27 April 2018

The Hon Ken Wyatt AM, MP
Minister for Aged Care & Indigenous Health
Member for Hasluck
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Dear Minister,

Jane Seaholme has asked the supporters of her Change.org petition[1] "***Mandate aged care staff/resident ratios. Stop the neglect***" to write to you to emphasise their concerns and tell you why the regulation of staffing is so important.

This letter is to support her submission and challenge your claim that there is no evidence.

Many of us were alarmed at your recent claim that *"There is no clear evidence of a relationship between mandated staff ratios and quality care"* – a fake news catchphrase borrowed from industry.

It is certainly true that there has been almost no evidence collected about care in aged care in Australia over the last 20 years and that current policy is based on belief rather than evidence. Failures in care are not measured and reported in spite of promises by industry in 2003 to do so.

In social systems that are not based on data, evidence always poses a risk. Our aged care policy makers have shied away from evidence and not actively promoted and supported research. With the exception of employee representative organisations in 2016, staffing levels were last investigated in Australia in 1985 when the need was recognised and guidelines proposed. Dr Perrin has written to you about this.

This was the period when the neoliberal discourse was spreading rapidly in Australia and aged care owners were leading the way. This discourse claimed that any restraint on market activities impeded the good that markets always did. It rejected social responsibility. It was a discourse based on belief and not evidence or logic. The consequences are glaringly apparent yet leaders are still ignoring the consequences and trotting out much of this outdated and disproven dogma.

Government has the money to employ the sort of staff who have the knowledge and skills needed to do the literature reviews and commission the research needed to accumulate the data necessary for the development of policy. We desperately need to collect data and learn from it if we are to find our way out of the mess we are in. It should not be necessary for citizens to collect data in order to confront such obvious political misconceptions.

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[1] https://www.change.org/p/mandate-aged-care-staff-resident-ratios-stop-the-neglect

Evidence

The history: The USA responded to extensive failures in the 1970s and 80s. During the 1990s an in depth study was done by the Institute of Medicine. The Centre for Medicare and Medicaid (CMS) mounted an eight-year investigation at the same time. There is clear evidence that expected levels of care in the USA could not be reliably achieved with staffing levels below a crude level of 4.1 hours per resident day. Too many failures occur.

The outcome: A set of minimum recommended levels below which failures in care were likely was put in place by 2000. This was based on this research. Staffing levels and actual failures in care have been closely monitored yearly and reported publicly. The data has been used to refine the recommendations and examine the variables impacting on care. Collection of staffing data is performed quarterly[2].

Although staffing and failure rates have slowly improved, over 50% of homes still have low staffing levels. Over 90% of facilities have some areas of deficiency and 20% are serious. Less than 10% have no deficiencies at all. Assessments of staffing and care are done yearly. Plans by the Bush administration in 2002 to extend this to 3 yearly as in Australia were rejected by a congress and public – both informed by data.

You may remember that in the 1990s increased frequency of oversight was recommended by regulatory authorities who had closely examined data in several countries as well as Australia. This was resisted by industry and rejected by a government that was supporting them. A leading industry figure even claimed to have written the 1997 legislation that did this.

Staffing and care: That there is a close relationship between an adequate level of staffing and failures in care is self-evident. This is fully supported by the data collected. In its advice to the public the CMS stresses the importance of staffing levels, skills and the impact of staff tenure and turnover.

Many of the massive US corporations and private equity groups have ignored the minimum recommendations and instead succeeded by relying on marketing and branding to secure admissions. The data and multiple research papers show that they perform poorly in assessments of staffing and care.

Unlike Australia there is a niche market of discerning users who do use the data when making choices so that nonprofits are able to compete successfully by employing the staff needed to provide care. Even though the large for-profits chains and private equity staff poorly, this has seen the USA on average staff their facilities with twice as many trained nurses and give each resident an hours more nursing care than in Australia.

Without data, Australian nonprofits have to compete in the same way as the corporate for-profits in order to survive. Many in Queensland are reducing their already poor staffing levels further and many more failures are being identified in nonprofit owned nursing homes.

The CMS recognised quite early that valid data about staffing and failures in care is critically important but by itself can distort services and is not sufficient. More is needed but the USA has not succeeded in creating a context in politics and aged care that builds on this data in ways that address the problem.

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[2] CMS - Staffing Data Submission: http://go.cms.gov/2frxXuQ

Mandatory staffing levels

While acknowledging that federal minimum levels would improve care in the USA, the costs and the availability of sufficient staff were used to argue against it.

