Response to Consultation Paper on the Pricing Framework for Australian Residential Aged Care Services 2024–25

Submission to Independent Health and Aged Care Pricing Authority (IHACPA)

https://www.ihacpa.gov.au/resources/consultation-paper-pricing-framework-australian-residential-aged-care-services-2024-25

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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.

Table of Contents

1 Summary

In this submission we indicate our concerns by briefly commenting on our previous submission and the Issues raised:

1. The difficulties and problems that developed when Activity Based Funding (ABF) was introduced into the US health care system, a system, which like our aged care system, was based on free market principles and market dominance.
2. The lack of resilience and current parlous state of our public health system, which has been funded by an ABF system that focused of efficiency. An excessive focus on efficiency reduces reserves and creates systems that cannot adapt and lack resilience.
3. The neoliberal model of aged care adopted in Australia forces providers of care to follow the money rather than care if they are to survive. This will put constant pressure on the proposed **A**ustralian **N**ational **A**ged **C**are **C**lassification (**AN-ACC**) system.
4. The regulatory system in aged care has failed badly for the last 20 years. This is not because of the regulations, but because of the failure of the regulators, whose capacity was markedly reduced by government. They were captured by a revolving door of appointments from industry, whose interests they protected. This has not changed and will make it difficult to manage funding.
5. The failure of the recent Royal Commission or government to address any of these issues.

Concerns more directly related to the AN-ACC

1. The increased complexity created by the AN-ACC and other regulatory changes is likely to place a greater burden on both staff and the providers. The risk is that this will compound the staffing problems. It is already causing community home care providers and some of the good providers of residential care to stop providing aged care services.
2. The collection of the data used to calculate funding will still come from the providers themselves so may be difficult to verify.
3. The complexity may lead to delays causing funding to lag behind changing needs of the service.
4. Funding such a complex system using a distant centralized mechanism is expensive and hazardous
5. The system will struggle with inequity when rationing is required.

An alternative

1. We argue that there is a huge power imbalance that creates a situation where containing its excesses requires constant distrust. This should be replaced by one based on balanced power in which trust and trustworthiness are core requirements.
2. We argue that to develop such a system we should decentralize management and oversight using a community-led place based collaborative approach.
3. Funding requirements would then be assessed by groups who can be trusted and they would be responsible for ensuring it was properly spent and met the needs of the service. A complex ABF system might not be required.
4. Central organizations would work through and with regional ones in a balanced and supportive manner.

2 Background

2.1 A Reminder

We remind the IHACPA of our 10 October 2022 submission in which we described the problems that developed with **A**ctivity **B**ased **F**unding (**ABF**) in health care in the USA in some detail.

ABF in the USA: Like Australia, it was a free market driven and controlled competitive system in which the industry followed the money rather than the care provided. Those who failed to do so ceased to be competitive. ABF funding was used in health care but not in aged care.

We described how:

1. The constraints on profitability caused providers of hospital care to expand into sectors that paid per item of service and did not use ABF. Patients in these sectors were over serviced and exploited to increase profits. Professionally unethical behaviour was encouraged.

   This occurred in:

   - Specialty hospitals supplying psychiatric, drug dependency and rehabilitation services
   - International expansion in Asia, Europe and Australia
   - Marketplace consultants promoted the advantages of expanding into these sectors and used per item of service payments as a reason for doing so

2. Hospitals, which were paid for services where rehabilitation services were covered by ABF funding, transferred patients after acute treatment to nursing homes where they could be given large amounts of care paid per item of service.

   We note that the rate of Post-Acute Care funding associated with ABF systems increased rapidly between 1988 and 1997, after which the funding system was changed to remove the incentive to do so, but it remains higher than other countries[1].

3. ABF was unprofitable in surgical patients who developed complications and hospitals avoided patients at risk of complications. Many who would have benefited did not get care.

4. When an additional item was added for these patients making high risk surgical patients profitable there was extensive upcoding using this more profitable item. Overservicing became a problem and one hospital did several hundred unnecessary major heart surgeries.

