

Submission to Productivity Commission Inquiry into Aged Care Employment

Aged Care Crisis Inc.

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Contents

1	Introduction	4
1.1	The aged care system.....	6
1.2	The Royal Commission into Aged Care Quality and Safety.....	7
1.2.1	Government and Industry responses	8
1.2.2	The Royal Commission's promise.....	9
1.2.3	The role of the Productivity Commission.....	10
1.2.4	A challenge to the Productivity Commission	12
1.2.5	How is this related to staffing and “employment models in aged care”?	12
1.2.6	The structure of this submission	13
2	Staffing problems in aged care.....	14
2.1.1	Understanding what is happening.....	14
2.1.2	Warnings ignored: Staffing and nursing care reduced	18
2.1.3	Unworkable models of staffing	19
3	Better models for staffing.....	28
3.1.1	Models to learn from	29
3.1.2	Applying these ideas to nursing homes:	30
3.1.3	Addressing the issues raised in the Issues document	32
4	Attachments and Appendices.....	34
4.1	Appendix A: Why our society and human services are in trouble	34
4.2	Appendix B: Market Forces and Private Equity.....	34
4.3	Appendix C: Relevant social science	40
4.4	Attachment D: Balanced forces in complex social systems	44
4.5	Appendix E: Impact of neoliberalism on society.....	45
4.6	Appendix F: State and Regulatory Capture.....	47
4.7	Appendix G: The Productivity Commission and its reports	48
4.8	Attachments H: Aged Care Crisis - Submissions to the Royal Commission	67
4.9	Appendix I: Royal Commission Workforce	69
4.10	Appendix J: Royal Commission Program Design.....	70
4.11	Appendix K: Submission to Royal Commission - addressing Structural issues	75
4.12	Appendix L: Royal Commission - Financing Aged Care	79
4.13	Appendix M: Royal Commission Counsel's recommendations	81
4.14	Appendix N: For-profit groups contracting staff to government or providers of care.....	83

Glossary and abbreviations

ACC	Aged Care Crisis
AACC	Australian Aged Care Collaboration - aged care provider industry lobby group consisting of six aged care peak bodies: Aged & Community Services Australia (ACSA), Anglicare Australia, Baptist Care Australia, Catholic Health Australia, Leading Age Services Australia (LASA) and UnitingCare Australia
ACRN	The Aged Care Reform Network, established on 12 August, includes Allity, Bolton Clarke, Estia, HammondCare, Regis Aged Care, Opal Healthcare and Uniting NSW ACT. They are a remnant of the previous group named "Aged Care Guild" who disbanded because of adverse publicity their members received. They are now working closely with AACC and have Mike Baird representing both groups.
ACSA	Aged Care Services Australia (industry representative group)
COTA	Council of the Ageing
LASA	Leading Aged Services Australia (industry representative group)
NACA	National Aged Care Alliance (representative body of industry aged care organisations)
hprpd, hprd	hours per resident per day
LLLB	Living Longer Living Better - The industry's contribution to the government's roadmap through NACA (National Aged Care Alliance) is a long one. It started with the joint development of the Living Longer Living Better (LLLB) reforms. This was based on the recommendations of the 2011 Productivity Commission Report <i>"Caring for Older Australians"</i> . In addition, individual members of the industry consulted and worked closely with government. Many were appointed to government bodies and committees.

1 Introduction

Aged Care Crisis (ACC) is an independent community-based advocacy group that has closely examined the development of aged care policy over the years. It has seen and despaired about what has been happening on the ground to staff and residents. It was glaringly obvious yet it took a Royal Commission to reveal it. Its members were among the first in the community to warn that the policies adopted would not work - 23 years ago. ACC, and prior to its formation, its members have been collecting data and making submissions to aged care related inquiries for nearly two decades, urging real change.

We have been pressing for structural changes that would address the consequences of the damaging changes made in 1997. In particular, we have pressed for models of care and staffing that would address the dreadful conditions that are driving staff away from aged care and giving it a dreadful reputation. The system has been allowing profit-hungry providers to avoid employing more costly skilled staff or giving more work to part time staff even when they were available¹.

The changes made in 1997 created an unbalanced system where commercial interests and values became ascendant and the interests and values of communities and professional staff subservient. The large power imbalance that resulted has distorted the way the system operates and it has been failing as a result. Our submissions have advocated for restructuring, using models which restored that balance in favour of staff and residents. We address the issue of balanced social systems in [Attachment D](#).

The Terms of Reference: The primary instruction in the terms of reference for this inquiry published in February indicated that the Commission was to “*undertake a study to examine employment models in aged care*” and in doing so address the value of directly employed care workers. It should “*also consider*” Recommendation 87 made by the Royal Commission which very specifically recommended that providers' preference the direct employment of workers rather than subcontract. The regulator was to assess this and make a record of it and see that the subcontractor is up to standard.

We immediately set out to address the primary issue of models of care and staffing as well as the way they impacted on staff. In doing that it was critically important to look at the context within which these models operated because that was often the reason why the existing models did not work and why future models might not work. We then suggested models that would assist in changing the context.

Recommendation 87: We had almost completed this part of the submission and were turning to the address Recommendation 87 when we obtained a copy of this inquiry's Issues Paper late in March. The Issues Paper indicates that “*This study will focus on two employment arrangements that were highlighted as of concern in the Royal Commission's final report and that appear to be the target of the proposed restrictions in recommendation 87*”. That is not what the Terms of Reference indicated, although that was included.

The entire focus of the Issues Paper has shifted to direct and indirect care and Recommendation 87. We had previously prepared a submission to the Royal Commission's investigation into the response to COVID. In this we examined this issue as well as the problems created by the two businesses that government contracted to provide services during the COVID pandemic.

¹ Generation Next - Helping Graduate Nurses and Midwives Find Jobs Health Times
<https://healthtimes.com.au/hub/nursing-careers/6/news/nc1/helping-graduate-nurses-and-midwives-find-jobs/1422/>

There is little doubt about the soundness of Recommendation 87. The difficulty is not the soundness of the recommendation, but the context within which it operates. The decision to renovate the system leaving its structures and unbalanced pressures in place, rather than rebuild it along the lines suggested by Commissioner Pagone, has left the system unbalanced and without the balancing forces needed to contain the perverse pressures generated by competition.

While it is much easier to work closely with, support and guide employees and monitor their activity when they are directly employed, it is also possible to exploit their vulnerability, to make them more 'efficient', use less of them and compromise care. This has been happening because of the strong perverse pressures and incentives in the system. Neither staffing model will fully address this.

Structural change of the system is needed to address this. The renovated model advised by Commissioner Briggs and adopted by government does not do this. Commissioner Pagone's rebuilding model goes part of the way, but does not go far enough.

What lies behind this: We cannot help asking what lies behind this inquiry and our research when preparing for the COVID Inquiry is revealing. There were two companies contracted to provide services by government during COVID, Aspen Medical and Mable ([Appendix N \(pg 83\)](#)). Both will be adversely impacted by this change in policy.

Aspen Medical was established by two wealthy entrepreneurs in 2003. It is based in Canberra and it has been close to government becoming the go-to company supplying services to it all over the world. Other countries use its services so it improves Australia's economy.

There was a revolving door, and a past health minister became a director in 2007 soon after he left parliament. He remained there for many years. Aspen's owners are large donors to both major political parties. The contracts awarded to it by government during COVID, many without going to tender, were large.

Mable was founded by two bankers in 2013/14. It acts as an Uber like service for caring staff by putting them in touch with customers and taking a cut from staff income and from the customer but not accepting any responsibility. It has been very successful.

Several very wealthy individuals including the Packer and Murdoch families have invested large sums in it. It became more and more commercial. We believe that COTA, the senior's representative group that works closely with industry and government in developing and supporting market policies, has been an investor. It has been a strong supporter and its CEO attended an opening ceremony with the Minister for aged care in 2017.

There are other smaller operators in this sector, but these two dominate.

Capture: In [Appendix F \(pg 47\)](#) we deal with the widespread problem of State and Regulatory Capture. We describe the way both political parties have been captured by industry, through lobbying, donations, revolving doors and more. In aged care, this dates from 1996 when aged care mogul Doug Moran first got behind the Liberal party to help it win government, a party that, he admitted, worked with him to develop the aged care reforms he wanted and pass the legislation he required.

There is no doubt who holds the purse strings and the power, and whose interests are adversely affected by Recommendation 87.

But there are other issues too. This is a restriction on the free market that both these investors and this government are deeply committed to so both are ideologically opposed to it.

In seeking to overturn this recommendation legitimately without too much criticism, they would turn to an old and trusted ally who thinks like they do and has strongly supported this market philosophy including its introduction into aged care in the past. None of these groups have blinked in the face of repeated failures.

There are multiple allegations being made about the character and integrity of our politicians, their unsavoury conduct and the sort of things they do. Disgusted long-term members within parties are speaking out publicly attacking their leaders². Past leaders are their strongest critics.

This and the information about these companies may all be circumstantial and unrelated, but that does not look very likely. It all suggests that there are forces at play that have nothing to do with aged care or society but impact adversely on it.

We will look at the problems in these models when we address them later in this submission. We are first going to address the primary term of reference for this inquiry, which is *'employment models in aged care'* and that needs some background.

1.1 The aged care system

Background Paper 8, **'A history of aged care reviews'** was prepared for the Royal Commission into Aged Care Quality and Safety by the Commission's staff and published³ in October 2019. The paper listed 30 reviews since 2000. It examined 18 of them and summarised each briefly. It acknowledged that behind the questions the reviews were asked to address *"has been an underlying concern that the system has not been performing as it should"*. It listed another 13 reviews between 1980 and 2000 but did not examine them.

Some at Aged Care Crisis have had a long interest in dysfunctional social systems and the reasons why they have become so dominant, last so long and are so difficult to confront and change. We have made submissions to many of these inquiries and it is clear that they and the recommendations they made were either largely responsible for what happened, or failed to address the issues. Recommendations that did not align with beliefs and policy were either not implemented or implemented in form only so became tokens for what should have been there and whose intent could now be circumvented.

At the same time, that politicians and industry were boasting about a 'world class' system and providers were achieving perfect scores during accreditation, the frailty and acuity of residents in nursing homes was increasing, the staffing situation was deteriorating, nurses were complaining and the number of major failures reported in the press was increasing.

Critics and those who had real experience spoke out but were ridiculed, attacked, discredited and staff who did so were often fired. Unhappy nurses deeply disturbed by what they saw vacated the sector. The recurrent scandals exposed by the press were brushed aside as rare exceptions and when inquiries confirmed real problems token regulatory changes were made and then boasted about.

The background paper concluded by asking *"why, after all these reviews, the aged care system still fails to support an appropriate quality life for the most frail and vulnerable members of our community"*.

² Liberal senator Concetta Fierravanti-Wells labels Scott Morrison 'a bully with no moral compass', ABC, 30 Mar 2022, <https://www.abc.net.au/news/2022-03-29/concetta-fierravanti-wells-blasts-scott-morrison/100949764>

³ A history of aged care reviews, Background Paper, 8 Oct 2019 Royal Commission into Aged Care Quality and Safety

The background paper understates the extent of this problem, its duration and the enormity of what has happened. The problems and the reviews called to examine them go back to the 1960s. Over the last two decades in particular, governments have contracted numerous experts and credible industry advisors to do research, advise on policy and do consultations on their behalf.

Government have formed advisory groups and worked closely with industry and selected community groups that have supported their policies when developing policy. It has followed their advice. Credible people working in the sector have been appointed to government bodies and put in charge of departments and even regulatory bodies. There have been vast numbers of consultations with communities, staff and many experts carried out by government and marketplace experts.

Enormous efforts were made and vast sums spent. We should not doubt the commitment of those who participated. They believed in what they were doing. Yet, at the end of all this, the Royal Commission documented⁴ *“horrific reports”*, found widespread neglect in what was a *“sad and shocking system that diminishes Australia as a nation”*.

How could this have happened?

1.2 The Royal Commission into Aged Care Quality and Safety

As interesting is that no publicly visible attempt was made by the Royal Commission to address and answer the question posed by their own background paper, nor did they explore the obvious answers when they were explained to them.

In our submissions, we asked them to do so and offered explanations which, when we consider their backgrounds, they might have found challenging and rejected. The alternatives to the current system would not have seemed credible to Commissioners drawn from the system or government. It is possible, even likely, that this unwillingness to confront these issues is why there was such strong disagreement between the two final Commissioners that they made very different structural recommendations.

The Commissioner's backgrounds were in government regulations and in corporate and tax law. In formulating their recommendations, they engaged with industry, market advisers, government departments and the senior community organisations that had been responsible for the previous system and its failures. There are two very experienced aged care industry individuals who have been very critical of the current system, but only one was well enough to make a submission. Our inquiries revealed that neither were given an opportunity to appear before the Royal Commission.

We were alarmed by the Commission's decision to issue a consultation paper outlining proposals, calling for submissions and commencing hearings into program design. This was because they had not yet done any sort of analysis of the reasons for failure of the system and of the many previous reviews performed over the years. We had already made submissions addressing these issues but they were not published. We felt that informed responses could not be made by citizens until these issues had been addressed and they were made aware of them.

⁴ A Shocking Tale of Neglect, pages 1-12 in Interim Report: Neglect Volume 1, Royal Commission into Aged Care Quality and Safety, October 2019

In a submission about program design on 24 January 2020⁵, we accused the Commission of “*addressing the symptoms but not the cause*” of the failures indicating:

The second critically important question is to ask “Why is it going on?” The interim report fails to do this adequately. As a consequence, the proposals at subsequent hearings address the visible manifestations but not the root causes of the problems.

We tried to focus their attention on the patterns of thinking responsible for the failed policies, harmful practices and the power imbalances that existed. We indicated “*that deliberation about decisions have taken a wrong turning*” and that the Commission was “*instinctively avoiding the paradigm issue and as a consequence, is focusing on the obvious manifestations of the social pathology and not the root causes*”. Our submission explored the relevant social science that explained what was happening.

The two Commissioners had different backgrounds and disagreed strongly. Commissioner Briggs a long term bureaucrat working within government implementing their processes wanted to “*renovate the existing system*” and so not make major structural changes. Pagone, who had once studied the social sciences clearly had greater insight. He wanted to rebuild and so restructure the system by making it more independent from government and by decentralising power and management to regions. Decentralising and reducing direct government control are critical first steps to reform but do not go far enough.

The solutions and recommendations that both agreed on, focussed on directly addressing issues like staffing levels and skills, training, health care and regulation. These are the serious deficiencies that the Commission identified. If implemented by government, this will result in significant improvement but the treatment is palliative.

These are symptoms of the social pathology that has not been addressed and will progress. It is very likely that in due course the same or other problems will recur. Increased regulation is a temporary band-aid and not a sensible solution to a deeply flawed system. In a sensible society you fix the system so that regulation is seldom needed and the success of the system does not depend on it.

1.2.1 Government and Industry responses

Predictably, government selected Briggs renovation model and has proceeded reluctantly and slowly. Neither the Prime Minister who was the minister responsible for aged care in 2015, the major political parties responsible over the years, nor any of the politicians who introduced the failed policies, have acknowledged their failings or made any sort of public apology.

The industry itself has united and instead of acknowledging their role in advising on and supporting policies, as well as in providing shocking care, they are shifting the blame to government claiming the failure was due to inadequate funding and not their fault. They have engaged a public relations expert, are lobbying hard and trying to get unsuspecting citizens to write to politicians in supporting their goals.

It is clear that some key industry figures and politicians do not accept the Royal Commission's description of the system in the interim report. We continued to hear claims to a 'world class' system.

⁵ Aged Care Crisis Submission to Royal Commission into Aged Care Quality and Safety Re: Aged Care Program Redesign 24 January 2020 responding to consultation paper (AWF.660.00070.0001.pdf)

After the final report, a leading industry representative speaking to a global audience about the report, minimised the findings and suggested that the system was essentially sound and formed a good basis from which to continue reform to address remaining problems along the lines suggested by the Royal Commission. He and another senior industry figure who was involved in the failed system are promoted internationally as *'thought leaders'*.

The government itself is making more money available, but is proceeding with the 'reforms' using the same free market based strategies. It is unable to acknowledge that its cherished policies have failed and that change is needed - a well-recognised pattern of behaviour called 'paradigm paralysis'. The same people including the speaker at that global meeting, or industry leaders from the same organisations, have been appointed to the new National Aged Care Advisory Council that is *"playing a key role in guiding"* the implementation of the Royal Commission's recommendations. The consultations with community recommended by the Royal Commission are also being undertaken by the same people who did so before. The process has once again been delegated to a series of marketplace consultants. It looks as if the foxes are still guarding the hen house.

We recently responded to a departmental consultation that once again limited critical analysis and discussion by restricting input and by not publishing the submissions. We responded critically and then placed an analysis ***"Why our society and human services are in trouble"*** on our web site. We set out the issues and challenged what was being done.

This article is a supporting document for this submission (see [Appendix A](#)). What has been happening since the Royal Commission reported is described in Part 5 *'What has happened instead'* (pages 30 to 37).

1.2.2 The Royal Commission's promise

When the Royal Commission was called, Aged Care Crisis contributed to the development of terms of reference⁶ and proposed additional items including:

Evaluation of structural issues in the aged care sector that might have led to past and present instances of failures in care. This should determine whether current structure and management practices are congruent with community values and with our knowledge of the behaviour of individuals, communities, society and market entities.

In addition, we suggested one specifying the *'Evaluation of past and present policies'* including the 2012 LLLB reforms and the 2015 Aged Care Roadmap.

We noted that:

When supposedly independent and objective inquiries have been commissioned, Commissioners have been drawn from what were seen as credible candidates. This was because they came from an economic or other background that aligned with policy. Believers were generally disparaging of alternate points of view and of those who thought differently. They had little clinical insight or experience in caring.

⁶ Submission: Consultation to develop the detailed Terms of Reference for the Royal Commission into Aged Care Quality and Safety Aged Care Crisis 24 September 2018 <https://www.agedcarecrisis.com/images/subs/tor-rc.pdf>

And then warned:

Contributors need to be persuaded that the proposed commissioner is not biased by preconceptions that undervalue their contributions.

At a subsequent meeting with the minister, we stressed the need for real structural reform and others supported that. The minister promised this.

In a press release after the interim report the commissioners referred to their final report promising that

That report will set the framework for a complete overhaul of the aged care system — from system philosophy and design, to interactions with health and disability services, to workforce, funding and regulation

What has eventuated after two years of inquiries and a year since the Commission's final report, falls a long way short of those promises. We are not blaming the Commissioners, but believe that our warning was ignored. Government selected Commissioners who had worked with them in the past and were trusted because they shared their views and understandings. They too, did not see alternative points of view and the insights of some critics as credible.

1.2.3 The role of the Productivity Commission

A new way of thinking about markets that was developed by economists in Europe soon after the World War II led to the free-market movement that is now called neoliberalism. It began to have a significant impact in the late 1960s and there were soon divisions and sometimes heated debate among economists and politicians – much of it around the abandonment of protectionism.

This new movement became dominant in politics in the 1980s. After it became the mode of operation for market globalisation during the Thatcher and Reagan era, it became a central pillar of policy in Western nations.

As well as focussing on the economic benefits and market opportunities of globalisation, the philosophy also introduced new patterns of thinking and modes of operation that redefined our understanding of the human condition and of society. It required major changes in the way businesses operated and led to changes in the behaviour of citizens, society and politics. Schools of management adopted these ideas and spread them across all of society.

When protectionism was abolished, the foreign income generated by marketing and farming fell in Australia and the focus on competition, management and efficiency shifted to service industries which soon generated a much larger share of this foreign income.

This was a one-size-fits-all model and it was blindly applied in humanitarian services to the vulnerable, where the necessary conditions for a competitive market do not exist. Humanitarian community services have been marketised across those countries that embraced these ideas. In Australia there have been multiple failures across almost every sector where citizens are vulnerable.

This has also happened in the USA and the UK. We have written about this in some depth⁷.

Aged care is the most vulnerable of all. It is influenced by the VET system that trains the nurses as well as by the banks that have invested heavily in the sector and are represented on boards so influencing policies. All three have badly failed those they were entrusted to serve. Their vulnerable customers and/or employees have been exploited and harmed. They have all been involved in scandals followed by Royal Commissions, which exposed the failures but then responded with relatively ineffective solutions.

Strangely there is nothing new about any of this. What has been done is based on a belief system that has ignored over 2000 years of knowledge about services to the vulnerable, over 200 years of knowledge about markets and over 100 years of close study of these problems by philosophers and social scientists. The remarkable thing about these all-too-common situations is that those in power believe deeply in what they are doing. They reject alternate points of view, are oblivious to the consequences of what they are doing and do not see what is happening.

It is outsiders who see with different eyes and use a different logic that see what is happening, but struggle to persuade the powerful.

The Productivity Commission's contribution: The economists on the Productivity Commission and before it, the Industries Assistance Commission and the Industry Commission have been closely involved in the changes that have occurred and the disputes which have caused some politicians to challenge their ideas and advice⁸. As these ideas have been accepted by those in power, the Productivity Commission has gained in credibility and power itself.

They, together with other economists and senior businessmen have played a key role in the adoption and dissemination of these new patterns of thinking and in making them a self-evident pattern of thought in our society

Most of the vast numbers of reviews, inquiries and consultancies in aged care over the last 25 years have approached it as a market like any other. It was not examined as primarily a community services to vulnerable citizens in need.

Several of these reviews have been done by economists, some from the Productivity Commission. When examined from a different perspective using different insights, we can see that these reports are among those that had most impact. They were more responsible for the shocking system that neglected our frail and vulnerable citizens because they came from such a credible source. In [Appendix G \(pg 48\)](#) we look at some of these inquiries.

We stress that we are not wanting to point fingers or blame anyone. We are dealing with well documented and understood social pathology but those who have studied it have struggled to be heard. Almost all of us, if we had lived the lives of those responsible, might have behaved in much the same way.

⁷ For many examples see 'Failed markets and culturography' on Inside Aged Care 2015 J M Wynne <https://www.insideagedcare.com/aged-care-analysis/cultural-perspectives/failed-markets-and-culturography> and 'Contracting government services to the market' on Inside Aged Care 2015 J M Wynne <https://www.insideagedcare.com/aged-care-analysis/cultural-perspectives/contracting-government-services-to-the-market>
For a case study and illustrative in-depth analysis of a US health care company that operated in Australia see 'Culturography: A for-profit example' on Inside Aged Care 2015 J M Wynne <https://www.insideagedcare.com/aged-care-analysis/cultural-perspectives/for-profit-example>

⁸ **From Industry Assistance to Productivity: 30 Years Of 'The Commission'** – Productivity Commission 2003

As social animals we are not, as the economic theories adopted by economists claim, naturally logical or truly objective. We are driven by powerful existential needs which make it very difficult to be objective or logical. To accomplish that and address the problems created by belief, we have to step outside the belief to become aware of the problem and then support one another in addressing it. We find that confronting and struggle to do it.

1.2.4 A challenge to the Productivity Commission

We are directly challenging the two Commissioners, who are both economists to do the unthinkable. We are asking them to put their economic training, their lives, their many theories, their economic models, the complex lexicon of economics and markets on one side while they step into another world.

This is a world that looks down on what has and is still happening with different eyes. It uses different words, concepts, insights and logic to expose and examine the world's complexity. It will enable you to recognise and understand the social pathology that infects us and is responsible for the symptoms that the Royal Commission has described and is treating.

We are asking them to acknowledge the failures that have occurred, make very different recommendations about staffing and use their status to force their colleagues, politicians and society to confront them. Many outsiders are already well down that path and will support you.

We realise that this is a huge ask. Challenging our society and its beliefs as well as everything that we have believed in and the ideas on which we have built our lives is probably the most stressful thing that we humans ever do. But you are dealing with the lives and welfare of thousands of our fellow citizens as well as the nature of future society and its humanity.

We think that the need and the evidence for this is compelling. Those insights should inform the recommendations you make about staffing models and we believe there are good reasons for going further. While based on a commitment to freedom, neoliberal theory has turned the society that nurtures the young into a threat to their freedom. It has impeded the socialisation of the caring values that underpin social responsibility for society as a whole as well as its members. In doing so they lose their own freedom to think and behave independently.

It is far from clear to whom the Productivity Commission is accountable – government or civil society. We suggest that, contrary to the ideas on which neoliberal theory is based we are all social beings. As such every citizen is ultimately accountable to his or her fellows - to our society. That responsibility should be integral to every functioning society and should be 'internalised' by every citizen - particularly by those serving the community and vulnerable citizens. It should govern every endeavour we engage in. Productivity Commissioners are members of society and share that responsibility.

1.2.5 How is this related to staffing and “employment models in aged care”?

The language of economics and markets addresses staffing by using words like salaries, hours worked, training, unions, management, microeconomic reform, enterprise bargaining, incentives, leave, insurance and entitlements. It focuses on productivity, efficiency and incentivisation. Staff are likely to employ the same terms when expressing their unhappiness and seeking change.

