

14 July 2017

Human Services inquiry

Productivity Commission
Locked Bag 2, Collins Street East
Melbourne Vic 8003

**Re: Response to Introducing Competition and Informed User Choice into Human Services:
Reforms to Human Services draft report**

<http://www.pc.gov.au/inquiries/current/human-services/reforms/draft>

We thank the Productivity Commission for the opportunity to submit a response to the draft report.

In addition, we attach two documents as appendices, which supplement this submission:

1. Second supplementary submission to the Future of Australia's Aged Care Workforce Inquiry
2. Letter and submission to the Hon Ken Wyatt re analysing the aged care regulatory system

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1 Introduction

1.1 The relevance of this review

This review has its origins in the Harper Review¹ set up at the end of 2013, finally released in 2015 and accepted by Government in November 2015². The next step was to delegate the task of implementing the recommended reforms to the Productivity Commission in April 2016. The relevance of this review needs to be seen within the changing political and social context.

The Harper Review was inspired by a radical re-embrace of the neoliberal discourse and its market driven social program. There was a rapid community backlash against this, which saw the replacement of Abbott by Turnbull at the end of 2015, but not the total abandonment of the policies that had angered the community.

Despite his personal popularity, Turnbull almost lost the election he called and he now has a narrow majority and a hostile Senate. The labour party is also unpopular and not trusted. This rejection of the major parties responsible for the neoliberal changes in society³ is mirrored globally. First with Brexit and then with a disastrous backlash against Theresa May in the UK's 2017 election⁴. In the USA, the Trump phenomenon speaks for the consequences. In France major parties have been abandoned. The neoliberal state is not what our community were promised and not what they wanted. Critics of neoliberalism claim that its time has come and are asking what next⁵.

We are left with a disillusioned and unhappy electorate that no longer believes in the promises of either major party and is looking elsewhere – a relatively unstable and dangerous situation. It is the logical consequence of the neoliberal discourse and policies introduced in the 1990s. Without understanding the root causes each of our countries has swung in different directions but in each instance towards charismatic leaders offering something different.

We consider and hope that, whatever the final report recommends, the political disillusionment will prevent any further attempt to saddle human services with neoliberal dictated solutions including recommendations to reform these services by focusing on '*competition, efficiency and choice*'. In our view inquiries should begin with and address problems. Starting with ideological solutions and then looking for somewhere to impose them is not a rational or sensible way of addressing social problems particularly in human services.

The Commission is hindered in making its recommendations by its brief to find a place for competition and choice and the pressure on it to do so.

¹ Competition Policy Review: <http://competitionpolicyreview.gov.au/>

² Government response to the Competition Policy Review: <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/CPR-response>

³ Austerity has strangled Britain (The Guardian), 7 Jun 2017: <http://bit.ly/2tHYK7M>

⁴ How populism explains May's stunning UK election upset: Experts react (The Conversation), 9 Jun 2017: <http://bit.ly/2rxOYom>

⁵ Even the IMF Now Admits Neoliberalism Has Failed Ben Geier in Fortune 4 Jun 2016
<http://fortune.com/2016/06/03/imf-neoliberalism-failing/>

If we are reaching neoliberal capitalism's end days, what comes next? Allan Patience The Conversation 6 Feb 2017 :
<https://theconversation.com/if-we-are-reaching-neoliberal-capitalisms-end-days-what-comes-next-72366>

From public good to profit margin: how privatisation is failing our communities David Hetherington The Guardian 6 March 2017
<https://www.theguardian.com/commentisfree/2017/mar/06/from-public-good-to-profit-margin-how-privatisation-is-failing-our-communities>

1.2 Ownership

In reading the draft report, we were interested to see the strong recommendation that services to aboriginal communities should be: *'developed in partnership with and owned by that community'* and that *'governments need to adopt a mindset of working with – and investing in – remote Indigenous communities'*. The principles were *'community voice and place-based approaches'*.

It is clear that the report did not see any need to apply the same principles to other human services. It seems that for services to be successful for some humans (generally considered to be less privileged, educated and affluent) they must be “owned” by them.

Strangely for others, (generally better educated, more privileged and affluent) decisions can be made on their behalf and then marketed to them. This is the managerial neoliberal approach.

It is not surprising that this recipe has failed and left society disillusioned and angry. The Commissioners have failed to appreciate that one of the main reasons human services have failed so badly, not only in Australia, but in the USA and the UK is that they have been ‘captured’ by outsiders, decisions made by them and then imposed – or more accurately - marketed to the communities in our countries.

