

31 July 2020

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

Dear Committee members,

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

Aged Care Crisis commends Senator Griff in supporting this important Bill to provide financial transparency and accountability in how taxpayer's funds are spent in aged care.

This important Bill will require aged care providers to disclose their income, their spend on food and medication, the amount spent on staff and staff training, accommodation, administration, and how much they pay out to their parent bodies.

Aged Care Crisis is an independent community based group that is primarily concerned with the impact of Coronavirus on aged care and what can be learned about systemic problems from the responses, not only in Australia, but also internationally.

Members of our group are engaged with the aged-care sector in a variety of ways - as health professionals, legal experts, and family members of residents in aged care and as volunteers. Our website provides accessible information on many aspects of elder abuse and aged care and an opportunity for site visitors to express their views and concerns. The tenor of much of our feedback indicates a high level of community concern relating to the neglect or mistreatment of aged care residents, appalling staffing levels and skills in aged care homes and a completely opaque system in how taxpayer's funds are spent in aged care.

ACC has played a unique and pivotal role in examining events and trends within the aged-care sector. For at least two decades ACC and/or its members have taken the time and effort to respond to various aged care inquiries, reviews and consultations and critically examined scattered information. We have published articles from the coalface and created a forum where participants can tell of their experiences and comment critically. We produce a periodic newsletter. Our byline '*where little voices can be heard*' underpins all that we do.

Our submission follows.

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1 In Summary

After over two decades of opacity about financial transparency around staffing and care, the community needs and deserves information on how taxpayer funds are being spent.

Billions of taxpayer's funds are poured into aged care every year without any requirement to publicly report. In 2018-19, governments spent over \$20 billion on aged care, with the majority - approximately 70 per cent of this for residential aged care. Government Budget spending commitment for 2019-2020 is \$21.6 billion, estimated to increase to \$25.4 billion in 2022-23¹.

Providers must tell us exactly what they are doing with our money and account for it fully. Whilst privacy is an important consideration, it should not be used as an excuse or a barrier to transparency and accountability or as a way not to protect those who are unable to protect themselves.

Aged Care Crisis strongly supports the intention of the proposed Financial Transparency Bill 2020. It is an important first step to introduce much needed transparency to an opaque sector and should be strongly supported.

Trust is at an all-time low. The one thing that the public must be given is accurate, reliable and verifiable information. This Bill is a litmus test of the industry and our politician's willingness to be transparent and work with the community in sorting out the mess they have created by being so closely aligned with industry.

We refer to elements of Senator Griff's Second Reading regarding the proposed Aged Care Legislation Amendment (Financial Transparency) Bill 2020:

“... Under the Bill approved providers will have to provide annual financial statements to the Quality and Safety Commission, which will then make them public. **The financial statements will detail the amount spent on the provision of care—things like food and medication—as well as the amount spent on staff and staff training, accommodation, administration and the amounts paid out to parent bodies ...**”

A failure to pass this bill will be a clear sign to the community that government and industry are not going to change their ways and that our society needs to respond accordingly.

This Bill is an important first step to transparency, but its importance in building a working relationship with society and its citizens cannot be over-estimated.

When we have accurate financial data we can perform the research needed to refine the way in which aged care funding is applied and keep the public informed. Sector claims of *"unreasonable additional administrative costs and red tape"*² are baseless and a furphy.

¹ Budget 2019-20: https://budget.gov.au/2019-20/content/factsheets/aged_care.htm

² New Bill calls for providers to publish staff numbers by job description, Australian Ageing Agenda, 22 Aug 2018: <https://bit.ly/2DjfJHM>

It should be noted that financial and care data is already being collected and reported to the sector on a regular basis by financial institutions like StewartBrown and others³.

In a recent 2020 article⁴, Australian expert Professor Joe Ibrahim, Head of Monash University's Health Law and Ageing Research Unit, said that part of the confusion about aged care homes staffing levels and funding, is a lack of transparency for what things cost in the aged care sector. Aged care homes are currently not required to disclose how many staff they have nor how they spend government funding.

In 2005, Professor of Accounting at the University of Sydney, Professor Bob Walker, pre-eminent authority on accounting practices, examined financial documents from 18 aged-care homes and gave evidence to the full bench of the Commission in the aged-care pay case of the NSW Nurses Association. His analysis - accepted in full by the Commission, highlighted the need for better financial accounting in aged care for residents and families. He succeeded in providing enough evidence to prove that the industry was in a healthy financial position overall⁵.

Accurate information and data on performance is crucial for policy makers, regulators, community members and for informing providers about weaknesses in what they are doing. A major problem in Australia is that when the system was changed in 1997, government did not set up an effective mechanism for collecting information. They abolished state oversight and removed all accountability requirements so that providers no longer have to show where the money goes. Instead they gave the role of oversight and regulation to the industry friendly Accreditation Agency (now the Aged Care Quality and Safety Commission), something it was not designed or equipped to do.

Current policies to increase marketplace competition and consolidate the marketplace are being introduced in the absence of any reliable data about the care and quality of life that is currently provided and without a clear path for monitoring the impact of these changes on standards of care and quality of life.

1.1 The importance of data

The one fact that emerges from all of the inquiries into aged care in Australia and now the Royal Commission into Aged Care Quality and Safety is the absence of any real data about outcomes.

