

Aged Care Act: Background and information for politicians (Part 1)

May 2024

About this guide:

More than three years after the Royal Commission handed down its contentious and conflicted recommendations in February 2021, a new *Aged Care Act* was to be tabled in parliament in July. To enable this and limit criticism, final consultations were rushed through over the holiday period.

Departmental consultations and roundtable meetings have been managed by market-place consultants. Others were run by COTA and OPAN. These groups have all been committed to the 2012 market-based reforms that failed so badly. They helped design and manage them. Their success is rooted in the dominant ideology of the last 30 years. Their credibility is based on the illusion that those reforms had created a 'world-class' system. Little progress was made at those meetings in addressing the flaws in that system that were not addressed in the draft act.

In spite of the way these consultations were done, there was strong criticism of the draft Act and its introduction to parliament has now been delayed. Further one-on-one consultations are now being held by the department with some of the strong critics including Aged Care Crisis.

We have found the department, without these multiple consultants, much more amenable to considering the sort of changes needed. They will struggle to include them without making significant alterations to the structure of the system as defined within the draft Act. While this would only require a number of amendments, these would challenge the now accepted interpretation of the Royal Commission's Recommendations promoted by the Morrison Government. They will struggle to do that.

It is clear from a careful reading of the Royal Commission's Interim report which promised major change that the first judge Commissioner Tracey, would not have supported this Bill. After his death, the replacement judge Pagone, would clearly have condemned it. He recommended a very different system in the final report to that advised by the third public servant, Commissioner Briggs. He strongly criticized her recommendations, which preserved the structure of the system including all of its deeply embedded problems. He indicated it would not work. This Act is based on the recommendations of only one of the three commissioners and the other two would not have supported it. Yet it is defended by claiming it was what was recommended.

The ideological divide revealed in the Royal Commission is fracturing our wider society too. The ascendance and dominance of believers has resulted in a large power imbalance within politics and our society – a well-recognized state known as 'capture'. It will make it very difficult for the current government to include the needed amendments even if the department recommends them. Labor would be vulnerable to strong public criticism by believers. It will need strong support from the cross bench. There has been extensive misinformation. They need accurate information.

The likelihood is that this Act will be rushed through parliament at a very busy time under the shadow of an election in late 2024 or early 2025. There will be very little time for politicians to learn of the complexities of a sector that has been characterised by recurrent and ongoing failures since the 1960s. We cannot tell you what changes if any will be made to the proposed Act before it gets to parliament, but we can give you the information you need to assess it when it arrives - while there is time to read it.

In this document we summarise the issues and explain them so that you know what has been happening when the new aged care bill is tabled in parliament.

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Overview

Introduction: We give an outline of the problem with the new aged care act, the resistance to constructive criticism and the misinformation used to sell it to the public. Our intention is to give politicians the information they need to make important amendments. We describe who we are and quote strong but credible critics.

The background information politicians need: A description of the nature and origin of the global ideology that has failed us and will continue to do so after the *Aged Care Act* if it is not changed. We describe its many failures and the way believers are in denial. They cannot accept it has failed. Aged care is part of this.

The story of Aged Care: We describe how these policies were introduced into aged care, the imbalance of power that protected them from challenge and their recurrent failures there. Multiple inquiries failed to address the problems and instead the illusion of a world class aged care system was maintained. The conduct of the Royal Commission is examined more closely to show how its initial promise to address these issues was subverted and abandoned. The government responded by handing the ‘reform’ process over to believers and the new *Aged Care Act* has been structured to maintain and protect the ideology from further challenges.

The major failures in the draft *Aged Care Act*: The draft act preserves and protects the ideology by putting all of the power and control in the hands of four people directly or indirectly appointed by government. This effectively entrenches the ideology and protects it from challenge. It will prevent needed change. Five key issues that are not addressed in the act are described.

Alternative approaches: In response to the many problems that have arisen, citizens movements have been developing across the world. The ways in which they are dealing with these problems are described. The simple amendments that need to be made to the act to make it accountable, restore a balance of power and open it to constructive change are described.

Background and information for politicians Part 2: An analysis of submissions by others is in a separate document

Part 1: Outline of aged care issues and the new draft Aged Care Act

Aged Care Crisis Position

1 Introduction

Real reform requires a knowledge of the relevant societal and aged care history, the underlying reasons for failure, and a strategy for addressing them. All are absent in the current draft legislation for the new *Aged Care Act*. This act protects the ideology on which policy is based and instead focuses on the consequences and not the causes. It does not address the real problems responsible for failure. Instead, we are getting complex band-aid processes and regulation.

There are many groups who are deeply concerned by deficiencies in the new draft act even when they do not understand the underlying problems. While their issues may have been heard during the many recent consultations and may even be included in the final act, they will have limited impact and could be a distraction if the system on the ground is not restructured so that it works to correct their valid issues.

Our intention in writing this is to summarise the story of aged care, the reasons for recurrent failure, what happened at the Royal Commission, the response by government, the problems with the new draft act and the new proposed regulations. Discussions are ongoing and we cannot predict what will finally be put before parliament. Vested interests will resist real change. This document is intended to give you the background and describe the current issues about the draft so that you are in a position to assess this properly when it is tabled in parliament.

While others have focused on what is in the act and the inadequacy of the wording, our major concerns are firstly, what has been omitted from the act, and secondly the way in which it has been structured to protect the current system and the belief system on which it is based. It will take years to undo the harm done over the last 60 years and build a new system. The new act needs to open the system to the sort of changes that are needed so that they can begin.

The draft act, if not changed, will obstruct and further delay the real changes that are needed. They will make it much more difficult later. If needed changes are not made soon, we will be urging independent politicians to press for amendments that will enable and encourage new structural initiatives so that the process of rebuilding can commence.

To understand what has happened and what needs to be done you will need to understand how and why we got to this situation. In this document we summarise the issues briefly and indicate where more information can be found.

Who we are: Aged Care Crisis Inc (ACC) is a small organisation formed in 2005. Some of us already had past experience in dealing with ideologies and the failed systems they often create, particularly in vulnerable sectors like health and aged care. During the 1990s, data about failures in health care in multinational operators was supplied to state health departments who resisted strong political and market pressure and did their best to keep them out of Australia.

In 1999, the federal government (Dept Health) was supplied with a large amount of data from the USA, where the aged care system had failed to deliver and was in crisis. They were warned that the policies adopted here in 1997 would have the same consequences. This was ignored and that eventually happened. ACC has closely tracked developments and the many failures in aged care. It has supplied data and urged changes to a majority of subsequent inquiries¹. These changes challenged belief and were ignored.

¹ Aged Care Crisis Publications <https://www.agedcarecrisis.com/publications>

1.1 The proposed new *Aged Care Act*

The harshest and most accurate criticism of the draft of this new act comes from Stephen Duckett, a past head of the Department of Health. He was charged with implementing this ideology in health care in the 1990s in Australia, then later in Canada before returning and leading the Grattan Institute's health and aged care section. It was the more independent and regionalised model developed by the Grattan Institute that Commissioner Pagone advised. Duckett seems to have had some earlier reservations because in 2001, he co-authored a paper with Gerontologist Professor Hal Kendig, an advocate for localism, describing the benefits of managing care funding locally². Kendig spent the last 20 years of his life advocating for care to be managed locally.

Duckett is now a strong critic and in January 2024 likened the new draft act³ to Thatcherism in its denial of community. It was *“still riddled with the old ideology”* and was drafted by *“the zombies that stalk the aged care policy corridors”*. It *“has a Thatcherian individualistic emphasis, founded on a naive belief in markets which can fix everything, and that government's role is to sit back and weed out the occasional bad apple. This is not good enough”*. He is not the only critic⁴ of this market, but probably a majority of our citizens do not understand this ideology and its consequences. They do not realise how they have come to accept it as the 'normal' way of thinking and behaving.

Professor Kathy Eagar and her coworkers have been almost as critical. They did research on staffing and developed the Activity Based Funding advised by the Royal Commission and adopted by government so were closely involved with the Royal Commission and saw what was going wrong at the same time as we did.

Between 2020 and 2024 Eagar wrote fifteen articles on the same *'Pearls and Irritations'* web site as Duckett. They focused on what happened at the Royal Commission, the deep flaws in aged care policy, the incompetence of government and the failure of governments subsequently to address the ideology and the serious problems in policy. She did not address the problems in the draft act but endorsed Duckett's article. Eagar identified the same problems as we did and at the same time.

We have listed those 15 articles in date order at the foot of Part 1 and when we refer to them in the text below, we do so by using the date in brackets.

² **Australian directions in aged care:** the generation of policies for generations of older people Kendig H and Duckett S Australian Health Policy Institute Commissioned Paper Series 2001/05 National Library of Australia Australian Government <http://bit.ly/32b6oKh>

³ Proposed new Aged Care Act leaves gaps in rights Stephen Duckett in Pearls and Irritations 12 Jan 2024 <https://johnmenadue.com/proposed-new-aged-care-act-leaves-gaps-in-rights/>

⁴ New aged care laws bear the fingerprints of industry lobbyists. Will the voices of older Australians be heard? ABC News 17 Apr 2024 <https://www.abc.net.au/news/2024-04-17/lobbyist-influence-on-new-aged-care-laws-evident-advocates-say/103672736>

2 The background information you need

2.1 Significance of ideology in aged care

This ideology, now called neoliberalism, was developed by economists during the turbulent great depression of the 1930s when the collapse of societies in Europe led to the rise of fascism and World War II in the 1940s. They disregarded existing knowledge about human behaviour and the social pathology responsible and instead blamed community movements for what happened claiming that they always behaved this way. They promoted a libertarian philosophy that saw society as a threat to freedom and denied the close relationship between individuals and the society they live in. They expressed this philosophy through markets which they claimed always worked provided they were not restricted or interfered with in any way.

