

26 May 2020

Dear Health and Aged Care Ministers and Shadow Ministers,

## **Re: Failures in aged care policy**

This is an open letter appealing to both major parties to honestly acknowledge that while policies were developed and applied to aged care in good faith by both parties, they have not worked and that there have been unintended consequences.

In the interests of all older citizens, we are appealing to you to publicly advise the Royal Commission that you would be receptive to recommendations that require significant changes to current thinking about the sector and to current policies that are based on this.

It is many years since government appointed inquiries have criticised or made recommendations that challenge the philosophical principles behind policy. If we are to get change that works then the Royal Commission needs to be freed from this unwritten obligation.

We explain why below.

## **1 Policy issues in Australia**

### **The current situation**

Over the last 20 years we have been assured that we have a world-class aged care system. But these 20 years have also been characterised by increasing numbers of recurrent scandals, angry families, crushed whistle blowers and ever more challenging press reports. There have been vast numbers of inquiries and reviews and even the problems that have been identified, have not been addressed or resulted in change.

**These reviews and inquiries have all been commissioned or carried out by one of the two major political parties. The most striking feature of these inquiries is their failure to examine or challenge the belief systems and the policies that both parties have followed and supported. There seems to be a taboo that precludes reviewers from exposing problems in policy.**

In its interim report 'Neglect' the Royal Commission found a system that *"fails to meet the needs of its older, vulnerable, citizens. It does not deliver uniformly safe and quality care, is unkind and uncaring towards older people and, in too many instances, it neglects them"*. The Commissioners concluded that *"it is a sad and shocking system that diminishes Australia as a nation"*. It identified a multitude of problems in a deeply flawed system.

## The reasons

Staffing in Australia has been kept confidential since 1997 and we do not collect and publish objective measures of performance. Accountability for how taxpayer's money was spent was no longer required. As a consequence, there have been no meaningful measures of performance and cost cutting went undetected. The largest cost was staffing. Expensive skilled nurses were replaced with nurse aids and numbers declined. All of this was a direct consequence of policy.

The policies both parties adopted in good faith and with high expectations, created a situation where care and profit came from the same stream of money in the belief that competition would encourage efficiency and better care. There were no measures of outcomes to compete for and the sector was complex so that willful blindness and confirmation bias were not confronted. The strong competitive pressures introduced created perverse incentives. This was a consequence of policy.

Because of these policies, we successfully deluded ourselves that we had a world-class system. Data about staffing now available shows that the USA, on average supplies twice as much care from trained nursing staff and a third more care overall than Australia.

One expert analysis in the USA where careful studies of nursing requirements have been done, divides staffing into five groups based on numbers and skills. The data shows that well over half of our nursing homes fall into the poorest group described as '*dangerously low*'. This means that in over half of our nursing homes, there are insufficient staff and skills to supply even basic care. Many failures would be expected. That is clearly what has happened. This was a consequence of policy.

While staffing is not the only problem, the findings of the Royal Commission are what you might expect with this level of staffing. Aged care policy was central in concealing staffing levels, resisting calls for recommending minimum levels and more. It was responsible for introducing a regulatory system based on accreditation, which is not a regulatory process. This had not only failed in health care in the USA but it had been rejected for the regulation of aged care.

Many spoke out about these problems but were assured that we had a world-class system as revealed by our nursing homes' exemplary performance in meeting our oversight and regulatory processes. It is now clear that our regulatory system had been captured and was ineffective. Oakden in South Australia was a graphic illustration of just how ineffective it was.

It was government policy that ignored established principles around conflicts of interest. It reduced the independent bureaucracy replacing it with a revolving door of industry representatives. This enabled regulatory capture.

Our system has deteriorated and has fallen a long way behind the troubled systems in the USA and the UK. It is past time that this is acknowledged as a failure of policy.

Eighty percent of aged care is provided by families at home and the rest by employed carers in our communities at home or in nursing homes. Care was once largely the province of the community. This was where they developed and expressed their humanitarian values. Being responsible and contributing gave them a sense of ownership and trust in the system.

The free market policies adopted pushed community aside. They no longer have oversight of what happens in their communities. They no longer have a sense of ownership and trust. Deceptive marketing of commodified services has further eroded trust. This is a consequence of policy.

The process driven and centrally managed aged care system that has replaced the community is inflexible and dehumanising. It alienates citizens and undermines the community values and societal webs that motivate people and build social capital. There is no opportunity for any sense of ownership to develop. Neither citizens nor community are now in a position to insist that their values be the basis for care. This is a consequence of policy.

Without an effective customer, an involved community and data to show what was happening, strong perverse marketplace incentives to reduce costs in the competitive market were unopposed. This was a consequence of policy.

Competition, innovation and efficiency was directed at increasing profitability and in growth, usually by acquisitions. These objectives were accomplished by squeezing care, including staff and other resources essential for caring. This was a consequence of policy.

This situation was compounded by policies adopted in 2014. The market was considered to be immature and in need of rapid consolidation by competitive acquisitions. Funding was diverted away from care in a frenzied rush to grow. Staffing and care deteriorated more rapidly. This was a consequence of policy as expressed in the Aged Care Roadmap.