Future of Australia’s aged care sector workforce: The recently released senate workforce inquiry accurately identifies serious deficiencies impacting on staffing and makes some constructive recommendations. It makes similar recommendations to those in the Productivity Commission’s draft submission when addressing aged care and workforce issues in aboriginal communities. It stresses the need for community participation and involvement. It promotes flexibility referring positively to the successful Aboriginal and Torres Strait Islander Flexible Aged Care Program.

The senate report extends this inclusive approach to CALD communities stating that *“CALD input positively affects the development of ageing and aged care policies and programs that are appropriate and responsive”*. A similar approach to LGBTI communities listing a goal that they be *“actively engaged in the planning, delivery and evaluation of ageing and aged care policies, programs and services”*. It was worrying that there were still barriers to their employment as carers.

The senate committee also had extensive input describing the unsuitability of competitive aged care markets and difficulties with market based Consumer Directed Care in regional and remote communities as well as in some of these other groups.

It was claimed that the MyAgedCare website had created *“a barrier to accessing aged care services for Aboriginal and Torres Strait Islander peoples”*. It was claimed that *“Now, again, everything has to go through MyAgedCare. We have lost that connection between the multidisciplinary team and the consumer. This is all consumer directed, but for us it is actually not working. It is removing that connection that we have all had, and we have built that over a number of years. So it is quite difficult.”*

There was strong criticism of the *“move to a centralised portal and phone line for individuals (MyAgedCare) to be assessed for access to aged care had created a barrier for the service and for their clients”*. There were claims that this had *“led to a decline in service levels”* in the Northern Territory.

Care at home instead of in nursing homes is being encouraged in urban communities where it costs less. Aboriginal elders are culturally far more closely tied to the land. We should understand that it will be even more important to them to spend their final years in their remote communities rather than in an urban nursing home. Yet these local communities are hopelessly under-resourced and unable to cope because of the distances involved. The system does not meet their needs when it costs more to do so.

Example

ABC 7.30 program reported a tragic example⁶. People responsible for that community indicated that *“Our base problem is just simply the nature of the community — it’s big, it’s widespread, there’s huge distances to travel, and the conventional funding models don’t fit that particular community”*.

They complained that funding for them was always too little to make a real difference indicating that *“You can’t keep playing catch-up when you want to develop into a productive, sustainable, economically viable, socially viable community. - - - services should be bolstered for the homelands rather than centralised in hub communities”*.

Ken Wyatt (Minister for Indigenous Health and also for aged care) displayed a distinctly neoliberal lack of insight and cultural insensitivity when he responded to the ABC TV 7.30 report⁷ claiming funding was adequate and describing the situation, by saying it was *“up to individuals to ‘raise the alarm’ about people who fall through the cracks”*. They should phone him. This was only part of a larger problem and responding to individual situations not the answer.

Local organisations claimed they had been on the phone, but there was limited funding available to service the region. They were disempowered and disenfranchised because they no longer had control over delivery of local aged care services.

Local services had regressed since being transferred away from them during the NT Intervention. The local system knew, but could not meet this need within the strictures placed by the central system. They did not have the resources or the flexibility. As was explained, this was only an example of a larger problem.

Lack of funding suitable for the sector and an inappropriate structure compound the problems of extreme poverty for these senior Australian citizens.

It seems that choice is only for the privileged and we lack charity!

The senate workforce inquiry realised the diversity of aged care and indicated that *“there is a need for a more tailored, flexible approach to aged care service delivery, particularly in remote and very remote areas”*.

⁶ Utopia: Aboriginal elderly sleeping on ground with dogs amid calls for improved aged care
<http://www.abc.net.au/news/2017-07-05/utopia-aged-care-kathleen-ngale/8651086>

⁷ Utopia: Minister Ken Wyatt tells impoverished Aboriginal community to ring him if services inadequate
<http://www.abc.net.au/news/2017-07-06/utopia-minister-ken-wyatt-tells-impoverished-locals-to-call-him/8684372>

In contrast, there is little attention to the social dynamics of care and similar difficulties when dealing with white English speaking Australian citizens in metropolitan areas where the large corporate providers dominate the input to the committee. Aged Care Crisis considers that many of the criticisms can be applied to metropolitan areas as well.

