

# Aged Care Legislated Review – Aged Care Crisis Inc.

---

## Table of Contents

<b>1.</b>	<b>Tell us about you.....</b>	<b>2</b>
1.1	What is your full name?.....	2
1.2	What stakeholder category do you most identify with? .....	2
1.3	Are you providing a submission as an individual or on behalf of an organisation? .....	2
1.4	Do you identify with any special needs groups? .....	2
1.5	What is your organisation’s name? .....	2
1.6	Which category does your organisation most identify with?.....	2
1.7	Do we have your permission to publish parts of your response that are not personally identifiable? .....	2
<b>2.</b>	<b>Response to Criteria in the Legislation .....</b>	<b>3</b>
2.1	Whether unmet demand for residential and home care places has been reduced.....	3
2.2	Whether the number and mix of places for residential care and home care should continue to be controlled.....	4
2.3	Whether further steps could be taken to change key aged care services from a supply driven model to a consumer demand driven model .....	5
2.4	The effectiveness of means testing arrangements for aged care services, including an assessment of the alignment of charges across residential care and home care services.....	5
2.5	The effectiveness of arrangements for regulating prices for aged care accommodation	6
2.6	The effectiveness of arrangements for protecting equity of access to aged care services for different population groups.....	7
2.7	The effectiveness of workforce strategies in aged care services, including strategies for the education, recruitment, retention and funding of aged care workers.....	7
2.8	The effectiveness of arrangements for protecting refundable deposits and accommodation bonds .....	8
2.9	The effectiveness of arrangements for facilitating access to aged care services.....	8
<b>3.</b>	<b>Other comments .....</b>	<b>9</b>

# **1. Tell us about you**

## **1.1 What is your full name?**

-

## **1.2 What stakeholder category do you most identify with?**

Other.

## **1.3 Are you providing a submission as an individual or on behalf of an organisation?**

Organisation.

## **1.4 Do you identify with any special needs groups?**

Nil

## **1.5 What is your organisation's name?**

Aged Care Crisis Inc.

## **1.6 Which category does your organisation most identify with?**

Recipients of care & family members of people receiving aged care and home care.

## **1.7 Do we have your permission to publish parts of your response that are not personally identifiable?**

Yes, publish all parts of my response except my name and email address.

## 2. Response to Criteria in the Legislation

### 2.1 Whether unmet demand for residential and home care places has been reduced

Refers to Section 4(2)(a) in the Act

In this context, unmet demand means:

- a person who needs aged care services is unable to access the service they are eligible for e.g. a person with an Aged Care Assessment Team / Service (ACAT or ACAS ) approval for residential care is unable to find an available place; or
- a person who needs home care services is able to access care, but not the level of care they need e.g. the person is eligible for a level 4 package but can only access a level 2 package.

Response provided:

*The consequences of not having an effective oversight system and the failure to collect data is that government does not have a system to estimate, plan or inform aged care policy. Policy is being made in the dark and without considering evidence. Relying on a survey to which few will respond is not useful!*

