

Introduction to an analysis of the new aged care act and proposals for change

Author: J.M. Wynne, Aged Care Crisis Inc.

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1 Introduction

The proposed new Aged Care Act has been developed by the department and industry without addressing the many concerns and criticisms being made of our society and of the system. It has been presented for comment on the details. Opportunities to make serious criticisms have been limited.

Our discussion group are now asked to address the finer details of the proposed act and a proforma has been provided to do that. To understand what is needed, we need to understand what has been happening in more depth. It is challenging and even the Royal Commission avoided doing this. Many are unfamiliar with the concepts and history.

The aged care system is in crisis because of many years of bad policy. It has been trapped in the prejudices and beliefs of the 20th century. We do need a new system and we do need a new Act to replace the one that has failed so badly. Large numbers of powerless and vulnerable older citizens have been neglected and abused and it is appropriate that the new system and the Act should focus strongly on their rights and our responsibility to protect them.

Sadly, the proposed new Act is still trapped in the debris of failed 20th century beliefs and policies. Those developing it have built their lives within the failed system and seem to experience the new 21st century thinking as a threat. The ideas on which the proposed new act is based are still deeply flawed. Those developing it do not seem to understand how badly the system failed and how flawed the thinking on which it is still based is. Major system changes are required if aspirational legislation is to take root and flourish in the system.

It needs major changes in order to open it to 21st century ideas and allow these to flourish so that citizens can embrace the progressive changes that are needed at the coalface, in the system, in our society, then in government and finally in further supportive legislation.

To understand what happened in aged care and why it failed so badly, as well as what has happened during and since the Royal Commission and the sort of changes needed, we need to have a basic grasp:

- a. of the social science that has developed over the last 120 years, and
- b. an understanding of what has been happening in our societies over the years and in aged care more recently.

This sort of social science is challenging and has not been popular in establishment Australia. It explains why it may not be a coincidence that it now costs twice as much to study the social science that equips students to be citizens when compared with subjects that prepare them to be workers in the system. Some basic insights are not really difficult to understand. Much of it is obvious yet we ignore it.

We stress that this is not a criticism of individuals but an examination of human and societal behaviour. COTA and OPAN have been dedicated major players in a system that has failed and we do need to consider where they went wrong and discuss what can be done about it with them.

It is a long story and this account is of necessity quite long. Few are familiar with its many facets. Time is short and we have not attempted to reference our sources. We hope it is helpful.

The intent is to give those involved the information they need to understand the processes at work and what has been happening in the world, in Australia and particularly in aged care as a result. What is needed to address this is readily apparent and it is not happening.

2 The nature of mankind and society

Overview: The social science that explains the nature of our humanity and its interdependence with the society we live in is examined. This close relationship makes us very adaptable but when the close relationship between individuals and their society breaks down citizens become stressed. They readily develop ideas that are not sound and can be harmful – usually called ideologies. Because those involved believe deeply in what they are doing the problems are difficult to address.

Successful social systems depend on a balance of ideas and power and when these new ideas take control this balance is disturbed. These systems fail to work and cause harm. We look at markets as social systems and what we know about the way they work. Markets depend on competing self-interest and will exploit vulnerable people if there is not a balance of power. We describe strategies that have been used to prevent this in vulnerable sectors.

Mankind: We are complex animals living in a complex world. We have primitive selfish selves rooted in our fight for survival as well as social selves (consciences). Social Selves evolved when we discovered that cooperating enabled us to survive and prosper more successfully. We developed cooperating societies. We learned to control and direct our primitive ambitions so that they served our common interests and did not harm others or the group.

As a consequence, we became the most successful species in the world. There is however ongoing tension between our two selves. Both are important but individuals can find society's restraining hand frustrating.

Our social nature led us to develop language and intellect. We could communicate and reflect on what we learned. We could enter into the lives of others and learn from their experiences. We learned to empathise with others, build close relationships and then imagine and experience their misfortunes. We experienced emotions that led us to help and care for them. We built societies and become loyal citizens. We would even sacrifice our lives to save others or protect society.

Our vulnerability: Humans are born immature and unformed and our development into mature humans depends on our interaction with others in our society. In doing so we develop our social selves and establish the sort of relationship we have with our primitive selfish selves. We develop values that constrain us and we identify with them. They guide us.

Our nature is therefore intimately linked to our society and its values. It cannot be separated. When one changes so does the other. This close relationship makes us very adaptable to change but also vulnerable when this close relationship breaks down.

Society, the world and stability: As intelligent beings building our lives. we need to understand the complex world we live in and we need it to be a stable world. By sharing our experiences and debating with one another we develop ideas and ways of thinking about the world (paradigms) and learn how to use the best ideas for each situation we encounter. We talk about 'world views' and 'cultures'. We learn to trust this world and one another.

The more eyes and different experiences the better our grasp of the world. The more stable our society is and the more we relate to and trust one another, the more readily our ideas adapt to and include changing situations. We talk about this sort of involved and engaged stable society where people are treated equally and where their different ideas and experiences are seriously considered and debated as a 'civil society'.

We also need to develop meaning systems and structures within society that enable us to feel safe as we build identities and fulfil our self-driven ambitions. It is society that supports us in doing this. It also sets the limits of acceptable behaviour to prevent us from harming others or society itself. As a society we develop values that guide us all as we do this. This ensures that we all benefit.

Social action: Major changes have resulted from ‘collective’ movements in civil society. We started with monarchies and dictatorships. These were centralised leadership models of society where citizens served the interests of the powerful and were often exploited by them.

Civil society movements developed as citizens imagined more equitable societies. Collective citizen movements fought for and then established democracies (government for the people by the people). Rather than leaders we elected representatives who shared our views of the world and represented us in debate.

We moved from a belief in and reliance on leaders to faith in ourselves. We have identified with this and united to fight wars to protect this freedom. That process is clearly incomplete and we are still threatened by dominating leadership.

Instability and social pathology: Our great weakness is our dependence on a stable world within which to lead our lives. When there are major changes that affect society or when civil society is weakened our ideas about the world no longer hold up and we find this very disturbing. We lose trust in the world and become fractious and unstable. This state of being was first described by a social scientist in about 1901 and many have written about it since. He called it ‘anomie’ to contrast it with ‘nomos’ the Greek word for law and order.

At times like this it becomes more important for us as individuals to have a stable view of the world than that this view should be real. We are very susceptible to appealing but irrational beliefs. Individuals and groups readily develop and adopt beliefs that are not sound and then build their lives using them. They will fight to impose them on society and then defend them with their lives. We readily return to a cult of leadership rather than representation. Believers see themselves as being superior because of their knowledge and when they gain power they dominate and lead.

These new beliefs are often a one size fits all model that is harmful and undemocratic. Groups within society are exploited or harmed. Analysts call these ‘ideologies’ but believers strongly reject this description when criticised.

We need to understand that these are not bad people. They believe deeply in what they are doing. This is why they are so successful even when they are doing harm, and why the situations are so difficult to deal with. We are all vulnerable and Australians are not different.

Explaining this: Social scientists have written about the way humans ignore existing knowledge when creating ideologies. Others have written about the psychological and social strategies that believers use to shield themselves from evidence of failure and from logical argument. We can understand why those who created our aged care system discounted critics and continued to claim that it was world class even as it crumbled and fell apart. Many of them still cannot accept it.

The 20th century has seen huge changes and social upsets. It has been plagued by ideologies. It was one of the most violent in human history. This is likely to be at least partly due to the development of mass media and to skills in marketing. Believers have been able to get their appealing ideas and messages out faster and to a far larger audience than ever before. We also developed far more lethal weapons. The development of social media in the 21st century has compounded this.

The books analysing these social processes are examined and referenced in Appendix G, 'Books and people who analyse' of Aged Care Crisis' detailed June 2023 submission to "A new model for regulating aged care".

Relevant recent analyses: In 2022 an Australian Professor John Braithwaite, a social scientist published his work studying the periods in history when there was a stable world view supported by a well-developed civil society and stable government. He compared it with those periods when it was controlled by dominant individuals or groups (including market dominance). These periods were associated with high rates of criminality and citizens were harmed. He also described the breakup of society (anomie) when these systems failed. He described the association with war.

These periods which he called 'cascades of criminality' were very resistant to change and it was only when citizens rallied and rebuilt a stable civil society where many different ideas could be debated and evaluated that stability returned.

A similar sort of analysis of complex social systems within society published in 2006 showed that social systems also depended on a balance of points of view and a balance of power between participants. Any one group with particular interests that might be harmful is checked by others. The system is stable and the many points of view make it adaptable to change and resilient to shocks.

When as sometimes happens one group becomes dominant, the system becomes unbalanced and harmful. It is no longer adaptable and resilient. The social system in which this happens now goes through cycles of failure as the now powerful and entrenched groups regroup after each failure and take back control by centralising management. This sets the stage for further failure. This cycle of recurrent failures is only broken when other participants and society seize a window of opportunity to take back control and decentralise.

While this process has been analysed primarily by scientists studying resilience it can be seen to have happened in aged care in Australia. We need only look at the recurrent failures and the many inquiries and unsuccessful centralised attempts at reform. That seems to be happening again in the new *Aged Care Act*.

The market as a complex social system: That a successful market depended on competing self-interest and that this self-interest created problems for vulnerable people unable to compete was first recognised in ancient Greece. This happened in health care where patients were vulnerable. The importance of collegial engagement in maintaining ethical standards, values and responsible conduct was recognised. Ethical standards based on values, responsible conduct and collegialism were embedded in the Hippocratic oath that doctors first swore allegiance to about 2500 years ago.