As in Australia, the powerful corporate lobby and their political supporters in the USA have fought a bitter battle to preserve their profits and serve their shareholders. They have a primary fiduciary duty to their shareholders to do all that they legally can to protect their financial interests. They have done this in the face of evidence by successfully resisting any restraint on their right to staff as they see fit.

We are left with no choice but to counter this by enforcing the most effective minimum mandatory staffing levels that we can afford and meet. Providers will not be breaching their fiduciary responsibility because they will be legally required to behave responsibly. This will be clearly specified and families will be able to insist on it.

Strong community pressure supported by data saw several US states introduce some mandatory staffing requirements but in many instances the levels were a tokenistic response to this pressure and were too low to have much impact.

Research has shown that those states that had realistic mandated staffing levels performed better. It also showed that it is important that these be carefully developed and specific because some corporations were able to manipulate their staffing in ways that met levels without including the more costly skills required for good care.

Clearly we may not be able to afford adequate levels of staff and in that case we need honesty from government and a system that is structured to ration fairly and effectively. We are entitled to know what staffing levels are needed and how far we fall short so that citizens can contribute to debate and find ways of supporting and helping fill gaps in services.

The way the present system is structured renders it incapable of that. We need to set limits of acceptable conduct. These should be legislated and adjusted as data about care is collected and evaluated. Communities can then take steps to see that they are followed by those who serve them.

Staffing information supplied to Inquiries and Reviews

Inquiry: Future of Australia's Aged Care Sector Workforce

Much of this information was supplied to the Senate's Aged Care Workforce Inquiry in a supplementary submission by Aged Care Crisis in 2016 and published after the 45th parliament reopened the Inquiry. Staffing data in Australia had for the first time become available and could be assessed against the extensive work done internationally[3]. The Inquiry decided not to consider this new 45th parliament material in its report. They used this as an excuse for not considering and not including the important information and the extensive data we supplied in their final report.

Some of this data was supplied to subsequent reviews and inquiries. At Aged Care Crisis our impression is that data which challenges is unwelcome and instinctively rejected.

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[3] Supplementary submission - Aged Care Crisis: http://bit.ly/2BHoOrc

The Aged Care Workforce Taskforce is Industry led

We find it very disturbing that the taskforce to address workforce issues was handed to the industry. This is an industry that has tailored staffing to economic objectives and has rejected staffing data that is based on the needs of residents when they were not in its own financial interests.

I attended the first taskforce summit and supplied the taskforce chairman with staffing data beforehand. This expensive summit was run as an industry-branding excise by a company that specialised in branding and boosting morale through positive imagery. No data was supplied and as a consequence it was no more than an uninformed talkfest by people who thought they were doing well.

The community and staffing

It is time for government to acknowledge the growing unhappiness about our aged care system and to accept that this unhappiness is based on the experience of people in the community who see what is happening and of staff who are unable to provide the care those they care for need. It is real.

It is not as industry claims a beat up by the press or because the community is expecting too much. It is the press's responsibility to act in the public interest and to expose failures in the system. The public need and want to know when the system is failing them. Industry promotes positive stories through its endless marketing and the press should not be a party to this.

Extensive data was supplied to all major parties in the late 1990s and early 2000s. If they bothered to read it then it was ignored. What has happened was predictable and was predicted. It had already happened elsewhere.

We have a system that has been built on rhetoric and branding rather than real service. The community is increasingly aware of this and has become intensely distrustful.

Jane's petition for mandatory staffing levels

The tide is turning and the community is marching. Jane Seaholme's petition for mandatory staffing levels now has over 208,000 signatures[4] and is growing by the minute. It is a good example of the disenchantment sweeping the community - a wave of unhappiness that reveals the lack of confidence in the system. This cannot be resolved by more unsupported rhetoric.

The context: New marketplace scandals in multiple vulnerable sectors are exposed on our television screens almost nightly. These show that we have a predatory marketplace that exploits any vulnerability it can find. Their financial success ensures that the discourse that makes what they do legitimate is highly infectious.

An assessment of the close links between the financiers who have been defrauding citizens and aged care are described in *Appendix 2*, which is attached separately.

The current government policy has created a competitive market for profit that is not constrained by community values. It has created a high pressure system in which there is no room for empathy or the exercise of our humanity, one in which our sensibilities are blunted and success is attained by exploiting any vulnerability that can be found.