This free-market belief appealed to businessmen, economists and others smarting under the restrictions placed on markets by society after the debacle of the great depression. Other libertarian movements that similarly rejected social restraints in the name of freedom soon became aligned. Together, they spread these beliefs steadily across the world through satellite think tanks and educational foundations. They were adopted by schools of business and management.

By the 1960s tensions within political parties in the USA and Australia were developing. By the end of the 1970s both Reagan in the USA and Thatcher in the UK had adopted these 'free market policies'. They became the basis for globalisation during the 1980s and 1990s. Everything including aged care was managed by turning it into a market. Countries were expected to 'liberalise' by freeing their markets from any restrictions on their operations and on trade. Economists at the Productivity Commission and its predecessors played a central role in advising on and introducing this in Australia.

There was rapid growth in the size of corporations and huge multinationals became far wealthier than some nations and more powerful. The founding economists in Europe and the USA became advisors to governments and were honoured with Nobel prizes. Many warnings about the consequences of both the individualistic ideology and the power imbalances created for society and citizens by these developments were ignored. By the end of the 1980's, neoliberal ideas were dominant in the USA, UK, Australia and many other countries. They were introduced into Australia, including into vulnerable sectors even though these sectors were already failing in the USA.

These policies have remained dominant in the corridors of power ever since as system after system has failed. Like every ideology any successes were used as confirmation. Problems including those in aged care were ignored or explained away. Many Aged Care related reviews and inquiries after these failures, addressed the failures directly but ignored the issues in the dominant ideological that were responsible for them, so had only marginal and temporary benefits.

2.2 Failures

Economists: Many warnings over the years about the impact of this ideology on markets and society were ignored. Others described how Neoliberalism had ignored the warnings of the father of economics, 18th century economist Adam Smith. In his book '*The Wealth of Nations*' Smith warned that businessmen were an "*order of men*" whose ideas should be viewed "*with the most suspicious attention*" because they generally have "*an interest to deceive and even oppress the public*".

Many economists who once supported neoliberal ideas have now become strong critics globally as well as locally. To our surprise even the International Monetary Fund (IMF) in the March 2024 edition⁵ of its journal acknowledges “*a growing consensus that economists must be open to new ideas and frameworks*”. It devoted an entire edition to this. There is a lot to learn.

ECONOMICS *How should it change?* Quarterly Publication of the IMF - March 2024

The editor notes the “*growing disenchantment with the economics profession*”. She praises the qualities and broad perspective that the early 20th century UK economist John Maynard Keynes possessed because “*He considered economics a moral science*”.

As Aged Care Crisis have explained previously it was Keynes Insights into the societal and economic failures of the 1930s that saw Keynesian economics constrain market excesses and balance them with social objectives leading to the post World War II stable and prosperous world. Neoliberalism appealed because it rejected these restraints on the operation of markets.

The editor describes the soul searching that is now focussing on “*how economics can better integrate social sciences and elevate welfare and distributional issues*”. She concludes that “*economists must be open to institutional alternatives and experimentation and reflect the complexity of economic reality and values of our time*” and that the difficulty lies in “*escaping from old*” ideas.

The journal quotes the President of the European Central Bank who described economists as “*the most tribal scientists you can think of - - - They don't go beyond that world because they feel comfortable there.*”

Multiple articles examine the challenges of a new era. When addressing this and commenting on Neoliberalism **Dani Rodrik** indicates that “*it is widely recognized that this approach failed in a number of important respects*” and that “*the erosion of the middle class is the most significant threat to our social environment*”. ---- *Economics can help only if it expands our collective imagination instead of reining it in* - He suggests we need “*a new model of globalization*”.

Kate Raworth stresses the importance of “*human flourishing on a thriving, living planet*” and that “*This calls for a profound paradigm shift*” for economists. **Katharina Pistor** argues that putting a price on everything and assuming rational behaviour, as is now fashionable, is not a measure of our human behaviour which is more complex. She describes “*the social costs of the price mechanism, which fails to incorporate almost anything that matters to people*”. **Andrew Stanley** describes the lack of correlation between the GPD and the scores in the World Happiness Report’

An article by **Professor Angus Deaton**, the 2015 recipient of the Nobel Memorial Prize in Economic Sciences acknowledges the failures and the harm done blaming an “*overenthusiastic belief in the efficacy of markets*”, and the failure to recognise the importance of power and of ethics. He notes “*the libertarian streak*” in the sector and acknowledges that many still have a “*vested interest in capitalism as it currently operates*”. He concludes that economists “*recommendations become little more than a license for plunder*”. He advises “*greater engagement with the ideas of philosophers, historians, and sociologists*”.

⁵ **ECONOMICS *How should it change?*** Quarterly Publication of the International Monetary Fund March 2024
<https://www.imf.org/-/media/Files/Publications/Fandd/Article/2024/03/FD0324.ashx>

Jayati Ghosh, another economic professor supports Deaton's concern about power, writing that *"The need for drastic change in the economics discipline has never been so urgent" yet "the discipline's mainstream persists in doing business as usual, as if tinkering at the margins with minor changes could have any meaningful impact - - - economic wisdom - is at best misleading and at worst simply wrong - - - a powerful lobby within the discipline has peddled half-truths and even falsehoods- - - the exclusion of the concept of power from the discourse, which effectively reinforces existing power structures and imbalances. - - - the use of political power to push private economic interests. –*

She explains that-- *The enforcement of strict power hierarchies within the discipline has suppressed the emergence and spread of alternative theories, explanations, and analysis" And "Arrogance toward other disciplines is a major drawback, expressed for example by the lack of a strong sense of history- - - much has to change if economics is really to become relevant". She writes about the way issues are "squeezed into mathematically tractable models, even if this removes any resemblance to economic reality/*

Diane Coyle also writes *"In many countries and many sectors, a small number of firms have significant market power". She writes that "absence of solidly grounded welfare economics has been an uncomfortable vacuum.- - It is time for a reboot of welfare economics" and to move "away from the simplistic set of assumptions - -"* **Atif Mian** blames a lack of balance between *"what people earn and what they spend" - -for –"a massive debt supercycle that threatens the global economy".*

Ulrike Malmendier and Clint Hamilton write about what 'Behavioural Economics' can contribute writing about our uniqueness saying *"humans have a mind and a body, and an economic science that describes human behavior needs to account for both".*

Niall Kishtainy notes that *"Today's economists rarely consult Adam Smith's 1776 The Wealth of Nations" even though "his legacy was claimed by advocates of free markets and limited government. Yet the "modeling and mathematics toolbox" they developed was "a model of the economy so simplified that Smith would hardly have recognized it". He described the long "story of how the wordy 'political economy' of the 18th century turned into the mathsy 'economic science' of the 20th century".*

Suresh Naidu looks at labour relations arguing that *"the traditional economic model of how wages are set fails to reflect the real world" She points out that "employers exercise monopsony power" and this gives them "a degree of control over pricing" but that is not reflected in the models used.*

Wendy Carlin explains how a new approach to economics education can help address pressing societal problems. In addition to the *"in- and out-group" they "add a third pole and call it 'civil society', a richer view of human motivation can include altruism, reciprocity, dignity, and sustainability".*

Comment: We need to consider the criticisms by a world financial body that most of mainstream economists across the world have difficulty in *"escaping from old ideas", that they are "the most tribal scientists you can think of", that many have a "vested interest in capitalism as it currently operates", that "a powerful lobby within the discipline has peddled half-truths and even falsehood", that economists have used "political power to push private economic interests", the presence of "strict power hierarchies" and that there is "Arrogance toward other disciplines". The endurance of this system using these strategies is a graphic illustration of how durable harmful ideologies can be.*

It all resonates with what has been happening in Australia when we look at government, the public service, the multiple marketplace advisors and the way this new aged care act has been developed. Stephen Duckett's harsh comments that the act was *"still riddled with the old ideology" and was drafted by "the zombies that stalk the aged care policy corridors" makes much more sense."*

We worry that while they focus on society and ethics these economists still seem to see economists as superior beings and this as something they will now do for society. They still write about incentives rather than motives and values. They do not examine themselves as part of society and consider what society has to do itself if it is to rebuild responsible citizenship, assume greater responsibility for its vulnerable members and rebuild a deliberative democracy. What role will academic disciplines including economics play in supporting this and how with they fit in?

We find it encouraging that our own Productivity Commission in 2022 appointed Natalie Siegel Brown as the new Commissioner (Social Policy). She has a strong focus on community and when she was the Public Guardian in Queensland, she successfully used empowered community visitors to watch over the care of those the Guardian was responsible for. She advocated strongly for this to be introduced into aged care in Australia and we supported that. It would be a good way of building community, involving it in care and making providers accountable to the communities they serve.

