian Aged Care Collaboration (AACC)' which has seized on the Royal Commission report in order to shift blame to governments that have acted on industry's advice. They are seizing the opportunity to reclaim their right to lead the reform process.

Aged Care Crisis have responded by describing the role that industry played in the design, management, oversight and shielding of the current failed system from exposure in an 'Accountability Report'.

We are pressing for a community-led system to prevent this from happening again. We have also described the central role that the industry played in advising Labor when they were last in power and the role that donations from vested interests played in this.

- **Accountability Report** (Aged Care Crisis Inc)
  https://www.agedcarecrisis.com/images/time-to-care-about-aged-care.pdf
- **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

4.2 The Social Science of ideology under threat

Simple one size fits all belief systems soon clash with the real world and are threatened by the revelations. This is well understood. To maintain their legitimacy and do what the belief system requires they adopt a number of strategies that are readily apparent in aged care.

4.2.1 New truths

The first is to claim additional illusionary truths to enable believers to do what belief and policy requires. The claims made by industry and accepted by politicians since 1997 that ageing is not a disease and nursing homes are not hospitals justified the claims that you did not need trained nurses to care for them.

Care of the weak, frail and dying was conceived as primarily a hotel service marketed like holidays with a trip-adviser type website. Peter Shergold, the founding chair of the Aged Care Sector Committee that worked on policy with government later claimed[8] that *"regulation in the aged care sector is misplaced"* and that *"the aged care sector should resemble the hotel industry"*.

In fact, ageing is a process of organ degeneration. Residents are frailer and sicker than most hospital patients. Most are even more dependent on good clinical, allied health and nursing care to maintain their weakened systems and maximum possible wellbeing.

The consequences for the elderly were huge. This illusionary 'truth' has been a major reason for neglect and abuse. It also explains the unfortunate decision of the Abbott government to move aged care away from the Department of Health to Social Services under Scott Morrison in 2014. This was a period when government displayed even less insight and the perverse pressures on the system were markedly increased.

4.2.2 Controlling information

All ideological beliefs seek to take control of the collection and interpretation of information and use that control to neutralize unwelcome information. If we look at Figure 7 in the attached document you will see that as resident acuity (frailty and illness) increased by 53%, the number of trained staff required to care for them fell by 35%. This was the period when marketisation was being increased and consolidation supported. The neglect and abuse was rapidly increasing.

During that same period the successful attainment of full marks in accreditation increased from 64% to an almost 100% success rate of 97.8%. Multiple calls for transparency were followed by claims to be introducing transparency that were never fulfilled.

It is clear that the body responsible for monitoring care and protecting the elderly was responding to the threat imposed by real information by protecting the belief system and those who supported it instead of the elderly. It turned a blind eye to neglect and abuse. The Royal Commission has been very critical.

There is nothing unexpected about this. This is how most dysfunctional belief systems maintain their legitimacy and so their hold on power.

4.2.3 Making false claims and countering criticism

Nurses, residents and family members have been complaining about what has been happening for over 20 years. The press has reported multiple failures and many scandals. The response by both government and industry has been to deny, and when this is impossible to claim these as rare exceptions, and then to assert that we have a world class system, using the exemplary performance of the findings by our regulator as proof.

Critics are attacked and discredited and those who persist have been threatened with defamation. Whistleblowers are sought out and penalised, attacked and discredited, then fired and no one else will employ them.

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8 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

4.2.4 Understanding all this

Australian citizens have been deliberately and repeatedly misled and deceived by government and industry for at least 20 years as their vulnerable elderly fellows were neglected. At the same time the system was milked by providers competing for commercial advantage. Government aided and abetted this.

Clearly neither government nor industry can be trusted with the management of the aged care system and the care of our older citizens. It is simply not possible for them to have been unaware of what was happening. We dare not trust them again.

There is nothing unexpected about all this. It's the way people in this situation behave and have behaved many times before. If we look at the assertive way they behave when they make claims it is clear that they believe what they are saying and behave as if they are ignorant of the real situation even when they must be aware of it.

This strange phenomenon is counter intuitive but has been recognised and explained for many years. The way individuals and large groups of believers in societies see and know what is happening and then deceive themselves has been explored in depth. They know but do not acknowledge what they know so can continue to maintain the beliefs on which their lives depend.

The extensive examination of historical examples and the research done into the many ways we do this has been analysed and reviewed in two recent books. They do this under the titles of Wilful Blindness[9] and Strategic Ignorance[10] .

