SUBMISSION ON AGED CARE ACT EXPOSURE DRAFT

1. INTRODUCTION

The Minister, Department, and all stakeholders are to be congratulated on the radical and long-awaited repositioning of aged-care residents from commercial profit centres to individuals with specific rights and needs.

This sweet victory of human rights makes all the more tragic the complete failure of the Exposure Draft to tackle the systemic cultural and organisational failures of the Sector. The Royal Commission exposed an industry completely incapable of meeting its stated purpose, riddled with incompetence, disrespect, and daily cruelty towards the most vulnerable of our society. There were fifty sexual assaults a WEEK, but no one knew. This is an industry in crisis, obsessed with profit and completely lacking in transparency, accountability, and oversight.

Yet none of these issues is addressed. Instead, we have a Draft that endlessly emphasises the putative rights of residents but provides no methodology for ensuring their provision and scant remedies when breaches are discovered. Creating a "System Governor" with no power or duty to govern solves nobody's problem.

We have been thrown a bone in the yard, while back in the kitchen it is business as usual.

RECOMMENDATION ONE:

A. **That the current Draft, with suitable amendments, be released for comment as the Aged Care Rights Act, and carried into Law within a reasonable timeframe.**
B. **That the Minister and Department commit to serious inquiry and consultation with stakeholders on an Aged Care Governance Act, to produce a recommended model for public and private provision of aged care services, together with appropriate licencing, reporting, inspection, and sanctions.**

2. TOWARDS A MODEL FOR FUNDED AGED CARE PROVISION

It is readily apparent that the current model of independent private operators receiving vast amounts of public subsidy with "light-touch" regulation has failed abysmally. The rationale for privatisation of public provision is the magical ability of "markets" to deliver "efficiencies" that governments cannot. Yet aged care residents and their families are never going to be fully-informed consumers making rational decisions about products, and have virtually no access to market choice or portability. Furthermore, the providers do not compete in any market, but share a common desire to cut costs without penalty and increase public subsidy.

If private providers are going to continue to be permitted to operate in funded aged care, it will have to be under a completely revised set of conditions. While those conditions will need to be negotiated over time, it is necessary to amend the current Draft to provide the powers and duty to enforce them.

3. THE COMMONWEALTH AS PROVIDER OF LAST RESORT

Despite its egregious failure, the current system is strongly supported by providers. The power disparity between industry advocates and supporter groups could not be more marked or more clearly on display. The Exposure Draft is riddled with concessions to industry, and free of any serious attempt to rein in their rapacity.

The greatest driver of privatisation is not market mythology but the flight from government responsibility. It has not worked, as the public continues to hold government to account (cf Pink Batts). But operators have been handed a blackmail-level threat of withdrawal from provision, which they ruthlessly deploy whenever threatened. Governments who succumb to bullying are despised by the electorate as weak and ineffectual.

NOWN recommends that the Commonwealth recognise that allowing itself to be pressured by one industry after another is neither good government nor politically fruitful. The Exposure Draft needs to clearly state that the Government will not be intimidated by bleatings of unprofitability or threats of withdrawal. The provisions in the Draft (Chapter 5 parts 2&3; Chapter 6) that refer to ensuring financial viability must be prefaced with the firm undertaking that there will be no bail-outs, and no too-big-to-fail moments. The service is essential; the providers are dispensable.

Private provision is NOT cheaper – there are no budgetary implications, merely administrative ones.

RECOMMENDATION TWO

That the System Governor be established as provider of last resort. That the Department be equipped take over running, and/or purchase assets of any failed or withdrawing provider, on a temporary or long-term basis.

4. THE MYTH OF SELF-REPORTING:

Nowhere is the pro-industry bias more prominent that in the retention of the ludicrously inadequate self-reporting. A recent investigation by adjunct Professor Rodney Jilek, (reported SMH Jan 16 2024) is prime example – 68 non-compliant homes had a five star rating, and 81 had four stars. The star rating method is administered by the Department (giving it credibility) but relies almost entirely on information supplied by the provider – a cherry-picked sample of 10% of residents for resident experience; and unvetted provider information for staffing. Only compliance information is provided by the Commission, and they are giving 5 stars to homes they have determined are non-compliant. Self-reporting is a wicked failure, and the Commission must be supplied with sufficient staff and funding to ensure accuracy.

RECOMMENDATION THREE:

As a general principle, self-reporting by providers will not be relied upon as the sole source of information on any matter. The Commission must inspect records of staffing levels and seek its own feedback from residents and representatives. Prudential requirements need to be strictly enforced, and non-compliance with any obligation rigorously followed up.