Capture: A major consequence of the imbalance of power in our society is the 'capture' of regulators, governments and policy by the ideology and its powerful supporters. Governments and regulators act in their interests and protect them rather than citizens and society. Neoliberal think tanks and the scholarships they award, foster a culture of leadership in which charismatic believers can sell themselves as leaders to industry, politicians and the public so compounding the problem. Deliberative democracy, in which communities choose trusted representatives to make decisions on their behalf, suffers. The Democracy Network considers that capture of our democracy has become a major problem in Australia⁶.

Marketised systems: Individual analysts and community groups around the world including in Australia are now writing critically about what has happened to markets and particularly those human services that were marketised as a result of policy.

We have used the 2018 Australian book '*Wrong Way: How privatisation and Economic reform backfired*' edited by Australian political economists Cahill and Toner as a resource. They give a good overview of the phenomenon and how it developed in their introduction. The contributors describe the adverse consequences for multiple marketised sectors in Australia that have been 'plundered'. Policy capture is illustrated, but the book does not offer many solutions for aged care.

Chapters address problems in health and aged care as well in other sectors that impact on aged care including the banks that invest, the VET system and universities that train staff, as well as the restructuring of employment services and labour policy.

Consequences for society: In the 1980s and 1990s social scientists and doctors warned of the negative consequences of these beliefs for society and health care respectively. Two social mechanisms can be seen to have had an impact on societies across the world and are worth trying to understand. Understanding and addressing this is the key to reform including for aged care.

1. The distrust of society and social movements deep within neoliberalism was we think unique. It saw civil society pushed aside, managed and so eroded as believers took control. Marketing strategies influenced the way citizens and societies thought and behaved – the normative order. A much less egalitarian and more libertarian individualised self-directed society developed. That altered the balance between our primitive selfish selves and our social selves (consciences), which in well-functioning societies controls and directs this drive to ensure that it serves us and does not cause harm. Many vulnerable people in many sectors have been harmed. The young who grew up in this were most affected.

⁶ Confronting State Capture Feb 2022 <https://australiandemocracy.org.au/statecapture>

2. For about 120 years social scientists have understood the importance of building a stable 'normative order' (religious or secular) that we can use to understand the world we live in and act in it. When the normative order is unable to adapt to change or a crisis and no longer works, society can become distrustful, confused, anxious, and fractious. There is a high incidence of mental illness, suicide and crime. Emile Durkheim who first described it in about 1901 called it 'anomie'.

In this situation we desperately seek order and will disregard evidence and knowledge in order to invent or adopt new beliefs. It is fertile soil for bizarre cults, appealing ideologies and charismatic populist leaders with dangerous ideas. If unchecked it can end in war. What happened in the world in the 1930s is a typical example.

The more stable and engaged society is, the more resistant to this it will be. The problem is addressed and war can be averted when society rebuilds and engages with the diverse experiences of its members to create new understandings and a new order.

An ideology can be stabilising while it seems to be working. When it causes harm or fails to deliver it is often very resilient and resists change. The now powerful believers cling to it even as society breaks down. Neoliberalism is doing this now, but is probably unique in that it has left us with a weakened civil society unable to effectively challenge believers.

Analysts around the world are now describing the consequences for society as the policies based on neoliberal belief have failed. These include a loss of social cohesion as society fractured, became polarised, and lost trust in our institutions and in our democracy. Others within society describe the decline of democracy in many countries over the years as citizens and society have been marginalised by these policies. The world is in turmoil. Some call it the 'post-truth era'.

We currently have high incidences of mental illness, bizarrely radicalised citizens, violent crime with random stabbings, domestic violence with women being killed and failures in multiple sectors including aged care. Yet we investigate and try to address each of these as if they are isolated problems and not related to each other or what is happening in our society.

The Rand Corporation in the USA has studied this⁷ and since 2018 has written multiple articles calling it 'truth decay'. It found that truth decay is also linked to the decline in the teaching of civics and social studies in schools.

The greater neglect of education about society in the USA is used to explain why truth decay is greater in the USA than Europe. But this has happened in Australia too. A lack of knowledge and social consciousness appears to be an important contributor.

These changes are linked to the growth of huge corporations and the concentration of the world's wealth and power in a smaller and smaller percentage of the population. There is a decline in overall wealth, in the size of the middle class and there is greater relative poverty overall.

The resilience of ideologies: Social scientists realise how deeply entrenched and resistant to change, ideological beliefs become when they hold power. History tells us that it takes a united society and the power of numbers to break the cycles of recurrent failure and protective centralised control that follow each failure. Citizens have to become involved and engage to rebuild society and restore balance. Failure to do so in time, too often allows extremism to flourish and ends in war.

It is encouraging that citizen groups across the world are currently growing and uniting. Many are pressing for a greater role for citizens and community in providing human services, which have suffered most. This is a threat to the ideology and to those who believe in it. They will resist it.

⁷ Truth Decay An Initial Exploration of the Diminishing Role of Facts and Analysis in American Public Life The Rand Corporation 2018 https://www.rand.org/content/dam/rand/pubs/research_reports/RR2300/RR2314/RAND_RR2314.pdf

Aged Care as an example: Aged care is not an island and is part of this society. It is heavily influenced by the wider society and related sectors and in turn contributes to the wider problem. Reforms in aged care and other human services will impact other sectors and wider society itself. Not only is aged care more vulnerable, but it has suffered most from these policies.

Every citizen has family and friends who are ageing and so becoming victims of this system. They themselves will eventually have to depend on it. There are more reasons why citizens should become involved and fix this than in other human services. In doing so and in taking greater control and addressing the imbalance of power within the system they will be leading the way in rebuilding our civil society. Other sectors will follow.

The failure of the **new draft Aged Care Act** to seize this opportunity and the manner in which it excludes democratic community involvement and control is a betrayal not only of the elderly but of Australia and its citizens. Captured politicians who understood everything as a free market and not as a humanitarian community service handed the bulk of the reform process to the powerful and influential global and local marketplace advisors who have benefited most from neoliberal policies. They have the largest *“vested interest in capitalism as it currently operates”*. They would suffer most of all if these policies were abandoned, yet they have been involved in almost every part of the reform process.

3 The story of aged care

The early years⁸

Care in the early years was provided by humanitarian societies and governments. By the late 1960's free market ideas were becoming influential and funding was provided for private providers of nursing homes in the belief this would be cheaper and more efficient. Industry saw this as '*low risk, high profit financial ventures*'. The for-profit sector expanded rapidly. By the 1980s Australia had one of the highest rates of nursing home occupancy in the world.

Inquiries during this period (Coleman 1975 and Mcleay 1982) considered that aged care was too complex to be managed centrally and they favoured decentralisation with greater local community involvement and control. This did not happen. The 1985 Giles report on Private Nursing homes is reminiscent of the 2020 Royal Commission report. It described the unnecessary incarceration of the elderly in nursing homes, poor staffing and appalling standards of care. It urged direct community involvement in investigating complaints and regional Community Standards Committees. This did not happen.

Attempted reform

The Hawke (Labor) government's ten-year reform program commenced in 1986. Funding for staffing and care was protected from profit taking. Home care and low care hostels were supported for less frail seniors. An assessment process was introduced to manage access and prevent unnecessary admissions. A vigorous often on-site state regulatory process bored down into failures to identify underlying problems. Research suggested it was superior to the tick a box regulation in the USA and the UK at this time.

The 1989 report into Human Rights by Chris Ronalds was followed by legislation in 1991. Her recommendations for an independent advocacy system and a trained visitor's scheme to watch over care were watered down and their power to expose failures in care was later curtailed. A 1985 study of staffing requirements in Victoria recommended levels comparable to those found to be necessary and introduced in the USA in the 1990s. Government rejected this.

The for-profit industry smarted under the new restrictions and rallied under Doug Moran's leadership. They resisted the reforms strongly and were aided by the increasingly dominant free market beliefs. Paul Keating who replaced Hawke in the 1990s did not support the ten-year reform plan and it languished. He wanted to introduce neoliberal principles and microeconomic reform into aged care but when his economic advisor Bob Gregory warned him of the consequences for staffing and care he sat on his hands.

The Howard government and beyond

Marketisation: The Howard coalition government elected in 1996 ignored Gregory's warnings. The 1997 act abandoned all the reforms and restructured the system using free market principles. It replaced the effective regulatory oversight with the industry friendly accreditation process. This had been rejected for aged care and already failed repeatedly in health care in the USA. It abolished the probity requirements (an assessment of trustworthiness) for new providers and large investors. Companies with a bad track record were free to buy an Australian aged care company.

⁸ See Wynne JM, Saltarelli L and Winkler D. Chapter 2 'Policies Influencing Aged Care in Australia: Past, Present and Future' in *Healthy Ageing and Aged Care* edited by Bernoth M and Winkler D, Oxford University Press 2022
See also *Residential Care for the Aged: An overview of Government policy from 1962 to 1993* by Roxane Le Guen Parliamentary Research Service Nov 1993 Department of the Parliamentary Library

Failure and capture: The first of a succession of scandals and failures occurred after only 3 years. The situation got steadily worse over the years with scandal after scandal until the outcry was so great that a Royal Commission was called in 2018.