Missing is data about what is happening in the system, data from which you can draw conclusions and on which you can base actions. It is impossible for a market to operate effectively if the community are in the dark. Planning and policy cannot be made in a vacuum.

There cannot be financial accountability for something when you have no way of assessing the service that is paid for and no transparency as to how the funds are expended.

It is unrealistic to expect humanitarian services to be governed by the same 'in confidence' and other provisions that can be applied to the sale of commodities that are readily evaluated in other markets.

³ Financial Benchmarking, StewartBrown: <https://www.stewartbrown.com.au/services/financial-benchmarking>

⁴ Aged care staffing: send in the forensic accountants, MJA, Issue 21, 1 June 2020: <https://bit.ly/3hz34PG>

⁵ Expert Debunks Employers' Poor Plea, The Lamb, Volume 62 Issue 4, May 2005: <https://bit.ly/2OZf2WF>

Neither governments nor market have been accountable to the communities they serve and both have resorted to marketing and branding to sell their services and policies to citizens. This is not based on data and it has ignored failures and accounts of poor care from citizens. The discourse was a matter of faith, which consequently needed defense and not challenged.

In our view:

1. **Quality of service delivery:** The evidence that quality of service delivery is being seriously compromised is overwhelming but determining its extent is hampered by a lack of data.
2. **Value for money:** Because there is no accountability for how funding is spent or for the quality of the service provided, it is not possible to assess whether taxpayers are getting value for the money that it spends on aged care. The conduct of the industry suggests that widespread roting or maximizing may be occurring but with commercial in-confidence provisions and without transparency, no one really knows and it is difficult to regulate. Vulnerable sectors do not fit into the unqualified commercial paradigm.

This is our money that the government is spending. It has abandoned transparency and not ensured accountability. The manner in which market entities including the banks, have exploited every vulnerability they could find and the way in which aged care providers have exploited other weaknesses in the funding system makes it unlikely that anyone, except the providers are getting value for money.

3. **Sustainability of the sector:** Without transparent data about expenditure, staffing and quality of care, there is no possibility of determining the amount of money that needs to be spent. The endless economic argy-bargy among politicians ensures that it is not possible to estimate the resources available for providing care nor whether rationing is necessary.

To address these problems we need a system change that will have transparent and validated data collected, and that will see data evaluation, decision-making and discourse creation sited close to the bedside where its impact will be immediately apparent.

Management and policy makers should be informed and guided by the data and advice that comes from those who know what is happening.

1.2 Systemic work to fix the aged-care system

While we agree Senator Griff's statement and the Royal Commission's interim report "*showed that the government has deep systemic work to do to fix the aged-care system*", we feel that the Royal Commission has failed to critically analyse its own findings and the data available to it in order to look at the root causes responsible for the failure of the system. Like previous inquiries, the Commission itself seems to be avoiding this.

Having carefully documented the many failures in care, the Royal Commission failed to stand back and critically examine the reasons for them, and in our view is treating the symptoms rather than the disease in the system. While doing so might result in temporary improvement, the disease itself will progress and continue to manifest itself in the same or other ways.

In our submission to the Commission's Consultation paper on Program Design⁶, we drew attention to the Royal Commission's Background Paper 8 describing the failure of the many previous inquiries and reviews, as well as governments in responding to them. **Their consultation paper asked the important question as to why this had happened, but has not investigated why.**

⁶ ACC Submission to Royal Commission into Aged Care Quality and Safety, Program Design: <https://agedcare.royalcommission.gov.au/system/files/submission/AWF.660.00070.0001.pdf>

No attempt has been made by the Royal Commission to answer that question. Doing that would have challenged current dogma. As a consequence, we argued that the Commission is behaving similarly to the previous failed inquiries, and is likely to be as ineffective in developing a long-term solution and for the same reasons.

We explained why challenging the self-evident ideas adopted by the establishment in our society was so challenging that it was avoided. We examined the social science around this to show how strong the competitive market pressures driving down staffing and care were, how these inhibited critical thinking and why we frail humans found ways of ignoring issues or rationalising unpalatable data that challenged cherished and established 'truths'.

The conduct of subsequent hearings and submissions made by Counsel has at times encouraged us, but others have reinforced our assessment.

1.3 Capture: Government and aged care lobby groups

What happened in the Senate on 5 December 2019 shows just how strong the ties that bind aged care lobby groups and government really are⁷. At 9.30 that day, some crucial amendments to aged care legislation were introduced which would force nursing homes to reveal how they spent their \$20 billion of taxpayer funds each year — specifically, how much went to staff, food and *“the amounts paid out to parent bodies”*.

The Senate vote took place just five weeks after the scathing interim report titled 'Neglect' from the Royal Commission into Aged Care Quality and Safety.

When the crucial vote came, Government voted against it and, with the help of Pauline Hanson, the reform was defeated. It might seem an odd choice for Pauline Hanson, who has previously rallied against the aged care sector for *“rorting and malpractice”*, but it shouldn't be surprising that the Government voted it down.

In 2018, MP Rebekha Sharkie introduced a Bill requiring every aged care home to disclose and publish quarterly staff/resident ratios, providing some much-needed transparency to aged care.

The aged-care sector opposed this⁸ on the basis that staffing and care are *'too complex'*. This is an argument for collecting and studying data, not for hiding it.