In a world where we analyse the patterns of thinking and the ideas that lie behind the things we think and do we use different words like worldview, discourse, paradigm, culture, civil society, social capital, and value systems. A truism in sociology is that even when the ideas we adopt are fanciful and not real, they are real in their consequences. That comment usually refers to ideologies because those consequences are often harmful.

In exploring problems and explaining what is happening the social sciences use additional words and concepts like nomos, anomy, compartmentalisation, internalisation, rationalisation, wilful blindness, strategic ignorance, bad faith and more.

When this world looks at problems in staffing it talks about motivation, identity, authenticity, power, discourses, and then cultural, paradigmatic and role conflicts. It identifies outcomes like alienation and toxic cultures.

These additional concepts open up new windows of understanding that expose flawed policy and guide more sensible alternatives. Models of care that do not consider these issues and address them will not solve the hidden problems in staffing.

1.2.6 The structure of this submission

This inquiry is about staffing models. The concepts we use are important for designing staffing models that will work because staff are a part of the systems and societies that are studied but they go so much deeper.

We will outline these issues up front and indicate their relevance for staffing. We have written about them in many submissions and other documents over the years - and to submissions made to the Royal Commission. We will deal with these issues in attached documents or in linked documents briefly described in appendices. They also reveal the effort we have made to have them addressed and the way they have been ignored.

2 Staffing problems in aged care

To make aged care attractive for staff and stop the ongoing flight from aged care, the Commissioners will need to understand why the system has been so dysfunctional and failed so badly. They will need to confront the elephants in the room at every inquiry and review. These were so challenging that no one, not even the Royal Commission dared look at them.

To create a model for staffing that addresses these issues, we need to understand our conflicted nature and the nature of society. In doing so we must grasp the relevance of discourses, paradigms, cultures as well as their relationship with power and how they impact on us and society.

We need to look at the origin of beliefs and then understand ideologies and their consequences. We need to use the knowledge about mankind and society to understand why they can be so harmful and so enduring in the face of glaring failures. We need to understand the sociological and psychological strategies believers in ideologies use to justify their actions and shield themselves from evidence, criticism and argument. We will need to look at them in a historical context and consider the way they impact on staff and staffing issues.

We need to understand the late 20th century ideology that still has much of the world in its grasp and the consequences this has had for:

1. society and the people who are nurtured within it including the staff who work in aged care
2. The marketplace within which the staff work including the owners and managers whose policies and practices they must deal with, and
3. The sort of politicians and political system that has emerged from this society and the market which has come to dominate it. Within this there is an impact on democracy and a resistance to change. This too, has impacted on staffing and care.

Developing a truly successful staffing model that addresses these issues will be very challenging as it will need to confront the issues and make changes within each of these domains. Some in Australia and at the Productivity Commission may already have a good knowledge of the social sciences but even then, be unfamiliar with the sort of issues addressed because Australia has not really had to deal with anything quite like this before.

We will refer to the issues and indicate where in the documents and linked files we have addressed them.

2.1.1 Understanding what is happening

Overview of the appended and attached material

Introduction: [Appendix A](#) 'Why our society and human services are in trouble' gives an outline of what has been happening, the ideology responsible and the response to the Royal Commission.

The neoliberal ideology responsible for the many failures is being increasingly challenged across the world and in our analysis and submissions we have referred to and linked to some of this material. In [Appendix B \(pg 34\)](#) 'Market forces and Private Equity' we comment on and discuss a good recent analysis of the problems caused in aged care and the particular problems created by private equity. We describe our attempts to address this problem over the years.

If we are to deal with this problem, we need to understand the social science that explains **why this is happening and why it is so resistant**. In [Appendix C \(pg 40\)](#) we link to analyses which:

- a) look at the seemingly illogical idea that those responsible for this problem are genuine good likeable people who believe in what they are doing and are not the malign individuals their conduct suggests.
- b) do a root cause analysis looking at what is happening in greater depth and from many different points of view to illuminate the problems.
- c) discuss the insights and quote from a recent book by a sociologist who throws additional light on the way we behave in these situations. She writes about 'strategic ignorance'.

Balance in complex social systems: In [Attachment D](#) we look at the problem in another way. We look at the complex social systems that make up our complex society. We examine the way that the many different points of view, experiences and insights in a collegial interacting society balance one another to make the systems work, become adaptable to change and also resilient to shocks. We examine what happens when they become unbalanced and what needs to be done to rebalance them. We apply that model to aged care to show what has happened and what needs to be done instead.

State and Regulatory Capture: The ascendancy of markets, the dramatic reduction in the public service in the pursuit of small government and the appointment of industry figures has emasculated the public service. It has become a servant of government and is no longer the independent career based service which previously gave fearless advice to government in the service of the public interest.

Government has instead relied on a revolving door of marketplace consultants and industry figures selected because their similar beliefs make them credible. The same thing has happened to regulation which the neoliberal belief insisted be reduced to a minimum. In [Appendix F \(pg 47\)](#) 'State and Regulatory Capture' we look at a damning report describing what has happened. We might reflect and ask ourselves whether neoliberalism, which was a response to totalitarianism has taken control of government and society and given us a form of marketplace totalitarianism itself – one that savagely pursues those who expose its failures (eg Witness K and his lawyer). We have been writing about capture in aged care for some years,

Until this changes, the staffing model must work in a captured system and a captured state and that is unlikely to work.

Impact on civil society: Neoliberalism is about far more than markets. Its underlying philosophy sees society as a threat and so pushes it aside and disempowers it. It manages society and its activities by marketing rather than engaging. Citizens are no longer engaged in the affairs of society that stimulate critical analysis, dialogue and the development of real world paradigms.

This philosophy and its libertarian focus undermines the interactive collegialism where our paradigms and meanings are formed leaving society vulnerable, ineffective and unable to cope with challenges. The activities that engage citizens as well as the collegialism and empathic bonds needed to maintain and build value systems and social responsibility are missing. If we don't use it, we lose it.

The hollowness of promises, the growing inequality and the multiple failures in a society not engaging seems to have created what is called truth decay. A lack of trust in facts and evidence creates instability and so 'fake news' and more. Analysts call ours the post truth era.

All this creates instability and so the risk of populism which in the past enabled the rise of people like Hitler and Mussolini. This is the very thing that neoliberal's founding philosophy was intended to prevent. We elect the wrong sort of people to parliament and get bizarre and inept leaders like president Trump in the USA. This instability is likely to place stress on our ill prepared citizens, particularly younger generations. It should not surprise us that there has been a rapid increase in psychiatric illnesses, suicide, family violence and more, especially among the young - as well as many other problems.

This is important not only because it helps us to understand what is happening but for staffing and the models the Commission is considering. The owners and managers inhabit one end of this society and the staff another, the end that lives at the anxious and uncertain end and experiences the stresses.

The staffing model that the Productivity Commission advises has to do something about the context within which it will operate and address the issues there if it is to work for insecure and anxious workers as well as vulnerable frail citizens and our society.

We examine these issues in [Appendix E \(pg 45\)](#) and the linked analysis

Relevance for the Productivity Commission: The problems we have analysed above create the context within which the new staffing model will operate. We have also deliberately addressed the previous issues in greater depth because the Productivity Commission and its many inquiries as well as those by other economists have played a significant role in what has happened to society over the years and also to aged care. We have challenged the Commissioners to mentally step aside and look at what has happened as an outsider seeing with several different eyes.

What has happened has not worked and we are asking them to challenge themselves and respond differently. This is to support that request. We have not had time to look at the numerous inquiry reports over the years but to address this further we briefly describe some reports we have looked at and comment. We have done this in [Appendix G \(pg 48\)](#).

We have pursued these issues and pressed for changes in aged care in numerous submissions over the years. The remaining Appendices examine some of our submissions and either attach them or supply links. We also refer to some others. You should draw your own conclusions using the insights provided by the previous Appendices.

Submissions to the Royal Commission

Our first general and staffing submissions. In October 2019 we made a short submission in which we addressed the terms of reference describing what was happening and how the involvement of communities in the process would help in addressing the problems. We attached a detailed analysis we had already prepared which described what had happened and supported that with data. We explained how and why this had happened. We described the structural changes needed to address the problems and the science supporting that approach.

After listening to the five hearings into staffing in Melbourne we wrote another submission the same month focussing on the paradigm issues revealed in the case studies and on the way Counsel avoided opening up the paradigm conflicts when questioning the witnesses.

These submissions were not published and we have attached some of it ([Attachments H](#)). We can supply the rest if requested.

Following hearings about staffing, the Royal Commission put out a staffing consultation paper asking for input and listing issues. Our submission ([Appendix I \(pg 69\)](#)) described what had happened to aged care and addressed the staffing issues explaining how community engagement and empowerment would help address them.

Program design: We were very surprised and concerned when the Royal Commissioners sent out a consultation paper without first examining and reporting on the reasons for the many failures. Citizens responding would not have the information they really needed to comment. We criticised this, explained the real causes and responded to the issues.

Counsel put out a proposed program design and requested comment. We made another submission describing some general issues then commented specifically. These two submissions are addressed in [Appendix J \(pg 70\)](#). We think the program within which staff work will be important for the way they relate, become motivated and perform and so for the success of the staffing model.

Structural Changes: In this quite detailed submission we were responding to what we had heard at hearings and focused on structural changes. We examined what was happening again and looked briefly at issues like our humanity, governance, capture and regulation. We looked at advocates who had been pressing for regionalism but been ignored and some of the literature on this. We developed some recommendations for structural reform. We expanded on some of the issues in other submissions to give the submission greater depth.

We have described the thrust of this submission in [Appendix K \(pg 75\)](#). It was not published but we can supply a copy on request.

Financing Aged Care. We made a submission to a request for input into financing aged care and to another on capital financing. We briefly describe them and supply links in [Appendix L \(pg 79\)](#). Funding has a huge impact on the way the system operates, on staffing and the sort of model needed. As Gregory indicated in 1993 and experience confirms, there is no effective way of preventing the erosion of staffing and care in a strongly competitive market unless that staffing is protected from profit taking. We have pressed for staffing and care to be protected from profit-taking as it was prior to 1997, but providers should be rewarded for managing this by paying them to do so. This should all be done locally so enabling local management to terminate contracts if care is not adequate and so make the market work.

Counsel's Final Recommendations. We filled in a large spread sheet supplied by the Royal Commission commenting on each recommendation counsel made to the two Commissioners. We also made a final submission commenting on Counsel's recommendations more broadly and criticising some of the thinking revealed ([Appendix M \(pg 81\)](#)).

2.1.2 Warnings ignored: Staffing and nursing care reduced

Senator Gibbs⁹ was a strong advocate for the vulnerable and disadvantaged. She realised what was going to happen in aged care and spoke out strongly when the 1997 Aged Care Bill¹⁰ was introduced.

Gibbs gave a telling and prophetic speech in parliament in which she aptly referred to George Orwell's book '1984' as she described the way the words '*nursing care*' had disappeared from the discourse about aged care.

Prophetically, Gibbs spoke of '*managers with no nursing experience. No longer do nursing homes have to employ a qualified director of nursing who will ensure that professional standards are met*'. She referred to '*dramatically decreased guarantees of the level of care that residents will receive*' in a system where there would '*no longer be the checks and balances*'.

Gibbs asked '*who is going to ensure that the taxpayers' money that the government allocates to these nursing homes is properly spent on nursing care?*'. Even at that early stage the '*minister is going around claiming that accreditation will take care of everything*'.

This is a claim that 25 years later was still being trotted out in the face of evidence that the system was failing. **This flawed regulatory process has been used for marketing the system and has been the first line of defence when failures in care are publicly criticised.**

In the Bill there was '*a deliberate budget driven omission which fails to appreciate the health risk to residents in reducing or removing nurses.*'

We know that levels of staffing and particularly skilled staff have steadily decreased at the same time as the acuity of the residents that need this skilled care has rapidly increased since the introduction of the 1997 Aged Care Act.

Senator Gibbs urged that '*aged care should never regress to the situation before 1984, as highlighted in the Giles report. This report highlighted a range of complaints against nursing homes. In fact, some of the photographs of neglected patients with bed sores you could put your fist into were horrifying.*'

Gibbs concluded her speech prophetically saying '*I believe this legislation will start a move which will work to the disadvantage of many of our most vulnerable senior citizens*'.



Gibbs was describing a system where those who make policy, those who make decisions and those who manage care not only lack the information needed, but have no practical experience in the provision of care. She was describing 2022.

⁹ Gibbs, Brenda (1947–) Australian Senate Biographies <http://biography.senate.gov.au/gibbs-brenda/>

¹⁰ Aged Care Bill 1997, Hansard, Senator Gibbs, 24 Jun 1997, page 5042 <http://bit.ly/2rfThau>

2.1.3 Unworkable models of staffing

The high-pressure model of staffing adopted by the market has focused on financial efficiency. It has created an underfunded, overworked, relatively unskilled and profoundly stressed often part time workforce unable to make a living. Carers are working in a stressed environment where culture is focussed on profitability and keeping costs down. The stage is set for cultural, paradigm and role conflicts and even toxic cultures.

Professor Michael Fine from Macquarie University has been writing critically about privatisation and its consequences since 1992. He has been particularly interested in the nature of care and the negative impact of these changes on relationships between management and staff as well as staff and residents and the way care is provided. In 2017 one of us reviewed and commented on 18 of Fine's articles¹¹ written between 1992 and 2015. In a 2015 paper 'Cultures of care' he comments that *"the richness of academic discussion on the topic stands in contrast to its limited use in policy"*.

Not-for-profit's social mission and traditional mode of operation was challenged and they were forced to adapt and behave like markets and in doing so, they used the many psychological strategies that allow individuals to adopt inauthentic identities and engage in activities that are not compatible with their mission which is tokenised. One of us first looked at this¹² in 2006 and we have tracked its progress in aged care over the years. The not-for-profit's peak body, ACSA is a good example.

Nursing homes increasingly come to depend on agency staff to cover staff absenteeism and increased demand. This is a recipe for failure as these staff do not know the residents or their needs and there is no time to supervise them when under pressure. In a well-staffed facility, there is some redundancy of staff and skills so that it can respond to stresses. Agency staff should be rarely needed.

The responses to problems are often uncoordinated. For example, the recent decision by the Fair Work Commission¹³ to make part-time home care a minimum of 2 hours for employees, took no account of the current structure on the ground and is likely to compound the problems of staffing and care in home care.

Improvements in staffing and in remuneration should be negotiated between local community organisations, local staff and local providers, then integrated through to central management systems so that the changes and the consequences are well thought out and carefully integrated with other changes. The community-led and centrally supported model we advocate would enable that.

The hidden staffing model

There has been an industry model of staffing in Australia since 1997. It was based on the deceptive argument that aged care was not a disease and nursing homes were not hospitals. Aged care was not health care. You did not need expensive nurses. They did not bother to study death certificates – an example of wilful blindness!

¹¹ The Nature of Care Inside Aged Care 2017 <https://www.insideagedcare.com/aged-care-analysis/theory-and-research/nature-of-care>

¹² The Not-for Profit Dilemma Corporate Medicine web site 2006 <http://www.corpmedinfo.com/notforprof.html>

¹³ A Fair Work Commission decision means 'big changes' are coming to home care from July 1 ABC News 20 Apr 2022 <https://www.abc.net.au/news/2022-04-20/home-care-providers-concerned-about-fair-work-decision/100997130>

That was the explanation offered but as academics describing what happened indicated¹⁴, the *“changing make up of the aged care workforce is mainly influenced by economic advantage: hiring carers is cheaper than hiring registered or enrolled nurses”*. The intent behind the myth was to reduce staff costs to a minimum.

In 1997 a very successful and credible US authority figure, Andrew Turner planned to enter aged care in Australia. He met cabinet members and many in the industry. His views would have reinforced policy as well as government’s market and staffing models. These are reflected in an outspoken interview he gave about health care in the USA in 1996.

He asserted¹⁵ that

“government regulators are out of control - - health care suffers because of governmental support and regulation - - the marketplace would close poor operators - - operating health care as a business is a must. - - there continues to be tremendous fat in the health care delivery system - - there is fat beyond belief - - at the actual bedside I think there is fat. Why do we have to have a registered nurse change a bedpan?”

In 2000, Aged Care Minister Bronwyn Bishop is reported¹⁶ as saying that the standard of training required in aged care was *“middle-aged women providing tender, loving care”*. The Royal Commission obtained 1997 documents showing the cabinet were deliberately rationing aged care¹⁷. Over the years, governments have supported the market’s efforts to deskill aged care. That was what was intended.

In 2014, the new Prime Minister, Tony Abbott even moved aged care out of the Department of Health and into the Department of Social Services. In 2016 a provider and board member of industry group LASA echoed the sentiment¹⁸ writing *“Age is not a Disease – Aged Care does NOT belong in the Healthcare Domain”*.

Aged care consultancy Ansell Strategic has consistently supported this and in its May 2019 submission to the Royal Commission it emphasises in red on page 9 that **‘Residential aged care is a home, not a hospital’**. Its submission is called **‘FIXED STAFFING RATIOS IN RESIDENTIAL AGED CARE’** and it argues against them.

This myth that aged care was not a disease was finally debunked by the report¹⁹ of the 2019 Senate Inquiry *‘Effectiveness of the Aged Care Quality Assessment and accreditation framework for protecting residents from abuse and poor practices’*. The report blames most if not all the failures on the problem created by this myth and firmly debunks it. These patterns of thought are deeply embedded in aged care managers and their profits have depended on them. It will take more than this to dislodge them.

¹⁴ Our ailing aged care system shows you can't skimp on nursing care The Conversation 27 June 2019 <https://theconversation.com/our-ailing-aged-care-system-shows-you-cant-skimp-on-nursing-care-115565>

¹⁵ Andy Turner wants the government out of health care, Period New -Mexico Business Journal. April. 1996 April. 1996 Vol 20; No 4: p 10 Copy available at http://www.corpmedinfo.com/sun_the_fat.html

¹⁶ Crimes of neglect, The Australian, 4 Mar 2000

¹⁷ The 10-page 1997 memo that brought us to where we are today on aged care, ABC News, 24 Oct 2020 <https://www.abc.net.au/news/2020-10-24/10-page-aged-care-memo-waiting-lists-and-quotas/12807592>

¹⁸ ASX Aged Care in Australia - the Future - Nick Loudon <http://bit.ly/2L8f3YD>

¹⁹ Final Report Effectiveness of the Aged Care Quality Assessment and accreditation framework April 2019 Senate Community Affairs References Committee <http://bit.ly/2L6yK33>

Implementing the model and consequences for staff: If we look carefully, we can see how the model worked. The Howard government adopted a hands off approach and set out to marketize and globalise aged care and encouraged companies to invest promising large profits.

Development Corporation of Australia (DCA) an investment company²⁰ operating several businesses, turned to radiology and aged care in 1998. It invested \$50 million in aged care and by 2006 it operated over 5,000 beds and was the largest for-profit corporate provider of aged care in both Australia and New Zealand.

It found that it could not make the profit it had expected from aged care. This was in large part because it could not control the biggest cost which was nursing care. This was because of union resistance to staff cuts. Profits were falling by 2003 and plummeted in 2005.

The big banks and private equity held off and did not invest in aged care. The government came to the rescue by passing the 'work choices' act that markedly reduced union power in 2005. By 2007, the banks and private equity had invested heavily with one buying DCA's aged care division. They proceeded to reorganise aged care and make it more profitable, but at the expense of nursing care.

Industry blames government funding for the problems, but they actively supported the reduction of staff over the years. When they had a huge injection of funding in the years after the 2012 reforms, this went to competing to consolidate. It did not go to staffing. Instead this increased competitive pressure and put even greater pressure on staffing.

StewartBrown, the accounting business that collected nursing staff data and advised providers, set the staffing benchmarks for the sector at 2.9 hprd (hours per resident per day). This was more than an hour (29%) less than the 4.1 hprd minimum safe levels recommended in the USA after many years of close study during the 1990s.

Even large, better staffed not-for-profits like Southern Cross²¹ and Blue Care²² eventually reduced their staff to meet the benchmark.

Trained staff were not welcomed into the sector and in particular, newly qualified registered nurses were left out in the cold²³. Even with the demand during COVID, many struggled. The nursing homes made no effort to support them and help them gain experience. Large numbers could not get jobs²⁴ and those who did, did not feel welcome. Some had to go overseas to get experience²⁵.

Providers preferred international staff from poor countries who had come to Australia on visas²⁶ and some even replaced Australian staff to use them. DCA group commenced this²⁷ in 2005. They recruited them from poorer nations or worked with agents that did.

²⁰ DCA Group Corporate Medicine 2006-7 <http://www.corpmedinfo.com/dca.html>

²¹ Southern Cross Care defends nursing home cuts, families hit back Chinchilla News 13th July 2017 <http://bit.ly/2YOpJyR>
Illoura staff run ragged as residents wait for basic assistance Chinchilla News 20th July 2017 <http://bit.ly/2YDsTW1>

²² Now it's Blue Care cutting nursing hours for elderly residents ANMF 1 August 2017 <http://bit.ly/2YGc8tc>

²³ Genera&on Next - Helping Graduate Nurses and Midwives Find Jobs Health Times updated in 2020 <https://bit.ly/3LkUIKW>
Graduate nurses share their employment struggle The West Australian 25 March 2019. <https://bit.ly/3Ki3N5W>
Skimping on registered nurses 24/7 risks care in nursing homes ANMJ 10 Sept 2021. <https://bit.ly/3F26wPV>
The young nurses who can't get a job in aged care Hellocare 22 Sept 2020 <https://hellocare.com.au/young-nurses-cant-get-job-aged-care/>

²⁴ Nurse graduates 'locked out' of workforce as migrants get jobs Bendigo Advertiser 8 June 2015 <https://bit.ly/3ETfpeu>

²⁵ Hundreds of WA nurses go to Britain to find work under Health Department deal The West Australian 25 March 2019 <https://bit.ly/3EUwR2g>

²⁶ Opal aged care introduces roster overhaul, job cuts and 457 nurses ABC News 24 June 2015 <https://ab.co/3LoPMVB>

²⁷ DCA GROUP (DVC) \$3.95 : Aged Care and Medical Imaging Your Money Weekly July 14, 2005

These staff were not unionised and could be exploited and taken advantage of. This exploitation became so extensive in multiple sectors including aged care²⁸ that a Senate Inquiry examined the problems in 2016.

The ongoing impact of this model of work: Exploitation and wage theft has continued unabated. Another damning report from the senate *“Systemic, sustained and shameful unlawful underpayment of employees’ remuneration”* has just been released²⁹.

The report examines the extent and impact of the various forms of wage theft that have now become an essential component of the business model for increasing numbers of companies since 1997. The sectors affected include disability and aged care where BUPA had underpaid *“more than a third of its workforce (approximately 18 000 current and former staff) by as much as \$75 million since 2014”*.

Theft comes from wages, leave entitlements, superannuation and more. Incentives and bonuses linked to profits drive managers and encourage this conduct.

Companies that engage in wage theft *“have acquired an economic advantage over their competitors”*. They prosper at the expense of responsible competitors, who go under or are acquired if they don’t conform.

These companies target the most vulnerable members of our society, those who lack capacity and power including, insecure workers, non-union workers, those with low incomes and low skill levels, migrant workers particularly those on temporary visas (65 per cent had experienced wage theft), students, the young entering the workforce, women, first nations people and those living in regional areas. *“Child, aged and disability care”* are among the sectors listed.

The report investigates and describes the poverty many live in and the short and long term consequences of this for their lives – the stress and mental health problems, the challenge to *“people’s sense of self”* leading to *“fear, shame and embarrassment, isolation, anger and frustration, and desperation”*. We argue that this pressure has had a huge impact on their sense of community and humanitarian values. There will be a far greater impact on those providing care to the vulnerable elderly and disabled. Toxic cultures are more likely.

The report comments that *“Industrial relations reforms over the last 20 years have shifted the balance of power in favour of employers over employee, moving from a centralised industrial system to a system of individual rights”*. This has *“evolved from a belief in the priority of markets”*. The report describes the adverse consequences for many of those who speak out or make efforts to claim their entitlements – leading some to call this *“modern slavery”*.

Many employees have been sold a deceptively attractive libertarian model of work that offers them control over their lives and a choice of when and how they work. Instead this has left them isolated, vulnerable and powerless so readily exploited. The number of workers whose wages are set by awards has dropped from 80% to 59%.

²⁸ Nightmare for nurses The Age 31 Jan 2007 <https://www.theage.com.au/national/nightmare-for-nurses-20070131-ge43zr.html>

Recruitment firm fined over 457 visa exploitation. 2008 <https://bit.ly/3xWjnlh>

‘Exploitation’ of graduate and overseas nurses Aged Care Guide 22 June 2015 <https://bit.ly/3MC4cl8>

Australian graduates and 457 workers exploited under current laws ANMF 19 June 2015 <https://bit.ly/3OKbd5x>

A National Disgrace: The Exploitation of Temporary Work Visa Holders report. the Senate Education and Employment References Committee March 2016 https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Report

²⁹ Systemic, sustained and shameful Unlawful underpayment of employees’ remuneration The Senate Economics References Committee March 2022. <https://apo.org.au/sites/default/files/resource-files/2022-03/apo-nid317205.pdf>

The extent of this exploitation shows that *“there is no longer a balance of power”*. This balance is essential if the market is to work for staff and society.