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[4] Mandate aged care staff/resident ratios. Stop the neglect: https://www.change.org/p/mandate-aged-care-staff-resident-ratios-stop-the-neglect

Government's response: To protect its policies from risk, our government strongly opposed the current Royal Commission into banks but was forced to create it. It has revealed the widespread systematic exploitation of vulnerable citizens. Government is attempting to escape culpability by blaming those who were driven to do this by the pressure to succeed.

These strong pressures were introduced as part of government competition policy. The government's corporate regulator ASIC is shown to be as unwilling to expose all this and embarrass the government as is the Quality Agency in aged care.

The stance that the government and its inquiries have taken in aged care has followed the same pattern. Short-term electoral prospects have trumped responsibility to citizens. Aged Care Crisis, which would willingly have cooperated in working for an acceptable solution, has been left with no choice but to join those who are pressing for mandatory staffing levels and a Royal Commission, something which we had hoped would not be necessary.

The message of Jane's petition: Every resident and their family needs to know how many staff are needed for safe care and how many more are needed with increasing acuity. Families and community need regulatory support so that they can insist on this when they deal with providers. Jane Seaholme is doing the community a great service and is to be admired. We should all strongly support her efforts.

I find it doubly disturbing that instead of addressing the core problems in the system like staffing itself, government is once again tinkering with a regulatory system that has failed following several previous attempts. These were sold to the public in similar glowing terms. Once again the changes are based on emotive imagery and not on evidence. Politicians are protecting themselves by setting up a structure that can more tightly control the information that citizens receive. *(See Appendix 1, which is also attached).*

Yours sincerely,
J Michael Wynne
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J M Wynne MB.ChB.,FRCS.,FRACS.,Grad Cert Ed
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Attached: *Appendix-1; Appendix-2*

Appendix 1: Regulations that ignore the problems

Token efforts

Instead of changes that address the problems that have resulted in this poor staffing you have promoted and made claims about another set of changes to a regulatory system that has repeatedly failed. These are based on increased use of unannounced visits, a 'one stop shop' change to regulation and a flying squad to go out and douse the flames of any potential scandal.

Unannounced visits: The Quality Agency's own figures show that agency inspections alone detect only 14% of failures. Of the remainder, 74% were detected when the agency was tipped off about potential problems and 12% after risk profiling. 1.3% of announced visits and 1.5% of unannounced visits detected a problem, an increase of only 0.2%.

The impact of unannounced visits on the 14% where it will make a difference is likely to be marginal, unless the agency also investigates more effectively.

One-stop shops: We note the claims to a 'one stop shop' for the most recent of the many failed reforms of our regulatory system. Perhaps you have forgotten that this was the rhetoric adopted by Mayne Health to describe its model of care, a model strongly supported by then minister of Health, Michael Wooldridge. It was modelled on similar policies adopted by Columbia/HCA and its competitors in the USA.

Columbia/HCA paid $1.7 billion to settle allegations of fraud. Others paid lesser amounts. Wooldridge and Mayne Health both disappeared amidst allegations of inappropriate behaviour.

One-stop shop models have been marketed as serving customers. Many have been more about tightly controlling everything that is being done in the interest of those involved in providing the service. All services provided are kept within the organisation.

By controlling referrals to different services that they provide providers have been able to boost profits by playing pass the parcel with the customers. This is another form of difficult to detect maximising and fraud which some claim has been used in health and aged care in the USA.

In regulation a one-stop shop ensures that regulation is the responsibility of a group of people who all think the same way and can be controlled and constrained to protect. Those who can be trusted to serve the prevailing discourse and protect it can be appointed so that it is readily captured by special interests.

ASIC's regulation of the banks can be seen as an example as can the aged care accreditation process. Because they face conflicting data they are continuously devising explanations and justifications to maintain their beliefs. They are incestuous so that as it builds a hierarchy of rationalisations it wanders into fantasy and ultimately fails in spectacular fashion. This has just happened in aged care regulation. Now it is happening at ASIC.

One stop shop regulation is the very opposite of a system of regulation based on the principle of distributive justice. Here many different points of view are used to shine a light on suspect conduct so that it is fully understood and transparently evaluated. This is what Aged Care Crisis is advocating for.

Sending out the flying squad: Sending out a team of experts when problems arise may help individuals at that time, but does nothing to address the serious problems in the aged care system. It simply gets there before the press. It douses the flames and so prevents the press from finding out what has happened and informing the public. This seems to be the intention here. It helps individuals without fixing the system.

