

Submission: Aged Care Rules consultation

Submission to Department of Health and Aged Care

<https://www.health.gov.au/our-work/aged-care-act/consultation>

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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.

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 in 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.

In the interest of transparency and informed public debate we would like our submission to be published.

1 Introduction

Aged Care Crisis was deeply saddened by the complexity of the rules being created to support the new *Aged Care Act*.

1.1 The Regulatory Trap

The rules, the Act and the regulatory changes are all good example of what Dr Albert Banerjee warned Nordic countries about in aged care in 2013. He described how the regulatory trap¹ developed in aged care in Canada². This happens when, instead of addressing the reasons for recurrent market failure in vulnerable sectors, policy makers repeatedly try to control the perverse pressures responsible by regulating over and over again each time it fails. This has been happening in Australia over the last 25 years as well³.

The numerous regulatory processes and rituals become ever more complex tying down staff and motivated providers to the extent that they actually compound the problems they are intended to address. Staff become disillusioned and good providers overburdened. Both vacate the sector leaving it to those who have learnt how to exploit the situation and succeed.

As Banerjee indicated, neoliberal believers and powerful vested interests become involved in designing their own regulation and unsurprisingly this does not work and soon fails,

In Australia: We are already seeing this happen in Australia again with municipalities that provided good home care and some good nursing home operators vacating the sector. Staff don't want to work in the sector and as a consequence staffing objectives are not being met.

Marketplace advisers in Australia have already seen the opportunities created by the way the new Act is driving smaller providers away. They are writing about the new market opportunities⁴ in aged care. Entrepreneurial multinationals like the giant US multinational private equity group Bain Capital, realised what is happening and the opportunities for them. Bain has recently purchased Estia Health care in Australia and is looking for further opportunities. Some Australian companies (eg Menarock Life) are not far behind and are also looking to increase their market share.

Strongly free-market entrepreneurs including private equity groups have created huge problems in the USA and the UK as well as playing a role in the failures in aged care in Australia over the last 15 to 20 years. The Standing Committee on economics inquiry into private equity in 2007 specifically rejected our warnings about this and instead welcomed them.

Marketplace advisors, including the Big Four, have played a major role in designing the new regulations. Their business models are deeply embedded in neoliberal free market ideology. The views of providers with vested interests have been very influential.

¹ The Regulatory Trap: Reflections on the vicious cycle of regulation in Canadian residential care: (Dr Albert Banerjee) https://www.academia.edu/25304647/The_Regulatory_Trap_Reflections_on_the_vicious_cycle_of_regulation_in_Canadian_residential_care

² See pages 203-2016 in 'Marketisation in Nordic eldercare (2013)' <http://www.diva-portal.org/smash/get/diva2:667185/FULLTEXT01.pdf>

³ See 'The Regulatory Trap' Page 32 on Aged Care Crisis Oct 2024 Submission number 165 to the senate Standing Committees on Community Affairs review of the New Aged Care Bill 2024. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AgedCareBill2024/Submissions

⁴ See "3.3 The corporate response to the new regulations and the new Act" on Page 21-23 of "Aged Care Act: Background and information for politicians (Part 1) Aged Care Crisis May 2024 <https://www.agedcarecrisis.com/images/pdf/C-politicians-info-part1.pdf>

It is no surprise that the regulatory system is already failing (eg Star ratings⁵). We saw this happening in star ratings webinars for providers and warned about this problem⁶ in our 'Analysis of the Star Ratings webinar for providers' which is Appendix I of our June 2023 Submission to Consultation Paper 2 'A new model for regulating aged care'. The discredited marketplace advisor PwC was involved in designing the star ratings system. It has just been announced that this time KPMG, has been contracted to refresh and update the star ratings.

Incredibly, this government has been using another marketplace adviser, Nous Group to advise on home care issues and is again. This time they are advising on relationships with General Practice in nursing homes.

Many warnings have been ignored. In the final report, Royal Commissioner, Justice Pagone advised that the system be restructured and warned that the reform model advised by the other commissioner would not work because they did not address the actual problems in the system. Captured governments ignored his advice.

The reasons why policy makers cannot accept that the sort of competitive free markets they have introduced across multiple vulnerable sectors, have failed and need restructuring, requires exploration and explanation. Instead, they keep trying to regulate them.