*The assessment of 'unmet demand' has been hampered for a number of reasons:*

1. *The level of unmet demand exists for a number of reasons. Family members have complained to Aged Care Crisis that the system is overly complex<sup>1</sup> and often very poor value for money<sup>2</sup>. Many are suffering in silence, some have gone to media<sup>3</sup>, others have made their own arrangements after citing the system as 'unfriendly', an administrative burden or waiting lists unbearably long<sup>4</sup>. Excessive administration fees<sup>5</sup> seem to be a major barrier to accessing home care and are a symptom of an excessively complex system.*
2. *Regional and rural areas are problematic as access to residential and home care places are also limited.*
3. *The complexity of the entire aged care system has spawned a new breed of expensive consultants thrust upon many frail and vulnerable consumers. Many must now navigate the aged care maze by acquiring expert services, if they can afford to do so, in the pursuit of planning the remaining chapter of their lives. There may be "specialist" aged care accountants, aged care placement consultants, paid patient advocacy services (existing government funded services are often inundated) and countless commercially driven "review" websites which may or may not have the interests of would-be residents at heart. These consultancy services may improve the employment figures but take control away from those whose prime need is to control their lives, effectively reducing the funds available for care.*
4. *A system introduced to assist people to stay home for longer is appealing, but in practice Level 3 and 4 packages are near impossible to access so it is not working effectively and many are denied the care they need. Some are entering aged care prematurely as they do not have any other 'choice'.*
5. *Home care 'exit fees' add another layer of complexity for recipients<sup>6</sup>. The claim that 'exit fees are necessary to assist home care providers cover administrative costs' undermines the market and creates another way to maximise. This is a risk that any market entity runs and a cost they pay for not satisfying the customer. When we employ a cleaner or gardener, we don't pay them for work not done when we find them unsatisfactory. The government is creating a market and then by funding poor providers and allowing them to prosper ensuring that it won't work. No business can expect recipients to use their services forever<sup>7</sup>.*

<sup>1</sup> So much for client control (The Senior, 1 Mar 2016): <https://www.thesenior.com.au/news/so-much-for-client-control/>

<sup>2</sup> Acceptable Aged Care Administration Fees: <https://daughterlycare.com.au/aged-care-administration-fees>

<sup>3</sup> 'Steam coming out both ears': Aged care bill shock (paywall: [www.batemansbaypost.com.au](http://www.batemansbaypost.com.au)), 5 Oct 2016

<sup>4</sup> Waiting times for Aged Care Packages: The need to know, Maria Griffiths et al, Australasian Journal on Ageing Vol 33 Issue 1: <http://onlinelibrary.wiley.com/doi/10.1111/j.1741-6612.2012.00641.x/full>

<sup>5</sup> Compton calls for review of 'repugnant' home care admin fees (Aust. Ageing Agenda, Community Care Review, 20 Oct 2016): <http://www.australianageingagenda.com.au/2016/10/20/compton-calls-review-repugnant-home-care-admin-fees/>

<sup>6</sup> Overview of Exit Amounts (Department of Health, 10 November 2016): <https://agedcare.health.gov.au/programs/home-care/overview-of-exit-amounts>

<sup>7</sup> Home care: exit fees by stealth (CPSA, 28 June 2016) <http://www.cpsa.org.au/aged-care/1499-home-care-exit-fees-by-stealth>

6. *The government and the industry's focus on clothing the poorly structured aged care system in positive images fuels the perception that its primary objective in aged care is to off-load its responsibilities to seniors and instead create an industry that can address its funding crisis by competing in global markets. In doing so, it is supporting the sort of providers that international data shows provide suboptimal care and penalizing those who provide good care. It is exposing the elderly to an open market without creating the regulatory and community structures that would enable this market to work. Without oversight, transparency and an effective customer, the marketing of choice is cynically opportunistic. Those with insight are avoiding the system and making their own arrangements.*

7. *Many seniors might find responsibilities they have assumed in assisting their children and grandchildren more compelling than meeting their own short-term needs. As a consequence preventive care may be suffering but the extent of this and the additional long-term costs have not been studied.*

8. *In their submission, the Combined Pensioners and Superannuants Association of NSW (CPSA) have examined the costing structure and we agree with their assessment.*

*Recommendation 1: Many of the ideas that underpin our aged care system are failing and need re-evaluation. This should lead to structural changes.*

*Recommendation 2: The Government set in place a process for the collection of data that would allow consumers and community to be knowledgeable participants in this marketplace and that they should use that information and their response to it to inform aged care planning.*

## **2.2 Whether the number and mix of places for residential care and home care should continue to be controlled**

Refers to Section 4(2)(b) in the Act

In this context:

- the number and mix of packages and places refers to the number and location of residential aged care places and the number and level of home care packages allocated by Government; and
- controlled means the process by which the government sets the number of residential care places or home care packages available.