Lessons: Once again policy is being made in the face of data and the lessons of history. The first lesson from the history of regulation is that no regulatory system is capable of controlling a system that is driven by perverse incentives that are out of control. This is particularly so when this is captured or self-regulated. The second is that the centralised government system is incapable of regulating such a vulnerable sector.

Finding solutions

Common sense indicates that we should fix the problems in the system first and then design a regulatory system that works. Accurate data is required for both.

Submissions from Aged Care Crisis as well as from successful regulators in other sectors in Queensland and Victoria made to the many recent inquiries have used available data to suggest changes.

They have proposed empowered visitor's schemes, which, if local, could be supported and advised by local nurses and doctors. It could readily be developed into a system that would make providers directly accountable to the communities they serve and create a regulatory system based on the principle of distributive justice. This would constrain the perverse incentives introduced by government policy.

Both would:

- reduce the control that the industry has over politicians, over the regulatory system and over the sort of service provided.
- ensure that the needs of residents and their communities were effectively balanced against the needs of the marketplace.
- address emerging problems in our democracy revealed by what is happening in aged care by adopting the principles of transparency and participatory democracy.

Nursing homes that were accountable to their communities would have to talk to them. They would have to discuss issues surrounding care directly with them instead of their lawyers. Inappropriate ideas and practices would be promptly confronted and disallowed, so reducing reliance on formal regulation.

These submissions and the arguments made have been ignored and this can only be because of the power of the industry and because they challenge policy.

Real change must come: It is worth noting that aged care systems similar to ours have failed in the US, the UK and Europe. We have recently learned that Italy, Portugal, France and Spain have been experimenting with a variety of systems that have more staff and community involvement. Canada and Japan have also made some moves in this direction. There are many in the UK who are now pressing for a move in this direction.

Aged Care Crisis has been pressing for changes that look at ways of involving community and staff in managing, overseeing, supporting and providing aged care for almost 10 years.

Research has shown that social services work best when communities have ownership of the ideas on which the system is built as well as ongoing involvement and control over the provision of these services. We accept this for our indigenous communities but deny it to the rest of the nation.

We think that there are likely to be some initial small improvements after the regulatory changes your government is introducing - while the publicity lasts. The ongoing perverse incentives within the system, lack of transparent reliable data and lack of regulatory effectiveness will, as in the past, soon mold the changes to meet industry's requirements. These are not aligned with those of our communities.

Ultimately common sense must prevail, but the longer this is delayed by vested interests the greater the difficulties and consequent suffering.

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Appendix 2: Politics, Banking and Aged Care

The general public does not recognise the close links between government policy during the last 20 years and the scandal involving the banks, nor the links between the banks and the many other scandals in the marketplace. They do not understand how a profitable culture and the practices it makes legitimate, leads to the exploitation of the vulnerable and how this spreads like an influenza epidemic.

The link between pressures introduced by a policy, which drives the market and society by focusing on competition for profits without any social or legal restraints, is readily apparent. Patterns of thinking, which would once have been untenable, have become legitimate. Financiers and economists have developed programs that exploit the financial opportunities. Banks are at the heart of this industry

Banks have investment arms and invest in many other companies so that their executives sit on many boards. Their financial reputations give them added influence and credibility. Financiers run educational programs give advice and talk at industry meetings. They have an enormous impact on how the market thinks and what it does. Others learn from them and spread the message.

In the USA: I studied how this happened in the USA several years ago explaining the role that the big Wall Street financiers, like Citigroup and UBS played. Their influence and their thinking lay behind the massive World.com and Enron scandals as well as the frauds and scandals that engulfed the US health and aged care systems.

The spread of the patterns of thinking that resulted in frauds that exploited the vulnerable can be traced from the banks into health and aged care corporations. From there they can be followed from business to business as successful businessmen were poached by others and moved across sectors and between sectors taking their profitable ways with them. Some non-profits followed.

Example: The sort of rationalisations used to spread market thinking is well illustrated by the Wall Street frauds that led to the exploitation of unsuspecting investors.

When neoliberal market thinking swept through US politics in the 1980s, regulations enacted after the financial crash of the 1930s were repealed. These protected investors by regulating conflicts of interests.

In the early 2000s investment advisors actively exploited vulnerable investors and defrauded them by giving them advice that harmed them but made huge profits for the banks. They proudly claimed that “conflicts of interest” had now become “synergies”.

These profitable advisors were praised and given industry awards, which were reported in the press. Their reputations made their advice and their justification even more credible. Their message and practices spread across the sector.

