

## Submission to:

# Inspector-General of Aged Care Bill 2023 [Provisions] and the Inspector-General of Aged Care (Consequential and Transitional Provisions) Bill 2023 [Provisions]

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Aged Care Crisis Inc.

3 April 2023

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# 1 Introduction

Aged Care Crisis Inc. appreciates the invitation to submit to this inquiry. Over the years we have made a large number of critical reviews and advocated change but it is clear that this was not welcome. We can only describe what has been happening and plead with politicians to remove their blinkers and look at what has gone wrong.

To understand the problems that will be created by another centralised oversight process we need to understand the problems in the existing system. There are also potential issues with an Inspector General of aged care appointed by the Governor General who is advised by the government of the day. The interim appointment by the government of one of the principle architects of the failed system illustrates the problem.

We have closely tracked what has been happening over the years. We were already aware of the parlous state of health and aged care in the USA in the late 1990 and were writing about this. The situation was very similar to that now exposed in aged care by the Royal Commission into aged care in Australia.

By 1999, one of us had collected a large amount of information. He corresponded with the Department of Health in 1999 and supplied information about the problems in the US aged care system. He warned of the consequences of similar policies being followed in Australia<sup>1</sup>.

## 1.1 The Royal Commission

We are very critical of the Royal Commission and its failure to deliver on the promises it gave to Australia in its interim report<sup>2</sup>. We are equally critical of the reform agenda adopted by both governments.

The Royal Commission *“heard compelling evidence that the system designed to care for older Australians is woefully inadequate”*. It described a *“shocking system that diminishes Australia as a nation”*. It attributed this to *“deep and entrenched systemic flaws”* and indicated that these *“flaws of the aged care system as a whole are at the heart of this story”*. It found that the *“system is failing and needs fundamental reform”*. It promised that its final report would advise *“whole-of-system reform and redesign”*. That did not happen and the deeply entrenched flaws remain. It did not keep its promise. What we got was far from *“whole of system”*.

Australia and its citizens have been betrayed.

Aspirational legislation and increased regulatory effort will come under the same strong perverse pressures that saw the repeated failure of all the previous efforts. While there may be temporary improvement, particularly if staffing is improved, it is very likely to fail again in due course. Even effective regulators will struggle to contain the strong pressures threatening services. At best we will end up with an uneasy overregulated substandard system plagued by tensions. This is what has happened in the USA.

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<sup>1</sup> **Correspondence about Aged Care 1998/9 between Wynne JM and the Department of Health.** (see specifically warning in final summary of letter dated 9 March 1999 and the supply of a disk containing a vast amount of material with the letter dated 26 June 1999)  
[http://www.corpmedinfo.com/agedcorresp\\_1999.html](http://www.corpmedinfo.com/agedcorresp_1999.html)

<sup>2</sup> **Royal Commission into Aged Care Quality and Safety. - Interim Report: Neglect Volume 1** see pages 12, 81, 118, and 255

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A system that depends on regulatory effort is not a system that is working well and yet that is the way our society and our politicians have been conditioned to think. A good system is one that works because it is well structured and balanced. Regulations should rest lightly and regulatory action seldom needed.

Addressing the *'entrenched systemic flaws'* and creating a system that works will require major additional structural reform that changes the power structure within the system. Doing so would eliminate the strong perverse pressures within it that undermine aspirational legislation, and compromise regulatory effort. Vulnerable sectors like this require a very different sort of market.

## 1.2 Understanding what happened and where it went wrong

Free market thinking which saw markets as self-correcting and any control as impeding their efficiency became ascendant in the 1990s. Governments and industry were soon aligned and working closely together. Markets and free-market thinking became dominant across western societies. Many are now writing about the way this silenced the alternative views that provide the checks and balances needed to check the excesses of markets and make society work well.

In 2022, Braithwaite wrote a detailed historical review of what happens when states are dominated by powerful groups<sup>3</sup>. He focused on market dominance. He concluded that *"Criminalised states and criminalised markets evolve when there is no networked governance of their dominations"*.

His analysis explains why, in almost every sector of our society where there is any vulnerability, in the customers, the employees or the funding, the vulnerable have been exploited and the system corrupted. The response of regulators has been to try and contain the problems rather than address the reasons for them. This has made these sectors complex and difficult to navigate. This has happened in aged care.

Braithwaite found that this did not occur when there was an actively involved and well-structured civil society with the power to prevent dominance and constrain the excesses of any one group. He found that these situations were corrected when society seized an opportunity to regroup, rebuild capacity and take back control.

Others like Walker and Salt have examined complex social systems using a model to explain the importance of a balance of views, insight and power for their effective operation<sup>4</sup>. This balance makes the system malleable. It readily adapts to change and is resilient to unexpected shocks.

