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NEWS

As the royal commission prepares findings that will likely recommend a return to an earlier system of aged care, the crisis in the sector can be linked to Howard-era reforms that stoked greed and lowered care standards, and have been worsened by successive governments. By *Rick Morton*.

The collapse of aged care (part one)

John Howard in 2001, after announcing changes to aged-care policy in suburban Brisbane.

CREDIT: AAP IMAGE / DAVE HUNT

"It can be seen, commissioners, that the aged-care system we have in 2020 is not a system that is failing," Peter Rozen, QC, told the Royal Commission into Aged Care Quality and Safety in August. "It is the system operating as it was designed to operate. We should not be surprised at the results."

The series of events that led to this moment – with the country's aged-care system teetering on the brink of collapse – stretches back long before the Covid-19 pandemic hit.

Its origins lie in the changes made under the Howard government in the late 1990s, which ushered in a 23-year failed experiment; a live study of human patients that saw falling care standards, dramatic loss of professional skill and soaring profits.

The Saturday Paper can reveal that Rozen, who is senior counsel assisting the commission, will recommend an end to this experiment when he makes submissions to royal commissioners Tony Pagone and Lynelle Briggs this week.

He will recommend winding back the clock, essentially, to where it was before 1997, by mandating significant minimum staffing levels in nursing homes.

For more than two decades, no such requirement – with an explicit prescription for registered and enrolled nurses, therapy and personal-care workers – has existed anywhere in aged-care law.

Before John Howard's 1997 aged-care changes, the number of registered nurse (RN) hours that a typical nursing home with 60 residents was funded for and received was 308. Within a decade, it dropped to just 198.

Today, it is 168 hours in a week.

On its own though, Rozen's staffing recommendation won't be enough to untangle a system so plagued by opacity, so denuded of oversight or empty of responsibility. Whatever comes from the royal commission will need to correct decades of calcification that has paralysed hearts and minds to the horrors of institutionalisation, greed and corporate entitlement.

If you want to trigger an aged-care gold rush, you're going to need money – a lot of it.

But the 1996-'97 budget offered no extra cash for aged-care services. In fact, the line item for "reform of aged and community care" saved the Howard government almost $570 million over four years.

Still, providers didn't need these funds to win big. They had something better: the promise of sweeping deregulation gave providers carte blanche over hiring.

The top quarter of all private aged-care companies in Australia have a return that is *almost four times higher than the best performers elsewhere in the world.*

Immediately before the new act began, the old funding model stipulated a ratio of staffing qualifications.

It broke down like this: almost a third of all care in nursing homes was to be performed by an RN, 58.5 per cent by an assistant in nursing (AIN), 8 per cent for therapy (allied health) and 1 per cent by the director of nursing.

"The decision in 1997 around the new [aged-care] act was that the government would outsource Australia's duty of care for older people to private providers," Professor Kathy Eagar, director of the Australian Health Services Research Institute at the University of Wollongong, tells *The Saturday Paper*.

In all 345 pages of the first version of Howard's Aged Care Act, the words staff and employees are mentioned only three times each. The bill's "quality of care" provisions were extremely vague, requiring only that "approved providers … maintain an adequate number of appropriately skilled staff to ensure that the care needs of care recipients are met".

The following year, 1998, the requirement that one registered nurse had to be on duty in a home at all times was removed.

The abandonment of minimum staffing requirements had private equity firms and American corporates salivating. Suddenly, frail older Australians had become big business.

The nurses were the first to go.

In 2003, there were 16,265 full-time equivalent RNs in Australian nursing homes, representing 21.4 per cent of all direct care employees in these facilities. Even with an explosion in the number of older people receiving care, by 2016, there were only 14,564 registered nurses caring for them, representing less than 15 per cent of all staff.

Enrolled nurses (ENs) fell by almost 2000 full-time positions – dropping from 14.4 per cent of all employees to 9.3 per cent.

These clinical roles were replaced by low-paid and low-skilled personal care workers, often migrants who are given little or no support and face language barriers in the workplace. More than 26,000 such jobs were created between 2003 and 2016, pushing the proportion of these still-overworked employees from 56.5 per cent to 71.5 per cent of the entire direct care workforce.