It is not a coincidence that the Royal Commission in Australia has identified conflicts of interest as a core problem in the present scandals and that banks are now embarrassingly selling off businesses where this same conflict of interest exists and has been exploited in the same way.

In Australia: As indicated the bankers have tentacles that spread through every vein of our marketplace. In the last few years we have seen maximising and rorting in almost every vulnerable sector of our country. That all of these things are happening together is clear evidence of an association.

Vulnerable workers and customers that they were expected to serve have suffered as they were misused to increase profits by exploiting the funding system and regulatory laxity.

In addition to financial and insurance by banks and others we have job seekers, vocational training, international fruit pickers, farm workers, visa holders and students all exploited. Moneylenders have seized the opportunity. The franchising industry whether in 7-Eleven stores or pizza shops have been actively maximising profits by illegally exploiting disempowered employees.

Then there is the repeated maximising of the aged care profit system over the last few years and the plight of nurses as staffing levels have been squeezed for profit.

Policy, Aged Care and the Banks: One need only look at the Aged Care Roadmap to see that it is this market driven by competition for profit that lies at the heart of government's policy for the sector. Multinational franchisers are targeting the opportunities presented in home care by Consumer Directed Care in both aged care and disability services – the most vulnerable people in Australia. It is a disaster waiting to happen.

As in the USA financiers and other business advisers are frequent contributors at industry meetings and are employed as consultants. This has been most apparent in meetings organised by non-profit providers through their representative body ACSA. Financiers have been warning non-profit providers of the consequences of not following their business advice and the need to appoint managers who will.

Banks have been among the more active investors in aged care and have been represented on boards. Macquarie Bank and AMP, both exposed in the current Royal Commission have been major investors. Another offender, Westpac, also invested in aged care. This was a sector where probity was no longer required. The way they ran their businesses illustrates what happened.

Macquarie Bank has a questionable record in aged care. It has been active as an adviser in business transactions involving for-profits and nonprofits in aged care over the years.

It established its own aged care empire Retirement Care Australia (RCA), by purchasing nursing homes and retirement villages. Its investment was through its private equity division, Macquarie Capital Alliance Group (MCAG).

In 2005 it bought up Salvation Army homes and was soon criticised for the staffing decisions it was making. A 2006 press report indicated that *"They won't be making the beds but they will be running them in the Macquarie way".*

In 2007 it was in conflict with unions about conditions and about sackings. There was unhappiness when it forced 36 patients with dementia out of units that were only 9 years old because they wanted to pull it down[1]. Another home that failed multiple standards was closed down and the nurses complained about the way their redundancy was handled.

[1] CorpMedInfo website - Profit before people: http://bit.ly/2K6ugpi

Continued…

Macquarie Bank became the owner of Canada's largest for profit aged care provider. In 2008 it clashed with its own Canadian staff in a public scandal over the rationing of diapers to incontinent patients in an attempt to increase profits.

In 2007 Macquarie's RCA merged with Regis under the latter's name. Regis, which had previously behaved responsibly and had a community focus, was soon closing down unprofitable nursing homes and being criticised for the way it treated staff. In 2008 Macquarie Capital was in trouble and Macquarie bought back its shares in that venture 'leaving the original investors out of pocket'.

The sort of behaviour introduced into aged care is illustrated by a 2013 court action that exposed sordid behaviour by RCA and Regis who were sued by a doctor who had leased his nursing home to RCA as a going concern with a requirement that it be returned in good working condition in 2008[2].

Instead, the court was told the facility was allowed to deteriorate and the doctor deceived as residents were transferred to a competing RCA/Regis facility and the facility hurriedly closed down so eliminating a competitor. The doctor was deceived and defrauded.

The judge found that the companies had acted to prefer their *"commercial interests to the interests of the residents, in breach of the User Rights Principles".* The companies had indulged in misleading conduct and this was *"sufficiently reprehensible to justify an award of exemplary damages."*

Regis has been an aggressive competitor, listing on the share market in 2014 and running into trouble when government clamped down on the way funding was being 'maximised' by the industry. It tried to maintain its profitability by charging residents for items that it was not entitled to. When the regulator blocked this, it took court action and lost. I do not know if Macquarie bank is still an influential shareholder.

Westpac: In the early 2000s Westpac and ING, an international bank, were involved in Village Life, a project that sought to make large profits from elderly pensioners by providing low cost accommodation in return for most of their pension. This left no money for alcohol or cigarettes and the venture went from bad to worse.