When the balance is disturbed and one force becomes dominant the system is pushed right out of that model and becomes dysfunctional. They offer another model which shows how it then goes through repeated cycles of rebuilding followed by further failure.

After each failure the dominant vested interests seize control again, centralise the system further and make it more rigid, tightly controlled and unresponsive until it fails again. The system is tightened with each attempt to restructure and centralise so is likely to get steadily worse. These cycles of failures continue until the window of opportunity is seized, the system is decentralized and its multiple participants regroup, re-engage and the balance is restored.

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<sup>3</sup> [Macrocriminology And Freedom](#) By John Braithwaite ANU Press, Feb 2022

<sup>4</sup> [Resilience Thinking: Sustaining Ecosystems and People in a Changing World](#) by Walker B and Salt D Island Press 2006

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If we look at the history of aged care, we can see that these models explain the cycle of recurrent failures in aged care<sup>5</sup>. This started when the industry regrouped in the late 1990s to frustrate the reforms commenced in the 1980s and then centralized and took control in 1997. The Royal Commission was an opportunity missed. The same dominant vested interests have taken control again and the window of opportunity is almost closed. Next time it could be even worse.

## Brief outline – the story

Keating wanted to abandon the reforms commenced by the Hawke government and marketise aged care. He desisted when economist Bob Gregory warned him of the consequences. Powerful industry groups, including those from aged care got behind the Liberal party and drove it to power in 1996. The new coalition government ignored many warnings and worked closely with industry in developing the 1997 *Aged Care Act*. The leader of the aged care industry group involved later boasted he had written the new Act!

This new Act removed all restrictions and accountability and set up an industry friendly regulatory system. A razor was taken to the public service, industry figures were put in charge and its capacity markedly reduced. Marketplace consultants filled the vacuum. Community groups and advocacy groups that supported policy were funded and engaged as advisors. Those who were critical were marginalised.

The system was soon plagued by recurrent failures and scandals with large numbers of reviews and 'reforms'. None addressed the deep systemic flaws or the dominance of industry.

Two of those reviews were particularly harmful. The first was the 2004 Hogan Review appointed by the Howard government. It found that there was a wide difference in profitability between providers and blamed this on inefficiency<sup>6</sup>. The industry complained that they could not manage their large staffing costs because of the power of unions. Big banks and private equity investors would not invest. The 2005 work choices legislation reduced union power and they invested. Staff came under pressure and the situation deteriorated more rapidly.

The second damaging review was the 2011 Productivity Commission's Inquiry "*Caring for older Australians*". This was established by Labor in response to the deteriorating conditions. Once again, the sector was examined as a market and not as a humanitarian service. It recommended more centralisation and more market strategies including some that Howard had abandoned. We were critical at the time<sup>7</sup>. We wrote:

“Providers of care must appear to provide the sort of care that the community expects, while serving a very different and demanding master - the market. The Report is trapped in this same situation and fails because the commissioners do not address it.

There is consequently a deeply divisive fissure running through the new structure that the commission is recommending. It is likely to give rise to tensions, disturbances and undesirable practices”

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<sup>5</sup> **Attachment D: Analysis of aged care as a failed complex social system** to Aged Care Crisis Submission (no 39) to Productivity Commission Review 'Aged Care Employment' May 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)

<sup>6</sup> Criticism of 'Review Of Pricing Arrangements In Residential Aged Care' 2004. Corporate Medicine web site  
<http://www.cormedinfo.com/agereport2004.html>

<sup>7</sup> Wynne JM A Critical Examination of the **Productivity Commission Report Caring for Older Australians** June 2011 - Corporate Medicine web site <http://www.cormedinfo.com/pccritique.pdf>

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By now, Industry and supportive community groups had formed the National Aged Care Alliance and they were working closely with the minister<sup>8</sup>. They were well represented on government's advisory 'Aged Care Sector Committee'. They drafted the new Living Longer Living Better (LLLBB) reforms and persuaded the minister to adopt them. COTA was particularly active in this and its leader Ian Yates persuaded parliament saying:

*"It is historic for COTA" - -and - "That package is something that we have been on a long journey to achieve and the journey continues. Our submission outlines some of that journey" - - and - - "COTA comes here to say in the strongest terms that the bills before the parliament should be passed this session".*

Yates then helped market those reforms to the public in a speech aptly titled 'A time bomb is ticking'. These reforms lit the fuse on the bomb and there were soon more problems.

The Abbott government with Morrison in charge of aged care built on them using a '**Red Tape Reduction**' program to gut regulation, creating a market focused '**Aged Care Roadmap**' and then addressing what they considered was an immature and fragmented market by a policy of '**competitive consolidation**'.

This ramped up the competitive market pressures on staffing and care. It sent the system spinning out of control. The next Prime Minister Malcolm Turnbull was unable to check this. It finally imploded and Prime Minister Scott Morrison called the Royal Commission in 2018.

