

1 The problem of ideology and what to do about it

CONTENTS

1	The problem of ideology and what to do about it.....	1
1.1	The story of belief.....	2
1.1.1	The nature of belief and power – its durability.....	2
1.2	The state of the nonprofit sector	5
1.3	Warnings and criticisms ignored in Australia	6
1.4	A wider problem	7
1.5	Ideology now under threat.....	8
1.6	Markets are not always like this and need not be	8
1.7	Supporting social science	10
1.8	The new Act and what can be done about this	10
1.9	Closing comment	12

Introduction: I have had experience of and closely examined ideologies and their adverse consequences for citizens and society during the violent 20th century in several countries before I emigrated to Australia. I was particularly interested in their consequences for health care. The relevant social science was studied as was the development of neoliberal ideology from its origins in the 1930s to its dominance of policy and markets in the USA in the 1980's and then in Australia during the 1990s.

I wrote about its numerous failures in the USA particularly during the 1990s and warned about its consequences for Australia at the time supplying data to authorities. I was horrified when the Howard government adopted these policies for the vulnerable aged care sector in 1997 and supplied it with data showing the adverse consequences for aged care in the USA, warning that this would happen here too.

By the start of the 21st century the system was already failing with the first of a succession of scandals. Aged Care Crisis heard from residents and staff and started collecting data. We have been working together over the last 20 years as staffing and care deteriorated. We have written multiple submissions publishing data, documenting the failures, explaining what was happening and indicating what needed to be done to change policy and counter ideology. This was ignored. We watched as the deeply conflicted Royal Commission identified the problems, promised to address them and then betrayed Australia by walking away from it.

A huge opportunity was lost when the opposition and the press failed to challenge the way the Morrison government and vested interests responded to the Aged Care Royal Commission by ignoring the judge's model and then buried his strong criticisms of the other commissioner's 'renovation' model. It shows how few were sufficiently interested to read the final report.

This analysis focuses on the intractability of ideology in the face of ongoing failures, overwhelming evidence and strong criticism. It describes how believers take back control in order to protect the belief from further challenge. The proposed new aged care act is a graphic illustration of how powerful believers centralise, take control, put up barriers and marginalise potential threats so neutralising critics and preventing change. We describe what needs to be done at this late stage to prevent this.

1.1 The story of belief

1.1.1 The nature of belief and power – its durability

Free market neoliberal policy originated in the 1930s and 1940s. It created a new set of deeply flawed certainties, including one that saw personal freedom as threatened by community and as expressed through markets. It disregarded existing knowledge about humans, society and markets. It claimed that social outcomes would be met by competitive self-interest and encouraged this with rewards and incentives.

It grew in influence globally during the 1960s and 1970s. It finally became dominant globally when adopted by Reagan and Thatcher in about 1980. It has had a devastating effect on civil society and on markets, particularly in sectors where people are vulnerable such as health and aged care. Paul Keating and John Howard were early converts. To understand just how difficult this really is to change we need to look at how it happened and how deeply this is entrenched in our society.

Health and aged care in the USA: Joseph Califano was a lawyer and political advisor to politicians until President Carter fired him. He was a believer in free markets and very critical of the health system. His 1986 book *'America's Health Care Revolution: Who lives? Who dies? Who pays?'* had a huge impact in the USA and then in Australia¹. He expresses his faith in *"the genius of American business"* and writes *"The gospel lesson is that hard-negotiating buyers, who treat health care like any other products they purchase, can change the system -- and we are only beginning to realize the benefits of competition"*.