Adam Smith the 18th century father of economic theory also recognised that providing good service was not really in the self-interest of the individual providing it. Good service depended on the knowledge and power of the customer. This power ensured that the interests of the service provider were in serving the customer well as his reputation would suffer.

Smith also described businessmen as an order of men whose interests were not those of the community. Any suggestions they made should always be carefully examined by society before being adopted.

If we convert these insights into 'necessary conditions' (a basic logic concept) then a knowledgeable and capable customer, and an involved civil society that sets the limits of permissible conduct are two necessary conditions for a market to work. Neither exist in aged care today.

Addressing this problem: If we look at it another way then Smith is saying that as a general principle, businessmen's self-interest means they cannot be trusted without checks and balances. Vulnerable people and even society itself will be exploited if the market has too much power. This will happen unless a situation is created where being trustworthy (described as probity) is necessary for success in the vulnerable market where they operate. There are ways of doing this.

Probity: The vulnerability of some sectors in society to exploitation has been recognised for a long time. Only those who embraced community values and so were seen as trustworthy (fit and proper) were permitted to provide services in these sectors. This was later enforced by 'probity regulations' for vulnerable sectors including health and aged care. The past conduct of applicants for licenses was examined to ensure they could be trusted before granting a licence to operate. Their owners were also evaluated as their financial control enabled them to influence behaviour. Probity requirements were abolished in aged care in 1997.

Cooperative businesses: Another way of addressing this is for services to be provided by cooperating community groups – people who are a part of the community or caring professions who embrace community values and work together. They cooperate to meet need and competition is controlled and limited. They set the standard that others must meet. To compete others must become part of the community and adopt community values. The Business Council of Cooperatives and Mutuals is pressing for this approach in Australia and is being supported by government - but it is not being supported for aged care.

Place based collaboration: Yet another way of creating the needed checks and balances is to build local capacity and empowerment and give local government and communities control over vulnerable markets locally. Providers of services would be required to work with communities and be accountable to them. On site communities would ensure that those they supported were trustworthy and adopted their values. This is the 'place-based collaboration' model introduced in Canada and now gaining support in other countries including Australia.

3 Relevant history of Society

Overview: We explain how the great depression of the 1930s disrupted society and how Hitler and Mussolini were able to get German and Italian Citizens to embrace fascist beliefs and go to war to spread them. Citizens across the world united and fought to defeat them and restore democracy and create a balanced society again.

But a group of economists in Austria misinterpreted the situation and ignored all the knowledge we had about humans, society and markets. They blamed citizens and social movements for what had happened and argued that all collective citizens movements led to dictatorships and destroyed the freedom of individuals. As economists, they believed that freedom was expressed through markets and that any restrictions on markets stopped them from working and were harmful.

We describe how this belief system appealed to economists, businessmen, managers and politicians. It spread across the world and by the late 1960s factions within political parties were adopting these ideas. When it was adopted as the dominant model for globalisation in the 1980s it became a one size fits all political and market system in many countries.

Big corporations became more powerful than governments and society was pushed aside and lost its capacity to impose its values and protect citizens. We describe the way that citizens in vulnerable sectors were soon exploited by big corporations in the USA and UK. We describe how all this has impacted on societies and how they are once again breaking up. More dangerous ideas are spreading.

To understand what has been happening in society, politics and aged care we need to go back to the early 20th century and to the great depression of the 1930s. This is when civil society in Europe collapsed and charismatic leaders like Hitler in Germany and Mussolini in Italy rose to power by selling fascism to stressed citizens. This phenomenon is often described as 'populism'. These dictators expanded their empires by invading smaller and weaker states.

Communities and societies across the world united to protect democracy and joined together in the Second World War. Millions of dedicated citizens were wounded or died to protect our democracy and the freedoms that many had fought so hard to create in the past.

Response to the Great Depression: The collapse of the US stock market in the 1930s that precipitated the Great Depression was blamed on a failure to control irresponsible market behaviour. A new economic approach at the time (Keynesian Economics) saw governments take more control over markets, prohibit situations where there was a conflict of interest and take regulatory action to prevent problems. This approach was firmly established by the end of the war and there was a long period of stability. But there were those who had different experiences and in due course this was to be challenged and overturned.

A new belief: A group of economists in Austria had seen and experienced what had happened in Germany and like so many in this situation they ignored existing knowledge about society and the important role that community had played in establishing democracies. They ignored the way citizens had united to defeat these dictators.

Instead they interpreted their own experience of collective populism in Germany as the norm and not an aberration. For them, what they described as the 'collective' became the great threat to the freedom of individuals and they equated collective action by citizens with socialism. Friedrich Hayek its most prominent leader wrote:

"In theory Socialism may wish to enhance freedom, but in practice every kind of collectivism consistently carried through must produce the characteristic features which

Fascism, Nazism, and Communism have in common. Totalitarianism is nothing but consistent collectivism, the ruthless execution of the principle that 'the whole comes before the individual' and the direction of all members of society by a single will supposed to represent the 'whole'."

These were economists and they saw individual freedom as being expressed through markets freed from restrictions by the 'collective'.

Terms like 'free market' and 'economic rationalism' are misleading because this was much more than a theory about markets. It redefined the relationship between mankind and society by not only putting individuals and their selfish selves above society but by turning society and balanced collective action by citizens into threats. That was likely to have huge consequences for society and so for the sort of citizens that comprised it.

Markets were given properties they did not possess. It was claimed that unrestricted markets always corrected themselves and that any attempt to control or contain them prevented this. The belief called for small government and minimal if any regulation.

This new neoliberal belief system challenged the Keynesian approach but at the time had little credibility.

Growth: These ideas appealed to economists and businessmen. Milton Friedman, an economist from the USA was an early convert who became very influential in promoting these ideas in the USA. Both Hayek and Friedman later became advisers to Prime ministers and presidents and both won the Nobel prize for economics. Friedman considered "*social responsibility*" to be a "*fundamentally subversive doctrine*" in the marketplace.

In 1947 two years after the war ended Hayek and his supporters formed the Mont Pelerin Society in Switzerland as a venue for developing these ideas and disseminating them. Similar satellite think-tanks promoting these ideas were soon formed in many other countries. Politicians and businessmen were influenced and by the mid-1960s divisions were opening up within conservative political parties in the USA and Australia and then later in the Australian Labor party as well.

A supporting belief system: During the 1960s, Russian immigrant, writer and 'philosopher' Ayn Rand led a movement rejecting the restraint imposed by the '*collective*', which she described as "*the tribal premise of primordial savages*".

Her philosophy 'objectivism' promoted selfishness as a virtue and condemned social values like altruism. It rejected existing knowledge and was largely ignored by social scientists at the time. But the ideas appealed to many and her group soon gathered a popular following as 'libertarian' movements promoting individual freedom from social control, seized on these ideas. They grew as a result.

Her ideas resonated with Hayek's followers and were promoted in many of the same think tanks. She became far more influential after her death in 1982 when these ideas spread globally.

Globalisation: President Reagan in the USA and Prime Minister Margaret Thatcher became converts and when they were elected at the end of the 1970s they embraced globalisation. They worked together to make this a market process and it was based on free and unfettered markets. States were required to remove any restrictions on the operation of markets – a process called 'liberalisation'. Globalisation of civil society was far more limited so this market was unbalanced.

An analysis of what happened in the USA by the Rand Corporation in 2018 argued that the defeat in Vietnam and then the Watergate scandal disrupted society during the 1970s making US society vulnerable to these appealing ideas and leading to Reagan's election. They called this a period of 'truth decay'.

In the UK and Australia, the dominance of unions and many industrial disputes may have done much the same. The swing to neoliberalism was accompanied by a backlash against unions in the business sector and among conservative politicians in both countries.

Market Dominance: Fragmented markets were seen as immature. Consolidation into fewer but much larger competitors was encouraged. Competition was seen as a universal good. Any form of cooperation, collegialism or professional protection from perverse market pressures was seen as anti-competitive. The caring professions were targeted because of this.

Soon large multinationals were bigger, wealthier and more powerful than states. Countries competed to attract them to invest in their industries where they were welcomed. Local companies increased in size, power and confidence. Businessmen and politicians became more and more aligned as politicians made every effort to encourage the businesses and protect their interests.

Spread: The number of think tanks and educational foundations increased. The Atlas network founded by a member of the Mont Pelerin Society grew rapidly and there are now over 500 Atlas member organisations around the world, many teaching both Hayek and Rand. They raise funds from supporters and target top students in business, management, law and politics by offering leadership courses and leadership scholarships.

For example one Atlas network an '*Economic Education Foundation*' in Western Australia teaches both Hayek and Rand. Its mission is to "*develop future free market leaders*" based on the principle that "*limited government and free markets are essential components for the future success of Australia*". It claims to have awarded 2,000 scholarships from the state where it operates to send students to study these ideas in international institutions. These students see themselves as leaders.

Managerialism: Economists were early converts but business schools and management courses followed. A particular mode of managing that did not rely on knowledge of the actual business managed was considered to be superior and became dominant. Called 'managerialism' by critics it considered that it had superior knowledge and should lead. It focused on cultural change and the use of personal incentives – a strategy first tried in education in the 1960s but later abandoned because of its adverse impact on student's behaviour.

Managerialism spread these neoliberal ideas across society imposing them and pushing civil society, its diverse experiences and its values aside. Citizens embraced the leadership model.

A leading Australian doctor in the 1990s described this as transfusing 'mad cow thinking' into every vein of our society. (Mad Cow disease acquired from infected cattle causes bizarre thinking and behaviour). Social scientists wrote a book "The Human Costs of Managerialism" warning of the consequences for society and citizens. Many similar warnings were ignored.