### 1.3 A 'World Class' system?

We need to understand that these people believed deeply in the policy and its underlying philosophy, and in what they were doing. While what they did must be criticised, we need to be kind and consider their plight and difficulty in coming to terms with this. They had no doubts and still cannot accept that they were wrong.

**Red flags ignored:** At the same time as nurses were describing what was actually happening in the system as it failed residents, they believed it was a world class system. They were promoting it to the world as such. The exemplary ever improving performance of providers reported by the regulator was used to support these claims and dismiss critics.

There is no mystery to this. Social scientists have been examining this sort of behaviour for a long time and are still writing books about it.

**The regulators:** The accreditation standards were a particular problem. Braithwaite and his team did an observational study and reported on their findings<sup>9</sup> in their 2007 book "*Regulating Aged Care*". They described "*indefensible ratings of compliance*". They also found that advocacy was with a small 'a' because of the restrictions created by their dependence on government funding. They warned about regulatory capture noting that "*business values are capturing regulatory values*".

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

<sup>9</sup> *Regulating Aged Care: Ritualism and the New Pyramid* by J. Braithwaite; T. Makkai; V. Braithwaite e.Books.com: <http://bit.ly/2mUgU8>



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Regulatory capture<sup>10</sup> is a well recognised and studied problem in which regulators come to think like those they are regulating. A situation develops in which the regulators protect those they should be regulating instead of the victims of the system.

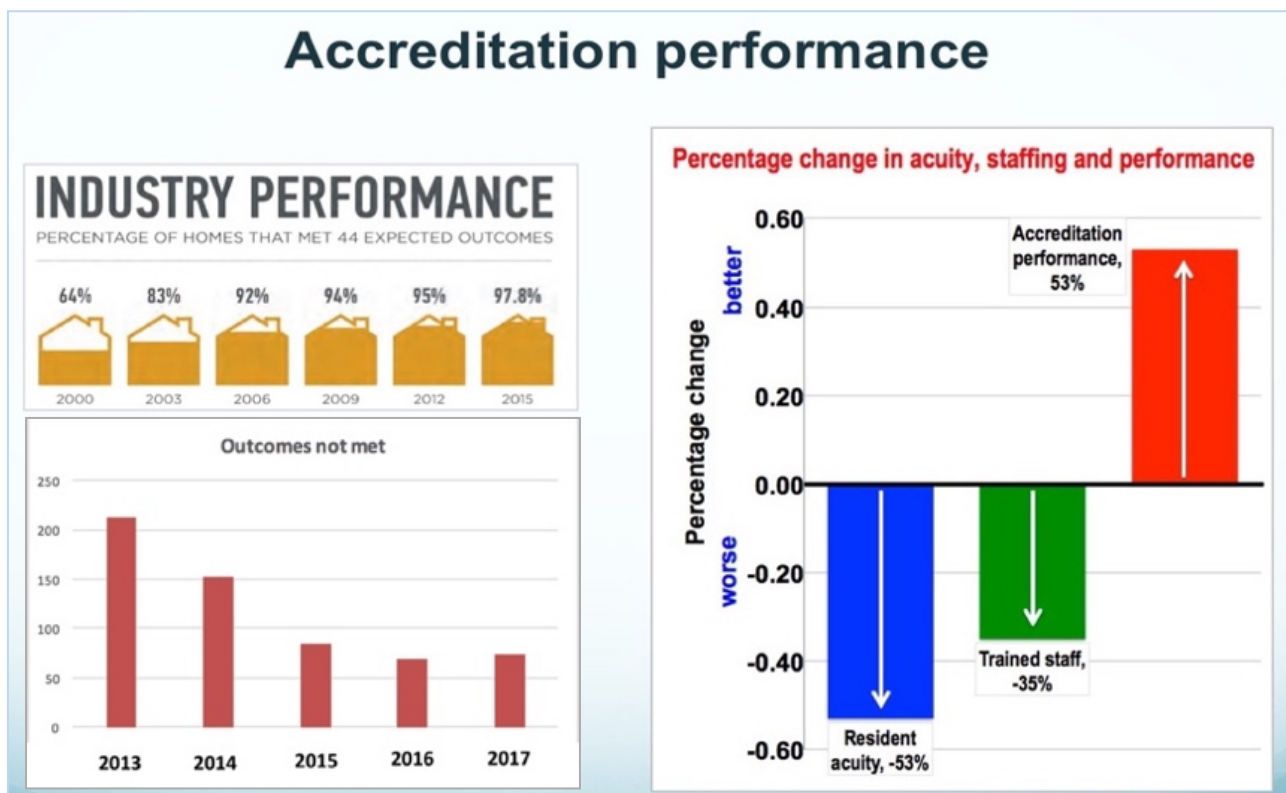
Braithwaite's concerns about advocacy explain why it was the press who exposed what was happening in aged care as it deteriorated over the years. It was not the government funded advocacy groups operating under OPAN. A good example of this was the Aged Rights Advocacy Service (ARAS) in South Australia.