Response provided:

*One of the considerations in deciding whether to be cared for at home or move into residential aged care is the desire to remain close to friends, family and to maintain close ties with community. A free market in aged care will see an oversupply in areas where profits can be made and an undersupply in areas where care is really needed resulting in a two-tiered system where some are over-serviced and others underserved. This is already apparent.*

*This is a sector where the needs of the community should take preference over the pursuit of profits by the market. Local communities should be empowered to play an important role in planning their future and in deciding what they need and which providers they choose to serve their communities. This is where market forces and competition could be used to leverage improved services.*

*The impracticality of structuring a competitive market around the capacity of frail elderly citizens, many in cognitive decline and their anxious families, to be effective customers must be addressed. A market structured around an empowered community has a much greater chance of success. Their ability to respond flexibly to the needs of community would ensure that service to the community would drive the market. This is currently not the case and the elderly are not in a position to change this.*

*Recommendation 3: That the market be restructured and community be empowered and educated so that they can become an effective customer in this vulnerable marketplace.*

### 2.3 Whether further steps could be taken to change key aged care services from a supply driven model to a consumer demand driven model

Refers to Section 4(2)(c) in the Act

In this context:

- a supply driven model refers to the current system where the government controls the number, funding level and location of residential aged care places and the number and level of home care packages;
- a consumer demand driven model refers to a model where once a consumer is assessed as needing care, they will receive appropriate funding, and can choose services from a provider of their choice and also choose how, where and what services will be delivered.

Response provided:

*Demand and choice are bureaucratised concepts that sit poorly in this sector. For seniors control is a critical component and while choice is part of being in control, choice for choices sake as expounded in the Aged Care Roadmap is simply confusing and provides an opportunity for the market to exploit the vulnerable.*

*It would be far more appropriate for communities to be directly involved in structuring services for their seniors and working in partnership with providers in providing the services needed. The communities, working with their older members, would then negotiate with government and providers for the sort of services needed. They would be in a position to constrain the excesses of the market by having a measure of control in who provides the services and by the advice they give to seniors.*

*It is not a question of supply and demand, but of meeting the needs of the community. The current model on which aged care service are based depends on an informed and effective customer. Not only does the system not supply the customer with the information needed but the bulk of customers are not and cannot be turned into effective customers. While empowerment is a lofty goal it is limited by our biology and we should abandon illusionary beliefs.*

*We have suggested an improved Aged Care Roadmap<sup>8</sup> by analysing the government's approach. In this we directly involve the community in the control and management of the aged care system, so creating a supported and empowered customer as well as a civil society structured to fulfil its role in capitalist democracies - exposing the illusions and controlling the excesses that both markets and politics are at risk of.*

*Recommendation 4: That the deficiencies and failures in the Living Longer Living Better reforms be confronted. We recommend a community based restructuring of the aged care marketplace, as this would address the problems in the least disruptive manner.*

### 2.4 The effectiveness of means testing arrangements for aged care services, including an assessment of the alignment of charges across residential care and home care services

Refers to Section 4(2)(d) in the Act

In this context:

- means testing arrangements means the assessment process where:
  - the capacity of a person to contribute to their care or accommodation is assessed (their assessable income and assets are determined); and
  - the contribution that they should make to their care or accommodation is decided (their means or income tested care fee, and any accommodation payment or contribution is determined).

Response provided:

*While we all die, the costs of the last years of our lives, like any illness, is totally unpredictable. It is impossible for anyone but the very wealthy to plan ahead and make any sort of estate planning. The opportunity for some form*

<sup>8</sup> Aged Care Roadmap - Inside Aged Care: <https://www.insideagedcare.com/introduction/aged-care-roadmap>

*of sensible long term insurance system to even out the risks fairly and address the aged care bulge was lost in the 1990s. The only equitable option left is to introduce an estate levy to fund aged care.*

*We are faced with a very confusing means tested system imposed at a time of crisis in our lives. We lose control of our finances and so the security we have spent our lives building. This is disorienting and destabilising. More than choice, we need to be able to plan our lives and for our succession. At this stage of our lives, estate planning and securing the future of our families is our last and most important activity. It is very distressing to have that taken from us.*

*Recommendation 5: That the government seek some method of addressing the major inequity in the system – the unpredictability of the way we die and what it will cost.*

## **2.5 The effectiveness of arrangements for regulating prices for aged care accommodation**

Refers to Section 4(2)(e) in the Act

In this context:

- regulating prices for aged care accommodation means the legislation that controls how a residential aged care provider advertises their accommodation prices.