The report explains that *“Complex employment relationships and supply chains make it possible to obscure employee status and hide the beneficiaries of underpayments”* and *“Changes in ethical outlooks have seen broader tolerance of exploitation”*.

We explain the development of these complex corporate webs in [Appendix B \(pg 34\)](#) and the loss of ethical values and our humanity in [Appendix E \(pg 45\)](#).

The report reviews the many central regulatory processes that have failed to work. They write that workers may *“not be aware of the significant differences between an employee and an independent contractor”* and that workers who are *“independent contractors have 'extremely limited' avenues for assistance, as they fall outside the remit of the FWO and many community legal centres”*. Penalties are insufficient to deter large companies using *“franchise and labour hire business models”* who are repeat offenders.

In summing up, the committee concluded that in addition to its impact on workers, wage theft, *“particularly with superannuation theft”* was *“detrimental to the economy”*. *“Future generations of workers will have to foot the bill”* through extra taxes to pay for their pensions.

Lawyers involved in these cases warned that *“regulator resourcing would never be sufficient to address underpayment, and that empowering workers to act collectively is vital”*, so making the case for greater union power. The report makes multiple recommendations to address these issues by regulation and education.

The report is a challenge to current neoliberal thinking and not surprisingly, the liberal senators on the committee wrote a dissenting report to what is clearly a pre-election release of the report. They do not deny what is happening, but claim that they have already addressed the issues with regulatory changes and these are working. The first outcry about these practices led to the senate report in 2016. That claim is not sustainable in 2022 – 5 years later.

Over the last 20 years and particularly during these last few years, the staffing model was protected by strongly resisting pressure to publicly disclose actual staffing levels and set minimum safe levels. This would have led to embarrassing international comparisons as international data showing superior staffing has been publicly available for over 20 years.

The conditions in nursing have deteriorated to the extent that large numbers now plan to leave³⁰ and a good article³¹ tells industry exactly *“why nobody wants to work for you”*.

An alternative approach: What is clear is that while it is essential, central regulation on its own is ineffective against powerful pressures. There is no one there on site to represent the communities and provide on-site pressure to control the excesses of both market and unions.

We will need to re-establish the system of community values that is missing and rear citizens who will embrace them and behave responsibly. It is governments role to empower communities and support them with regulation so that they can create an effective civil society that controls aberrant behaviour at source. Instead neoliberal governments have undermined and eroded civil society and are now threatened by this challenge to fundamentals tenets of their belief.

³⁰ One in four Primary nurses plans to quit APNA 17 Feb 2022 <https://bit.ly/3MAhkHv>

³¹ Struggling to find staff? Here's why nobody wants to work for you. Sydney Morning Herald 17 Nov 2021 <https://bit.ly/3rWuVkw>

We argue that this must be addressed by building a culture of responsibility and accountability to the welfare of all citizens including staff and communities. A rebuilt Civil Society, where involved responsible citizens work together, must have the power to put unresponsive transgressors out of business.

In the 18th century the father of economics Adam Smith warned that the interests of 'this order of men' were in exploiting society and we should be very wary of them. We must replace this undemocratic exploitative market-led capitalist system with a community-led responsible capitalist democracy. Our government's responsibility is to society, not the market whose donations they depend on. We must address that too.

Commercial models

As indicated in our introduction, the Productivity Commission is tasked with assessing the recent commercial models where market entities provide staff or nursing services to governments, individual customers and nursing homes. Some simply act as agents putting the provider (or professional carer) and customer in contact.

The alternative is direct employment of staff by the provider and this is what the Royal Commission advised in recommendation 87.

Without local community support and only the impenetrable MyAgedCare website to help, these models for sourcing staff became very successful. They were used extensively during the COVID pandemic where their weaknesses were exposed.

We collected information about Aspen Medical and Mable, the two companies providing services during COVID and documented the criticisms made about them. They lacked the skills and knowledge of the sector, and the residents and the Royal Commissioners saw this. They did not perform well during the COVID outbreak. We have copied our findings into [Appendix N \(pg 83\)](#). We do not recommend these models.

While these models and the companies involved have been strongly supported by government their commercial focus, competitive structure and lack of collegialism do not in our view meet the needs of the sector. The model used for customers in the community takes no responsibility for the staff or the services they provide and is unable to provide the support, mentoring, collegialism and oversight that direct employment offers when the provider values the direct model and embraces it and its values. In the indirect model a significant sum is taken from each provider.

A much better way of catering for individual shortages is to have a collegial and rewarding system with more redundancy and establish cooperative relationships and integration so that providers help others who have a problem or can combine to meet bigger challenges.

Residents need social care too and redundant staff can participate in this so be usefully engaged in building relationships, quality of life and social capital. This service and integration would be much better provided by local community bodies working across the system and able to resource staff when needed. They know the staff providing services and their capabilities so can do this in a cooperative way. The staff using these businesses might be better engaged in some of the other models we have suggested.

Part of a wider problem

This indirect care model is part of a wider problem and is representative of the way the neoliberal free market's contracting of government services operates to take control of community services and marginalise the communities served.

An article³² on 6th April 2022 reveals that government has allocated \$91 million to fund “*six organisations to help grow Australia’s home care workforce by 13,000 over the next two years*”.

When the contracts went to tender on 6th August 2021 there were nine grants to compete for through an “*open grant process, with one grant for each state and territory (NSW and ACT combined) and an additional two grants directed to regional and remote areas*”. Joint consortia applications were welcomed³³.

The aim was to recruit personal care workers rather than nurses. The focus was on screening candidates for training, mentoring and supporting services, work placements, training existing staff as well as helping providers attract and retain staff.

The six organisations turned out to be a combination of fifteen organisations with 5 groups covering the states and one the remote regions and indigenous population.

The article reports that:

Funding has been granted to:

1. *Settlement Services International in NSW and ACT*
2. *Aged and Community Services, together with Mediashpere Holdings (Powerhouse Hub), Human Services Skills Organisation (HSSO), and MEGT in Victoria and Tasmania*
3. *Council on the Ageing Queensland, together with Skills Hub Ltd, Partners4Health and Skills Generation, in Queensland*
4. *Recruitment Solutions Group Australia in South Australia and Northern Territory*
5. *North Metropolitan TAFE, together with South Metropolitan TAFE, Amana Living and Programmed Skilled Workforce in Western Australia*
6. *National Aboriginal Community Controlled Health Organisation for Aboriginal and Torres Strait Islander people in rural and remote communities.*

While this is a hotchpotch of very different companies, it has a similar feeling and some very similar operators.

An exception. There may have been some resistance from Western Australia where three of the four selected had a different flavour with two being long established TAFE's rather than the flawed more recently privatised VET experiment that systematically exploited students.

³² Six organisations funded \$91m to drive home care workforce Community Care Review 6 April 2022
<https://communitycarereview.com.au/2022/04/06/six-organisations-funded-91m-to-drive-home-care-workforce/>

³³ Applications open: Home Care Workforce Support Program Department of Health 6 August 2021
<https://www.health.gov.au/news/announcements/applications-open-home-care-workforce-support-program>
Expansion of home care workforce underway ministerial Media Release 10 August 2021
<https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/expansion-of-home-care-workforce-underway>

The third is a large not-for-profit church provider with a training subsidiary which understands that *“Self-paced and online learning have a place for certain types of training, but we know from experience that this approach doesn’t adequately prepare you for working in a care environment”*.

In the other states training seemed to focus more on computer based training, a useful resource but one which does little to impart values, build relationships or give practical experience. Personal contact and role models are required.

The final partner in Western Australia is ‘Programmed Skilled Workforce’, a leading multinational *“provider of operations and maintenance services”*. It manages training and staffing, employs large numbers of staff itself and provides services across multiple sectors of the market.

This is the indirect model that the Royal Commission criticised. Its flavour fits with the grant recipients in the other states.

The remainder of the successful candidates

Of the others, COTA and ACSA have played a central role in the design of the system that failed so badly. They have never acknowledged or accepted any responsibility and there is no suggestion that they or government have changed their close relationship or mode of operation.

The remainder are a mix of for-profit and large non-profit companies that have received much of their funding from governments in the past and rely on that. As indicated in [Appendix G \(pg 48\)](#), ‘Big Charity’s success depends on going with the flow and not criticising or challenging policy.

In NSW and ACT ‘Settlement Services International’ has won the contract. It is a global operator with a corporate web of subsidiaries and \$127 million in revenue. It has strong partnerships with governments where 90% of its funding comes from. It has had a primary focus on *“migrants, refugees and asylum seekers”* but that has shifted during COVID.

With ACSA in Victoria and Tasmania, is Mediasphere Holdings which provides computer based services and training courses. With it is Human Services Skills Organisation (HSSO). HSSO is an employer-led body focused on strengthening the Human Services workforce. Then there is MEGT, who are apprenticeship experts providing a *“solution to hiring and managing apprentices and trainees”*.

With COTA in Queensland is ‘Skills Hub Australia Ltd’. It is not clear if it is part of the international Global Skills Hub group. It seems to focus on foreign graduates with degrees that need upgrading before they can register in Australia. Then there is ‘Skills Generation’, which is part of the VET system and a Registered Training Organisation dedicated to delivering qualifications to existing workers in Queensland. Finally, there is Partners 4 Health, a large Queensland ‘health promotion’ charity which generates \$25.76 million in sales (USD). It *“is a Primary Health Network in Brisbane and part of the Ambulatory Health Care Services Industry”*.

Then South Australia and Northern territory have ‘Recruitment Solutions Group Australia’ which is a large Sydney based group generating \$39 million in sales. It is a *“recruitment consultancy offering temporary and permanent solutions across the areas of all Hospitality throughout Australia”* and boasts of their *“ability to personalize matching people with the right career”*.

For remote areas there is National Aboriginal Community Controlled Health Organisation (NACCHO).

Comment: The government's model for staffing focuses on big corporate groups who manage their operations using market principles. We question their suitability and the sort of control that this market power gives them over what are essential human services. This does nothing for the *'systemic, sustained and shameful, unlawful underpayment of employees' remuneration'* described by the senate report, for the disempowerment of workers or for the re-engagement and re-empowering of communities.

Involving and re-empowering communities is essential if we are to rebuild civil society and create caring cooperative communities that look after and support their members. The government's model for improving staffing does not address the deep flaws in the system or the disillusionment in the community about aged care as rewarding work. Corporate and government marketing is not an effective motivator in sectors like this. The vulnerable foreign visa holders are still being targeted by the sector, but without addressing their exploitation. It is all more of the same.

While many of these big groups may operate slightly differently to the model in the Issues Paper, they are all part of the neoliberal free-market/small government policy that contracts everything, including management of society and its affairs to big business. These businesses are part of the system that has pushed society aside and managed its affairs.

This is something that could have been organised through local community organisations who could have recruited, supported and assisted new local community staff to undertake coursework while getting practical experience and support in local nursing homes and home care services. This was an opportunity to start building community and collegialism – another opportunity missed by a government and industry that is strategically ignorant of its problems.

The restriction proposed by the Royal Commission on indirect employment can be seen as a direct challenge to free market beliefs. Government might see that as a foot in the door and could be seeking the Productivity Commission's support for ignoring it.

3 Better models for staffing

This will be no easy task and it is difficult to make specific recommendations.

Salaries vs social rewards: As the Royal Commission indicated (page 418) “*Adequate staffing numbers with the right skills are a necessary but not sufficient*” condition for good care. More is required. Clearly it is critical that staff are adequately funded for their efforts and that those taking on this arduous role are rewarded as well as in hospitals if not better. They should be able to live comfortably. But funding alone will not address the problems.

Equally important are the relationships and empathic bonds they establish between one another, with those they care for, their families and the wider community so that their values and dedication are admired and they gain status and standing. For this to occur, the context must be collegial and there must be time to engage. The relationships of care are very rewarding. Professor Fine at Macquarie University has explored these in depth and written about the difficulties created for these relationships by the current market system. We briefly summarised some of his work¹¹ and linked that to the originals some years ago.

We should also be wary of boosting salaries using incentives. One of us has closely examined what happened when staff were offered large bonuses for meeting corporate objectives in a health care company in the USA.

Staff in this company accepted glib explanations offered by the company that claiming that this was good care to which they were entitled. They enthusiastically participated in the exploitation of their patients for profit in order to be rewarded and were blind to what was happening.

Finding a model that might work: We might copy Gregory in warning that there is no way of creating a good nursing model that is rewarding for both staff and residents under the system that we have had. Structural changes need to be made to alter the way owners and managers manage staff and support them.

We need to address the problems in our society that isolate us by changing the context of their lives at work so that collegialism flourishes, staff support one another and restrain any tendencies to stray from their mission. This is how caring values are built and maintained. Caring is not something that flourishes in isolation. Staff need to belong and feel they are valued. The culture, the paradigms used and the roles they have should be congruent with their values so that their identities are authentic.

Instead of being subjected to factory like efficiency, there should be some redundancy in staffing so that staff have time to build relationships with residents and families as well as each other. Care requirements vary and there can be crises. Redundancy makes the system more adaptable and resilient to shocks like COVID.

Staff should have a role and be involved in policy development and in confronting issues. They need to contribute and use their knowledge to do so. They need some power and respect, yet as employees in the current environment, they have little or none at all. It is an effective civil society that has the power to force change and employees can tap into that power by working with and informing civil society.

A new edition of an educational book for staff has just been published⁸⁹. We contributed a chapter describing what happened to aged care to bring it so low and the good recommendations made about staffing by the Royal Commission. We gave them the information needed and encouraged them to get involved and work with communities if they wanted to keep the good recommendations on track and ensure they were not eroded.

3.1.1 Models to learn from

In these models staff are directly employed by the cooperative business. They may be joint owners or it may be part or fully owned by relatives or community members.

The Dutch Buurtzorg model³⁴ is something the Commissioners should look at. It is a collegial model where nurses form business groups who provide community care by engaging closely with those they care for.

It is:

"... a model of health and social care provision in which professionals work collaboratively in non-hierarchical teams to provide holistic care ..."

It creates a system where financial considerations are balanced by professional and community values. As a business it has a reputation for motivated and satisfied staff and satisfied customers as well as low costs.

The problem that the Commissioners might need to address is how to introduce something like this into a country like Australia where societal/professional hollowing out and managerialism have eroded capacity. As we have indicated structural change is urgently required to rebuild social structures in Australia if we are to get successful aged care. A UK study encountered this problem³⁵ finding that:

However, some of the core features of the Buurtzorg model were difficult to put into practice in the National Health Service (NHS) because of significant cultural and regulatory differences between The Netherlands and the UK, especially the nurses' ability to exercise professional autonomy.

They concluded that:

Whilst many of the principles of the Buurtzorg model are applicable and transferable to the UK, in particular promoting independence among patients, improving patient experience and empowering frontline staff, the successful embedding of these aims as normalised ways of working will require a significant cultural shift at all levels of the NHS.

Business Council of Co-operatives and Mutuals (BCCM): The BCCM³⁶ has been actively supporting and working with citizens, workers and communities in developing models of cooperative staff and/or citizen owned businesses in several sectors in Australia. It is also a balanced model where commercial forces are contained.

³⁴ Coffee first, then care Inside story 8 Oct 2021 <https://insidestory.org.au/coffee-first-then-care/>

'Buurtzorg'. The Dutch word that could revolutionize healthcare World Economic Forum 13 June 2017 <https://www.weforum.org/agenda/2017/06/the-dutch-community-care-revolution>

Buurtzorg is now officially represented in Australia <https://www.buurtzorg.com/buurtzorg-is-now-officially-represented-in-australia/>

Aged Care Innovation: The Buurtzorg Model Primary Health NetworksService design Jan 21 <https://beaconstrategies.net/beacon-strategies-blog/2020/1/21/aged-care-innovation-the-buurtzorg-model>

Welcome to Buurtzorg - About Us <https://www.buurtzorg.com>

³⁵ Transforming community nursing services in the UK; lessons from a participatory evaluation of the implementation of a new community nursing model in East London based on the principles of the Dutch Buurtzorg model BMC Health Services Research 9 Dec 2019 <https://bmchealthservices.biomedcentral.com/articles/10.1186/s12913-019-4804-8>

³⁶ About co-operatives and mutual BCCM <https://bccm.coop/about-co-ops-mutuals/>

There are already many international and Australian businesses that have been very successful in achieving their social objectives. It is a cooperative model that embraces community values and encourages collegialism between staff and with citizens. In the models adopted smaller groups can network to support and learn from one another as well as act together to get the commercial benefits of size. Their web site indicates that

Co-ops and Mutuals often form in response to a market failure. Once established they can be highly successful and sustainable enterprises. Co-ops and Mutuals have been serving Australians for more than 175 years.

It is long past time that we accept that aged care is a failed market and this is because the one size fits all market model used was unsuited to the sector. We need a very different sort of market.

The BCCM recognises the serious problems caused by the competitive Neoliberal market in aged care and elsewhere in Australia. It has been pressing for their cooperative model to be used in aged care. It has been running webinars where successful Australian or international cooperatives explain their model and what they have accomplished. In disability care in Australia there have been staff owned, or staff and disability family owned businesses operating facilities or services caring for the disabled. ACSA's new CEO has taken an interest. The Productivity Commissioners should engage with BCCM's CEO Melina Morrison.

3.1.2 Applying these ideas to nursing homes:

General considerations: To put it simply, the provision of aged care to the vulnerable by profit focussed private equity groups and market listed businesses whose only reason for investing is to make a killing is obscene. Their investment should be restricted to the real estate side of the business. Market investment and capital can instead be obtained by creating a stable secure investment for investors seeking safety and those investing ethically.

The collegial models above are well suited to home care and to the development of smaller facilities for residents with dementia or needing low care. We need to consider how nursing homes that supply high care and palliative care could adopt these principles and create a balanced market where collegialism is encouraged and commercial pressures are balanced by staff and community empowerment.

We also need to consider how to introduce this into the large facilities that the industry built because they were more profitable – aptly called 'wrinkle ranching'. They cannot be pulled down so will be around for many years.

Some, including consumer advocacy group 'National Seniors', are advocating for and pressing for a co-design model. In a National Seniors survey of their members, many did not see how this could work within the present structure. We agree that unless the power imbalance is addressed, the process will once again be tokenised.

Civil society is the only entity with the power to constrain both market and government. It should be able to mediate disputes among its marketplace members. In doing so it could ensure that the market pays service to community values when this is required. In the first instance this social control should be on site using social pressures and sanctions.

Aged care occurs in our communities and in our homes so is well placed to address this problem. In doing so it will be starting the long road to rebuilding a vibrant and involved community that rebuilds our humanity, our society and our struggling democracy. Our education system should play a central role in fostering a knowledge centric community that engages collegially in the

creation of knowledge and that uses its knowledge to take control of its affairs. It could start with aged care.

A model to aspire to: Aged Care Crisis has been pressing aged care inquiries for greater community involvement and empowerment for many years. In a regionally managed system that fostered collegiality, staff and community groups would work together in providing care and services and in creating a force to balance competitive financial pressures.

The 'critique of marketisation' which we referred to in [Appendix B \(pg 34\)](#) explained that "*service users are 'sticky'*". It is very stressful for them to choose to move to another facility and they do not do so. For this and other reasons, the competitive market does not work.

If the system were to be restructured by separating the ownership of facilities from the providers of care, then the local community management responsible for and acting for its community members could easily replace providers with minimal disruption to staff and residents and so make the market work. If community groups were unreasonable, they would struggle to find a replacement so restraining them and creating balance.

In the community model we have suggested informed and empowered local communities (including their health professionals) would assess new providers track records and their probity before licensing or contracting them to manage the facilities where care was provided to their members. Community and staff, most of whom are drawn from the communities served, would work closely with the providers who managed the facilities in a collegial manner providing a balanced check on commercial excesses. Remuneration should encourage stable investment by providers.

Some selected and trained local community employed staff on site regularly would participate with management and caring staff in watching over residents, managing complaints and collecting data so creating an environment of open disclosure. They would be mentored by local professionals and central regulators who would support and step in when required and visit periodically. Regulation and data collection would be part of everyday service and so not onerous or threatening.

We have not addressed subcontracting, and the sort of problem that occurred at Earle Haven. If this was needed it would be done by the community body and work on the same basis cooperatively with others providing care.

We ask the Commissioners to consider a collegial staffing model where collegial community engagement and cooperation are embraced and where both have sufficient say in what happens in our nursing homes to balance the perverse competitive pressures in the system.

3.1.3 Addressing the issues raised in the Issues document

Without direct experience we can only comment from a broader perspective. Perhaps the biggest problem with these models is that they encourage an 'efficiency' based, just enough approach and we will not get the well-staffed collegial facilities in which staff have time to build relationships. The facilities will not be adaptable or resilient. Their commercial success is a measure of failure at the bedside.

Page 12

Q. Should labour hire agency workers who are directly employed by the agency also be a major focus of the analysis? If so, why?

A. Examining them is helpful in understanding market models that don't work and we have indicated why these models are unsuitable in this sector. Instead, the focus should be on models that will address the root cause of the problems in staffing and the system itself. It should create a context where staff will be comfortable, motivated and feel important and valued and in which those responsible should be directly accountable to the communities they serve so that families can be confident that their members are well cared for.

Agency staff are also transients and do not know the residents and are often less well trained. This should also be considered because they are an unknown to full time staff and require close supervision if patients are to be protected. Their use should be kept to a minimum. There should be sufficient redundancy to make their use an exception.

Page 18

Q. Prevalence of agency workers, independent contractors and platform workers.

A. The large sums invested in Mable by the very wealthy suggests that it is widely used and that they expect this to grow rapidly. That groups like COTA are supporting it suggests that they think so too. It also suggests that providers might find the model more economical and easier to use. We are not persuaded that this is good for care.

Page 21

Q. The implications for aged care recipients of using agency workers, independent contractors, or platform workers.

A. Quality of care is at risk and not easily supported. An independent contractor may form good relations with customers and provide good services but there is a risk of outliers who provide poor service or mistreat residents going undetected. Some collegialism and close association with peers who can exert pressure or act is needed. Working within a cooperative is better and there are others ready to step in when needed (eg. illness or leave).

Regulation in aged care has not worked. This is partly because ideology discourages real regulation and it has been replaced by forms of self-regulation, and partly because it has been captured. It is also too far away and needs a local on-site arm that sees what is happening and responds early.

Ideally, the system should work well on its own and not depend on regulation for its success although it needs to be there when needed.

Page 22 Fig 4 and Page 28

Q. Potential impacts of indirect employment in aged care

A. Care recipients: being vulnerable and at risk from a relatively unknown outsider who is not vetted and supported by others. The recipient does not have trusted community advice or even word of mouth guidance so is not well placed to make choices.

Workers: The interests of the indirect employer are not those of the worker or the recipient. It lacks the collegialism between staff that encourages learning, engagement and social capital.

Aged care providers: Economic advantage as able to plug gaps cheaply and with little effort and avoids the need to have some redundancy – can be lean, nasty and profitable. Better to have someone you know and work with every day.

Other: No incentive to innovate in caring. A commercial competitive operator in a sector requiring cooperation and collegialism is a recipe for problems. It is probably more expensive and workers pay more for the privilege. Regulation is less effective.

Page 29

Q. potential impacts of preferencing the use of direct employment of personal carers and nurses in aged care?

A. Collegiality, cooperation, relationships, reliability. Creating a welcoming workplace with some redundancy. It would cost more but provide superior care, be adaptable and flexible. Efficiency has its limits and prevents adaptability and resilience.

4 Attachments and Appendices

4.1 Appendix A: Why our society and human services are in trouble

Overview: As criticism of aged care mounted the Department and those industry analysts that it contracted to consult with the community, tried to limit well-constructed and considered critical analyses and community debate that challenged the solutions they were promoting. They used structured forms with focused questions, limited the length of open contributions, restricted the length of submissions and did not publish them so others could not engage with the issues they raised.

In spite of the Royal Commission, nothing has really changed. In November 2021, the department opened consultations (by 18 Jan 2022) on a proposal to align regulation³⁷. It was no different. We responded with a short critical submission which included a link to a critical analysis of what was wrong with our system, placed on our web site³⁸.

The analysis “**Why our society and human services are in trouble**” has five sections.

