

# Submission to Aged Care Amendment (Implementing Care Reform) Bill 2022 [Provisions]

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[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/AgedcareReform](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AgedcareReform)

Aged Care Crisis Inc.

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# 1 Summary

**Introduction:** We introduce our submission by giving a brief historical outline of how the situation developed. We focus on the evidence that was ignored, on the multiple investigations and reforms and the behaviour of those involved. They believed deeply, in the face of the obvious, that the reforms introduced in 1997 had given us a world class system when, as the Royal Commission revealed we had a deeply flawed one that we should have been ashamed of. The introduction exposes the issues that reveal why the system has failed, and explain why this has gone on so long. This has happened before and been closely studied.

The Royal Commission examined and reformed this market by focusing on the visible failures but not the structural dynamics and the unbalanced forces behind them. We were critical of this at the time and said so. We welcomed the recommendations, which would improve the situation but have stressed that they did not address the structural and lack of balance issues.

The previous government accepted most of the recommendations but has been tardy in implementing them. The new government has promised much and moved rapidly but shows no sign of acknowledging the deeper issues or addressing them.

## 1.1 The (Implementing Care Reform Bill) 2022

### (1) Nursing:

We welcome the new requirement for registered nurses which is long overdue. We explain the difficulties that will have to be overcome in implementing this and other essential staffing reforms because of the long delay and the current crisis in our society.

### (2) Capping home care charges and abolishing exit fees:

These prevent market excesses and remove the barrier that discourages those getting poor care from moving to another provider. We welcome and support them, but they simply treat the symptoms without addressing the causes.

**Government and policy:** We have become very concerned about the lack of innovation and the way the new government's aged care policy is closely following its predecessor. To illustrate this, we look at what has been happening in home care by examining the shift from HACC to CHSP, to Packages and Consumer Directed Care (CDC) funding. We examine the difficulties created as each step has moved from successful block funding to greater marketisation and more problems. This has created large problems for local governments providing services which have increasingly been encouraged to hand it to the market.

The previous government very recently took another step to marketise by abandoning CHSP bulk billing altogether. Local communities gave up in despair and started vacating the sector and working with government to replace them by private providers. We describe the problems and the crisis in Victoria that resulted.

Government must have known this and what the consequences were going to be. They did nothing to oppose or stop it. To explain this, we briefly examine the factionalism of both parties, the influence of corporate donors and the power of the market who have 'captured' the political agenda.

We look at how this played out when Labor was last in power and ‘reformed’ aged care the way the market wanted. Nothing has been done about factionalism, donors or capture since then and the same factional individuals are now managing this new reform. We are concerned that the aged care reform agenda has been captured again.

### **(C) Transparency of information:**

As we see it, these clauses do not actually make any major legal changes and simply encourage the Minister to require more transparent data collection and publication. We look at the pressures that might undermine the intention, the complexity and the large costs. There are much better ways of addressing these problems and making the sector accountable to those they serve.

### **Much more is needed and we need to understand why**

We explain that regulation alone does not change what is happening on the ground when it does not address what is happening there. We then explain that aged care is a part of society and interacts with it and other systems. It is not an island.

We look at the numerous failures in our society, the way society has fractured and lost its way, the way we have responded and the sort of leaders we have elected. We argue that western democracies have been weakened and totalitarian states are seizing the opportunity. Aged care is only one of multiple failures in a failing society yet it is seldom examined in this way.

There is nothing unique or new in this. It has happened many times before. It has been extensively studied and interest has increased recently. Many are writing about it.

### **Studies that explain our failures and how to fix them**

We examine three strands of analysis that expose what has been happening and show what needs to be done.

1. The first is macro historical analyses across history showing the causative relationship between dominance of society, societal breakdown, exploitation of citizens, criminal behaviour and warfare. There has been a lot of interest in political and market dominance and capture.

These phenomena occur in cascades which are very persistent and are only reversed when society reforms, rebuilds and takes charge so creating a balance of power between society’s many parts that constrains and prevents dominance.

2. Those studying resilience have focussed more closely. They have examined our complex social systems and have explained how they function well, adapt quickly and are resilient to shocks when they are restrained by many different views and forces which contain pressures and keep the system in balance. But when one force becomes dominant the system is pushed out of balance and no longer works and this is very difficult to fix.

When the system fails, the dominant groups seize control, centralise it and take over management. It then goes through repeated cycles of failure when the same thing happens. It is only when citizens seize the opportunity, decentralise and involve all those involved or interested that a balanced system is restored. We show how this has been happening in aged care.

3. The final strand is a close look at our human nature and our society to see what makes us behave like this and why we ignore knowledge and logic to latch onto belief systems that are harmful and then make them dominant in society. We find that building a strong civil society that is involved and active resolves this and prevents us from doing it again.

**Our current ideology:** We explain how and why our current ideology developed in the first half of the twentieth century, how it ignored knowledge and logic. It also misunderstood the nature of man and society coming to see society and our humanity as a threat to individual freedom. It expressed its philosophy of freedom from societal accountability and control through markets.

We explain how it spread across western society and became dominant in the late 20<sup>th</sup> century. The ideology was adopted by markets and governments globally and became dominant. Its views about humanity and society led it to take control and neutralise society. We explain how the situation we described earlier developed.

### **Real reform and aged care:**

The insights from these analyses show that rebuilding civil society and involving it is essential if we are to confront dominance, restore balance and effectively address the crisis in our society and in aged care. Aged care is well placed to initiate this.

We set out some principles for doing this and explain how it could be done in aged care. We suggest recommendations which we would like the Senate Committee to make to government.

## 2 Introduction

Aged Care Crisis has examined the history of aged care and closely followed the deteriorating situation in aged care over the last 23 years.

**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 available<sup>1</sup>.

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.

Our analysis is informed by a long experience of and an interest in dysfunctional systems that harm citizens and sometimes whole societies. We have been particularly interested their impact in health and aged care. Our analyses is influenced by the social science that explains why and how these situations arise and endure for so long in spite of the harm done.

### 2.1 Background early history of aged care

Serious problems, particularly in for-profit providers, had been identified by reviews in aged care in the 1970s and early 1980s. Reviewers had advised greater regional involvement and greater direct community accountability.

The reform program commenced by the Hawke government in 1986 prevented profits from being taken from money allocated for staffing and care. A system of more effective close state oversight with regular visits was commenced. While this did not meet all of the regional and community recommendations, it resulted in considerable improvement.

These changes were very unpopular with large sections of the industry who saw these as restrictive. They strongly resisted them but their challenge in the courts was unsuccessful. The changes directly challenged the new economic thinking about free markets that had been adopted in the UK and the USA. They were being pressed for in Australia by the business sector, advocated for by the Productivity Commission and were soon adopted by politicians in both major political parties.

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<sup>1</sup> 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/>

The Keating government, elected in the early 1990s, did not support the new regulations and they languished. When his own economist (Professor Bob Gregory) warned of the adverse consequences for staffing and care of introducing the market changes he proposed, Keating sat on his hands. The industry turned to the opposition and supported them.

The new Howard government elected in 1996, worked with industry leaders to radically restructure aged care as a competitive market in 1997. Since then both political parties have supported this model and worked closely with industry. Contrary views have been ignored.