ABF in Australia: The focus of ABF is on increasing efficiency and we note that your documentation refers to this. While not advocating inefficiency, a focus on efficiency is ill-suited to sectors like health and aged care because good care depends on building trusting relationships. This takes time and is not factored into efficiency. A drive for efficiency usually results in minimum levels of everything including staffing. This impedes the system's capacity to respond to new developments or to unexpected demand for services. The system lacks resilience.

The COVID epidemic showed just how unprepared the public hospital system in Australia was and it is clear that it is still not coping well. Bed block and ambulance ramping has been an ongoing problem over the years indicating inadequate resources.

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[1] Activity-Based Funding of Hospitals and Its Impact on Mortality, Readmission, Discharge Destination, Severity of Illness, and Volume of Care: A Systematic Review and Meta-Analysis Palmer KS et al PLoS One. 2014; 9(10): e109975. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4210200/

We are not aware of any studies done to see what role ABF funding played in creating this state of affairs, but it is an obvious risk and we suspect that it played a part.

2.2 Problems for ABF in Aged Care

Since 1997, aged care has been delivered using a neoliberal free-market model where strong commercial pressures were generated in a drive for efficiency, but in the absence of an effective customer or any community restraint. To compete and avoid being taken over, companies were forced to follow the money rather than care and did so. Staffing and services were steadily reduced to a minimum and then even further.

The story of aged care has been one of ongoing failures and recurrent scandals followed by attempted reform that either had little impact or increased the pressures by further 'market reforms' as in 2004 and 2011/12. The situation deteriorated rapidly after the 2012 changes and, when there was extensive publicity, a Royal Commission was called in 2018.

After 1997, neoliberal policy saw the public service markedly reduced and career public servants replaced by appointments from industry. The regulators were 'captured' by the industry.

During this period the acuity and frailty of residents increased steadily at the same time as the more expensive trained nurses needed to care for them were increasingly replaced with untrained nursing assistants. In spite of this the success in passing all accreditation standards increased from 60% to a near perfect 97.8% percentage and this figure was used to discount the many claims of poor care and claim a world class system. It is clear that the captured regulators were supporting government and industry and not protecting elderly citizens. Revelations at the recent Robodebt Inquiry revealed that this is systemic problem as other departments were found to be doing the same thing.

As far as we are aware, ABF funding has not yet been introduced into aged care in other countries, so Australia will be pioneering this. Introducing ABF into this system will put strong pressures on it. Providers will look for opportunities to exploit any weakness.

We need to consider whether the Royal Commission has made any significant changes to the perverse pressures in the system responsible for failure.

2.3 The relevance of the Royal Commission into aged care

The Royal Commission into aged care's interim report released in October 2019 described the Commission's findings. It stated that it *"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"*. This confirmed what those who had closely tracked what was happening in aged care were saying.

There were two Commissioners, one a judge and the other a past senior public servant who had played a major role in marketplace issues. The judge died after the interim report and was replaced with another judge.

The second stage involved addressing the *"deep and entrenched systemic flaws"* and recommending the changes needed to address them. But there was no further mention of systemic flaws, their nature was not explored and those who were asked to make submissions were not supplied with the information about them so they could make recommendations.

Instead, the Commission engaged with the same industry and government officials responsible for the present system and not with critics. Submissions that challenged this approach were not published. Many highly relevant issues were not explored by this Royal Commission.

In our view the reform agenda was hijacked after the interim report. We suspect that by the time the new Commissioner Pagone came to grips with what was happening the program had already been set and he had little choice but to go along with it. It was soon clear to observers that the two Commissioners often disagreed even publicly. *The Australian* newspaper commented[2] that *"Close observers of the royal commission noticed a philosophical difference in approaches since Mr Pagone was brought on to the commission in October 2019"*. In the end, the two Commissioners wrote separate chapters and made different recommendations.

Commissioner Pagone wanted to rebuild the system by making it independent of government and by regionalising direct management. He clearly realised that the recommendations made by the other Commissioner to simply 'renovate' the system would not address the systemic flaws and not be effective. He was very critical of this.