Resistance to evidence: Even as the reforms he advocated took off, things started falling apart, as insurers were rorted and patients harmed. Believers like the two founders of the largest US health care company, **Columbia/HCA**, responded² to the criticism that accompanied its failures with:

"Health care is a business like anything else." and "The day has come when somebody has to do in the hospital business what Macdonald's has done in the fast-food business and what Wal-Mart has done in the retailing business," --- Richard Rainwater'

"Do we have an obligation to provide health care for everybody? Where do we draw the line? Is any fast food restaurant obliged to feed everyone who shows up?" --- Richard Scott

This was published in 1996 and it was followed by more and more critical media coverage about Columbia/HCA³ in the USA. Yet in 1997, a year after this was published, the Howard government was welcoming Columbia/HCA to Australia. The company planned to invest \$1 billion in Australia's health system. Those plans were disrupted when the FBI swept through the company's hospitals in the first stage of a massive \$1.7 billion fraud investigation. Many would have been harmed. The company abandoned its plan to invest.

At the same time in 1996 Andrew Turner, the founder of **Sun Healthcare**⁴, who was also welcomed in Australia only a year later and met with our cabinet, was saying⁵:

"The government should butt out. If that happened, market forces would quickly resolve the problems in the industry" and "there continues to be. tremendous fat in the health care delivery system at a number of levels. We haven't even begun to cut the fat."

¹ For some comments and extracts see 'Joseph Califano and the Market Revolution': <http://www.corpmedinfo.com/califano.html>

² Carl Ginsburg 'The patient as a profit centre: Hospital Inc. Comes to Town'. The Nation 18/11/96

³ Columbia/HCA http://www.corpmedinfo.com/access_columbia_hca.html

⁴ Sun Healthcare http://www.corpmedinfo.com/access_sun.html

⁵ 'Andy Turner wants the government out of health care, Period'. New -Mexico Business Journal. April. 1996 April. 1996 Vol 20; No 4: pg 10
Copy at http://www.corpmedinfo.com/sun_the_fat.html

Australia had only two years before, seen the departure of the fraud ridden **National Medical Enterprises (NME)**, which had by then been renamed **Tenet Healthcare**⁶. It had been welcomed into Australia in December 1991 even though a fraud investigation had already commenced in the USA. It pleaded guilty to criminal conduct in the USA in 1994, paid a record fine and was forced to sell over half its US hospitals where the fraud had occurred. Insurers were defrauded and patients harmed as vast numbers of patients received long periods of unnecessary treatment. Children were specifically targeted because they were insured for longer periods in hospitals so more treatment could be given. Many were harmed and psychologically scarred.

Between 1992 and 1994, when Labor was in power, government had refused to accept the advice to refuse licenses from four state health departments⁷. Large Investors including the government owned investment bank, committed to investing large sums provided its new very successful US CEO remained in charge and the contract for access to the company's successful business strategies responsible for its problems was maintained. It was only later when confronted with evidence that its US directors and CEO in Australia had themselves been involved in similar practices in Asia before coming to Australia, that enough pressure was exerted to force the company to sell up in Australia and internationally – although that was not the reason it gave.

In advising the West Australian state government to give it the power to reject licenses for this company in 1993, Andrew Penman who investigated for the West Australian Health Department⁸ referred to the information I had supplied indicating:

His investigations have been very thorough and the documentation he has provided has been sufficient to convince me that there is a very serious threat to the Australian Hospital system through the introduction of NME as the major shareholder in the private hospital system.

He described how vulnerable and at-risk Australia was. He indicated that:

The entrance of multinationals into this field has changed this, probably forever, and confronted the department with the challenge of comprehensively assessing an applicant on a number of dimensions, and being able to prevail against a challenge to its assessment."

He pressed for a cooperate approach across state and federal governments. He was ignored.

Like other US companies and successful businessmen, the company remained in denial. Even after criminal convictions, large settlements with insurers and patients who had been harmed, and abandoning its international operations, they still believed in what they were doing. This hugely successful company could not accept what it had done as wrong or that its business practices were flawed or responsible for harming citizens.

Only 7 years later the same sort of thing was happening and there was another large scandal involving several hospitals. Tenet Healthcare's most profitable hospital had done between 700 and 800 unnecessary major heart surgeries⁹. Its CEO in Australia was now back in the USA. He was in overall charge of this hospital and negotiated the contracts with these doctors. I had been told that something similar was happening at his hospital in Asia, before he came to Australia but was not in a position to collect the data needed to say so. There were more fraud allegations in the USA a decade later.