Australia has endured over 20 years of opacity about staffing and care⁹. Both the community and the workforce have had enough. We need sunlight.

It should be noted that staffing data is already being collected and reported to the sector on a regular basis by financial institutions¹⁰. The Aged Care Quality and Safety Commission has been collecting this information for at least a decade, promising industry that this information would not be made public.

⁷ Why the Government blocked a law forcing nursing homes to reveal staff and food budgets, ABC News, 8 Feb 2020: <https://www.abc.net.au/news/2020-02-09/federal-government-blocked-law-nursing-homes-reveal-finances/11943380>

⁸ New bill calls for providers to publish staff numbers by job description, Aust Ageing Agenda, 22 Aug 2018 <http://bit.ly/2Ngi5Xj>

⁹ Aged care ratings do not tell what you need to know about Australian nursing homes, ABC Investigations, 2 May 2018 <https://ab.co/2uXYSDh>

¹⁰ Financial benchmarking: <http://bit.ly/2y0nzjY>

When it comes to the collection and reporting of financial data or development of benchmarks based on them, no one complains that it is 'problematic or 'burdensome'. This data is conveniently trotted out prior to¹¹, and during inquiry appearances¹², coronial inquest¹³, industry talkfests or when asking governments for more money¹⁴. Financially based staffing benchmarks have even been used by non-profit organisations as justification for reducing already appalling staffing¹⁵ across nursing homes.

Over the years we have supplied data to inquiries and the Royal Commission that reveals Australian staffing levels and mix was so poor, that staffing in over half of our nursing homes would be classified as dangerously low – the poorest of five groups in the USA where data was collected and staffing levels were based on data about outcomes. This classification was done in consultation with a leading academic who has been involved in studying the relationships between care and staffing for over 30 years.

We supplied this information to the 2016 Aged Care Workforce¹⁶ Senate Inquiry as well as to the Chair of the Aged Care Workforce Taskforce, the CEO of industry lobby group LASA and in February 2019 to the Royal Commission. This included the same sources and data as that supplied to the Royal Commission by Professor Eager and her team, as well as additional data showing the distribution of staffing by provider type and comparing regulatory failures.

None were prepared to consider and acknowledge the significance of this. We also canvassed empowering communities and giving them a role in holding those caring for their vulnerable fellows to account. This fell on deaf ears.

The aged care industry has been successfully lobbying governments for years. The influence of industry through government committees and policies is well known and is being rightly questioned at the Royal Commission.

There are countless examples of a revolving door in aged care, regulatory capture and perverse incentives in aged care. None to date have been addressed. We hope the Royal Commission does.

¹¹ Staffing data: <http://bit.ly/2NWfQxE>

¹² Inquiry: <http://bit.ly/2NXsQ5Z>

¹³ Coroner's inquest: <http://bit.ly/2unfrdR> (pgs 45-46)

¹⁴ SB 2017 Registration Kit "The results of the survey may also be used for other purposes. It is likely that summary data will be used by industry bodies to lobby Government and in the formulation of policy." <http://bit.ly/2AhDiPx>

¹⁵ **Southern Cross Care defends nursing home cuts, families hit back**, 13 Jul 2017, Chinchilla News <http://bit.ly/2xV9uEs>

¹⁶ Supplementary submission: Future of Australian's aged care sector workforce:

1.4 Claims to a “good aged-care system in this country”

Claims to a “*good aged-care system in this country*” are unsupported with any data and yet are uncritically accepted.

We have:

- A Royal Commission into Aged Care Quality and Safety confirming widespread accounts of poor care, understaffing and over-medication of residents;
- Thousands of accounts from families and aged care staff;
- Recurrent scandals over the years since 1997;
- Inadequate and unsafe staffing levels and skills by international standards;
- A steady decline in staffing skills at the same time as the number of people needing increasing skills increased rapidly;
- Dr Richard Kidd chair of AMA Council of General Practice, a doctor who has worked in the sector for years claiming “*It's definitely worse now than it was 20 years ago*”¹⁷, and
- The president of the AMA, another GP who provides nursing home care saying that the “*workforce did not have the “capability, capacity and connectedness to adequately meet the needs of older people”*. Doctors are crying out against “*replacing registered and enrolled nurses with medically unqualified “personal care attendants*”¹⁸.

In the midst of a deadly second wave of COVID-19 where aged care residents are now bearing the brunt of the pandemic, Professor Ibrahim when interviewed, described the effects of inertia from successive governments, an ineffective regulator, lack of action, unsuitability of market forces to aged care and a complete lack of transparency:

“... well, so much has gone wrong it's difficult to summarise in a sentence, the fundamentals are the aged care sector was never prepared and hasn't been prepared for over 20 years to manage any crisis. The Royal Commission has proven that with their interim report in November last year and we've had 20 reports showing major failures in aged care including shortages of staff, staff not having the skill sets that they need, the free market principles where there's a lack of transparency, a lack of information given to the residents and their families...”

“... There's a lack of accountability of where our 20 billion dollars of taxpayer money goes every year, the providers aren't required to account for that. We know that there are profits being made in aged care and homes are not compliant, we know that the regulator has failed and the government's own inquiry demonstrated failures in regulation, all of the issues with the this pandemic and this outbreak was foreseeable...”