Benefits: There has been a huge growth in business and industry. This increased employment and wealth in many countries including Australia. Countries with cheap labour have prospered although sometimes by exploiting those labourers. This has also fuelled consumerism, increased damage to the environment and contributed to global warming.

Consequences: Politicians in many countries including Australia have adopted a leadership approach and this one size fits all philosophy. They market their beliefs to the public and employ marketing experts to help them do so. The corporate press have followed and supported this.

We have returned to a leadership model of government and representative democracy has suffered. People in vulnerable sectors have lacked power and have been exploited. Society has not been there to protect them. Social scientists have described the consequences for both civil society and our democracy. One described our society as kidnapped.

Across the world but particularly in the USA, the UK and Australia there have been multiple major market failures and they have occurred in sectors which are vulnerable because citizens or employees do not have the knowledge or power to resist exploitation. There have been many scandals involving, financial institutions advising citizens (including Wall Street market leaders), banks, large businesses (eg. Enron, Worldcom, Citigroup) and many more. Vulnerable sectors like health and aged care have been victims in the USA and UK.

These many failures in the USA in the 1990s challenged belief. Industry and politicians started talking about 'governance'. This more modern use of an old term focussed largely on self-governance. Strategies were developed, which corporations were expected to use in order to regulate themselves. While some have become more careful it is now clear that governance was no match for strong unopposed competitive pressures in vulnerable sectors.

Society unravelling: These policies have seen a large maldistribution of wealth which is now concentrated in a small percentage of the worlds population. The numerous failures can no longer be ignored and many are writing critically about neoliberalism and proposing alternatives.

Society has been fracturing again and this is occurring globally. Social scientists have shown an association between the breakup of civil society in this way and wars.

While there are probably multiple factors, having a dominant global belief that sees society itself as a potential threat and pushes it aside will have made the world more vulnerable. We are seeing a host of bizarre populist beliefs and cults. It is probably not a coincidence that citizens in 'democracies' across the world are electing leaders like Trump in the USA, Johnson in the UK and Morrison in Australia.

Some countries are already at war. Civil society has withered and is no longer a stabilising force. The problem is now so extensive that social scientists analysing this have called it the 'Post-truth era'. War has already broken out between Russia and the Ukraine as well as Israel and Gaza. Other relationships are tense and an article in The Conversation (29 December 2023) identifies another five places at high risk of war in 2024. We have huge problems to address and our societies are in no condition to do so.

Responding: There are now local and global citizen's movements that understand what is happening to society. They are pressing for real change but the establishment is resisting strongly.

We need to examine how all this has played out in Australia and impacted on aged care.

4 Australia and the consequences for aged care

Overview: The early history of free market beliefs and of aged care in Australia are described. These neoliberal ideas influenced aged care policies in the late 1960s. The problems created were exposed in the early 1980s and a reform agenda was commenced. The reforms challenged the new belief in markets. Industry resisted and the reforms stagnated.

Early aged care: Few lived to old age in the early years of colonisation. Care of the sick and vulnerable moved progressively from poor houses to community organisations supported by government and this developed further after the Commonwealth was established at the turn of the century.

By the mid 1960s free market neoliberal ideas were becoming influential. Government thought that a for-profit market would be more efficient in aged care and cost less. Funding was provided to encourage this. The system was not regulated.

Businessmen instead saw investing in the sector as “*low risk, high profit financial ventures*”. The number of nursing homes expanded rapidly as for profits increasingly dominated. Australia soon had one of the highest nursing home occupancy rates in the world and many did not need to be there. Home care was not as profitable and attempts to encourage this failed.

The Whitlam Labor government (1972-5) tried to favour non-profit providers by funding them better but without success. For-profit providers formed an association to counter this.

The Fraser Coalition government (1975-83) did little to address the problem. By now both major parties had factions supporting neoliberal free market ideas with Fraser adopting a Keynesian approach while his Treasurer John Howard adopted neoliberal ideas.

The Productivity Commission was moving from Keynesian economics to free markets and would play a major role in advising on this.

Aged care reform: By 1983 when the Hawke Labor government gained power, Reagan and Thatcher were driving globalisation based on neoliberal ideas across the world. Hawke accommodated to this but did not embrace it fully. There was tension between him and his treasurer Paul Keating who did. It was Hawke who finally accepted the challenge posed by aged care and commenced a 10 year aged care reform program.

Relevant and significant reviews and inquiries in aged care (1970 to 90): The Coleman (1975) and particularly the McLeay inquiry (1982) recognised the complexity of the sector and the variability of both individual needs and cultural differences in different areas. They argued that this was too complex to be managed centrally by the Commonwealth and both wanted it to be done regionally by people who were on site and could work with individuals and address local circumstances as had happened in health care. This did not resonate with the new free market advocates.

The Giles Review (1985) of private nursing homes exposed neglect, abuse, understaffing, maladministration and regulatory failure. It was reminiscent of the later 2019 Interim Royal Commission Report. It advised reforms to staffing as well as local community involvement in complaints handling with ‘Community Standards Committees’ to monitor care in each region. This did not happen.

The Ronalds review (1989) reflected the government’s commitment ‘to social justice’. It focussed on human rights. It also advised an empowered visitor’s scheme to watch over and monitor care and a strong independent advocacy system.

The industry derided the visitors scheme as a 'community busy bodies scheme' and strongly opposed this and the advocacy schemes. When both were later introduced their independence, powers and roles were markedly reduced so that they were relatively ineffective. In spite of strong opposition, a human rights law for aged care was passed in 1991.

The Hawke Reform program: Hawke commenced his 10-year reform program in 1986. The many reforms included an assessment process to limit unnecessary admissions, and a 'Resident Classification Instrument' to estimate the costs of care. The funding for staffing and care (CAM funding) was costed separately using the classification instrument. Providers had to account for how they spent this money and return any unspent funds. Care was protected as profits could no longer be taken from providing care, only from the remaining funding (SAM funding).

The new 'Home and Community Care (HACC)' program encouraged home care. Hostels were supported to provide care to those who only needed assistance and not nursing. The uncontrolled growth in nursing home beds was stopped.

A rigorous oversight program was carried out by state regulators and the results collated centrally. A set of 31 objective standards were measured. When failures occurred regulators focused on them and investigated to identify problems and see why the failure had occurred.

A study comparing this oversight system with the USA and UK concluded that it was superior to both. Another study compared different sorts of provider concluding that as in the USA failures were a result of pressure from the top to '*get this done, but don't tell me how you do it*'. This was more common in for-profits. Care improved and the plan was to steadily improve care by increasing the frequency of visits.

The Keating government 1991 to 1996: When the conflict between Hawke and his treasurer became too great Keating replaced Hawke. He immediately changed tack. He started marketising and restructuring society and markets along neoliberal lines. He set up a National Competition Council to implement and manage National Competition Policy.

The Liberal opposition meanwhile: Industry and opposition conservative politicians had established the HR Nichols Society in the 1980s. It met regularly to discuss market and legal problems as well as policy. They focussed particularly on the unions who had become powerful under Hawke.

Keating did not consult widely and his marketisation policies were unpopular. By 1996 Howard was well prepared and he did not need to really explain his policies to win the election.

The HR Nichols Society was fertile ground for neoliberal ideas and some years later it became affiliated with the Mont Pelerin Society. Many of their members joined it too. John Howard did so in 2010 when he was no longer prime minister. He was honoured at their annual meeting held in Sydney.

The marketisation of health care resisted: Keating started marketising health care and the first of a succession of large US multinational hospital companies was enthusiastically welcomed into Australia by the market and politicians in December 1991. This company as well as multiple others were in trouble in the USA where many patients had been misused and exploited in order to defraud insurers. This was simply ignored.

Some citizens were aware of its practices and ABC Four Corners showed an expose of the company's conduct in the USA in 1992. Concerned citizens now knew who to contact. They collected information from contacts in the USA and supplied this to state probity regulators. These regulators resisted strong pressures from governments and found that the company could not be trusted. They advised against hospital licenses. Governments fought back and two states refused

to reject licences. It's a complex story but after criminal convictions in the USA the company eventually left in 1995.

When elected in 1996, the Howard government promptly welcomed three more US multinationals into health care. One was an aged care provider in the USA where similar problems to those in health care had now developed. Information was readily available and it was supplied to regulators. None stayed for more than a few years.

The medical profession was now well aware of what had happened in the USA and at the first meeting with the new minister in 1996 the president of the AMA made his views clear. There was a heated standoff in 1997/8 when the medical profession refused to accept US-like policies which would have limited their market power. They stood firm.

A few years later when Australia's largest private hospital owner, which had formed a close relationship with the Howard government, adopted unacceptable US style business practices the doctors used their market power and took their patients elsewhere causing profits to plummet. The company sold its hospitals soon after. The medical profession was the second customer and it had used its market power to protect Australia and its vulnerable citizens.

This does not mean that market policies have not had an adverse impact or that the profession has always got it right. But it shows the benefits of having a second more powerful but responsible customer in vulnerable sectors. That is an option for aged care.

Marketisation of aged care delayed: The for-profit sector had lost credibility and power after the Giles report. But by the time Keating became Prime Minister it had rallied strongly behind Doug Moran, the owner of a major provider of care. It strongly opposed the Hawke reforms. Keating did not support the Hawke reforms either and they languished.

Keating planned to introduce free markets into aged care and use the new market management strategies. He commissioned economist Bob Gregory to advise on this. Instead Gregory advised strongly against this, warning that it would be necessary to repeal the CAM funding that protected care from profit taking. If this was done neither the current system nor any possible alternatives would be able to prevent the diversion of funding from care. Keating did not do so.