Alzheimer's Australia (in the senate report) was of the view that with current aged care dynamics:

“it seems inevitable that vulnerable, resource-intensive consumers, including people with dementia and especially those with more complex care needs, will lose out if we rely solely on market forces to drive access and quality”.

A system for all citizens; There have been multiple failures in aged care in the competitive system in metropolitan areas over the years and this has escalated recently. It is unfair that vulnerable metropolitan citizens should be singled out for separate treatment and denied the same control over aged care services. Many are subjected to unrestrained market forces that make a virtue of cost savings and profiteering at their expense – see for example the exposure of predatory practices in retirement villages by ABC Four Corners on Monday 26 June 2017.

The success of the Dutch ‘Buurtzorg’⁸ locally managed and locally controlled model supports our thesis that local control and local community involvement supported by government is the key to community and aged care services whether rural, aboriginal or metropolitan. In this innovative model, small groups of trained nurses work together to harness and integrate the resources in the community to support the person receiving care. It even costs less.

Aged Care Crisis has been making this argument for several years. In our submissions we have pressed for ‘ownership’ of services (in the sense of control of), like aged care, to be returned to the community. We argue that the centralized managerialist approach has failed in human services like aged care in the same way as it failed aboriginal societies. Both have led to the squandering of financial and human resources.

Instead we have seen endless tokenistic ‘reviews’ and ‘consultations’ within the neoliberal discourse. These have failed to consider really effective and collaborative community participation as an option. Instead, the words and intent focus narrowly on ‘consumers’ while their communities are ignored.

In all instances the delivery and execution of these services have been held captive by central government and the market it supports. Idealised hype and unrealistic ideas are marketed to the public.

We argue that “Flexible and Local” should be relevant key words for addressing the issues in aged care in all jurisdictions. This is not to suggest that government abandon its responsibility, but that it work closely with and through local community structures whenever possible.

⁸ Our Story (Buurtzorg) <http://www.buurtzorgusa.org/about-us/>
The Buurtzorg Nederland (home care provider) model. Royal College Nursing (UK) 25 Apr 2016
<https://www.rcn.org.uk/about-us/policy-briefings/br-0215>
Home Care by Self-Governing Nursing Teams: The Netherlands' Buurtzorg Model The Commonwealth Fund
<http://www.commonwealthfund.org/publications/case-studies/2015/may/home-care-nursing-teams-netherlands>

Recommendation 1.: For several years we have been advocating that aged care services be ‘developed in partnership with and owned by that community’ and that ‘governments need to adopt a mindset of working with — and investing in — communities’ in creating and managing human services like aged care locally. The principles ‘community voice and place-based approaches’ should apply to aged care. Other sectors, particularly community services would benefit from a similar approach.

2 A way of understanding 20 years of neoliberal policy

2.1 The importance of discourse

But put it together, and we have a systemic problem in how we deal with those in the twilight of their lives; a problem that continues to flare, and continues to be ignored by successive governments.

But what turns this ignorant misdemeanour into a crime is that government after government has ignored the problem. The elderly and the sick just don't seem to carry the political weight of the young and the loud.

Maddona King - Sydney Morning Herald, 29 Jun 2017

Madonna King⁹ had reviewed the never ending series of failures in care and the commercial exploitation of the elderly. In her SMH article she wrote about the misery of those who were the victims of this.

A useful way of looking at and understanding:

- what has happened in aged care,
- what has happened in human services more generally (banking, financial advice, job services, vocational training etc.),
- why it is government that also has blood on its hands in the elder abuse debate, and
- why government has failed citizens so badly in so many sectors

is to consider the different patterns of thinking or discourses that have been applied to the sector.

⁹ **Madonna King** ‘The sad treatment of our elderly has got to stop’ Sydney Morning Herald 29 June 2017
<http://www.smh.com.au/comment/that-thinking-feeling/the-sad-treatment-of-our-elderly-has-got-to-stop-20170628-gx0tbc.html>

Discourse: Much of the more recent research in this area builds on the insights of the philosopher Michel Foucault. He has shown how the power to control the content of our discourse enables some of us to control the way others think and behave¹⁰ – what he calls governmentality – the way patterns of thought ‘enter into our souls’ through discourse and become integral to who we are - our identity. This is the way in which ideology comes to be accepted by citizens and acted on to create a stable society.

Most worrying is the power to decide what is not credible and what is not accepted as part of the discourse. This allows harmful ideologies that do not stand up to rigorous evaluation to take control and impose their systems of thought across all of society, regardless of the consequences and of alternative points of view.