It's little wonder, then, that nursing home tycoon and Liberal Party donor Doug Moran boasted of his role in designing the Howard government policy, which would throw open the doors to billions of dollars of investment.

Moran, who died in 2011, was particularly thrilled about the proposed introduction of new accommodation bonds, lump sum payments provided from a resident's assets or the sale of their home that nursing homes could use as interest-free loans.

As the furore around this measure grew, Moran compared those who opposed the policy to corporate fraudsters Christopher Skase and Alan Bond. He called them "silvertails, next of kin [and] the hoarders of assets".

"There are a lot of bludgers in our society and I think that's got to stop because it imposes further costs on to the taxpayers of this nation," Moran told *The Daily Telegraph*.

But Howard was spooked by the backlash, and the bonds policy was dropped on high-care places. It would be another 17 years before accommodation bonds were extended, by a Labor government, to the rest of the aged-care sector.

While Moran got everything else that he'd wanted – reduced standards and regulations you could drive a truck through – it didn't stop him quitting the Liberal Party in disgust over Howard's backdown.

The impacts of the changes, lobbied for by Moran and others, were sweeping.

In an October 2019 background paper on previous reforms, the Royal Commission into Aged Care Quality and Safety noted the 1997 system redesign allowed “greater reliance on resident contributions to the cost of care, including through a system of accommodation bonds, and residential care benefits subject to income testing”.

There was also “a relaxation of previous regulatory requirements, such as tight financial acquittal requirements, and their replacement by a ‘lighter-touch’ accreditation approach”.

Before the changes, all aged-care providers were required to prove that a portion of their funding was actually spent on direct care and staff duties.

Howard’s law erased this.

A senate community affairs references committee report on the legislation in 1997 warned that “any system that claims to be concerned about the quality of care in nursing homes must ensure that public money provided for nursing care is spent for this purpose”.

Although Howard did later make minor concessions based on issues raised in its report, none of the committee’s recommendations were adopted.

With its passage into law, the great Howard experiment marked a catastrophic shift in the sector that neither major party has proved willing to undo.

Rather, the free market only grew hungrier. It demanded to be fed, and it was.

The age of monolithic providers began slowly, at first.

By mid-1999, for example, private for-profit companies had a 27.6 per cent share of all bed licences in residential aged care. In June last year, their market share had grown to 41 per cent.

John Howard privatised the aged-care sector, but it was Labor’s Mark Butler who really accelerated changes in 2012.

As minister for Mental Health and Ageing, Butler spearheaded the Gillard government’s major reform to the sector, adopting large swaths of a 2011 Productivity Commission blueprint that finally delivered what Howard never could – vast sums of free money to providers.

Short of detonating the whole model, Butler had few choices. Providers were losing money on so-called high-care places that did not attract accommodation bonds, but charging eye-watering amounts for low-care beds where these funds could be levied. In Sydney by 2008 some were in excess of $2 million.

In reality, by 2012, almost every bed was now a high-care one.

Butler abolished these distinctions. Accommodation bonds that previously only existed in low-care homes were allowed to be charged across the entire sector, subject to approval from the new Aged Care Financing Authority.

Older Australians became “consumers” of services.

Bonds were renamed “refundable accommodation deposits” – or RADs – and residents could no longer negotiate their value. As consumers, they paid the market rate. They could, of course, choose to pay either a bond or a daily payment calculated as a function of the bond price and government interest rate – or they could pay by a combination of both methods.

Either way, though, the money flowed.

The average value of accommodation bonds held by providers in 2012-13 was $229,000 per resident. By last year, that had climbed to $318,000.

In the same time, the total pool held has more than doubled from $14.3 billion to more than $30 billion. These funds are guaranteed by the Commonwealth, should providers go bust.

Providers invest these bonds and skim the profits to buy up property or conduct infrastructure projects, which the law encourages, and return only the original amount to the resident or their estate when they leave or die. Essentially, the system has created billions of dollars in interest-free loans.