5 Neoliberal dominance and aged care (1997- 2018)

Overview: The full introduction of neoliberalism in Australia and into aged care by the Howard government is described. Failures soon developed in aged care and many other sectors. Developments and failures are described as these policies were pursued by subsequent Coalition and Labor governments.

We describe the development of 'governance' processes in an attempt to control the many markets that were failing. There were multiple reviews and inquiries and attempts at reform which did not work. The free market policies were repeatedly reaffirmed during this period.

We examine the role that different senior's organisations played in supporting and developing this unchecked market or in criticising it. We look at the way political parties and the public service were captured and controlled by the market.

We discuss the concept of State Capture and describe a damning 2022 report describing it in Australia. The rapid deteriorated and revelations of more and more failures after 2016 saw the Morrison government bow to pressures for a Royal Commission.

The Howard Government (1996-2007): Neoliberal policies were pursued far more aggressively by this coalition government and all warnings were ignored. Small government, minimal regulation, competition and efficiency were the driving forces. The size and skills of the public service were drastically reduced and industry leaders were put in charge of departments. Industry figures were appointed to policy making committees and over the years policy issues were progressively contracted to marketplace advisers – even when they were not primarily economic. The big Four accounting firms led the way but many others participated.

The public service was no longer independent. It often served government and industry rather than society. There was a revolving door between politicians and senior public servants on the one hand and industry on the other as they grew closer and closer together.

The government favoured those who supported them with funding, contracts and grants. The contracts could include gag clauses. Only those who were agreeable to work with them were contracted and funded to do so.

Critics particularly advocacy groups lost their funding or received less. Many conservatives did not believe that the government should be funding organisations that criticised them. There was alarm when in 2017 one of the strongest proponents of restricting funding to critics was appointed to head the Australian Charities and Not-for-Profits Commission. All this had a chilling effect on criticism from civil society organisations.

Over the years as the system failed many blew the whistle and there was extensive coverage of failures in aged care. It was rare for there to be any mention of the advocacy service or to see any input from them. The problem was finally graphically illustrated in the 2016/17 exposure by state regulators of what had been happening at the Oakden facility over the previous ten years. The government contracted and funded advocacy service, had visited on multiple occasions during that period but not acted. The accreditation agency had been giving it a perfect score.

Market failure and governance: As indicated earlier, Neoliberalism has been associated with major market failure and scandals across the world. In Australia it started with the Bond and Skase scandals in the early 1990s and there were soon many more including the collusive price fixing scandals in the trucking (1994), cement (1995) then packaging (2007) industries.

This was a government that was committed to minimal regulation. After the HIH Insurance (2001) and One Tel telecommunications (2001) collapses and a Royal Commission investigation,

'governance' became the solution to corporate problems. It relied on the companies and the market to fix and control themselves. In a sense it delegated the solution to the market itself.

It was introduced in 2005 through the public service where Lynelle Briggs, who would later be a Royal Commissioner, played a key role. She became an authority. The stock exchange took control of its introduction into the marketplace. It has been the go-to solution ever since.

If we look at the ongoing market failures it is clear that governance has been no match for the perverse pressures introduced by national competition policy in a one size fits all free-market model. Every vulnerability has been exploited. Key trusted institutions like the financial advice industry and the banks, which would be expected to embrace governance processes have led the way. It has been whistleblowers (concerned citizens) rather than regulators who exposed the problems.

People on visa's working in Australia are particularly vulnerable. Franchising groups have been problematic and the 7-Eleven scandal exposed widespread wage theft in 2014/15. Senate Inquiries have revealed widespread abuse and wage theft of holders of Working Visas across large sections of the market.

The lending industry, the betting industry and the trucking industry have all been accused of exploiting the vulnerable. Trusted Medical Insurance companies like Medibank have been accused of prioritising profits over people.

Government services contracted to the market have fared no better. The vulnerable have been extensively exploited in Job Services Australia and in the Vocational training (VET system) which was privatised by the Howard government.

Aged Care and Disability Care: The recurrent and ongoing market failures in the aged and disability care markets cannot and should not be separated from this wider context and the philosophy that underpins market policy.

Successful market practices are highly infectious. The banks have invested in both caring sectors. They are influential role models and sit on boards. The VET system trains staff for both sectors and a system that behaves like it did does not create socially responsible empathic workers or spread professional values.

The story of aged care: Aged care illustrates the way policy unfolded. The Howard government abandoned all of the Hawke reforms. It worked closely with Industry and was advised by Moran and his colleagues. Moran later even claimed that he had written the act.

The 1997 Act removed all funding and staffing controls as well as accountability and probity requirements. It handed the process to the market and it became market-led. The rigorous state regulations were abandoned and instead a centralised accreditation process was introduced. The minister stressed that this was a process to assist providers provide care and not a regulatory process.

There had already been problems with accreditation in the USA. President Reagan's plans to use it as the only regulator in the USA had been abandoned because of the strong opposition. There was little opposition in Australia.

Accreditation: The illusion that accreditation was not a regulatory process was strongly asserted by the agency itself over the years. In its 2011 submission to the Caring for Older Australians Inquiry, it objected strongly to its being included in the single regulatory body that was advised on the basis that it was not a regulator. Although it was renamed and restructured several times this amalgamation did not happen until the Morrison government did it in 2018.

No one else thought this way during this period and both government and industry were soon responding to critics by claiming world class excellence because of this rigorous regulator!

Policies: The policies introduced after 1997 led investors to look forward to large profits. Many now invested. Government kept its hands on the funding to ensure they focussed on costs.

The Labor opposition under Kim Beasley swung away from Neoliberalism and strongly opposed this legislation. Senator Gibbs gave a prophetic speech drawing attention to Gregory's warnings. She predicted a return to the horrors exposed by the 1985 Giles report.

The Riverside scandal, the first of many major failures occurred only three years later in 2000. There were many more as staffing and care services deteriorated steadily over the next 20 years. As indicated earlier these triggered many inquiries that exposed staffing and other problems. The system was repeatedly patched, regulated and centralised but the deep flaws in the system and its one size fits all market were ignored. The problems continued.

Two reviews by economists accelerated this process. Howard appointed economist Warren Hogan to conduct a review in 2004. He found that although they were paid the same, some providers were profitable but others were not. The accreditation process showed no difference in performance. He concluded that many providers were inefficient in containing costs and that this needed to be addressed. This put more pressure on staffing.

Many of the early investors were not making the profits they expected. This was because their biggest cost was staffing and the unions were still strong enough to prevent them reducing staffing levels too far. Banks and private equity were not investing because of this. The government helped by passing the unpopular work choices legislation in 2005. This reduced the power of unions. Banks and private equity invested and the pressure on staffing and care increased as costs were reduced.

Labor government (2007-13): Howards growing unpopularity saw Labor win the 2007 election and Kevin Rudd became prime minister. He was not a supporter of neoliberalism. He was faced by the 2008 financial recession and aged care was sidelined. Australia came out of this recession well because of his more Keynesian like response.

In 2009 Rudd published a scathing criticism of Neoliberalism in 'The Monthly' claiming its time was over. He also planned to tax the mining companies that were making so much money selling bits of Australia to others. He clearly underestimated the political power of the market.

The Gillard government: Rudd was soon deposed by his own party and replaced by Julia Gillard. Gillard did not win a majority at the 2010 election and governed with the support of independents. She created the NDIS to address the many problems in the care of the disabled. It too relied on market processes.

Another aged care inquiry: There had been more and more reports of failures in aged care and something had to be done. This time it was Labor who turned to the Productivity Commission and appointed economist Mike Woods to conduct the 'Caring for Old Australians Review' in 2010. Its 2011 report gave the market everything it wanted including more money. In addition, it recommended greater centralisation at the top, something even the accreditation agency resisted. What was happening became very interesting.

The story of senior’s civil society organisations: Three major seniors organisation have represented seniors in Australia, National Seniors (established 1976), Council on the Ageing (COTA established in 1957) and the Combined Pensioners and Superannuant’s Association (CPSA established 1931). CPSA had played a major role prior to 1997. It strongly opposed the 1997 changes and soon lost much of its government funding.

COTA was far closer to government and supportive of policy but the other two were critical. Plans for COTA and National Seniors to merge were abandoned in 2004 because of these differences. In 2010 National Senior’s CEO Michael O’Neill was scathing saying that there was “*no doubt the current aged care system is broken. It reflects a decade of inaction ...*”

The National Aged Care Alliance (NACA) was formed in 2000 to work with government in formulating policy. All three senior’s groups were initially members. A condition was imposed that required members to adopt agreed Alliance policy positions. They could not criticise decisions. This was unacceptable to National Seniors and CPSA as industry were in a majority and they would have to rubber stamp industry policy. National Seniors and CPSA resigned and were then largely ignored by government.

COTA had no trouble with this and soon took a leading role working with industry to develop policies. Its CEO, Ian Yates became the public face for government promoting and supporting policies. COTA has been funded to undertake multiple projects for government including surveys of community attitudes.

The Living Longer Living Better (LLLB) reforms: COTA took a leading role in working with NACA members in implementing the Productivity Commission’s 2011 recommendations. They developed the LLLB reforms and worked closely with the Minister for Health Mark Butler who was persuaded to adopt them.

These policies reaffirmed the market system developed by Howard in 1997 and went even further by bringing back bonds for nursing home residents calling them ‘Residential Aged Care Deposits (RADs)’. This made large amounts of money available to providers. Howard had abandoned his plans to introduce bonds in 1997 because of a massive public backlash. Now the same party that had been so critical of Howard’s policies and of bonds in 1997, was rubber stamping the policies and even bringing back bonds.