ARAS started as a branch of COTA and Ian Yates was on its board for 30 years. During this period ARAS failed to detect the extensive neglect and abuse of residents that occurred at the Oakden facility in South Australia over a 10 year period between 2007-2017. ARAS advocated for residents on 14 occasions over this period, performed four staff training sessions including how to identify elder abuse(!), and had six meetings with residents and their representatives.

It was a state regulator who finally investigated and documented the many problems exposing the failure of federally funded regulators including ARAS. What were its board doing during this period? Yates must have been the most experienced member and by then he was working closely with government so had influence.

**The advocacy services have been regularly on site and well positioned to expose what was happening. They could have refuted the claims to a 'world class' system. They failed us.**

A graph taken from one of our submissions shows the extent to which those responsible for vetting the system and protecting our elderly were covering up its failures<sup>11</sup>:



<sup>10</sup> Regulatory Capture – Definition And Meaning <https://marketbusinessnews.com/financial-glossary/regulatory-capture-definition-meaning/>

<sup>11</sup> One of charts supplied to Royal Commission Jan 2019 by Aged Care Crisis Inc. - Not published.

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If we look at accreditation results in Australia (top left chart) we see that the number of perfect scores increased from 64% in 2000 to 98% in 2015. The chart below this shows how the number not getting perfect scores fell rapidly after introduction of the red tape reduction program in 2014.

On the right below the line, we have charted the percentage increase in the acuity of residents (53% increase in the number of high care cases) and the 35% fall in the trained staff needed to look after them over the same period. Above the line we have charted the 53% increase in the success rate in getting perfect accreditation scores.

### **Were the near perfect accreditation scores really possible when staff were more and more stretched?**

We now know that care was steadily deteriorating over this period. In 2007 Braithwaite also commented on their success in keeping information out of the press. There is nothing unusual in this. Dominance is maintained in captured states by controlling information. Those that don't openly censor information find other ways of doing it.

**Accountability:** Industry and government have connived in keeping information away from the public. The regulator was central to this. An audit by the Australian National Audit Office in 2003 criticised the accreditation agency for not collection outcomes data to validate their performance. In 2004, the regulator and industry promised to collect this data. It never happened.

The agency published details of accreditation failures but for many years they were removed from their website as soon as the provider had corrected the problem. It was not possible to evaluate a facility's track record or the performance of a company. Further deception was revealed in 2008 when the minister's report claimed that only 1.6% of nursing homes were failing an accreditation standard. Aged Care Crisis had been collecting the reports and had more than double that number. When we challenged this, it transpired that only those that had not yet corrected the problem by the end of the year were being counted. The actual failure rate was 7%<sup>12</sup>.

Regional and remote area facilities had a much higher failure rate than central ones. For profit companies operated in central areas and there were hardly any for-profit facilities in regional areas. International data showed that for-profit facilities staffed poorly and had poorer outcomes. The accreditation agency insisted that their data showed there was no difference. They were lumping all the data (central and regional) together and the high rate of failure in regional areas was hiding what was happening in the cities. Other studies have since shown that there is a difference.

In 2012 nurses working for the Department of Health blew the whistle on the department which was ignoring the fraud they were detecting in aged care. They were told to look the other way.

The approach to publishing data is revealed in minutes of the Aged Care Advisory Committee in 2017 released under FOI. At this meeting, a suggestion by the minister's representative on the Committee to release all accreditation data publicly was not welcomed by the industry<sup>13</sup>. It considered "*these reports were more technical and, without explanation, may not provide useful information for consumers or their families*".

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<sup>12</sup> Aged Care Report Card – Aged Care Crisis: <https://www.agedcarecrisis.com/news/research/108-aged-care-report-card>

<sup>13</sup> FOI release Aged Care Advisory Committee meeting May 2017 <http://bit.ly/2EYtZWj>

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Ian Yates from COTA which advocates for more data, considered that the more subjective *“Consumer Experience Reports, - - will provide consumers and their families with more information”*. Clearly, some will understand that data and those who advise prospective residents should have it. Others will want to research it. It should be available.

The expectation that vulnerable elderly citizens will provide accurate assessment information is an illusion. It is being used in a similar way in the planned Star Ratings where consumer feedback is to be rated highly and will make a big contribution.

Clearly some will understand that more detailed data and those who advise prospective residents should have it. Others will want to research it. It should be available.