<https://www.agedcarecrisis.com/images/whysocietyandhumanservicesareintrouble.pdf>

- **Part 1: Introduction** - A history of failure in aged care
- **Part 2: Root cause analysis** - The problems of a) self-interest b) social responsibility, c) ideology, d) markets, and e) with humans and their society
- **Part 3: The story of neoliberalism**
- **Part 4: What is needed for real reform**
- **Part 5: What has happened instead**

4.2 Appendix B: Market Forces and Private Equity

A good analysis: We urge the Commissioners to examine the excellent analysis of the adverse impact of neoliberal market policies on the aged care sector from the Centre for the Understanding of Sustainable Prosperity, University of Surrey in the UK:

A critique of the marketisation of long-term residential and nursing home care. Walker CC, Druckman A, and Jackson T. The Lancet Healthy Longevity. Science Direct Volume 3, Issue 4 April 2022 Pages e298-e306

Source: <https://www.sciencedirect.com/science/article/pii/S266675682200040X>

The paper describes and critically examines how “*the embedding of neoliberal market values such as competition, consumer choice, and the profit motive*” led to failure. They “*outline why providers can scarcely respond to competitive forces without compromising care quality*” and “*why the promotion of consumer choice cannot effectively motivate improvements to quality of care*”. They describe “*how privatisation opens the door to predatory financial practices*”. They examine the economic reasons why this has impacted so negatively on staffing and care, and why it is inappropriate for these services “*to be managed through the principles of neoliberal market ideology*”.

³⁷ Aligning Regulation across Care and Support Sector - Consultation Stage 2 Department Health <https://bit.ly/3vmX2M1>

³⁸ Aged Care Crisis **Response to consultation paper: Aligning regulation across Care and Support Sector.** <https://bit.ly/3xV4i3m>

The authors examine the attempts to control what has happened and suggest additional ways of doing so. They concluded that *“Even if we were to successfully implement each of these reforms, however, the central characteristics of the care sector still remain”* and that *“No matter how clever regulations are, there will always be those who seek to game the system (and who do so successfully), often with disastrous consequences”*.

There is no mystery to this as 20 years ago in Australia, Bob Gregory warned politicians that there were no mechanisms for preventing this from happening if staffing and care were subjected to market forces by removing the protections that the Hawke government had put in place to protect them in the 1980s. The Howard government and the Productivity Commission both ignored this and many other warnings.

Like us, the authors recognise that the policy is based on a logical category error because the necessary conditions for a market to work do not exist. They write *“we must recognise the categorical error - - - that care is not a commodity to be freely traded on the market, but an intimate act that requires trust, and relationship”*.

The authors go on to examine the impact of private equity which *“now own several of the largest care home chains”*. They write:

Widespread use of predatory financial practices by these entities has sparked concerns about the implications of financialisation for quality of care, working conditions, and economic and operational stability across the sector.

They describe how financial engineering practices have enabled value extraction from nursing homes, increased short-term returns to investors *“at the expense of operational and economic stability within the sector”*. They describe the corporate group structures *“with dozens of related subsidiary and parent companies, registered in a range of locations, many in low- tax jurisdictions”*.

Aged Care Crisis and Private Equity: By 2007 when the Australian senate mounted an inquiry into the impact of the growing number of private equity investors, one of us (MW) had been tracking the marketisation of health and aged care, warning the medical profession and writing about it for 27 years. His submission to the senate in 2007 warned of the consequences indicating that *“the explosion in private equity will potentate and exacerbate serious problems existing in vulnerable sectors of Australian society”*. The warning was discounted in their final report. Within months the US press was describing the consequences in aged care.

The real problem is that the aggressive strategies private equity adopted were very successful financially. This forced competitors, both for-profit or non-profit, to emulate them or be left behind. They set the standard, which others had to follow to compete successfully. A large number if not a majority now use complex corporate webs of related companies.

We described what was happening³⁹ online in 2015 noting that *“Because private equity makes large profits, their financial strategies, conduct and practices are adopted by others in the marketplace”*.

³⁹ Private Equity on Inside Aged Care <https://www.insideagedcare.com/aged-care-analysis/aged-care-marketplace/private-equity>

We also made a submission⁴⁰ about this to the 2018 Senate *“Inquiry into the Financial and Tax Practices of For-profit Aged Care Providers”* and then followed with a supplementary submission⁴¹ to refute unsubstantiated claims that were made at a public hearing by the Senate Committee.

After we gave evidence to the Senate Committee examining the proposed *Aged Care Legislation Amendment (Financial Transparency) Bill 2020*, we responded to Questions on Notice⁴². The first question was about the impact of the proposed transparency bill and the government budget. We explained our support for the bill and its important objectives, but also our reservations because of the probable limited impact of both within the current political context.

The second question was about the corporate web of associated entities that were being widely adopted in aged care. We explained the role of private equity in creating this problem and summarised what was happening in Australia, the USA and the UK. In our conclusion we suggested what needed to be done to address the problem.

Within days of our letter, a new expose of what private equity was doing appeared in the UK press. We also discovered that in the USA, the *“House Committee on ways and means, subcommittee on oversight”* had been conducting another investigation into the problems created by private equity.

We wrote a supplementary letter on 31 May enclosing the UK reports and material from the US inquiry. We urged the committee to look at the sort of structural changes we were advocating.

In relation to aged care we indicated:

There is a growing movement to regionalise and rebuild citizenship and civil society in the UK and elsewhere. There are networks of citizens in the UK and globally pressing for regionalism and citizen engagement. They support local networks and write extensively about regionalism. There are global networks that have similar objectives, sometimes describing it as "neighbourhood democracy". We were interested to hear Lucy Turnbull, Mayor of Sydney, pressing for regionalism on The Drum on 28 May 2021. Private equity and inappropriate corporate relationships would not prosper in systems like this.

We also wrote that:

- - we find it disappointing that in the USA, the UK and Australia the thinking and primary focus still seems to be on containing the problems primarily through regulation.

It would be so much more sensible to make the structural, paradigm and policy changes that would create a system that does not think and behave in this way and does not depend on regulation to make it behave responsibly. That means creating a very different sort of market to that current in all three countries. We need a system that responds to citizens real life situations and that leads in identifying needed regulations rather than one that tries to subvert them. A community-led system would do this.

⁴⁰ Aged Care Crisis Submission to senate Inquiry into the Financial and Tax Practices of For-profit Aged Care Providers June 2018 <https://www.agedcarecrisis.com/images/subs/32-AgedCareCrisisInc.pdf>

⁴¹ Aged Care Crisis Supplementary Submission to senate Inquiry into the Financial and Tax Practices of For-profit Aged Care Providers 26 July 2018 https://www.agedcarecrisis.com/images/subs/32_supp1.pdf

⁴² Response to Questions on Notice Aged Care Legislation Amendment (Financial Transparency) Bill 2020 24 May 2021 <https://www.aph.gov.au/DocumentStore.ashx?id=65051df9-a1d7-421f-b150-fc779dadd3c7>

It may be that private equity and others who come only for the money might be less enthusiastic. The community-led system provides an avenue for them to extricate themselves from the sector and for the system to be gradually dominated by mission driven non-profit providers as was suggested in the AARP (American Association of Retired Persons) wish list.

(Note the Committee did not publish this letter but we can provide it)

The power of neoliberal beliefs and competitive pressures

We worry that in Australia the power and durability of the 'self-evident' neoliberal beliefs when they are financially successful is not appreciated. Abandoning successful practices in strongly competitive markets when success depends on exploiting the vulnerable, creates huge pressures to continue unchecked when reforming the system threatens corporate survival.

The exploitative practices are highly infectious as competitors must adopt them to compete and survive. Far from correcting themselves when problems occur (as neoliberalism claims) free markets once successfully infected, rapidly create a pandemic.

Examples

In Health care in the USA in 1994 National Medical Enterprises (NME) pleaded guilty to criminal offences after exploiting vulnerable patients in psychiatric and substance abuse hospitals. It paid about A\$1 billion in fines and settlements with those it had defrauded or harmed and was required to sell all its psychiatric and substance abuse hospitals, (well over half of its hospitals). It was subjected to five years of close supervision by the department of justice.

NME's practices were highly infectious and almost every other corporate provider in those sectors had poached its trained managers and done the same things. They were fined for similar conduct.

NME renamed itself Tenet Healthcare. It was not profitable while being closely supervised but profits grew rapidly again when the oversight was lifted in 1999. Only 3 years later in 2002 it was found to be doing hundreds of unnecessary major operations, rorting the funding system as well as cost cutting that caused other failures in care.

In aged care in the USA: In 1989 NME spun off its large aged care division which soon broke up and its trained managers spread through the industry. The managers it had trained were at the forefront of the system wide exploitation of the funding system and poor care to residents that created a huge problem in the US aged care system in 1999 after government had stepped in to stop the rorting.

Aged care in Australia: The founder of Sun Healthcare, a major offender in the USA scandals, had been trained by NME and adopted its market approach. He brought his company to Australia in 1997. We have reason to believe that his appealing marketplace policies strongly influenced the Howard government and that our system was also infected as providers were soon persuaded.

Here too this infection and the pressures created markedly reduced staffing and care and spread through the industry. Any who failed to do this did not prosper so either failed or were taken over by a company who would. We now know the consequences. That it has taken 20 years to expose all this, speaks for the power of ideology.

Franchising in Australia: 7-Eleven led the way by creating a situation where its franchisees could not make a living without indulging in wage theft. Multiple other franchising businesses were soon infected adopting similar practices. What was happening in 7-Eleven and then at other franchise businesses was exposed by whistle blowers and the press in 2015/16 resulting in a damning senate inquiry. But this did not stop the practices as revealed by the senate report²⁹ in Feb 2022. Seven -Eleven is in the news again 6 years later after paying franchisees \$98 million because of what it has been doing⁴³.

⁴³ 7-Eleven to pay \$98m after franchisees allege its model was 'a lemon' based on wage theft ABC News 6 April 2022
<https://www.abc.net.au/news/2022-04-06/7-eleven-wage-theft-98-million-franchisees-class-action/100970682>

Perhaps real change is possible: We were surprised by a strongly worded document released by the white house in the USA, in which President Biden committed to radical changes in the flawed and deeply troubled US aged care system.

This is a system which our research⁵² since 2016 has revealed on average provides each resident with twice as much care from registered and trained nurses and a third more nursing care overall than Australia. This showed just how far Australia has fallen behind over the last 20 years and how much worse it is here.

Like Australia there have been serious flaws in policy in the USA where there is also state capture by the market. A multitude of inquiries, starting with the Institute of Medicine Inquiry⁴⁴ in 1986, have identified problems but not solved them for the same reasons.

In the USA Biden is showing great political courage in the face of 'state capture'. He is targeting the wealthy and influential private equity sector. He is accepting research, which shows that *"private equity-owned nursing homes tend to have significantly worse outcomes for residents"*, that residents were much more likely to be admitted to hospitals, that *"COVID-19 infection rate and death rate were 30% and 40% above state-wide averages"* and that private equity investment in aged care *"has ballooned from \$5 billion in 2000 to more than \$100 billion in 2018"*. Private equity had *"sought to cut expenses at the cost of patient health and safety"*.

We have written about state capture and lobbying in Australia by wealthy businessmen in [Appendix F \(pg 47\)](#). They have the power to crush politicians who challenge them.

Anthony Albanese, leader of the opposition in Australia also made a courageous statement in parliament about really addressing the aged care crisis. He looks and sounds genuine in his speech and we know that he understands what has been happening because he strongly opposed the changes⁴⁵ introduced in 1997.

He may well face opposition from the faction in his own party who strongly embraced this market⁵⁷ when they developed the flawed pro-market 2012 LLLB policy that set the stage for the rapid deterioration that followed. A politician who was involved at the time wrote⁴⁶ about the way *'big business hijacked parliament'*, about donations, and the way political parties *'took the money and ran'*.

The Productivity Commission would be serving the interests of all Australians and be supporting meaningful change by politicians who put citizens above political self-interest, if it had the courage to confront what has happened. The Productivity Commission review needs to look at the evidence that explains the repeated failures globally and make findings and recommendations that address the root cause of failure in this vulnerable sector. As the examples show these practices are enduring and impossible to stop while the belief in neoliberalism and the competitive pressures remain. Braithwaite (below) shows that we are at a critical tipping point and this is now urgent.

⁴⁴ Improving the Quality of Care in Nursing Homes Institute of Medicine 1986 (National Academies Press)
<https://nap.nationalacademies.org/download/646>

⁴⁵ Albanese AGED CARE (COMPENSATION AMENDMENTS) BILL 1997 Hansard 5 June 1997 page 5042
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F1997-06-05%2F0010%22>

⁴⁶ How big business hijacked parliament Rob Oakeshott The Saturday Paper 15 August 2014
<https://www.thesaturdaypaper.com.au/topic/politics/2014/0>

Other examples and analyses

The USA has led the way in marketising health and aged care. An article in *The American Prospect* tracked the ongoing and recurrent problems that have developed in the US aged care system since the 1960s when the sector came “*under the near- total control of a predator class*” of entrepreneurs through to the dominance of private equity in the 21st century⁴⁷.

Meanwhile, in response to the failures in the system exposed by COVID, some states, including New York have passed laws increasing minimum required staffing levels and, as in Australia in the 1980s, limiting the amount of profit that can be taken from funding provided for staffing and care⁴⁸. The intention is to dissuade “*bad actors from coming into this business*”. Predictably those responsible for the problems are challenging the legislation in the courts.

When the USA cracked down in the 1990’s these bad actors looked for international opportunities and targeted Australia. Private equity groups have been sniffing around and have once again targeted our largest for-profit health care provider Ramsay Healthcare in a takeover attempt⁴⁹.

At home in Australia, Criminologist, Professor John Braithwaite has spent his life working with others to study patterns of criminality on a broad scale and look at regulatory failure. His latest book⁵⁰ ‘*MACROCRIMINOLOGY AND FREEDOM*’ explores history and global behaviour to identify and explain the complex patterns of societal failure. He writes about war, state, market and organisational criminality as well as the factors impacting individual criminality within society. He shows how criminality becomes infectious, describing cascades of violence and authoritarianism as well as “*cascades of collective efficacy*” when a normative stability is restored.

He finds an association between dominance, criminality and freedom. He presses for a balanced system where state, market and other forms of dominance are restrained and balanced. His focus here is on civil society and the creation of normative structures within society that create stability.

He writes at length about the relationship of these problems to the breakdown of society itself. Others have called this ‘truth decay’ and labelled our current episode as the ‘post-truth era’. Braithwaite and his co-workers use the older sociological term ‘anomie’ to describe this recurrent phenomenon. They consider that it plays a critical but complex role in these cascades.

We need to position aged care within these broad insights. We argue that vulnerable sectors like aged care, if properly restructured are well placed to restore balance by re-engaging and re-empowering civil society’s normative value systems. This is urgently needed to counter the late 20th century cascade of corporate and state criminality and the anomie now driving that cascade.

⁴⁷ The Corporatization of Nursing Homes. A tragic history of how we’ve treated elderly citizens, for profit by Maureen Tkacik *The American Prospect* 20 Oct 2020 <https://prospect.org/familycare/the-corporatization-of-nursing-homes/>

⁴⁸ Nursing Home Owners Are Fighting New York Law That Prioritizes Patient Care *Truthout* 25 April 2022 <https://truthout.org/articles/nursing-home-owners-are-fighting-new-york-law-that-prioritizes-patient-care/>

⁴⁹ Big super joins KKR in \$20b bid for Ramsay *AFR* 20 April 2022 <https://www.afr.com/companies/healthcare-and-fitness/ramsay-confirms-20b-takeover-offer-20220420-p5aeov>

⁵⁰ *MACROCRIMINOLOGY AND FREEDOM* John Braithwaite ANU Press 2022 <https://press.anu.edu.au/catalog?search=MACROCRIMINOLOGY+AND+FREEDOM>

4.3 Appendix C: Relevant social science

In this appendix we link to articles that lie behind, go beyond and explain issues described in the document '**Why our society and human services are in trouble**' in greater depth. Staff, managers and owners are all members of societies and belong to different groups and factions within it. All of them will be influenced and impacted by what is happening there. Staff generally lack power and are particularly vulnerable when society is unbalanced and dysfunctional. Any recommendations made will need to operate within the context of our society and address any issues there if they are to work.

a. Why good people do bad things

<https://www.agedcarecrisis.com/opinion/articles/465-why-good-people-do-bad-things>

This is a web page intended for a general audience. It tries to encourage a more analytical approach and counter our gut tendency to blame and attack.

Sections:

- Aged care is not alone
- How can this possibly be happening? It can't be true - or can it?
- They may be good people but they are still lying
- Implications

b. Root Cause Analysis of failures in Aged Care

<https://www.agedcarecrisis.com/images/pdf/root-cause-analysis.pdf>

This explores the problems underlying ideology and our failure to address the social pathology. It was attached to a submission to an Inquiry into the need for registered nurses in nursing homes in NSW in January 2021. The attachment was not published by the Committee. We have placed it on our web site as a resource.

Contents

- Glossary
- Executive Summary
- Introduction: Groundhog days in aged care
- Many eyes needed, but we only use one
- Insights from many eyes – different perspectives
 - The perspective of history
 - Perspective: market theory
 - Logical perspective - necessary conditions
 - Logical perspective - a tautology
 - Perspective: Mis-specifying human behaviour
 - Perspective: Humans and truth
 - Perspective: Becoming human and claiming an identity
 - Perspective: Pressures to conform
 - Perspective: Strategies used to conform
 - Perspective: Understanding language
 - Perspective: Education
 - Perspective: Media analysis
 - Perspective: Resilience
- Conclusion

c. The Unknowners: How Strategic Ignorance Rules The World ZED Books Ltd 2019

By Lindsey McGoey

In her penetrating analysis of the way the world operates and how 'strategic ignorance' is playing an ever greater influence today, McGoey explores the world of knowledge creation. She explains how we ignore knowledge strategically in order to create the knowledge systems we want or need and do the things that we must in the situations in which we find ourselves. She also considers how we claim knowledge when we don't possess it. These are issues we think the Productivity Commission might consider.

A good example of strategic ignorance is the consistent and repeated denials by industry figures and politicians since 1997 that staff levels bear any relationship to care, and the way that they and politicians have done everything they can to frustrate attempts to make providers disclose them. They have claimed there is no evidence for the association with care.

For example, when ABC 4 Corners interviewed Sean Rooney, the CEO of aged care industry group Leading Aged Services Australia (LASA) in 2018 at the height of the exposures that led to the Royal Commission⁵¹:

Sean Rooney: With regards to staff ratios, as I said, that is a very blunt instrument in order to deliver person-centred flexible care to meet a growing and changing set of needs. And his is not something that...

Anne Connolly (journalist): So, you don't believe there should be staff-to-resident ratios?

Sean Rooney: No. I don't believe because the international literature doesn't actually support that.

As Aged Crisis have known since 1994, there have been many studies in the USA showing the relationship of staffing levels and skills with failures in care, as well as the big difference between the different types of owners. This difference was related to their focus on profits with private equity being the worst performers followed by corporate ownership, then non-corporate for-profit ownership. Non-profits and government owned facilities performed best.

We included this data and also data comparing staffing levels in the USA with those in Australia in a submission⁵² to the 2016 Senate Inquiry into the '*Future of Australia's aged care sector workforce*'. We later gave it to the Chair of the Aged Care Workforce Strategy Taskforce, John Pollaers. The Royal Commission was also supplied with this data but rejected the staffing level evidence until its own delegated research confirmed it. It continued to strategically ignore the evidence showing the relationship with ownership type.

Staffing and disclosure: The arguments about minimum safe levels and resistance by industry have been going on since the 1980s. In spite of this, the data needed to assess this information has not been collected or reported by regulators in Australia. It has not been reported by industry advisory group StewartBrown, which has collected staffing data suitable for analysis over the years. This can only be a reflection of the extent of the capture of politicians and regulators by industry and the need to ignore conflicting knowledge to protect this.

It was not possible to hide the sanctioning of poorly performing facilities. Baldwin who analysed the incidence found that for-profit owned facilities were twice as likely to be sanctioned⁵³.

McGoey's more complex book complements Margaret Heffernan's book '*Wilful Blindness: Why we ignore the obvious at our peril*' (2011 & 2019). Heffernan's book explores the many ways in which we ignore what is happening in front of us when that information is challenging and unwelcome.

We come to understand how those who provide aged care and walk past it every day can maintain their belief in a world class system. Those like the Royal Commission, who are instructed to look and cannot look away have described this system as shocking and characterised by neglect.

⁵¹ quoted in Lobby Groups and the Australian Aged Care Sector. Lobbywatch 1 Oct 2019 <https://bit.ly/3rRxx3k>

⁵² Future of Australia's aged care sector workforce - Supplementary submission to Senate Standing Committees on Community Affairs 19 Nov 2016 Section 3 Comparing Australian staffing levels with the USA https://www.agedcarecrisis.com/images/pdf/sub302ss2_ACC.pdf

⁵³ Quality failures in residential aged care in Australia: The relationship between structural factors and regulation imposed sanctions Baldwin R et al Australasian Journal on Ageing 22 May 2014 <http://onlinelibrary.wiley.com/doi/10.1111/ajag.12165/abstract>

This denial of knowledge and experience is so deep that it has persisted in some businessmen and politicians after the damning Royal Commission's report. We are aware of another example in the USA where this denial persisted even after a criminal conviction.

In our analysis over the years and in our *Root Cause Analysis* above we have used the insights from the French Philosopher Jean Paul Sartre to explain why this is usually not deliberate.

It's a sort of schizophrenic phenomenon where we know but lie about it to ourselves or deliberately don't look when we know information is there. We create knowledge and an identity based on it which is not authentic. He describes it as 'bad faith'.

McGoey too uses these insights saying:

(P293) Bad faith, the existential French philosopher Jean-Paul Sartre once suggested, is not exactly lying to others. It is the problem of lying to oneself, which makes it much more insidious, much less perceptible, and much less challengeable than obvious cover-ups or clear efforts to deceive. 'The true problem of bad faith stems evidently from the fact that bad faith is faith. It cannot be either a cynical lie or certainty,' Sartre writes. 'The essential problem of bad faith is a problem of belief.'

McGoey uses this to explain why experts can get it so wrong, particularly when their expertise overlaps other domains in which they are not expert or challenges what they believe and do - and why alternate expertise when acknowledged can bring vital new insights. She uses drug regulation to illustrate the problem.

(P295) This reality - the fact that different forms of evidence and expertise can't be ranked as easily as some experts assume, has far-reaching implications, extending far beyond the seemingly esoteric realm of drug regulation.

The realization that people can be blinded by their own narrow expertise, and also the flipside of this problem, the fact that people's individual experience can often lead to radical new ways to understand and to resolve different social or political problems, lie at the heart of ancient and modern debates over the value of democratic governments.

McGoey recognises the problem of status and power (as described by Foucault) in inhibiting the sort of informed debate that makes this happen. We might think of the current cult of leadership that has diminished the role of independent citizens. Then there are think tanks like the Mannkal Foundation that take the young and train them to be leaders who think they have superior knowledge. We need to recognise the impact of the sort of managerialism that neoliberalism has created – a managerialism that claims superior knowledge and places it above others knowledge and experience. Nursing academics have studied the impact on nursing staff.

McGoey goes back to ancient Greece to advocate change.

(296) This is especially true when it comes to isegoria, a word for which there is no equivalent today in common western political vocabulary. Isegoria ‘means not just freedom of speech in the sense we understand it in modern democracies but rather equality of public speech.

(P297) The ancient Athenians saw that democracy’s great value rested in its perpetual check on the knowledge of the powerful. It thwarted the entrenchment of power monopolies by people with an incentive not to learn about the weaknesses or errors of their own decision-making. - - - - - it is the only system of government that prevents a permanent hierarchy of rulers from imposing their rigid, class-bounded notion of the good life onto other people, either intentionally or not.

In pressing for change we have used the educational term ‘constructivism’, a form of learning where students construct concepts by debating with their teacher on equal terms. We are advocating for community forums like this in the local management and oversight of aged care.

McGoey describes, what we have called ‘compartmentalisation’ – a mechanism for a form of ‘bad faith’, when writing about the founder of neoliberalism Frederick Hayek.

(P298) And yet, quite ironically, Hayek’s stubborn insistence that market mechanisms lead to the most epistemologically effective pricing system evolved into a sort of ideological rigidity on his part that was equally if not far more resistant to theoretical and practical challenges than the ‘statist’ socialism that he tried to counter.

The irony of Hayek’s stance is that he, perhaps more than any other 20th-century economist - perhaps any economist in history - was the first economist to realize an important point about the fragility of expert knowledge. He even gave his Nobel acceptance speech on this topic, titling it ‘The Pretence of Knowledge.’

(P300) The pretence of knowledge is a problem. But so is the pretence of ignorance, and the discipline of economics, and the social sciences more broadly, still haven’t grappled enough with this second problem.

(P303) But in general, the most influential economists of the past 50 years have tended to share Hayek’s anti-government, pro-market bias. The even handedness of their 18th and 19th- century heroes - thinkers such as Smith and Tocqueville who saw that both ‘big’ government and ‘big’ industry can lead to despotic concentrations of power - fell to the wayside of the economics academic mainstream.