Source: ABC Mornings with Virginia Trioli, Professor Joseph Ibrahim Health Law and Ageing Research Unit at the Department of Forensic Medicine at Monash University
<https://ab.co/3oc6Sk7>

This speaks for an ‘**exceptionally poor system**’, one in which all of the pressures in the system are driving it down to third world levels and where the regulator has claimed that care was improving when it cannot possibly be.

¹⁷ Quality of care in residential aged-care facilities, Standing Committee On Health, Aged Care And Sport; Hearing; 11 May 2018, Canberra: <http://bit.ly/2LDHgpN>

¹⁸ Stressed doctors quit aged-care sector in droves, The Australian, 25 July 2018 <http://bit.ly/2NIP1IA>

1.5 Fact check: Impact of ownership

When interviewed by Patricia Karvelas on ABC Afternoon Briefing, incredibly Ageing Minister Richard Colbeck was quick to defend the private sector, despite nearly three quarters of outbreaks of COVID-19 in Victorian private sector owned homes:

Colbeck: ...the community transmission has continued, the number of people has continued to grow as a basis of the community transmission and I have to say **I don't take to this concept about private aged care.** It is aged care across the board. There is no difference between any form of facility as to the infection rate in Victoria at the moment ...

Karvelas: There are more than 760 coronavirus cases in private aged care and a handful in state-run aged care, that's the difference. Has the private aged care model failed in this instance? You made the point earlier saying it's not just in the private system, but if you look at the numbers, it is overwhelmingly in the private system.

Colbeck: Well, on pure numbers, because there's more private – there's more aged care in that sector, but if you look at it in a proportionate sense, the ratios are the same. So, about 1 in 10 aged care facilities that are government run have a case of Covid in them and it is about the same proportion in the rest of the sector, the private, the charitable and the church run. And so, you know, I think this is a bit of a line that's been run. I think it's a furphy. I don't agree with it. I think it's an unfortunate way to try and characterise the aged care sector. We all know that there are issues with aged care, that's why we called the Royal Commission, and we need to manage and deal with those things, but...

Source: ABC Afternoon Briefing: Patricia Karvelas speaks to Richard Colbeck, 29 Jul 2020 <https://ab.co/2Xe8mIP>

We suggest the Minister take some time to look at evidence and data prior to making unsubstantiated comments in media. The Minister's comments show a complete disregard for residents, their families and the greater community in Australia and just how wedded to industry they are, regardless of evidence. They deserve better.

Baldwin et al studied the incidence of sanctions in Australia between 1999 and 2012 and published his results in 2014¹⁹. He found that the risk of for-profit owned facilities being sanctioned was more than twice as great as that of nonprofit owned facilities. They challenged government policy in their several articles.

These figures confirm his findings and show that in spite of the additional competitive pressures on nonprofits since 2014 in the introduction of market based reforms, for-profits are still sanctioned more than twice as often. This study confirmed a similar finding by Ellis and Howe²⁰ in 2010.

This confirmed a small study we did in 2008 and the 1999 to 2012 study of sanctions by Baldwin. Both are in keeping with the findings of the 1993 study by Braithwaite and international studies since 1994.

¹⁹ Quality failures in residential aged care in Australia: The relationship between structural factors and regulation imposed sanctions Baldwin R et al, Australasian Journal on Ageing, 22 May 2014 <http://bit.ly/2RG93F4>

²⁰ The role of sanctions in Australia's residential aged care quality assurance system Ellis J M and Howe A Int. Journal for Quality in Health Care, Volume 22, Issue 6, December 2010, Pages 452–460, <http://bit.ly/2YFBuYd>

Impact of ownership: When we examined the incidence of failure to meet all standards and sanctions separately in the inner and outer regional groups of aged care homes, we found that in both the inner and the outer groups, the for-profit owned facilities performed between one third to three times worse than nonprofits and government facilities²¹.

The big differences in the type of ownership between inner and outer facilities masked the extent of the difference between ownership types. This is what both Baldwin and Ibrahim are saying. Had the Agency analysed their figures properly by considering this variable in 2015, they would have detected this. They would have been able to confirm Baldwin's findings instead of challenging them.

As Baldwin indicated, this sort of analysis is vitally important for making policy. It is doubly so when it shows that the policy is flawed and produces worse outcomes.

Baldwin has published articles calling for evidence-based policy²². He pointed out that the *"most researched structural factor is ownership as it is a predictor of other factors that may influence quality such as staffing levels, organisational culture and financial performance. - - - - - most research studies using large samples have reported that residents in not-for-profit facilities enjoy better quality of care and have better outcomes than those in for-profit facilities. - - - The evidence on indicators of financial performance tends to favour the for-profit sector"*.

In another paper²³ Baldwin writes that the Australian government *"appears to be indifferent to other structural factors"*:

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

Like Ibrahim, he is also calling for *"wider community debate on the future shape of the residential aged care industry in Australia"*.