⁶ Tenet Healthcare & National Medical Enterprises (NME) http://www.corpmedinfo.com/entry_to_Tenet.html

⁷ This is only a broad overview of the complex developments.

⁸ Document released under Freedom of Information in 1995,

⁹ 'Coronary: A True Story of Medicine Gone Awry' by Stephen Klaidman

Overview article and quotes at 'Tenet Healthcare's Redding Hospital: Unnecessary Cardiac Procedures II'
http://www.corpmedinfo.com/tenet_reddingupdate.html

In was a large donor and, in spite of all this, continued to get government support during this period with a senior Democrat on its board and then the brother of the Republican president. This was now government policy.

In Australia: Nothing is as resistant to evidence and common sense as belief. Minister Wooldridge was so impressed by Sun Healthcare's founder Andrew Turner in 1997 that he promptly announced plans to revolutionise our health care system using step-down care¹⁰. This was a Sun speciality. It had exploited a loophole in the US system to build its large empire.

Sun Healthcare was already under investigation in the USA and the loophole used to exploit step-down-care was closed by the US government. The Australian advisory Foreign Investment and Review Board (FIRB) was very critical of Sun Healthcare¹¹ but was ignored. Sun Healthcare failed a probity review in Victoria and then entered Chapter 11 bankruptcy in the USA and Australia. It fired its founder and chairman. We heard no more about step-down-care and it did not enter aged care as planned. Government policy did not change.

Then there was **HealthSouth**¹², the largest provider of rehabilitation services in the USA. It also bought a facility in Victoria in 1997. It had an impeccable corporate history at the time. Within a year or two it was accused of a US \$4 billion accounting fraud and a lengthy fraud investigation and complex court cases followed. In this instance there was no evidence that patients were harmed. It did not expand in Australia and eventually departed.

In spite of all this, neoliberal beliefs have continued to dominate both parties, as well as health and aged care policy over the last 27 years - although some politicians have disagreed. When political parties are in power, disagreeing politicians have been forced to remain silent. Evidence has been ignored and critics have been attacked and discredited.

Evidence and warnings: Dave Lindorff's early exposure of corporatised for-profit medicine in the USA in his 1992 book "*Marketplace Medicine: The Rise of the For-Profit Hospital Chains*" was criticised and challenged. I read it at the time. It was prophetic and his concerns were confirmed 12 years later by '*Critical Condition: How Health Care in America Became Big Business & Bad Medicine*' by Barlett & Steele (Doubleday Nov 2004)' as well as many other similar analyses.

By 1992 both major parties had accepted this policy as the future for health care in Australia. An Australian PhD student, who had completed his study of the US system, wrote a small book¹³ warning of the consequences.

He described how inevitable this was calling it:

"... a huge and depressing departure from the system as they (readers) now know it. - - - compassion will give way at an increasing ratio to profit. Care for the patient will give way to care for the corporation - - - - the might of the megacorps is formidable; they are practised in the use of politics, and power and wealth, in getting their own way. The only way that this nation can impose its will on any of them is to do so as a nation. ..."

The book had no impact and when the pro-market AMA president was challenged by it at the time, he described it to me as the '*loony left*'.

¹⁰ Wooldridge injects \$500 m for reform, Courier Mail 18 Dec. 1997

¹¹ Document released under FOI

¹² HEALTHSOUTH http://www.corpmedinfo.com/access_healthsouth.html

¹³ Remission Impossible by Ron Williams (1992) More quotes at <http://www.corpmedinfo.com/williams.html>

Aged care: I remember that Lindorff also referred to much earlier problems in aged care, and in a 1998 letter opposing the licensing of aged care company Sun Healthcare to provide pathology services in a section headed '*Please note also*' I wrote about:

j. the vulnerability of our health system to being controlled and dictated to by a group as aggressive and profit oriented as Sun Healthcare. Dave Lindorff in his book "Marketplace Medicine" describes the corporate practice of buying up all the aged nursing homes in a region, then thumbing their noses at regulators concerned about standards. They dared not close facilities and tip the elderly out into the streets.