It plunged towards bankruptcy and eventually sold the villages to buyers who had other uses for this. Some 400 elderly 80-year-old retirees were sent eviction notices. It was only after a public outcry that a way around this was found.

Gullible shareholders who lost money felt they had been misinformed and launched a class action. Its business activities were questioned and Consumer Affairs Victoria investigated to see if there was any illegality.

[2] [2013] VSC 629: http://bit.ly/2HIPMSp

AMP: In 1998 AMP joined with a US aged care group to form Principal Healthcare. Principal bought many of Moran's aged care facilities to give him the funds to expand into Europe and then leased them back to him. It was soon the biggest private aged care owner in Australia with ambitions to expand to 20,00 beds (15% market share). It blocked Moran's attempt to sell his share of the homes to others and then bought him out and operated the homes itself. Principal expanded into the UK and Europe where it owned and operated a large number of nursing homes.

In Australia the company became Domain Principal. It had a record of poor performance. There was a scandal in 2010 when an undercover journalist exposed appalling standards of care in one of its nursing homes. Newspapers reported other failures and an investigation by CPSA found 13 other homes that had recently failed standards

In 2004 the federal government made $3,500 per resident available to providers to improve fire standards by the end of 2005.

In 2011 Domain Principal employed a drug-addicted nurse without checking references and background. Despite warnings from staff, they put him in charge of the facility at night. He deliberately lit a fire in which 30 residents sustained burns and 11 died. The home did not have fire sprinklers. The families of those who died were angry about what happened and the way in which the company dealt with them[3].

At the time *The Sydney Morning Herald* reported that "*almost 20 per cent of its homes around the nation*" had breached accreditation standards**.**

Despite its record a foreign investment group invested a large sum in 2013 becoming joint owners and enabling rapid growth. The company changed its name and has continued to grow and compete strongly in the marketplace. There have recently been further reports of poor care in some of its facilities.

Citigroup, whose role in influencing health and aged care in the USA is referred to above, used its Asian private equity and turnaround subsidiary to buy Australia's largest for-profit nursing home group, which had not been making money in 2006. NSW Health Department had recently spent 18 months investigating the probity issue surrounding hospital licenses for this company and only reluctantly granted licenses with conditions shortly before the hospitals were sold. There were no such problems in aged care where by now the need for probity in the sector was a distant memory.

Citigroup used its market skills to rapidly make the company profitable and then sold it to the UK company BUPA just over a year later. BUPA has been having problems with care in its UK nursing homes and has sold much of its operations there. Australia remains profitable.

[3] change.org: http://chn.ge/1hMuqCN

The market has acquired politics

Market power: In writing about barriers to health reform in our political system in 2015 John Menadue, once secretary to a prime minister, wrote that the major barrier was "the power of providers". He indicated that *"A succession of Australian health ministers may have been in office but they have not been in power"* and that *"The community is effectively excluded".* Rob Oakeshot who experienced the system in parliament linked this to corporate funding – that policies were in effect for sale.

Behaving like markets: But it goes further than this because political parties have adopted the thinking and practices of the banks and behave like big business. Policies developed in think tanks become a commodity to be advertised to the public using all of the skills developed in the marketplace and the advice of public relations experts.

In 2015 the executive director of *The Australia Institute* wrote an article describing how the government was "trying to run the country like a private company".

Data and logic are no longer relevant and catchphrases that press emotive buttons become the norm. It is as if both parties are managed by Cambridge Analytica. Representative democracy is a thing of the past.

The treasurer's response to the revelation that the Royal Commission whose establishment the government so strongly opposed is a textbook example of obfuscation, misinformation and blame shifting by attacking and labelling the opposition leader. The Minister for Revenue and Financial Service gave an even more remarkable exhibition in an interview for ABC Insiders. This is what politics has become.

Leadership: We have developed a cult of leadership, in which the public face of the leader and his/her capacity to sell appealing policies without raising any doubts are defining characteristics. There is no place for statesmen in the political process and policy suffers.

Civil society: The community is disillusioned by what they see and hear. Many no longer identify with democracy and this is dangerous. If there were any viable alternative neither major party would be electable.

The community has disengaged and when they become angry about what is happening, grab at and support anyone with simplistic but emotionally appealing policies. This is a crisis for democracy and no one is addressing it.

Loyalty in the market: In our society loyalty to the corporation has taken precedence over responsibility to society. In 2003 after an insurance scandal there was talk of legislation, which would encourage staff to speak out when their company was behaving inappropriately.