As Professor Ibrahim highlighted when interviewed²⁴ *"A lot of the public homes are in regional areas where the private providers will not go, and the public also tend to look after the more complex residents, particularly those that are bariatric or got significant brain injuries, and so that the public sector tends to get the much more complex, the differences that we know are, there are differences in staffing levels and ratios and staff skill sets, we know there are differences in location --- a lot of the building stock in the public sector is older, so i would have expected more transmission there because they're more likely to have shared rooms and shared bathrooms, whereas the privates tend to have far more single rooms and ensuites, and so in a sense, it doesn't make sense, looking at just the structure, why those outbreaks would be greater in private. It makes sense when you look at the staffing and the staffing qualification. "*

²¹ Aged care report card, Aged Care Crisis, 2008, <https://www.agedcarecrisis.com/news/research/108-aged-care-report-card>

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

²³ Residential Aged Care Policy in Australia - Are We Learning from Evidence? - Baldwin R et al Australian Journal of Public Administration, vol. 00, no. 0, pp. 1-14 <http://onlinelibrary.wiley.com/doi/10.1111/1467-8500.12131/abstract>

²⁴ ABC Mornings with Virginia Trioli, Professor Joseph Ibrahim, 29 July 2020: <https://www.abc.net.au/radio/melbourne/programs/mornings/mornings/12485620>

1.1 ‘Accountability’ - but to who?

To talk of accountability is meaningless if those to whom it is accountable to are not in a position to take control and enforce that accountability. This requires a degree of knowledge, some involvement and the power to insist. **In Australia and particularly in aged care, the community has been disempowered, denied information and pushed aside.**

The role of civil society, its functions and its management of its affairs, has been steadily usurped by both government and markets. This has left civil society disengaged, disempowered and ineffective in fulfilling its important role in responsible capitalist democracies. This is described by those who examine it as a ‘hollowing out’ of communities²⁵. Aged care, once a community function, has suffered most.

Government has been captured by industry and the free market discourse. It depends heavily on marketplace entities, which it consults and contracts its services to, for information. Its discourse does not see others as credible. The hollowing out of civil society has made the lack of expertise real. We no longer have the sort of civil society that is confident it can contribute.

An attempt to harness the expertise of knowledgeable community sectors and rebuild civil society through the open government and participatory democracy movements by the Gillard labor government was abruptly terminated when Labor lost power in 2013. A *“leafy maze of committees, councils and forums”* was reduced to *“a bare stump”*²⁶.

1.6 Transparency and data

The financial sector has consistently reported on the most profitable performers as the best performers in aged care. But they are careful never to set the staffing levels against this good financial performance.

Most profit comes from the income paid for care rather than for hotel services. StewartBrown reports both staffing levels and the wide difference in the money saved from the income derived from care without setting the two together. It requires little imagination to see that financially good performers are likely to be poor performers in staffing and in providing care. Staffing comprises about 70% of the cost of care.

Aged Care Crisis have emphasised the lack of data and the lack of transparency on many occasions over the years. This lies at the root of the failures in the aged care system. If we had accurate data about the actual performance of providers and of the sector, then problems that we describe could be addressed and regulatory failure could be confronted.

We would have the data needed to develop a much better system and decide how much we were prepared to spend on it.

Prior to the introduction of the *Aged Care Act* in 1997 the provision of care, mainly staffing, was largely funded by government under the CAM/SAM²⁷ system. Profits could not be taken from the CAM money allocated for staffing and any unspent funds were returned to government.

²⁵ Community Sourcing and Social Care Yapp C and Howells C Centre for Welfare reform
<http://www.centreforwelfarereform.org/library/by-az/community-sourcing-and-social-care.html>

²⁶ Tony Abbott will rue cutting advisory boards by Wendy Harmer, Sydney Morning Herald, 31 May 2015
<http://www.smh.com.au/comment/tony-abbott-will-rue-cutting-advisory-boards-20140530-zrxo.html>

²⁷ Care Aggregated Module (CAM); Standard Aggregated Model (SAM)

In 1997 staffing requirements were abolished as was all accountability for how government funds were spent. All accountability and protections for staffing were removed and new managerial strategies were adopted. There were no limits on how 'efficient' the cost cutting was and more money could be made by doing this through staffing than through accommodation.

Companies could do whatever they liked and did so to compete successfully by extracting profits from staffing and care. The only limit was the need to develop ways of passing the industry-friendly accreditation process. These measured the presence of processes, but not their implementation or outcomes.

Palatial nursing homes were built to attract the wealthy then extract profits by reducing the costs of staffing and care and additional profits were made by advertising and selling extra services.

As the 1993 Gregory report predicted, the removal of the protection of staffing levels and skills from profit taking provided by the CAM funding in 1997, has seen staffing levels and skills steadily eroded.

When it comes to the collection and reporting of financial data or development of benchmarks based on them, no one complains that it is 'problematic' or 'burdensome'. This data is conveniently trotted out prior to, and during inquiry appearances²⁸, coronial inquests²⁹, industry talkfests or when asking government for more money.

Financially based staffing benchmarks have even been used by non-profit organisations as justification for reducing staffing³⁰ across nursing homes.

1.7 Historical implications of the 1997 Aged Care Act

The historical implications of the 1997 *Aged Care Act* under Howard's reign ignored findings of previous aged care reviews including Professor Gregory's warnings. Gregory's 1993 report was tasked with examining the possibility of increasing efficiency using new managerial strategies. They concluded that *"neither the current monitoring system, nor any of the alternatives considered - - (could) - - prevent the diversion of funding from care"* if these were introduced.

Carefully designed regulation was abandoned and replaced with an industry friendly accreditation process, which was designed to assist and not police. The regulatory framework has presided over a system claiming it to be *"world class"*³¹ when it is anything but.