(Aged Care and Pathology Licenses http://www.corpmedinfo.com/obj_sun_hic_11_1_98.html)

There are other early state and federal departmental comments about Australia's vulnerability and quotes about aged care 'probity' in my 1998 letter.

What Lindorff described has now happened in Australia and it has been compounded by the introduction of Refundable Accommodation Deposits (RADs) by the Labor government in 2012. Worse still, they guaranteed them to residents so government have to refund huge sums if a big company fails or is put out of business. These companies are too big and too powerful to be allowed to fail and can thumb their nose at regulators and even dictate policy (capture).

When the Howard government planned to introduce bonds like this in 1997, strong criticism from Labor and a public outcry caused Howard to abandon it. Labor's Minister Butler was persuaded to reverse this policy position by the 2011 Productivity Commission report (Mike Woods) and was strongly urged by the National Aged Care Alliance (NACA) and particularly by Council of the Ageing (COTA) to adopt this policy.

Both major parties have been factionalised around neoliberalism since the 1970s and factions typically appoint inquiry Commissioners and advisors who are seen as credible because they share their views. Even though problems were identified, the reforms did not address their causes.

Relevance: While the sector should clearly be dominated by community and nonprofit values and services, the costs in money and human suffering of simply making aged care not-for-profit would be prohibitive so it is not a practical step at this time. We need a strategy that understands our human nature and the nature of the social systems within which we live. We need a very different system and there needs to be a path that corporate interests, who are unable to conform, can use to exit the system.

Social scientists who study these problems were largely absent from the Royal Commission's discussions and critics were ignored. They were not seen as credible by believers. But their knowledge and insights are very relevant and do offer a path both for society and aged care.

1.2 The state of the nonprofit sector

Many want to make the sector nonprofit but simply making the sector nonprofit would not work because nonprofits have themselves become part of the problem and many have now adopted these beliefs and behave like markets. They have brought in managers to make them competitive and in doing so have changed.

Big Charity: In 2014 Dalton and Butcher¹⁴ wrote about 'Big Charity'. They described how large nonprofits have become dependent on government support and contracts. They dare not speak out and instead do what is required of them. There is a loss of mission.

Aged Care: In order to reverse the rapid growth in for-profit aged care providers that started in the 1960s, the Whitlam government encouraged and supported the nonprofits and they formed a separate association and focused more on mission. That persisted into the twenty first century when this came under pressure as the new ideology eroded mission. To survive, they needed to bring in new managers and operate in the same way as for-profits.

There was strong pressure from for-profits and some nonprofits for a single body. We saw the formation of Leading Age Services Australia (LASA) in 2012. But most members of Aged and Community Services Australia (ACSA) felt that their mission would be eroded if they joined with for-profits¹⁵. They resisted and did so again in 2015 when another attempt was made.

But the pressures increased. In 2016 after Turnbull tried to stop the rot created by Abbott's aged care policies, Pat Sparrow, COTA's reform officer, who was then aged care advisor to the Abbott government left and became CEO of ACSA. She was a believer in this policy. Under her leadership and the pressure from the Royal Commission all aged care providers have now amalgamated into a single organisation 'Aged & Community Care Providers Association' (ACCPA). They speak with one voice.

Relevance: Handing aged care back to nonprofits is not going to make them change the way they now think and behave. Much more needs to be done to address the ideology before this would be effective.

1.3 Warnings and criticisms ignored in Australia

Health care: I am only one of many who warned about what was happening during and since the 1990s. I have written articles, presented to the medical profession and made information available on web sites. The medical profession realised what was happening. Dr David Weedon a later AMA president, Stephen Leader, a prominent member of the profession, and Peter Arnold, chairman of the AMA council all wrote articles warning of the dangers of these policies. Howard's Minister for health, Michael Wooldridge received a cold reception from Dr Weedon when he spoke to AMA members about the new policies in 1996.