## 2.2 Recent history

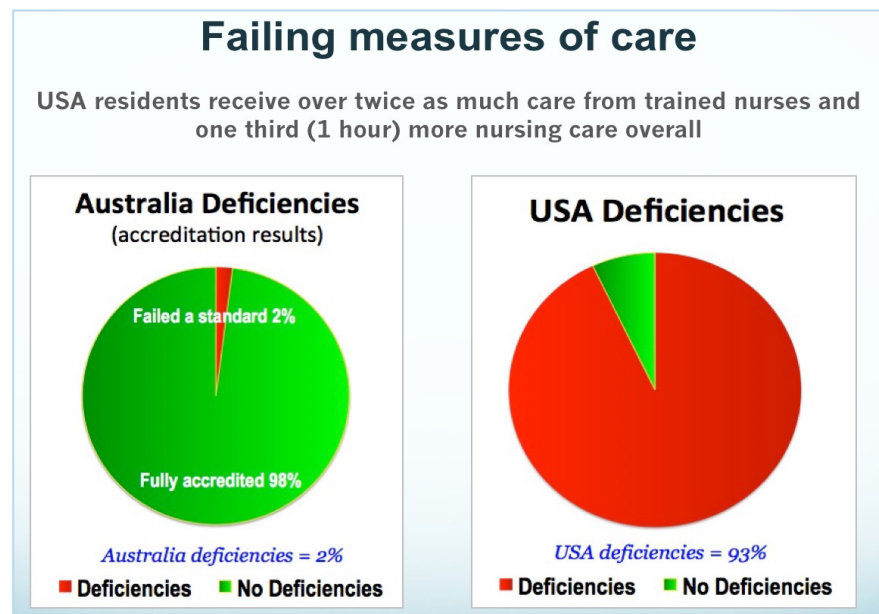
Gregory's warnings proved prophetic. The Riverside kerosene baths scandal in 2000 after only three years, was the first of many involving failures in care. Since then, there have been ongoing problems with recurrent scandals, followed by a multitude of reviews, inquiries and consultations. These were followed by reforms that claimed to have addressed the issues. None have worked. Staffing and care have deteriorated progressively. This has accelerated over the last 12 years as the focus on reforming the market led to more marketplace solutions that ignored past knowledge.

Aged care has not met anyone's expectations except the providers who entered the sector to make money and become wealthy.

In spite of this government ministers and industry have regularly boasted that Australia had a 'world class' system confirmed by a rigorous regulatory system, which showed that care was improving steadily.

### Failing measures of care:

By 2016, almost 98% of Residential Aged Care Facilities in Australia were getting perfect scores - something that should have been contrasted with the better staffed US system where only 7% got perfect scores and 20% had serious failures. This readily available information recorded over the years was not examined.



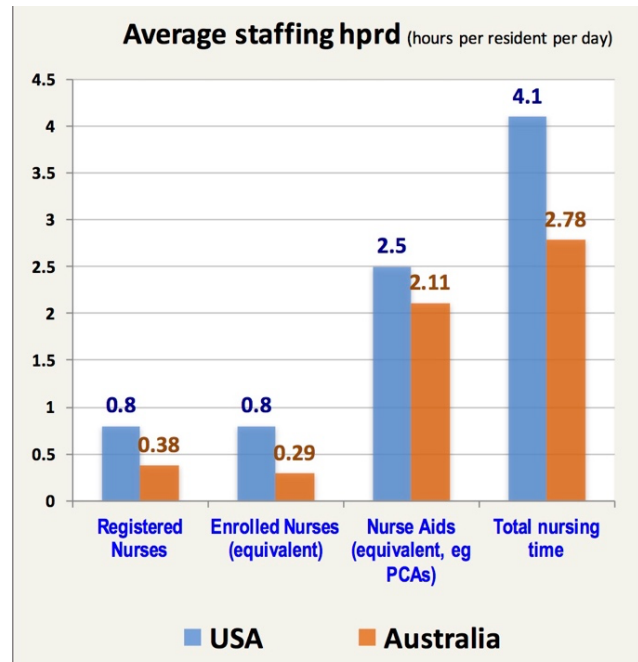


### Average staffing hprd (hours per resident per day):

This success in meeting all the standards set was achieved even though residents in US nursing homes received more than twice the amount of care time from trained nurses and a third more care time overall than Australian residents. Comparisons were never made.

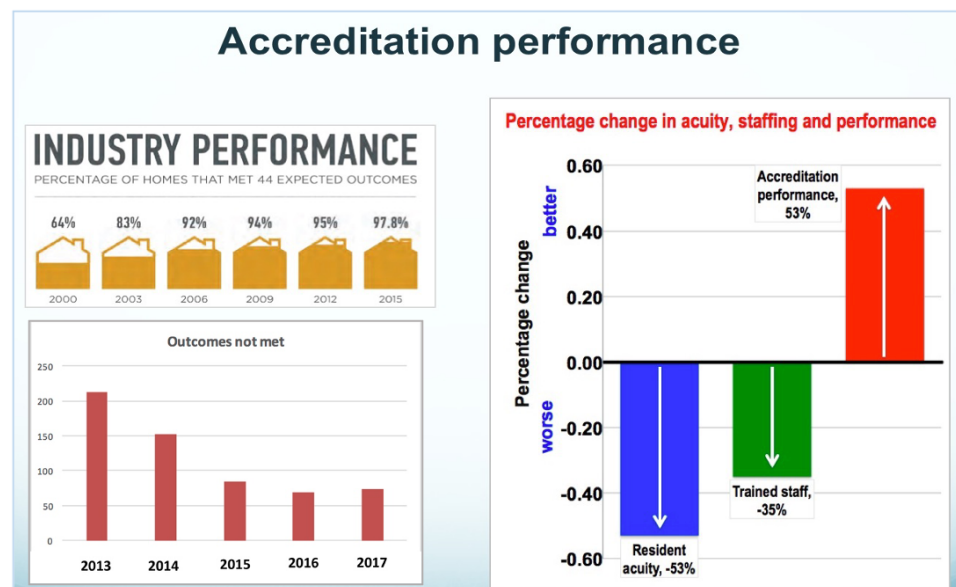
We are not suggesting that the US has a good or successful system. Its system has been flawed since the 1980s. It has had serious problems over the years. Their regulatory system has revealed them, and regulatory effort has contained them better than in Australia but the system remains suboptimal.

The argument is that systems that depend on regulation are dysfunctional and need restructuring if they are to work well.



### Accreditation performance:

Even more remarkably, this success rate in Australia was achieved as the percentage of sicker and frailer residents (revealed by the number of high care residents) increased by over 50% and the percentage of trained nurses needed to care for them fell by 35%.



During this period there were multiple 'reforms' instituted by the 'industry' and government working together. Each, like that in 2012, and those in 2014 and 2015, were promoted to the public in glowing terms, once again reaffirming that the system was world class. Yet each was followed by further deterioration and more scandals.

The data above has been supplied to government and other reviews on several occasions since 2016. It has largely been ignored. The more the situation deteriorated, the more ineffective centrally controlled regulatory reforms were introduced. The claims to excellence became more strident.

During this period citizens, staff and academics, who spoke out about what was happening were ridiculed and their credibility destroyed. Advocacy groups that spoke out and blamed the radical changes that were made in 1997 for the problems were marginalised and ignored. Those who embraced the beliefs that gave these changes legitimacy, were welcomed and listened to. Logic, evidence, as well as the insights from social scientists over the last 200 years were ignored.

There was extensive adverse publicity surrounding the long standing serious failures in care and the abuse of residents that was revealed by state regulators at Oakden at the end of 2016. The facility had been regularly visited and received full marks by federal aged care regulators over the previous ten years. A new round of government and senate reviews, regulatory reforms and exaggerated claims followed.