1.2 Root cause analysis

Some at Aged Care Crisis have had a long experience of ideology and more recently of the consequences of neoliberalism's domination of policy for health and then aged care, first in the USA and then in Australia. This is an ideology based on a misunderstanding of the nature of mankind, of society and of markets. Many warnings about the predictable adverse consequences were ignored.

As well as playing a central role in market failures in multiple vulnerable sectors in multiple countries, this ideology has had a profound negative impact on society and on the behaviour of individuals. This has contributed to the erosion of civil society and to what has been described as truth decay and populism. We deal with this in the section 'Consequences for society' on pages 8-10 of our May 2024 'Background paper for politicians⁴.'

The Rand Corporation has studied this phenomenon in depth⁷. Its CEO in 2022 noted that:

"Truth Decay—the diminishing role of facts and analysis in public life—is one of the true existential risks, not just to the United States, but to democracy globally. It cuts across what's required for democracies to function, which is that we have some common way of agreeing on facts."

⁵ Aged care homes star rating system needs transparency overhaul, ombudsman says The Guardian 6 Nov 2024 <https://www.theguardian.com/australia-news/2024/nov/06/aged-care-homes-star-rating-system-needs-transparency-overhaul-ombudsman-says>

⁶ See Appendix I ("Analysis of the Star Ratings webinar for providers") in our submission 'A new model for regulating aged (response to Consultation Paper 2 June 2023 <https://www.agedcarecrisis.com/opinion/articles/476-new-model-for-regulating-aged-care>

⁷ Truth Decay An Initial Exploration of the Diminishing Role of Facts and Analysis in American Public Life The Rand Corporation 2018 https://www.rand.org/content/dam/rand/pubs/research_reports/RR2300/RR2314/RAND_RR2314.pdf
The Diminishing Role of Facts in American Public Life The Rand Blog 17 Jan 2018 <https://www.rand.org/blog/2018/01/the-diminishing-role-of-facts-in-american-public-life.html>
'The Future Could Be Brilliant': RAND's CEO Is an 'Apocaloptimist' 4 Aug 2022 <https://www.rand.org/pubs/articles/2022/the-future-could-be-brilliant-rands-ceo-is-an-apocaloptimist.html>
RAND_RRA134-17.pdf The Missing Infrastructure for Elementary (K-5) Social Studies Instruction https://www.rand.org/content/dam/rand/pubs/research_reports/RRA100/RRA134-17/RAND_RRA134-17.pdf
Democracy at Risk? Summary of an International Conference on Challenges Facing Democracies 11 Dec 2023 https://www.rand.org/content/dam/rand/pubs/conf_proceedings/CFA2800/CFA2888-1/RAND_CFA2888-1.pdf

They found that truth decay existed in Europe but was less of a problem than in the USA. They suggested that the erosion of, and poor quality of civic education in the USA was responsible for some of this. They have taken a keen interest in civic education and in the consequences for democracy.

Civic education in schools has received considerable attention in Australia and another parliamentary inquiry is currently in progress⁸. It seems to have suffered by not being seen as a high priority in their communities when compared with courses in 'Economics and Business', which lead to a career in our market focussed country. It now costs twice as much to study social science as other subjects at universities, showing how little it is valued by governments.

For these courses and the value systems they teach to be relevant, citizens need to have roles and responsibilities in society where they can use this knowledge and express these values. They need to use them to build the social selves that constrain unacceptable behaviour and create valued identities and status. Students need objectives and role models to aspire to. Neoliberalism has taken this away and the new act prevents it from developing in aged care.

In functioning democracies politicians represent society and play a major role in building and supporting a stable civil society of responsible citizens. Citizens express these civic values in managing their lives and their community affairs as well as engaging with national issues. Neoliberalism more than other beliefs since the 1930s has pushed society aside, managed it and indoctrinated it using the media. It has eroded civil society and undermined democracy.

Like all dominant ideologies those involved have built their often very successful lives using these beliefs and come to believe ever more deeply. They simply cannot conceive that they are wrong. Any challenge to these beliefs is threatening so is not seen as credible. They ignore evidence and resist change.

Yet neoliberalism's failures have been glaringly obvious. This was an ideology developed, supported and maintained by economists over the years. It has been strongly criticised by social scientists and others during this period.

But now it is economists themselves around the world including in Australia who have become the strongest critics (see pages 5 to 9 of our Background paper for politicians⁴). Yet the mainstream economists and politicians in Australia remain resistant and willfully blind.