He urged doctors:

-- don't be swept away by the emotive zeal which is characterising the debate about competition policy. Please consider the social consequences at what is happening. - - - - I believe it is a sign of our intellectual and moral bankruptcy as a society that we can only concentrate on growth, on competition and on greed.

Relationships between government and the AMA broke down almost completely as doctors resisted and refused to do what government wanted.

These policies have impacted health care adversely over time but it has not been nearly as bad as in the USA. The AMA were more united and so less trapped by policy than their colleagues in the USA. They have been able to resist and to exert some control over care.

¹⁴ Dalton, B. M. & Butcher, J (2014). 'The rise of Big Charity in Australia' Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA) Conference. Denver. CO, 19-22 Nov 2014.

Oligopoly in Monopsony: The rise of Australian Big Charity in the delivery of services to people with a disability Dalton BM - 2014 UTS
<http://bit.ly/2Jv3E4x>

¹⁵ Views among not-for-profits <https://www.insideagedcare.com/aged-care-analysis/widely-contrasting-views/views-among-not-for-profits>

Aged care: In contrast, doctors had no power or control over aged care and it has paid a far bigger price. I knew that NME, the US company under pressure in Australia in 1994 had until recently been one of the largest aged care providers in the USA and this had been spun off as a separate business. I worried that it would enter aged care and wrote to the department.

A Mr Raino Perring responded boasting about the departments aged care probity assessments including *“checks of propriety, honesty, financial capacity and previous experience in the industry”*.

State probity regulations had frustrated these new policies in health care and were not included by John Howard in the 1997 aged care act. Anyone could now invest in aged care regardless of their track record. The department were not able to evaluate their track record even when challenged with data, which we tried to do. Probity is not in the proposed new Aged Care Act either.

Criticism has grown steadily from multiple sources across Australia over the years and the press has described the many failures. There have been multiple senate and other inquiries and many problems identified.

In each instance there have been reforms that did not challenge ideology and did not work. In spite of this, both politicians and industry continued to claim that we had a ‘world class’ system and dismiss criticism. They believed it and clearly many still do.

1.4 A wider problem

This is not only a problem for aged care, and many other sectors across the world have suffered when these free markets have failed. We have described the extent of this in Australia elsewhere¹⁶.

The dominance of markets and a policy that saw society as a threat has seen civil society pushed aside and become fragmented and unstable. In Australia we were warned about this in the 1990s and many have written about it since calling it truth decay and the post-truth era.

This develops when what has become the ‘normative order’ fails citizens and this is now happening to neoliberalism. Citizens become rudderless and confused so susceptible to charismatic individuals who offer leadership and attractive but flawed ideas. It is often described as populism. This has been recognised and studied since about 1901.

It is a very dangerous phenomenon and is associated with a greater risk of war and violence. The rise of fascism and World War II after the 1930s great depression is a good example.

Relevance: This situation exists again today. The social science shows the critical role of power imbalance in creating ideologies and of rebalancing power to address these situations.

The situation is only resolved when society re-engages with what is happening constructively and then rebuilds a more balanced system. We need a new more sensible normative order and a balance of power that prevents dominance and provides checks and balances to ideas that are flawed.

¹⁶ Failed markets and culturography 2016

<https://www.insideagedcare.com/aged-care-analysis/cultural-perspectives/failed-markets-and-culturography>

Contracting government services to the market 2016

<https://www.insideagedcare.com/aged-care-analysis/cultural-perspectives/contracting-government-services-to-the-market>

The first step in solving our current problems with market dominance successfully in aged care and elsewhere must focus on rebuilding civil society and controlling ideology. Aged care must play its part.