## **2.3 Understanding what has been happening**

Aged Care Crisis has explored the social science that explains why, after so many investigations, reviews, consultations and 'reforms' during this period, the system continued to deteriorate and why citizens accepted the explanations.

The social science also explains why genuine people who believe deeply in what they are doing, ignore knowledge, evidence and logic then attack their critics, in order to maintain their belief.

But, responding by blaming those responsible, as too often happens in our society, does not address these problems. While they must be exposed there are better ways of addressing them.

## **2.4 The Royal Commission**

After 2016, the claims to reform and world class care soon lost their credibility. The number of family members, staff and university investigators willing to speak out increased. Many more failures were reported in the press.

When a two-part exposure of aged care was announced by ABC television's Four Corners program in late October 2018, the Prime Minister announced a Royal Commission to investigate aged care.

The Royal Commission listened to families, staff and communities. It examined what was happening in the facilities. Its Interim Report titled 'Neglect' delivered in October 2019 confirmed what should have been obvious. There was widespread neglect and abuse was common. It was a system that Australia should be ashamed of and it was certainly not world class. They promised to address the issues.

The failures in the aged system and its inability to cope with additional stresses and strains were dramatically confirmed by the failures in the system during the COVID pandemic. COVID took a huge toll of the elderly residents. The Royal Commission's proceedings were delayed.

As in the many previous investigations, when examining and addressing the failures, the Royal Commission consulted widely with industry, marketplace advisors, economists and senior members of government bodies - the same people who created and managed the failed system.

We were worried that the small number in the industry who had been strong critics of the system were not engaged in reforming it. Communities, civil society groups and critical advocacy groups had very little input.



The Royal Commission's contracted investigations confirmed the serious problems in staffing, in basic medical and social care as well as the serious problems in funding that had developed. The failures in governance and regulatory oversight were revealed. In their final report the two Commissioners made 148 recommendations to address these issues and government accepted the majority of them.

At Aged Care Crisis we welcome the recommendations made. If they are successfully implemented, they will improve the situation. Addressing them urgently is an important first step but they do not solve the real problems.

## **2.5 Our concerns regarding the Royal Commission**

We do have serious concerns and worry that, even though its recommendations go much further than the many previous inquiries, the Royal Commission has made some of the same mistakes.

The failures in care, staffing and regulation are symptoms of an unbalanced system that is failing because of fundamental flaws in its structure. If only the symptoms are addressed there will be good palliation but the problems are likely to persist and create more problems in the future.

The Royal Commission has addressed this as a failed market. It has not examined it as a failed community service, which would require additional remedies. This focus only on the 'market' and not on the 'humanitarian service' has resulted in an unbalanced social system and service.

The cultural conflicts between markets and community/professional services will remain. This will impact negatively on working conditions. The strong perverse financial pressures in the competitive marketplace responsible for the staffing and regulatory problems will not be effectively balanced by counter pressures from the society served. More is required and this will become more difficult the longer it is delayed.

In their submissions Aged Care Crisis drew the Commissions attention to these issues and complained to them about their failure to address them. We were disappointed that they were not addressed.

### **Progress of reform to date (August 2022)**

Government has been tardy in addressing the serious problems identified in October 2019 as well as in implementing the recommendations made in the March 2021 final report. It is clear that many in the government as well as industry struggled to accept the confronting findings of the Royal Commission and the urgency of reform.

Almost three years after the interim report revealed extensive neglect requiring urgent attention and almost 18 months after the final report, very little has been done on the ground to address the problems and progress the recommendations. The situation in the sector has continued to deteriorate and this has been compounded by the impact of the ongoing COVID pandemic on staffing and, by the wider local and global factors that are putting pressure on the economy. Large companies are the biggest problem<sup>2</sup>.

The staffing resources and funding required to implement the recommendations and address the failures in the system will have to compete with the demands of other stressed sectors and citizens who also need and deserve support.

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<sup>2</sup> For example 'Bupa's Waratah facility has funding frozen after Aged Care Quality and Safety Commission report. The Age 11 Sept 2022 <https://www.abc.net.au/news/2022-08-11/bupa-waratah-facility-funding-freeze-after-aged-care-audit/101319596>

### **3 The Aged Care Amendment (Implementing Care Reform) Bill 2022**

Government has set out an administrative path to meet the Royal Commission's recommendations. The first bill was passed by the previous government in July 2021 and the second already finalised Bill by the new government in July 2022. This is the third Bill and it addresses election promises.

We support the intent of the legislation as one of the steps necessary if we are to improve the provision of aged care. We do have some reservations about this and also about the path that the Royal Commission recommended and this government is following. We think more will be required and that should be sooner rather than later.

#### **(1) Requiring a registered nurse on duty at all times:**

As explained and as Gregory predicted in 1993, the staffing problem we have was an inevitable consequence of the policies introduced in 1997 and energetically pursued by both major parties ever since.

Governments since 1997 have focused on preventing the excesses of the 1970s and containing the cost blowout as the approaching aged care bulge increased demand. They did so by limiting funding, marketising the system, abolishing the restrictions protecting funding for staff from profit taking and abolishing the probity requirements that vetted new providers to be sure they were trustworthy. Instead, they encouraged all comers with the promise of profits if they successfully contained costs. The government assisted and encouraged cost cutting.

By far the largest cost was staffing. The new policies marginalised the community and marketed at them so they did not know what was happening. When the nursing unions resisted staff reductions, they were effectively neutralised by introducing 'WorkChoices' legislation.

As the Hawke government realised in the 1980s, it is essential to protect staffing and care from profit taking in the marketplace. Minimum staffing skills and levels are essential.

For over two decades, government and industry have refused to accept the importance of skilled registered nurses and staffing levels. This persisted in the face of solid international evidence, elementary logic and failing care. This was essential legislation but it has been deliberately rejected by market and government who voted down proposals by independents.

This legislation and the recommended imposition of compulsory minimum staffing ratios and levels are essential first steps and must not be delayed. Many US states have had minimum levels and have performed better than others. The damage done by neglecting this for so long is immense. It is going to be very difficult to recover the situation and will cost much more now. It is going to be a struggle to find sufficient motivated and trained staff willing to enter the sector which now has a very poor reputation.

In addition, enforcement will struggle with the legacy of the deeply entrenched beliefs and the appealing rationalisations that were used to justify repeatedly rejecting staffing ratios. Providers will try to game the system to keep costs down by seeking exemptions to staffing requirements.

The best way to prevent this is by insisting that providers engage constructively with local government and local communities to help in finding staff. Exemptions should only be granted when they can show that even their communities cannot find anyone suitable. The exemptions should be withdrawn as soon as they do.

We make the following comments about issues that will need to be confronted:

- a. The 'wilful blindness' and 'strategic ignorance', described in the introduction, is an important symptom of dysfunctional systems based on illusionary beliefs (ideology). If this legislation is effective, it will certainly improve care, but it is unlikely to discredit an entrenched belief system and replace it with balance and insight. By itself it will not make the system function well and more direct action will be needed.
- b. By itself this measure will not make the sector attractive to staff and they will not be motivated to adopt it as a career when so many other options are available. The cultures of the dominant market are incompatible with that of caring professionals and communities. The latter are not empowered by this change and the system remains unbalanced.

The paradigm and cultural conflicts created lead to unhappy staff, role conflict and often toxic cultures. Staff lose motivation and neglect residents. They sometimes take their frustrations out on residents. Disillusioned staff have been moving elsewhere for years. A balanced system in which caring values are backed by real community power is required.