The discourse of care: On the one hand we have the traditional discourse of care, one that uses phrases like vulnerability, responsibility, empathy, relationships, responsible citizenship, trust and trustworthiness, probity, responsible capitalism etc. It is based on long-standing medical, religious and community paradigms and has stood the test of time.

In this discourse, vulnerability and interdependence are set against an acknowledgement of the essentially predatory nature of markets.

This discourse resides in the community and in those who actually provide the care. The values on which it is based are the values of the community. The services are the responsibility of the community and are provided by the community to its needy members.

The neoliberal discourse: On the other hand we have the neoliberal discourse of free markets, competition, efficiency, choice, microeconomic reform, incentivisation and a top down controlling managerialism. Its values are the values of the free market system. Neoliberalism has become particularly successful because its discourse has been driven and controlled by a managerial structure. This has been introduced into almost every sector including government and not for profit humanitarian endeavours.

Professor Stephen Leeder, eminent doctor and thinker described it as the transfusion of mad cow thinking¹¹ into every vein of our society. At the time Mad Cow Disease was jumping species to infect humans. It caused bizarre delusions and strange behaviour.

Warnings by multiple writers that this managerialism was destroying our humanity were ignored. On page 16 of the book he edited¹², Stuart Rees wrote of the “*willingness to disparage old professional practices and traditions in the interests of a new corporatism*” and then “*Associated with this promotion and educational expansion is a corporate language and accompanying attitudes. These are the outcomes of preoccupation with management as the panacea for governments and organisations*”.

In the 1990s our academics were not yet familiar with the significance of the contribution being made in France by Foucault. What Rees was describing was the relationship between blind ideology and discourse and the role that managerialism played in changing the discourse in Western society and beyond – how mad cow thinking was infused down into each part of society

¹⁰ Foucault's insights in 'Theory and Research in aged care' on Inside Aged Care web site: <http://bit.ly/2sMY6to>

¹¹ Professor Stephen Leeder 'Mad-cow thinking - how far has it spread' Australian Medicine 20 May 1996 p 6

¹² Stuart Rees and Gordon Rodley 'The Human Costs of Managerialism' Pluto Press 1995 page 16

and into all citizens. It became a part of all our DNA – of who we are, our social consciousness. The culture of care and the concepts that comprise it were not part of the discourse. Our humanity and the responsibilities we have for one another, our social selves” were left out in the cold and withered.

Typical of this disparagement of historical knowledge and common sense was the reincarnation of free markets and the rise of neoliberal thinking in the 1970 and 1980s. This was based on the idea that social responsibility was in some way socialist and so evil. The requirement that responsibility be to anyone other than shareholders, impeded the operation of markets.

The ascendancy of the neoliberal discourse: One of the first things that the neoliberal Howard government did when it gained power in 1996 was to abolish the probity regulations that restricted the provision of aged care to those who were “fit and proper” - those who could be trusted to embrace the community values of social responsibly and responsible citizenship when providing services to vulnerable citizens. The message this change sent to the market was clear and unambiguous.

Our current aged care system is now dominated and controlled by the neoliberal discourse. Its representative organisations, its owners, its managers, and many of its staff now live and work within the neoliberal discourse, one in which society is controlled and structured hierarchically. It has little understanding of the discourse of care as these words and ideas are excluded from that discourse. As a consequence there are some remarkable examples that show how ignorant senior managers in the sector actually are about what happens at the bedside.

It is these senior people who are seen as credible by government. They are appointed as advisers to government and are extensively consulted. They are appointed to regulatory bodies. They are the people whose submissions, made to a never-ending series of reviews and inquiries (most generated by failures of the system), are seen as credible. Their views and arguments are accepted.

Community organisations that adopt the neoliberal discourse are seen as more credible than those who question it. They are supported and have more influence. Government itself appoints reviewers or contracts consultants whom it sees as credible because they share their neoliberal beliefs. As a consequence the issues that are identified within the discourse of care are discounted and receive little attention in the reports.

The difficulties in providing care: Those who write about the culture of care or who do research within the discourse of care¹³ stress the extreme difficulty in developing a culture of care in a system structured within the neoliberal discourse. The neoliberal discourse and its management structure inhibits the development of a culture that builds caring relationships, empathises, embraces community values and is built on a sense of mutual responsibility. It fosters a system that is centralised, task focussed, process driven, impersonal, complex and insensitive to personal need.