There are many reasons why surveys of consumers and their families are not reliable:

1. Opinions from recipients of care and their families are valuable when they lead to investigations that reveal problems but, while it may confirm a good quality of life, it is of much less value in assessing standards of care. When surrounded by positive marketing and strong beliefs, residents will identify with these beliefs even when the care they are given is poor. They lack knowledge and confidence so do not know any better.
2. We know that many staff are strongly motivated but unable to provide good care because of understaffing or poor training and ignorance. Residents and family will see that motivation and dedication and reflect it in their responses.
3. As is apparent from recent failures, many family members and staff are reluctant to speak out about failures in care as they are fearful of retribution. Those submitting assessments would be readily identified and it would be easier to recognise who had had the insight to be critical. There is a massive power imbalance.
4. As clinical researchers know there is a huge placebo effect with positive feedback in these situations. People take their cues from those in power around them. This is why clinical trials are never considered valid unless they are double blind or there are objective measurements go confirm the feedback.
5. A psychologist has also explained<sup>14</sup> why *“if you are relying on the system to survive, believing that it is good and just helps to keep your fear, insecurity, futility, alienation and meaninglessness at bay”*.

This information about surveys is readily available but believers seldom look around them when they want to do something that favours them. It has been called strategic ignorance.

Information from individuals who recognise a problem is obviously valuable in detecting problems and regularly on-site observers more readily see what is happening. Surveys of this sort are not reliable.

**What do ordinary citizens do when they realise they have been deceived?** Aged care is only one manifestation of this deception. Sooner or later citizens begin to understand and they get angry. We are already seeing signs of this in Australia. We need only look at what is happening in the USA.

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<sup>14</sup> **Truth Hurts: The Science Behind Why People Don't Care About The Death Of Our Planet And Democracy.** Lissa Johnson in *New Matilda* 19 Aug 2015 <http://bit.ly/2TdDIAE>



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Angry citizens turn to those who are attacking the system and promising a new utopia, often one that devalues and attacks our democracy. They rally behind the Donald Trumps of this world – people who promise to drain the swamp and make America great again!

The gut response of dominant groups when they feel threatened by something like this, is more centralisation, more control and more secrecy. That is a recipe for disaster and simply does not work. It ultimately makes the situation worse.

The window of opportunity is still there. If failures are acknowledged by those responsible and citizens are actively engaged in addressing them so that they can see what is happening and build their lives by becoming a part of reform, then we get real change and rescue our democracy.

## 1.4 The Royal Commission – What happened?

Governments in a dominated society see those who think and behave like them as credible. They will appoint them to make decisions or carry out reviews, particularly in sensitive areas. The government saw everything including humanitarian services as markets.

We were aware of this problem and in our 2018 submission to Minister Wyatt we indicated that all too frequently *"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"*.

We indicated that they might be *"biased by preconceptions that undervalue"* the contribution that some witnesses made. We think that our warning was ignored.

When we were one of a group who met the minister, we all agreed that structural changes should be a priority and included in the Royal Commission's Terms of Reference.

The first Commissioner was a judge who had specialised in industrial relations and once given a lecture on this to the HR Nichols Society. He died after completing the Interim report and was replaced with another judge whose focus had been on tax issues. Both are market related.

The second Commissioner working with both judges was a distinguished long-term bureaucrat. She had been the Australian Public Service Commissioner from 2004 to 2009 and had been responsible for overseeing the introduction of governance processes into the public service and indirectly into the market entities contracting with government.

Governance became the process used to contain problems after it was recommended by the HIH Insurance Royal Commission in 2001. The Stock Exchange and public service were responsible for implementing this. The second Commissioner was one of four individuals with responsibility for aged care who were among the 22 fellows listed on the web site<sup>15</sup> of the influential 'Centre for Strategy and Governance' in 2020. It has been described as *"a quietly influential collective ... with one thing in common: lots of experience in the highest levels of government"*. Three were government officials and one, the Commissioner of a major review.

We have also looked at the extent to which vulnerable people have been exploited in almost every sector where there are vulnerabilities including aged care. We do not think that governance processes have been any match for the perverse competitive pressures in the system.

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<sup>15</sup> The Centre for Strategy and Governance – Our people <https://www.csg.org.au/our-people/>

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In some of the inquiries into corporate nursing homes the Commissioners blamed governance. We think they overlooked the role that these pressures played.

In spite of our reservations the two judges proved to be more objective and accepted the evidence. The Interim report was quite clear in its findings. We think the second Commissioner had been so heavily involved in government policy and built her identity within it that she was not able to fully accept what had happened. That became apparent during the second part of the process, when the two Commissioners disagreed strongly. They made separate recommendations about structural changes.

The two Commissioners disagreed strongly and sometimes publicly. The Judge was the chair and in his preface to the Final report<sup>16</sup> he wrote that *“we differ sharply on certain aspects”*. He wanted an *“Independent Commission model”* and not the *“Government Leadership mode”*.

He argued that *“Mere adjustments and improvements to the current system will not achieve what is required”* and that *“A profound shift is required”* - - - it *“does not need renovations, it needs a rebuild”*.