Ian Yates proudly promoted the new bill to introduce the reforms to a senate committee claiming it was “*historic for COTA*” and that it was “*something that we have been on a long journey to achieve*”. He urged the senate “*- in the strongest terms that the bills before the parliament should be passed -*” COTA led the presentation to the Press Club promoting the new LLLB reforms. There was some irony in the title “*The aged care time bomb is ticking*” because these new reforms seemed to light the fuse which sent the system plunging.

Yates has been appointed to many government aged care committees over the years. During the development of the LLLB reforms COTA’s current CEO Pat Sparrow was its ‘*Director Aged Care Reform*’.

What was really happening - State capture?: While clearly there was still a neoliberal faction in Labor this sacking of a prime minister then turnaround in policy raises issues. Rob Oakeshott was one of the independents who supported Gillard. In 2014 he offered some insights into what was happening. This explained why the industry could take control of policy.

Oakeshott published an article explaining *“How big business hijacked parliament”* and describing how donations and lobbying created a situation where these wealthy businessmen were *“intimately involved with, and crawling all over, our democracy”* and so sent *“many necessary policy reforms to the doghouse”*. This resulted in *“the policy inertia of Australia today”*. It was *“a sold out democracy bent to the will of big business”*.

Subsequently there was a Grattan Institute report and then a senate review of donations. When independents developed legislation to address these issues both major parties voted against it.

Others were also alarmed at what was happening. A professor at Latrobe who studied these things wrote an Article *‘Democracy in Crisis’* in December 2014 looking particularly at the way global issues were impacting our democracy. He pressed for civil society to address the issue.

Justice Fitzgerald whose 1987 Inquiry exposed the corruption in politics in Queensland warned in 2009 about a drift back to the past. He spoke out again about what was happening in 2015. Also in January 2015 the Canberra Times criticised the way Abbott was running the country like a business and The Conversation described the way he closed down Freedom of Information.

Others described the way politicians kept the public in the dark about what they were doing. In 2015 they criticised Morrison for the way he personally controlled information in his portfolios and *“almost completely stripped his departmental bureaucrats of the power to answer questions”*. In 2015 renowned human rights Barrister, Julian Burnside, described both Abbott and his government as *“the worst in our history”* and the Labor opposition as *“the least effective Opposition in living memory”*.

State Capture: While these issues may no longer be as newsworthy there is nothing to suggest that politics has changed since then or that industry has any less control over politicians who must hide what they are doing from the public to please their wealthy masters. This is ‘state capture’, which The World Bank defines as *“the exercise of power by private actors to ... shape policies or implementation in service of their narrow interests”*.

The Australian Democracy Network published a report *“Confronting State Capture”* in February 2022. They describe State Capture as *“one of the most significant threats to democracy in Australia”* and as *“a problem eating away at the foundations of our democracy, our way of life and everything we care about most”*.

They describe what state capture is in depth and what needs to be done to stop it. These changes will not come from government but from a society that recognises the problems and forces change.

They indicate that *“a key element of state capture is the management of political parties both in government and opposition - - - - ensuring that even in a change of government, the whole infrastructure of state capture remains intact”*.

We can understand why in 2022 after receiving the Aged Care Royal Commission report the Morrison government simply appointed the same people to senior posts and handed the whole reform process back to the multiple marketplace advisors who had been running the show for years by contracting them to advise and work with the department. They all marketed this to the public as reform.

We can understand why the Labor government did not make any changes to what was being done and followed the same path working closely with these groups. It even appointed someone from Ernst and Young (EY) as secretary of the department.

The Abbott government: The Labor government was defeated at the 2013 election and the Abbott government took charge of the LLB reforms enthusiastically. Abbott supported the claims that aged care was not a disease and not part of health care. He clearly did not understand the role that degenerative diseases played in ageing and how they could be treated. He immediately transferred aged care from the Department of Health to Social Services where Morrison and Fifield were the ministers responsible.

In 2014 he created the Aged Care Sector Committee comprising industry leaders and Ian Yates to help government formulate policy. Long term public servant Peter Shergold was the first chairperson followed in 2015 by David Tune. Pat Sparrow, COTA's *'Director Aged Care Reform'* was appointed to the post of aged care advisor to government and worked with Morrison and Fifield on aged care issues.

There were three major 'reforms' during this period that sent the system spiralling out of control. They were welcomed by industry leaders. In following neoliberal policy the government immediately focussed on reducing regulation in what it called the *'red tape reduction programme'*. This aimed to reduce the cost of regulation by A\$1 billion annually. Aged care was part of this and regulatory oversight was markedly reduced. NACA and the sector committee developed this for aged care.

The second was the Aged Care Roadmap which was a neoliberal roadmap focussing on markets and competition. It set out the neoliberal principles.

The government considered that our market was fragmented and immature with too many companies. Its third 'reform' supported a policy of competitive consolidation and the additional money available from RADs supported this. There was a frenzy of buying and selling and several companies saved enough to list on the share market where they could raise more money.

An analysis by marketplace analysts suggested that the number of companies operating would be halved within six years and then halved again to one quarter in the next ten years. All this would have put huge pressure on providers and then on staffing and care as they struggled to save money to acquire others, list on the share market or just to get a good price. Profitable residents, who had carefully chosen a good ethical provider, were sold off with their nursing home to a very different sort of provider.

The funding system came under pressure too and was the target in what some liked to call maximising but which a subsequent aged care minister described as rorting and fraud. Finances were not disclosed but in similar situations in the USA companies used their capital, their income streams and the market value of their existing facilities in order to raise large loans. When government finally stopped the rorting they struggled to pay the interest on these loans and many entered bankruptcy. This may well have been happening in Australia at this time.

Some revelations: In 2015 Shergold resigned from the public service and his position as Chairman of the Sector Committee to become chairman of Opal Healthcare. Opal was an aged care company that had changed its name after a series of failures and extensive publicity. It is jointly owned by an AMP bank investment fund and a Singapore government fund. His comments about the way he and the Australian government thought about aged care in Australia at a business meeting in Singapore were revealing including:

"... An immature sector that is dominated by non-profit providers - - - little market competition - - - - aged care in Australia is over-regulated - - - regulation in the aged care sector is misplaced - - the aged care sector should resemble the hotel industry."

It seems it was not really about care. Most revealing was Shergold's statement that *"government is concerned about a public backlash from people who believe that aged care should be a community service and not motivated by profit"*. We can understand why information was kept away from the public.

The Turnbull government (2015-18): Abbott had become very unpopular and in September 2015 Malcolm Turnbull challenged and became Prime Minister. He had recently given a public speech on the Magna Carta, which revealed his different views. He moved aged care back to the Department of Health and Susan Lee became minister for aged care. Pat Sparrow was no longer government advisor and became the CEO of ACSA.

The hard-line market policies were not pursued as aggressively. Those funding items that were being maximised were terminated and the gravy train was over as was the competitive consolidation. There were no more listings on the stock market.

Many had overspent, money was now short and there was even more pressure on staffing and care.

In December 2016 the Oakden scandal erupted revealing the extent to which both the accreditation process and advocacy services had been failing citizens for years. In 2017 a senate workforce inquiry showed how poor staffing was. There were multiple inquiries including one into care as more and more failures occurred. Community groups were calling for a Royal Commission'

The Morrison Government (2018-22): The Abbott conservative wing had become more and more alarmed at what was happening to their policies. They eventually challenged Turnbull and Scott Morrison emerged as the compromise Prime Minister. The situation was now out of control. When the ABC announced and then in October 2018 showed a damning two-part expose of the situation in aged care, Morrison finally announced a Royal Commission.

By now older people were avoiding residential care and the home care system was over loaded with over 100,000 on waiting lists. The market focussed Consumer Directed Care (CDC) system that had been introduced was not working well and many were being over charged. The COVID pandemic interrupted and delayed the Royal Commission proceedings. It exposed just how stretched and inadequate aged care in Australia had become. The system was unable to cope and far too many died.

6 The Royal Commission into aged care 2018

Overview: The way this Royal Commission was set up and the way the commissioners differed in their allegiance to the current free market model are described. The interim report was damning of the system and described deep system flaws that needed attention.

After the first judge died the process was hijacked by the remaining commissioner and the deep system flaws were ignored. Reforms focussed instead on regulating the current system. When the new judge appointed to replace the one who died came to grips with what was happening the disagreement between them became obvious.

In the final report the two commissioners made very different recommendations with one advising changes which the judge criticised as only 'renovations'. This was not what was needed to address the system flaws. The judge advised a rebuild of the system making it more independent of government and decentralising the management and oversight of the system.

The Morrison government ignored the judge's criticisms and handed the whole centralised process over to the department. It contracted multiple market advisors to help them renovate the present system and preserve its free market structure.

When Labor won the election in 2022 it simply rubber stamped what the Morrison government was doing. Yet in other sectors it started introducing the sort of reforms that empowered communities to manage their affairs and challenged free market policies. These are the sort of reforms that are needed in aged care.

In aged care big corporations are in control. The only rational explanation for excluding aged care is that 'State Capture' makes this policy too dangerous for Labor. This is not in the interests of Australian citizens.

The proposed new Aged Care Act is set firmly within neoliberal free market policies and its centralised structure and exclusion of community will make real change in the future much more difficult.

What happened: The Royal Commission was faced by a system that had failed in the 1970s and again after recommended reforms that were working had been abandoned in the late 1990s. This was because these reforms challenged what was by then established belief, and were strongly opposed by industry.

The system had been failing with repeated scandals ever since the free-market model was adopted in 1997. This was in spite of numerous inquiries and reforms. None of these addressed the deep flaws and the perverse pressures that were created.

The Commission's own investigators reported on the history of the system. They described this problem and raised the issue. The Commissioners did not properly address this.