Many committed staff do succeed in forming empathic relationships and provide the best care they can, but they must struggle against the system and the discourse that gives it legitimacy to do this.

¹³ Theory and Research in aged care - Professor Michael Fine, Dr Bob Davidson and others (Inside Aged Care):
<https://www.insideagedcare.com/aged-care-analysis/theory-and-research#care>

Recommendation 2.: Aged Care Crisis argues that aged care and similar services should be returned to the discourse of care and that this would be best done by applying the same principles as set out for aboriginal services in the draft report. It would be best done by supporting and working with communities in the same way.

A similar approach would be appropriate for family and community services, and for palliative care (at least in the community and in nursing homes). It might be a consideration in other sectors.

3 Comments about the draft report

This report is valuable because it accurately identifies major problems in the sectors it has selected for change. It also identifies what needs to be done to address them. It struggles to find credible reasons for using competition efficiency or choice as the driving force and often shows why they are unhelpful.

This is not to suggest that there should be no competition, that services should be inefficient or that choice and control are not important considerations. But these should be a product of the discourse of care, where they are modulated and controlled by the well understood prior needs of care. In the neoliberal discourse they are fundamental and primary controlling principles. They are not controlled or effectively modulated by the more important considerations that belong to the discourse of care.

3.1 Data collection

The report stresses the importance of data collection. We support that, but recognise the difficulties in collecting unbiased data. The draft report fails to show how the accuracy of data can be verified and how the many biases that occur in a competition driven system can be avoided.

Many previous reviews have made similar recommendations, particularly for data about the outcomes of the care provided. These have fallen on deaf ears and we suspect that this was related to the threat that data poses to the neoliberal discourse.

We argue that the reason for this is that the collection of data in these vulnerable sectors exposes government and the neoliberal agenda to challenges and threatens its legitimacy. The *Aged Care Act* of 1997 produced a savage backlash from the community. The response was to work closely with the industry to abolish almost all accountability and non-financial data collection and put oversight into safe neoliberal hands. At the same time, the community was marginalised. This has not changed.

Foucault showed that power lies with those who control data and so set the limits of discourse. Even more important than the collection of data is who controls it, who interprets it, and how it is used.

The draft report accurately describes the extent of data collection in aged care in both the USA and the UK. Yet in both of these countries the system has failed citizens. While there are several reasons why this has happened, the regulatory system that generates this data is held at least partly responsible. We argue that it is ignored by the dominant neoliberal discourse, a discourse

that is unsuited and harmful in this sector. The context in which data is collected and interpreted is critically important.

The discourse of care should be the dominant discourse in the sector and have an important role in data collection, interpretation and dissemination.

Recommendation 3.: That the collection, interpretation and dissemination of data should be overseen and managed within the discourse of care. This means that community structures should be responsible for collecting data and reporting it to their local communities as well as publicly.

3.2 Additional services and resources for palliative care

In referring to palliative care in particular, the committee recommends improved staffing skills and levels, as well as additional funding. These recommendations are being made for a residential aged care sector and for community services that are now driven by a competitive neoliberal free market and managerial discourse. This discourse focuses on efficiency in building profit and on growth in order to improve market share and raise funds from the share market. Not only is there a staff shortage but there is a strong incentive to build on this and use it to justify low staffing levels – a vicious cycle of poor staffing, poor conditions, staff moving elsewhere and an industry that benefits from this financially. There is little incentive to address the issue.

More money: Additional funds made available by the Abbott government in 2014 under *the Living Longer Living Better* 'reforms' did not go to care but instead fueled a buying spree and the listing of several companies on the share market¹⁴. There is much to suggest that the neoliberal government intended the money to be spent in this way to make Australian companies competitive in the Asian marketplace (ChAFTA). Residents were the losers not only through deficiencies in staff but in the sort of management they got when they were sold off to a strongly profit driven private equity or market listed company.

On almost every occasion when additional funding has been made available to meet the needs of care, it has been 'maximised' (a new word for rorting) and not been used as intended¹⁵.

More staff: Neoliberal management has no concept of the discourse of care and is consequently surprisingly ignorant and blind to the consequences of their actions. When the funding from which profits can be generated are considered then the opportunities for gaining a competitive advantage lie with the money paid for care rather than accommodation.

Increased profitability comes from savings made on the payments for care and the vast majority of savings and so profitability comes from reducing the costs of staffing. All the pressures in the system are towards using the minimum numbers of staff that they can get away with.