The many times 'reformed' and renamed regulator over the years did not change the essential nature of the accreditation process. As the residents became more and more frail and the numbers of skilled staff needed to care for them declined, the incidence of perfect scores in accreditation of nursing homes increased from 60% in 2000 to almost 98% by 2015. In the better staffed and regulated US system only 7% got perfect scores.

It is now clear that the regulator was captured and was protecting the industry and government policy, and not the residents. This success rate was accepted by industry and government who used it to justify claims to a world class system. They used it to reject claims of poor care and to claim that the failures that could not be challenged were rare exceptions.

Believers were in denial and, as has happened in ideologies before, many still are. There is nothing unusual in this when ideology is challenged. The ongoing denial by big US health care corporations in the USA over the years has been far greater. They could not accept that the market practices that made them so successful were deeply flawed. They failed again repeatedly even after paying massive fines and after pleading guilty to fraud and harming patients. Politicians supported these policies and continued to support them. They even sat on some boards.

Inquiries and reforms: Many inquiries and claimed reforms in aged care in Australia over this period have failed to address the problems in this market and the resulting 'reforms' have failed as a result. Inquiries by an economist in 2004 and the Productivity Commission in 2011 focused on making the sector fit the new market model more closely and on greater central control. They made the situation worse. This is happening again now in the new draft act.

Industry involvement: Aged care businessman Doug Moran later claimed that he had written the 1997 act and he certainly contributed to it. Over the years there has been a revolving door and senior industry staff figures have been co-opted onto advisory committees. Industry and groups that supported this model have been at the policy table since 2000 when the National Aged Care Alliance was established. In 2012 they largely designed the *Living Longer Living Better* (LLLBB) reforms that Butler implemented under Labor⁹. They opened the system to greater marketisation.

In 2014, Abbott and Scott Morrison, the minister responsible capitalised on this to ramp up the pressures in the system. In this he was aided and supported by industry representatives on the Aged Care Sector Committee and a full-time advisor from COTA. The industry are now being hypocritical trying to blame the failures in care on governments for not funding the system. They were themselves conniving with government and focussing instead on ways to reduce costs.

Capture: That government and policy have been captured by the dominant market became clear after 2014 when a politician spoke out¹⁰ and analysts looked at what was happening⁹.

Not-for-profit sector: Market pressures have forced not-for-profit providers to compete in the same way and this has led to progressive erosion of their mission of care. The separate industry groups have come closer and closer together over the years and the three separate organisations finally amalgamated in 2022 to form the '*Aged and Community Care Providers Association*' (ACCPA). They now speak with one voice and are in a much stronger position to influence government and the public than ever before. Their commercial interests are not those of the public.

⁹ 'Why the appointment of Mark Butler as Shadow Minister for Health and Ageing is significant' Aged Care Crisis Feb 2021
<https://www.agedcarecrisis.com/opinion/articles/453-why-appt-of-mark-butler-is-significant>

¹⁰ Rob Oakeshott: How big business hijacked parliament The Saturday Paper 9 Aug 2014
<https://www.thesaturdaypaper.com.au/topic/politics/2014/08/09/rob-oakeshott-how-big-business-hijacked-parliament/1407506400834>

3.1 The problems with the Royal Commission into Aged Care

The system came apart in 2016 as more and more problems were exposed by the press and to senate inquiries. When an ABC Four Corners expose was announced in late 2018 the government gave in and announced a Royal Commission.

Governments see those who support their views as credible and appoint them to inquiries. As the Royal Commissions own report of previous inquiries later showed, they can be biased and not challenge ideology and so be ineffective. Aged Care Crisis realised this. In a 2018 submission into the terms of reference we warned the minister of this danger. At a meeting with Minister Wyatt, we got assurances that structural changes would be considered this time.

Both the Commissioners and counsel were appointed by government. Our warning was ignored and it is clear that this Royal Commission was deeply conflicted. But with a judge in overall charge the initial report was damning describing widespread neglect in a woefully inadequate system. It described a *“shocking system that diminishes Australia as a nation”*. It attributed this to *“deep and entrenched systemic flaws”* and 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 said that *“The structure of the current system has been framed around the idea of a ‘market’ for aged care services - - - It is a myth that aged care is an effective consumer-driven market”*. It indicated that it would *“explore the need for measures to manage a fragmented market for the delivery of aged care, along with consideration of alternatives”*.

After this report the judge died and the redesign of the system was commenced by a past senior member of the public service who had been involved in developing the governance processes that had failed so badly. The Royal Commission now walked away from these commitments, even ignoring the reports from its own commissioned investigations. It engaged with industry and public servants rather than critics – those the remaining commissioner had worked with and must have seen as credible.

Extracts from our multiple submissions to the Royal Commission show what happened:

- 1. First short submission (Oct 2019):** In this we highlighted the problem in this market, stressed the need for structural changes and referred to the minister’s promise. We pressed for a distributed system with community involvement *“that is not constrained by an ideological discourse and personal ambition”*. We attached a 400 page analysis of what had happened to aged care with 26 recommendations, five appendices and 700 references *“explaining where it went wrong”*. Neither were published.
- 2. Supplementary submission late Oct 2019:** This was written after watching sessions on staffing in Melbourne. We focussed on the way the obvious conflicts between paradigms (patterns of thinking) at the session were being ignored. We concluded *“We are concerned that when looking for solutions, the Commissioners are listening closely to the same voices that have been talking to government over the years, the voices that have adopted the paradigm that lies at the heart of the failed system”* and that this would lead to *“a rearrangement of the chairs and not deal with the real and deeply embedded problems in the system – the paradigmatic issue”*.
- 3. Submission into staffing (Dec 2019):** We indicated *“Structural changes must address the beliefs and resultant policies that are causing alienation, toxic cultures and the provision of task focused care”* and the need to *“change the context and the power structure within which citizens live their lives and so free them from the control exerted”* if we are to address this.

- 4. Submission into Program Redesign (Jan 2020):** We directly challenged what was happening by asking *“Is something missing?”* and accused them of *“Addressing the symptoms but not the cause”* and of not asking *“Why is it going on?”*.

We asked *“how would the proposals to redesign the program eradicate the power imbalance?”*. We indicated *“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”*. We added *“The Program Redesign consultation paper does not suggest a restructured new aged care system of the sort promised in the interim report and we find it very disappointing”*.

- 5. Commenting on Counsel’s recommendations for Program Redesign (Mar 2020):** *“we think that designing a new system by isolating the discussion from the context within which it will operate is unrealistic”*. And then *“at this stage we are not persuaded that the objectives are attainable with the proposals that have been put forward by counsel. We are concerned at the way in which the Commission is proceeding”*.

The Commission was *“not challenging many of those responsible for what has happened to aged care with the data and the important issues that need to be confronted”* and *“the Commission has become selective in the data it chooses to use and is ignoring that which challenges its proposals or questions the validity of the views of those whose advice it accepts.”*

Then finally *“We are concerned that the Commission has been captured by these same patterns of thinking and that, in working so closely with members of the policy silo, the Commission is developing a program that does not address the real issues but which can be sold to the public as part of another branding exercise. It is not listening and has become willfully blind to alternate points of view and the evidence that supports them.”*

- 6. Submission into Aged Care Structure (Aug 2020):** We explored this issue in depth explaining that their own commissioned report by Dyer et al found that regulation in most countries was decentralised and that eminent gerontologist Hal Kendig had spent the last 20 years pressing for local management. We then made recommendations including that *“Responsibility for management and oversight of care should be returned to local and regional government and their communities so that they can appoint their agents and work transparently with them and replace those who fail to deliver”* and that *“Communities will need a great deal of support to do this. A network of support services should reach down to support and work with these communities to build capacity, mentor, support, empower and be there to take over and help when there is insufficient capacity”*.

- 7. Submission into Financing Aged Care (Aug 2020):** We refer to *“the unpredictability of care costs”* and comment that *“the lives of the elderly and their families are too often disrupted by large unpredictable aged care costs”*. We assert that *“funding must follow the need for care and services, instead of care following the money”* as was happening. If the system was not changed more funding might not go to care. We indicated that a *“strategy is needed to collect funds from the present generation in a way that does not cripple them and which addresses the inequity of unpredictable costs”*.

We discussed ways of addressing both generational inequity and the inequality created by the unpredictability of the way ageing occurs. In its recent 2024 report, the minister’s industry dominated **‘Aged Care Taskforce’** uses generational inequity to give industry the user pays option it wants. This does not adequately address the other inequity.

8. Capital Financing (Oct 2022): We commented on the way the commission was consulting and being influenced by those responsible for failure who were *“still expressing the same ideas and counsel seems to be accepting and embracing them - - - - - Equally disturbing was counsel’s willingness to accept their strategy of placing the blame for what has happened on government when many of those giving evidence have been advisers to government and have been as if not more culpable”*. We opposed RADs where this money went to providers who built *“facilities that are profitable for them but unsuitable for the provision of good care”* and argued that funds *“should be used by communities to enable them to develop the facilities their citizens need”*.

9. Response to Counsel’s submission and recommendations (Nov 2020): We were encouraged by a comment about 1997 cabinet documents by Commissioner Pagone when he indicated *“Good people, well intentioned, doing the best they can, can cause the biggest problem to fix the system without a complete overhaul”*. We comment that *“This is particularly relevant to this Royal Commission and we are encouraged that the Commissioner seems to grasp this problem in his comment because the order we impose can be the problem”*.