There is no clearer indication of how lucrative these changes to the system were than what happened either side of their legislated start date on July 1, 2014.

First, in April, aged-care provider Japara listed on the Australian Stock Exchange and almost immediately beat its own initial public offering price. Regis Healthcare, another mammoth operator that formed after Macquarie Group hoovered up several nursing home providers in 2007, followed with its public listing in October. Finally, Estia Health debuted on the ASX in December 2014.

By April 2015, the ASX was posting material to its investment and finance newsletter spruiking "profit from ageing population".

The benefits, according to Richard Lie from Stockradar, included "government inducements" and "major consolidation".

For-profit providers now represent 49 per cent of all aged-care operators.

The aged-care giants grew quickly. In early 2018, Regis had a market capitalisation of $1.2 billion – it has since dropped to $342 million following years of blows to the sector – and together this corporate trio has recorded $8.4 billion worth of revenue from government subsidies and resident charges in five years. Over the same time, the three listed companies paid out almost $600 million to shareholders.

While public companies have strict reporting obligations, there are only threadbare transparency requirements for private aged-care providers.

Research ordered by the royal commission from tax advisory outfit BDO Australia, published late on Tuesday, reveals that the "current model favours more sophisticated providers who have the necessary financial acumen to manage diverse portfolios and capital structures".

In other words, the system is set up to allow operators to play hide-and-seek with government subsidies and across multiple "related" entities within a web of controlled companies.

This is a "perfectly legitimate" model, BDO says, with one important caveat: "The current approach of having no priority or obligations to report on the related entity … may influence the behaviour of service providers in unintended ways and lead to adverse outcomes for the taxpayer."

Buried in the report is a significant detail.

While the analysis shows that for-profit aged-care providers in Australia have broadly similar profit margins and asset returns when compared with companies in the Asia-Pacific, Europe and the United States and Canada, they differ in one remarkable way.

Nowhere in the world do similar systems have as high a return on equity as in private Australian aged-care operators – usually a reliable measure of income generated from investment. These providers have a return that's almost 10 percentage points higher than the value for listed companies in Australia, and 4 percentage points higher than the closest cohort in the Asia-Pacific.

The top quarter of all private aged-care companies in Australia have a return that is almost four times higher than the best performers elsewhere in the world.

"This would indicate that unlisted for-profit approved providers behave quite differently from their counterparts," BDO says in its report. "For example, they may be distributing a higher proportion of profits out of the entity and retaining less."

This is important, as BDO notes, because "property investment is a significant feature of residential aged care providers" and the Australian government may "make a contribution for the use of the property for each resident".

"Which is effectively a payment of rent," it says.

Basically, providers invest in property, often using bonds from residents, and then charge themselves, and by extension the government, for the rent of that property.

In addition to this payment – and separate to the care subsidy provided by taxpayers – aged-care companies can transfer accommodation bonds received from clients to these other entities as "related party loans" and "use the funds to buy property or other investments".

"An approved provider can own the property asset under a different entity, most likely without recourse."

They then pay rent to these linked companies, listed as an expense for the aged-care facility but which is income for the vehicle that holds the property. Companies need only complete an annual prudential compliance statement.

One of the worst-affected homes in Victoria during the state's second wave of Covid-19 was St Basil's Homes for the Aged in Fawkner. The home paid more than $14 million in rent to its owner, the Greek Orthodox Church, in the past five years.

At last year's royal commission hearings, the inquiry heard about multiple care failures at another Victorian facility, Menarock Life's Greenway Gardens, that occurred in 2018. Here, management had issued a staffing cap based on its financial constraints, rather than resident needs, which were growing more complex.

"You will see a rent figure of $350,000 for this facility. And that's a payment to a related entity," counsel assisting Paul Bolster asked Menarock's director, Craig Holland.

"Yes, correct," he replied. "The [aged-care] business operates through one legal entity and the property is held in another legal entity."

Menarock Life purchased Greenway Gardens in early 2018. The year before the purchase, the facility's previous owners paid just $70,000 in rent.