¹⁴ The Aged Care Marketplace (Inside Aged Care) <https://www.insideagedcare.com/aged-care-analysis/aged-care-marketplace>

¹⁵ Consequences of marketplace thinking: Examples from Australia. Inside Aged Care: <http://bit.ly/2sITG6z>

Managers seem to be blind to the consequences of reducing staff levels and those who make savings by doing so are rewarded. Job opportunities open for them. This problem extends across for-profit, not-for-profit and government services. One of the most glaring examples of this was in the government run National Health System in the UK. It was exposed in the Mid-Staffs hospital scandal at Stafford hospital¹⁶.

This is the sort of system in which palliative care is provided and in which the draft report is advocating more competition – competition which will be about efficiently generating profits.

Future of Australia’s aged care sector workforce: The Workforce Inquiry articulated the concerns of Palliative Care Australia, the peak national body for palliative care, about the capacity of aged care services to meet these increasingly high care needs:

People in receipt of aged care services increasingly have complex health care needs due to multiple chronic diseases; they will require long-term care including palliative care and end of life care. The complexity of their care needs is as high as people in acute hospitals and the trajectory of their care is long term and ultimately terminal. Yet, aged care services are often much less equipped in terms of staffing, funding and skills to provide high quality holistic care to these people, who are among the most vulnerable in our community.

Alzheimer’s Australia expressed concern that decreases in the ratio of direct care staff and the proportion of qualified nursing staff:

...are already impacting on the quality of care offered to some of the most frail and vulnerable people in our community and that the situation has the potential to worsen in the future as demand pressure increases.

Alzheimer’s Australia further commented:

Demand is growing at a faster rate than the supply of aged-care services. It seems inevitable that vulnerable, resource-intensive consumers, including people with dementia and especially those with more complex care needs, will lose out if we rely solely on market forces to drive access and quality.

The review documented the steady decline in trained staff and also noted that they were “*disproportionality represented by Personal Care Attendants (PCAs)*”. The staff were largely employed on a permanent part-time basis. Psychologically the elderly need continuity and trusted faces. Their complex needs fall through the cracks when there are too many staff attending to them at different times. Part time and agency staff always create additional problems and need to be kept to a minimum.

¹⁶ Mid Staffs hospital scandal: the essential guide The Guardian 6 February 2013 <http://bit.ly/2rSNhFu>
Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (Francis Report) UK Government 6 Feb 2013 <http://bit.ly/2s6eOmS>

There has been a steady increase in the number of difficult to manage residents with dementia and the number needing palliative care. Both of these areas require larger numbers of skilled well trained staff. Staffing has been going in the opposite direction. Many “*described aged care as an unhappy and stressful environment*”. There was evidence that “*direct care workers are managing workloads that are unsustainable, leading to compromised professional standards and quality of care, as well as adverse impacts on workers*”.

These sectors also need more skilled medical and allied medical professionals. The report “*notes concerns that nurses, medical professionals and AHPs are currently underutilised in the aged care sector*”. It wanted this addressed.

The impact of market based competition and efficiency: Competition in this aggressive marketplace sector is about profitability and financial survival with little room for sentiment. Those who don’t have a profit stream cannot grow.

This is a sector where the competition for company growth (ie acquisitions) rather than sector growth pushes prices up and does not increase bed numbers or skills levels. Financial advisers of all sorts¹⁷ are advising smaller companies to keep prices down and warning them to merge or sell to larger corporations if they are unable to do so.

Stewart Brown in its reports addresses care and the profits made from care separately. The good companies are those who make profits here and it warns those who are failing to make a profit here that they may not be viable. Seventy percent of the cost of care is in staffing (which Stewart Brown does not report on in this context). The message to facilities who spend more on nursing is clear. Stewart Brown’s benchmark for staffing falls well below international standards and it has been criticised by coroners as inadequate.

“I can only reconcile the two categories of evidence by concluding that, at least in the Manor, the industry benchmarks for adequate staffing did not provide for a realistic workload of the staff nor the ability to fulfil all of their tasks. On a wider scale, the evidence suggests that staffing levels are often inadequate across the aged care industry. The evidence also indicated that staff absenteeism was a significant factor in reducing staffing levels to below what was adequate to provide proper resident care. Again, the evidence gives me no reason to believe such an issue is confined to Vaucluse Gardens¹⁸”.