Government quietly abolished federal aged care probity regulations restricting ownership and replaced them with an industry friendly 'Approved Provider' process. This opened the sector to all and sundry. The welcome mat was laid out to all including those whose reason for providing care is its potential profitability rather than the altruism, empathy, community values and sense of responsibility that should characterise a sector like this.

These retrograde reforms introduced in 1997 were as Gregory predicted and which the Royal Commission has confirmed in its Interim report titled 'Neglect'.

²⁸ Economics References Committee, Financial and tax practices of for-profit aged-care providers, 17 Jul 2018: <https://bit.ly/2CRr1mD>

²⁹ Record of investigation into Death, Magistrates Court of Tasmania, Coronial Division: <http://bit.ly/2unfrdR>

³⁰ Southern Cross Care defends nursing home cuts, Chinchilla News, 13 Jul 2017: <http://bit.ly/2xV9uEs>

³¹ Australian Trade and Investment Commission - Austrade - Aged Care: (accessed 25 May 2017) <https://www.austrade.gov.au/aged-care/>

Since then, governments have attempted to keep costs down by using market pressures to drive efficiency and so keep costs down. Not surprisingly, they did drive down the biggest costs, which were unmonitored staffing and care. Both deteriorated with catastrophic consequences for those in aged care.

A major consequence was that instead of highly motivated dedicated skilled professionals providing continuity of care and familiar faces, we have seen the casualisation of care with a revolving door of, often disillusioned and unhappy, underpaid relatively unskilled staff living day to day as they struggled to make ends meet and feed their families. To do so they work across multiple facilities so encouraging cross infection. The elderly have been paying for these policies with their lives³². COVID-19 is finally shining a glaring light on this.

The new free market policies introduced in 1997 centralised the management and oversight of aged care under the Commonwealth.

The McLeay report in 1982 had warned that aged care was too complex to be effectively managed by the Commonwealth. It recommended that this should be done by local and regional bodies. The 1985 Giles report recommended local government and local community organisations be directly involved. The 1989 Ronalds report recommended that visitors and advocacy schemes should be actively involved in keeping an eye on things.

The 1997 changes went in the opposite direction and the Commonwealth took control pushing local bodies and communities aside. It is now clear that this was a very big mistake.

The quality of food has deteriorated and consumables like pads for the incontinent have been rationed leaving residents in soiled pads for long periods.

Over the years, aged care residents in nursing homes have been raped³³, robbed³⁴, bathed in kerosene³⁵, attacked by rodents³⁶, suffered injuries or death from other residents³⁷, burnt to death³⁸, strangled³⁹, cooked⁴⁰, melted⁴¹, sedated to death⁴², overmedicated^{43 44} or choked to death⁴⁵.

³² Workplace insecurity pervades the whole economy, just when every job is under threat, The Guardian, 25 Jul 2020: <https://bit.ly/2WVoDSD>

³³ Shocking numbers of elderly women being abused in aged care homes (7 Jul 2014) <http://www.theage.com.au/victoria/shocking-numbers-of-elderly-women-being-abused-in-aged-care-homes-20140706-3bg9w.html>

³⁴ (a) Victorian retiree sets up hidden camera to catch thieving aged care worker, ACA, 2 Jul 2015: <https://bit.ly/3fecX4l>

(b) No jail for NSW aged-care fraudster nurse, AAP, 7 Jul 2015: <https://bit.ly/3fcB0RI>

³⁵ Parliament hears kerosene bath led to death (ABC-PM) (8 Mar 2000) <http://www.abc.net.au/pm/stories/s108761.htm>

³⁶ Nursing home mouse infestation was present for months (CPSA): <https://bit.ly/2CjIL9B>

³⁷ (a) Residential aged care report says people are being shackled, assaulted and turned into 'zombies' (12 Nov 2013): <https://bit.ly/2Z9MSOs>

(b) Elderly woman assaulted four times while in aged care, The Age, (1 Nov 2002): <https://bit.ly/2O41yZh>

³⁸ Elderly nursing home resident died of burns in 'horrific circumstances', coroner to investigate (ABC - 8 May 2015) <https://ab.co/3e9umdF>

³⁹ Strangled by a shower cord? (SMH, 3 Apr 2011): <https://bit.ly/3ecSFqW>

⁴⁰ Nursing home blamed for patient's death (ABC - 1 Aug 2012): <http://bit.ly/OBoOul>
Coroner's written findings: <http://www.coronerscourt.vic.gov.au/home/coroners+written+findings/findings+-+071109+joan+ambrose>

⁴¹ Nursing home probe after woman 'melted to death' by a heater (Herald Sun - 8 May 2015): <https://bit.ly/3iFmgN4>

⁴² Premature deaths linked to drugs in nursing homes: <https://ab.co/31TUpCY>

⁴³ Death by medicine: <https://bit.ly/2O2XQPs>

⁴⁴ Aged care drug abuse that points to scandal, The Age, 6 Jan 2014, Amanda Vanstone: <https://bit.ly/38MSVfr>

⁴⁵ Vaucluse Gardens Aged Care facility 'understaffed' on night 85yo Barbara Westcott died, inquest told, ABC, 15 Dec 2015 <http://ab.co/1MdXOcu>

Some have endured DIY staffing (*no staff rostered on for over 10 hours at night*) in a fully accredited nursing home, resulting in recurring incidents of patients absconding, wandering and falling⁴⁶.