In describing Counsel’s submission, we indicated *“We are concerned that Counsel has fallen into this trap and that the order that was imposed on aged care and its failures in the submission - - - is limited and only addresses part of the problem”*. We discuss the social science around credibility and note *“that in preparing its recommendations Counsel consulted primarily with those who were responsible for designing, operating and managing the system that has failed and accepted their expertise, most of which lies within this order of thinking”*.

In addressing Counsel’s final submission to the commissioners, we challenged the way *“Industry arguments were accepted and government blamed”* and explain that it was industry that had been consulted, trusted and protected by government that had then rorted the system and broken that trust. Both were equally responsible.

We welcomed many of the aspirational changes but it was *“what has been omitted that is of concern and we think this is because of Counsel’s inability or unwillingness to consider any order of thinking other than that of industry and the government whose legal team is assisting the Commission”*. We criticised the way the same centralised system, the same groups and the same system was being supported, particularly in regulation.

We indicated *“The most revealing evidence of the single focus order of thinking adopted is the failure to confront the powerful perverse incentives created by the sort of market system that we have and will still have”*. We pleaded with the Commissioners *“to confront the problems in Counsel’s order of thinking”* and instead *“embrace an order of thinking based on responsible citizenship and values that focus on trusting relationships, the welfare of others and the common good of society”*.

Professor Eagar started writing in 2020 when the Covid Pandemic exposed just how far the system had deteriorated over the years and how market policy had failed.

A failed system

“- the light that COVID-19 is throwing on aged care homes in Australia and internationally. - - - aged care was already in crisis ----- has been festering for at least the last two decades. ---both major parties have seen competition and the market as critical means to drive improvements- ----(They) sought to be in alignment with key industry and aged care consumer peak bodies. -----rigid standards and regulations stifle innovation and responsiveness. - - - only 15% of residents are receiving care that would be classified as 4 or 5 star in the 5 star public rating system used in the USA”. The Royal Commission “is a once in a generation opportunity to get aged care right” --- (Eagar 7 Aug 2020)

“----- Outsourcing the government’s duty of care for older Australians has been at the core of structural failings in aged care for the last two decades.- - - We should not be surprised at the results - - (need to) plan for aged care as a social responsibility and a public good - - - it is our government, not providers, that is accountable for aged care” --- (Eagar 17 Aug 2020)

The starting point for a fit-for-purpose, 21st-century aged care system is public recognition that we can no longer continue to simply subcontract out our public duty of care for frail and vulnerable people. - - -system is broken and needs rebuilding from the bottom up”. --- (Eagar 18 Aug 2020).

Problems with the Royal Commission: It would have been difficult for Eagar to comment and criticise the Royal Commission staffing sessions as we did. Her evidence and research was central to that and she was involved. But when the program redesign sessions commenced, she could express the same anxiety that we had about the direction the Royal Commission was taking and their position on this market. We can see the consequences of a deeply conflicted Commission. In an article ‘**Aged Care: Human Right or a market opportunity**’ Eagar speculated on what the Royal Commission would do in its report stressing:

“- - , the private-for-profit market model has not resulted in the improvements that were expected - - (It was) time to conclude that aged care should no longer be framed as a private market. ---(then)-- It will clearly recommend more funding and more regulation – (but these) quick fixes --- will not go anywhere toward tackling the structural and systemic issues that are at the heart of our failing aged care system – (the) billion dollar question is whether the Royal Commission goes further and, if so, whether the government will respond- --(There were)- key questions about the role of aged care, the role of the market and the interface between aged care and health care”.

(She commented on some of the inconsistencies and implications of Counsel’s statements)- - “But no one would seriously suggest that taxpayers should commit to an uncapped taxpayer-funded private market, whereby significant additional taxpayer money would be poured into the system only to be taken out at will as profit? - - - - The only sustainable way to achieve that is through structural and systemic reform.- -(It is)- clear that aged care should no longer be framed as a private market.- - - - care needs to be repositioned to sit alongside Medicare”. ---- People do not need aged care because of their age but because they develop health conditions.- - - Aged care has five domains – health, function, social, residential and end-of-life care needs. --- (Eagar 12 Oct 2020)

In ‘**Aged care and the magic pudding**’ Eagar expresses her concerns about counsel’s recommendations on funding and intergenerational inequity:

--- issues were not satisfactorily addressed in the final submissions to the Royal Commission -- - - - avoided the need to address fundamental questions surrounding equity, efficiency, effectiveness, affordability and inter-generational equity - - - - In the absence of a magic pudding, it will ultimately come back to government and to taxpayers to decide (Eagar 28 Oct 2020)

And then in ‘**Commissioners hand government a ‘get out of jail’ card with disagreement between Commissioners**’:

Speaking from the bench, the two Commissioners disagreed publicly on the future governance arrangements for Australia’s failing aged care system with one disagreeing with the governance propositions put by Senior Counsel and the other supporting them. In doing so, they handed the government a get out of jail card. (Eagar 29 Oct 2020)

The new Commissioner, Justice Pagone who replaced the judge who died seemed to realise what was happening. The disagreements between the two Commissioners were apparent to those who were watching the sessions closely. That disagreement was confirmed in the final report when the two Commissioners wrote separate chapters structuring the system very differently.

The retired public servant left the system as it was – market driven and captured, centralised and controlled by government, and dependent on regulation. Her proposal was described by the judge as renovation. It did not address the problems in the system. He recommended a rebuild with decentralised management and oversight, and a much more independent central body in control as recommended by the Grattan Institute. It would have been much harder to capture.

In his introduction to the final report the judge indicated that *“we differ sharply on certain aspects”*. He wanted an *“Independent Commission model”* and not the *“Government Leadership model”*. He argued that *“Mere adjustments and improvements to the current system will not achieve what is required”* and that *“A profound shift is required - - (it)- does not ‘need renovations, it needs a rebuild”*. He stressed the importance of *“understanding why the aged care system has been failing”* and that it *“has come to its present state in an entirely foreseeable manner- - “*. He indicated that they were *“unable to consider market dynamics to any great extent”* and we understand how frustrated he must have been.

Professor Eagar and colleagues described it this way in **‘Fundamental failure: Aged care a public good or competitive market? RC fails to address role of private providers’**:

If the government or the community is looking for an elegant blueprint for how to fix aged care, they will not find it here. - - - full of inconsistencies, contradictions and conflicts.- - - could not agree on critical issues.- - -The report is peppered by disagreements between them - - - One Commissioner sees government as the problem. The other Commissioner sees government as the solution - - - handed the most recalcitrant issues back to government - - - government and aged care providers have been handed a ‘get out of jail’ card ----- no questioning of the underlying assumptions about aged care as a market - - - made no adverse findings against any provider - - - little in these unanimous recommendations that is new. (Eagar and Westera 2 Mar 2021)

They look at the consequences of the preponderance of underpaid women staff and less wealthy women residents in **‘Aged care – where sexism and ageism walk hand in hand’**. They comment on how the report was overshadowed by the Britney Higgins rape scandal:

- - - none of these changes are likely to impact on the one sector of society where women are the most vulnerable – the aged care sector. - - - women represent 87% of workers --- -Two thirds (64%) of all people in receipt of aged care are women. ----- (RC estimated) - --prevalence of elder abuse in Australian residential care is 39%.----- the prevalence of neglect to be 31% ----- just like women’s rights issues everywhere, systemic change is required. (Eagar and Westera 7 Apr 2021)

3.2 The Government’s response

Morrison Government: Pagone’s recommendations challenged ideology and the Morrison government simply ignored them. It adopted the renovation model. Every criticism of the process is now confronted by claims to be doing only what the Royal Commission advised, when in fact only one of the three commissioners involved advised this and one indicated that it would not work.

Eagar and Westera put it this way in ‘The Aged Care Royal Commission: the government responds with more money but the structural problems remain’:

There is little that is truly transformational. –(They have)--- largely adopted the arrangements recommended by Commissioner Briggs whereby governance responsibility remains in the hands of Commonwealth public servants.---- no one should be fooled by this. ---- it fails to address the underlying structural and ideological factors that have shaped the aged care system we have today - - - the deep fundamental problems of the aged care system will not go away. It will only be a matter of a few years before the system is back in crisis again - - - - The market ideology - - - - is at the very heart of many of the biggest failures that led to the ACRC (Westera and Eagar 18 May 2021)

The Morrison government quickly turned to its close allies and supporters, the big accounting and business advisers on whom it had become more and more dependent. Over the years government and government departments have been working with and consulting with them in addressing almost every problem they encountered - particularly in vulnerable human services like aged care.

These groups are deeply conflicted because when their advice to government would adversely impacts on the industry that uses their services, their business would suffer. Their businesses would prosper if they left loopholes or used their knowledge to help industry circumvent the regulations they designed (eg. recent PwC scandal). Their approach in advising both industry and government is rooted in the neoliberal model. Their businesses with both industry and government will suffer more than others if neoliberal policies are abandoned. They are therefore doubly conflicted in advising on aged care. They prosper when government and policy is centralised and captured so that government is looking after industry and not citizens.

The government set up a huge and costly process of consultations and submissions managed by these groups¹¹. If you dig down you find their fingerprints everywhere. The public service has been decimated over the last 20 years and a revolving door with industry has limited it's independence. Departments no longer have capacity and it would not be possible for the department of health to manage all of the inquiries and consultations that are happening alone.