The judge recommended separating central management from direct government control and regionalising the actual management of services. In doing so he was trying to address the *“deep and entrenched systemic flaws”* and so fulfil the promise his predecessor had made.

The renovation approach failed to address the entrenched flaws and did not challenge existing policy. It reneged on the promise given in the interim report, which both judges had signed.

In indicating what needed to be done the judge stressed the need to *“understanding why the aged care system has been failing”* and acknowledged that those responsible *“did their best”* but the system *“has come to its present state in an entirely foreseeable manner, given its basic structure and the constraints and influences on its governance”*. He described the many consequences including the poor funding blaming government for this concluding that care becomes *“merely transactional rather than based upon relationships”*.

While the report is critical of government free-market policies, it fails to appreciate the full power of the perverse pressures introduced or the close nexus (capture) of the political and regulatory systems by the market and just how corrosive this is. The report admits that they were *“unable to consider market dynamics to any great extent in our inquiry”*.

The report lacks depth here but does criticise the hands-off approach to the market and takes a stronger regulatory approach focusing on government.

It fails to advise the structural changes needed to create a balance of power and so eliminate the pressures in this market in order to make it work. This would be in keeping with well-established market principles going back over 200 years to the father of economics, Adam Smith – but rejected by free-market ideology. The judges plan to regionalise the system was the first step but it did not go far enough.

**Our submission ignored:** In an unpublished submission to the Royal Commission dated 4 August 2020, we addressed the systemic flaws including the problems in this market by restructuring the system. We advocated for what we called a community-led system and explored ways of doing that.

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<sup>16</sup> **Final Report:** ‘Care, Dignity and Respect’ Royal Commission into Aged Care Volume 1

We indicated:

“Every one of us and every community is and has always been responsible for the care and the wellbeing of our vulnerable fellow citizens. Anyone providing that care is doing it on our behalf and they are our agents. Our agents are responsible to us and it is our responsibility to watch over them and ensure that our agents are caring for our fellows, as we would, were we in a position to do so.

As citizens and communities, we need to be able to choose who will look after our vulnerable fellows to be sure that they can be trusted. We must be able to replace any of our agents who do not live up to our expectations. The structure of the market model introduced in the 20<sup>th</sup> century has excluded us and we are no longer able to meet our responsibilities to our vulnerable citizens.”

## 1.5 The response of industry and government

It is increasingly clear that neither the industry, the government nor the public service could accept the evidence and the findings of the interim report or the revelations when the COVID pandemic revealed how poor the situation was. This exposed the sectors inability to adapt and its lack of resilience. The Royal Commission examined this issue and issued an additional damning report. The Minister for Aged Care’s performance when questioned about these issues by the Senate was aggressively inept.

The departments and its subsidiaries were extensively consulted by the Royal Commission. The industry and the market advisers they used made a huge effort to influence the Commissioners. It is interesting that ACSA, the body representing nonprofits, was most active in uniting the industry. Ten years earlier when LASA was formed, they had been very divided about joining with the for-profit sector and eventually elected not to do so<sup>17</sup>.

Their CEO of ACSA was now Pat Sparrow who had been the reform officer for COTA. She worked with Yates in developing the 2012 LLLB forms. From 2014 to 2016 she was the Abbott government’s aged care advisor working with ministers Morrison and Fifield.

It is interesting that these groups all had extensive access to the Royal Commission. Two executives within the industry who had been very critical of the system and spoken out were not interviewed.

With so much input from her peers and those within the industry whom she may have worked with, the public service Commissioner may well have been under some pressure to renege on her promise.

## 1.6 Response to the final report

One of the striking features of the responses is that not one of the politicians, public servants or industry leaders responsible for this shameful system, which has neglected our parents and spouses, has acknowledged their role, accepted any responsibility or apologised for what happened. This can only be because they don’t believe it and when they discuss issues, they reinforce one another’s belief.

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<sup>17</sup> See ‘Views among not-for-profits’. Inside Aged Care 2015 <https://bit.ly/40RFmVx>

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**Industry:** At least one of the leaders in the sector publicly asserted that we had a ‘world class’ system only weeks after the release of the interim report titled ‘Neglect’! He was on the previous government sector committee advising government and remains on its replacement. He became CEO of the International Federation of Ageing (IFA) and in October 2021 he presented a webinar on the Royal Commission.

In that webinar, he did not mention the findings of the interim report and he attempted to minimize the failures insisting it had been a sound system and was a good system to build on. The Royal Commission recommendations were doing that. He praised some of those who had been leaders in that system. The Convener of the meeting ended it by saying how proud she was to be an Australian and how proud she was of our aged care system. Some of these people are still described on the IFA and Australian web sites as *‘thought leaders’*.