Family members have been kept in the dark^{47 48}, banned from visiting loved ones^{49 50} or bullied by facility staff after complaining about care⁵¹.

Some family members (out of desperation) have taken their concerns to media⁵², setup websites (or blogs)⁵³, established social media^{54 55} presences, published diaries of care online⁵⁶ or setup online petitions to have their concerns heard^{57 58}. Some have been threatened with letters of legal action⁵⁹ and a few of these have refused to buckle.

At one public meeting, family members recanted allegations that frail residents were mistreated at a nursing home already connected to claims a lady (twice) had to have maggots removed from a wound⁶⁰. In another home, staff complained of *"maggots crawling over the floor and a lack of basic infection control equipment such as gloves and liquid soap"*⁶¹. We have also seen stories of overgrown nails, untreated infections, medication mix-ups, and research showing up to 80% of aged care residents are malnourished and reports of dehydration⁶².

There are cases of residents dying prematurely because of over-prescription of anti-psychotic medication⁶³. Many are suffering needlessly from untreated infections, urinary tract conditions⁶⁴ and pressure injuries, lying in soaked pads brimming with urine and faeces (compromising skin condition) for hours⁶⁵ on end because there are not enough care staff to clean or turn them regularly. Then there are the cases of rationing of incontinence pads⁶⁶ with a daily 'limit', to save on costs.

⁴⁶ (a) Audit finds Southport Lodge nursing home unstaffed between 8pm and 6.30am, AAP, 19 Dec 2012: <https://bit.ly/2ZRvffl>

(b) No staff for 10.5 hours per day: <http://www.agedcarecrisis.com/opinion/articles/213-no-staff-for-10-5-hours-per-day>

⁴⁷ Aged Care complaints kept secret (The Age, 27 Sep 2014): <http://bit.ly/1OeQq3O>

⁴⁸ Aged care home covered up death of resident, The Age, 18 Dec 2013: <https://bit.ly/2DldYtK>

⁴⁹ Loved ones 'locked out' of nursing homes (ABC Lateline, 21 May 2013): <https://www.youtube.com/watch?v=rV76MKCxEqQ>

⁵⁰ Woman denied access to dying mother condemns 'monstrous display of evil' by nursing homes (ABC, 9 Oct 2015): <http://ab.co/1MgJ0yl>

⁵¹ Aged care residents and families 'bullied by facility staff' after complaining about treatment, advocacy group says problem widespread (ABC, 28 Sep 2015) <http://ab.co/2fYWWUs>

⁵² Anger at quality of Canberra nursing home food, hygiene (13 Sep 2014) <http://bit.ly/1KNGwqS>

⁵³ Stand Up 4 Better Aged Care - Abuse and neglect in Australian nursing homes: <http://www.standup4betteragedcare.com>

⁵⁴ **facebook**: Nursing Homes in Australia - Time For Change: <https://bit.ly/3fl3ZCA>

⁵⁵ **YouTube**: Story following four families who try to discover what happened to their loved ones in nursing homes in Australia: <https://www.youtube.com/watch?v=8t03loPwSLk>

⁵⁶ Online diary relates the experience of 82yo "Jean" as she attempted to ensure that her husband received adequate aged care during the last years of his life: <http://www.agedcarecrisis.com/opinion/your-say/318-a-fly-on-the-wall-in-hell>

⁵⁷ **change.org** petition by family members concerned about employment process of hiring staff in aged care: <https://www.change.org/p/health-minister-stop-ignoring-aged-care-safety-don-t-let-opal-s-negligence-kill-more-victims>

⁵⁸ **change.org** petition by family member concerned about accreditation of aged care homes: <https://www.change.org/p/prime-minister-malcolm-turnbull-pm-turnbull-the-life-of-a-nursing-home-resident-is-often-one-of-misery-will-you-help>

⁵⁹ Care crusade: <http://www.smh.com.au/national/care-crusade-20130824-2sjs.html>

⁶⁰ Nursing home in the spotlight over abuse claims: <http://www.abc.net.au/local/stories/2013/10/09/3865387.htm>
YouTube: <https://www.youtube.com/watch?v=TQiqbN1fLec>

⁶¹ Scabies found in nursing home: <http://www.smh.com.au/articles/2003/05/21/1053196640611.html>

⁶² Shining the light on nutrition in aged care facilities: (Alzheimer's Australia, 9 May 2014) <https://fightdementia.org.au/news/shining-the-light-on-nutrition-in-aged-care-facilities>

⁶³ Doctors could face prison over drug prescriptions (ABC Lateline, 29 Aug 2012): <http://bit.ly/MZCcLe>

⁶⁴ <http://www.smh.com.au/nsw/elite-nursing-home-under-investigation-20121110-294u4.html>

⁶⁵ Nursing home care in crisis <http://www.couriermail.com.au/news/nursing-home-care-in-crisis/story-e6freow6-1111115005107>

⁶⁶ This open letter was written by a person with a family member in a nursing home (9 Nov 2015): <http://bit.ly/1i13NvF>

The majority of correspondence we receive is due to a critical lack of trained staff, leaving many to die unnecessarily, in great pain⁶⁷, or without proper palliative care⁶⁸. One partly blind frail patient admitted to a NSW hospital from her aged care home after a serious fall, was forced out of the hospital with an eviction notice. It was read out to her in a crowded ward, which must have been quite humiliating – despite protestations from her aged care home that she needed acute care⁶⁹.