The consultations on the aged care act are a good example. Meetings of advocacy groups with the department have been run by MP Consulting (Mathew Pegg) who claim¹² *“For over 15 years mpconsulting has worked closely with government in developing and implementing its long-term aged care reform agenda”*. We now know what that agenda was and still is.

Departmental consultations with the public across the country have been run by KPMG. It is the company that has been used most extensively for advising on aged care. Department members have been observers at these sessions. KPMG is seeking citizens views and recording them and there is no discussion. The proceedings are recorded and KPMG analyses them and reports on their findings.

When asked they admitted that they were also assessing the submissions made and reporting in the same way. They denied that they played any role in developing the legislation. They are clearly in a position to filter the information used and exclude those that they don't think are credible because they challenge belief.

¹¹ **Government outsources aged care reform to management consultants** Rick Morton The Saturday Paper 27 Nov 2021
<https://www.thesaturdaypaper.com.au/news/politics/2021/11/27/government-outsources-aged-care-reform-management-consultants>

¹² MP Consulting Recent Projects/ **Advice On Aged Care Legislative Reform** <https://www.mpconsulting.com.au/projects/>

Eagar and Westera did not address the issue of consultants but in **'Covid and aged care: When you are in a deep hole, the most important thing to do is stop digging'**, they used the way the Morrison government responded to COVID-19, then handled the vaccinations and more COVID to show how government thought and operated. This showed how wedded to outsourcing and markets, and how inept, ill-equipped and incapable of dealing with major problems it was.

----- The bottom line is that the needs of older people cannot be met unless aged care is better integrated with hospitals and health care managed by states and territories. --- Australian Government is 100% responsible for aged care. -----Both residential and home aged care have been in a mess for years, ----- aged care residents represent less than 1% of the Australian population ---(yet)-- accounted for 75% of all Australian deaths due to COVID-19

-----The Department of the Health and the government rejected the (Royal) Commission's assessment. From their perspective, they had managed COVID in aged care homes well and they seemed genuinely perplexed that others did not share that view. - - - - Twelve months on, the same deep failings in the governance and delivery of aged care are the cause of the current failure of the aged care COVID vaccination program. ----- The first step in fixing a problem is recognising you have a problem.-----This decision (not to give vaccination to the better equipped states but to privatise) set the aged care (and disability care) vaccination program up to fail before it had even started. From that point on it was just a matter of time. ----- In the event, using private organisations for vaccine distribution in aged care has been really hit-and-miss. ---- the Commonwealth seems genuinely perplexed that there is so much criticism of the roll out in aged care.

----- It is time to question whether the Commonwealth is the right tier of government to manage aged care into the future. ----- it is clear that it does not have the appetite to drive transformational change. -----intent on running aged care as a silo in isolation from the other services that older people need ---the direct opposite to what is actually required - - - - it may be time to transfer aged care back to the states and territories where aged care can be integrated with their subacute health and community services and where the quality and safety of aged care can be better assured. (Eagar and Westera 7 Jun 2021)

Six months later a new COVID-19 Omicron strain was spreading through this still under-resourced and poorly vaccinated sector. **'Aged care again bears the tragic brunt of a COVID-19 wave: why?'** Government had prematurely lifted masks and isolation across the country.

-----incredible that aged care is again on the frontline of the COVID-19 pandemic, with outbreaks in about half of aged care homes in Australia -----two overwhelming conclusions can be drawn ----- better staffed public sector homes did demonstrably better. Residents in private-for-profit homes, with fewer and less qualified staff, fared much worse. ----- second conclusion is that most of the responsibility rests with the Commonwealth

----- lifted almost all restrictions including face mask and social gathering requirements. - ----- Omicron variant - - - has spread like wildfire both in the general community and aged care. (Multiple failures described including) - - a significant hollowing out of the public service over time, with an increasing reliance on politicians' staffers and external contractors for policy advice that invariably focuses on the political objectives of government rather than the broader needs of the public. (Eagar and Westera 22 Jan 2022)

In ‘**None of us is safe until all of us are safe: Australia and global vaccine equity**’, Eagar makes the point that we are not meeting our responsibility to support vaccination in less developed countries who will reinfect us as travel opens up again.

Sending strong messages that the worst of the pandemic is now over.----- sad reality is that the pandemic is not behind us. Fifteen weeks later, cases numbers have risen to more than 5 million ----- toll of people living with long COVID rises daily. ----- (Vaccinations are) --essential to assist the populations of other nations. ---Australian Government’s response continues to be inadequate.---- Global vaccine equity has an allocation problem. (Eagar and Morris 24 Apr 2022)

It is the same government and the same advisers who have prepared the new aged care regulations and then this draft aged care act. We can understand why it is such a problem and as Eagar indicated, if this draft act is not changed to open the system to change then it may be many years before there is another window of opportunity.

Albanese Labor government: One might have expected the Labor government that was elected in 2022 to change direction. It did increase funding for staff and set staffing levels. It opened an inquiry into the failings of these conflicted advisers but it has done nothing about them in aged care. Morrison’s reforms have been rubber stamped and implemented.

This is not surprising when you consider that the Labor party itself is factionalised and were responsible for the failed free-market based **Living Longer Living Better** (LLLBB) reforms introduced in 2012. Labor have even brought the economist who advised them at that time back from Ernst and Young and made him Secretary of the Department of Health.

The Labor government knows that if they make any changes to the proposed act, the opposition and the market will fund a media campaign accusing it of abandoning the Royal Commission recommendations. The dominant right-wing press will publish it and social media drive it. Industry donors including the Big 4 global marketplace advisers will stop the donations to Labor that are needed to fund the upcoming election.

A report by the Australian Democracy Network¹³ in February 2022 makes a compelling case “*that state capture is a problem eating away at the foundations of our democracy, our way of life and everything we care about most*”. They found 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*”.

There will be strong resistance and real change is unlikely to come from the two major parties. Any prospect of changing this bill to open it to community groups that are interested in moving towards a better system will only be achieved by the crossbench pressing for change and making amendments that open the system to new ideas.

Eagar was initially positive about Labor in ‘**A Labor budget to address workforce shortages in aged care**’, but asked:

-----The question is whether Labor is prepared to go further in its second term to tackle the underlying problems that these solutions are meant to address. --- (noting that providers) - felt under no requirement to pass the 15% on in full to all of their staff. (Eagar 20 May 2023)

¹³ Confronting State Capture Feb 2022 <https://australiandemocracy.org.au/statecapture>

Nine months later and it was a different story in **'Mid term Aged Care Report card: 5/10 – must try harder'**:

The election of the Albanese Labor government was met with a strong sense of optimism-- -- Alas, it was not to be. -- (reforms)- either been watered down, delayed, largely cosmetic or abandoned. ---- (more) bureaucratic reporting and increasing micro management - - - strong sense of reform fatigue. - -little evidence of improvement ----The aged care gateway is still a nightmare to navigate, aged care assessment remains firmly focused on eligibility and not needs or preferences, quality of care is still well below par, the new public reporting system is a mess and reform in care at home has effectively stalled.

-----An equally important reason is that, like Aged Care Ministers and governments who have gone before, the current government appears captured by the aged care sector itself and by a small group of Canberra public servants.

----The new five star public reporting is a classic case of implementation failure. --- It is a mess. - - - It is a myth that aged care is an effective consumer- driven market” -- - The centrality of a market model permeates well beyond aged care. - - - it too misses the central point about care being a social good and not just a market. - - - no indication of the government even questioning this assumption, let alone any indication of its intention to change direction. - - - not-for-profit providers - - are increasingly becoming less influential- - Very large private-for-profit providers are increasingly more influential - - , they are very powerful. (Eagar and MacDonald 5 Feb 2024)

When the industry dominated taskforce reported it gave the industry the user pays option that it wanted. Eagar was critical in **'Albanese government wedged on aged care'**:

With a Medicare-style levy and changes to the treatment of family home both ruled out, the only choice left is more user-pays. But it will not be enough. -- The Taskforce - - was composed of aged care sector representatives, most with vested interests - - key recommendation is that older people should pay more. This should not surprise anyone. - ---- At best the Taskforce solutions are only a temporary solution. And that is the best-case scenario. ----The reality is that the Albanese government has been firmly wedged on aged care. --- unstated assumption of the Aged Care Taskforce is that aged care is a competitive private market. (Eagar 4 Apr 2024)

3.3 The corporate response to the new regulations and the new Act

One of the remarkable things about the Royal Commission was its failure and the failure of its several delegated investigations of international staffing and aged care systems, to even mention the extensive data in the USA showing how the more profit-focussed providers staff more poorly and have more failures in care. It was impossible to miss. Counsel refused to accept that US data as valid when we supplied it in January 2019. They ignored it again in October 2019 and did not publish it.

Research Paper 13 by NARI (National Aged Care Research Institute) in October 2020 examined Aged Care Resident perspectives in Australia and found that:

The results suggest that institutional factors play an important role in residents' experiences. Results were consistently best for residents in government RACFs, and usually better for residents in non-profit RACFs than for-profit RACFs. ----- Results by facility size were less consistent but overall there was a tendency for RACFs with 0-60 beds to have better resident perspectives than those with 61-100 or over 100 beds.