There are 873 residential aged-care providers in Australia. By income, the 60 largest aged-care providers in Australia and their affiliated entities account for 76 per cent of all revenue in the sector – almost $19.6 billion in 2019.

The data, published in BDO's analysis, is particularly vivid because it shows how this concentration began.

In 2011, the year before Labor's reforms, the top 60 approved providers accounted for 68 per cent of all income in the sector. In their wake, the 10 biggest aged-care juggernauts were able to almost double their income to $11.5 billion and increase share of all revenue in the aged-care sector to 44.7 per cent.

In the context of world-first research from the University of Queensland, also commissioned by the aged-care inquiry and released late last month, these trends are concerning.

Private providers with large nursing homes were the worst-performing group in Australian aged care. Small facilities run by state governments, meanwhile, were consistently the best across a full range of quality indicators.

The latter are also the fastest-shrinking type of aged-care provider.

In other research for the royal commission, the University of Wollongong's Professor Kathy Eagar found the average Australian nursing home resident receives just 180 minutes of care each day.

That ranks at the bottom of what is acceptable around the world. To bring this to between 242 and 264 minutes each day – considered good practice – would require an "overall increase of 37.2 per cent in total care staffing".

Crucially, Eagar found only 1 per cent of all Australian nursing homes meet the legislated standards for state-run homes in Victoria.

To meet Victoria's requirements, the federal government would need to boost registered nurse and enrolled nurse care time each day by 265 per cent. This information is vital to fully understand what happened next, when the Coalition came to power again in September 2013.

Tony Abbott inherited a precarious aged-care industry that was fat with profit, starved of care and had an insatiable appetite for growth.

The sector had become a property play with a funding mechanism that was despised by both sides of politics. Political leaders and bureaucrats had no way of knowing, nor apparently any desire of discovering, where the money provided ended up.

It was a top-heavy, free market enterprise that also happened to be charged with the care of older people experiencing the most complex medical conditions in the country.

Rather than fix the mess, Abbott, and successive Coalition governments since, simply raided the aged-care budget and redirected the savings elsewhere, conveniently using the greed of the biggest companies that aged-care policies had long boosted to attack the entire sector.

Within his first year, Abbott would rip out the two measures Butler legislated and relied on for the rest of Labor's reforms to work: a workforce compact and the dementia supplement.

Now dangerously unbalanced, the sector ran headlong into misery.

"The only way you can be making profit now is to be delivering inadequate care hours," Eagar says.

"It is impossible to make a profit and deliver adequate care hours to residents."

Next week, part two of this investigation will examine how these historical issues laid the groundwork for a near-total failure of the aged-care system in 2020. Read it here.

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Rick Morton is *The Saturday Paper*'s senior reporter.

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NEWS

The Covid-19 pandemic has highlighted two decades of aged-care mismanagement, but at the heart of the sector is a pyramid scheme that exposes the taxpayer to billions in liability. By *Rick Morton*.

The collapse of aged care (part two)

Prime Minister Scott Morrison. CREDIT: AAP IMAGE / MICK TSIKAS the slow collapse of Australia's aged-care system.

Over four years, the program would have delivered a down payment on wage increases of between 3 and 12.5 per cent for care workers and registered nurses, respectively.

> *With no mechanism to guarantee care hours or quality in aged-care homes, beyond vague accreditation standards, every seemingly disparate dysfunction in the sector has combined to diminish the quality of life for aged-care residents.*

Labor had designed the wage increases – which providers would ultimately have to fund after early support – partly as a way to fix a problem with the aged-care funding tool.

The tool, known as the Aged Care Funding Instrument, was the mechanism by which the government subsidy for individual aged-care residents was calculated.

The tool was an unpredictable burden on budgets because nursing homes made their own claims, based on their assessment of resident needs, and the federal government then paid.

Labor took all but $200 million of the $1.4 billion it needed for the wage increases directly from this funding instrument. This way, the government had a better idea of where the money was going.

Abbott made no secret of his disdain for the project, which he labelled "unionism by stealth", but as prime minister he blindsided the parliament by introducing a bill to terminate it entirely.