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"*. We agree.

In our view the government is ignoring the message Commissioner Pagone was sending in the section of the report he wrote. Instead, it is focusing on aspirational claims and complex regulation as it *"renovates"* the existing system. It is making exaggerated claims about reforming it.

Pagone stressed the importance of *"understanding why the aged care system has been failing"* and why the system was in its present state. We think he said this because he realised that this had not been done and should have been. He later wrote that the Commission were *"unable to consider market dynamics to any great extent in our inquiry"*. The central role that the pressures created by commercial competition in this market model was glaringly obvious. We think Pagone was sending a message here too. He understood where the problems lay.

The *Australian Financial Review* quotes him[3] as saying there was *"little point in repeating the same process again by asking the same Department that has overseen the current failings to build and run the new aged care system."* Pagone stressed the benefits of an independent system indicating that *"The same cannot be said of a department of state subject to ministerial direction"* and *"Such a body will always face conflicting or competing demands that it will seek to balance through compromise"*.

Government is carefully avoiding the basic structural changes that are needed to make this as well as other markets in vulnerable sectors work. The same people and groups who were responsible for creating a system with *'entrenched systemic flaws'* have been given responsibility for reforming the system and it is clear that none of them accept that there were systemic flaws in the system they spent so much time and effort designing. None of them have taken responsibility for what happened.

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2 **Split over aged-care reforms** The Weekend Australian 1 March 2021

3 **Split emerges between aged care commissioners** AFR 1 March 2021 https://www.afr.com/politics/federal/pm-urged-to-act-on-rape-claim-in-the-next-two-weeks-20210301-p576md

Relevance: This is relevant because the strong perverse pressures in the system remain and as a consequence success for providers will depend on the ability to maximise income by exploiting any weakness in the funding system and milking the resources needed for care in the name of efficiency. The same captured government regulators who protected governments by giving providers perfect scores in accreditation, when the system was failing, will be regulating the 'new system'.

The new AN-ACC will be under pressure as providers will seek out its weaknesses. The complexity of the new system will make this a difficult task.

3 Concerns about the AN-ACC funding system

In our view, the structure of the new system including its AN-ACC funding and expanded regulation will greatly increase the complexity and so the burden on providers which will be passed on to already overburdened staff.

We should take note when those nurse academics who study the sector say that staff are leaving in droves because of the sort of environment they are working in. When you find yourself in an environment where the culture and your core values are under pressure, you don't stay.

This is likely to have several consequences:

1. Staff will be put under ever greater pressure taking them away from care and making the sector an even more unpopular place to work in.
2. Good community providers of home care like those in Victoria, will vacate the service. Large numbers are already doing so and there have been suggestions that up to 80% will do so. [4] Warnings have been ignored[5].

   " - the Municipal Association of Victoria (MAV), have spent years warning both State and Federal Governments about how the move to marketise in-home aged care would put the strength of Victoria's system at risk. - - - - - Councils have no say or control over the subsequent providers contracted by the Commonwealth"
3. Smaller providers of residential care who generally provide better care, have decided that they cannot or do not want to operate in this sort of system and some have already vacated the sector[4].
4. The strong competitive commercial pressures in the system and the huge imbalance of power on the ground will put continual pressure on funding and care.
5. The data on which decisions will be based will come largely from providers, so compounding this problem.
6. The complexity of the funding system will increase the costs of the system with less available for care.
7. Because of the complexity of the system, there may be long delays in making decisions so that funding lags behind the needs of citizens.
8. The complexity and variability of both individual and regional requirements as well as changing care requirements for recipients make it difficult for a distant and complex centralised process like this to meet requirements.
9. The financial problems and generational inequity created by an ageing population will make it very difficult to balance limited funding fairly. As a consequence, it is likely that funding will be restrained. In a rationed system, an unbalanced market system leads to services being rationed to maintain provider profitability as has happened in aged care over the last 26 years.