In Report 1 of their Aug 2020 Research Paper 9 'The cost of residential aged care', quality of care is examined. The figures showed that in Australia, government operated nursing homes performed better than non-profit ones, and for-profit ones were the worst. Other figures show the percentage of homes sanctioned was lowest in government, double that in non-profit and double again in for-profit owned homes. This confirmed the findings of Dr Richard Baldwin's research in 2014. He published and tried to warn the Abbott government of the consequences of their policies.

Dominant market Ideology condemned a fragmented marketplace and saw marketplace consolidation as necessary. Abbott supported this and the pressures generated by the feeding frenzy of takeovers and mergers that were supported was largely responsible for the greatly increased failures leading to the Royal Commission/

Private Equity¹⁴: Studies in the USA have shown Private Equity ownership to be at the extreme end of that for-profit spectrum. They pioneered the use of corporate webs to hide profiteering, frustrate regulators and avoid tax. They have been a big problem in the USA and have done immense damage to the system in the UK where they are blamed for the bankruptcy of its largest nursing home provider.

In Australia, private equity invested in Estia and Allity who were leaders in the damaging feeding frenzy of acquisitions that occurred between 2014 and 2016. It put huge pressures on staff and care and encouraged rotting. Turnbull finally stopped it. Private equity took their money from Estia and ran before the share price dropped.

We warned the senate about the risks of private equity in 2007, have written about Private Equity on many occasions and supplied information to inquiries. It is clear that this lesson, like many others, has not been learned.

It is now happening again: In Appendix H of our June 2023 submission to the department on '**A new model for regulating aged care**' (linked from page 25 below), we described the way the complexity of the proposed new regulations and the changes being proposed for the new act were already driving local governments who provided good home care out of business. A number of smaller residential providers were also vacating the sector.

Private equity and Estia Healthcare also noticed. They saw the increased regulatory burden on smaller operators as a window of opportunity for them. After giant US private equity group Bain Capital announced it was buying Estia¹⁵ on 6 August 2023, they went after Melbourne based non-profit Blue Cross¹⁶ but were outbid by for-profit Opal Healthcare¹⁷, which had also started buying non-profit facilities in South Australia in 2023. Bain Capital took control of Estia in December 2023¹⁸.

¹⁴ RECENT See ACC response 24 May 2021 to 2nd Question on notice about 'Associated entities' on page 10 after appearing before the senate regarding 'Aged Care Legislation Amendment (Financial Transparency) Bill 2020 (a brief explanation of how private equity works) <https://www.aph.gov.au/DocumentStore.ashx?id=65051df9-a1d7-421f-b150-fc779dadd3c7>

ACC Additional Information letter 31 May 2021. Unpublished follow up letter to senate committee about recent developments in Private Equity in the UK and USA <https://bit.ly/3JQikOO>

OLDER IN MORE DEPTH: Private Equity. Inside Aged Care 2015-2018 (detailed) <https://www.insideagedcare.com/aged-care-analysis/aged-care-marketplace/private-equity>

Failures in Aged Care. Inside Aged Care 2015-16 (Mostly UK & USA) <https://www.insideagedcare.com/aged-care-analysis/aged-care-marketplace/aged-care-failures>

¹⁵ Bain Capital Private Equity to Acquire Estia Health Media Release <https://bit.ly/3JNZVvM>

¹⁶ Bain Capital-backed Estia in \$400m-plus BlueCross auction AFR 15 Oct 2023. <https://bit.ly/3QBtGnh>

¹⁷ Australia's largest pure residential care operator Opal HealthCare buys 11th biggest BlueCross The Weekly Source 13 Mar 2024 <https://bit.ly/4dpkiqg>

¹⁸ 'Ownership of Estia Health formally transferred to Bain Capital' Media Release by Estia.15 Dec 2023 <https://bit.ly/3QwF83G>

Estia's CEO explained what was happening¹⁹ to the Financial Review on 7 Aug 2023 saying . *“the aged care sector was ripe for more deals - - - those things are starting to occur with a little more vigour - - - We do see ourselves as a leader, as a consolidator in the sector. - - - Government changes -- and other regulations were likely to **become onerous for smaller players**”*.

Allens is a leading international law firm advising Bain's. On its web site web site, its Partners²⁰ said that *“the regulatory settings are now clearer, making aged care an attractive sector to invest in- - The aged care sector is highly fragmented in Australia. Our expectation is that future activity will be driven by consolidation and increased investment by private equity and other private capital providers,”* This is the same neoliberal illusion that destroyed care in 2014/15.

Market Screener²¹ (analysts) considered that *“More consolidation in the aged care space is expected in 2024, as companies look for scale following industry reforms that require better patient care”*. They are still 'wilfully blind' to the international and local evidence,(eg. Royal Commission) that less profit focused providers and smaller homes usually run by community organisations provide better care - not private equity.

Menarock Life is a for-profit aged care company founded and owned by a former Chief Operating Officer at Deloitte Private. It owned one of the worst COVID hit homes in Victoria in 2020 with so many staff and residents affected that all residents had to be transferred to hospital. In 2021 it put itself up for sale but there were no buyers. But the legislation has changed that and in March 2024 it was looking for investors to help it grow²². It is interesting that at roughly the same time, the ANMF were complaining that its *“pay rates for nurses and carers are amongst the lowest across Victoria's 160 aged care providers”*.

The new regulations and this new act are going to make the situation much worse and with ever bigger and more powerful providers, it will get more and more difficult to do anything about it. Unless there is real change, this betrayal of its citizens will be the legacy of the Albanese Labor government.

Comment: The careful 'choice' residents or their families made, have been promoted as the great advantage of the reforms.

In a competitive, corporate marketplace, the vulnerable too often become simply 'beds' - in effect, depersonalised profit vehicles being managed for profit and when market forces dictate, traded on an impersonal corporate market. Businesses are sold to the highest bidder, the one who feels they can extract the most profit from these vehicles who, despite all the rhetoric about 'choice', still have no say in this and certainly no control. Those who have carefully chosen a good provider can be sold off to a very different one.

These frail, older people need stability and do not shop around. This impersonal exploitation can in itself be a form of inadvertent elder abuse - integral to the market system. The instability inherent in a competitive market system places stresses on the services provided, creating a context where abuse more readily occurs but is less easily exposed.

¹⁹ Bain wins over Estia in \$838m victory for private equity AFR 7 Aug 2023 <https://www.afr.com/companies/infrastructure/bain-wins-over-estia-in-838m-victory-for-private-equity-20230807-p5due6>

²⁰ Allens advises Bain Capital on \$959 proposed acquisition of Estia 10 Aug 2023 <https://www.allens.com.au/insights-news/news/2023/08/allens-advises-bain-capital-on-959m-proposed-acquisition-of-estia/>

²¹ 'Estia Reportedly Gets Some Competition for BlueCross' Market Screener 12 December 2023 <https://www.marketscreener.com/quote/stock/ESTA-HELA-19157039/news/Estia-Reportedly-Gets-Some-Competition-for-BlueCross-45578286/>

²² \$200M Menarock LIFE aged care reportedly looking for investor to grow The weekly Source 28 Mar 2024 <https://www.theweeklysource.com.au/aged-care/menarock-life-aged-care-reportedly-looking-to-sell-stake>

4 The major failures in the draft Aged Care Act

Aged Care Crisis Submission on draft Act made to the Department of Health: (Mar 2024)

In our submission to the Consultation on the draft aged care act we support the aspirational ideas that the proposed draft embraces and promises, but we criticise the failure to address the problems in the system that will cause providers to ignore and erode them. We have chosen to focus our submission on the root causes of failure in the system that have not been addressed. Others have addressed specific issues and we have also done so in the past. Addressing the imbalance of power on which the five root causes created by this ideology all depend will go a long way towards addressing their issues too.

In the submission we deal with some of the background described in this document. We then use extracts from Cahill and Toner's introduction to their book and Bob Davidson's chapter on aged care to describe exactly what has been happening and why.

We then describe and discuss the consequent major root causes of failure in aged care that the draft act fails to address. This is why it will not work.

1. **Addressing the power imbalance** between providers of care on the one hand and elderly citizens and their communities on the other.
2. **Addressing the failure of neoliberal competition policy.** Strong competition in an unbalanced system ensured that those who fail to make enough money are put out of business while those who provide poor care in order to do so thrive.
3. **Addressing the consequences of paradigm conflicts.** Conflicted paradigms (patterns of thinking), cultures and roles often result in toxic cultures and unpopular workplaces with high staff turnover. People are harmed. This has not only occurred in nursing homes but also in government departments and regulators when their mode of operation challenges community values.
4. **Ignoring the importance of Trust and Trustworthiness.** The expectation that trust and trustworthiness (probity) would be a requirement for operating and investing in this vulnerable sector was abolished in aged care in 1997. The act does not address this.
5. **Ignoring capture and the erosion of our democracy** We discuss regulatory, state and policy capture as this has impacted aged care and still will after this act.

We discuss each in depth and explain how restructuring the system to restore a balance of power and paradigms by decentralising, then involving and empowering communities would address each of these problems. It should at the same time initiate the rebuilding of our fractured communities and our democracy.

Other issues

We describe our opposition to the privatisation of aged care assessments and the use of artificial intelligence to classify those needing care and prioritise waiting lists. We explain why this is so inappropriate. Many others are making this criticism.