- c. We are in the midst of a national nursing staff shortage and a financial crisis. Attracting the required staff to an unpopular sector will require both changed working conditions and a large increase in remuneration. A lack of sincerity about staffing and an ongoing deep obsession with markets and market mechanisms is revealed in the disastrous situation created in home care by the latest marketplace reforms we discuss in the next section.
- d. The government is planning to address the staffing problem by encouraging immigration and visa holders to work here. There are negatives and pluses to this.
  - i. Immigrants, particularly visa holders of all sorts, have been extensively misused, exploited and underpaid in Australia. Attempts to prevent this have failed. Aged care is vulnerable. Reports suggest that because of the savings possible in using non-union visa holders who dare not complain when short changed, some aged care providers have been employing them in preference to trained Australians<sup>3</sup>. This is not conducive to a caring workplace.
  - ii. Language and cultural differences can be a problem in dealing with the elderly. These can impair the caring relationships on which good aged care depends.
  - iii. Many immigrants and visa holders are simply looking for employment so are not motivated to be carers. Most become personal carers and not RNs and trained enrolled nurses (ENs). The RN's and EN's so badly needed to monitor the sick and frail and supervise personal carers, are in short supply and many failures are a result of this.
  - iv. On a more positive note, some cultures have extended families and value the elderly more highly. They care more and are less ageist. Western countries like Australia have adopted neoliberal and libertarian ideas that disparage community and deny it power and influence. Civil society has been eroded and fragmented. Citizens from countries where civil society has not been disrupted in this way are likely to be more socially responsible and caring.

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<sup>3</sup> Opal aged care introduces roster overhaul, job cuts and 457 nurses ABC News 24 June 2015 <https://ab.co/3LoPMVB>  
Nurse graduates 'locked out' of workforce as migrants get jobs Bendigo Advertiser 8 June 2015 <https://bit.ly/3ETfpeu>

## (2) Capping home care charges and abolishing exit charges

The older block funded HACC (Home and Community Care) and CHSP (Commonwealth Home Support Programme) engaged well with community, who often provided the care, and this worked well. The newer Home Care Packages are individually funded and there are four levels. They are means tested so that users contribute. Providers are forced to compete putting more perverse pressures on the system. It has been more problematic and the problems have been compounded by the introduction of 'Consumer Directed Care' where the funding is allocated to the carer. It gives them more control and some welcome it and feel empowered.

In practice, more of these services are provided by for-profit providers and both require more management which is taken from care. The vulnerabilities in the system have been exploited to increase profitability, sometimes consuming a significant percentage of the funds. Exit fees have discouraged families from changing providers and prevented the market from working properly.

The legislation to cap prices to control abuse is welcome and we support it. Abolishing exit fees is long overdue and it will make the market work better. But as in residential care, this is controlling the excesses of the system rather than fixing the problems.

## Concern about the new government's home care policy

The crisis developing in home care in Victoria has fuelled our concern that in spite of all the rhetoric, it appears that Labor has no intention of really addressing the deep problems created by current policies.

**Background:** The move from the very successful HACC followed by the CHSP funding and then to packages and Consumer Directed Care (CDC) has been part of an ongoing policy of centralised control and marketisation. Governments have been wanting to move away from the popular and successful bulk funded and community HACC and CHSP systems which did not comply with their competitive market based policies. They wanted to move to the Aged Care Packages and Consumer Directed Care (CDC) funding system which complied.

In Victoria as in Queensland, the state and local governments have continued to operate aged care services. They have had minimum staffing ratios and are well staffed by motivated nurses who are paid better. The better standards of care provided in their nursing home was reflected in the very low COVID infection rate and especially deaths which were rare in government funded homes, when compared with the private sector and even the NFP's.

Local governments have traditionally worked very successfully with the disabled and aged citizens in their communities advising, supporting and providing services but this had been changing.

Clare Hargreaves representing the Municipal Association of Victoria made a submission and gave evidence to the Royal Commission. In evidence she described how their *"services have been provided since post-World War II and since 1985 in a very secure and stable arrangement between the Commonwealth, state and local government in what was previously called the HACC program"*. She described how with the *"change to the Commonwealth Home Support Program, the change in arrangements where the Commonwealth have assumed responsibility have caused significant disruption to the previous very successful arrangements"*.

She also indicated that this has *"greatly impacted on council's ability to plan going forward"* and *"it has caused great disruption to the service"*. She also spoke of the stability and superiority of block funding. She indicated that while there were some differences, the approach of the national Australian Local Government Association (ALGA) was similar.

**The crisis in Victoria:** The state had a Labor government and the federal Labor party must have known what was being planned. Details describing the likely consequences were published in the press in April before the election.

The local councils wanted to continue providing services. They had to give the Commonwealth notice. They would have waited if they thought that Labor would not go ahead with this. They clearly knew the policy was not going to change and by May 2022, some were already vacating the sector. The changes would turn this into a competitive market and local councils have been doing their maths and looking at the consequences.

An analysis was published<sup>4</sup> on 15 April 2022. This confirmed that the *“long-term partnership with the Federal government has been undermined by the process of reform”* and that this is part of the ongoing *“efficiency push”*. Local government is being pushed out of aged care as the CHSP and Home Care packages are *“rolled into one”*.

While not confirmed, it seemed *“that funding will be largely consumer-directed and based on regulated market competition.”* Many councils had decided *“that there is no place for them in the new structure”* as the system was not viable.

Local councils paid staff above the award. They received \$6 to \$10 more per hour compared with rock bottom in the market. The working conditions were much better as was continuity of care as the turnover of staff was low.

This superior care was because federal funding was poor and the state government subsidised care with another \$150-200 million per year. Legal opinion was that this could become subject to *“competitive neutrality policy”*. Only some council services are exempt and this would likely be considered anti-competitive and could not continue.

Twenty three local councils have already withdrawn and their staff are being made redundant. Eighty percent are predicted to do so. Press reports describe what happened<sup>5</sup> The private providers could not find the staff. For example, in Boroondara, the federal government appointed Mecwacare. It took over on 1 August 2022 and in *“a letter sent to hundreds of elderly residents - - Mecwacare informed them that care services would not be available for ‘some weeks’ due to staff shortages”*. It had *“never disclosed any concern regarding staffing shortages”*.

On Mornington Peninsula where *“2,063 residents were transferred to Mecwacare and 1,554 to Bolton Clarke”*, more than a thousand elderly were left without care. The council had offered to *“keep some staff on to help with the transition, but that offer was turned down”*.

Many council staff decided not to seek employment with the new providers *“due to the lower wages, reduced training and support, and less time with clients”*. They found other jobs.

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<sup>4</sup> Local governments are being pushed out of aged care. But at what cost? Eureka Street 15 Apr 2022  
<https://www.eurekastreet.com.au/article/local-governments-are-being-pushed-out-of-aged-care-but-at-what-cost>

<sup>5</sup> Elderly residents abandoned by private aged care provider after council exit The Age 6 Aug, 2022 <https://bit.ly/3Qw8E70>

Aged care services on Mornington Peninsula: Elderly residents left without care. New home care providers appointed, The Age, 9 Aug 2022  
<https://bit.ly/3JO5IAp>

Big contracts, little staff amid ‘Uberisation’ of in-home aged care in Victoria The Age 9 Aug 2022 <https://bit.ly/3JO5VUd>

More councils to ditch in-home help, sparking fears aged care will ‘implode’ The Age 11 Aug 2022

<https://www.theage.com.au/national/victoria/more-councils-to-ditch-in-home-help-sparking-fears-aged-care-will-implode-20220811-p5b8yc.html>



**Our concerns that Labor's hands are tied:** We know that there are deep factional divisions in both major parties. They both have powerful but less popular factions supporting neoliberal market policies. We saw the way the tail wagged the dog when more popular moderate Turnbull replaced the unpopular Abbott. When Turnbull tried to resist their pressure, they replaced him with Morrison and we know the consequences.