There is nothing new in what finally happened at the Royal Commission. It has happened many times before. Those who examined the many, often recurrent failures, that occurred in the US health and aged care system were familiar with this.

Believers are seen as trustworthy and credible because they share the same beliefs. They are appointed by government to lead inquiries. They seldom challenge widely held established beliefs and instead of fixing problems they try to regulate them. That seldom solves the problems adequately. Critics are not seen as credible.

Aged Care Crisis members had seen this happen before and in their 2018 submission to Minister Wyatt about the Royal Commission, Aged Care Crisis raised this issue with him and warned against appointing commissioners whose previous experiences and beliefs might create bias.

Commissioner Tracey was an expert in industrial relations law and before being made a judge had spoken about this to the HR Nichols Society who at the time were very critical of the unions. He had also been involved in working with parties in the Australian Wheat Board Oil for Wheat scandal in Iraq and in an army whistle blower case – both controversial issues.

Commissioner Briggs had been a senior public servant and was an expert in governance. Government also appointed Counsel to the Royal Commission. Some had previously acted for politicians or government. They all had credible backgrounds.

What was unique about this Royal Commission was that there were internal divisions within it and the Commissioners took very different positions and made different recommendations. The two judges seemed to identify the problems and wanted to address them. It was the government who chose the recommendations that aligned with their belief.

The Interim report: The Aged Care Royal Commission's Interim Report described a “*shocking system*” with “*deep and entrenched systemic flaws*” that we should be ashamed of. It indicated that these “*flaws of the aged care system as a whole are at the heart of this story*”. It promised “*whole-of- system reform and redesign*”. It was clear that the judge intended to examine and address the systemic flaws.

Making recommendations: Commissioner Tracey, (the judge) then died and he was replaced with another judge (Justice Pagone). The design of the reform process was commenced by Commissioner Briggs without explaining or exploring systemic flaws. Most of the consultations were with market advisors, industry or departmental figures. Critics were not engaged with. This was something Aged Care Crisis complained about in their submissions, some of which were not published.

In their 24 January 2020 submission to the Royal Commission re Aged Care Program Redesign they accused the Commission of “*addressing the symptoms but not the cause*” of the problems. This looked like another solution that relied on regulation rather than addressing the problems. Aged Care Crisis challenged the Commissioners by stressing the power imbalance and the incompatibility of the patterns of thinking (paradigms) that had failed in the existing market system when contrasted with those required in a system that provided good care.

EXTRACT:

There is a stark choice facing this Royal Commission

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

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

The services are process driven rather than empathic.

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

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

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

Once the new Commissioner Judge Pagone caught up with what was happening it became obvious to observers that the two disagreed about many issues and the failure to understand and address the reasons for failure was clearly one.

Final report: In the final report the Royal Commissioners disagreed strongly. Commissioner Pagone wanted an “*Independent Commission Model*” with “*decentralised management*”. He was very critical of the “*Government Leadership model*” that simply “*renovated*” the existing system advised by the other Commissioner. He indicated that “*A profound shift is required*” and the system does not “*need renovations, it needs a rebuild*”. He stressed the importance of “*understanding why the aged care system has been failing*”.

We do not think that Pagone fully understood how extensive the influence of the industry and its supporters had been. This was not examined at the inquiry. He put most of the blame on government. State and regulatory capture were not examined although issues surrounding regulatory capture were raised in submissions.

Government responses: The Morrison Government ignored the “*deep and entrenched systemic flaws*” and Commissioner Pagone’s independent (of government) more decentralised model as well as his criticisms. It appointed multiple economic marketplace advisers as consultants in the reform process. It appointed the same people responsible for the previous system to senior positions and placed the department in overall charge. In essence it renovated the existing system, making it even more centralised and tightly controlled.

When the Labor government was formed in 2022 it simply rubber stamped this approach and continued with it. That this might well be due to state capture was discussed earlier.

Criticism: We are not persuaded that the new Act and the new regulations address the deeply entrenched flaws in the system or the promise of “*whole-of- system reform and redesign*” made in the interim report. They do not address the criticisms of the government led renovation model made by Commissioner Pagone. The system it is developing is an even more tightly controlled and centralised model and at high risk of capture. Instead of addressing the problems it is increasing regulation. There are glaring omissions.

But this government does know what to do: Incredibly in other similar areas where there is an imbalance of power and vulnerable citizens are being exploited and harmed, the Labor government is behaving very differently.

There is a process spreading globally that has been successful in addressing just this sort of problem by working with and empowering the disadvantaged and disempowered. It is called **'placed based collaboration'**. The department of Social Services under Labor is encouraging this and is funding **'The National Centre for Place-Based Collaboration'** (also known as the Nexus Centre) to introduce this in Australia.

The Nexus Centre *"is envisaged to be an independent, non-government entity to facilitate more inclusive and effective place-based partnerships between communities, governments, the non-government sector, business, and investors. It will recognise that place-based approaches differ and the 'right' approach reflects the needs and local arrangements that work best for that community"*. {Quoted from: Nexus Centre (Nexus Foundation) <https://ncpbc.org.au/> }

This resonates with what was said by aged care inquiries in 1975 and 1982, and with what Professor Kendig advocated (see below).

Placed based collaboration is now being quite widely supported in Australia with Monash University advocating it for social problems. Even the right wing Ramsay Institute is doing so for community problems. There is a group of economists called "Equity Economics" pressing for the market to operate in this way. (<https://www.equityeconomics.com.au>)

The Department of Social Services is also funding The Business Council of Cooperatives and Mutuals (BCCM) which is supporting the develop of cooperative (rather than competitive) businesses which have similar social objectives. The BCCM have advocated for this in aged care but that is not being supported.

Aged Care Crisis has been advocating for a similar community-led system since 2010.

The big difficulty with this approach is that it directly challenges the belief in the infallibility of dominant free and unfettered competitive markets and that is not seen as credible by believers. In a country where the state has been captured by powerful businesses, introducing this into aged care, a sector where corporate interests dominate would be political suicide. We suspect that this is why aged care is being taken in the other direction. That would be changed if it is the community that mobilises and uses its power to demand it.

Place based collaboration addresses and prevents both state and regulatory capture. It addresses the problem of an unbalanced market by supporting vulnerable customers and setting the limits of acceptable conduct.

7 Other relevant issues

Overview: There are issues that are important for a functioning system that further expose the problems in the proposed new act. We discuss and explain them

The way the aged care regulator has been captured by industry over the last 20 years is described. It protected government and industry instead of the frail elderly. The renovated system set up by the new act will be even more centralised and so more likely to be captured in the same way.

We look at the way conflicting patterns of thinking, cultures, roles and values between the dominant market and those required for a caring service play out in practice. They create problems in government departments, the regulators and in nursing homes. The new act will not change this.

We examine what has happened to our civil society and the consequences for citizens and aged care. This is not addressed in the new act. We examine the probity issue more closely and stress its importance. We describe how effectively it was used in health care in the 1990s. It is ignored in the new act.

We look at the way those who designed this system are unable to accept that the system had failed so badly. The new act has given them control again and they have not changed their belief in the market system they created. We give examples. We look at the problem of complexity in aged care and argue that it cannot be properly managed centrally and is better managed locally.

Regulatory Capture: The problem of state capture is described above. While regulatory capture can be seen as part of this it is usually considered separately and is a better recognised phenomenon.

It occurs when regulators are so influenced by the powerful groups they regulates that they adopt their thinking. Instead of protecting society and the citizens they should be serving regulators protect the interests of those they are supposed to regulate.

This is particularly likely to occur when there is a revolving door between industry and the regulators and when there are conflicts of interest for those involved. In our public service including aged care, industry leaders have been appointed to multiple advisory committees or to senior positions in government. Both politicians and public servants have moved on to senior positions in industry. Industry figures have played a major role in designing the system and regulating it.

The Howard government worked so closely with the for-profit aged care sector in developing the 1997 regulations that their leader 'Doug Moran' claimed he had written them. This close relationship has continued ever since. The accreditation process, the main on-site regulator, has been managed and influenced by industry appointees for years.

It was supposed to be independent, but the aged care minister was alleged to have repeatedly interfered with it and its first chairperson resigned in protest. Industry leaders have been on its board and assessors were of necessity drawn from industry.

Criminologist Professor John Braithwaite investigated aged care regulation in the mid 2000s. In his 2007 book "Regulating Aged Care", he described the problems that were developing and the way the regulators were ignoring failures in care. He described his teams "*observation of indefensible ratings of compliance during our fieldwork*". He was unimpressed with the advocacy service funded by government. He indicated that the system had been captured by business thinking and warned of the consequences.

This problem became even worse in 2014 when the Abbott government put the CEO of the industry body Leading Aged Care Services (LASA) in charge of the accreditation agency (now the Aged Care Quality and Safety Commission)

Capture of the regulator in aged care has been readily apparent. Over the years the proportion of skilled staff in the sector declined, while at the same time the number of whistle blowers who spoke out and of press reports of poor care clearly increased. At the same time between 2000 and 2016, the success rate in obtaining perfect scores increased from 60% to an almost perfect 97.8%.

In 2016 when staffing figures became available and could be compared with the USA staffing in Australia had fallen so far behind international standards that residents in US nursing homes had on average twice as much care from trained nurses and a third more care (about an hour per day) of nursing care overall.

In the United States which still has a far more rigorous more distributed state oversight system, only 7% got perfect scores (compared with almost 98% in Australia). Twenty percent have serious failures.

The Oakden scandal finally exposed what was happening. The accreditation agency and advocacy services had been on site repeatedly over the 10 years of abuse and yet it had received perfect scores.