1.5 Ideology now under threat

Peter Shergold, the public servant who seems to have been a role model for Commissioner Briggs, resigned from being chairman of the Aged Care Sector Committee advising the Abbott government in 2015. He became chairman of OPAL Healthcare, a company owned by banks and the Singapore government. At a 'closed door' meeting with businessmen and politicians in Singapore he spoke about the way our government thought about aged care. He also revealed how threatened ideology was indicating 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”

That threat became much stronger during the Royal Commission and Pagone's recommendations made them immanent and real. If that happened in aged care it would soon spread to other sectors. But that was only the beginning.

As indicated in Part 1 of our earlier information sheet for politicians, neoliberal ideology is now more under threat than it has ever been. Criticism is not only from fringe academic media and from social scientists. Its strongest critics are now economists themselves and the public is stressed and angry. This was apparent in the success of the independent Teals and the Greens at the last election.

Aged care and the Royal Commission have been hugely threatening for neoliberal believers and they are desperately rallying to protect their beliefs and the system that they have created and believe in so deeply. The new *Aged Care Act* is a graphic illustration of this.

1.6 Markets are not always like this and need not be

It is interesting to see the editor of the Quarterly Publication of the IMF in March 2024 praising John Maynard Keynes because *“He considered economics a moral science”*. He was the economist who they once criticised so strongly. To recognize the significance of this, we need to understand our history.

In her analysis of Strategic Ignorance¹⁷ (the way believers ignore challenging knowledge), Linsey McGoey wrote about Adam Smith and other early economists and the way their insights were now being ignored.

The even handedness of their 18th and 19th- century heroes - thinkers such as Smith and Tocqueville who saw that both 'big' government and 'big' industry can lead to despotic concentrations of power - fell to the wayside of the economics academic mainstream.

She also wrote about the 20th century French Philosopher Jean-Paul Sartre who described the way we deceive and lie to ourselves calling it 'bad faith'. She also quoted him as writing *“The essential problem of bad faith is a problem of belief.”*

But this strategic ignorance happened during the 19th century industrial revolution as well when a hands off 'laissez-faire' approach to markets was adopted. We saw inequity, exploitation of workers and even children as well as poor houses. This was the world that Charles Dickens described in his novels.

¹⁷ The Unknowners: How Strategic Ignorance Rules The World ZED Books Ltd 2019 By Lindsey McGoey

This hands-off approach culminated in the collapse of the US stock market in the 1930s, the Great Depression, the rise of fascism and a world war.

Keynesian economics was a response to this. Governments and communities took an active interest in the market and intervened when needed so that the system was rebalanced.

Personal experience: Keynesian economics created a very different world. I have memories of the 1950s living in a large industrial city in South Africa. In my university vacations while at medical school, I spent time helping out in the medical department of General Motors car factory. I was impressed with the strong support and responsibility for staff and their welfare. Management were caring and staff were loyal.

Another relative was in a senior position in the Ford factory and build the network of Ford service stations across the country. He was everyone's 'Uncle Jim', not only because of the good relationships he had with everyone, but because of the way he maintained them with people he had fired and helped them in re-establishing their business – even lending them money.

This was the beginning of apartheid yet these big businesses maintained this approach and did not exploit the opportunities presented by this.

A cousin was the son of a factory owner and would inherit one day. As a young man he started by working his way up from the bottom learning the business. He then spent time working in similar businesses in the USA. He was impressed that senior management in the USA had all worked their way up through the business and knew every facet of it and the staff. A senior manager would strip of his jacket and tie to get down on the assembly line and show the workers how to do things if he saw a problem.

Businesses were social units where people knew and understood one another. Relationships were good. They were socially responsible citizens. They did not import managers who had no practical experience and were simply trained to compete and make money.

Neoliberalism arrived: Some smarted under Keynesian restrictions and these new neoliberal ideas appealed to them. They were spread globally by believers. We are once again seeing a huge maldistribution of wealth and the exploitation of workers, vulnerable customers as well as any weaknesses in the system.