4.4 Attachment D: Balanced forces in complex social systems

Analysis of aged care as a failed complex social system Jan 2021 (Updated March 2022)

This document was written in January 2021 before the Royal Commission handed down its final report. It was attached to a Senate Committee Inquiry into a Transparency Bill in April 2021.

It uses a model used by resilience theory to describe the way complex social systems depend on a balance of forces to keep them balanced, adaptable and resilient to the unexpected. When the forces become unbalanced, the balance that works is disturbed and the systems are pushed into a different distorted place where the systems don't work.

It becomes very difficult to restore the balance and the sort of strategies usually adopted to do so fail again so that there are cycles of recurrent failure. Strategies that have been successful are described.

The document analyses aged care as a failed system that had just completed its second cycle of failure. It speculates about which of the two strategies the Royal Commission's recommendations would follow.

The Royal Commission reported in February 2021 and the government has responded and its reform program is underway. We have modified (appended) an extra page describing what happened. We argue that government has chosen changes that have started us on the third cycle of failure.

4.5 Appendix E: Impact of neoliberalism on society

Why society has withered: The consequences of policy failure

<https://www.agedcarecrisis.com/resources/make-aged-care-accountable/consequences-of-policy-failure>

This is one of a series of web pages pressing for greater direct accountability of aged care to the communities they serve. This was a background page describing the warnings that were made about neoliberalism's impact on society and our humanity and how these warnings have come true. It is the problem that must be addressed if we are to make aged care accountable to the communities it serves.

This material can also be considered within the context of dominance leading to cascading state and market criminality, and their relationship to 'anomie' as more recently described by Braithwaite (see [Appendix B \(pg 34\)](#))

Contents

- Background information
 - Aged care as a wider societal problem
 - Civil society, Government and Markets
 - Vulnerability
- The erosion of society and the ascendancy of markets since the 1980s
 - Origins
 - Expansion
 - The belief system (many warnings described)
- The structure of the new system
 - Civil society (more warnings)
 - Government
 - The market
 - Many are now aware of the problems
- Understanding the Royal Commissioners and their report

Social atomisation: After looking at that article you might consider the numerous problems in society today, the high levels of stress, the alcoholism, the psychiatric illnesses, bullying and suicides among the young. We have problems with relationship breakdowns resulting in assaults and even murder of spouses and children. New members of our society are sometimes so alienated by their experiences that they become victims of bizarre hate cults and religions joining terrorist groups and killing fellow citizens. Our young soldiers have been committing war crimes in Afghanistan and killing civilians. Braithwaite also describes some of these changes in his analysis of anomie (truth decay) and the cascades of dominance and criminality.

We need to think about the consequences of the rejection of society by neoliberalism and the libertarian movement, many of whom follow Ayn Rand. There is the self-focussed libertarian approach they encourage and the sort of instrumental relationships they consider normal. These are likely to impact on collegialism and social capital, and so on empathy and social responsibility. The exclusion and hollowing out of society reduces serious engagement compounding the issues.

Managers are no longer drawn from those who have learned their skills in the business and have friendly relationships with staff. Mobile self-interested and motivated staff have no loyalty to the business and employers feel less responsibility to staff. Many are now part time and/or work for several employers – particularly in aged care.

Competitive pressures and management culture can cause inauthenticity, mental distress and so alienation. The collegialism and relationships across staff levels that existed under the Keynesian economic model that flourished in the 1950s and 1960s have long gone.

These cultural changes and this new ethos of society are readily assimilated by the young, particularly when leaders have been trained using the ideas of Hayek and Ayn Rand. Children who grow up in this environment might not experience the collegialism and mutual support from others and so not be socialised into community values. We are instinctively social but this culture does not favour the development of strong social selves, community values and responsible citizens.

The inconsistencies and the obvious misinformation used to support neoliberal belief has steadily eroded trust in the system and many citizens may feel rudderless and experience 'anomie'. A community no longer involved in what is happening in their society are ill-equipped to cope with this situation, creating a fractured and anxious society, a situation called truth decay⁵⁴.

The growing gap in wealth, the ineptitude and mammoth blunders over the past few years, the rise in 'fake news' and 'alternative facts' have dramatically increased this to the extent that many are writing about what is now called the post-truth era, where lies replace truth in order to increase power, impose ideology and crush critics⁵⁵.

While social media and other factors may be contributing, the problems in society referred to above seem to be those that you might expect from the new neoliberal approach. As we indicated in the linked article, we were warned in the late 1990s that something like this was happening and that we were losing our humanity.

Staff in aged care have grown up in this culture and assimilated its values. These may not equip them well for their role in the caring professions and we need to take steps to address this situation.

⁵⁴ Truth Decay: An Initial Exploration of the Diminishing Role of Facts and Analysis in American Public Life Kavanagh J and Rich MD Rand Corporation 2018 https://www.rand.org/content/dam/rand/pubs/research_reports/RR2300/RR2314/RAND_RR2314.pdf

⁵⁵ Lies, damn lies and post-truth The Conversation 19 Nov 2018 <https://theconversation.com/lies-damn-lies-and-post-truth-106049>

4.6 Appendix F: State and Regulatory Capture

In making recommendations about staffing the Commissioners will need to understand and take steps to address state and regulatory capture. Those who have captured our state and its regulators will oppose changes that challenge belief. If forced, to adopt staffing recommendations, they will do so in form only and not in substance. Processes readily become ritualised or tokenised and their presence is promoted and used to reject criticism and silence critics.

In February 2022 the Australian Democracy Network released a report '*Confronting State Capture*'. The report⁵⁶ describes how markets and big business control our political system and get the outcomes they want. It explains just how extensive this is and how damaging it has been to our democracy and our society.

The report describes the ways in which this is accomplished. They illustrate this using case studies of the Fossil Fuel Industry and the Arms Industry. They could as well have used aged care. While we have not used the term State Capture, we have described the revolving doors, lobbying and other activities in aged care and understood the consequences.

Regulatory capture is a well-recognised and well described process in which those regulated take control of the thinking around regulation and often colonise the actual process so controlling what happens. It has been a major problem in aged care and we have written about it in some of our submissions but not used the term 'state capture'.

We have addressed aspects of this in submissions to the governments '*Review of National Aged Care Quality Regulatory Processes*' (Carnell and Paterson 2017) and the 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*' 2017-19. We described regulatory capture and state capture (not by that name) and the revolving door between industry and government that characterises both in greater depth in our 2019 analysis 'Why Aged Care is failing' for the Royal Commission.

(Attachments H p28-35)

An article⁵¹ in LobbyWatch describes the groups that are close to government and influencing them and looks at the consequences. We have written about the strong influence⁵⁷ that these same groups had on Aged Care Minister Mark Butler (Gillard Government) in developing the pro-market Living Longer Living Better (LLLBB) reforms based on the 2011 Productivity Commission report 'Caring for Older Australians'.

On the same web page in a section "*Who controls policy? Who chooses our leaders?*" we describe the allegations about the impact of donations during this period as well as the several subsequent inquiries and reports examining the problem created by donations and the control over policy that this gave donors.

⁵⁶ Confronting State Capture Australian Democracy Network February 2022 <https://bit.ly/3Kmi4i8>

⁵⁷ Why the appointment of Mark Butler as Shadow Minister for Health and Ageing is significant Aged Care Crisis 8 Feb 2021 <https://www.agedcarecrisis.com/opinion/articles/453-why-appt-of-mark-butler-is-significant>

4.7 Appendix G: The Productivity Commission and its reports

Introduction

We explain our criticisms by referring to some of the reviews and research reports from the Industry Commission and then its successor the Productivity Commission. These illustrate the problems we have identified by looking at several reports briefly. We cannot claim to have studied each lengthy report in depth. We also comment on a report from another economist.

The Commission's account of its own history⁵⁸ in 2003 describes the changes over the previous 30 years as it moved from Keynesian to Neoliberal economics. At that time, it boasted of *"an arm's length relationship with the Government, which can tell it what to do but not what to say"*. It indicated that it had developed a broader role *"moving into areas of complex economic and social interaction"* in order *"to help governments make better policies for the benefit of the Australian community"*. We note it can initiate research independently. We worry that it did not always have the knowledge needed to deal with complex social issues, but did not recognise that or were strategically ignorant.

The historical account also indicated that *"Competition policy has continued to be an important focus of the Productivity Commission"*. This suggests that in 2003, its prime focus remained on economics and that this was dominated by neoliberal thinking.

At Aged Care Crisis our interest is what may have happened to its responsibility to act *"for the benefit of the Australian community"* when it considered the area of *"complex economic and social interaction"* and found that the neoliberal competitive economic policies which it strongly supports and has advised on, turn out to be harmful for the Australian community. There is now convincing evidence that this is so with strong criticism in Australia and globally.

We have written about revolving doors and capture in [Appendix F \(pg 47\)](#) above. The Productivity Commission *"is an agency of the Australian Government, located within the Treasury portfolio"* and is funded by government. With such a close working relationship staff are likely to move between them. We recall seeing a comment about this.

We note the then treasurer's strong endorsement of the Productivity Commission's report on National Competition policy⁵⁹ in 2000 and the government's relief that this and a similar senate review had not blamed National Competition Policy for the many issue that were being raised about it particularly in regional areas⁶⁰. The pressures to ignore unpalatable truths must have been strong over the years.

⁵⁸ From Industry Assistance To Productivity: 30 Years Of 'The Commission' Productivity Commission Web Page.

⁵⁹ Government Responds To Productivity Commission And Senate Select Committee Reports On National Competition Policy Treasury Media Release Peter Costello No.084 in 2000.

⁶⁰ Government Response to the Report of the Senate Select Committee on the Socio-Economic Consequences of the National Competition Policy - Riding The Waves Of Change <https://bit.ly/3rWobmP>

Reviewing Productivity Commission Reports

A. Policies: We will start by looking at some of the reports over the years that address policy issues. We show how policies based on neoliberal thinking were first applied to human services in 1991. We examine the extent to which it became a one size fits all system of thought by looking at the following policy reports between 1996 and 2016.

- Exports Of Health Services 1991
- Competitive tendering and contracting 1996
- Structural Change in Australia 1998
- Competition Policy Reforms on Rural and Regional Australia 1999
- Microeconomic Reforms and Australian Productivity 1999
- Structural Adjustment - Policy Issues 2001
- National Competition Reforms 2005
- Potential Benefits of the National Reform Agenda 2007
- Workplace Relations Framework
- Competition and Informed User Choice in Human Services

B. Aged Care reports: We look at reports some of which had a major impact on aged care policy.

- Nursing Home Subsidies Report 31 March 1999
- Review of Pricing Arrangements in Residential Aged Care by WP Hogan 2004
- Economic Implications of an Ageing Australia 2005
- Trends in Aged Care Services - some implications 2008
- Caring for Older Australians 2011
- Ageing Australia Overview 2013

A. Development of policies

Exports Of Health Services - Review 1991

This review illustrates the problems as well as a phenomenon called strategic ignorance. This describes behaviour where readily available challenging knowledge is ignored or not sought. It is a pointer to what was to come and we describe some consequences of the policies it seriously debated.

The report starts with

The Commonwealth Government's agenda for microeconomic reform is being progressively extended to the services sector. It is now generally accepted that the efficient provision of services is important not only for those services which are used as inputs to other business activities such as transport and electricity, but also for community services such as health and education which account for a large part of government expenditure.

In this inquiry, the Commission has been asked to identify institutional, regulatory and other arrangements which impede the efficient export of health services and to advise on any changes which should be made to deal with those impediments. - - - The report focuses on exports made through the provision of health care to foreign patients in Australia.

This review follows a 1989 review into 'international trade in services' by the Industry Commission's predecessor, the "Industries Assistance Commission".

The review was very probably initiated after pressure from Doug Moran who is remembered for the large nursing home empire he built, his strong free market views and his influence on politicians.

He was very influential and played a major part behind the scenes in developing the flawed policy that resulted in the marketisation of aged care in 1997.

In the 1980s he was also providing health care⁶¹. He ambitiously targeting the wealthy by building luxury hospitals. He saw huge commercial potential in wealthy Asians. He built a large complex on the Gold Coast focusing on medical tourism. These ventures were unsuccessful and by the end of the 1990s he had vacated the hospital sector.

The 1991 Productivity Commission report treats health care as a way of generating profits for Australia and sees it primarily in economic terms. It focuses on the economic potential of medical tourism. It takes a rather brutal uncaring approach to those who cannot pay who will *“receive only that medical care necessary to stabilise their condition”*. It presses for greater efficiency, lowering costs and less regulation.

It identifies *“regulations which restrict doctors advertising their services to potential foreign patients”* as a problem and indicates that abolishing them would increase competition. While it does not recommend abolishing them it suggests that this should be considered in the future.

Comments

The paradigm conflict: The report examines health care as a market to be exploited and not as a humanitarian service to those in need whoever and wherever they are. There is a huge difference in the conflicted paradigms that are used. This is a reflection of the ethos developing within the market, and shows how far it is moving away from that of the professions providing care and the traditional social values of society. It largely ignores over 2000 years of history in the care of the vulnerable.

The risks to vulnerable patients posed by self-interest and avarice were recognised in ancient Greece about 2500 years ago. The medical profession guided by Hippocrates addressed the problem by embracing an ethic of service to citizens and a commitment to collegialism, swearing an oath to uphold both.

The dominance of collegialism over competition has been critically important because doctors working cooperatively could counter the perverse pressures from selfishness and until more recently competitive pressures. They could create a balanced system that did not exploit patients. They could support one another, and maintain the culture of care that treated patients according to need and charged according to means. They could exert some pressure on colleagues who faltered.

Collegialism is critically important in containing the perverse pressures created by self-interest in human services. This falters when the social structure of society does not support it.

The targeting of the wealthy of other countries at a time when they are vulnerable simply to make more money for your country creates a sense of revulsion in those motivated by a *‘discourse of care’*.

Example: The approach to those who could not pay in this report is reminiscent of the language used during the 1980s when a large sector of the corporatized US health care system advertised aggressively to fan public anxiety and then pursued profitable insured patients by paying large bonuses to bounty hunters in the community for each patient admitted.

⁶¹ Moran Health Care Hospitals (1960s to 1999) Corporate Medicine web site http://www.corpmedinfo.com/moran_hosps.html

Non-medical assessors pressured patients to be admitted to hospital when it was not needed. Once admitted they were provided with vast amounts of profitable but unnecessary treatment.

Those assessing prospective patients for admission got similar advice to that recommended in this Productivity Commission report. Those who could not pay were sent home even if they did need admission to hospital for treatment.

This was the start of a cascade of corporate health and then aged care crime⁶² that still threatens the world. We have previously used one of these companies as an illustrative example of what can happen when medicine is practiced within a free market neoliberal culture⁶³.

Advertising: There is a long history of harm to patients from persuasive charlatans, some within the profession itself. Advertising by these charlatans became a particular problem and the medical profession therefore banned it and made it unethical.

Concepts like 'of good standing' and a 'fit and proper' person were applied by society to those citizens who embraced community values and could be trusted. The care of the vulnerable in society was entrusted to them and probity requirement were legislated by governments to weed out those who could not be trusted.

'Standing' was important for medical practitioners and when they relocated they might obtain a certificate of 'good standing' from their association to vouch for their integrity.

Consequences of these neoliberal policies: Neoliberalism saw health care as a market and competition as a virtue which was threatened by collegialism and the prohibition of advertising. Prime Minister Keating did not pursue the suggestion that the ban on advertising be lifted. The Howard coalition government that succeeded him in 1996 did so, making the ban on advertising by doctors illegal.

Groups of General Practitioners who had no surgical training have been able to advertise themselves as cosmetic surgeons on social media and create large followings. They have become very wealthy doing surgery.

For years highly trained plastic surgeons have had to repair the damage. They have tried repeatedly to warn government and citizens. They spoke out but it had no impact. The plastic surgeons' efforts were probably seen as self-serving and so ignored. Self-interest drives markets and those involved think this way. This is the frame of analysis used within free market thinking.

Example: In 2002 in the USA, doctors in a very profitable hospital became aware that large numbers of profitable but unnecessary major heart operations were being done by two doctors. They pressed for the hospital's quality assurance committee to investigate.

Management saw this as jealousy by competitors and self-serving. They blocked the investigation that the doctors were demanding. Many more had major surgery after this and a few would have died before an outsider, a priest, saw what was happening and went to the FBI. By then between 700 and 800 patients had already had unneeded heart operations⁶⁴.

The most senior company executive responsible for what happened at this hospital and for blocking the investigation was CEO of its Australian subsidiary between 1991 and 1995 when the company was finally forced out of Australia and he returned to the USA. His reputation for profitable management was so strong that his presence and continued access to this company's successful 'business expertise' was a condition imposed in 1993 by large potential investors in Australia. This was when the company was undergoing a probity review in NSW.

⁶² The Health Care Marketplace in the USA Corporate Medicine web site 2001-2008 http://www.corpmedinfo.com/corporate_overview.html
Critical Condition: How Health Care in America Became Big Business & Bad Medicine by Bartlett & Steele (Doubleday Nov 2004)

⁶³ see 'Culturography: A for-profit example' on Inside Aged Care 2015 J M Wynne. <https://bit.ly/3MDLgK6>

⁶⁴ Tenet Healthcare's Redding Hospital. Unnecessary Cardiac Procedures. Corporate web site 2003 <https://bit.ly/3vPq2uL>

A judge appointed by government, when the department wanted to delay the decision, had overruled the department's subsequent recommendation to reject the license and instead proposed granting a licence subject to conditions which would have excluded this CEO. The judge was persuaded to make changes to his conditions. These allowed the CEO to remain. It was uncontested allegations about his and his colleagues past conduct that finally led to the company's departure from Australia.

The startling exposure of the culture, conduct and dangerous practices of a very successful group of cosmetic surgeons who advertised through social media, was dramatically exposed on Four Corners on 26 Oct 2021⁶⁵. Their conduct is finally being reviewed by regulators. Without advertising, and in a collegial environment these doctors would not have had any 'standing'. They would have been put under strong pressure and isolated at an early stage.

Probity: Neoliberalism sees probity requirements as restraints on the freedom of the market and as inhibiting the effective operation of the market which is expected to correct itself.

Government plans to globalise health care were frustrated when, during the 1990s, state regulators found that the large multinationals, which governments were inviting into health care, lacked probity and barred them from operating in their states.

Instead of learning from this experience the Howard government was wilfully blind. Probity requirements were abolished in aged care in 1997. The federal department of health and aged care could not investigate and act even when they were advised of concerns and given evidence.

Australia's largest private operator has featured prominently at the Royal Commission and in the press. It is owned by one of the multinationals, whose probity the department was asked to investigate when it first bought into aged care. They could not do so. In our view some of its conduct at that time, which was drawn to the attention of regulators, raised issues about its probity.

Competitive Tendering and Contracting by Public Sector Agencies. Overview. Productivity Commission Report No. 48, 24 January 1996

This review supports competitive tendering and addresses this as a one size fits all policy which includes health, aged care and disability care. These are areas where competition is often harmful and we do not think this was adequately understood.

The report's primary focus seems to be on 'competition'. It says

Competition is a key driver of many of the potential benefits available from CTC.

In cases of limited competition, emphasis should be placed on creating an environment conducive to potential competition

Hospitals: While the report refers to preserving quality, it does not seem to adequately address the impossibility and unreliability of measuring this. In Health Care it uses the Department of Veterans' Affairs contracting of hospital services to Ramsay Healthcare⁶⁶ as an example.

⁶⁵ Cosmetic Cowboys, ABC TV Four Corners 21 Oct 2021 <https://www.abc.net.au/4corners/cosmetic-cowboys/13603636>

⁶⁶ Ramsay Health Care Corporate Medicine web site http://www.corpmedinfo.com/ramsay_main.html

It indicated that “surveys of Hollywood patients (DVA hospital) suggest that services are as good or better than when DVA operated the hospital” and that the “quality of services provided to veterans has been maintained”.

Ramsay’s success and its maintenance of quality were not due to competition. It skilfully avoided competition by providing services like that referred to as well as certain specialty areas where there was no competition.

Competition and commercialisation in the rest of the sector drove costs down and companies like the much larger Mayne Health resorted to unacceptable practices that caused it to fail and eventually be bought by Ramsay.

Alpha Healthcare failed and was bought by Ramsay too giving it a dominating position in the private sector. This was attained by carefully avoiding competition when it was small and lacked capacity.

Far from being a success the contracting out of public hospitals to for-profit companies was a dismal failure and eventually abandoned. One of us has examined the background to this⁶⁷. A quote used from a report in the *Sydney Morning Herald* on 18 Jan 2000 sums it up:

The most serious problem with such care is that it embodies a new value system that severs the communal roots and Samaritan traditions of hospitals, makes doctors and nurses the instruments of investors, and views patients as commodities.

Another web page described what happened in each state⁶⁸.

Not-for-profit sector: Competitive contracting has also distorted the not-for-profit sector. In order to be credible in the eyes of government and compete successfully for contracts providers had to consolidate into large companies, embrace the new management structure and focus on efficiency, competition and more. We saw the rise of Big Charity⁶⁹ which became the credible spokesperson for the sector. But they were unable to speak out critically if their credibility and success in securing contracts was to be maintained. It was in their interest to support politicians and their policies. In another paper⁷⁰ the authors indicate:

Many consider that the marketization of public services over the past two decades has had a corrosive effect on collegiality within parts of civil society.

As Dalton and Butcher observe “Gains in both ‘voice’ and policy influence have been greatest for large, national, highly professionalised and more ‘corporate’ social service organisations, or ‘Big Charity’. Big Charity also understands that its capacity to exert influence on policy is proportionate to its willingness to be ‘civil’ in its dealings with government.”

⁶⁷ Privatisation and the public hospital system http://www.corpmedinfo.com/privatisation_austr.html

⁶⁸ Colocations and Privatisations in Australian States http://www.corpmedinfo.com/privat_aus_states.html

⁶⁹ The rise of Big Charity in Australia Butcher JR Conference Paper · November 2014 Available via Researchgate

⁷⁰ Oligopoly in Monopsony: The rise of Australian Big Charity in the delivery of services to people with a disability Dalton BM https://opus.lib.uts.edu.au/bitstream/10453/87286/4/DALTON%20DARCY%20GREENANZAM1579_1579_ANZAM-2014-015.PDF

In the conclusions to a 2016 conference published as a book⁷¹ the contributors “*spoke to the constraints imposed by an authorising environment that privileges process over results*”. Butcher and Gilchrist quote warnings that “*contracting almost inevitably lead NFP organisations to commodify their services and, as a consequence, transform their values*”. They note that “*the transition to a near total reliance on contracted service delivery in this country is almost complete*”.

It is clear that the Productivity Commission did not and perhaps still do not understand the dependence of not-for-profits on collegialism, cooperation, community values and mission nor their vulnerability when these are replaced by a requirement to compete and their values are no longer supported and upheld by an effective and involved civil society.

Aspects of Structural Change in Australia -- Research Paper Productivity Commission December 1998

This report describes the structural changes as competitive service industries replaced agriculture and manufacturing as sources of foreign income. It looks at the impact on the labour force including the contraction in secure full time employment and the growth in part time jobs. It documented the high rates of staff turnover. In metropolitan areas it found “*the greatest increases in the Finance and business and Education and health industries*”.

There was no reference to aged care or to the already falling percentage of skilled nurses. The report makes no attempt to look at the societal impact of what was happening or the actual quality of life of that changing workforce. In humanitarian services a switch to part time employment usually disrupts relationships, collegialism and loyalty. Staff turnover is usually a marker of discontent.

Impact of Competition Policy Reforms on Rural and Regional Australia - Productivity Commission 1999

The report concluded that the decline in population and other effects were due to the decline of primary industries in Australia’s economy and not because of competition. The abandonment of protectionism was barely mentioned and this was claimed to be beyond the control or influence of governments. Growth in employment came from service industries.

This was the report that the treasurer Peter Costello was so welcoming of because it found that “*competition policy has been wrongly blamed for some of the effects of these long-term changes in the environment facing our rural industries*”. He then went on to write about the great benefits of competition policy because “*The Commission has found that rural and regional Australia has benefited from competition policy*”. In another press release he indicated it “*provides a strong endorsement of this policy*” and it was not responsible for the flight to cities and decline in population.

Surely it was a deliberate government decision to abolish protectionism by removing tariffs. This was supported by the Productivity Commission. It exposed primary industries to international competition, which put them out of business (like our car industry).

⁷¹ Conclusion Butcher JR and Gilchrist DJ in *The Three Sector Solution: Delivering public policy in collaboration with not-for-profits and business* ANZOG 2016 <https://www.jstor.org/stable/j.ctt1rqc9kc>

Some sectors collapsed and, others went into service industries. It disrupted collegial communities, made us dependant on other countries and reduced our resilience to outside crises (eg conflict with countries we relied on). There were clear benefits but in retrospect was this review balanced in its conclusions?