In January 2023 Pat Sparrow, now the new CEO of COTA gave a similar webinar *“Post a Royal Commission, The future of Aged Care in Australia”*. Her stellar career and the important role she had played in our aged care system were lauded. There was no mention of *“neglect”* or *“a system to be ashamed of”*. There was little about the Royal Commission. Both the IFA CEO and Sparrow spoke well and looked genuine. We accept that they were and that this reflects the way they understand the situation.

The industry rapidly regrouped after the final report and set about lobbying politicians with Sparrow and ACSA leading the way. ACSA and LASA united to form the *‘Australian Aged Care Collaboration’* (AACC). The Aged Care Guild which had disbanded because of adverse publicity remained isolated.

After the Royal Commission’s Final Report, AACC immediately published a report *‘It’s time to care about aged care’*, dodging blame and shifting it to government. It launched a campaign asking citizens to lobby politicians in the electorates with most seniors<sup>18</sup>. We responded with an Accountability Report on our website challenging what they were doing<sup>19</sup>.

By May 2022, the remaining Guild members had regrouped and they merged with the AACC to form the *‘Aged and Community Care Providers Association’* (ACCPA) - a strong unified group to organise conferences and drive the industry’s agenda.

**Government:** The Morrison government accepted most of the Royal Commission’s recommendations including those of the public servant, but the judge’s recommendations to decentralise have simply disappeared and no one has mentioned them since. They began the process of implementation, but not enthusiastically or quickly.

It was as if nothing had happened. The same or similar industry figures were soon back doing the same things although the bodies they joined had new names. Once again, they spent large sums on multiple marketplace advisors<sup>20</sup>. It was clear that little had changed and this would be more of the same.

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<sup>18</sup> Industry Campaign Report: It’s time to care about aged care AACC Feb 2021 <https://www.careaboutagedcare.org.au/report/>

<sup>19</sup> Accountability Report - Aged Care Crisis April 2021: <http://bit.ly/40wWBMn>

<sup>20</sup> Government outsources aged care reform to management consultants Rick Morton The Saturday Paper 27 Nov 2021 <https://www.thesaturdaypaper.com.au/news/politics/2021/11/27/government-outsources-aged-care-reform-management-consultants>

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Meanwhile, Labor had kept its head down but made promises prior to the 2022 election which it won. It has not changed policy and simply passed the Bills that the Morrison government had not yet passed and then a few of their own. They have started moving more rapidly and put more funding into staffing, but it is clear that the sector remains very unpopular and staffing targets will not be met.

Most revealing of Labor's position is their decision to appoint Ian Yates, the primary architect of the damaging LLLB reforms that became such a problem and who worked so closely with Labor in 2012, to lead the Council of Elders and then as the Interim Inspector General to watch over and report on the Royal Commission reforms. He has been in a leadership position on many groups including on the advocacy group ARAS that failed to detect the problems at the Oakden facility in South Australia.

We are aware of Yates reputation in the sector and realise he is motivated and believes in what he has done. This is what you often find in dysfunctional systems where believers do harm. These people continue to have very successful careers and the same sort of problems follow them. We have seen many examples in the USA and have used one of the largest health care companies in the USA as a case study<sup>21</sup> because the problem was so extensive - but it is not confined to big companies.

One wonders what sort of inquiries and research the minister did? How will Yates respond as Inspector-General when he encounters situations that challenge the beliefs and the system that he has dedicated his life to?

**The Department:** Of concern to many is the way that the Department of Health has become more secretive and closer to industry. In addressing policy issues, it first discusses and develops policy with industry, then it sets out a discussion paper promoting this and asking for submissions. Those who understand what is happening and go to great lengths to research the issue and engage critically, find their submissions disappear into a black hole and are ignored. Submissions are not published so no one knows what the alternative proposals are.

A good example of what happens was the webinar with the industry to discuss the new Star Ratings<sup>22</sup>. The intention was clearly to restore confidence in the system. The star ratings themselves and the way they were being implemented was not going to work well.

## 1.7 Final Comment

Once again, the system seems to be becoming more and more centralized and more and more tightly controlled. Walker and Salt as well as Braithwaite's warnings about unbalanced systems and civil societies are relevant because this seems to be heading in the wrong direction.

There is one other worrying policy issue that we almost hesitate to mention. Election victories today are influenced by marketing and much of that is paid for by large industry donations, often made to both parties.

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<sup>21</sup> Culturopathy: A for-profit example. Inside Aged Care  
<https://www.insideagedcare.com/aged-care-analysis/cultural-perspectives/for-profit-example#it-was-focused-on-the-insured>

<sup>22</sup> Star Ratings webinar Star Ratings information for residential aged care providers Dept. Health 18 Nov 2022  
<https://www.health.gov.au/resources/videos/star-ratings-webinar-star-ratings-information-for-residential-aged-care-providers?language=en>



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In 2014, a year after Labor agreed to the LLLB reforms and it had lost power, Rob Oakeshott, one of the independents who had supported the minority Gillard government, spoke out about the way parliament had been hijacked by big business<sup>23</sup> as "*political parties took the money and ran*".