On the Labor side, Rudd published a savage attack on Neoliberalism in 2009 and he was deposed soon after by Gillard. The Minister for Aged Care in her government worked closely with the market in designing the unfortunate 2012 Living Longer Living Better (LLLBB) reforms<sup>6</sup>. These went further than Howard and gave industry everything it wanted sending the sector on a downward spiral.

We were very critical of this at the time and warned him. Our analysis suggested to us that Labor was a prisoner of its large corporate donors including those in aged care and this was behind Rudd's departure and the aged care 'reforms'.

More recently Rudd's Treasurer, Wayne Swann, now Labor's president, published another attack on Neoliberalism on Labor's web site. Clearly some were not happy with this. Soon after Labor announced a new Shadow Ministry and the Minister responsible for aged care in 2012 was made Shadow Minister.

We thought that the same thing was happening again in 2021 and published an article on our web site<sup>7</sup>, describing what happened between 2010 and 2013. We examined the hold that large donors still had on the party suspecting that this was happening again. That Shadow Minister is now the Minister.

We know that in the past Albanese was not a fan of neoliberal policies. During the Howard government era he spoke very critically. We worry that the party is paralysed by factional rivalries and a prisoner of its donors. Progress and real reform will stagnate again.

The new government will simply follow the program laid out by Morrison and the recommendations of the Royal Commissioners he had carefully selected. The Royal Commission did not address issues or debate structural reforms that challenged neoliberal programs. We hope that we are proven wrong.

### **(3) Amendments relating to transparency of information**

We agree with the Royal Commission's finding of a lack of transparency and accountability. The critical question to ask is 'transparency and accountability to who'?

The intention as expressed in the Explanatory Memorandum is welcomed but its implementation seems to be problematic. The explanation given is complex and there are multiple references to other older regulations and codes to which it will conform.

What seems clear is that there will be no new regulatory powers but that the Minister will be encouraged to instruct the regulators to obtain far more data and make that available to the public with the intention of giving them more choice.

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<sup>6</sup> Aged care policies adopted by Labor 2011-13: <https://bit.ly/3QB00nT>

<sup>7</sup> Why the appointment of Mark Butler as Shadow Minister for Health and Ageing is significant. Aged Care Crisis February 2021 <https://www.agedcarecrisis.com/opinion/articles/453-why-appt-of-mark-butler-is-significant>



The information will be provided on the MyAgedCare system, an unfriendly system that is already complex and difficult for older people to use. Simply putting more information 'out there' may help researchers as it has in the USA but it is not a realistic solution in this sector. Even in the USA where this is done quite well, most people rely more on word of mouth. Only a small percentage use this data to make decisions.

**Likely consequences:** Failures in care impact on the credibility of the government of the day and its election prospects. The industry's credibility and viability is threatened by exposure. Since the advent of mass media, electoral success has depending on marketing skills and the money for that comes from donors.

Many of these donors are providers of services to government or regulated by government. No major political party can afford to cross its donors. Many have examined this. They explain the way government and government regulation has been captured by industry. Industry and government have been looking after each other since 1997.

If we examine what has happened over the last 20 years, it is clear that both industry and government have connived in keeping unwelcome evidence from the public. This is more obvious in aged care than anywhere else. The Albanese government might try to change this but the electoral costs will be large and subsequent governments will revert to business as usual when dealing with donors.

The complexity of what is proposed is described in the last section of the memorandum as is the large additional regulatory burden and the \$131 million regulatory annual cost.

There are much better ways of ensuring transparency and accountability and assisting potential residents and their families. This transparency and accountability should be to the communities served.

The two Royal Commissioners disagreed strongly. Commissioner Pagone attempted to make aged care more independent of government and manage it regionally so moving in this direction. He advised restructuring the system. Transparency and Accountability would have been more local and more relevant, but he needed to go further. Donors would not have welcomed this and it challenged belief. Predictably the government did not consider this.

This was strongly opposed by Commissioner Briggs who preferred to 'renovate' the existing system. She resisted any structural change.

Over the last two decades vast sums have been spent on inquiries, reviews and consultations with marketplace advisors and economists. These have been ineffective and that money would have made a huge difference if it had gone to staffing. When we see how little fundamental change has resulted from this Royal Commission, we feel that the same criticism can be made.

## 4 Much more is needed and we need to understand why

We are not going to resolve the problems unless we stop behaving like ostriches and take our heads out of the sand, confront what is happening and understand why it is happening.

### 4.1 Regulatory failure

Aspirational legislation enshrining human rights and changing regulation are needed but by themselves they do not change the way people on the ground think and behave. They do not address perverse pressures in the system. A system that depends on regulatory effort to keep it in check is a system that is not working.

If those on the ground do not identify with and embrace the changes, they are likely to look for weaknesses and loopholes they can exploit. An equilibrium develops as regulators deter the worst behaviour and those regulated develop work arounds. This is happening in the USA and is revealed when some go too far and are exposed<sup>8</sup>, often by whistleblowers and not regulators. It seems to be working but the system does not work well and tensions within it remain. The system fails to reach its potential, lacks resilience and is likely to fail again, particularly if regulatory capture has not been addressed.

Regulation is important but will only be a truly successful model if it changes the structure of the system and creates the balance of power needed to balance the forces that drive these complex social systems. This balance ensures that perverse forces and pressures are countered so that they are balanced making the system resilient and responsive to change and shocks (eg. COVID). Governments role is to create and then support and stand behind this.

### Not only an aged care problem

Aged care is only one social system among a web of inter-related social systems all situated within and interacting with a wider social system, society itself. Remarkably failures in each have been investigated by inquiries and commissions in isolation. Any suggestion that they should be examined in context, and the impact and influence of these wider influential systems on one another addressed is disregarded. As a consequence, factors that influence other or even all of them are ignored.

Aged care is only one of a multitude of failed social systems in the USA, the UK and Australia. Problems started in the latter part of the 20<sup>th</sup> century and progressively infecting more and more social systems.

**An era of failure:** Australian senators will remember the massive Alan Bond and Christopher Skase corporate frauds at the end of the 1980s followed by the HIH and One Tel collapses at the turn of the century. Cartels and price rigging developed and distorted the market in the trucking industry, in packaging and in cement businesses.

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<sup>8</sup> For Example: Five Individuals and Two Nursing Facilities Indicted on Charges of Conspiracy to Defraud the United States and Health Care Fraud. Press Release US Dept Justice 9 Aug 2022  
<https://www.justice.gov/usao-wdpa/pr/five-individuals-and-two-nursing-facilities-indicted-charges-conspiracy-defraud-united>

Similar problems were occurring in the USA and the UK. The response in all three countries was to develop a form of 'corporate governance' that encouraged and required companies to regulate themselves. In Australia this was strongly recommended by a Royal Commission in 2005. Future Aged Care Royal Commissioner, Lynelle Briggs played a key role in introducing this through the public service and became an authority. The Australian Stock Exchange promoted and spread it through the marketplace.

This seems to have had little impact. There were soon major problems<sup>9</sup> with the banks, financial advisers and other financial institutions in Australia and globally with more Royal Commissions. Human services particularly those contracted to the market, were soon exploiting the vulnerability of those whom they were charged to help.