It is interesting to look at an earlier study of aged care in the USA I was sent in 1994. Like many studies it clearly showed that for-profit providers staffed more poorly and had more failures in care.

But as interesting was that the best providers were a few smaller technically for-profit providers owning only one or two facilities. This suggested that when you had dedicated responsible individuals who knew what they were doing but were less constrained than nonprofits you could get more innovation and better care. They were probably soon acquired by believers and no longer exist.

Relevance: As humans we are social animals and strive to succeed and build successful selves in whatever social situation we find as we grow up. We can see what neoliberalism has done to us and our society. The solution to our problems must lie in a restructured and more balanced social system where our humanity and our responsible selves balance the pressures of self-interest within markets and management.

Local social control supported by regulation is necessary. That requires decentralisation and appropriate legislation. Greater central control with more and more draconian regulation is a stopgap at best but not a solution.

1.7 Supporting social science

In Appendix G of our lengthy June 2023 submission about the new regulations¹⁸ we address the social science that explains what has been happening and what needs to be done. Relevant to finding a solution are

Walker and Salt (2006)¹⁹ describe the way a balance of points of view and power, and collegial engagement create well-functioning social systems. When one group with a vested interest becomes more powerful and dominates, then the system breaks down, fails and harm is done.

They show how these systems then go through cycles of repeated failure as vested interests use their power to seize back control after each new scandal, centralise and then restructure it their way until it fails again. The cycles of failure only stop when other participants rally and take back power, so restoring balance.

Aged care is a good example of this. It illustrates how this can happen in multiple shorter cycles when vested interests quickly take back control as has been happening since 1997. There are also longer cycles with more major failures when attempts are made to restore balance but fail to do so. In aged care, this occurred during the Hawke reforms in the 1980s and again with the recent Royal Commission. Vested interests are now taking back control in the new Act but as Sarah Holland-Batt²⁰ has just described, they are still fighting back against the extensive regulatory restriction that many critics have managed to keep in the Act. We agree with her criticisms but feel there is a different and better approach – identifying the causes and addressing them - restoring balance.

Criminologist **John Braithwaite (2022)**²¹ has also written about the balance of power. He has written an extensive review of history examining the way that dominance by individuals or sections of society is associated with exploitation of the dominated citizens and criminality.

He includes market dominance and describes how:

“Criminalised states and criminalised markets evolve when there is no networked governance of their dominations”.

He charts the association of dominance with societal breakdown (anomie, truth decay, post-truth) and war. The situation is only resolved when citizens seize an opportunity to take action and rebuild civil society so that there is a balance of power again.

Relevance: The social science indicates what needs to be done to address not only the problems in aged care but those in society itself. Aged care is particularly well placed to contribute to this and lead the way. That window of opportunity is rapidly disappearing.

1.8 The new Act and what can be done about this

As indicated in the previous material, it is not what is in the Act, as much as what is omitted that concerns us. It is the way the system is being centralised and tightly controlled by a small number of individuals and government appointed bodies. They are all the same people and the same bodies who were closely involved in building and managing the system that has failed.

¹⁸ A new model for regulating aged care. Submission June 2023 (202 pages)
<https://www.agedcarecrisis.com/opinion/articles/476-new-model-for-regulating-aged-care>

¹⁹ Walker, B. & Salt, D. (2006) Resilience thinking: Sustaining Ecosystems and People in a Changing World. Island press

²⁰ Criminal penalties proposed for aged care bosses by Sarah Holland-Batt. The Saturday Paper 13 July 2024
<https://www.thesaturdaypaper.com.au/news/politics/2024/07/13/criminal-penalties-proposed-aged-care-bosses>

²¹ Macrocriminology And Freedom By John Braithwaite ANU Press, Feb 2022

The act was crafted by politicians and marketplace advisers whose interests and careers are deeply embedded in neoliberal ideas.