Research concludes that many resident transfers might be avoidable with better primary care in place including staff skill mix, primary care services⁷⁰ and that inadequate documentation negatively impacts on the resident's journey through emergency departments⁷¹.

Other family members have appealed to their local or state-based politicians around Australia for support or help. Although rare, some politicians have recorded the concerns of their constituents in parliament⁷². **There is an abundance of information for those who want to look.**

In stark contrast to the increasing neglect and many failures revealed in the media, at the Royal Commission, and by the COVID-19 pandemic, success in accreditation has climbed steadily over the years. Government and industry have claimed this as evidence of a world-class system and that staffing levels were adequate. Residents and their families have depended on this regulatory body to see that there were adequate numbers of suitable staff to care for them. But this was a body that did not regulate and insisted on using a process that in 2014 it claimed was incompatible with regulation. The public have been deliberately deceived.

These instances of poor care, poor staffing levels, victimisation and neglect have also been confirmed by the Royal Commission.

For example, incidences of malnutrition and pressure injuries is higher than in other countries and, as the Royal Commission has found, the sector is characterised by unacceptable levels of neglect and abuse.

Factors influencing malnutrition included *“food budget, staffing, social activities, and family bringing meals to residents”*. The *“association between malnutrition and mortality among nursing home residents is especially clear”* and the literature *“clearly indicates that malnutrition leads to earlier mortality”*. In addition *“staff training studies demonstrated clear benefits on malnutrition indices”*. Low staffing levels are associated with malnutrition⁷³.

Prevention of pressure injuries is labour intensive and failures here are recognised as a key indicator of deficiencies in both staff numbers and skills. One of us has a medical background working overseas and in Australia. Pressure sores are almost always preventable with really good nursing care and their incidence is a marker of failures in care.

⁶⁷ <http://www.news.com.au/lifestyle/health/hospital-complaint-about-wwii-veteran-posted-to-youtube/story-fneuzlbd-1226657953493>
Australian War Veteran dies in pain: https://www.youtube.com/watch?v=xn_KOlKORc

⁶⁸ Aged care crisis (ABC Lateline, 15 Jul 2013): <http://www.abc.net.au/lateline/content/2013/s3803710.htm>

⁶⁹ <http://www.smh.com.au/comment/agedcare-response-a-true-test-of-societys-caring-20150824-gj6a8b.html>

⁷⁰ Resident transfers from aged care facilities to emergency departments: can they be avoided?
Faculty of Medicine, Nursing and Health Sciences, Monash University: <http://www.ncbi.nlm.nih.gov/pubmed/26095333>

⁷¹ Shortfalls in residents' transfer documentation: challenges for emergency department staff
School of Nursing & Midwifery, Monash University: <http://www.ncbi.nlm.nih.gov/pubmed/25113312>

⁷² The Need to Improve the Accreditation Standards for Aged Care Facilities Speech
(Anthony Byrne MP – 5 Jun 2014: <http://anthonybyrnemp.com/category/speeches/page/6>

⁷³ Low staffing level is associated with malnutrition in long-term residential care homes J Woo, I Chi, E Hui, F Chan and A Sham
European Journal of Clinical Nutrition (2005) 59, 474–479

1.8 Aged Care Crisis suggestions for addressing the sectors problems

To address these many issues Aged Care Crisis is pressing for changes that would build on the insights of the reports that were ignored in 1997. It is now clear that McLeay was correct and that the centralised managerial Commonwealth approach has failed.

We argue that aged care is primarily a community responsibility and that those who provide it are our agents and doing it on our behalf. As our agents they should be directly responsible to us.

We are pressing for a move that builds on earlier insights and recommendations:

1. A funding system in which the funding for staffing and care is protected as it was prior to 1997.
2. That instead providers profitability be ensured by a negotiated contract with local and regional councils and community organisations. That local providers work closely with these local entities, their aged care assessment teams, their visitors and advocates, who would ensure full transparency and accountability
3. That Commonwealth and state bodies as well as regulatory bodies and health services be structured to mentor, assist, support and build capacity in the local organisations so that they can fulfil their important roles.
4. In order that market pressures work effectively in the interests of the residents and the community, the sector be structured in such a way (eg using REITs⁷⁴) that the local council and communities working with their mentors could terminate the contracts of providers who do not embrace community values and provide the services required. It should be possible to change providers without disrupting staffing or the care being given to residents.

⁷⁴ REIT = Real Estate Investment Trust

2 Conclusion

This Bill is an important first step towards the sort of transparent and open market system that will address the major structural problems and the harm done by the perverse incentives introduced in 1997 as well as ensuring taxpayers money goes where it should.

The absence of data has made it impossible to formulate policies that are based on evidence rather than wishful thinking. It has been impossible to make informed choice and has exposed many vulnerable citizens to the risk of exploitation by profit-focused operators.

After 21 years of the same policy, this proposed Bill would, if successful, be a major turning point. The public should place strong pressure on their representatives to ensure that it is supported and passed. They should then maintain the pressure to ensure the next step is the collection of accurate and verifiable data about care.

It is absolutely imperative that this Bill passes and Australian public interests succeed. Anything less will be detrimental and further contribute to the erosion of trust endemic with the aged care system.