The business community was furious as they felt that this challenged their right to the loyalty as well as the intellectual products of their employees' minds. Hugh Morgan, the chairman of the Business Council angrily claimed that the proposed changes would put *"employees in conflict with the interests of their organisations and would turn them into state informers".*

In sensible societies the primary loyalty is to civil society (often called the 'common good'). It has the right to call on the loyalty and the intellectual participation of its members. It is this loyalty and the penetration of civil society's responsible patterns of thought into the marketplace through employees that enables civil society to set the limits of acceptable behaviour for businesses. This sort of social control is flexible enough to allow different levels of acceptability between used car salesmen and aged care providers.

There was a moment of insight when Morgan claimed that scandals like this were inevitable in this marketplace. This inevitability was something the voting public has never been told about. He quoted Adam Smith calling it the "agency problem".

But Smith also wrote about "*this order*" of men whose interests were seldom those of the community and who were likely to deceive. Any proposals from them should be "*long and carefully examined ... with the most suspicious attention".*

Loyalty in politics: We expect the politicians we elect to be there for us and to have a primary responsibility to speak up and act in our interests and on our behalf representing our views. But politicians have embraced market thinking and have a higher loyalty to their party. Some may privately acknowledge that policy will be harmful but when asked to do something about it will explain that they are a politician first and so must support the party.

As politicians openly state, their party's primary role and responsibility is to win elections and hold power. It is not to the public or to civil society. Their responses to the bank fraud and crisis in aged care, are directed to winning the next election and not to the problems the community is experiencing.

Tinkering with regulation is to use band-aids to hide what lies underneath. It does nothing to change the way those in the system think and operate and to address the problems by identifying and removing the cause. We should heed Adam Smith's advice in politics too.

The Agency problem

Agency theory: The Agency problem described by Smith and the agency theory that has grown from it has been used primarily to highlight issues in companies with shareholders. It is a theory that looks at self-interest in the marketplace.

These companies are run by agents (CEOs and board members) who are a long way away from the often-small shareholder owners whose agents they are. Their personal interest may be very different to that of the shareholders and they are likely to look after their own interests and defraud the shareholders. Many will do so. Customers may also suffer.

Distance: The problem relates to the distance between the shareholder owner and the agent. The owners are unable to supervise and ensure that the business is run in the way they would do if they were running the business themselves. The use of incentives and bonuses is intended to align the self-interest of the agents running the company with that of the shareholders.

Quite clearly when the financial interests of the shareholders and their agents are in defrauding the customers, then the incentives and bonuses will incentivise the CEO and other agents to collude in defrauding the customer regardless of whether the owners know or approve of this – a common agency problem exposed again at the Royal Commission.

Agency theory and services: Agency theory is equally applicable to other situations. Civil society has a responsibility to provide services to its members whether these be aged care, mental health, banking or insurance. In doing so it places social responsibility and community interest above self-interest.

Civil society is unable to do all this itself and must employ or delegate many of these responsibilities to agents. Distance makes it difficult for them to ensure that the agent will not act in his/her self-interest and not be socially responsible. As civil society withers and self-interest becomes the driving force in society, the agency problem must become bigger and bigger.

The agents to which civil society delegates its responsibility are government or marketplace entities. Government as agent often subcontracts to other agents in the marketplace who may in turn subcontract further so creating a hierarchy of agency problems.

There is a distance between society and all these agents. Civil society is unable to supervise their agents and make them provide the services in the same way as they would if they did it themselves. There is a similar distance between governments and their agents. This can make it very difficult for government to supervise and control the agents they have subcontracted to.

Government as agent: If as Morgan indicated, the agency problem is inevitable, we can understand why politics has abandoned social responsibility and is serving the interests of political parties and powerful corporations who incentivise them through lobbying and donations. Civil society struggles to control this and has failed to do so.

The belief that markets are self-correcting and that regulation impedes their operation compounds the problem. This is self-serving because government do not have the capacity to regulate effectively and will not admit it.

We can understand why we have a regulatory system, whose primary role is to protect government and not embarrass it by exposing its failure to meet its obligations as agents for the community. It is not supervising the agents it has subcontracted its responsibilities to.

We can also understand why politicians and government are incapable of fixing this problem by themselves.

The market as agent: As the hierarchy of agents increases the layers of potential for self-interest and fraud at the expense of the service and the customer increases.

We need only look at what is happening in the banks and in every other sector including aged care to see how extensive the agency problem has become – just how many are being defrauded of the services they expected and how serious this is.