This Act is the response of threatened vested interests who have put up the barricades, fortified them and then barred all the gates to prevent entry. Independent citizens and the society that the system should serve, have been locked out. It will take many years and a major scandal to reopen them after this.

We have written about capture and the trap that political parties are in elsewhere. Labor is factionalised and trapped because it was the system they designed in 2012 that failed so badly and those responsible still believe and are very powerful.

The political situation: We are approaching an election and this act is going to be rushed through with little opportunity for review. We need to find some way of keeping those gates open so that citizens can get through, see what is happening, re-engage and make changes. This must be sufficiently appealing to the electorate and so self-evident that it would be difficult to criticise and resist. There is a simple principle that meets this and it is 'accountability to the communities served'.

We are pressing the Greens, Teals and Independents to unite and press for amendments that will do this and appealing to sensible members of the Labor party to do something about the direction Labor has taken and work to support them.

Amendments that make the system accountable: We would like to see the following amendments:

1. adding a basic principle, that the sector should be accountable to the communities it serves, then
2. adding a clause that requires each of the central systems from the Inspector General to the government appointed management and regulators to consult with local community organisations, when addressing issues that affect them,
3. adding a clause that creates a central organisation comprised of representatives appointed by local communities (and not government as is currently the case) with whom wider issues can be discussed, and
4. that this central organisation should appoint a representative to the central management including the inspector general, the system governor, the regulator and the complaints system to ensure transparency, accountability and community input.

1.9 Closing comment

The recommendations adopted by the Morrison government and then rubber stamped by Labor were made by only one of the three Commissioners involved (one died and was replaced). The Royal Commission was divided ideologically between a previous public servant and a retired judge. The judge criticized these recommendations strongly and indicated they would not work. His recommendation to decentralise and make the system more independent were a move in the right direction but threatened ideology.

Our reason for exploring entrenched ideological durability critically is that in our view, the Royal Commission recommendations that were accepted by both governments, is exactly what the multiple reviews, inquiries and reforms that the Royal Commission's own report found had failed over the last two decades have done.

They are making aspirational regulations and claims and promoting them as solutions. They are making changes to regulations without addressing the deep flaws in the system and the way it operates on the ground. We have had aspirational legislation and many regulatory reforms in the past. The core problems have never been the aspirations or the regulations although they have contributed. The act leaves us with the same deeply flawed badly structured system and the captured regulators who failed so badly. Neither problem has been addressed.

The perverse incentives and unbalanced power remain and any reforms are likely to suffer the same fate as their predecessors. The new Act must be evaluated within this context. What changes is it going to make on the ground in nursing homes and communities? So far very little has happened and the system is getting worse as the regulatory complexity drives motivated providers and staff away.

Finding a way out of the mess

Aged Care Crisis argues that we have to start somewhere in solving these society-wide problems and aged care is by far the best place to start because it is provided in our communities and in our homes, where we can see exactly what is happening. The recipients of care are our loved family members, parents, spouses and friends. A majority of us will eventually become old and need care ourselves. It is in all our interests to start working together to ensure that we see and understand what is happening in aged care and ensure that communities have the power to hold those who care for our fellows to account. That is what makes markets work.

The most effective regulator is the social pressure from responsible colleagues and friends in a well-functioning society. They confront flawed ideas and detect problems early. The best way to do that is to restructure aged care so that community organisations are involved in aged care locally so that they can see what is happening. They need to become the second involved customer with knowledge and power. If they find providers unsuitable, untrustworthy or unresponsive, they can put them out of business. Most of us still have years of active life after retirement. By becoming involved we can protect our own futures, create new meanings and build our social identities during our later years.

For nearly two decades Aged Care Crisis has been looking at different ways of doing this. It has made many submissions explaining and pressing for structural change along these lines. If we could do that it would be a giant step and other vulnerable sectors could build on it.

Clearly future generations must receive preference over those generations departing and funds are not unlimited. But you cannot ration using competitive markets because pressures to survive will ensure that care is rationed maximally in order to preserve profitability.