It occurred in Job Services Australia, extensively in Vocational Training (the VET system) which trains carers and nurses for aged care, in aged care itself and in disability services where there has been another Royal Commission. Unlike the USA where massive frauds were perpetrated and patients were exploited and harmed to increase profits, doctors stood firm and maintained some balance. An uneasy equilibrium has existed, but there have been some problems with serious allegations of exploitation by health insurers. The health system has struggled and is currently stressed and in trouble. It is not working well.

In the general market, vulnerable employees have been extensively exploited, particularly in the franchising businesses commencing with the Seven Eleven scandal. Foreign workers, particularly Visa holders, are vulnerable and not protected by unions. They have been widely exploited wherever they have worked including on farms, in the food industry, in franchising and even aged care. There has been a senate inquiry but the problem continues.

Politicians have not been immune and we have seen massive scandals where they have exploited opportunities to make money or advance their personal interests. There are endless allegation of unacceptable influence and behaviour

We have seen the poor seeking loans targeted and scammed. Truck drivers have been exploited. More widely the balance of power between workers and employers has been broken by the WorkChoices legislation. Salaries have stagnated as the rich have become richer and the rest of society poorer. The social services they come to depend on are underfunded and unable to cope.

It is as if society has lost any sort of moral compass and those who dominate and control its structures are cannibalising citizens and society itself. It ignores and no longer accepts evidence even when this threatens humanity.

Civil society has broken up and citizens have lost trust in the structures of society. They have become stressed and atomised. Society is fractious and combative and not cooperative.

These stresses are greatest for the young entering the system. It should not surprise us that mental health and suicide have become a huge problem. The high suicide rate in veterans is not only in those who are traumatised in battle.

Those who study this situation describe it as the Post-truth era. Citizens who are searching for a compass will readily embrace any promise of a better future. They have elected charismatic but incompetent and not well balanced individuals to power. We have seen bizarre leaders like

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<sup>9</sup> Failed markets and culturography Inside Aged Care 2016  
<https://www.insideagedcare.com/aged-care-analysis/cultural-perspectives/failed-markets-and-culturography>  
Contracting government services to the market Inside Aged Care 2016  
<https://www.insideagedcare.com/aged-care-analysis/cultural-perspectives/contracting-government-services-to-the-market>

Donald Trump and Boris Johnson. Leadership in Australia has also been problematic with the same disregard for evidence and logic. Our democracy has been eroded.

**Logical conclusions:** There can be little dispute that western societies across the world are in crisis. The power of democracies lies in their citizens and the way they engage – the strength of their civil societies. These developments, the erosion of civil society and its values, and the actions of aberrant leaders have weakened democracies across the world.

Outsiders looking in understand what is happening. The totalitarian states whose territorial ambitions have been contained by the west can see it. They are flexing their muscles and behaving aggressively. Situations like this usually precede war.

Only the wilfully blind and deliberately ignorant could logically deny that there is likely to be a close causal relationship between all of these failures. As we approach the failures in aged care we should be looking for common causes.

We need to consider how these other sectors influence aged care and how that can be addressed. We should be looking at what in our society is influencing aged care in far greater depth and more broadly. We should also consider whether aged care is contributing to the wider problems and what aged care can do to resolving them, particularly in rebuilding our damaged society.

**Good people do bad things:** Our gut response to situations like this is to blame the powerful people who are responsible for the problems and describe them as evil – and the things that they do often are. The claims that it is usually good people who do the most harm in the world made by 18<sup>th</sup> century Scottish father of economics Adam Smith and then later in the 19<sup>th</sup> by US historian, Henry Adams, seems totally illogical when we look at this.

But when we live through these situations and deal with these people we are surprised at how genuine they are, provided you don't threaten the things they believe in. We have a capacity to lie to ourselves, ignore evidence and rationalise what we are doing when we believe very deeply in something. As humans we feel threatened when our beliefs are challenged and we fight back

## 4.2 A Groundhog Day phenomenon

There is nothing really new or unique in what is happening. Similar things have been happening for a long time. Social scientists who also try to stand outside society and look at it objectively have been writing about it for years.

Over 100 years ago in France, Emile Durkheim, one of the earliest sociologists described the situations and some of the consequences when society loses its grasp on the world and fractures. He even identified the link with an increase in suicides.

He called this situation 'anomie' to contrast it with nomos (normal), when society was bound together by a strong 'normative order'. Social science and sociology developed rapidly and there was plenty to study during the early 20<sup>th</sup> century.

One of us (MW) lived through and had experience of dysfunctional society and social systems. By the 1970s when he studied social science, the issues were well understood. Studies have continued.

Strong belief is extremely resistant to challenge and it should not surprise us that this challenging knowledge and those who hold it are often not seen as credible by believers.

Social scientists have realised what has been happening and over the last 30 to 40 years there have been many warnings and predictions that were simply ignored. As the situation deteriorated the volume of criticism and analysis has grown steadily but it too has been ignored. It is probably not an accident that government funding decisions have made it twice as expensive to study the social sciences.

### 4.3 Studies that explain our failures and how to fix them

Humans and their societies are complex phenomena. As individuals and as societies we are a consequence of layers upon layers of evolutionary development over millions of years. Many have examined this complexity from many different points of view to give us insights into what we are like and how we operate. There are three threads that are particularly informative and helpful. They are not particularly difficult to understand. They show what needs to be done.

#### The Macro perspective – a broad view

John Braithwaite is an eminent criminologist and the founder of the international group REGNET. He and his international peers have spent many years studying human history to identify recurrent patterns of human misbehaviour and criminality. They have explored them to identify patterns that enable us to understand what is happening. He has brought this large volume of research together in a detailed in depth analysis in an extensively referenced book<sup>10</sup> ‘Macro criminology and freedom’ published in February 2022.

The book explores the complex relationships between dominance of society by groups within it, anomie (*referring to societal breakdown and fragmentation often referred to as ‘truth decay’ or ‘post-truth’ today*), the exploitation of citizens, criminal behaviour both by the powerful and the disempowered, and their association of these phenomena with warfare.

He finds that because of the way these developments influence one another, there are cascades of criminality and also cascades of virtue when society works well. Dominance is closely associated with exploitation and criminality. He writes at length about political and market dominance and criminality including when government is captured by the market.

Cascades of virtue are associated with a balanced society in which there is a balance of power and a well-structured civil society. Dominance is prevented by a strong civil society in which anomie has been replaced by a strong ‘normative order’.

The balance of powers ensures that dominance and excesses by any group is checked by a network of others. Braithwaite says *“Criminalised states and criminalised markets evolve when there is no networked governance of their dominations”*.

Cascades of criminality are eventually terminated and changed to cascades of virtue when citizens rise up and take back control of their societies, re-build a normative order and establish a balance of power. He writes about ‘tipping points’ when there are opportunities for society to interrupt the cascades.

**Relevance:** Braithwaite’s insights seem to be particularly relevant to the USA, the UK and Australia today. The war in Ukraine by Russia and the aggressive behaviour of China are ominous.

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<sup>10</sup> *Macrocriminology And Freedom* By John Braithwaite ANU Press, Feb 2022

The recent community backlash against major political parties and the dramatic success of the Teals and the Greens at the recent election reflects a strong desire for change within our society. This is a tipping point. It is a huge opportunity to rebuild and re-empower our civil society and re-establish a balance of power.