He called it a "*sold out democracy bent to the will of big business*". They were "*intimately involved with, and crawling all over, our democracy*". Could this really be what was happening in 2012? Aged care companies have been among those donors.

Since then, the Grattan Institute has issued a report critical of donations and lobbying. There has been a Senate investigation. We are not aware of any real changes to the regulation and disclosure of donations. We have known of allegations by critics since 2015 suggesting that ministers are in power, but not in office.

When a Royal Commission finds "*deep and entrenched systemic flaws*" and everyone including our governments bury it as best they can, when those responsible for a shocking system are praised and put back into senior positions, and when it all becomes more centralised and more controlled, then the question of who is really in power in Australia becomes a worrying issue.

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<sup>23</sup> How big business hijacked parliament Rob Oakeshott The Saturday Paper 9 Aug 2014  
<https://www.thesaturdaypaper.com.au/topic/politics/2014/08/09/rob-oakeshott-how-big-business-hijacked-parliament/1407506400834>

## 2 The two Bills to set up an Inspector-General of Aged Care

Extract of Explanatory memoranda:

The two Bills support the establishment of the new Inspector-General of Aged Care (Inspector-General), who will provide independent oversight of the aged care system.

The establishment of the Inspector-General is a key component of the Australian Government's response to the Final Report of the Royal Commission into Aged Care Quality and Safety (Royal Commission), published on 1 March 2021. The Royal Commission identified a range of systemic issues within the aged care system, including inadequate funding, a lack of transparency, poor access to health care, an absence in system leadership and governance, and a need to restore trust in the Government's stewardship in the aged care system.

The Royal Commission found that the aged care system currently lacks an entity responsible for providing independent oversight of, or for reviewing, systemic issues and driving improvement. As a result, the Royal Commission recommended that the Government 'should establish an independent Office of the Inspector-General to investigate, monitor and report on the administration and governance of the aged care system' (Recommendation 12).

We are not going to comment on the details of the legislation but instead will look at what is being done in the light of the matters described in our long introduction. Our interpretation of these Bills is that the Inspector-General will simply be monitoring central organisations and their processes and assessing them.

Clearly it is important for there to be an independent process for watching over what is happening in aged care, monitoring the introduction of reforms and evaluating their effectiveness. But there should also be accountability.

As the last 20 years so clearly reveal, this centralised and centrally controlled system has presided over a system with "*deep and entrenched systemic flaws*" and did not see what was happening. How will the Inspector-General and his department determine what is happening on the ground in Australia, and assess how the accreditation process, complaints system and funding are operating on the ground? The track record of centralised systems that are not directly accountable is appalling. Who will the Inspector-General be accountable to?

The legislation does not say who will be advising the Governor General when he makes the appointment. This is likely to be the government of the day and as we have seen, they do not always act wisely or in the best interests of citizens.

### 2.1 Suggested alternative

We need to talk about distributed oversight, monitoring and assessments so that there are built in checks and balances. Those on the ground should have input into the assessments done and the central regulators and Inspector-General should also be accountable to those on the ground.

In the community-led system that we have been advocating for, central bodies would operate with and through local governments and local civil society organisations who are regularly on site.

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Not only would central organisations support and mentor local services and integrate those services but local organisations would act as a check to prevent what has happened over the last 20 years because they would see what was happening. Local groups would elect a central organisation to integrate their services and work with other central organisations.

There are two possible ways of doing this. The first is for the Inspector-General's department to work directly through and with local organisations and get their input into what is happening on the ground as well as how effective the various reach down services are. Local organisations will report back on the impact of new regulations or reform processes from where it is happening.

The elected central body representing local organisations would be collecting this sort of information too. It might be more efficient for the Inspector-General's department to work closely with this body or even be attached to it so that they check and balance one another. That sort of accountability has been sadly lacking.

## 2.2 Building Community

But first we need to build community, involve them and give them the capacity, responsibilities and the power to engage and build rewarding identities.

Governments really only have two choices:

1. Continue down the present path and enter another cycle of failure, continuing the cascade of criminality by ignoring the *entrenched systemic flaws*. This will ultimately come back to bite them.
2. Alternately, they can address the flaws by rebalancing the system. They can start the process of decentralisation and the building of civil society concurrently with other regulatory efforts. The restructuring should be part of the *Aged Care Act* but the changes will need to be introduced carefully and not rushed. The central agencies will need to be reorganised to operate very differently and it will take time.

We think the evidence and logic for this is quite compelling but it is a big change and will take effort and time. The 21<sup>st</sup> century will be a better and more humane one if we do.