We summarise most of these issues in our submission to the Senate³ where we provide links to additional material that explores in greater depth.

The Royal Commission's findings in its interim report and the recommendations of Commissioner Pagone in its final report were threats to these beliefs. The extent of this threat is revealed in the way the new aged care act preserves and protects the system that has failed by centralising control over the system. It marginalises potential criticism by controlling all appointments and excluding independent community participation.

⁸ Inquiry into civics education, engagement, and participation in Australia Joint Standing Committee on Electoral Matters 2024 https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/Civicseducation

Identifying root processes: We have identified root processes (major problems) created by neoliberalism that have impacted on aged care as well as other vulnerable sectors.

1. The **power imbalance** between providers of care on the one hand and elderly citizens and their communities on the other.
2. The **failure of neoliberal competition policy** as a consequence of this power imbalance. Strong competition in an unbalanced system ensured that those who fail to make enough money because they provide good care are put out of business while those who provide poor care in order to do so thrive.
3. The **consequences of paradigm conflicts** between controlling believers on the one hand and professional staff and responsible citizens on the other. Conflicted paradigms (patterns of thinking), cultures and roles develop. These often result in toxic cultures and unpopular workplaces with high staff turnover. People are harmed. This has not only occurred in nursing homes but also in government departments and regulators when their mode of operation challenges community values.
4. The importance of **trust and trustworthiness**. The requirement that trust and trustworthiness (probity) would be a requirement for operating and investing in this vulnerable sector was abolished in aged care in 1997.
5. **State and regulatory capture**. This occurs when those making policy or regulating have close associations with powerful members of industry and adopt their views. As a consequence, they regulate and make policy on behalf of the industry rather than society and its citizens. Regulatory, state and policy capture has impacted aged care and still will after this act -- (See a brief description on pages 35-36 of our submission to the Senate³ and on pages 17-18 and 25-26 of an introduction that we wrote for participants in roundtable discussions in January 2024⁹).
6. The **erosion of our democracy**. In a society where community is pushed aside and misinformed, and where powerful believers control the information, the policy that governments make and the way regulators regulate, then democracy becomes little more than a token.

The new *Aged Care Act* in its present form does not address any of these issues. The deceptive way in which the recommendations of the Royal Commission have been promoted to the public by both major parties is a reflection of the state of our democracy and the extent to which our political system is captured. The deception will further erode trust and create more truth decay.

In our submission to the Senate, we suggested amendments that would open the system to community input in ways that would rebuild our civil society and open the door to the sort of changes needed to address the actual problems in the system.

⁹ Introduction to an analysis of the new aged care act and proposals for change' prepared for roundtable participants Jan 2024. See Pages 17-18 for State Capture and Pages 25-26 for regulatory capture <https://www.agedcarecrisis.com/images/pdf/A-acc-Analysis6Jan2024.pdf>

2 Conclusion

Vast sums have been wasted in order to preserve the system that has failed and persuade the public to support it.

All we can do at this stage is to set out what has happened and warn those involved that, while believers will once again control data and make exaggerated claims to success and being 'world class', these claims will be hollow.

This is not lasting change and the system will fail again. Many will continue to suffer from neglect and poor care. This sort of recurrent regulatory reform has been going on for over 25 years and we will be back here again sooner or later.

Misinformation of the sort given to the public about the Royal Commission will continue to drive truth decay and populism making it an ever-increasing existential threat.

Any solution must focus on rebuilding our civil society by involving communities in their affairs. Aged care is the best place to start because it impacts on everyone. That opportunity is being blocked in the new *Aged Care Act*.

The role of education: Good education is also crucial but to engage students, their learning must be relevant to their future lives. They need to recognise and embrace the importance of their role as responsible citizens in civil society and not only in voting and referendums.

As artificial intelligence and robotics release us from the burden of endless labour, we will soon need a new world order that capitalises on the opportunities for building our human societies.

Universities will need to play a central role in ongoing community education, particularly in the social sciences if we are to build our societies' knowledge base, critical thinking skills and intelligence in ways that allow us to capitalise on the opportunities. These skills are best developed by embracing programs of lifelong learning. Real-life experience ensures that their ongoing relevance is recognised. Their importance in training economists and businessmen to make them think critically and become socially responsible must be recognised.