Response provided:

*It seems that every time the government regulates, this is negated by the minutia of detail. If the government are promoting the publishing of fees to enter aged care on the MyAgedCare website, then this should be done correctly.*

*The deep flaws in the current marketplace are illustrated by the manner in which market listed for-profit providers have been able to exploit the lack of market power of their residents by levying extra charges. These have been used to prop up the losses sustained by their risk taking in the marketplace.*

*This unstable market is only possible because the providers are able to manipulate the costs of care without being constrained by the consequences of doing that for services. The creation of an effective customer and a community that controls the limits of acceptable conduct would increase the stability of the market and constrain the high-risk players in the market game. They would play a key role in regulating prices.*

*Recommendation 6: The sector requires a stable secure market and not a high risk unstable one. Empowering and involving community would be a major step in the right direction.*

## 2.6 The effectiveness of arrangements for protecting equity of access to aged care services for different population groups

Refers to Section 4(2)(f) in the Act

In this context equity of access means that regardless of cultural or linguistic background, sexuality, life circumstance or location, consumers can access the care and support they need.

In this context different population groups could include:

- people from Aboriginal and/or Torres Strait Islander communities;
- people from culturally and linguistically diverse (CALD) backgrounds;
- people who live in rural or remote areas;
- people who are financially or socially disadvantaged;
- people who are veterans of the Australian Defence Force or an allied defence force including the spouse, widow or widower of a veteran;
- people who are homeless, or at risk of becoming homeless;
- people who are care leavers (which includes Forgotten Australians, Former Child Migrants and Stolen Generations);
- parents separated from their children by forced adoption or removal; and/or
- people from lesbian, gay, bisexual, trans/transgender and intersex (LGBTI) communities.

Response provided:

*Other contributors indicate that those requiring government assistance and unable to pay large RADs are having difficulty and are discriminated against. CPISA<sup>9</sup> have analysed the manner in which the government's attempts to maintain equity by requiring a 40% threshold for supported residents has been undermined by the incentives in a system that is driven by financial considerations and not the needs of the community.*

*By placing the community and its support of its seniors at the heart of this system and empowering them to set the limits of acceptable behavior we ensure that the market serves them equitably and that succumbing to dysfunctional incentives is not acceptable conduct.*

## 2.7 The effectiveness of workforce strategies in aged care services, including strategies for the education, recruitment, retention and funding of aged care workers

Refers to Section 4(2)(g) in the Act

In this context aged care workers could include:

- paid direct-care workers including nurses personal care or community care workers, and allied health professionals such as physiotherapists and occupational therapists; and
- paid non-direct care workers including: managers who work in administration or ancillary workers who provide catering, cleaning, laundry, maintenance and gardening.

Response provided:

1. *In a sector where success depends on profitability there is a strong incentive for providers to contain costs. There is little incentive to increase their costs by training and supporting more staff.*

2. *Motivation dries up quickly in an industry where decisions are based on cost containment at the expense of care. The consequences of this can be unpredictable and sometimes frustration is taken out on residents.*

3. *Instead of addressing the poor working conditions in the sector and the dysfunctional culture within many facilities, the response has been to try to present a false image of the sector through marketing and so attract unsuspecting young people into the sector.*

4. *Staff morale is destroyed when they have to struggle and find themselves unable to meet the needs of residents as the money that is provided for care is being funneled off into large profits, CEO bonuses and large*

<sup>9</sup> Nursing home bonanza (CPISA, 1 October 2015): <http://www.cpsa.org.au/aged-care/1358-nursing-home-bonanza>