5. TRANSPARENCY:

The Royal Commission called for greater transparency, which the Draft seems to side-step by instituting transparency into the complaints process. While this is welcome, in neatly avoids the industry's greatest fear – scrutiny of their business model. Profitability in outsourced government provision is increased by cutting service levels or increasing subsidies, both or which have been rife.

As contributors and lifelong taxpayers, users of the aged care system need assurance that the privatised model is delivering value for money. While Chapter 6 Part 10 provides a mention (the only one in the Draft) of this as a duty of the System Governor, there is no mechanism for publishing aggregated figures of actual expenditure against subsidy, nor any regular scrutiny of the provision of extra services. Both the quality of meals and scandalous billing for services not provided (or even available at the home where charged) are not dealt with by any mechanism or even scrutiny. The

hoary old excuse of “commercial confidentiality” must not be an excuse for secrecy as to the use of public funds. We need to see them go where they are intended.

A substantial investment will need to be made in compliance by operators and in collecting and publishing data to inform funding levels.

RECOMMENDATION FOUR:

That the Commission collect, verify, and publish annually, detailed data on the actual cost of residential aged care, including profit-taking, and with special consideration to management costs.

6. A DRUG SCANDAL

Evidence from pharmacies suggests widespread failure to properly administer and account for medications prescribed to aged care residents. Reports of facility employees approaching pharmacies expecting “replacement” drugs because tablets “have been dropped or lost” are sufficiently frequent to suggest prevalent misuse. When told by pharmacies that new medications will require the script filled again, they reply to “just bill the patient”. Not only has it been noted that the drugs most often “lost” are pain medications with street value, we must also wonder if patients are even receiving their prescribed medicines.

This matter requires urgent attention. There are pressures on pharmacies to comply and on doctors to supply new scripts. Only some pharmacies are reporting their concerns to the Health Department, and none to the Aged Care Commission.

RECOMMENDATION FIVE:

That the Commission thoroughly investigate and respond to instances of prescription drugs “going missing” and general negligence is handling and accounting for prescribed medicines.

- **(i) That the AMA and Pharmacy Guild be approached by the Commissioner to ensure all doctors and pharmacies understand their duty to report lack of appropriate care and accountability in the administration of medications, and under no circumstances to provide further supply on demand.**
- **(ii) That the Commission be given access to Health Department records and investigate where anomalies appear.**
- **(iii) That the power of entry without notice (Chapter 6 Part4) be extended to apply to instances of suspected drug negligence or misuse. It represents a serious risk to the “safety, health, and well-being” not only of the resident, but of the entire community**

7. RESTRAINT AND CHEMICAL RESTRAINT

Dealing with difficult residents is a core part of the responsibility of providers. Providers have no right to docile and compliant clients. Restraint will be required at times, but evidence at the Royal Commission suggests that a resident with a genuine complaint, perhaps inappropriately expressed, will receive no resolution but will be labelled “difficult” and in danger of continuous chemical restraint.

It is central to this issue that neither aged care recipients nor their representatives and families are in a position to judge the necessity of restraint after the fact. Even if they are involved in decisions about continuous restraint, including being locked in, they are likely to fall into line with whatever the providers tell them about previous behaviours. Doctors who bulk-service facilities are also in

danger of inappropriate influence over their medical decisions. Oversight is clearly necessary, and the decision to carry over the provisions of the previous Act is totally insufficient.

RECOMMENDATION SIX:

That the Commission investigate all cases of continuous or frequent restraint and seek opinions other than those supplied by the provider as to their appropriateness. That representatives and supporters be supplied with a complete list of all medications given for anxiety, depression, and any mental or behavioural issue with the opportunity to discuss the reasons and appropriateness of the prescription.

That the Commission inspect, without notice where necessary, records of incidents and responses leading to loss of freedoms by aged care recipients, to ensure compliance with the rights set out in the Act.

8. CONCLUSION

Funded and supervised aged care is a right. People love to say that care used to be provided "by the family", but this is a wicked lie. Aged and child care services were provided by an army of dispossessed, disempowered, and derided women. Women's progress towards equal rights and access to employment have hugely benefited the economy and society, and the rewards of this must not be squandered in tax cuts but used to replace the vast amounts of ignored and unpaid labour women previously supplied.

NOWN has recommended, in response to appalling revelations of lack of care, considerable increases in the supervisory and investigation functions of the System Governor and Commissioners, which will come at a modest cost, but no substantial increases in services. These recommendations go to fundamentals of the provision – that neither the recipients nor their representatives have any access to market choice or portability, or independent information about products, or any capacity to find out about, let alone enforce, breaches of quality standards. These functions have been left to the non-existent market, which has failed as predicted.

The industry has called for self-regulation, and has proved itself brutally self-serving. It is time to abandon the fantasy, and regulate, investigate, and prosecute to the extent required.