The close links of this behaviour with power, which they describe, mirrors the insights of the late 20th century philosopher Michel Foucault. He described the way in which the powerful control the patterns of thinking (discourse) of citizens. For example, by controlling the way employees think managers govern (control) the way they behave.

Studies in Australia have examined the ways in which the 'discourse' imposed by market managers in health and aged care has altered the way nurses think and understand the work that they do[11].

4.2.5 The implications of this for the Royal Commission's final report

This knowing but not acknowledging may be counterintuitive and not always easy to understand. But it is important because the link of ideology to power explains why the recommendations of the Royal Commission even if accepted by the government are very unlikely to provide a permanent solution to aged care or do anything for the wider problem in society. More will be required.

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9 Wilful Blindness Why We Ignore the Obvious at our peril Margaret Heffernan 2011 updated 2019 https://www.booktopia.com.au/wilful-blindness-margaret-heffernan/ebook/9781847377715.html

10 The unknowers: how strategic ignorance rules the world Linsey McGoey, London, UK, Zed Books, 2019, 369 pp https://www.tandfonline.com/doi/abs/10.1080/19460171.2020.1768422?journalCode=rcps20

11 **Aged care:** Behind Open Doors - A Construct of Nursing Practice in an Australian Residential Aged Care Facility De Bellis A Flinders University October 2006 Doctoral Thesis http://flex.flinders.edu.au/file/7030fbbf-d410-44a7-ad07-ec65a3f32347/1/Thesis-De_Bellis-2006.pdf

Health Care: 'Nursing Hours' or 'Nursing' Hours: a discourse analysis by Luisa Patrizia Toffoli RN MN Doctoral Thesis The University of Sydney April 2011 https://ses.library.usyd.edu.au/bitstream/2123/8367/1/LToffoli_Thesis_Final_241011.PDF

Mental Health: Neoliberalism, community care and mental health policy by Henderson J in Sociology Review (2005) 14: 242-254

The Royal Commission avoided analysing and criticising when this would have meant directly challenging the prevailing ideological belief in markets, which remained uncontested. It did not look at the social theory. The recommendations they made did not alter the power relationships within the sector. As a consequence, the same patterns of thinking and of behaviour including wilful blindness and strategic ignorance will very probably continue and transparency will be tokenised. Problems will recur.

5 The Royal Commission into Aged Care

5.1 Aged Care Crisis attempts to persuade the Royal Commission

Aged Care Crisis was acutely aware that government understood aged care as a market rather than a community service and that it would appoint those who it saw as credible because of their experience with this sort of market. In a submission about the terms of reference for the Royal Commission, we raised this issue and then at a meeting with the Minister in 2018, we stressed the need for major structural changes.

We were unsuccessful. One Commissioner appointed to the Royal Commission was an expert in governance and had been responsible for introducing it into government departments over the years. The other two were judges with experience in Commercial Law and/or taxation.

On a web page we have described the efforts we made to get the Royal Commission to examine aged care as part of a larger failure in society that needed attention and as a community service rather than a market. We challenged the prevailing ideology and addressed the history and social science that explained what was happening. We argued for greater community involvement.

- **An opportunity missed: Aged Care Crisis attempts to persuade the Royal Commission**
  https://www.agedcarecrisis.com/resources/make-aged-care-accountable/aged-care-crisis-and-the-royal-commission

5.2 The Royal Commission's report

The Royal Commission interviewed many residents, families and staff prior to preparing its first report 'Neglect'. In redesigning the system, it heard from and relied on experts, the majority of whom came from the market, the current aged care system, the government and economists.

It was clearly sympathetic to what they were saying and accepted their explanations, but these were the same people and the same groups that government had been consulting. They now blamed the government for not funding the system. It is certainly true that it is now underfunded and understaffed but they connived in this.

5.3 Where the Commission went wrong

The Commissioners latched on to 1997 cabinet documents in which the cabinet deliberately set out its intention to ration funding to contain costs in aged care. This approach continued to drive policy decisions over the next 23 years. The Commissioners blamed government, rather than the ideology they served and the industry that was advising government every step of the way.

It is certainly true that in the 1960s and 1970s there was a great deal of overservicing. Australia had one of the highest incidences of nursing home residents in the world and many of the elderly were receiving poor care. Money was not going to care. Reforms introduced in 1986 started to address the problem, but were opposed by industry then abandoned.