### Exploring more closely

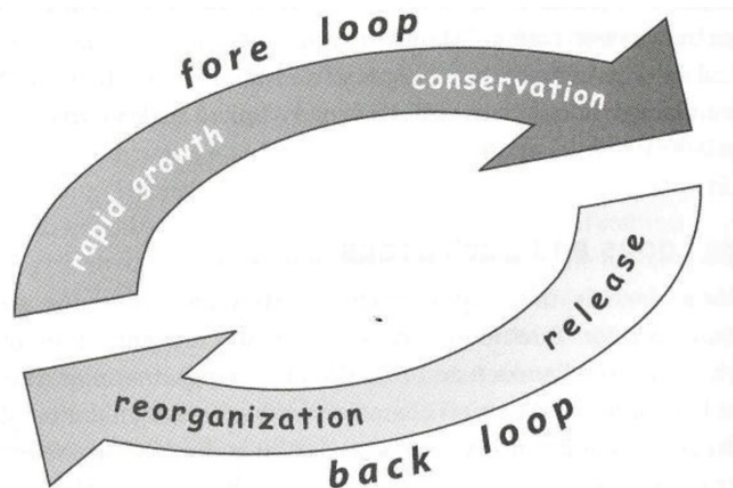
Social scientists studying the resilience of complex social systems have been particularly interested in the ecological consequences of failures in complex social systems and their resistance to reform<sup>11</sup>. This approach is equally applicable to non-ecological complex social systems such as aged care.

They show how a broad range of balanced and empowered insights from different involved groups keeps complex social systems in check and prevents any one force from pushing the system out of balance. There is a good range within which the systems operate successfully and can respond and function well. When the system is pushed too far by one group others block it. These balanced systems respond effectively and adapt to change. They are flexible and are resilient to unexpected shocks.

When any particular pressure group becomes dominant and overcomes the others the whole system is pushed right out of the zone of effective operation. It becomes dysfunctional and damages the environment, citizens or society itself. This situation is very difficult to address.

The authors explain how when this happens and the failures are recognised and exposed, the system collapses (release phase). A program of reform is commenced (reorganisation) and at this stage there is a window of opportunity during which an actively involved community can take control and reform the system differently.

If they miss the opportunity, then the powerful vested interests take control again and 'reform' the system by centralising and tightly managing it making it more efficient (rapid growth) but less resilient and adaptable. It becomes very difficult to make any changes (conservation) until the next crisis of serious failures occur. Systems often go through recurrent cycles of failure before effective changes are made.



*Reproduced from Walker and Salt 2006 pg 82*

Successful reform is usually accomplished when the opportunity is seized by community groups to decentralised the system and manage it locally in collaboration with multiple different interested groups in society. Balance is created and stability restored.

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<sup>11</sup> Walker, B. & Salt, D. (2006) *Resilience thinking: Sustaining Ecosystems and People in a Changing World*. Island press



Aged Care Crisis has analysed aged care using this model<sup>12</sup> showing how it became unbalanced during the 1970s and attempts to reform it and involve community in the late 1980s lost momentum. This allowed the powerful vested interests to take control again in 1996 and the opportunity was lost. A new cycle started as they centralised and managed. The ongoing failures were dramatically exposed again in 2017/18.

The community were angry again and wanted change, but they were distracted by other crises and attention waned. The long drawn out Royal Commission and its recommendations pacified them. The same powerful vested interests have once again taken control and the window of opportunity is rapidly disappearing.

This analysis meshes well with Braithwaite's sweeping analysis. It explains the cascades of criminality, the potential tipping points and the importance of a strong and stable civil society with balanced power.

### **Going closer still. Examining human weaknesses**

**Our nature:** Finally we need to examine our own frailty and vulnerability as humans.

Developmentally the first individual forms of life were focussed only on survival and only the fittest survived. It was very inefficient. Those who cooperated and worked together became more successful and soon social networks and groups prospered. A balance between the deep selfish need to thrive and survive and our social responsibility to others and the group (social selves) was developed.

Humans thrived not only because they became intelligent and reflective but because their young were born so immature. Their genetic potential is modified and moulded by society in a process called socialisation. Our nature, our understandings, our behaviour and even our society are largely socially constructed. New strengths and new responses and behaviours are rapidly passed to succeeding generations making us very adaptable to changes and so successful. The development of language is critical.

The weakness in this process is that a fractured and anomic society will not do this well and the next generation might not be well socialised so that they are more focussed on self and less able to cope - perhaps even contributing to the cascades of criminality.

**Our society:** We live in a complex world which we all experience differently. We do not cope well with this complexity and have to build simpler patterns of ideas and ways of thinking (paradigms) that enable us to understand the bit of the world we live in and the society around us.

We do this by sharing experiences and ideas and building a world view and a normative order together. We also need to become active in this world and build lives there and for this we need to create meanings that motivate us and social values than build our societies.

As we build our lives in our societies, we create identities based on these paradigms, world views, meanings and values. They become a part of who we are.

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<sup>12</sup> Attachment D: Analysis of aged care as a failed complex social system' (Jan 2021 updated 2022). Aged Care Crisis Submission to Productivity Commission inquiry into 'Aged Care Employment' April 2022  
[https://www.pc.gov.au/data/assets/pdf\\_file/0010/339940/sub039-aged-care-employment-attachmentd.pdf](https://www.pc.gov.au/data/assets/pdf_file/0010/339940/sub039-aged-care-employment-attachmentd.pdf)

Our problem is that we live in a changing world and change can happen quickly. We try to cling to the paradigm, world views and meanings that no longer apply. The world becomes unstable and we become disoriented and experience stress – also called anomie.

**Our vulnerability:** At times like this we are desperate for a new order and will create one for ourselves or embrace appealing ideas that others have developed. These are often not based on shared experience, on evidence or logic. Lives are created using them and they are incorporated into our identity. We defend them when they are challenged.

Imaginary ideas not based on the real world create problematic normative orders, world views and meaning systems, but they are vital and stabilising for those who embrace and believe in them. Because they are not based on knowledge, logic or social values they can be harmful to others and to society.

When they fail and the beliefs are challenged, they assert these views strongly and defend them by attacking and discrediting their critics. They seek and often succeed in dominating society. We describe these as ideologies. They often become durable and long lasting. Understanding this adds another level of understanding to Braithwaite's cascades of criminality.

There is an extensive volume of work describing the strategies used to ignore knowledge and logic in developing and maintaining ideologies and rationalising their legitimacy. There have been many studies of the psychological and social strategies we use to deceive ourselves, ignore the harm we are doing and discredit our critics. There has been renewed interest recently with McGoey<sup>13</sup> doing an in depth historical analysis of what she calls 'strategic ignorance' and Heffernan<sup>14</sup> writing about 'wilful blindness'.

Societies with an active well-structured and collegial civil society in which we are involved together, support one another and share experiences provides insulation from these problems. Change can become a welcome challenge to be met. Building new paradigms based on evidence and logic can become exciting and rewarding. This aligns with Braithwaite's cascades of virtue and a society that challenges and stands up to vested interests so maintaining balanced social systems.

This is a only brief summary. These issues are explained more fully in an article '*Why our society and human services are in trouble*' on our web site<sup>15</sup>.

## Our current ideology

Our current dominant paradigm and world view has been called 'free markets', 'economic rationalism' and more recently 'neoliberalism'. It had its origins in the anomie of the great depression and was a response to the way citizens in Germany and Italy embraced Hitler and Mussolini's fascist world order to create a normative order and new meanings. They followed these new leaders in going to war.

A group of Austrian economists ignored the long history of society and social movements that challenged dictators and monarchs and then developed democracies which protected human freedom and rights. To preserve freedom in the world they had gone to fight in the distant war to defeat the fascists.