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[4] Regulatory changes are driving the best providers out of aged care Aged Care Crisis May 2023 https://www.agedcarecrisis.com/opinion/articles/475-regulatory-changes-are-driving-the-best-providers-out-of-aged-care
Aged care workers affected by Victorian councils scrapping services. Hellocare 12 Aug 2022 https://hellocare.com.au/aged-care-workers-affected-by-victorian-councils-scrapping-services/

[5] Op Ed - Work with councils on in-home care evolution Municipal Association of Victoria 19 Aug 2022 https://www.mav.asn.au/news/OpEd-work-with-councils-on-in-home-care-evolution

4 Finding a simpler and more effective solution

If we were prepared to challenge the ideology responsible for the deeply flawed free-market system that has introduced the strong perverse unopposed pressures that drive people to exploit others in order to succeed, then we would not need all this. If used at all, AN-ACC would simply be a mechanism for watching over the system in order to detect outliers that need to be examined. Currently we have a model that depends on distrust to control its excesses. It is being applied to a sector where trust and trustworthiness are vitally important because of its vulnerability. That needs to change.

Creating a balance of power

We need to reverse the power imbalance in this system so that the market is directly accountable to the citizens and communities it serves. These communities should have the power to replace those who betray their trust and fail their citizens. Central organisations should build and support them and work with and through them.

An imbalance of power is now recognised across the world as a key problem for many communities and vulnerable sectors. Many citizens groups are pressing for a greater say in their affairs. There is pressure for greater regionalism, localism, distributed democracy and more. Regionalisation that focusses on changing the balance of power is called '*place-based collaboration*' and there are groups in several countries including Australia that are collaborating in exploring this solution but not in aged care.

The Canadian Tamarisk Institute, a leader in doing this, puts it this way:

> Our argument is that systems transformation led at a place-level, with communities having agency over the change is the only viable way for shifting the dial on complex social problems with different casualties. We need radical devolution of power and responsibility to communities, backed by access to sources of support that will help steward the process of change without taking back power. We need to embrace the reality of uncertainty in this work and allow journeys of change to be different, whilst connecting those doing the work with each other to leverage their experience and insights.

It is time for this to be trialled in aged care in Australia and not just in rural and remote areas.

A community service from which community is excluded

Aged care is a service to citizens who live in communities. It is a community service and yet communities have been excluded. There was a graphic example of this sort of thinking at a Roundtable meeting about aged care that community groups held with the Department of Health and the Minister on 23 August 2023. In summing up, the leader from the department referred to the role of all 'stakeholders' and listed them. She needed to be reminded that this was a community service and they were a stakeholder.

Addressing the issues with a community-led approach

The values on which relationship-based care depends including trust and trustworthiness are community and professional values and not market values.

Aged Care Crisis has been pressing for a community-led aged care system in which community organisations are involved in the planning and building of services and facilities to serve their members. They would then assess potential providers probity and capacity before contracting or licensing them to provide the services needed. Those providing care would be their agents and community organisations would be in a position to revoke the license of providers who betray their trust.

The community organisation would be responsible for paying the providers a fee for their service as well as paying for the care provided which should be protected from profit taking. Success would come from competing to provide the best service rather than squeeze more profit.

The communities would be involved in watching over their citizens and in overseeing the care given, monitoring funding and investigating complaints and failures.

Central regulators, professional organisations and regulators would play a critical role in building capacity, training, mentoring, supporting and stepping in to assist if needed. They would work through and with local organisations to achieve their objectives.

Funding: Funding requirements would be assessed in the community working with the providers in a mutually trusting way. The central funding organisation would provide oversight, mentoring and support. It would make the final decision based on available funds but communities would be in a position to hold them accountable.

Objectives: This structure would hopefully create a balanced market system. Open disclosure and remediation as well as regulatory oversight would be built into the system so not be an onerous intrusion.

Communities would also need a central group representing them to sit at the table when national issues are debated.

We strongly support legislating for human rights in aged care but if this is to be more than another marketing opportunity, we will need to build a system that embraces it and prevents it from becoming no more than a token.