*mansions. Profit may not be a dirty word but in underfunded humanitarian services that are struggling to care for the vulnerable it has an unpleasant odor.*

*We know that society has to apportion its resources and that funding is not unlimited. When funding is limited the huge difference between a market that focuses on maintaining profitability and a community driven system that struggles to provide the best care possible with the resources that are available is glaringly apparent. Without an effective community in control of the outcome for residents, the market far too readily fails citizens.*

## **2.8 The effectiveness of arrangements for protecting refundable deposits and accommodation bonds**

Refers to Section 4(2)(h) in the Act

In this context:

- arrangements for protecting refundable deposits and accommodation bonds means the operation of the Aged Care Accommodation Bond Guarantee Scheme.

Response provided:

*The investment of RAD's in the purchase of facilities at overinflated prices in the private equity and share market driven to consolidate has put the security of these funds at risk when faced by an economic downturn. This is already a problem. It was an unconventional and complicated solution to what should, with foresight, have been a simple problem resolved with an equitable long-term contribution scheme. Its complexity is confusing for the elderly. It places both the elderly and their funding of the system at risk.*

## **2.9 The effectiveness of arrangements for facilitating access to aged care services**

Refers to Section 4(2)(i) in the Act

In this context access to aged care services means:

- how aged care information is accessed; and
- how consumers access aged care services through the aged care assessment process.

Response provided:

*The centrally controlled and bureaucratized system has failed. It was ill considered, unwise and not appropriate for the sector. A community-based system is required. We have heard numerous complaints about the system's complexity, its unresponsiveness, its impersonal nature and the ever-increasing costs; costs that are taken from resident's packages.*

### 3. Other comments

Response provided:

*Aged Care Crisis concurs with comments made in some submissions, including CPSA and other submissions already published. The aged are asked to choose a suitable service or home without any information that might assist their 'choice'<sup>10</sup>.*

*The following submissions published to date, provided detailed examples of the difficulties faced by the community and service providers:*

<i>anonymous_2</i>	<a href="https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_2.pdf">https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_2.pdf</a>
<i>anonymous_3</i>	<a href="https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_3.pdf">https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_3.pdf</a>
<i>anonymous_4</i>	<a href="https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_4.pdf">https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_4.pdf</a>
<i>anonymous_13</i>	<a href="https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_13.pdf">https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_13.pdf</a>
<i>anonymous_14</i>	<a href="https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_14.pdf">https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_14.pdf</a>
<i>anonymous_15</i>	<a href="https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_15.pdf">https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_15.pdf</a>
<i>anonymous_16</i>	<a href="https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_16.pdf">https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_16.pdf</a>
<i>anonymous_17</i>	<a href="https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_17.pdf">https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/anonymous_17.pdf</a>
<i>City of Victor Harbor</i>	<a href="https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/city_of_victor_harbor.pdf">https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/city_of_victor_harbor.pdf</a>
<i>merri_health</i>	<a href="https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/merri_health.pdf">https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/merri_health.pdf</a>
<i>sir_charles_gairdner Hospital ACAT</i>	<a href="https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/sir_charles_gairdner_hospital_aged_care_assessment_team_acat.pdf">https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/sir_charles_gairdner_hospital_aged_care_assessment_team_acat.pdf</a>
<i>star_community_services</i>	<a href="https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/star_community_services.pdf">https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/star_community_services.pdf</a>
<i>Sunnyside_lutheran_retirement_village</i>	<a href="https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/sunnyside_lutheran_retirement_village.pdf">https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/11_2016/sunnyside_lutheran_retirement_village.pdf</a>

*The Sunshine Lutheran Retirement Village and other critics have commented that the system has been thought out by people who have little insight and no understanding of the nature of care. The real community of seniors has not been engaged. Instead of confronting criticisms, those involved have sought to avoid them and discredit their critics. The Village also commented that this survey has been constrained and the questions designed to avoid criticism of the fundamental flaws in what is being done under the rubric of the Living Longer Living Better reforms and the idealistic Aged Care Roadmap. Those who are most unhappy have not been encouraged to contribute.*