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<sup>13</sup> Unknowners: How Strategic Ignorance Rules the World. by Lindsey McGoey 2019

<sup>14</sup> Willful Blindness: Why We Ignore the Obvious at Our Peril by Margaret Heffernan 2013 and 2019

<sup>15</sup> Why our society and human services are in trouble. Aged Care Crisis Dec 2021  
<https://www.agedcarecrisis.com/images/whysocietyandhumanservicesareintrouble.pdf>

Instead these economists blamed society for supporting these dictators and promoted this abnormal behaviour by society as a universal truth. Social movement were condemned as socialist and community action was described as collectivism.

Their leader Friedrich Hayek wrote

“In theory Socialism may wish to enhance freedom, but in practice every kind of collectivism consistently carried thought must produce the characteristic features which Fascism, Nazism, and Communism have in common. Totalitarianism is nothing but consistent collectivism, the ruthless execution of the principle that 'the whole comes before the individual' and the direction of all members of society by a single will supposed to represent the 'whole'.”

These theories mis-specified the human condition and denied our social nature. It was essentially a form of libertarianism which saw society as a threat to the freedom of individuals and markets.

These were economists and the freedom of individuals was expressed through markets. Markets were guided by an invisible hand. They were always self-correcting and any interference or control by society or government interfered with this. If they were not working then the interference should be removed.

Initially a marginal belief, supporters formed the Mont Pelerin Society to promote and disseminate the belief. US economist, Milton Friedman was an early convert taking the ideas to the USA. Satellite think tanks were established across the world. The ideas appealed to businessmen, economist and politicians. By the late 1960s factions within parties were influencing policy in many countries including Australia.

In the USA, the Russian immigrant writer and philosopher, Ayn Rand, promoted libertarianism in her philosophy and condemned any influence and control of the individual. She condemned selflessness and considered altruism to be a disease. She promoted selfishness as a virtue.

These are the community values that motivate those who provide human services. Ayn Rand died in the 1980s but libertarian movements supporting her philosophy have grown steadily. They have aligned with and supported neoliberalism.

Regan and Thatcher became converts and were advised by Friedman and Hayek. This belief became the basis for market globalisation during the 1980s and was soon globally dominant. Schools of management adopted them and the new management strategies were soon applied to government services, universities and to societal organisations so became the way to operate.

There is now a global 'Atlas Network' of over 500 think tanks across the world including Australia. They teach Hayek's theories and often Rand's as well. They run leadership courses for students and raise funds for thousands of leadership scholarships to institutions that teach these ideas. They are seen as credible and are accepted as leaders.

In Australia these policies were supported by the Productivity Commission and introduced by Keating in the 1990s, then applied more strongly by Howard in 1996/7. The market has come to dominate society and government has been captured. Alternative views and civil society have been overwhelmed and hollowed out. What has happened illustrates the important role that beliefs play in the cascades of criminality and virtue Braithwaite describes, although he does not go into this in his book.

**Criticism:** The consequences of neoliberalism are now clear. Many globally and in Australia are writing about the problems and failures of neoliberalism explaining how society and government have been captured. They are looking for alternatives. Others write about solutions like localism and regionalism and citizens movements. Others suggests ways of engaging citizens, of re-building society, and of developing a more deliberative democracy that includes community.

At this time the market and major political parties remain committed to these policies and have shown little appetite for real change.

This is only a brief summary and we explore this belief system and its consequences in more depth in our article '*Why our society and human services are in trouble*'.

## 5 Suggestions for reform

These three themes create a framework for real reform not only of aged care but of the other problems in Society. Clearly the focus must be on rebuilding society and creating a balance of perspectives and a balance of power in society as well as in the aged care system. Because aged care is provided in our communities and in our homes it is well placed to do this and to commence the reforms that are needed.

In pressing for reform, we argue:

1. For a balance of constraining power within societies and countries. In democracies that identify with Abraham Lincoln's vision of *"government of the people, by the people, for the people"*, it is the people of a well organised society who must ultimately have the final say.
2. For collegialism and social responsibility above competition. In a collegial society power is set aside in debate and decisions are based on a debate that embraces knowledge and logic..
3. That for markets to be effective there must be a balance of power where that of customers and community matches that of the market and ultimately prevails.
4. That governments should not usurp the functions of community but instead should support and build communities, mentor them and be ready to assist when needed.
5. That the community and its citizens are responsible for its vulnerable sectors and vulnerable members. For that reason, in vulnerable sectors, responsibility and power needs to be tilted towards community so that they have control and can protect their members by excluding those who cannot be trusted or who fail to deliver.
6. Because of their complexity and extreme vulnerability **aged care and similar services** need to be regionally based and community-led and be managed in close cooperation with community organisations.

Every community and its citizens are ultimately responsible for the care of their members. Anyone providing care is their agent doing it on their behalf and is directly responsible to them. They should work closely and openly together.

The following roles and functions for community-led services might be considered:

- a) Planning and structuring the aged care services to meet the needs of their communities. Local services would plan the sort of aged care facilities required, working with providers and developers. Government and central organisations would train, mentor and support. The design of facilities would be based on citizens needs rather than their potential profitability.
- b) Vetting the past conduct (probity and capacity) of prospective providers of care and then either licencing or contracting the provision of services only to those who are trustworthy as well as capable.
- c) Community employees and community volunteers should work collegially with providers and staff in supporting residents and providing personal support. They should be involved in addressing complaints and failures in care, jointly collecting data and in providing advocacy. This collegial involvement will ensure open disclosure. Community would work cooperatively with management when decisions are made.

- d) Education, support and mentoring should be provided for these services by central services that also integrate and provide backup. The model should be a reach down and support one. Central management, regulators, advocacy services, medical services, data collection and research could operate in this way working with and through local bodies. They should be there to help and be able to supply services that local providers are unable to provide.
- e) Local organisations should have the power to terminate the licence or contract of any provider who fails to deliver satisfactory care. They would be mentored and supported in doing this.
- f) It would make the market work effectively if direct ownership of facilities was separated from the providers of care. Facilities could be owned by communities or by Real Estate Investments Trusts (REITs) and leased to providers. Providers could then be changed with minimal disruption to staffing and care.
- g) Funds should be managed locally. Funding for staffing and care should be protected from profit taking but providers should be well funded for providing this important service. Auditing and oversight of expenditure would be done locally but reported centrally

It is not our intention to be prescriptive but rather to suggest possible ways of implementing the community led principle. Some providers, particularly those focussed on profitability and not able to identify with community values could become REITs or extricate themselves in an orderly fashion.

## 5.1 Recommendations

1. Having registered nurses on duty at all times is critically important and this should be supported. The problems should be recognised. To help with this communities and local government should be engaged to provide some oversight and to recruit and motivate new staff.
2. Capping home care charges and abolishing exit fees are sensible changes and should be supported. Perhaps the decision to abandon block funding should be reviewed using evidence and logic.
3. The proposed amendments relating to transparency of information do not as far as we can see change the situation in the long term. They are not robust and appear to be no more than a wish list. They are going to be costly and that money could be better spent elsewhere.  
  
Transparency, data collection and accountability would be much better accomplished by working with and supporting local governments and communities. Doing this would be a useful first step to involving community, building civil society and moving to a balanced community led system that resolves the real problems.
4. We recommend that the senate advise that a plan be developed to create a balanced aged care system by involving and empowering communities, building local capacity and civil society, regionalising and directly involving communities. Government should legislate to restructure the system so that central bodies work through and with local organisations supporting them and building capacity.