Privately providers were ecstatic, particularly as Abbott returned the money saved to the general aged-care budget.

"The providers didn't want to do the compact, but they wanted the bonds," says a senior Labor figure from the time. "The consumers didn't want to pay more but they wanted a better system …

"The providers were able to wriggle off the hook. The one thing they didn't want, Abbott got rid of for them."

In late 2013, the new government also moved policy development for aged care out of the Health Department and into the newly formed Department of Social Services.

While the change would be brief – lasting only slightly longer than Tony Abbott's prime ministership – the bureaucratic whiplash only compounded existing problems.

Then, just six months after the workforce reform was killed off, the then assistant minister for Social Services, Mitch Fifield, torpedoed the Dementia and Severe Behaviours Supplement, saying it had been massively "oversubscribed".

Initial modelling suggested 2000 people in nursing homes would receive the supplement. Instead, by March 2014, more than 25,000 people were being supported. This cost was met entirely by government.

More than half of all residents in nursing homes have some form of dementia. But rather than deal with the budget implications – an initial estimate of $11.7 million in funding in its first year blew out to $110 million – Fifield pivoted. He centralised dementia support in the Severe Behaviour Response Teams, at a cost of just $14 million a year.

Thousands of people who would have received specialist dementia care no longer received it.

Part one of this investigation ran in last week's issue. Read it here.

When the report landed with senior Department of Health officials early in the year, its warning was blunt. This was deliberate: the confidential dossier was intended to jolt a lethargic government into action.

"It remains our view that approximately 50 [aged-care] providers – one per week – are likely to walk away due to financial stress in 2020," author Gary Barnier wrote.

"Not all of these providers will be in rural, regional and remote Australia. A substantial investment in the management of risk is warranted."

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Barnier, a member of the federal government's Aged Care Financing Authority, and partner at Cooperage Capital, did not elaborate on how much money was needed to prop up these homes. But the department accepted his recommendation to establish a team of seven full-time employees to manage the problem.

The report, known internally as the "viability project", found 141 of Australia's 873 nursing-home providers were at "extreme risk of imminent failure".

It found a further 89 providers "that will be in severe financial stress within two years".

The report was commissioned by the Department of Health as evidence mounted that the government may have to repay billions of dollars in accommodation bonds should these providers collapse. Between them, the nursing homes listed by the "viability project" hold $5.3 billion in bonds.

These bonds are a fee paid by residents to providers, usually based on property prices in the area. The average per resident is $318,000 – although they can be well over $1 million.

Providers can invest these bonds however they like, including on the sharemarket, although most are invested in property. The interest belongs to the provider, but the bonds must be returned to the resident or their estate when they leave care or die. If a number of bonds need to be returned at once, this creates a liquidity problem.

In trying to privatise the cost burden of an ageing population, governments – both Labor and Liberal – had transformed the aged-care sector into what was, essentially, a pyramid scheme. The bonds are central to this.

As long as the sector kept growing and money kept coming in, the only concerns for government were to manage taxpayer funding and regulate the care standards. But now some of these providers are struggling.

Covid-19 was still only a bit player in global aaffairs when the Barnier work began. None of the report's analyses had factored in the unthinkable once-in-a-century devastation of a pandemic. Instead it was grappling with the reality of a man-made disaster in aged care.

If any single element in this astonishingly complex artifice fails, the whole of it breaks down. Bonds are one part of this, another is a steady decline in government funding and care standards, but the two are inseparable from each other.

Tony Abbott had been prime minister for only a matter of days when, in September 2013, he hit pause on the outgoing Labor government's $1.4 billion "workforce compact" for nursing homes. This was a signal moment in

These were cruel cuts, but the real trouble came with structural funding changes that would be introduced by Scott Morrison when he became treasurer the following year.

Morrison was just three months into his new job when he delivered the mid-year economic update in December 2015.

The treasurer booked a $472 million saving to be "redirected by the government to repair the budget and fund policy priorities".

This money was found by freezing indexation of the Aged Care Funding Instrument and making it harder for providers to make claims under the subsidy.