Microeconomic Reforms and Australian Productivity - Exploring the Links. Productivity Commission 12 Nov 1999

A lengthy two volume report examining performance since the 1970s and demonstrating the success of micro-economic reform on the productivity of Australian businesses and the improvement in financial wellbeing among citizens. We did not find much about health, aged care, nurses or other vulnerable sectors when quickly scanning the volumes. Keating accepted Gregory's 1993 warnings and advice. He did not apply this sort of reform to aged care but John Howard did when he gained power. Gregory's warnings soon came true. This should have generated change but when policy is driven by belief (an ideology) data is controlled, evidence is hidden and it is all ignored – an example of wilful blindness.

Structural Adjustment - Key Policy Issues - Productivity Commission Research paper 2001

This review responds to growing criticism of the impact of the structural changes and the concern that the *“social safety net and other generally available measures may be insufficient or inappropriate”*.

The report did not question the validity or the benefits of the changes. It looked at ways of reducing the costs of implementing change, the unequal financial impact of the changes which benefited some more than others and the *“limitations in the information available to policy makers”*. It looked at economic impacts and not social ones. Australia has paid a heavy price for its failure to do so.

Review National Competition Reforms. Productivity Commission Inquiry Report No. 33, 28 February 2005

A pat on the back: This report is positive about the achievements of the structural reforms and competition policies and urges the government to press ahead making many recommendations in this regard. It was a huge pat on the back for the Howard government's one size fits all policies and it ignores its failures.

It describes national Competition Policy as a *“highly innovative exercise in national economic reform”* and the whole program as *“well-suited to a multi-jurisdictional reform agenda”*. It claims that *“clear gains are possible in Australia's international competitiveness, in the efficiency of domestic markets”*. It indicated that there is *“both the scope and the need to do better”* and that *“Further reform on a broad front is needed”* and that *“opportunities for further economic reform are wide ranging”*.

Labour force and consequences for aged care: The report targets the labour market claiming *“significant restrictions on competition”* indicating that *“policy changes to increase the flexibility and responsiveness of Australian labour markets remain a high priority”*.

This is the same year that government followed their advice and introduced the work choices legislation, whose unpopularity probably led to the change of government in 2007. This legislation enabled government and industry to override the resistance of the union movement to the efficiencies obtained by reducing the skills and numbers of nursing staff in aged care.

It facilitated the exploitation of vast numbers of unprotected and vulnerable employees in aged and disability care as well as other sectors over the years.

Private equity and other powerful profit hungry investors, which had been reluctant to invest in aged care because of union resistance to staff cuts, now did so and they targeted staffing. This impacted adversely on care which deteriorated even more rapidly with many more failures reported in the media by 2010 when the Productivity Commission was asked to help again.

Human Services: The report pressed for greater competition in *“various human services, through mechanisms such as ‘purchaser-provider’ models”*. It stressed that competition was a means to an end and it is clear that end was economic efficiency.

Health and Aged Care: The report specifically targets new areas including health and aged care using the threat of the ageing population to give it urgency. It considers health care as *“a prime candidate for a nationally coordinated reform approach”* and claims a *“circuit breaker is needed”*. It suggests an *“efficiency improvement of 10 per cent in service delivery”*.

The report considers that *“its proposed reform agenda could play a central role in helping to enhance living standards in the face of population ageing and other major challenges ahead”*. It urged governments to *“examine opportunities for the disaggregation of their publicly-owned generation assets”*. It advocated *“competitive tendering and contracting out”* in health care using ‘purchaser-provider’ arrangements. That costly experiment was tried and failed.

The VET system: The other area targeted was the Vocational Education (VET) system. Its privatisation was a huge failure with repeated scandals because of the exploitation of students and defrauding of government funding. The educational standards were so poor that large numbers of degrees and diplomas, including in aged care, had to be withdrawn. In spite of this the system has not been changed.

Financial incentives: There is a strong focus in the report on financial incentives indicating that *“Providing financial incentives for jurisdictions to follow through with agreed reforms can be very useful in promoting effective outcomes”*. They could *“help in progressing a new nationally coordinated reform agenda”*. In another example of ‘strategic ignorance’ the known problems and adverse impacts of incentives were ignored.

Incentivisation had its origin in experiments in rats, and became the basis for ‘behaviourism’. It was introduced into education at the beginning of the 1960s and rapidly came to dominate education. Its initial success in achieving higher grades soon soured. It also encouraged rote learning and discouraged reflection and understanding. The students focussed on the incentives, became selfish and ignored the consequences of their actions for others. Critics claimed that it turned students into rats.

The lessons were not learned and it became a key part of the microeconomic reforms that market managers employed. In sections of the US health care system corporate owners offered large bonuses to incentivise managers and staff to achieve financial targets. They too behaved like rats. Many engaged enthusiastically in the exploitation of their patients generating huge profits. They were encouraged to do even more with big bonuses. They were oblivious to the consequences for patients. Incentivisation was a major contributor to the huge scandals that engulfed the sector in the 1990s. The sort of data needed to evaluate the impact of incentivisation is not readily available in Australia.

In **Appendix E (pg 45)** we examine the adverse impact that the neoliberal ideology underpinning the National Reforms Agenda has had on society.

It is not possible to quantify how much the diffusion of incentivisation practices and the attitudes engendered in employees by incentives have contributed to the changes in individual behaviour and the fragmentation of society that we describe but it seems likely that they have played their part.

Potential Benefits of the National Reform Agenda. Report to the Council of Australian Governments (COAG) 2006/7

This report is directed at COAG and urges the states who are members to get on board with the National Reform Agenda. It presses them to adopt the strategies recommended in 2005, specifically referring to health care.

It suggests that *“Improving productivity and efficiency in energy, transport, infrastructure and other activities through the competition and regulatory reform streams could provide resource savings of around \$10 billion”* with *“nearly \$4 billion in net revenues of Australian governments after 10 or more years.”* Achieving a *“5 per cent improvement in- - health service delivery”* could save *“around \$3 billion”*.

Competition, Innovation and Productivity in Australian Businesses. Productivity Commission Research Paper 2011

This research found that *“firms appear more likely to innovate if they face stronger competition”* and *“that innovation is associated with better productivity outcomes”* although the association was weaker. There was also an association with the size of the business and number of employees. Aged care is not mentioned or assessed separately.

The data collected was from subjective judgements by survey respondents. The results were what you might expect if this was gathered from credible people in the various businesses who think in this way and so respond. Strong competitive pressures drive innovations that generate more income and not better care or services unless these will increase profits. Many involve cutting staff or their remuneration. We remind you of the exploitation of workers by large companies like Amazon⁷² and Coles⁷³, as well as Facebook⁷⁴ and other social media. They exploit the weaknesses of individuals, society and the political system. We have already described the exploitation of vulnerable staff.

They do not work in vulnerable sectors where the necessary conditions for a market are absent and when the system depends on distant government regulators. The examples illustrate the problem.

Example 1: Health Care

Some of the largest US health care companies were highly innovative in developing strategies for boosting profits including one called National Medical Enterprises (NME)⁷⁵. The share market was ecstatic as were managers and some staff.

⁷² Amazon workers are rising up around the world to say: enough The Guardian 26 May 2019
<https://www.theguardian.com/commentisfree/2021/may/26/amazon-workers-are-rising-up-around-the-world-to-say-enough>

⁷³ Coles accused of underpaying more than 7,500 workers by \$115m The Guardian 2 Dec 2021
<https://www.theguardian.com/business/2021/dec/02/coles-accused-of-underpaying-more-than-7500-workers-by-115m>

⁷⁴ Criticism of Facebook https://en.wikipedia.org/wiki/Criticism_of_Facebook

⁷⁵ The Impact Of Financial Pressures On Clinical Care Lessons From Corporate Medicine Corporate Medicine web site (1996)
<http://www.corpmedinfo.com/corpmed.html>

Innovations included building large numbers of psychiatric and substance abuse hospitals where funding was more easily rorted than in acute hospitals, then

1. filling hospital beds
 2. by scare marketing,
 3. paying a large sum to bounty hunters or anyone else who persuaded people to come to hospital,
 4. running help phone lines to encourage people to come for assessments,
 5. assessors admitting people to hospital provided they were insured without regard to whether they needed admission or not,
 6. targeting children who were better insured by running health events at schools and more,
7. and making huge profits by:
 8. designing ineffective treatment programs that made much more money and lasted the duration of patient's insurance
 9. allocating patients to doctors who would use these programs, making them very wealthy too,
 10. employing people whose only job was to persuade people stressed by too much treatment from taking their own early discharge so reducing profits.
 11. Taking steps to stop doctors from discharging patients who did not need to be in hospital and 'resigning' doctors who persisted in doing so.

Example 2: Aged care

Large corporate empires were built by building an excess of nursing homes beds and then transferring recovering patients from hospital to nursing homes where the funding system allowed them to make much more money by providing large amounts of rehabilitation.

All the evidence in aged care confirms that the Productivity Commission's findings in regard to competition and innovation are systemic and global. The big for-profit aged care companies, competing strongly for profits were more innovative in creating complex corporate webs and in strategies to be more efficient in successfully generating profits at the expense of care.

They increased income by reducing staff and other costs. Unlike Australia, the USA does collect data and this data shows that nursing homes owned by more competitive for-profit companies, staff poorly and have far more failures in care. Larger nursing homes also have lower staff ratios and more failures than smaller ones. Too often the innovations come at the expense of staff and the care they try to provide but this is ignored.

Vocational Education and Training Workforce Inquiry 2011

It is interesting that this report into staffing and education in the VET system was developed the same year that it was reporting on innovation. The summary of the report indicated that there were deficiencies in staffing and in educational standards but does not refer to any changes in either.

The sector was already well into privatisation moving the focus from government funded TAFE's to corporate businesses and there was unhappiness about that. The consequences of that do not seem to have been examined.

These new corporations in the sector were already being highly innovative in exploiting the profit potential, persuading unsuitable people to borrow money to do courses they would never pass, squeezing the system so that standards were falling and more.

The inquiry seems to have been blind to what was happening under their nose. This should have directly challenged their belief in competitive markets, marketplace innovation and central governance. This again looks like wilful blindness and strategic ignorance.

The recommendations made by the inquiry were no match for the powerful commercial forces and had no beneficial impact on the sector. Educational standards continued to fall as the sector was milked for profits and many diplomas awarded eventually had to be withdrawn.

The scandals⁷⁶ were exposed only a few years later by whistle blowers, the community and the press, not by the regulators or government funded inquiries. This was a glaring example of the failure of neoliberal policy and central control and an illustration of the importance of giving civil society a central role in community services. Doing that is a direct challenge to neoliberal thinking.

Workplace Relations Framework 2015

This is a large 2 volume work. A summary of the Fair Work regulations governing negotiations between employers and staff indicates that there are *“ethical and community norms”* and that the Fair Work regulations in Australia *“provides balanced bargaining power between the parties”*. It claims that *“Australia's labour market performance and flexibility is relatively good by global standards”* and that *“Australia's WR system is not dysfunctional”*.

When we consider the parlous situation, poor pay and overwork that has been happening to aged care staff since 1997, we wonder what happened to ethical and community norms.

There are the workers at Amazon and Coles as well as in the multiple scandals that have exposed the exploitation of workers in 7-Eleven stores and many similar franchised businesses - as well as farm workers, packing firms and more.

Many types of foreign visa holders have been exploited in multiple parts of the economy including temporary work visas, holiday visas and students. Multiple ABC Four Corner's exposures and senate inquiries have exposed the problems.

We have not read the full report but any thorough exploration of the issues at the time of the report would surely have revealed this widespread failure as well as the huge power imbalances responsible. This seems to be a glaring example of the sort of wilful blindness that has become so common in aged care and elsewhere.

Introducing Competition and Informed User Choice into Human Services: Identifying Sectors for Reform. Productivity Commission 2016 then 2017

The new Abbott government elected in 2013 aggressively embraced neoliberal principles and set up a *Competition Policy Review* whose 2015 report recommended that government should increase competition and *“put user choice at the heart of human services delivery”*. Abbott's promise to do this was duly implemented and the Productivity Commission appointed to do so.

The Commission found that this *“has proven to be neither simple nor without cost”*. Aged Care Crisis made submissions criticising the process. It was a solution looking for a problem to address and as the commission must have realised it would have been damaging to most human services. The report selected six areas and then made some suggestions for doing so. By then aged care and disability were falling apart and featuring in the press. As far as we are aware not much happened.

⁷⁶ Privatisation turned vocational education into a den of shonks and shysters Sydney Morning Herald 3 Dec 2015 <https://bit.ly/3KmuWos>
'Contracting government services to the market' on Inside Aged Care 2015 J M Wynne. <https://bit.ly/3EV1xR4>

B. Aged Care reports

In this section we examine the following aged care reports

- Nursing Home Subsidies Report 31 March 1999
- REVIEW OF PRICING ARRANGEMENTS IN RESIDENTIAL AGED CARE by WP Hogan 2004
- Economic Implications of an Ageing Australia 2005
- Trends in Aged Care Services - some implications 2008
- Caring for Older Australians 2011
- Ageing Australia Overview 2013

Nursing Home Subsidies Report 31 March 1999

The purpose: The report summarises what it calls the 1997 ‘reform package’ and the ‘structural changes’ that resulted – a neutral term for privatisation, whose consequences are not examined. In fairness it is charged with making funding more equitable between the states. It *“recommends a subsidy regime which provides a clear link to the standard of care”* and the underlying costs. It focuses on setting benchmarks, writing that government should *“specify its intended outcomes in terms of a standard of care benchmark”* and wanted *“transparency in the link to the cost of providing care”*.

Measuring standards: The intentions are commendable but there is a lack of insight and research into the difficulty in measuring care and creating benchmarks. The report advises *“incentives for improvements in the efficiency”*, a recommendation, which in the unbalanced system created in 1997 was to put strong pressures on staffing and care, and erode both. Under the now dominant neoliberal beliefs, the community and professional forces needed for a balanced system that restrained excesses were no longer seen as legitimate.

The report uncritically accepts the suitability and reliability of the Residential Care Standards and the accreditation process that it describes. There was already abundant evidence that accreditation had repeatedly been ineffective in preventing the exploitation of patients for profit in the US Health system. It was no match for powerful commercial forces. Reforming the process there had not worked.

The conduct of the companies responsible for this exploitation in the USA had been examined by state regulators during the 1990s and widely published in the Australian press.

In addition, inquiries would have revealed that when Ronald Reagan had tried to introduce accreditation as a regulator in aged care, its unsuitability had been recognised and he had been prevented from doing so.

The ideology government had adopted rejected regulation, considering it an impediment to an effective market. The minister had made it clear that accreditation was *“not a policeman”*, an assertion strongly and repeatedly made by the agency itself. This was clearly not a system which could be used for *“explicitly recognising quality of care objectives”*. Available evidence that challenged belief was not sought.

Ignoring Gregory’s advice: In examining and designing funding changes the review quoted the 1990s reviews by economist Bob Gregory and used his analysis to support its recommendations. The report examined the history of aged care but makes no reference to the failures exposed in the 1985 Giles report.

The Commission’s report accurately described the way the CAM funding had been structured to prevent profit being taken from staffing and care so the author of the report knew the risks of abolishing it. CAM funding had been abolished by the market ‘reforms’ in 1997.

In a startling example of strategic ignorance, the report failed to mention Gregory's warning that, if CAM funding was abolished, neither the current standards monitoring system, nor any alternatives considered would prevent the diversion of the funds from staffing and care⁷⁷. These warnings had been raised in parliament and were included in a critical 1997 senate report that was ignored by the Howard government. There was no explanation in the Productivity Commission's report of why these very relevant criticisms and warnings were deliberately ignored. Was this responsible behaviour?

The reviewers knew that in 1998 the previous more rigorous staffing requirements had been abolished and a *"less prescriptive requirement - - - which allows homes themselves to determine staffing arrangements"* had been substituted.

Writing about benchmarks and assuming that dysfunction would be contained in a system like this looks like wilful blindness.

Probity forgotten: The report describes the processes to ensure the *"necessary expertise and experience"* of new providers applying for licenses to operate. It must have been aware of the way in which state probity regulators examined the character of future owners and providers of hospital care to be sure they were of good character and could be trusted.

It must have realised how effective this had been in blocking international companies with dreadful track records in health care during the 1990s. A company with a poor record of care and fraud had been found to lack probity in Victoria only the month before. In the USA it provided aged care and was planning to enter aged care in Australia. All these matters had received extensive press coverage. The reviewers could have spoken to these regulators.

The authors must have known of the existence of the strong probity regulations protecting aged care from similar companies and that this had been abolished in 1997.

The report did not understand our nature and the long recognised need to ensure that only citizens who could be trusted be allowed to care for vulnerable citizens. It did not write about probity and evaluate the impact of this problem on the requirement to maintain standards of care.

The report did indicate that *"regulations influence the nature of care services provided in nursing homes and hostels"*. But the absence of the most important of these, the protection of the weak and frail from known predators was conveniently ignored.

Following Productivity Commission guidelines: This report describes the policy guidelines set in the Productivity Commission Act 1998, a time when neoliberalism finally became dominant.

It is required the Commission to focus on the *"productivity and economic performance of the economy, reduce unnecessary regulation, encourage the development of efficient and internationally competitive industries"*. While these are appropriate in the trade of goods and some services, the strong focus on this too often conflicts with the requirement to *"give due regard to social, regional and environmental concerns"*. The knowledge we have about these issues has been strategically ignored.

The economists charged with these inquiries may well not have had the social science backgrounds or knowledge to do this but as McGoey suggested *"can be blinded by their own narrow expertise"* in markets and economies. They may not be receptive to the challenges created by the insights into human and societal behaviour from the social sciences. These have

⁷⁷ Report on Funding of Aged Care Institutions, Senate Community Affairs References Committee June 1997 Chapter 6: Ensuring quality of care Item 4.19 <http://bit.ly/2DETTMH>

been devalued in our society and by a government that has made studying social science much more expensive.

The 1998 policy guidelines create a context in which almost every activity, which involves the exchange of money in return for a service, is examined as primarily a competitive and potentially efficient and productive market. There is an expectation that it will operate or can be made to operate like this. In 2001 Robert Kuttner warned us about this⁷⁸ writing:

If we begin by assuming that nearly everything can be understood as a market and that markets optimize outcomes, then everything leads back to the same conclusion—marketize!

As he explained, when it is not this sort of market and when a very different sort of market is required then the one size fits all recipe will not only fail but can be harmful to society and its citizens. Attempts to make them more perfect markets compound the problems.

A roadmap to 'Neglect': The report in effect rubber stamped and underpinned the structural changes and policies that were responsible for the steady erosion of care. They sanctioned the policies that encouraged those of poor character, who could not be trusted, to enter the sector.

As an example, at a service level, there was recently a nursing home business being investigated for poor care in Victoria. Further investigations by the press revealed that the owners, who had entered aged care without their track records being examined, did so after being sanctioned and barred because of their neglect and cruelty in the chicken business. At a macro-level, large multinationals with poor track records in caring for humans have been accepted in the same way.

Only three years after this report, in 2002, a Senate Inquiry into nursing included aged care where it documented skeleton staffing, deskilling, the use of agency staff, the substitution of nurses with untrained staff, the consequent disproportionate number of untrained people doing nursing, the pay disparity compared with other nurses, the unsatisfactory unfriendly working conditions and the burden of the regulations. Gregory's warnings were coming true but no action was taken.

The blind faith in markets, the failure to understand human nature or recognise the necessary conditions required for a market to work, rendered this Productivity Commission review blind to what was happening. It was only the first of many to do so.

This was a huge missed opportunity and gave the government's deeply flawed policies undeserved credibility. 'Riverside' the first of numerous aged care scandals⁷⁹ revealing the deep flaws, was only a year away.

Review Of Pricing Arrangements In Residential Aged Care by WP Hogan 2004 (This was not a Productivity Commission Report)

Because of the absence of data, Hogan collected large amounts of economic information himself and used it to examine inputs and outputs in order to calculate efficiency and productivity concluding that there were big differences showing that the system was still 17% inefficient.

Income in the sector was controlled so there was little difference in that. The largest expense (about 70%) is staffing so it is clear where the efficiencies were coming from.

⁷⁸ Kuttner Robert The Limits of Markets in The American Prospect 2001 <https://prospect.org/article/limits-markets>

⁷⁹ Illawong Retirement Equity Pty Ltd The Riverside Scandal (2000) Corporate Medicine 2006 http://www.corpmedinfo.com/nh_riverside.html

He did not arrange for any assessment of the standards of care and uncritically accepted the deeply flawed accreditation data, which did not take account of important variables. Almost all aged care homes received full marks - normally an indication of an inability to discriminate. This he claimed showed that those whom he found to be efficient, performed as well as those who did not.

His recommendation to increase efficiency put strong pressure on those who staffed well and made it legitimate to reduce their staffing to unsafe levels. It made the situation worse. The critical findings of a 2005 Senate Inquiry were ignored.

One of us reviewed this report critically⁸⁰ prior to making a submission to the 2010/11 Productivity Commission Review 'Caring for Older Australians' in 2010.

Comment: Warren's life ties into the lives of the two politicians who strongly applied free market principles to aged care. He clearly influenced both. He was a warrior promoting the neoliberal beliefs, although that term is not used by its followers. His initial efforts were controversial and resisted but later became established. We can understand why he was selected by Howard for this review.

A chapter⁸¹ in a 1986 book 'Intellectual suppression' describes the widespread staff and student unhappiness at the University of Sydney after Warren was made professor of economics and restructured the curriculum in a way that was seen as "*oriented towards one particular conservative set of economic doctrines*". There were many protests. Some teaching staff left, two dissident tutors contracts were not renewed, and tenured staff called for a senate inquiry. The dispute went on for years. He was a man with a mission.

Hogan was described as "*a long-time adviser to the Liberal Party and consultant to the corporate sector*".

An article in the *Financial Review* also indicates⁸² that at Sydney University he taught future Prime Minister Tony Abbott and "*advised John Howard in Opposition and again when he was Prime Minister*". He was later a professor at UTS. He became famous as his views were accepted by politicians and became mainstream. After his death in 2009 an annual Warren Hogan Memorial Lecture was created.

In Feb 2019 the lecture⁸³ was given by John Howard. In that lecture he referred to Hogan's 2004 report as a very significant inquiry and "*That I think will be drawn upon very much in the work that will be undertaken by the royal commission into the aged care sector, which has now got underway*". Perhaps it was!

⁸⁰ REVIEW OF PRICING ARRANGEMENTS IN RESIDENTIAL AGED CARE (Hogan Report 2004) Corporate Medicine web site <http://www.corpmedinfo.com/agereport2004.html>

⁸¹ Political economy at the University of Sydney Jones E and Stilwell in Intellectual Suppression: Australian Case Histories, Analysis and Responses by Martin B et al (Angus and Robertson, 1986) <https://documents.uow.edu.au/~bmartin/pubs/86is/JonesStilwell.html>

⁸² Warren Hogan's warning for a low-growth world. Financial Review 3 Aug 2015 <https://www.afr.com/markets/warren-hogans-warning-for-a-lowgrowth-world-20150721-gigua1>

⁸³ Economic Challenges in the Contemporary World Warren Hogan Memorial Lecture, by former Prime Minister The Hon John Winston Howard OM AC <https://bit.ly/3KcJala>
Transcript: <https://www.uts.edu.au/about/uts-business-school/news/economic-challenges-contemporary-world>

Economic Implications of an Ageing Australia 2005

This report examines the increased costs of an ageing population and warns of the consequences of not preparing well for it. It too presses for greater efficiency to contain this threat.

Trends in Aged Care Services - some implications Productivity Commission 2008

This research paper follows on the report on the implications of an ageing population, as well as the Hogan review and recommendations, which it admits would be difficult to apply across the whole sector. It looks at the demographics of the ageing population, their greater wealth, the patterns of disease and the sort of care they expect – their natural desire for autonomy and choice.

It examines the challenges and suggests unbundling the services to separate accommodation from care, dispensing with the planning and allocation system (while retaining accreditation). Like previous documents, this examines aged care as a market. It writes about *“pressures on the demand-side of the aged care market are expected to accentuate a number of weaknesses in the current policy framework, including: inequities arising from existing program design; inefficiencies arising from excessive government regulation; and the need to improve service interfaces within and between aged care services and other systems”*.

It writes about the looming problem of enough staff to meet this demand and their poor remuneration. It is critical of even the limited and ineffective regulatory framework claiming that it *“impairs incentives for productivity improvement”*. It looks at ways of improving efficiency using technology, enterprise bargaining and outsourcing.

Caring for Older Australians - Productivity Commission 2011

Introduction: This review was a response by the Labor government to the steady deterioration in care and the growing number of press reports describing failures. There was pressure for change but what was recommended was more of the same.

It is interesting that the Commissioner of this major review, whose recommendations were acted on was Mike Woods. He was also Commissioner of the 1999 report into funding and was active in the 2008 Review of Trends in Ageing. While we appreciate the enormous amount of work he did and his dedication, we see a continuum of patterns of marketplace thinking of which we are very critical.

