

Comment on the Feedback Report on the draft Aged Care Act

Submission to Department of Health and Aged Care

We have been corresponding with some politicians about the proposed new *Aged Care Act*. The department has just published its report on the multiple consultations, surveys, round tables, and solicited submissions that have been carried out on the draft aged care act. This is to be brought to parliament once modifications have been made to address issues raised in this feedback document.

Most government inquiries publish submissions soon after they are received so helping to stimulate discussion and improve input. The department and the contracted market advisers have not been publishing submissions. They have been strongly criticised for this. This time they have published the submissions that were not private at the same time as the report. The links to these are on the same web page.

Both can be accessed from the page here:

- New Aged Care Act: exposure draft consultation: Report on Results updated 31/5/2024 by Dept Health & Aged Care
<https://consultations.health.gov.au/ageing-and-aged-care/new-aged-care-act-exposure-draft-consultation/>

1 Background

Over the last 23 years we have had multiple inquiries that have described the many failures in aged care, yet each carefully avoided the pretty obvious deep-rooted problems in the sort of market that had been created after neoliberal free market principles were adopted in 1997. This created a power imbalance with vulnerable customers and marginalised communities, setting it up to fail. The Royal Commission's own *Background Paper 8, "A history of aged care reviews"* commented on the failure of these inquiries to have any impact on the problems in care. The report shows that over the decades between 1980 and 2010 the number of inquiries increased from 5 to 9 per decade, then in the decade ending in 2020 it more than doubled to 20 - a graphic illustration of what was happening in the sector.

The report directly challenged the Commission concluding:

The overarching question that arises is why, after all these reviews, the aged care system still fails to support an appropriate quality life for the most frail and vulnerable members of our community.

We have described elsewhere how the interim report promised to examine the deep flaws that were clearly not being addressed in these inquiries. Then after Judge Tracey died, it simply dropped the ball and avoided these issues. Justice Pagone who replaced Tracey saw what was happening and disagreed strongly. He made separate structural recommendations that would have initiated the reforms needed to do this. He strongly criticised the way in which Commissioner Briggs recommendations left the existing market structure with its multiple deep flaws intact, indicating it would not work.

We have also described how the Coalition government and then Labor have simply buried the interim report as well as Pagone's recommendations and his criticisms. They put much of the reform process into the hands of the marketplace advisors that have been advising government on this aged care market during most of the 20 years of failure. The same people who designed this system, worked in it and built their careers there are back in charge, and others have led the consultation process.

The new act centralises everything and puts all the power and control in the hands of a small number of individuals appointed by government, effectively closing the door on any challenges to the flawed market model that is central to neoliberal belief. Vested interests are taking back total control of the system and ensuring that it stays that way.

It is clear that anything that might challenge this market and its problems is a very hot potato for those with power and influence. We have described elsewhere how beholden these parties are to the wealthy market leaders who dominate our society and aged care. Analysts call it 'capture'.

That deep fear of community power is embedded in this ideology and goes back to its roots in the 1940s. In 2015, shortly after resigning as chairman of the Aged Care Sector Committee that advised government on policy, long time public servant, Peter Shergold joined Opal Healthcare as chairman and then spoke at a 'closed door' meeting of investors and local politicians in Singapore.

Among the revelations about government thinking and policy that he revealed was that:

"government is concerned about a public backlash from people who believe that aged care should be a community service and not motivated by profit"

1.1 The consultations, webinars, surveys and workshops

We have previously described how these processes were managed and controlled by marketplace advisors and community organisations that were strong supporters of the previous system. They helped design it and then manage it - or provided services to it under contracts.

The sessions were well run but the focus was on the aspirational objectives and the wording of the act. It was difficult to get any traction on problems in the Royal Commission's reports, or marketplace issues. Attempts to get more involvement of, and accountability to the communities served were not embraced.

Several organisations participating in the COTA and OPAN run workshops, including Aged Care Crisis Inc. refused to sign the submission they prepared and made independent joint or personal submissions.

2 The Report on the consultations (31 May 2024)

The report follows the same pattern. The discussions were directed towards the wording of the aspirational legislation and not at the real problems in the system that was expected to address them. There are many problems in the wording of this act and we agree with many of the criticisms and suggestions for change.

But the argument is that this will not be a long-term solution unless the flaws in the neoliberal market model and the perverse pressures it creates are addressed. The additional centrally managed regulatory processes are putting more pressure on the system, so driving both staff and smaller providers who often provide the best care out of the sector. There are more effective ways of regulating this sector.

The report acknowledges that KPMG managed some of the public meetings and at the meeting I attended there were a few department representatives sitting at a side table but they did not participate. During a break I chatted to one of the KPMG staff running the meeting and was told that they were recording the proceedings and that KPMG then studied this and reported on it to the department. I asked about the submissions and learned that they were doing that there too. I asked about writing the act and that was strongly denied.

We were very disturbed that the material was being filtered by KPMG or other subcontracted business groups as their perceptions of what was credible would be market driven. We wrote to the department explaining our concerns and sent a copy of our submission to them. We subsequently met with them on two occasions. While we did not discuss this specifically, they did not deny that this was how it was being done.

The report does not comment on who did the assessment, but when we look at the complexity of the analysis of so much material and all of the charts generated from the survey we wonder if this could all have been done by the under-resourced department.