We now know our system had become a shocking system we should have been ashamed of. The agency was clearly protecting industry, government and the belief system from adverse publicity. Politicians and industry leaders were able to refute allegations of poor care and to genuinely believe and claim that Australia had a world class system. This is why the serious problems were hidden for so long. The obvious explanation is regulatory capture.

Until at least 2011, the accreditation agency insisted that it was not the regulator, the department was. Nurses employed by the department vetted funding claims by providers. When the nurses discovered fraudulent claims and reported them, they were told to look the other way. It was not their money. Instead, they blew the whistle and spoke out on television in 2012. This too looks like capture.

Relevance: The more centralised and centrally controlled the system, the greater the risks of capture. As evidence given to the Royal Commission indicated, the risk in the more decentralised UK and New Zealand is less than in Australia.

Power and control in the new aged care system set up in the proposed act will be even more centralised than before and concentrated in three people. The system Governor who is the head of the Health Department, (current appointee was recently with Industry advisory group 'Ernst and Young'), the Commissioner (Quality and Safety Commission) and the Inspector General – all appointed by government. This makes the system very vulnerable to political interference and to market dominance.

Quite clearly the new regulations should include principles and strategies to prevent capture. This would include steps to reduce revolving doors, limit conflicts of interest and to decentralise so that this does not occur.

Paradigm, cultural and role conflicts: Related to capture and particularly to the appointment of managers from industry in the public service, is the disparity between the way management and staff think. This can be a bit more difficult to understand.

Public service: There are conflicts between the beliefs, values, policies, expectations patterns of behaviour and performance requirements of these free-market marketplace managers and the expectations and values of public servants who expect to be serving the community and not industry. This is what the public expect too.

Scientists who study situations like this talk about paradigm (patterns of thinking) conflict, cultural conflict and role conflict where staff are required to do things that they disagree with or consider unethical. They experience acute discomfort. Toxic cultures readily develop where staff behave badly. The vulnerable can be abused. Good staff leave, the sector gets a bad reputation and suitably motivated people do not apply.

In 2014 only two years after the nurses spoke out, a 'capability review' of the department of health found multiple problems and a toxic culture. While the same sort of review was not conducted into the department of social services after the Robodebt scandal, the findings of the 2022 Royal Commission that investigated show the same sort of problems there.

A review of the 'Aged Care Quality and Safety Commission' established in 2018 was done in 2023 by David Tune. He found many problems including in management and culture. It was '*a near-dysfunctional regulator with areas missing one-third of their staff, overwhelmed by complaints, hamstrung by its legislation*' and more. The Royal Commission had recommended that this body be dumped and replaced by a more independent body. That did not happen. It will be responsible for regulating the reformed system.

When we consider the extent to which the public service was gutted over the years, the number of departments with market managers and the extent that departmental functions have been delegated to the market, then these three examples may well be the tip of an iceberg.

Nursing homes: The same sort of problems develop in hospitals and nursing homes when market managers take control. This can result in toxic cultures. People who have previously behaved well can take out their frustrations on vulnerable patients. This sort of thing was apparent in some of the Royal Commission hearings into corporate failures, yet the Commission attributed this to a failure of governance instead.

Authenticity and inauthenticity: Situations like this do not always result in the exposure of toxic cultures. Staff can embrace the dominant ideas in order to be accepted or to be successful. This situation was first explored by a French philosopher (Sartre) in the mid 20th century. He explained how people lied to themselves and assumed an inauthentic harmful identity in order to prosper. They deceive themselves in order to do things and embrace required ideas and practices that are harmful. They developed an uncomfortable inauthentic identity.

Near the end of the 20th century another philosopher Michel Foucault examined the way in which the powerful and credible control information and also control the way people think about it. They determine what is legitimate and what is taboo to consider or to talk about.

When the powerful and credible are believers in an ideology this can have adverse consequences. The situation described by Sartre is created. In 2006 a nurse doing research for a doctorate examined the way managerialist and neoliberal thinking by central managers had flowed down the system and into nursing homes. This resulted in behaviour that was harmful to residents who received poor care. She used Foucault's analysis to explain what was happening and spoke out.

Another doing research interviewed nurses to examine the way that they thought and behaved. She showed how managers changed the way nurses thought and behaved so that they became more market oriented in what they said and did. She too used Foucault's insights.

Relevance: If we look at capture and at then at the problems that arise because of inappropriate and harmful ideas, cultures and role requirements, then it all comes back to an imbalance of power. There are no checks and balances on the powerful when they go too far and impose their views and requirements.

We need to consider Adam Smith and his warnings about businessmen and the necessary conditions for a market to operate. Clearly we need to create a context in which success in the marketplace depends on the market being accountable to the community. We need to address the imbalance of power in the system.

We need a strong and empowered civil society that controls how the market thinks and behaves so that success in the markets depends on adopting community values and being a responsible citizen. The placed base collaboration model is a move in this direction.

Building empathy and values: Empathy, values and responsible citizenship are acquired attributes. They require a strong well-functioning civil society where citizens engage and enter into the lives of others, empathise with them, develops altruistic values and embraces values that support responsible citizenship.

These are all socially developed and in short supply when society is fractured or has been pushed aside. If they are not used, they atrophy and there is much to suggest this has happened. We have a society where ageism and other sorts of discriminatory behaviour are often not confronted. We were warned that the system was destroying our humanity in 1995.

To develop a society with empathy and values we need one where we regularly use our values and in doing so do good. By using them in our lives we make them part of our identity so that they are deeply embedded in us. Others see us and we become role models.

To encourage this we need a society where citizens have important roles and responsibilities and are involved in building and maintaining our society. Our social systems particularly in vulnerable sectors like aged care should ensure that our communities, the basis of civil society have important and controlling roles.

This has relevance for staffing too. When citizens are involved in and have responsibility for care they will be working with staff. Caring nursing staff are admired and readily become role models for citizens. This attracts the right sort of people to work in the sector. They come because they are motivated and not because it is just another job.

Probity: Closely related to the issues surrounding values is the concept of probity – ie trustworthiness.

When allowing or licensing someone to look after vulnerable people then trustworthiness should surely be the most important consideration. Trust and trustworthiness have been critical considerations in vulnerable services like health and aged care for centuries. Society only permitted those it felt it could trust to operate in these sectors and this was later enshrined in probity regulations. Regulators examined the track record of applicants for licenses to provide services to ensure they could be trusted (called 'fit and proper') before licensing them.

We need only look at what has happened in aged care since the Howard government abolished probity requirements in aged care in 1997. How many of the big corporate providers in aged care would have qualified.

This is a civil society issue and the department was challenged and supplied with information about several prospective global buyers. Their probity was questioned. The department did not have the power to act even if they had wanted to. Instead, they insisted that it was providers who provided care and that owners had no impact. The department even referred to them as 'passive investors'. The minister later insisted that even if they exerted influence our rigorous regulations would prevent problems.

The department and both political parties knew that after neoliberal free marketplace policies in health care became dominant in the 1990s, federal and state governments attempted to bring some of the largest and most dysfunctional multinational health care companies into Australia.

This was prevented by state public services assessing probity. They had been supplied with information by citizens who knew what was happening and collected information. The departments resisted strong pressure from industry and their own governments. They knew of the harm done, the criminal convictions and the massive fines showing how valid these actions had been.

The Howard government knew all this but probity requirements directly challenged neoliberal belief. The consequences of abolishing probity requirements in aged care are now apparent.

The failure to consider probity requirements in any of the discussions about reform or to include them in the new regulations is a graphic illustration of just how deeply embedded in neoliberal thinking these reform processes still are. Any genuine reform must bring them back in an enhanced form.

When we consider what has happened and the Royal Commission's findings, then it is clear that none of those politicians, public servants, industry bodies, community groups and marketplace advisors who designed and then supported and maintained this system, insisting that it was world class, can be trusted. None of them have acknowledged their culpability, criticised the policies, expressed different views or apologised in any way. They cannot expect citizens to trust them until they do.

That they were genuine people who believed deeply in what they were doing and still do does not mean that they can be trusted. The reasons why and how people do this is well understood and this is not to blame them. But quite clearly, they cannot be trusted until they have acknowledged what happened and clearly shown that they have changed their thinking and position.

Denial: The extent of their denial is apparent from this behaviour. One of the most graphic illustrations is a session at the International Federation of Ageing (IFA). A senior founder of a large Australian company (and also currently a member of committees advising government) is its CEO. There he is described as a "*thought-leader of the industry*".

Some months after the Royal Commission's damning Initial Report described a shocking system with systemic flaws, he was still claiming to the press in Australia that the system was world class and was simply '*evolving and changing*'.

Australia is well represented on the IFA by industry figures. It's Secretary General is also Australian. It advises and influences other world bodies.

On 29th October 2021 the Australian IFA CEO presented a global webinar on the Royal Commission's findings into aged care in Australia. There was no mention of a "*shocking system that diminishes Australia*" or of "*systemic flaws*". While he acknowledged problems, he considered that the system was essentially sound and this was all part of an ongoing reform process.

The Secretary General of the IFA was the moderator of the session. She summed up at the end praising the system and asserted *“I am an Australian. I’m very proud and very proud of the aged care system in Australia”*.

During the session the IFA CEO lauded one of his mentors, the CEO of the Accreditation Agency between 2002 and 2013. This was the period where Braithwaite had found *“indefensible ratings of compliance”*. The IFA CEO claimed his mentor had *“built a great base to work off”*.

After resigning in 2013 the Accreditation Agency CEO had joined a large newly market listed previously heavily criticised private equity owned company as its Chief Quality Officer. This was the time when the funding system was being ‘maximised’ and this company featured in the press in this regard. He is now also an advisor to the IFA and has also been called a ‘thought leader’.