The Caring for Older Australians report formed the basis for the policies welcomed by industry and like-minded community groups who persuaded Labor to introduce the 'Living Longer Living Better' (LLLBB) reforms in 2012. These set off a new round of market activity compounding the problems.

They were built on by the coalition Abbott government elected in 2013. His governments Red Tape Reduction program, Aged Care Roadmap, and policy of competitive consolidation, reduced regulation further and then dramatically increased the competitive pressures putting far greater pressure on staffing and care.

These changes and the pressures created pushed aged care over a tipping point and it deteriorated more rapidly until the growing numbers of failures led to the ABC's Four Corner's expose and the calling of the Royal Commission in 2018. This documented the sad and sorry state of the system that was neglecting the elderly, confirming the many warnings and the failures in care that Aged Care Crisis members had been making submissions about since 2005.

The report itself: This report was market focused and gave the market what it wanted. It gave the sector a funding boost by bringing back the bonds on high care that Howard had abandoned in 1997 when they proved so unpopular in the community. They were renamed calling them 'Refundable Accommodation Deposits' or RADs.

The strong criticisms Brathwaite had made, and his concerns about capture of the accreditation system in his 2007 book 'Regulating Aged Care' had been ignored in 2008 and still were in this 2011 review. No real changes were made to this but it did recommend centralisation of management and amalgamation of the regulatory bodies into a single body. This would have enabled further regulatory capture and more control over the release of information. The Accreditation Agency objected strongly claiming it was not a regulator and this centralisation did not happen until many years later.

Aged Care Crisis efforts: When Aged Care Crisis saw the draft report we issued a press release indicating that the report had "*ignored the moral imperative intrinsic to aged care and failed to address the consequences of market reforms*". We made further submissions and when we saw the final report we described it as "*an opportunity lost*"⁸⁴.

Aged Care Crisis and current members made six submissions⁸⁵ to this Inquiry. One analysed the reasons for failure and pressed strongly for a decentralised system in which empowered community bodies had a central role⁸⁶. We have continued to press hard for a community-led system to multiple inquiries since then but they have been ignored.

We were uneasy about the stance taken by the Productivity Commissioners in regard to the application of market principles, without any useful constraints that took account of the extreme vulnerability of the sector. We felt that the Productivity Commission's Report was there to help the business sector, rather than help and protect the elderly.

An article in Australian Ageing Agenda on 24 May 2011 quoted Commissioner Wood's speech to Aged Care Association NSW Congress⁸⁷. It confirmed our concerns.

For-profit aged care providers have little to fear and a lot to gain from the deregulated sector proposed by the Productivity Commission (PC), according to one of its architects, Deputy Chairman Mike Woods.

Later, Mr Woods said he thought many providers' current business models would be sustainable into the future and that the PC report "provides great opportunities for them to expand their businesses".

"They'll be able to construct where they think there's a market opportunity, they'll be able to offer a range of accommodation products and they'll be able to diversify into things like transition care or sub-acute care or respite, and even offer community care based from their accommodation hub."

⁸⁴ Media release: Caring for older Australians - an opportunity lost, 8 Aug 2011: <https://bit.ly/3vy6bQw>

⁸⁵ Submissions to Caring for older Australians review by Aged Care Crisis Aug 2010 <https://bit.ly/3vRCv19>
Aged Care Crisis February 2011 <http://www.pc.gov.au/inquiries/completed/aged-care/submissions/subdr520.pdf>
JM Wynne March 2011 <http://www.pc.gov.au/inquiries/completed/aged-care/submissions/subdr568.pdf>
Aged care Crisis May 2011 <http://www.pc.gov.au/inquiries/completed/aged-care/submissions/subdr0902.pdf>

⁸⁶ Submission to Caring for older Australians review by JM Wynne July 2010 <http://bit.ly/2kZxBi1>

⁸⁷ More good than harm by Stephen Easton in Australian Ageing Agenda 24 May 2011 <https://bit.ly/3ESpeJl>

“The industry players are well informed. They understand which way the market is going and they would already be making plans to maximise their opportunities in the new environment.”

“Accommodation bonds will not be related to the ability to pay,” he said. “The price will reflect what is relevant to the market. Ultimately, that means the price will reflect more closely the cost of providing residential aged care.”

This had everything to do with markets and minimal concern about the consequence for residents. In spite of the numerous inquiries and clear evidence of declining staff levels and skills, we see the same disregard of paradigm conflicts and the same strategic ignorance displayed 20 years earlier in the 1991 ‘Exports of Health Services’ review. The consequences were to be much more serious.

Criticism and analysis of what happened: We recently described what happened after the final report⁸⁸ and how Mark Butler, the Minister for Aged Care was persuaded to adopt the LLLB reforms based on this report and developed by the National Aged Care Alliance. On that page we summarised a detailed criticism of the Caring for Older Australian’s final report and linked to it. We described the LLLB reforms as a time bomb.

Ageing Australia Overview 2013

This research paper looks at what was happening in aged care. It had little impact and we have not looked at it.

Other reviews of interest

We have noted Productivity reports into charitable organisations (1996), into not-for-profits (2010) and social capital 2003. A quick glance suggests that the reports understand the nature of the sectors and the nature of social capital and support their role.

The 2010 report seems to recognise the problems and called for “*Wide Ranging Reforms Needed to Strengthen the Not-for-Profit Sector*”. We simply cannot look at them now but we can look at how little impact those reports had and how non-profits have been captured and their mission eroded. Social capital has been buried.

We note reports investigating local government funding in 2008 and regulation in 2012. The reports probably did not focus on the important role that local governments once played and how that role was reduced when the services they provided were privatised. Local governments and communities were key components of the civil society that has been hollowed out by neoliberalism.

Like many others advocating for greater localism and regionalism we are interested in rebuilding communities and re-involving them in their affairs. Aged care is well suited to lead the way. Decentralisation and accountability to community are essential if the perverse pressures that have done so much harm are to be balanced and controlled.

⁸⁸ Why the appointment of Mark Butler as Shadow Minister for Health and Ageing is significant Aged Care Crisis 8 Feb 2021
<https://www.agedcarecrisis.com/opinion/articles/453-why-appt-of-mark-butler-is-significant#read-more>

4.8 Attachments H: Aged Care Crisis - Submissions to the Royal Commission

a. Submission to Royal Commission into Aged Care Quality and Safety 8 October 2019

In this short submission we briefly indicated the fundamental flaws in the system and argued that the only way to address these was by structural reform built around community involvement and empowerment. We addressed each term of reference as well as the issues that witnesses invited to appear were asked to address. We showed how the problems in each would be addressed by our proposals and attached the analysis below.

(Note: The Royal Commission did not publish this submission and we attach it).

b. Why Aged Care is failing: An analysis of the history of aged care and proposals for change - October 2019

This in-depth analysis was sent as an attachment to our submission in order to validate and support what we had said. It explores and analyses what happened and why.

It examines the history of aged care to show how and why it went wrong, before looking at the data around staffing, regulation and outcomes. We write about regulatory capture and state capture although we do not use that term. We describe the revolving door and provide multiple examples. We also address the importance of civil society, of community and the essential role they play in controlling ideology and preventing totalitarianism.

We look at the social science to explain the way collegial communities engaging with projects confront inappropriate ideas and can detect problems at source and address them, when given the opportunity. We describe a model for doing so but there are alternatives and it is not prescriptive.

It is a long fully referenced document. There are 700 footnotes linking to sources, sometimes several together.

Table of Contents

1	Executive Summary	10
2	The crux of the Aged Care Crisis	49
3	Introduction: Symptoms of a dysfunctional social system	51
4	Social Processes: Self and Society	72
5	Neoliberalism, Managerialism and their consequences	77
6	The Story of Aged Care: 1950 to 1996	82
7	Background to the 1997 <i>Aged Care Act</i> and beyond	97
8	The consequences of neoliberal policy and managerialism in aged care	121
9	Staffing in Australia.....	179
10	How bad is care?.....	200
11	Aged Care Data in Australia	225
12	Regulatory failure.....	243
13	Effective regulation - broad issues in vulnerable sectors.....	324
14	Finding a way forward.....	338
15	A Community Aged Care Hub: setting in train such a process	346
16	Appendix 1 Consultancies by KPMG	361
17	Appendix 2 Analysis of 5 years (2012-13 to 2016-17) accreditation and sanctions data.....	378
18	Appendix 3 What people expect of the Royal Commission	388
19	Appendix 4 Neoliberalism, Managerialism and their legacy	396
20	Appendix 5: Letter to Minister for Aged Care, Mark Butler, 21 August 2012.....	414

(Note: The Royal Commission did not publish this submission. Because of its size we attach only the Executive Summary which describes the content and our recommendations. We hope that is sufficient but can supply the full analysis if it is needed.)

Note also that we have also contributed Chapter 2 "*Policies influencing Aged Care in Australia: Past, Present and Future*" to the just published latest edition of a book '**Healthy Ageing and Aged Care**⁸⁹' edited by Professor Maree Bernoth and Denise Winkler, Oxford University Press, 2022. It is a manual used for training aged care staff at all skill levels.

Our Chapter 2 describes the recommendations affecting staffing made by the Royal Commission. It then analyses the history of aged care in Australia (additional research on our part), describing what happened and the policies leading to failure. We concluded by urging staff to take a more active interest in policy and to inform and work closely with communities in order to build a power block that could use the insights from that history to keep the good recommendations on track if government faltered.

The book in hard copy or digital format deals with a broad range of issues addressed in aged care and is a cross discipline staff resource. The new edition should be accessible from most university libraries. The Commissioners might find it a useful resource providing insights into aged care from those who work in the system and train others.

**c. Supplementary submission to the Royal Commission into Aged Care Quality and Safety
28 Oct 2019**

Examining conflicting paradigms: After watching the five hearings on staffing in Melbourne from 14th to 18th November we decided to make an additional submission focussing on the way the different paradigms used by parties there were papered over and not challenged. Professor Eager spoke to her report and showed just how poor our staffing was compared to that in the USA.

In many publications and quite clearly on the US web sites she would have used to access that data (and even in the same documents), was data showing just how staffing and the incidence of failures in care differed depending on ownership type. She did not refer to any of this. This unpalatable data which has not been published in Australia is the sort of data that must be confronted if real changes are to be made.

In a similar vein, John Pollaers, Chair of the Aged Care Workforce Task Force, was not challenged with Eager's data. We had supplied him with very similar and easily confirmed data in December 2017, two years before, which he had not used or referred to at any time to our knowledge. We had challenged him then. We were not invited to his subsequent meetings.

We commented briefly on the other sessions including two studies of failure in nursing homes, identifying where the paradigm conflicts responsible for the failures in care were ignored.

We attached correspondence with Professor Pollaers as well as letters to industry figures whom we had met during 2017 to the submission. In the letters we were pressing them to give communities a greater role.

(Note: The Royal Commission did not publish this submission but we can supply it).

⁸⁹ Healthy Ageing and Aged Care, Second Edition, edited by Maree Bernoth, Denise Winkler, Oxford University Press:
<https://www.oup.com.au/books/higher-education/health,-nursing-and-social-work/9780190326234-healthy-ageing-and-aged-care>

4.9 Appendix I: Royal Commission Workforce

Supplementary submission to Royal Commission into Aged Care Quality and Safety Workforce submission, 6 December 2019

<https://agedcare.royalcommission.gov.au/system/files/submission/AWF.650.00046.0001.pdf>

Extracts:

In this submission we summarise our analysis of the deep flaws in the aged care system and the central role that belief patterns that are unsuited to the sector have played in causing the steady decline in the numbers and skills of staff. They have resulted in alienation, toxic cultures and a workforce that repels rather than invites employees.

Structural changes must address the beliefs and resultant policies that are causing alienation, toxic cultures and the provision of task focused care rather than relationship based care.

They are unable to accept that it is the market 'reforms' that they claim will correct the problems that have exacerbated the situation and driven continued failure. Simply patching the system, moving the chairs about and regulating more vigorously does not address flawed thinking and the structural problems created.

We summarise what has happened to society and aged care and how capture and revolving doors impact on staffing and can create toxic cultures across the system even in the department of health and the minister's office. We stress the minimum requirements needed for reform.

Aged Care Crisis argues that the care of the vulnerable in society is the responsibility of every citizen, of every community and of every civil society. It is a product of our ability to identify with and relate to others, our capacity to imagine their lives and to empathise with their misfortune. The values, norms, altruism, and the motivation this engenders, as well as the social selves that we develop as we fulfil our role as responsible citizens are all products of a civil society of interacting responsible caring citizens

We review the factors impacting on aged care and so on staffing again and indicate that good medical care is essential for maximum wellbeing, and being part of a community is essential if that wellbeing is to benefit their lives.

We responded to six questions put by the Royal Commission explaining how medical skills and values based relationships can be developed in a centrally supported and mentored community-led system.

4.10 Appendix J: Royal Commission Program Design

We were surprised to receive a consultation paper requesting *"input into designing aged care services"* to address *"endemic and system-wide problems with aged care"* that need major reform. There had been no analysis of the reasons for failure and the public were being asked to resolve an issue that had not yet been addressed or explained to them. This looked like wilful blindness.

a. Submission to Royal Commission into Aged Care Quality and Safety Re: Aged Care Program Redesign 24 Jan 2020 (AWF.660.00070.0001)

<https://agedcare.royalcommission.gov.au/system/files/submission/AWF.660.00070.0001.pdf>

Contents

Introduction - (Is something missing?)

Response to 'Program Redesign' questions

Appendices

1. Avoiding the paradigm issues
2. Exploring the nature of paradigms and why we won't challenge them
3. Asking Questions about the past - the story of belief
4. Marketising Aged Care - how it happened
5. Proposals for reform - addressing the paradigmatic issue
- 6 Professor Hal Kendig on regional pooling and regional management

In this submission we responded by asking *"Is anything missing?"* and explaining that we were being asked to address *"the symptoms but not the cause"*. We explained that *"we had done just this many times before"* and this was because we were not asking *"Why is it going on?"*.

We pointed to the *"massive power imbalance for residents and their supporters"* noting that

Residents and families fear retribution for speaking out and staff fear for losing their jobs. Family members giving evidence to the Royal Commission described the neglect or abuse of their loved ones and how disempowered they were. In some cases, family members were treated with contempt and bullied. The current system empowers providers, but not residents.

We asked *"how would the proposals to redesign the program eradicate the power imbalance"*. We pointed out that they were misrepresenting the history of aged care and indicated that *"We described what was happening at length in the analysis of the aged care system we attached to our first submission on 8 October 2019"*.

We now realise that by doing this they were directing attention away from the important and relatively effective regulatory changes made in the 1980s, particularly the way in which the fully accountable CAM (Care Aggregated Module) funding had protected staffing and care from profit-taking. Even more importantly, Gregory's prophetic warning about what would happen if this was repealed were safely hidden. This is a classic example of what McGoeys called 'strategic ignorance'.

Our in depth analysis of *Why Aged Care had failed* that accompanied our unpublished submission on 8 October 2019 only three months before, had carefully described the history of aged care and where it had gone wrong. We had described the CAM funding and its benefits on page 85 as well as Gregory's warnings on page 92. In section 7.2 *"The bizarre logic behind the aged care system"* on page 101 we indicated that *"Gregory's warnings in 1993 were ignored"*.

In writing about capture and revolving doors on page 257 we reminded readers that:

We have already referred to the impossibility of the centralised regulatory structures we have created successfully regulating a complex system driven by strong perverse incentives. Gregory warned us about this in 1993.

We referred to Gregory again on page 261 indicating that *“no regulatory system is capable of controlling the perverse incentives introduced by a neoliberal market system and that remains the central problem”*. The sort of community-led model (page 345-359) that we have been pressing for would protect the funding of nursing and care in a similar way to the CAM funding but would pay a reasonable fee for managing this to make it worth doing.

We can only hope that this is an example of the ‘Bad Faith’ problem of lying to oneself that we have referred to repeatedly.

We went on to challenge the Commissioners with the evidence of Baldwin and then Cumpston indicating that there was a stark choice facing the Royal Commission between the paradigms of free market thinking and humanitarian thinking. We stressed that under the current system *“the community and its altruistic values have been locked out by government policy”*.

We said:

We think that asking the community to participate in a process of program design without first opening this issue to debate was inappropriate and unwise. - - - Relying on regulation to address the consequences of system failure due to flawed thinking and policy based on it is not sensible and 22 years of regulatory failure confirms that.

We responded to the questions asked by explaining how a community-led system might address them.

In the appendices to this submission, we focused on the paradigm issues including how these impacted on staffing and why the readily available information Professor Eager had reported on had never been looked at before. We wrote about capture and asked why it had been ignored.

In Appendix 2 we explored the nature of mankind and society. We explained ideologies and the way we behave when we adopt them. In Appendix 3 we looked at the history of markets, the rise of neoliberalism, the decline of civil society and the consequences.

Appendix 4 describes the marketisation of aged care and the role governments played in this.

Appendix 5 looks at suggestions for reform by first addressing the nature of the underlying social pathology explaining the importance of power and the structural philosophy behind the changes we propose to rebuild civil society and address aged care. In Appendix 6 we review the late Professor Kendig’s long advocacy for regional management of aged care.

b. Submission to the Royal Commission into Aged Care Quality and Safety 18 March 2020 (AWF.665.00018.0001.pdf)

<https://agedcare.royalcommission.gov.au/system/files/2020-09/AWF.665.00018.0001.pdf>

Response to: Program Design

Table of Contents

- Introduction
- Brief overview
- Part A: A global problem impacting on aged care
 - The Context: Neoliberalism, Managerialism, the Roadmap and more
 - Incentivisation
 - What is leadership?
 - Financial Considerations
 - Oversight, data and regulation
- Part 2: Comments on hearings and counsel's submissions
 - Recent hearings and counsel submissions
- Appendix 1: Effectiveness of Probity Requirements
- Appendix 2: Examples of revolving doors

We responded to the Royal Commission's request for critical comment on Counsel's proposed program design. We indicated:

We repeat and re-emphasise the issues that we have raised in previous submissions and which we feel the Commission is avoiding and not addressing. We show how important they are for program design and explain why a failure to address them will compromise the sort of changes the Commission is proposing.

We indicated that:

The Commission seems to be trying to be all things to all people and is not challenging many of those responsible for what has happened to aged care with the data and the important issues that need to be confronted.

The Commission has, for example, stressed the importance of collecting data and its proper analysis for the success of its proposals. What chance is there of this happening in the conflicted aged care system if the Commission is itself so conflicted, that it ignores data and fails to examine and confront important issues? Our assessment is that this is happening.

We first show again that aged care has failed in other countries and is only one of many failures, yet that is not examined. We write about outside sectors influencing aged care and about revolving doors, capture, conflicts of interest again. We criticise the Commissioners approach to owners, probity, revolving doors, capture, conflict of interest, the unchanged approach to markets and to program design.

We once again examine the role of Neoliberalism and Managerialism. We look at the downsides of incentivisation, and the way the Commission had focused on this. We write about data collection and oversight. We write more about a more community-led system. We write about responsibility for aged care being repeatedly avoided and denied by government and regulator.

After summarising relevant points in our previous submissions, we comment on the hearings and the Royal Commission Counsel's **submission on staffing** indicating which items we consider appropriate and explaining why we disagree with others.

In dealing with local activities and staffing we indicate:

The ACC model of community based navigators, case managers and empowered visitors linked closely to the assessment system and working closely with staff creates a flexible model for addressing this and monitoring it without frequent formal reassessment. It ensures a continuum and the use of good local information that includes reliable subjective impressions based on observation and involvement. It creates and builds trusted relationships across the system and supports social connection.

In commenting on funding we said

The coldness of the centralised economic model of care is reflected in Dr Cutler's comments on day 2. He suggests that a service to an individual should be funded only when and until the benefit outweighs the cost. This thinking is without empathy or insight into the nature of *relationship-based care and not a response to necessary rationing*.

After marketing and incentivisation were discussed, we commented:

Mr Rozen rightly claims that *"What future generations will not forgive is an unwillingness to learn from the mistakes of the past"*. We argue that this is exactly what is happening and this is because the *Commission is not properly analysing and understanding the mistakes of the past including the role that deceptive marketing has played*.

We commented on Counsel's recommendations:

We are very concerned by the approach taken by counsel. The Commission has not in our view properly analysed what has been happening in society and in aged care over the last 30 years. It has not examined the role that the patterns of thought in what we have described as the 'policy silo or family' have played. These are deeply embedded in their psychological DNA. They have an internal logic and sense of certainty that is only challenged by looking at what is happening from other different perspectives.

We also commented on Counsel assisting submission on *Program Design: 4 March 2020*.

We summed up our feelings:

We are dealing with a crisis and the Commission is reverting back to the people, processes and structures that have failed. There is little sign of real innovation and this is probably because the Commission is relying on the same 'credible' people responsible for the system we have and much of its innovation was underpinned by self-interest rather than altruism. We might start by looking back to see what worked in the past.

We briefly looked at probity, Community and Civil Society and addressed other issues by showing that they would be best addressed through community involvement. In appendix 1 we described how effective probity requirements had once been.

In Appendix 2 of this submission, we gave examples of revolving doors in aged care and name the individuals.

4.11 Appendix K: Submission to Royal Commission - addressing Structural issues

It is interesting that the current government in 2021/2 adopted a well-used strategy used to limit community criticism by opening a much more important consultation on governance on 21st December 2021 and closing it on 18th January 2022 while people were on holiday. Only those who were 'in the know' would have known about it and so able to respond. We were otherwise occupied so were unaware of it. We did address governance in a submission pressing for structural changes that would include regionalism and community involvement and empowerment.

Aged Care Crisis Submission on structural issues - August 2020

Table of Contents

Introduction
Aged Care Structure
Failure to address the Terms of Reference
Many eyes: In depth exploration of the structural issues
Restructuring aged care - developing principles
A greater role for citizens and democracy
Before Neoliberalism: Aged Care Reviews and Inquiries 1975 to 1993
Advocacy for regionalism and community 1997 to 2020
Continuing support for regional and local government and community from 2001 to 2020
Recommendations for restructuring aged care
Appendix 1: Humans and Society
Appendix 2: Neoliberalism and Managerialism
Appendix 3: Governance and Regulation
Appendix 4: Regulatory Capitalism
Appendix 5: Localism
Appendix 6: Previous inquiries and advocacy
Appendix 7: Overview of the consequences of Neoliberalism.
Appendix 8: Submission to Royal Commission – Terms of Reference

When we made this submission to the Royal Commission in August 2020 analysing structural problems and pressing for them to be addressed, we devoted close attention and made some criticism of governance explaining why it had failed. In that submission we describe the many problems that developed in society and aged care. These had a huge impact on staffing.

We described the impact on the lives and working conditions of nursing home staff. We addressed the cultural and role conflicts that developed and their consequences, for care. The situations where this occurred had been identified in the hearings and then wrongly attributed to poor governance so that the problems were not properly addressed.

In that submission to the Royal Commission on 4th August 2020, Aged Care Crisis did an in depth evaluation of the structural problems and the reasons for failure not only in aged care and not only in Australia. We dealt at length with the failure of governance in the text and in an appendix.

On page 13 we stressed that an essential component of effective structural reform was the creation of a powerful force to balance the perverse incentives responsible for failure. Only the community has this power.

We said:

All of our submissions have tried to focus on the term of reference '(d)' (ie aged care services}. We argue that the involvement and empowerment of the wider local community and families who should be responsible for resident welfare will be critical in any solution to the structural problems in aged care.

On page 14 we challenged what they were doing:

In our submissions we have addressed aged care as social pathology, a manifestation of a disease that has infected our society. Any analysis like this will confront society and those who have built their lives in creating its simple solutions. Many will be threatened. This is a feature of change but we must not shrink from it.

In section 4.1.1 (The Royal Commission and intractable conflicts) we examined and were critical of the session in Tasmania which focused on the failures of governance. These were a clear example of paradigm and cultural conflict causing role conflict among staff and then alienation and probably toxic cultures. We were critical of the failure to address these issues and stressed the role of power and discourse, describing how market pressures and thinking were impacting staff.

In Section 4.2 we highlighted the many criticisms of neoliberalism and the managerialism based on it quoting from criticisms made by the Brookings institute as well as other academics criticising managerialism. Academics claimed that this adversely impacted *"the transformative power of education as necessary to a free society"* and resulted in the loss of *"an ethic of genuine compassion"*. We explained how the system was *"using power to take the care out of care, and excluding those with the power to insist on care"*.

In Section 4.3 we look at the consequences for workforces and for regulation stressing the need to address paradigm paralysis. In section 4.4 we look at the history of governance, the process that replaced regulation. We explain why it failed. This was not addressed by the Royal Commission.

On page 34 we advance *"three core principles that need to be embraced when restructuring aged care to meet society's expectations"*:

1. To restructure it into a system that is freed from perverse incentives by quarantining staffing and care costs.
2. create a situation where the pressures of self-interest are constrained, and
3. ensure that a community and professional discourse of care with its values has the power to control the market discourse and its values.