3 Aged Care Crisis Submission on the draft Aged Care Act

Our March 2024 submission about the draft act is number 130 and can be accessed from the earlier linked page. Instead of addressing the wording, we focused on the failures in the previous system and the failure to address them in the act. We explained that warnings and criticisms of the current market model by social scientists over the years have been overtaken by multiple criticisms from economists themselves.

We had not at that time seen the strong criticisms of what was happening, made by economists at the IMF and published in its journal in January 2024. We have written about that elsewhere. The criticisms were scathing about what was happening and the behaviour of economists across the world including the way they ignored the views of others.

The winner of the 2015 Nobel prize for economics stressed the power imbalances created and the need to pay more attention to philosophy, social science and history. He indicated that the advice economists had been giving was often a licence to plunder.

We quoted from the 2018 book *“WRONG WAY - How privatisation and Economic reform backfired”* edited by Australian political economists Cahill and Toner. It described what was happening in Australia and had chapters dealing with health and aged care as well as closely related sectors. It did not offer many solutions.

We identified five major consequences:

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.

Addressing these problems and solving the power imbalance, will take time but we should start by creating a system that can do so. The act creates a centralised tightly controlled system where all the power and control is in the hands of a small number of appointed officials so closing off potential changes that might challenge the ideology and the power of believers. Social science shows that social systems work best and are more resistant to challenging situations when there is a balance of insights and power. Markets are no different.

Aged Care is a community service and depends on community values and motivations, yet communities have been excluded over the last 24 years. We cannot get major changes to the act at this late stage but we can make amendments that would be popular in the electorate and would also open the system to future innovations that enable evidence-based change.

We are pressing for the following amendments:

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

4 The Social Science

When one examines what has been happening and the way the public has been deceived and evidence ignored, we instinctively see these people as evil, deceptive and exploitative and we get angry. We can see that happening in our community today. Yet we have met many of them over the years and they are clearly genuine motivated people who believe deeply in what they are doing and are resistant when that is challenged. They cannot accept it. Way back in the 18th century economist, Adam Smith described how difficult this made addressing these situations.

What has been happening: There is nothing new about what has been happening. Philosophers and social scientists have been exploring our complexity for centuries. We have this strange illusion that we are all rational beings acting in our own self-interest. But we only need to look around us to see that this is an illusion and those scientists are right.

As Willingham has indicated critical thinking required cognitive work and we have to learn how to do it. Part of the difficulty is in “*deciding to think in the first place*” and that the “*appetite for cognitive work when others might avoid it seems to be partly a matter of personality*”. Too often doing that gets you into trouble because it challenges the belief of others. Its easier not to think critically.

Critical analysis in examining oneself is challenging and stressful and the admonition to “know thyself” by wise men in the early 1900s is long gone. Society too finds it very stressful when its everyday understandings of the world that its members have used to build their lives and identities, break down because of change or because they are flawed and are failing citizens. They have to analyse critically to create new ones. Stressed societies can fragment and become fractious ignoring evidence as they develop illusions to hang on to. Mental illness, suicides and criminal behaviour become problems. It is fertile soil for the rise of bizarre beliefs, cults and charismatic people peddling unrealistic beliefs. Too often this ends in war.

What has been happening in our societies recently has seen many social scientists writing about this. For example, Margaret Heffernan’s 2013 book ‘Wilful Blindness’ (revised and updated in 2019) describes the many ways we ignore the things in our lives that are often glaringly obvious when they are unpalatable. Lindsay McGoey’s 2019 book ‘The Unknowers: How Strategic Ignorance Rules the World’ looks at the way we ignore existing knowledge and facts in developing and maintaining belief systems. Then there is our tendency to attack the messenger in order to ignore the message.

We readily adopt these strategies both when building new stabilising but illusionary and flawed beliefs in times of stress as well as when defending them when they are threatened by change, failure or criticism. If we look at what has been happening in the USA, these processes are fully revealed in Donald Trump’s response to a criminal conviction and the irrational response of the huge numbers of people he has inspired. The UK and Australia are not far behind. What has happened in aged care is an example.

Addressing these problems: We are social animals and togetherness in doing things and addressing problems engages, builds relationships and develops selves. That sort of society is resilient and addresses issues constructively when they arise. It more readily avoids all these problems. But neoliberalism has pushed civil society aside and marginalised it so that it is ill-equipped to do this. These problems are now global and threatening world stability.

Social scientists who have analysed these situations and what has happened in the past when these periods of stress (variously called anomie, truth decay and now the post-truth era) have been resolved without resorting to war which can bring people together. They stress the importance of rebuilding communities and involving citizens in their affairs so that they build collegial relationships and constructively engage in addressing the issues.

These scientists talk of the need for many eyes seeing from different points of view giving us a far better understanding of what is happening. They also write about a balance of ideas, insights and power in creating the checks and balances needed for stable and resilient social systems that adapt to change and cope with crises. They talk of deliberative democracy, which means collegial engagement.

Aged care affects every one of us and is well placed to initiate this process. This proposed new aged care act firmly closes the door and prevents that. The amendments that we propose open that door and enable that rebuilding. The ‘*cognitive work*’ can begin and citizens can learn to think critically. Once it starts it becomes exciting and rewarding and brings us even closer together.