That there is a shortage of staff for multiple reasons is clear. This problem is compounded when competitive pressures discourage those providing care from addressing the situation. Altruism has its limits. It also does little for struggling staff morale and recruitment when they see reports in the property press describing the prices their owners are paying for luxury mansions. This is not the sort of leadership they expect.

The introduction of competition and other market processes into palliative and community services will compound the problems that already exist.

¹⁷ **Driving cultural change** Inside Aged Care web page :
<https://www.insideagedcare.com/aged-care-analysis/cultural-perspectives/driving-cultural-change>

¹⁸ Record of Investigation into Death of Barbara Westcott - Magistrates Court of Tasmania, Coronial Division 2015/16
http://www.magistratescourt.tas.gov.au/_data/assets/pdf_file/0007/354724/Westcott,_Barbara.pdf

Details of staffing issues: In a supplementary submission to the workforce inquiry we analysed staffing levels internationally and locally showing how far Australia fell behind. We documented the evidence that increased competitiveness and profitability were associated with poorer staffing and care. We examined Stewart Brown reports to illustrate the way in which the financiers advising the industry saw and understood these issues and the sort of advice given.

We attach our supplementary submission to the Senate Workforce Inquiry for your information and as part of this submission. This confirms that the number of trained staff in aged care has steadily declined as the acuity and need for palliative care has increased. The total care provided and the amount of care provided by trained nurses has fallen so far behind international standards that many of our residents must be receiving substandard care.

The many reports of failures in the press and the many complaints by nurses are clearly well founded. Those who claim a ‘world-class’ system are either deluding themselves or deliberately dishonest.

The track record of the industry indicates that additional funding will go to profit rather than care. In a system where survival in a competitive market depends on keeping staffing levels as low as possible it is very unlikely that sufficient additional skilled staff needed to provide good palliative care will be employed unless the disincentives created by competition for profit are addressed.

Recommendation 4.: Additional trained staff are badly needed in aged care as well as for palliative care but funding for this should only be provided in a system that is operated within the discourse of care. Any changes must be tied to the transfer of management and oversight to local communities in a position to insist on the money going to the employment of staff.

4 Stewardship

The draft report lays great emphasis on government’s role in stewardship – in other words, regulation. But, neoliberal governments believe that regulation impedes the performance of markets and that regulation should be kept to a minimum.

In spite of this, the failures and problems with free markets have been so great that regulation has instead been increased to the extent that some academics no longer talk about the neoliberal era but instead refer to, and study, ‘regulatory capitalism’.

In these parallel but separate worlds, the same people press for less regulation at the same time as they boast about the vigour, extent and effectiveness of the regulation. They use that to counter their critics and to sell Australia’s ‘world class’ corporatised aged care system in Asia.

There are a number of features of this regulatory system:

1. It has been controlled and managed by those who embrace the neoliberal discourse.
2. It has been singularly ineffective and failed on multiple occasions in aged care in the USA and the UK¹⁹ as well as in Australia.
3. It has failed in multiple other vulnerable sectors in Australia in the recent past²⁰. Vulnerable customers and employees have both been extensively exploited.
4. While ostensibly maintaining standards and protecting citizens the priorities within the regulatory system have been the protection of the neoliberal discourse from being challenged by publicly reported failures.

There has been ongoing unhappiness and repeated reviews of both the Aged Care Quality Agency and the Complaints system in aged care. The latest scandal at Oakden in South Australia exposed failures going back at least 10 years and there are many other examples.

The response to the revelations of long standing systemic problems in both state and federal regulators has been the creation of four separate reviews of which three will be under the supervision of trusted neoliberal supporters, two of them will be held behind closed doors.

1. Review of National Aged Care Quality Regulatory Processes (*Online survey*)
2. Australian Aged Care Quality Agency - "Interval review" into Oakden²¹ (*behind closed doors*)
3. S.A. Independent Commissioner Against Corruption: Investigation²² (*behind closed doors*)
4. Senate Inquiry into Oakden aged care facility scandal and the ability of Australia's residential aged care system to protect vulnerable residents²³ (**public**)

It is unlikely that the system will be challenged in the first three and instead we will see more tinkering with it. Our best hope is with the recent announcement of a Senate Inquiry²⁴.

The Review announced by the Minister for Ageing is now inviting public submissions²⁵ through an online survey, however, this relies on a confined format of a prescriptive online question/answer including multiple choice (at least, unlike previous "surveys, there is provision to add an attachment on the last question").

After a meeting with the Minister we elected to supply him with our analysis of the regulatory system and asked him to make this available to the reviewers.