In Section 5 which follows we developed principles for restructuring. We addressed the erosion of civil society and the capture of the community mission of non-profits. We explored the literature and the so far unsuccessful attempts to rebuild society and our democracy using terms like regionalism and localism. In section 5.4 we made recommendations for restructuring aged care. We stressed again that:

Aged care is the responsibility of every citizen and of every community. Any person or entity providing that care is acting as the agent of that community and is expected to work closely with that community, act on their behalf and provide the service they and their members expect to the best of their ability. They are directly accountable and responsible to that community.

After referring to the horrors resulting from 20th century ideologies we indicated that:

In many ways Neoliberalism has been the most destructive of the ideologies for civil society because it has marginalised the society it should be serving. It has created in its place a system that fosters self-interest. In the narrow pursuit of financial objectives it ignores the societal values that focus on citizenship and the common good.

The technology that promised to release us from the burdens of labour has instead been used to bind more and more of us to endless labour. It has limited our societal horizons and forced us to try to find meaning within its limited self-centred boundaries. We have been trained for the market and not been educated to become the responsible and effective citizens required at this time.

We have created a brutal dog eat dog society within which those we expect to provide empathic relationship based care to the vulnerable are trapped. The ideology enticed us all with promises of independence, freedom and choice and instead, as RA Feenstra a moral philosopher indicated, we have been kidnapped and cannot escape. We will not get a caring aged care system until this societal problem affecting nursing home staff more than anyone else is fully addressed.

In this submission we provided greater detail and analysis by exploring the social science critical to understanding what has happened much more fully in appendices. The first appendix explored the nature of mankind - society, selves, culture and roles. It described the problems and consequences of the cultural and role conflicts that affect staff in greater depth.

The second appendix examined the history of neoliberalism and managerialism. It explained the misconception on which the founding principles were based - principles that over the years have marginalised and hollowed out civil society and now threaten our democracy.

The third appendix addresses governance and regulation. It looks at the origin of the words and the way governance started being used differently after 1970 when a rapid increase in fraudulent and harmful processes followed the abandonment of regulation. It examines the literature then goes on to describe the many failures of governance.

The 4th appendix deals with the overlapping concept of regulatory capitalism coined by academics and used by Braithwaite and the REGNET groups he formed. We comment and have the temerity to criticise some of the assumptions and arguments they make and point out that it has not worked.

Appendix 5 described the current localism movement that is pressing for greater local community involvement and control of their affairs.

Appendix 6 reviews some features of the eight major reviews of aged care carried out between 1975 to 1993, focusing on their approach to regional control and citizen involvement. The review by Giles in 1985 describes a situation very similar to that found by the recent Royal Commission.

Giles recommendations 35 years ago for regional and community involvement and those of the 1989 Ronald's report for local community oversight are similar to those that Aged Care Crisis has been pressing for since 2010. These proposals were not compatible with the neoliberal beliefs that the Keating government and industry had now adopted. Industry resisted strongly and these recommendations were largely ignored. Some knowledgeable individuals like Professor Hal Kendig have continued to press for regionalism.

Appendix 7 is a long list of the corporate scandals in the USA, the UK and Australia to make the point that while the problems are manifested in staffing problems and neglect in aged care, they are a consequence of what has happened in our society since neoliberalism became dominant and we have relied on governance.

Appendix 8 is the submission we made to the minister for aged care when he requested feedback on the proposed terms of reference for the Royal Commission. We pressed for an analysis of structural issues to be specifically added to the terms of reference.

NOTE: *This in-depth August 2020 critical submission and analysis with its arguments for regionalism and community empowerment was not published by the Royal Commission. The suggestions were not debated and were largely ignored. We can supply a copy if it would help.*

4.12 Appendix L: Royal Commission - Financing Aged Care

a. Submission to the Royal Commission into Aged Care Quality and Safety

Response to Consultation Paper 2: Financing Aged Care 11 August 2020

(18_AWF.680.00021.0001_native.pdf)

https://agedcare.royalcommission.gov.au/system/files/2020-08/18_AWF.680.00021.0001_native.pdf

We set out eleven principles that should underpin funding including the following:

- that the money gets to those who need it most and is not used to generate profit or finance competitive consolidation, both of which have been happening
- that funding must follow the need for care and services, instead of care following the money as happens with the current funding system and in unchecked competitive markets.
- that our grandchildren, a generation that is struggling, be protected from the threatening impact of generational inequity created by 30 years of failure to address the demographic changes in society.
- funding for care and staffing must be protected from predatory practices driven by strong market pressures - as it was before 1997.
- that funding decisions need to be made locally by those who can see where the needs are greatest, and where the use of publicly generated funding must be transparent to tax payers and community.
- a system driven by free markets must be replaced by one driven by the community and its altruistic values – a system to which the market contributes and for which it is rewarded.

We were concerned that *“those making submissions have not been not adequately briefed”*. We suggested that *“Asking people to fund a system without first deciding on the structure of the system needed to provide what is required is putting the cart before the horse”* and *“We worry that the real problems in the system are being hidden from those the Royal Commission is asking to make submissions”*.

We explained the problems in funding, staffing and care over the last 60 years and the way Gregory’s warnings about staffing and care were ignored. We wrote about the way financial management had destroyed mission among non-profits and referred to a hearing in Tasmania illustrating this.

The intent should be to create *“a source of funding for the providers of care that rewards their efforts without allowing them to tap into the funding intended for care”*

We suggested that funding *“the provision of services should be separated from ownership of the aged care facilities”* and explain how this could make a locally managed market work.

We suggest that the system should be funded by a Medicare like system (with means tested co-payments) but because of generational inequity we preferred a hypothecated contribution added to superannuation as advised by Gregory in 1993. Generational equity was required and the much smaller stressed current workforce which would have to pay for the current aged population could be protected by a temporary death levy reducing over 10 to 20 years.

Funding of care and oversight of expenditure especially on staffing and care should be done locally with central mentoring, support and backup.

We responded to the questions the Commission had asked us to address along these lines.

b. Submission to the Royal Commission into Aged Care Quality and Safety

Capital Financing for Residential Aged Care 2 October 2020 (AWF.680.00054.0001)

<https://agedcare.royalcommission.gov.au/system/files/2020-12/AWF.680.00054.0001.pdf>

We expressed our concern that at the most recent meeting the commission was still avoiding the paradigm conflict and listening intently to those responsible, and that

“They are still expressing the same ideas and counsel seems to be accepting and embracing them.

Equally disturbing was counsel’s willingness to accept their strategy of placing the blame for what has happened on government when many of those giving evidence have been advisers to government and have been as if not more culpable

We expressed our concerns about the impact of the RADs used to finance capital projects on the elderly and their families as well as the way it discouraged government regulators from putting large chronic offenders out of business because of the billions in RADs that government had guaranteed to refund.

This money went to industry who have disregarded the evidence that smaller facilities provide better care and foster the collegialism and caring relationships so important for staff morale and good care. Instead, the money has gone to large tightly managed facilities that are impersonal and more profitable or to lavish hotel style facilities that attract the wealthy.

We write about the track record of the companies and people that the Commission is listening to so intently. In summing up on 22 September 2021 Counsel *“gives them the credence they want by focusing on government’s failure to provide sufficient funding to allow adequate staffing. He ignored their culpability”*. We give examples to illustrate this and expose the paradigm issue they were avoiding.

We suggested that funding for capital investment should be drawn from the same superannuation fund we had suggested before and that it be channelled through local community management who would negotiate with a Real Estate Investment Trust (REIT) to build the sort of facilities needed by that particular community and its members. This would not prevent wealthy communities from drawing on payments from the wealthy to provide more luxury

We end by setting out our *“Necessary conditions for a successful aged care system”*. We list 17 items in this discussion.

We include that:

As far as possible the final decisions about planning and what is funded should be made locally with central support and advice when needed. It must be flexible and responsive.

4.13 Appendix M: Royal Commission Counsel's recommendations

Final Submission to the Royal Commission into Aged Care Quality and Safety

RCD.0013.0013.0185.pdf

<https://agedcare.royalcommission.gov.au/system/files/2021-02/RCD.0013.0013.0185.pdf>

Response to Counsel's submission and recommendations - 12 November 2020.

Note: Comment on each individual recommendation suggested by Counsel was made in a spreadsheet supplied by the Royal Commission. This additional submission refers to the final hearing where counsel presented his recommendations. It addresses the overall thrust of Counsel's recommendations.

The Hearing: We expressed our relief when Commissioner Pagone made some very insightful comments which showed that he did understand the social problem he was up against. The Royal Commissions final report shows he stood his ground and did try, but he was outnumbered and under pressure. The government ignored the recommendations he made.

We corrected counsel's interpretation of 1997 cabinet documents and gave more information about the influence that the US company Sun Healthcare's charismatic founder and chairman had in reinforcing policy at that time. We were critical of counsel's approach and described past warnings. We wrote about the problem of inauthenticity and so workplace conflict in aged care

We referred back to the statement we made when we were approached to appear at the first hearing of the Royal Commission in 2019.

Counsel had rejected our data and our analysis which concluded that *"we have simply shown that it must have failed far more often than anyone realises and that both the system itself and its regulation is dysfunctional and that structural change is needed"*. We stressed that aged care was a community service and should be rebuilt to give community a role.

It had taken 18 months and a vast amount of money for them to confirm our data and analysis. We indicated that *"Counsel has still refused to accept that aged care and its problems are a reflection of the order of thinking that has been imposed on the sector"*.

We wrote about the credibility of believers in office, those they had listened to and the unfortunate impact of their approach on staffing. We rejected the way counsel blamed government for the breakdown in their relationship. That close relationship was responsible for policies and for what happened. It only broke down when failures and rorting escalated and many more failures were exposed forcing Prime Minister Turnbull to respond. The attempt to control it made it worse.

Recommendations: We commented positively on the recommendations made by counsel but considered that too much was missing and we commented on this in the comments that followed.

We commented broadly on the recommendations

What is needed is regional involvement and control. We note that approved providers are still to be held responsible for care even though they have shown themselves unable to do so in the past. It would be remarkable if this worked.

We are deeply disappointed to see that oversight and regulation is to remain with the same quasi-independent Aged Care Quality and Safety Commission – the same incompetent groups that failed to manage the recent pandemic and have been hiding the failures from us all for years.

We have seen a succession of changes and reforms, but none have worked

Ignoring perverse incentives: The most revealing evidence of the single focus order of thinking adopted is the failure to confront the powerful perverse incentives created by the sort of market system that we have and will still have. The regulatory changes proposed are puny and quite incapable of confronting and addressing this. As we have indicated governance by steering, using levers and incentives has been ineffective and is most unlikely to contain this powerful force.

Counsel's submission has carefully ignored an alternative order of thinking that sees markets in a very different light. This order understands that the interests of markets are often the very opposite of those of citizens and the community. This ancient order of thinking has a proven track record.

We currently have a system that is set within an order of thinking that relies on self-interest to achieve its objectives. It is unsuited to a sector where an order of thinking that is based on responsible citizenship and altruistic values focused on others and the common good is required.

Counsel proposes replacing this system with a system that is still set within an order of thinking that relies on self-interest to achieve its objectives. It still remains unsuited to the sector - - - - It still rejects social control and effective on site regulation. - - - - Within this system the pieces have been moved about and changes have been made. There will undoubtedly be significant improvements for a period of time

Care, particularly aged care is the rock on which the neoliberal ship is sinking. There are two issues we should be addressing if we are to recover our humanity. First, what we can do as a society to rebuild aged care. Second, what aged care can do to rebuild society and our democracy. This submission ignores both. They are foreign to its order of thinking.

We concluded with a plea to the Commissioners:

We plead with them (ie the Royal Commissioners) to confront the problems in Counsel's order of thinking. It is based on hypothetical balanced self-interests that define and treat aged care as a market. We plead with them to embrace an order of thinking based on responsible citizenship and values that focus on trusting relationships, the welfare of others and the common good of society. This order of thinking sees aged care as both a community service and a community responsibility. A market that operates there must adopt their values and be directly responsible to them.

4.14 Appendix N: For-profit groups contracting staff to government or providers of care

Some entrepreneurs have created profitable businesses by providing nursing services to government or specifically to the aged care industry. This seems to be a model that is favoured by government.

The two best known examples are Aspen Medical, which is alleged to have had close links to government and politicians. Government has contracted it to provide services on its behalf all over the world and has turned to it to provide nursing in Australia on its behalf, particularly during emergencies created by the COVID pandemic.

Mable is a commercial Uber like business that puts customers in touch with independent individuals providing care. It takes no responsibility for them. It filled a need and was successful. It does not fit well with the collegialism that we consider to be important for care. Its close association and support from those believers responsible for the failed system was a clear warning and only the ignorant, confused and the opportunists seeking profits by keeping staffing to a minimum would have used it. The problem with this model has been exposed by the COVID pandemic and that should not be papered over by economic rationalisations.

In our 10 June 2020 submission to the Royal Commission's inquiry into COVID we looked at the information about both companies including the criticisms made.

Extract from Aged Care Crisis submission to the Royal Commission inquiry into COVID 10 June 2020

Aspen Medical

Aspen has been one of the government's closest allies. Based in Canberra, Aspen Medical was established in 2003 by Glenn Keys and Dr Andrew Walker. Initially it provided services to the NHS in the UK⁹⁰. It soon formed a relationship with the Australian government and became the 'go to' company for governments supplying services to the military in the Solomon Island, East Timor and more. It has provided services in remote regions and to the mining industry.

It provided the Australian governments contribution to containing Ebola in Africa and healthcare across 52 ADF bases in Australia. This served some 80,000 personnel. It provided services in offshore. detention centres. It has supplied services to the USA and many other countries. It has worked and provided services in the *"Pacific, Africa, the Gulf region, the UK and the USA"*.

There have been few evaluations of its performance in these distant operations. The WHO contracted it to provide hospital care in Mosul when Daesh was pushed out of this Iraq city⁹¹. The Johns Hopkins Center for Humanitarian Health in 2018 reported criticisms that the hospital turned away civilians needing treatment and that it left without ensuring continuity of the service it had provided.

⁹⁰ Aspen Medical <https://www.aspenmedical.com/aspen-medical>

Aspen Medical https://en.wikipedia.org/wiki/Aspen_Medical

Making the world healthier The Canberra Times 7 July 2012 <https://www.canberratimes.com.au/story/6168254/making-the-world-healthier/>

⁹¹ Aspen Medical's Covid-19 contracts The Saturday Paper Edition No. 301, 16 -22 May 2020 <https://bit.ly/3gFY0JW>

By 2020 it had a history *“of having assisted emergency medical responses in 17 countries”*. The government immediately turned to it⁹² to help it through the coronavirus epidemic. The first task was to deliver a *“pop-up emergency department to treat coronavirus patients”* in Canberra – a \$23 million project. By then it had 1000 Australian professionals *“working to control the COVID-19 outbreak”*. It was tasked with *“rolling out more than 100 respiratory clinics across Australia”*.

It was involved in services to the infected cruise ships, the Diamond Princess and then in managing the protective measures on the Ruby Princess after the blunder by NSW Health in Sydney. By 9th April 650 passengers from the ship had been diagnosed with COVID-19 and it had been linked to 15 deaths.

When the police commenced an investigation of what had happened *“Aspen Medical was tasked by Home Affairs Minister Peter Dutton to get an ‘honest picture’ of the situation on-board”*.

The press started investigating and questioning the close links between Aspen and government⁹³.

They discovered that:

- *“Former Howard government health minister Michael Wooldridge spent 10 years as a director of Aspen Medical over two stints between 2007 and 2019”*. He was under a cloud over his involvement in the drawn out saga surrounding dubious financial decisions by the Prime Trust board prior to its collapse.
- *“The company donated almost \$85,000 to both federal and state Liberal party divisions between 2013 and 2015. Federal Labor also received thousands in donations from the company as recently as 2017”*. (total amount disputed)

It was claimed that *“a Premier instructing the police to undertake a criminal investigation and then using a private company with ties to the Liberal Party - - does not pass the sniff test”*.

Aspen came to the rescue in Newmarch House two weeks after the first infection, on 20th April. It subsequently contributed 35 staff. There were soon concerns about Aspen’s capacity to address the problem⁹⁴. It was over two weeks before infected residents were moved into a separate wing.

Two days after working on the heavily infected Ruby Princess two staff started work at vulnerable Newmarch Lodge. This was well within the incubation period. While they were not responsible for the infection, this certainly does not pass any sniff test. It was even more troubling⁹⁵ when Anglicare stood down one of the contractors from Aspen Medical *“over alleged breaches in infection control”*.

The Guardian looked at what the government was paying Aspen Medical⁹⁶:

- more than \$57m for Covid-19 outbreak response services to the Ruby Princess and Newmarch House;
- the rolling out of 100 pop-up respiratory clinics - - cost not revealed

⁹² Coronavirus brings Aspen Medical's lifesaving work home The Canberra Times 5 April 2020 <https://bit.ly/2XMsFwn>

⁹³ Company collecting Ruby Princess evidence a prolific political donor Daily Telegraph 9 April 2020 <https://bit.ly/2XS4ZXo>

⁹⁴ Coronavirus Australia: Link between two deadliest clusters of COVID-19 revealed, 7 News, 7 May 2020 <https://bit.ly/3eB2H5K>

Aspen Medical staff who worked on Ruby Princess sent to Newmarch House just two days later – is Government’s ‘surge’ workforce capable of meeting demands? The Weekly Source 7 May 2020 <https://bit.ly/3cj1u1g>

⁹⁵ Death Toll Rises At Newmarch, NSW Chief Health Officer Cautions Over Laying Blame HelloCare 5 May 2020 <https://bit.ly/3ckZi9R>

⁹⁶ Aspen Medical reaps \$57m for Covid-19 work, including Newmarch House and Ruby Princess The Guardian 7 May 2020 <https://bit.ly/3cgA3W1>

The Federal government brought in Aspen. NSW Health which had been assisting Newmarch, had *“no control over those matters”*. It seems likely that integrating the two services did not work well. The Guardian reported⁹⁷ that this was part of a \$15.7 million contract awarded under a *“limited tender process to a private company”*, to provide *“emergency response teams of nurses, allied health staff and care workers in aged-care facilities”*. This made it *“exempt from the Commonwealth’s own procurement rules”*.

The Saturday Paper also looked back at these many contracts (*See Footnote 90*). The contract to build the emergency hospital in Canberra for \$23 million did not go to tender *“due to legal exemptions during an emergency”*. But work had started *“two weeks before the contract had been signed on April 24”*.

An anonymous emergency doctor indicated that *“he and his colleagues had concerns from the start that Aspen was promising more than it could deliver, particularly when it came to staffing”*. We have seen so much political corruption in politics in NSW, Queensland and more. We need to be sure this is not about jobs for mates.

There was concern about the privatisation of medical services particularly in emergency situations. As the doctor indicated *“privatising the system is a good way to remove whistleblower protections”* and so protecting government. Another claim was that this sort of privatization *“has had terrible impacts on the quality, accessibility and public accountability of these services”*.

The description used by the Department of Health when it commissioned Aspen to run training courses is revealing⁹⁸. It said *“Training is provided by our trusted COVID-19 training partner, Aspen Medical”*.

Mable

“Mable is a profit for purpose business”⁹⁹ which directly connects care/support workers and other health professionals with people who need care and support to live independently”.

Mable was officially founded in 2013/14 by former Bankers Trust partners Peter Scutt and Tony Charara, under the name “Better Caring” when they struggled to find the right home care solution for their parents. They put families in contract with independent operators who they believed could be trusted. There was a need and the venture was a success. While they make some attempt to vet the employees, they are independent contractors and Mable does not take responsibility for them. The online platform asks for tax file number, driving license and banking details, the worker pays Mable 10% to cover insurance and administration costs, but workers require an ABN to do so.

In 2016, Ellerston Ventures, in which billionaire James Packer had a major stake, invested \$3 million¹⁰⁰ in the business indicating that *“Community aged care and disability support represents a high growth opportunity”*. In 2018 Better Care changed its name to Mable¹⁰¹. It seems to have become more market focused providing staffing for NDIS and aged care providers as well.

⁹⁷ Exclusive: Gov’s \$5.8m aged-care app offers ‘no duty of care’ The Saturday Paper 23 May 2020 <https://bit.ly/36Km6Pb>

⁹⁸ COVID-19 infection control training Dept Health 27 May <https://bit.ly/2XJNB7b>

⁹⁹ Mable (Company), Wikipedia: [https://en.wikipedia.org/wiki/Mable_\(Company\)](https://en.wikipedia.org/wiki/Mable_(Company))

¹⁰⁰ Sydney healthtech startup Better Caring raises \$3 million from Ellerston Ventures Startup Daily 25 October 2016 <https://bit.ly/36KJQ5l>

¹⁰¹ Is it home ‘care’ or home ‘support’? Better Caring changes its name to Mable The Weekly Source 13 Sept 2018 <https://bit.ly/3gFoeMq>

Soon after, in his January 2019 statement to the Royal Commission,¹⁰² the CEO of COTA praised Mable as an innovative model saying *“We were pleased to support the introduction of Mabel (formerly known as Better Caring) into the marketplace about five years ago as one such early example of improving a consumer’s choice and control”*. We think COTA already had an investment in Mable but it was not disclosed.

In May 2019 Ellerston invested another \$10 million and he was joined by another prominent businessman¹⁰³ Jamie Odell, previously CEO of poker machine company Aristocrat Leisure. By now, the company was *“clearly a for-profit and for-purpose organization”*. Its focus was on money and it stepped up *“marketing and brand building”*. The character of the business was changing as it became more commercial.

At an early 2020 conference where the failures of Consumer Directed Care (CDC) were explored, it was noted that *“the control held by the consumer was nothing but an illusion”*. It was revealed that Mable claims to have 5,600 support workers to choose from¹⁰⁴. Currently, providers take up to 35% of the package in fees or in some cases more.

Mable takes only 5% from the fee negotiated by families, and 10% from providers. Not only was it cheaper, but the relationships with the support worker were more personal.

With the panic around coronavirus, job losses, working from home and isolating, many gave up on their home care¹⁰⁵. Mable would have had staff to spare. They became involved with government. Mable had targeted support services in the community as well as care staff. Many may not have had the skills needed to cope with something like coronavirus.

The government contracted it *“for a ‘surge workforce’ in nursing homes affected by Covid-19 infections”*. Rick Morton at The Saturday Paper took a close look at that¹⁰⁶. He argued that Mable was simply an Uber like entity that connected citizens and providers with workers. It had multiple disclaimers including that it had *“no ‘duty of care’ for the quality of its workforce or liability for the care provided”*, that they *“are not legally affiliated with Mable”* and that it has no control over or responsibility for them. Mable staff worked alongside the staff from Aspen Medical at Newmarch.

The government would pay for this, but it did not appear that they *“would subsidise workers who were not employed through the app”*. The contract *“is not subject to ordinary value-for-money checks, nor ‘accountability and transparency’ provisions”* and *“cannot be judicially reviewed”*. Morton revealed that an opening ceremony in 2017 had been attended by Aged Care Minister Ken Wyatt and COTA’s CEO Ian Yates. COTA was a shareholder in Mable. This was a 2 per cent granted in lieu of consultancy fees – so clearly COTA was involved as a consultant.

Morton went on to criticise the marketisation of aged care in 1997 and supported this by quoting the Royal Commission’s first report ‘Neglect’ including that it is a *“myth that aged care is an effective consumer-driven market”*.

¹⁰² Statement of Ian Garth Yates AM Hearing Royal Commission 31 January 2019 <https://bit.ly/2zGASue>

¹⁰³ Ex-Aristocrat CEO Jamie Odell bets on Mable Australian Financial Review 22 March 2016 <https://bit.ly/2MhN4Ed>

¹⁰⁴ How aged care agencies are failing our elderly Medical Republic 11 March 2020 <https://bit.ly/3cn3qpC>

¹⁰⁵ Home Care Clients Cancel Vital Services Amid Concerns About COVID HelloCare 1 April 2020 <https://bit.ly/3eCT0Ut>

¹⁰⁶ Exclusive: Gov’s \$5.8m aged-care app offers ‘no duty of care’ The Saturday Paper 23 May 2020 <https://bit.ly/36Km6Pb>

Independent journalist Michael West was also very critical¹⁰⁷ of *“the rise in untendered contracts. The numbers in Defence are enormous but it goes on elsewhere, with little scrutiny”*. He went on to criticise the contract with Mable, whose owners included the founding bankers, the Packer’s Ellerston Capital and News Corp’s Mediafund - the Murdoch family. Then there were rich-listers Tony Wales of Computershare, Alison Ferletto and investment banker husband Roger Feletto and of course COTA. These were the very rich in Australia seizing any opportunity they see. They are not charitable investors.

¹⁰⁷ News Corp and Packer aged care “win” is tip of corporate welfare iceberg Michael West 26 May 2020 <https://bit.ly/3dmlmIK>