By 1997, it was a matter of ideological faith that there was plenty of fat in the system and that you did not need expensive nurses. A leading US authority from a very successful company, Sun Healthcare, was welcomed into Australia in 1997. Its charismatic chairman, met with politicians and businessmen. This was his message too. In the USA he had urged government to butt out and leave it to the market who would soon sort it out as there was plenty of fat in the system.

This was part of the new faith and our industry leaders were saying the same things. They helped in writing the 1997 *Aged Care Act*. Government accepted their advice and continued to do so at least until 2016 when the illusion about a world-class system came apart.

In making decisions to ration care in 1997, government were simply setting the stage for what they expected the market to do and what it had promised them. They assisted every effort the industry made to reduce staffing levels and costs because they had been led to believe the system was overstaffed.

When things did not work out, they continued to work closely with industry to make the system more market-like so that it would work better. Industry and economists with faith in the free market have been at the table giving advice ever since. These policies have been theirs as much as government. That they might be deeply flawed was inconceivable.

The Royal Commissioners did not look beyond the cabinet document and refused to look more widely or consider the social science behind what was happening. As a consequence, they misinterpreted the situation and set out to address the visible manifestations of the failure (the symptoms) in aged care while ignoring the root causes (the disease) in society.

5.3.1 The consequences

The Commission has made important recommendations that will address the visible problems and will result in some major improvements, but they disagree about how this is to be done. It is not what they have advised that is problematic, but what they have omitted.

Most importantly, they have advised that the 1997 Act be abandoned and that the right of every citizen to receive good care be enshrined in the regulation. The costs of providing that care should be assessed independently and be transparent to the public. Both are welcome.

We suggest that the new Act should also include the right of communities to assume some responsibility for the care of their elderly members and have the power to make those who provide the care directly accountable to them.

Commissioner Pagone understands the entrenched nature of the problems in government and wants much of the management of the system to be independent of government.

Commissioner Briggs believes that government is capable of reform and of addressing its failings and then containing the pressures of the market by using much more active and greatly enhanced government and provider governance processes to ‘steer’ the system. Both support similar governance processes, but delivered in different ways.

We have reviewed many of the changes they recommend and where we have issues have commented, but if the government agrees to the changes, there will certainly be improvements in funding, in staffing and in care.

Our concern is that the reforms are treating the symptoms and that this is good palliation. They do not address the root causes and unless more is done, the system will still be subject to the same perverse pressures and the same or similar problems will develop again. The power structure and the pressures in the system will remain. There is more to be done if the disease itself is to be treated.

- **An opportunity missed: Analysis of the Royal Commission Report**
  https://www.agedcarecrisis.com/resources/make-aged-care-accountable/analysis-of-the-royal-commission-report

5.3.2 The problems

After two years and $93 million in costs, we still have a market system without an effective customer and without a community with the power to set and insist on conduct acceptable to it.

Free market beliefs remain intact and the system is still going to be market-led. The Commissioners both look to ramped up regulation by the same centralised and nominally independent but renamed, *Aged Care Quality and Safety Commission* and an accreditation process which will have increased powers. They advise greater transparency, but that has been advised in the past and never happened.

We will still have a largely centrally managed, overseen and controlled aged care system although the pieces have been moved about and rearranged and the same processes of steering the system by government and provider governance even if the processes have been beefed up.

The argument is that this is essentially a souped up version of the system we have and that the perverse and uncontrolled competitive pressures will continue to press against and probe the regulations to uncover loopholes. The power will still lie with the believers in the ideology and it will be subject to the same risks. Powerful vested interests will continue to dominate policy.

5.3.3 Qualifications

The versions of management proposed by both Commissioners envisage regional managers overseeing the way services are provided and managed. They claim this is essential. But they do not expand on this and explain how this would work in practice.

They also write about volunteers and getting feedback from seniors and they recommend a Council of Elders to seek out and obtain the views of seniors. What they do not do, is to give the community and its senior members any role in the system or any power over what happens in their communities.

This is something that providers have always strongly rejected and the free-market ideology itself has its origins in a profound and antidemocratic distrust of what it called the ‘collective’. We argue that what is needed is a community-led aged care system

While the ideology retains power, and while powerful industry vested interests continue to donate and lobby at the same time as they support and work with government and regulators, we will continue to see community marginalised rather than empowered.