*Aged Care Crisis and its members have been watching the development of the current aged care system since the 1990s and have been deeply disturbed by the decisions that have been made over the years. Many of us have made submissions to various reviews and inquiries.*

*The system has been designed by bureaucrats to serve their needs, contain costs and meet the needs of the marketplace. In the process, the needs of the community and seniors have been made to fit the patterns of thinking of decision makers in distant places.*

<sup>10</sup> Dear Santa (Aged Care Crisis): <http://www.agedcarecrisis.com/opinion/your-say/363-dear-santa>

*The current aged care system is based on flawed theory, poorly conceived, designed and implemented. Established market theory and over 2000 years of wisdom was disregarded. What has eventuated is a complex and impersonal 'house of cards'. Incentives in the system are directed to keeping staffing levels low and towards mediocrity in care. It is to their credit that many have maintained their values and the motivation to rise above the system and provide the best care that they can. The price they pay is to struggle financially. They are at risk of going under or being acquired and are unable to expand. Those who provide poor care in order to increase profitability survive and prosper. Those with empathy who try to serve their clients struggle to survive and become fewer in number.*

*A prerequisite for a successful market is the presence of an effective informed customer with the knowledge and power to insist on what is needed and an informed and involved civil society with the power to set the limits of acceptable conduct and sanction those who fail. This is vital in vulnerable sectors. The majority of elderly, especially those with impaired cognition, and their anxious families do not qualify.*

*Aged care is only one of multiple vulnerable markets where market failure has occurred and vulnerable people have been exploited. This is what market theory predicts will happen when the conditions needed for markets to work are missing.*

### **In this system:**

- 1. The centrally managed, controlled and regulated system in all its forms (financial, oversight complaints) is complex, process driven and inflexible. People fall through the cracks and innovative providers readily exploit its vulnerability. By its very nature, process driven systems attract process-focused people and the service becomes task focused and impersonal. Engagement with the suffering of others and the development of empathic relationships is frustrated.*
- 2. Consumer Directed Care (CDC) has the potential to create more flexibility but its management and administration is complex and confusing for many residents. Its administrative costs have been high leaving less for care. It has already failed in the United Kingdom. A flexible local system of funding would be a better alternative. Those capable and wanting control over their funding can be entrusted with this.*
- 3. Making choice a policy and a marketing strategy is unhelpful when it should simply be a part of control. This is what is important for seniors.*
- 4. As acuity has increased, the number of trained staff caring for frail residents has decreased and less costly less trained staff have replaced them. This is largely due to cost cutting to increase profitability.*
- 5. There are no reliable measurements of outcomes in Australia. In the USA every one of the 15,000 facilities is evaluated annually on 158 measures and this is reported publicly. We consider this to be excessive and misdirected, but collecting none is simply not acceptable.*
- 6. Staffing levels in Australia are woefully inadequate. When measured as hours per resident per day and compared with the USA, Australian residents receive half the amount of attention from registered and qualified nurses and less time from nurse assistants. On average, they receive an hour's less attention from nursing staff each day.*
- 7. International studies show that the stronger the pressure for profits, the poorer the staffing and the more failures in care. Australia does not collect enough data to make a definitive assessment but there are no reasons for thinking we are different.*

### **Solutions:**

*To address these issues there are only two viable solutions and both are necessary:*

- 1. Aged care funding and management should be decentralised and delegated to regional community services. This would make it flexible, responsive and restore humanity to the service. Complaints handling, oversight and the collection of information would become everyday activities that responded immediately and humanely to any issues that arose.*
- 2. The community should be given a controlling role in working with providers and residents. By supporting residents and families it would make them into effective customers and at the same time the community would be in a position to set the parameters of acceptable conduct and ensure they were followed.*