The next year, Morrison raided the funding instrument again – finding a further $1.2 billion. "Savings from this measure will be redirected by the government," budget papers stated.

Of course, Labor had similarly plundered the funding instrument just a few years earlier. But to understand why Morrison's razor had a more severe effect on the sector, you have to focus on one word: "redirected".

When Abbott intervened in the workforce compact, or when Labor made its changes, they kept the retooled funding in the general aged-care budget. Morrison, as treasurer, did no such thing. As far as aged care was concerned, the money vanished.

According to one registered nurse with more than 30 years' experience in aged care, the $1.7 billion that Morrison broke off the funding instrument "brought the sector to its knees".

Since 2000, the cost of providing care in nursing homes has risen by 116.3 per cent. But government subsidies to outsourced providers increased by only 70.3 per cent, royal commission analysis shows.

In new evidence tendered to the Royal Commission into Aged Care Quality and Safety last week, the Department of Health concedes that "the level of [subsidy] indexation has not been sufficient to cover the increasing cost of service delivery inputs".

The department also gently reframed its previous allegations that providers were "gaming" the funding instrument – artificially boosting the care needs of residents in order to obtain more funding. It now says this was likely done because the direct care subsidy was not keeping pace with costs.

"In particular, low indexation arguably encourages providers to make higher-than-appropriate funding claims under the [Aged Care Funding Instrument] model," the department told the royal commission.

We also now have evidence from two research reports to the government and the commission that whatever "gaming" was going on, it was happening in wealthy areas.

For the same class of residents, such claims were higher in cities than in regional areas. And both were higher than funding delivered in remote areas. Private providers claimed more for the same residents than non-profit providers, and both charged more than state and local government providers.

Morrison's changes crushed services in remote and regional Australia, which were already claiming less than they should have been.

New analysis by industry accountants StewartBrown – which in the past year has also advised both the royal commission and the federal government – shows that 75 per cent of providers in regional and remote Australia are now operating at a cash loss.

Morrison's budget saving was delivered on the back of these services.

At the time this was happening, and with the aged-care sector almost entirely reliant on government funding for general revenue, providers were raking in tens of billions of dollars in accommodation bonds.

Then, in 2018, two of the listed aged-care giants, Regis and Japara, lost a Federal Court ruling, which forced them and other large providers to repay residents tens of millions of dollars in "service" fees that had been charged for no actual service since late 2016.

At the same time, falling interest rates meant providers were making less from accommodation bonds.

The increasing frailty of new entrants to nursing homes, twinned with the expansion of home-care packages allowing older Australians to stay in their own homes with subsidised care for longer, meant the average length of stay in an aged-care facility fell to less than three years between 2003 and 2016.

Owing to this, many residents chose to pay a daily fee, rather than a bond.

In its submission to the royal commission, the Aged Care Financing Authority – which advises the Aged Care minister – painted a bleak picture of what led to the sector's current woes.

"A legacy combination of a highly regulated system, funding pressures, low community status and at times esteem, incentives that do not reward innovation, together with elements of ageism in society, have combined with the result that the aged care industry has struggled in attracting management and leadership skills compared with better resourced and more dynamic industries," it says.

The authority also warned of "the danger that the government may respond to the symptoms of deficiencies in policy settings, rather than dealing with the underlying structural problems".

Moreover, with no mechanism to guarantee care hours or quality in aged-care homes, beyond vague accreditation standards, every seemingly disparate dysfunction in the sector has combined to diminish the quality of life for aged-care residents.

Abuse, neglect and premature deaths are not rare incidents in Australian nursing homes but features of this system. The royal commission has heard as much.

For the past two years, the Coalition has promised to crack down on the lax standards regulating $30 billion in bonds held by aged-care providers. So far, none of the measures announced in the 2018 budget have started or even been legislated.

That year, the Department of Health first commissioned the consultancy firm EY to recommend changes to the prudential oversight regime. The work was then revisited by Deloitte, which handed its report to government in March last year, and then by accounting firm StewartBrown, which was brought in to review both the EY and Deloitte reports, delivering their brief in October 2019.