There is a risk that, instead of working with community, regional managers will end up by working closely with industry to once again manage and control individual citizens and community groups who attempt to draw attention to problems and challenge the system.

We strongly support regionalisation but a regional system which is independent of government and accountable to the communities they serve. They would work closely with empowered local communities to watch over providers and ensure that these providers are directly accountable to the communities they serve.

5.4 A sensible alternative

Over the last few years government and its regulator have competed with providers in denying responsibility for failures in care. It is time for us all to accept that responsibility for the welfare of vulnerable citizens, including the aged, resides and has always resided with their fellow citizens, the civil society of which we are all a part. This includes our communities and their responsible citizens.

Care is dependent on community values and on the empathic and trusting relationships that we form as we imagine the lives of others and walk in their shoes. We empathise and become motivated by altruism. These are not the values of the marketplace or of government, but of the community and the caring professions that work with them. The two are not compatible.

We argue that whoever provides or manages care is acting as an agent of the communities they serve and as such is directly accountable to them. It is the responsibility of every community to make sure that their agents are providing the care they expect and it is government's job to support and empower them to do so. The free-market ideology has pushed civil society and its communities aside, undermined and hollowed them out, and so rendered them unable to fulfil their role.

5.5 Competition policy has failed in aged care

Baldwin reviewed international literature for his doctorate and in a 2015 opinion piece in Australian Ageing Agenda[12] he challenged our government's competition policies writing *"Rather than providing evidence to support the contention that as competition increases so too does quality, the research has in fact found the opposite; studies in 2004 and 2009 found evidence showing that as competition increased, quality overall decreased".*

Economists from the Faculty of Business and Economics at the University of Melbourne have now analysed Australian data made available by the Royal Commission. In April 2021 they reported on[13] the impact of the increased competition introduced by the 2011 Productivity Commission report and the 2012 Living Longer Living Better (LLLB) reforms based on them.

The found that *"competition isn't associated with better quality of care or lower prices in aged care".* They found that *"the sector hasn't performed despite years of market-oriented reforms".* Among other changes, they suggest that *"consumers need an advocate to be on their side in their bargaining with providers".*

In our view, that advocate needs to be from the community, be there regularly to watch over the elderly consumer. Both should be supported by a community with the power to put providers who overcharge, do not cooperate and work with them, or fail to meet their expectations, out of business.

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

13 Competition isn't improving the aged care sector by *By Dr Ou Yang, Associate Professor Jongsay Yong, Professor Yuting Zhang and Professor Anthony Scott, University of Melbourne.* https://pursuit.unimelb.edu.au/articles/competition-isn-t-improving-the-aged-care-sector?s=03

5.6 What is needed is a community-led aged care system

We strongly support regionalisation. Regional managers who will work closely with local government and local community organisation helping them to set up local structures that will work together with them to:

- plan local aged care services and the construction of facilities,
- contract the construction of facilities needed,
- evaluate the trustworthiness and capacity of potential providers of care,
- contract or license these agents who will provide the care they require, and
- watch over the care provided and replace providers that fail to meet expectations.

Communities would work closely with the local managers of their agents, the providers in delivering the services and watching over the care. They would participate in the investigation of complaints and other issues that arise, so institutionalising open disclosure.

If any provider fails to provide the expected services or abuses the trust placed in it by the community, it should be easily replaced by another provider without disrupting staff or care. To accomplish this, ownership of facilities and provision of services should be separated and provided by different businesses.

In such a system the role of central management, regulation and other services would be to train, support, mentor and provide backup. They would be ready to step in and assist when local resources and knowledge are insufficient. The aim would be to build local community capacity and skill. Such a system would empower civil society and change the balance of power. This is essential for real change.

We have described what such a system might look like in more detail on our web site:

- **Creating a Community-led aged care system**
  https://www.agedcarecrisis.com/resources/make-aged-care-accountable/creating-a-community-led-aged-care-system

Treating the disease: This solution creates both an effective customer and an empowered community to watch over and set the limits of acceptable conduct. It places cooperation above competition and in doing so releases local provider managers and staff from the perverse imperatives of the current marketplace. It allows them to express their humanity. Formal regulation and governance processes rests lightly and the system does not depend on them.

In re-empowering community and enabling them to hold both community and ultimately government accountable it leads the way in rebuilding community and resetting the balance between markets, community and government.