We also note the disruption to the lives of those using the NDIS when they turn 65 and are forced to transfer to the Aged Care Act where the sort of services that they need are not provided. In a locally managed system, they would receive the services that they needed from whatever was available.

In an appendix to our submission, we provide an outline of five of our recent submissions to the department.

Our full submission is a resource which addresses these issues in greater depth:

- Consultation on the new *Aged Care Act* Mar 2024 (53 pages)
<https://www.agedcarecrisis.com/opinion/articles/478-new-aged-care-act>

Additional Resource --- Regulation: An additional source of in-depth information is Aged Care Crisis' lengthy July 2023 submission to the consultation on the '**New model for regulating aged care**'. While it is not directly related to the new Act, it describes the failure of the system and particularly regulation in greater depth. It looks at the complexity of the new regulations.

The argument is that these new regulations and this Act greatly increase the complexity of the bureaucratic processes and the intrusive oversight. It has the same problems as the previous one. The impacts will be felt most by the nursing staff who will be tasked with conforming to this, so compounding the staffing problem. It puts additional pressure on good providers.

Victorian local councils that provide home care and smaller nursing home operators are already vacating the sector and we described this in Appendix H. We are aware of another that has done so since then. In addition, a multinational company that operates in Asia and Australia focusing on home care has also just given its Melbourne home care customers a few weeks notice that they will need to find another provider. It is abandoning home care in favour of providing services to nursing homes.

There is a 5-page summary of this 200 page submission in the Appendix to our Submission to the draft act linked above.

The nine appendices to our submission about regulation expand on the following issues:

- A. Aged Care and the Society we live in** - describes the wider problem in our society
- B. Denial.** How believers have been and still are in denial
- C. and D. Early and later Regulatory failure** in detail
- E. What families and staff have to say about care**
- F. Aged Care Structure** - what we suggested to the Royal Commission
- G. Books and people who analyse what is happening** - the social science that explains
- H. Regulatory changes are driving the best providers out of aged care**
- I. Analysis of the Star Ratings webinar for providers** - some criticisms

Appendices A to E describe what has been happening. Appendices F and G are about addressing the problems. H and I are some of the things that are problematic.

The full submission about regulation:

- **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>

5 Alternative workable approaches

Across the world there is now a move towards rebuilding society and confronting unopposed power particularly in humanitarian services. In the UK the **Centre for Welfare Reform** focused on citizenship and society involvement in providing human services. It has spread globally forming the **Citizens Network**. It has a large digital library²³ of publicly available articles addressing these issues.

Place Based Collaboration is a reform process that specifically addresses imbalances of power and disempowerment. Power is given to the disempowered communities and they are supported and mentored as they use it to address the problems. It was developed and used successfully by the Tamarisk Institute in Canada and has spread to the UK, NZ and Australia.

The Department of Social Services is funding the National Centre for Place-Based Collaboration²⁴ (Nexus Centre) to create partnerships and work with those using this model. They are providing grants to do so. Monash University is advocating this approach for youth violence and the Ramsay Institute for tackling community challenges. Some economists are supporting its use more widely.

The sort of changes to aged care that ACC has been pressing for to address the power imbalance in aged care over the last 15 years, can be seen as a variant of place-based collaboration. Aged care is being steered in the opposite direction. When we tried to raise the issue of place-based collaboration at a COTA/OPAN webinar, it was dismissed because *‘the Royal Commission had not recommended it’*.

The Business Council of Cooperatives and Mutuals²⁵ (BCCM) *“puts people, not profit, at the centre of the enterprise”*. They promote collaboration between community businesses and not competition in order to counter many of these problems. They have advocated this for aged care. The BCCM is also being funded by government but not for aged care – yet.

Suggested changes to the Act: The world is changing. This Act locks the aged care system into the 20th century. The Act needs to open the system to change and encourage developments that work.

We argue that the new Act should be altered to make it more democratic and prevent capture by including a basic principle that commits to community engagement and accountability. It should add changes that will ensure that central managers, regulators and the Inspector General consult with local community authorities when making decisions that impact on their members. This will enable communities to become more involved. The use of a well-structured and empowered community visitor’s scheme to watch over care as successfully implemented in Victoria for disability care and in Queensland by the Public Guardian and as recommended to senate reviews and then the Royal Commission by both, would encourage local involvement and accountability to the communities served.

In addition, there should be stated support for the establishment of a body representing communities. It would independently appoint community representatives to work with and sit on central committees advising government as well as the System Governor, ACQS Commissioner, Complaints Commissioner and Inspector General services. They would be in a position to contribute and report back to communities so ensuring real transparency and representation. This would open the system to input from communities and alternative approaches. We do not think that captured political parties will make these changes unless there is strong pressure from the Independents and Greens.

²³ Citizens Network <https://citizen-network.org>

²⁴ National Centre for Place-Based Collaboration (Nexus Centre) <https://ncpbc.org.au/>

²⁵ BCCM <https://bccm.coop>

6 Background and information for politicians: Part 2

Reviews by the departmental and contracted consultants often do not publish the many submissions they receive so limiting public debate and shielding their decisions from criticism. Even the Royal Commission was very selective in the submissions it published and those that were published are no longer readily available on the internet.

We have had access to a number of critical submissions to the new aged care act. We describe the discussions that have been held and briefly note the content of the submissions we have had access to. We indicate where they can be obtained and also have copies ourselves, which we can supply.

This material is in a separate document.

Articles from Professor Kathy Eagar and her coworkers at the Australian Health Services Research Institute (AHSRI), Wollongong University

This group from Wollongong University did the research on staffing levels for the Royal Commission that showed how bad the situation was when compared with the USA. The Royal Commission had initially rejected this challenging data when it was first supplied to them by Aged Care Crisis in 2019. Eagar's team was also responsible for developing the ANACC version of Activity Based Funding that the Royal Commission recommended and government has implemented. Aged Care Crisis has reservations about this because of the problems that developed when Activity Based Funding was introduced into health care in the US health care market. But we agree with their criticisms of the aged care system and what has been happening.

The articles are in date order. The dates are displayed in brackets in the text above.

7 Aug 2020: Aged care homes: the weakest COVID-19 link Kathy Eagar
<https://johnmenadue.com/kathy-eagar-aged-care-homes-the-weakest-covid-19-link/>

17 Aug 2020: The (failing) aged care system we have in 2020 operates exactly as it was designed to – Part 1 Kathy Eagar
<https://johnmenadue.com/kathy-eagar-part-1-the-aged-care-system-we-have-in-2020-is-not-a-system-that-is-failing/>

18 Aug 2020: The (failing) aged care system we have in 2020 operates exactly as it was designed to – Part 2 Kathy Eagar
<https://johnmenadue.com/kathy-eagar-part-2-the-aged-care-system-we-have-in-2020-is-not-a-system-that-is-failing/>

12 Oct 2020: Aged Care: Human Right or a market opportunity Kathy Eagar
<https://johnmenadue.com/kathy-eagar-aged-care-human-right-or-a-market-opportunity/>

28 Oct 2020: Aged care and the magic pudding Kathy Eagar
<https://johnmenadue.com/aged-care-and-the-magic-pudding/>

29 Oct 2020: Aged care: Commissioners hand government a 'get out of jail' card with disagreement between Commissioners. Kathy Eagar
<https://johnmenadue.com/aged-care-big-problems-contested-solutions/>

2 Mar 2021: Fundamental failure: Aged care a public good or competitive market? RC fails to address role of private providers Kathy Eagar and Anita Westera
<https://johnmenadue.com/fundamental-failure-aged-care-a-public-good-or-competitive-market-royal-commission-fails-to-address-role-of-private-providers/>

7 Apr 2021: Aged care – where sexism and ageism walk hand in hand Kathy Eagar and Anita Westera
<https://johnmenadue.com/aged-care-where-sexism-and-ageism-walk-hand-in-hand/>

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

7 Jun 2021: Covid and aged care: When you are in a deep hole, the most important thing to do is stop digging. Kathy Eagar and Anita Westera
<https://johnmenadue.com/covid-and-aged-carewhen-you-are-in-a-deep-hole-the-most-important-thing-to-do-is-stop-digging/>

Aged Care Act: Background and information for politicians (Part 1) - Outline of aged care issues and the new draft Aged Care Act

22 Jan 2022: Aged care again bears the tragic brunt of a COVID-19 wave: why? By Kathy Eagar and Anita Westera
<https://johnmenadue.com/covid-hits-the-vulnerable-in-aged-care-yet-again/>

24 Apr 2022: None of us is safe until all of us are safe: Australia and global vaccine equity Kathy Eagar and Darcy Morris
<https://johnmenadue.com/none-of-us-is-safe-until-all-of-us-are-safe-australia-and-global-vaccine-equity/>

20 May 2023: A Labor budget to address workforce shortages in aged care Kathy Eagar
<https://johnmenadue.com/a-labor-budget-to-address-workforce-shortages-in-aged-care/>

5 Feb 2024: Mid term Aged Care Report card: 5/10 – must try harder Kathy Eagar and Les MacDonald
<https://johnmenadue.com/mid-term-aged-care-report-card-5-10-must-try-harder/>

4 Apr 2024: Albanese government wedged on aged care Kathy Eagar
<https://johnmenadue.com/albanese-government-wedged-on-aged-care/>