Comment on the 2011 Productivity Commission Draft, 'Caring for Older Australians'

Foundation for Effective Markets and Governance

The Foundation for Effective Markets and Governance (FEMAG) was intending to provide a longer submission. Unfortunately, Valerie and John Braithwaite, who were to draft this have been ill. So this brief comment is provided in the hope that Professor Valerie Braithwaite may be able to meet with the Commission to discuss it at your 5 April Canberra hearing.

We wish to restrict our comments to the aspects of the report that relate to the regulation of the quality of care. However, we make the general comment that the report puts more faith in the potential efficacy of markets for residential aged care than is justified. There is a need to grapple with the structural reality that when a person moves from home to residential care, they move from a world of competitive markets to one of endemic monopoly that cannot be dissolved. We spend all our lives choosing which hairdresser will cut our hair; when we go into residential care we must have our hair cut by the one hairdresser the facility arranges to visit. Worse, all the things that are most important to us are bundled into the hands of one provider – food, accommodation, daily health and hygiene, recreational activities. We pay fees to eat at the same restaurant three meals a day, seven days a week until we die.

It is wrong to think that while extreme bundling is inevitable, at least people can choose to move to a provider who offers a better bundle when quality deteriorates. The evidence is clear that moving from one aged care facility to another increases risks of death and other poor health outcomes. It is rational for consumers to lump it rather than move. Unfortunately we also know that quality of care changes greatly over time, especially if highly competent managers of a facility resign and are replaced by incompetent care managers. So consumers who make good choices at the point of entry are frequently stuck with poor outcomes. We do not deny that competition policy has an important role at the margins. Some kinds of bundling, such as the requirement at our mother's nursing home that Telstra is the monopoly telecoms provider, are avoidable. But for the most part professional standards and quality of care regulation drive quality everywhere in the world, not competition. This would continue to be the case even in a radically different world in which nursing homes had 80-90 per cent bed occupancy rather than 100 per cent.

In light of this centrality of quality of care regulation to outcomes, we are shocked that the report has not identified any areas that are under-regulated in Australia. Rather, the Australian industry and its regulators are portrayed as smug that all is well:

> The Commission (PC 2009a) noted that there does not seem to be a widespread problem of sub-standard care in the aged care industry. Indeed, in 2008 and 2009, 98.4 and 97.6 per cent of providers respectively, were compliant with accreditation standards (p. 124).

It is true that for many years compliance with most accreditation standards has been at around 98 per cent. We would not want our children to attend a school or a university that has average marks of 98 per cent. We would take that as evidence that it is marking too easily. We would especially worry that the best students will not be stretched in a world where all scores are in the high 90s. And at the bottom end we would worry whether there are students who are innumerate or illiterate who nevertheless get marks in the 90s.

Our experience of observing the issuance of 98 per cent compliance outcomes in Australia is that high scores should be interpreted as evidence of 'soft' accreditation assessment rather than of high standards. The other problem with ridiculously high scores is that they make the transparency reforms of a decade ago meaningless. Going to the website to inform a choice of nursing home is a meaningless activity because the website almost always tells you that everything is wonderful in every respect at every nursing home in your locality!

Soft performance evaluation is an old problem in Australia to which we have become inured. Twenty years ago we expressed concern to the Australian government at near 100 per cent assessed compliance with the old pain management standard when in fact pain management in Australian nursing homes was poor by international standards. Few things are as important to the elderly as the management of their pain; we owe them high standards in relation to it, not smugness based on statistical rituals of comfort.

We undertook searching empirical work on Australian and international nursing home standards in the 1980s and 90s and much more limited work in the early 2000s. So we regret that we are unable to provide contemporary data on where Australian standards are falling behind international benchmarks. We would say, however, that there are some obvious areas where standards are lower than other developed economies. Medication errors are shockingly common in nursing homes. Simple errors of giving Mrs Green the brown pill and Mrs Brown the green pill, when it should be the other way round, cause deaths. In the United States, we have good data on how often. In Australia we do not. Decades ago the United States had a transparent debate that led to the controversial conclusion that a 5 per cent error rate was acceptable to meet their nursing home standards. While citizens were shocked that their government could find a 5 per cent medication error rate acceptable, it at least was a transparent debate that put the magnitude of the problem and the costs of regulating it into the public arena. Americans can go to a web-site to look up the independently assessed 'Med-pass error rate' for any nursing home where they are considering the purchase of a bed. Having government inspectors annually calculate a 'Med-pass error rate' is not something we necessarily advocate. It would have costs for Australia that could approach the cost of our entire existing accreditation system. We would see it as a higher priority to move Australian standards up toward US standards on care planning. These standards require regular care planning meetings of all staff involved in the care of a nursing home resident that require discussion of certain topics and appropriate written revisions to care plans and the issuance of written invitations to residents and relatives to attend in advance of the scheduled time of the meeting. In the United States care planning standards tend to be higher in nursing homes than in hospitals because of the philosophy that planning is more important with long-term

care. In Australia, the reverse tends to be true – care planning is more rigorous in our hospitals than our nursing homes.

Even on care planning, we are insufficiently in touch with contemporary international practice to know where care standards are behind those in North America and Europe, and where they are ahead. We do not doubt Australia is ahead in some respects. Our comments are directed at the inward-looking methodology of the Commission's report which assumes Australia has high standards because we give ourselves high accreditation marks - without examining standard by standard where other countries expect more of residential aged care providers. Until a report like this has a hard look at what Australia does standard by standard and compares it to what comparable countries do, it seems reckless to recommend 'reducing the extent of regulation'. The Australian community should expect the Commission to be evidence-based in advancing such a policy position. It does not expect the Productivity Commission to be blind ideologues on questions of deregulation. We admire the Productivity Commission as an organization because it has such an evidence-based philosophy. And we admire the individual Commissioners we know who are guiding this report for the same reason. We have no doubt that in this Aged Care report the ambition of the Commission is to be evidence-based. Nevertheless we see this as a Draft where we are falling victim to our own national statistical propaganda about how good we are. We therefore submit the Commission needs to take some time to check out what other countries are actually doing on aged care regulation and what evidence there is that this is working.

Finally, we would be pleased to discuss your endorsement of 'responsive regulation'. There are some strong tensions in an approach that on the one hand emphasises 'responsive regulation' and on the other hand emphasises 'consistency and proportionality' (p. 412). Responsive regulation can require a disproportionately tough response like removing the management of a nursing home when this can save lives. It can require a disproportionately and inconsistently lenient approach when big mistakes have been made but management is doing a great job of learning from its mistakes to improve quality of care into the future.