¹⁹ International Aged Care (Aged Care Crisis) <https://www.agedcarecrisis.com/solving-aged-care/part-4/international-aged-care>

²⁰ Failed markets and culturography on Inside Aged Care web site <http://bit.ly/2ryheHr>
Contracting government services to the market on Inside Aged Care web site <http://bit.ly/2byL9ld>

²¹ Aged-care watchdog calls for answers over Oakden (The Australian), 5 May 2017: <http://bit.ly/2suGYpq>

²² <https://icac.sa.gov.au/content/oakden>

²³ Senate Inquiry: Effectiveness of the Aged Care Quality Assessment and accreditation framework for protecting residents from abuse and poor practices, and ensuring proper clinical and medical care standards are maintained and practised:
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AgedCareQuality

²⁴ Oakden breakthrough - media release - 30 May 2017: <http://bit.ly/2slvx32>

²⁵ Review of National Aged Care Quality Regulatory Processes (21 Jun 2017):
<https://agedcare.health.gov.au/quality/review-of-national-aged-care-quality-regulatory-processes>

Changes in the bureaucracy: Traditionally senior posts in the bureaucracy have been long-term careers. Senior positions within the bureaucracy were permanent. This gave them independence. They could fulfil their primary responsibility to the community when this clashed with the politicians of the moment. They were willing to take a stand against politicians and protect the community when politicians' actions threatened them.

With the ascendancy of neoliberalism, political parties readily terminate senior managers that do not meet their requirements and replace them with someone who will. When another political party gains power the process can be repeated.

Departments that have a regulatory function are conflicted and there is pressure to protect the government rather than the integrity of the services provided to citizens.

We supply a copy of our letter to the Minister. This addresses the regulatory issues in greater detail.

4.1 Lack of knowledge

In the two attached papers we refer to an instance in which a recent LASA CEO and a senior representative in ACSA used wrongly labelled inflated staffing figures to argue against criticism of poor staffing. We originally took a very negative view of that and in our attached submission to the senate workforce we challenged the integrity of those who did this.

On reflection we think this sort of problem is so extensive that it is more likely that this is an example of the startling lack of knowledge about care of those now managing aged care within the neoliberal discourse. It shows how hopelessly out of touch they are with what happens at the bedside. We have taken that approach in the letter to the Minister. In Rees and Rodley's book contributors warned of the danger of putting career managers in charge of sectors where they had no real practical experience, referring²⁶ to "assumptions about the universal value of management" and to ambitious managers "waiting in the wings for the call to demonstrate their toughness and efficiency"

An additional example of the differences in the discourse and the lack of knowledge in the managers of the sector was the attempt by industry to get the NSW government to abolish the requirement that a registered nurse be on duty at all times. Both LASA, ACSA and many managers of nursing homes argued against the need to have registered nurses on duty at all times. This flies in the face of extensive international data about the staffing levels needed for safe care. This was strongly resisted by those at the bedside (nurses and doctors) and those in the community who still embraced the discourse of care. The NSW government sided with the industry.

This is the context within which care is provided, and within which palliative care is being and will still be provided. It is the commercially focused managers who will decide on the funding and staffing for palliative care and those decisions will be a response to competitive commercial pressures. These are the people who are appointed to government bodies, and who advise government on policy.

²⁶ Stuart Rees and Gordon Rodley 'The Human Costs of Managerialism' Pluto Press 1995 (pages 16 & 17)

It is interesting that until the recent 2016 study by the universities in South Australia, the only study in Australia looking at the levels of staffing needed based on resident acuity was done in 1985.

In 2017 we fall a long way behind those recommendations. That vacuum in Australia has allowed managers to delude themselves about staffing requirements.

Conclusion: Regulation has been captured by the neoliberal discourse and its loyalties are not to citizens. The track record of neoliberal structured regulation shows that there is little prospect of government effectively exercising the stewardship on which the success of the recommendations in the draft report depends.

Recommendation: The commissioners should recommend a regulatory and stewardship system based on the principle of distributive justice – one in which people with different points of view participate so that the biases of each are confronted. In this instance community should play an important controlling role in regulation so ensuring that the discourse of care counters the neoliberal discourse.

Regulators must place their obligation to serve the community above that of protecting policy.

Appendices:

1. Second supplementary submission to the Future of Australia's Aged Care Workforce Inquiry
2. Letter and submission to the Hon Ken Wyatt re analysing the aged care regulatory system