The hurried changes made in response to the failures at Oakden merely combined three failed regulators into one. This makes it easier to maintain tight control over information and more vulnerable to regulatory capture. Under pressure, it is detecting more failures. This is unlikely to be maintained when the pressures are removed and it becomes business as usual.

The 'reforms' were made within the same patterns of belief responsible for the Aged Care Roadmap. They are responsible for the failures. It is now increasingly clear that these beliefs were flawed and many are writing critically about that. These changes protect belief and do not challenge its flaws.

In spite of numerous failed inquiries since 1997, the belief system responsible for these failed policies has not been properly examined. The contradictions have not been confronted. Policies have not been developed to create the sort of market that could work in vulnerable sectors.

We have followed the proceedings of the Royal Commission, raised these fundamental issues in submissions and offered to discuss them. It is becoming increasingly clear that doing so is taboo. Like previous inquiries, the Royal Commission is looking at the failures without examining the reasons for them.

The bushfire and coronavirus crises have exposed the limitations of governments and their need to work with and empower civil society when addressing crises. Politicians should now acknowledge this. We have had a crisis in aged care for over 20 years. This is because citizens and society, who are ultimately responsible for their fellows and on whose shared values care depends, have been left out in the cold. That must be addressed.

## **2 Problems created for the Royal Commission**

Most inquiries are appointed and funded by government. These include inquiries by parliamentary committees, by the Productivity Commission, by a Royal Commission or by being contracted to a marketplace entity. They do not fund them to criticise and dismember the policies of the government of the day. That is taboo.

These inquiries may do many things and make many recommendations but we are not aware of any since the 1980s that confront this unspoken taboo. None actually dissect and criticise the policies of the parties that initiated the inquiry. Recommendations from senate inquiries that criticise the government's policies get little attention.

The team supporting the Royal Commission and counsel are lawyers who have previously been employed by the Commonwealth to represent and protect government and its policies. They would have embraced its policies and ideas. It is difficult for them to impartially examine and criticise policies they have defended elsewhere when they have failed so badly in aged care. They might even fear for their own future if they do so. There are strong disincentives and little incentive for them to do what is clearly necessary.

The Commission has spent many hours debating ways of addressing the visible manifestations of the failures and ways of addressing these. It has been careful to avoid an analysis of underlying causes or of the contribution of government policies. It has ignored the social and psychological behaviour of normal beings in responding to the situations in which they find themselves when the systems they are a part of fail.

We have written to the Commission to:

*“... Express our deep concern at the delay by the Royal Commission in critically analysing Australia’s regulatory system and the policies on which they were based to assess their contribution to the problems the Commission has detected. In our view understanding where underlying philosophy and policy has impacted the management and regulation of aged care in ways that have worked well and where they have failed, should have been the starting point to any discussion of remediation. A deep analysis was required to understand why failures had occurred.*

*We consider this to be so elementary and the policies so flawed and out of step with community values and expectations, that we wonder if there is some taboo that bars government appointed and funded inquiries from examining policy. We cannot understand how it will meet the promises made in its interim report titled ‘Neglect’ in this way. This analysis has been glaringly absent from Commission hearings and is being avoided. In our view this seriously compromises their utility.*

*The Commission’s own Background Paper 8, described the failure of multiple previous inquiries, which also failed to do an analysis of policy. The paper asked why, but then did not give the obvious answer – why? ...”*

We also indicated:

*“... Clearly what will define this Royal Commission will be the regulatory changes that it advises particularly:*

- 1. the extent of restructuring recommended for the management of the sector. The centralised control and the complex process driven structure for aged care disempowers, alienates, undermines and discourages the engagement and ownership that those involved in care need to have as they form caring relationships. Local bodies, professions, community including families and providers who are responsible for care, would all benefit from a reach down, support, educate and empower model that gives them a sense of ownership. Bottom/Up integration of services would ensure that those most involved in care locally have real input into policy and identify with what was being done. Instead they have been left out in the cold.*

- 2. the way the Commission addresses the deeply flawed distant and seldom present oversight and regulation of the sector. It too should work seamlessly within and in support of the same groups. They need to be empowered and have ownership of the process if they are to have confidence in it. ...”*

## **Our plea**

We plead with both parties to put the interests of the elderly, their families and of the community ahead of your political self-interest, and your instinct to support and hang on to policies that you have identified strongly with. Society deserves better from its leaders when policies fail.

We ask you to acknowledge openly and honestly that while these policies were made in good faith they have not had the outcomes that you had hoped for. We ask you to acknowledge this to the Royal Commission and to encourage the Commission to closely examine these policies and the philosophy that lies behind them and to suggest what changes are necessary.

Constructive analysis and effective change are being inhibited by the Commission’s reluctance to confront policy. This is very challenging for them and they need your assistance and reassurance to do what is clearly required.

You would release them from the constraints by acknowledging the issues and your willingness to think differently about aged care.

Yours sincerely,

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