In December, the government deferred the introduction of a mandatory levy on providers, which would be paid by every nursing-home operator in the event one or more aged-care facilities defaulted on their accommodation bond repayments by more than $3 million in any given year.

About the same time, Covid-19 was already spreading throughout the Chinese city of Wuhan. It would arrive in Australia in just a matter of weeks.

While the virus did not cause the decline of aged-care standards in Australia, it highlighted the weaknesses that were built in by nearly two decades of government mismanagement.

Last month, consultant Cam Ansell of Ansell Strategic provided a report to senior Department of Health aged-care officials with a sobering message.

In a sample group of aged-care providers, representing almost 10 per cent of all operators, Ansell found they had lost $134 million in bonds since Covid-19.

He estimated $1 billion had been lost across the sector as of July 2020.

By January, that figure is forecast to climb to $2.6 billion.

Residents have been dying or choosing to leave substandard homes in large numbers. If they are replaced, it is more likely now to be by new residents who choose to pay the daily fee instead of a bond.

The Commonwealth's lawyers confirmed to the royal commission that the government was so spooked by the impact of Covid-19 it had arranged meetings with Health, Treasury and "major financial institutions".

"There were discussions as to whether the institutions thought government intervention would be required and in what circumstances," the lawyers told the royal commission.

This is the first time the public is hearing about how close the government has already come to having to bail itself out of its own mess.

One significant piece of work the Coalition has done since it came to power is to create the Aged Care Quality and Safety Commission, cobbled together from previously separate roles that once fell to a now-defunct quality agency and the Department of Health.

In January, the commission received its latest transfer of powers.

The regulator now "has primary responsibility for assessing and monitoring the performance of individual aged care providers against the Prudential Standards, and holding them to account for returning to full compliance where they are not meeting [them]."

It is a perverse arrangement. On the one hand, the government says the commission must uphold certain standards but at the same time it cannot afford for a provider to fail. And so many are now at that precipice.

In March last year, Deloitte advised the Department of Health that sanctioning providers that failed to meet standards could push them over the edge.

"In situations where a provider is already in financial distress, a potential disallowance of the ability to accept [accommodation bonds] by the Department may increase the likelihood of provider default," the consultant's report warned.

"Alternative options might be more appropriate in these instances."

Throughout the pandemic, the aged-care regulator has been criticised for ceasing on-site compliance audits of providers. But this was a recommendation of consultant Cam Ansell in his advice to government, also handed over in March, about how to mitigate the loss of accommodation bonds.

"To focus on appropriate and safe care, without the distraction of a visit by the [Aged Care Quality and Safety Commission] it is recommended that on-site assessments be postponed for at least six months," Ansell wrote.

During the pandemic, the watchdog has also been securing assessors through labour hire firms. One such application, seen by *The Saturday Paper*, shows the regulator is using the firm Programmed Health Professionals to hire casual assessors on one-year contracts in Melbourne. It lists the old, defunct watchdog as giving approval.

The aged-care royal commission, announced in late 2018, was tasked with fixing Australia's broken system for caring for the elderly and infirm.

It was framed as a rebuke to dodgy providers, following multiple revelations of horrific abuse and neglect in nursing homes.

Announcing the commission on a quiet Canberra Sunday, just weeks after he had ascended to the prime ministership, Scott Morrison warned the public that "we should brace ourselves for some pretty bruising information about the way our loved ones, some of them, have experienced some real mistreatment".

But this doesn't start and end with providers. To fix aged care, the royal commission will have to unwind two decades of government policy that has gutted and privatised the sector, promoted profits over the wellbeing of residents and tried, above all else, to ensure that the cost of caring for a rising number of elderly Australians would not affect the government's bottom line.

The inquiry will not hand down its final report until February. Calls for deep, broad reform and funding security were already urgent before its work began. A pandemic-induced depression has only put that urgency beyond doubt.

In his "viability" review, with its dire warnings of financial collapse in the sector, Gary Barnier says the Commonwealth can't wait for the royal commission's findings. It needs to act now.

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