*A theoretical underpinning: Interesting work was being done in data collection and responsive regulation in Australia in the 1990s. We were well ahead of the USA in developing a flexible regulatory system that identified issues in the provision of services early, showed that they were unacceptable, stigmatized them and then supported providers in addressing them. It included what are now well-established ideas about community involvement, participatory democracy and a balance of power in the delivery of services. All that work was abandoned in 1997 in favour of an accreditation system that has failed citizens.*

*But it would be a major mistake to see the problems in aged care as no more than a problem of regulation. Regulation cannot by itself address the patterns of thinking that have made this system so dysfunctional but it can be part of the solution and help in creating that context. To the extent that it aids this process Aged Care Crisis support a modernised version of what was being developed in the 1990s.*

*We do have some criticisms of some of his assessments of the Australian system and the direction that Braithwaite seems to be taking when it is looked at within a broader context. We see our proposal as contributing to what Braithwaite talks about as a “civic republican ideal of non-hierarchical accountability” in which different regulatory components interact to keep each other on track and so avoid both the tokenism that we see in the system and the ritualism that Braithwaite describes. The information that would be collected would balance and counter significant risks we see in Braithwaite’s system of data collection and feedback.*

*Aged Care Crisis are focused on creating a dialogue that takes the discourse of aged care out of boardrooms and the corridors of power and ties it to real life situations at the bedside and in the homes where care is provided. It is becoming increasingly clear that this is the key to the successful provision of any form of community service. What Braithwaite proposes can be a step in that direction and a component of it.*

## **A community controlled aged care marketplace**

*We have suggested a structure in which government works through local community services in order to integrate the fragmented central services currently provided by bringing them together in the community and at the bedside. We can see many advantages.*

1. *Funding: Kendig and Duckett in 2001 “proposed that all Commonwealth and State funds for aged care services be pooled into a single fund to be managed at regional level”. They extolled the many advantages of this in creating a flexible and accountable funding system that could be tailored to individual needs and not be subject to what we now call maximising (ie legal rorting). People would not fall through the cracks as is happening now.*

2. *Civil society: Building a strong and knowledgeable civil society structure that would set the parameters of acceptable conduct would ensure that social responsibility became an issue. This community organisation would advise and inform prospective residents empowering them to be effective customers. When they were unable to do so themselves there would be someone to look out for them. Control in decision-making (rather than salesmanship) would enhance their lives and allow them to make sensible choices. Market theory would operate.*

3. *Control: To be effective and underpin community empowerment the community would need to have a measure of control over which providers of care they would welcome into their community. A system of local approval of providers would be necessary. Social responsibility, a good track record and a willingness to work with community would be key considerations in decisions made.*

4. *Tackling the bulge: Such a system might not generate the same funding for growth as the current competitive one and the unpredictable share market. An alternative would be to use REITs (Real Estate Investment Trusts) to raise funds from the market and build new facilities, which the community then leased. This would allow the market to capitalize on the opportunity to grow while also meeting need. The market would still make a major contribution to infrastructure. The community would contract with a separate provider to staff and operate the facilities. Providers of care would have to work closely with communities and meet their expectations so ensuring that this market worked empathically. This would ensure that this market was stable and served the community rather than entrepreneurial risk takers playing market games.*

5. *Data collection: A critical role would be to work with facilities in collecting accurate data about care and quality of life and so avoid the bias of self-reported data. The important work into assessing the culture of the organization and the patterns of relationships commenced by Braithwaite and Braithwaite in 1995 would be*

facilitated because the community would be forming relationships with residents, families, staff, and management and would be in regular contact so that this would be an ongoing process. Total transparency would be assured.