Rebuilding and reinvolving community is seen as an essential step by many of those who have analysed the current problems in our western societies and in our democracies. Aged care is provided in our communities and in our homes. It is not only the worst affected sector but it is well placed to take charge and lead the way in making these badly needed changes.

5.7 Relevance for the Aged Care Legislation Amendment (Financial Transparency) Bill 2020

There are two relevant issues:

1. Centralised data reporting is essential and contributes to better performance but not by empowering consumers. Experience in the USA and Europe has shown[14] that only a relatively small proportion use central databases when making decisions. Most rely on local sources of information and word-of-mouth. It is more important that local groups have a good knowledge of exactly what is happening in local facilities and the best way of ensuring this is to give them a role in oversight and management.
2. Self-reported data is often unreliable and enables the system to be gamed. It is important that data is verifiable and this is best done by independent observers who are regularly on site and work with the providers in collecting and validating the data. This is what we are pressing for, not because they will check every tiny detail but because they will stumble on to systemic breeches and the consequences for providers of breeching their trust will be to be replaced by someone more trustworthy.

Recommendation: That a policy of regionalism and community involvement be adopted and that in structuring transparency and in reporting data including financial data in this bill opportunities be created for local community organisations and the professionals within them to be included in the management and oversight of data collection in their communities and regions. This will ensure they have first-hand knowledge and do not have to depend on the vagaries and complexities of websites and unreliable self-reported data.

[14] Rodrigues R, Trigg L, Schmidt A.E, and Leichsenring Kn (2014) The public gets what the public wants: experiences of public reporting in long-term care in Europe. Health Policy 116 (1). pp. 84-94. ISSN 0168-8510 https://bit.ly/2S69D4V

6 Attachment: *Analysis of aged care as a failed complex social system*

We attach to this supplementary submission an analysis we performed in January 2021 before the Royal Commission handed down its report.

6.1 Brief summary

There has been a lot of interest in the adaptability and resilience of complex social and socioecological systems - the reasons they fail and what to do about it. We have looked at this and aged care fits the models they use well. It describes what has been happening.

Academics who study this have developed two models:

1. **Balanced forces:** One model shows how stable adaptable and resilient systems are characterised by a multiplicity of forces that hold them in balance and allow them to adapt when forces change, and be resilient in a crisis. The model shows how it fails when this balance is disrupted by strong unbalanced forces - and how difficult it is to return these systems to balance.
2. **Cycles of failure:** The second model shows how those complex systems that become unbalanced and fail, go through cycles of failed attempts to fix them. That sounds like aged care.

   They noted that responses to failure usually involve greater centralisation, more management, processes and more efficiency. This results in less flexibility, less adaptability, less resilience and more failures. It is particularly resistant to change at this stage even as it starts failing and it all comes undone.

   It is most susceptible to real change after its failures are exposed and can no longer be denied. Resolving the issues and creating a totally new system is resisted by vested interests and the cycle of central management and efficiency starts again.

Successful change

These analysts found that some changes at this vulnerable stage were successful in bringing the system back into balance and making it work. Instead of centralising, they decentralised and moved to regional management. They developed networks of involved citizens working with regional managers. The systems were then less efficient and there was more redundancy but worked better because they were more adaptable and resilient.

Aged care

Aged care fits this model well. It describes what has been happening. Aged care has had problems since the 1960s and the models explain not only how the system became unbalanced and failed but how in the 1980s at the end of the first cycle of failure, attempts to reform by embracing regionalism and involving communities were frustrated by vested interests. Instead, a cycle of centralised reform and control was commenced.

That second cycle of failure has ended in failure with the exposure of widespread neglect and abuse. The system is once again susceptible to real change. Once again, it has been powerful vested interests that have had most access to the Royal Commission.

In the attached analysis performed in January 2021, we speculated on the likelihood that the Royal Commission would adopt a community-led model and were not optimistic.

This analysis was done prior to the Royal Commissions report and we speculated on what might happen. We are not surprised that the final report tinkered with the idea of regionalism, but fell short of what was required. Communities were excluded.

The system is still vulnerable and concerted action can be taken to build on their recommendations for regionalism by ensuring that it works with communities with the specific intent of developing a community-led system. That will require regulatory changes.

The window of opportunity is still open but is closing fast. The model suggests that unless the opportunity is seized, we are likely to start off on a new cycle and be back in the same place in another ten to twenty years.

By moving to a community-led aged care system we would change the balance of power in the system and restore the equilibrium that makes a balanced system responsive and resilient.