The sort of thoughts that these two thought leaders promote is left to our imagination.

Also interesting was the introduction given to Pat Sparrow, now CEO of COTA when she spoke at an IFA webinar *“Post a Royal Commission, The future of Aged Care in Australia”* on 6 January 2023. Her career in building our good aged care system with COTA and advising government was described in glowing terms.

She was certainly dedicated but she was COTA’s *‘Director Aged Care Reform’* during the period that COTA was designing and promoting the new system created by the LLLB reforms. After this she became the official government aged care adviser to the Abbott government during the period of the red tape reduction program that reduced oversight, the Aged Care Roadmap and then competitive consolidation. This was when things went bad. This was the system that was described as shocking and systemically flawed by the Royal Commission.

In fairness, in her speech she said little about the Royal Commission and was aspirational and positive about the future.

The Australian Aged Care Collaboration (AACC): During the Royal Commission ACSA (representing not-for-profits) was very active and took a leading role in dealing with the Royal Commission and reporting back to industry. ACSA also played a leading role in the industry’s response to the Royal Commission’s findings and recommendations. ACSA and LASA merged to form the ‘Australian Aged Care Collaboration (AACC)’. It immediately went public and mounted a program *“Its time to care about Aged Care”* asking the public to support it.

The AACC blamed the government for not funding the sector properly. It did not accept any responsibility itself. Even Commissioner Briggs had said *“providers have been critical contributors to the systemic problems of the aged care system”*. They have *“demonstrated little curiosity or ambition for care improvement”*.

The AACC targeted older citizens and marginal electorates that contained more of them so putting more pressure on government. Sparrow was a loyal member of the industry and played a central part in this.

The impression is that the industry’s primary focus is on restoring public confidence. There is much less interest in building a better system which they find threatening. This was even more apparent in a webinar the department ran for industry promoting their model for Star Ratings. The way the ratings were rated seemed to be designed to do that.

Further consolidation: The remaining providers, mostly members of the original “Aged Care Guild” (which dissolved because of the bad publicity its members received) have recently merged with the AACC to form the *‘Aged and Community Care Providers Association’* (ACCPA). Aged

care providers are now all members of a single more powerful body and the for-profit providers dominate.

Not-for-profits once proudly boasted of their not-for-profit status and the mission of care that drove them. Being aligned with for-profits was seen as eroding this mission. The debate became intense in about 2012 when Leading Aged Care Services (LASA) formed and wanted ACSA to merge with it.

Some not-for-profits at the time considered that there was no difference between the way the two groups operated, but many strongly opposed this proposed merger. Some described this as “hollowing out” mission. ACSA decided to remain as a separate body as they felt that their interests and mode of operation were different.

Is this beneficial: Non-profits once set the standards to which others had to conform and in international studies they consistently staffed better and provided better care in aged care. Studies in Australia have also suggested this in aged care but government regulators have consistently denied it.

Is the amalgamation of all groups into a single body adopting the same policies and practices really an advance? International evidence does not support it. It increases the power imbalance and the risks of capture.

Relevance: The new act is clearly still rooted in free-market principles and beliefs. The paradigm conflicts and systemic flaws remain. Care remains at high risk.

Probity: Probity is still not a requirement for aged care providers. It should clearly be. It is far better to prevent untrustworthy providers from entering the system than to depend on regulating them. Not only should new operators and potential owners be centrally evaluated but clearly empowered local citizens will be very concerned to ensure that the providers that they licence or contract to provide services to their fellows are trustworthy. They will reject those who betray their trust.

Clearly trustworthiness should be an important requirement for anyone working in this vulnerable sector. We might even consider how it might be applied to those appointed to advisory bodies, being employed in aged care by the public service, contracted to give advice or do research, or perhaps even to those politicians holding ministerial positions. A simple search of the internet is very revealing of the characters of some of the big groups that have been advising on aged care.

In a society where so many are failing us, we might well consider how to monitor and evaluate probity more widely. Community are far more concerned about probity than public servants and politicians. Their representatives should be represented on assessment committees and input from citizens with knowledge invited.

Consolidation: A united industry working together will be much more powerful and much more influential than ever before. It will be better positioned to influence government and policy, and to bury failures.

If we are to have a balanced system where power is balanced and excesses controlled then it is doubly important that we have an equally powerful civil society whose communities can keep these groups under control.

Handling complexity: The Coleman Inquiry in the 1970s and particularly the McLeay Inquiry at the beginning of the 1980s recognised the variability of different cultures and regions as well as of individual seniors. They considered that this complexity was such that it could not be managed centrally and that the system should be locally managed.

This did not fit with the new free market thinking spreading into Australia. Even though the Giles (1985) and Ronalds (1989) reports pressed for greater community involvement this did not happen. Decisions became more and more centralised and so less flexible and responsive

Highly regarded Gerontologist Professor Hal Kendig advocated strongly for aged care to be regionally managed for the last 20 years of his life. In a 2001 paper Kendig and Stephen Duckett wrote about aged care policies. They were concerned about the problems created by *“the strength of entrenched interest groups, power relations and resource constraints”* and were worried by the separation of health and aged care. They advocated for a local solution.

They were primarily concerned with funding and suggested that *“all Commonwealth and State funds for aged care services be pooled into a single fund to be managed at regional level”*. They described the advantages of this and argued that *“the supply of care can be tailored to local circumstances, such as those in rural and remote areas, and that additional supply can be carefully gauged to meet priority gaps in provision”*. This would *“enhance coordination and accountability, including quality of care”*. They indicated that *“Understanding the many influences on older people’s health and wellbeing will point the way towards priority policy areas where there are opportunities to improve ageing experiences”*.

In his submission to the 2011, Caring for Older Australians Inquiry, Kendig advocated strongly for a regionally managed and overseen system. All of this directly challenged neoliberal beliefs. It was disregarded and as far as we are aware there has never been a trial.

The Activity Based Funding (AFB), (called AN-ACC) is another centralised classification system that is being introduced. It has been used in health care in the USA for years. It was not without its problems in the USA where care was distorted and where ways were found by big corporations to defraud the system and provide unneeded care including major surgical procedures. Problems might be prevented if it was closely managed locally.

Relevance The new system is once again dividing up the types of care needed and classifying those needing it centrally revising and centralising the existing ACAT system. This is not what Kendig envisaged.

There has been pressure to privatise and contract out the aged care assessment process since 2014 but that has been very unpopular and was strongly resisted. The Labor government is now quietly doing just that. It has quietly called for tenders.

This complexity is a good reason for developing a place based collaborative system as it will be much more flexible and responsive. Many enter care after an illness and the current hospital-based assessment system for these patients has worked and it might be better if it is retained.

As with so much else the new act creates a centralised system that lacks flexibility and limits the possibility of real innovation – particularly when it challenges belief.

Regulatory Complexity: The new regulatory system is far more complex than anything we have had before and it has not removed the perverse commercial pressures that conflict with professional and community values (paradigm conflicts.) These result in cultural and role conflicts for staff and make aged care an unhappy place to work in.

The worry is that this extra burden will fall on staff and make the sector even more unpopular so increasing the staffing problem. Smaller providers who provide good ethical services also find all this very burdensome. Large numbers of municipal providers of home care have already decided to stop doing so and some non-profits operating nursing homes are moving out of the sector. This is driving the system in the wrong direction.

We have concerns about some of the increased regulation and oversight. The star ratings designed by PwC consultants for instance are deliberately weighted towards resident feedback in a way that shows little insight into the nature of human beings and how their opinions are influenced by power and credibility. They are also weighted towards the regulators findings without recognising the risks of capture or past failures. There are better ways of doing this

Effective regulation: The most effective regulator is the independent person you are talking to and explaining your ideas to in the community you live in. Others with different experiences more readily see problems and challenge misconceptions. Problems are prevented before they occur.

When problems do occur, they cannot be hidden and are discussed. Glib explanations and rationalisation are not accepted. Problems are identified and ways of addressing them debated.

This is why a well-functioning civil society is so important and why providers, particularly local managers and senior staff should be a part of it.

Central regulation is important but in a society that works well regulation should rest lightly and be seldom needed. It should be there as a fall-back resource when the normal processes of social control and resolution fail.

In his 2007 book Braithwaite explained that “*It is possible to have formalism that empowers and enables informal social control to work flexibly, in all its rich, innovative, contextual possibilities for variety*”.

We have addressed many of these issues in our in depth and rather lengthy June 2023 submission “**A new model for regulating aged care**” in response to the Department of Health Consultation Paper No. 2: It is available at <https://www.agedcarecrisis.com/opinion/articles/476-new-model-for-regulating-aged-care>

8 Implications for the proposed new *Aged Care Act*

As explained earlier, we do need a new act and we do need aspirational legislation about human rights, but these must be accompanied by changes in the system that address the perverse forces in the system and in society that have been responsible for the neglect and sometimes abuse of citizens. There are major issues that are not being addressed and major flaws in the whole process and in the way it is being done.

In essence the whole process has been hijacked by dedicated believers in the unfettered and unbalanced competitive market system introduced in 1997. They cannot accept that what was done was deeply flawed. These are genuine people who believe deeply in what they are doing and have no doubt. They simply cannot accept that they were responsible for the claimed failures.

What is proposed once again locks the system behind a centralised and controlled structure that manages and limits future developments that are necessary. It locks the system into the 20th century and will frustrate progress.

We need to make changes that will restore balance and open the system so that it can develop and adopt alternatives without the need for more constraining regulation.

We will look through the material supplied and insert the important principles that have been omitted and then suggest how this might be progressed.