6. *Oversight, regulation, accreditation, complaints handling and advocacy: These could all be integrated in the community and taken directly to the bedside so responding immediately and flexibly to the needs of the situation. Continuous improvement would become part of everyday life and the responses would be immediate once problems were identified. Our centralised processes are failing Australians far too often.*

7. *Social control: The most powerful and flexible form of control that we have over one another is the control that groups of people exert as they interact and define what is acceptable. Dysfunctional practices or inappropriate conduct is detected early and confronted so does not become institutionalised. In writing about the changing face of government and regulation in 1999 Braithwaite speaks of “a dialogue that without threatening distrust, naturally exposes abuse of power to community disapproval”. In regard to regulating nursing homes he speaks of including “residents groups and advocacy groups in nursing home regulation”.*

*Our proposal takes those ideas into the much more challenging situation that we have today. It re-emphasises Braithwaite’s recognition that effective discourse must be underpinned by power.*

*Provider power is far more deeply entrenched than when Braithwaite wrote this. To confront this and be heard the community needs to have greater power. Like De Bellis, Braithwaite refers to Foucault, the philosopher who has explored the nature of power, in support of his arguments. He also sets this within a broad view of participatory democracy, which in its proper place can enhance accountability.*

*The unstated message must be that “we want to work with you to help you care for our parents and neighbours. If you don’t want to work with us on this then we don’t want you here”.*

8. *Integration: The many fragmented centrally controlled activities perform sub-optimally. By integrating them locally they would work with one another and the entire service could be improved.*

9. *Flexibility: The current models of ageing are not meeting community expectations and new ways of living the later years of life are developing. By encouraging local community control of the funding the government would allow a diversification of services and stimulate innovation. Instead of a follower of failed systems elsewhere we could lead the way.*

10. *Burden: By representing government and working with providers to provide a service to help them improve, the regulatory burden would be lifted and be focused on outcomes more than process.*

11. *Funding mechanisms: This suggestion is not intended to alter the way the sector is funded by government and resident but rather the way its expenditure is managed and controlled in order to make this more effective and accountable. Nor is it intended to impact on the residents right to control their own lives and choose how they spend their money. It is intended to guide and protect them so that they can do so safely.*

12. *Economic downturn: In times of need the community would be there to support and help.*

13. *Staffing: The community would be working closely with staff in the facilities and would have a sound grasp of both the acuity of residents and the adequacy of staffing. Recommended ratios based on acuity would be helpful as they would be able to use these as leverage if staffing is inadequate and problems are occurring.*

14. *Restoring humanity: Most importantly by bringing the community to the bedside we bring our humanity and our empathy. We place them at the heart of aged care by welcoming and supporting those who possess those attributes and sanctioning those who don’t.*

## **References:**

*Australian directions in aged care: the generation of policies for generations of older people. Kendig H and Duckett S Australian Health Policy Institute University of Sydney 2001 <http://bit.ly/2fv1xd9>*

*Braithwaite J and Braithwaite V The Politics Of Legalism: Rules Versus Standards In Nursing-Home Regulation: Social & Legal Studies, Vol. 4 (1995), 307-341*

[https://www.anu.edu.au/fellows/jbraithwaite/documents/Articles/politicsoflegalism\\_95.pdf](https://www.anu.edu.au/fellows/jbraithwaite/documents/Articles/politicsoflegalism_95.pdf)

Braithwaite J. *Regulation and Quality in Aged Care: a Cross-National Perspective* Australian Journal on Ageing 17 (4) Nov 1998 page 172

[http://www.anu.edu.au/fellows/jbraithwaite/documents/Articles/Regulation\\_Quality\\_1998.pdf](http://www.anu.edu.au/fellows/jbraithwaite/documents/Articles/Regulation_Quality_1998.pdf)

Braithwaite J *Accountability and Governance under the New Regulatory State; Accountability in Australian Government Symposium in the Australian Journal of Public Administration* 58(1):90-97, March 1999

[http://johnbraithwaite.com/wp-content/uploads/2016/03/Accountability\\_Governance\\_1999.pdf](http://johnbraithwaite.com/wp-content/uploads/2016/03/Accountability_Governance_1999.pdf)

*Regulating Aged Care Ritualism and the New Pyramid* Braithwaite j, Makkai T, Braithwaite V - Edward Elgar Publishing Limited 2007

<https://www.amazon.com/Regulating-Aged-Care-Ritualism-Pyramid/dp/184720001X>