It is clear that Morgan was correct but the problem was more inevitable and has become far greater than he ever imagined. Aged Care and disability services are by far the most vulnerable of all services and the suffering is greater than in other sectors. Both need immediate attention.

Solving the agency problem

Morgan also indicated that *"The agency problem is built into the very fabric of the corporation and the only thing that keeps corporations going as the engine of our economy, is the cultural and moral standards which prevail within the community at large".*

What he is referring to is the ethic of social responsibility that cultural and moral standards support. He was contradicting himself because that social responsibility requires that employees, who are part of civil society have a prior responsibility to society above their employers. They should be loyal to and free to devote their intellect and capacity to serve that society. This is what he was arguing against!

We can see that two factors lie at the heart of the agency problem,

- the extent to which self-interest has become the driving force in society and social responsibility has declined., and
- the distance between owners or responsible groups and their agent.

If we are to control the agency problem and make both politics and markets work for society and not prey on it then we must address them.

Rebuilding social responsibility: A vibrant civil society is one that is socially responsible. This is the core value on which it is built. Civil society has been hollowed out and relegated to a peripheral role by the ascendency of markets. It no longer has a role in managing its own affairs.

Civil society and social responsibility centre on and depend on involvement. To rebuild both we need to re-involve them in managing and controlling their own affairs and in gaining the knowledge to do so. Technology creates new and easier ways of doing this.

Distance: Distance is not only physical. It is also structural, social and psychological. Physical distance can be reduced by bringing the owners much closer to the agents or by using digital technology to bring them together. But we need structures that integrate them so that they can work together. There are social and psychological issues of knowledge and power that can limit owner's capacity that must be addressed. Owner and agent need to be able to communicate on an equal footing. They have to be able and prepared to do so.

Applying this to government: The open government and participatory democracy movements aim to solve the agency problem in government by re-involving civil society in political process by bringing political processes, knowledge and power into civil society and into communities. Digital technology enables this. Policymaking is diffused and based on knowledge and logic. It confronts the leadership cult, creates a context where statesmanship can develop and builds civil society. It addresses the agency problem by giving civil society oversight of the political process.

Applying this to market: The manufacturing industry is less easy to manage but without commercial in-confidence laws, and with greater transparency and digital technology to bridge distances, owners could be in a better position to oversee their agents. They would not have to resort to the sort of incentives that encourage the exploitation of vulnerable employees and customers. An empowered and socially responsible civil society would be in a better position to insist on a greater degree of probity and so responsibility for safety, for employees and for environment from the market it invests its money in.

The agency problem can be more easily addressed for services because the services are delivered locally in communities and by managers in these communities. By more directly involving and empowering communities and their members so that they become participants in managing and overseeing we can overcome the leadership cult integral to managerialism. Decisions and policy will be developed and/or evaluated locally and have to pass the pub test of social responsibility.

Applying this approach to aged care

Aged care and disability are the most vulnerable of all sectors. The harm done is not financial but physical and mental suffering. It destroys the quality and quantity of life.

Because the service is provided in local communities and in our homes and involves every one of our families and ultimately every one of us, self-interest and social responsibility are aligned. These sectors are well placed to pilot and test out a better way forward because community involvement will be easier to develop.

Aged Care Crisis is pressing for changes that move in this direction. We support an empowered visitors scheme but want it to be local, part of and working with community and community structures – supported and mentored by local medical and other skills.

Communities would be rebuilt and would work closely with both providers and government. It would be an oversight process in which a responsible community is working with the agent, at whatever level in the hierarchy of agencies it sits, to ensure that the service is provided in the socially responsible manner that the community itself would provide if it were able to.

There would be representative structures extending from community to government ensuring that participatory democracy became a driving force in forming policy. It would ensure that its agent, the government, was operating and behaving in the same way as the community would. That is what democracy is intended to be.

Impact on current theory and practice

This process recognises that markets are not self-regulating and need to be monitored and controlled and that centralised government is unable to do this alone. By making regulatory oversight part of everyday activities it makes it less burdensome and more effective because it uses everyday social pressures as the first line of restraint. It replaces self-interest driven by incentives with social responsibility. Motivation is based on it.

Competitiveness and efficiency are constrained and controlled by the potential harm that might be done. It rebuilds civil society and ensures that government serves citizens by making participatory democracy a primary driver of policy in the sector.

The Aged Care Roadmap[4] designed by the government's appointed industry sector committee does none of these things and will need to be rewritten.

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[4] InsideAgedCare: https://www.insideagedcare.com/introduction/aged-care-roadmap