THE ROLE OF GOVERNMENT AND REGULATORS IN PREVENTING ABUSE IN RESIDENTIAL AGED CARE

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- Elder abuse
- Potential roles of government
- Trends in regulatory approaches in residential aged care
- Current regulatory framework
- Principles and proposed changes
- Will it work?

Note: This presentation addresses high-level concepts only.
The content does not constitute legal advice.

WHAT IS ELDER ABUSE?

A single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person

World Health Organisation

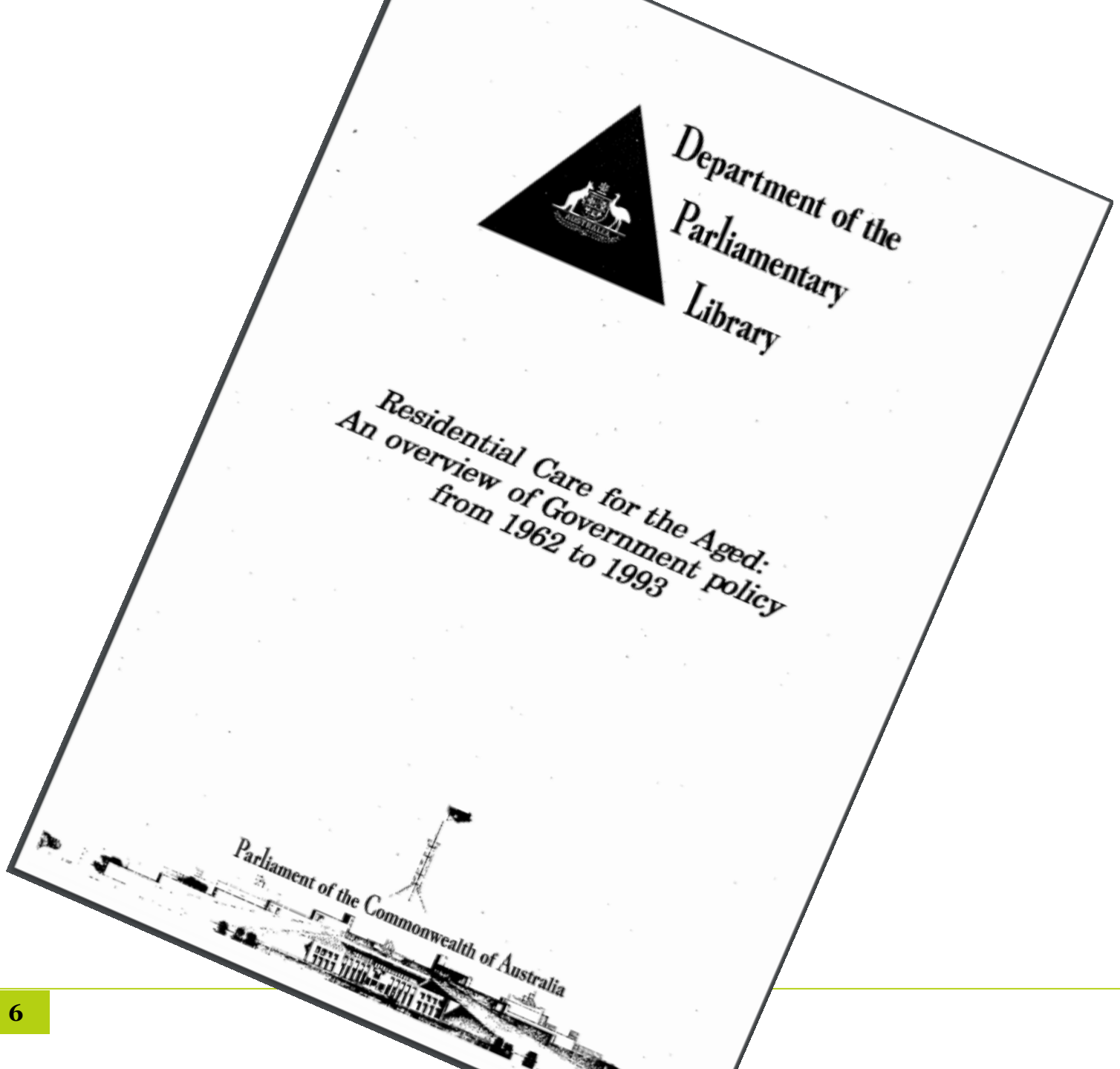
- Physical, psychological, financial, sexual, neglect
- Vulnerability stems from intrinsic factors (health) as well as extrinsic factors such as community attitudes and isolation
- WHO estimates prevalence of 2-14% in middle and high income countries

POTENTIAL ROLES OF GOVERNMENT IN RESIDENTIAL AGED CARE

- Leadership and policy development
- Standard setting
- Funding
- Direct service provision
- Licensing / regulation of providers
- Regulating provider compliance with standards (direct or associated with funding)
- Monitoring of compliance
- Publicising performance
- Establishing complaints management systems
- Regulating appointment of guardians, administrators and alternate decision-makers
- Workforce development initiatives
- Funding advocacy (generic and individual)
- Incentives, grants, research, recognition, workforce development

TRENDS IN REGULATORY APPROACHES

- Post-WWII, Australia was tightly regulated
- Regulation blamed for inefficiencies and constrained productivity
- Efforts to reduce burden of regulation since 1970s
- Contemporary approach: *regulation is never adopted as the default solution but rather introduced as a means of last resort*
- The objective is better regulation, not more regulation


Department of the
Parliamentary
Library
Residential Care for the Aged:
An overview of Government policy
from 1962 to 1993
Parliament of the Commonwealth of Australia

IN THE BEGINNING…

- Federal Government involvement in nursing homes began in early 1960s with introduction by the Menzies Government of a 20 shillings per day nursing home benefit

- In 1966, Government commenced capital contribution for nursing homes

- In 1968, Government introduced a supplement for residents requiring higher levels of care

WOOPS!

By 1971, the New South Wales Council on the Ageing was claiming that 8,000 beds in New South Wales nursing homes were occupied by elderly men and women who should not have been there.[8] The issues of unnecessary admissions to nursing homes and of excessive fees that were being charged in some cases continued to be raised.[9] It became widely accepted that almost 25 per cent of nursing home residents did not really need to be there on medical grounds.

IN THE 1970s …

- In early 1970s, the McMahon Government implemented a 'hands on', gatekeeping plan to control spiralling costs and uncontrolled growth:
  - Medical practitioner approval of admission was required
  - To address conflict of interest issues, medical practitioner certificates were endorsed or rejected by a Commonwealth medical officer
  - Director-General of Social Security approval was required to construct new homes or extensions
  - Private nursing home fees capped with opportunity for appeals
  - Initiatives to increase use of hostels (capital subsidy) and home care (domiciliary nursing care benefit)

- Achieved a relatively sharp reversal of increasing bed numbers

IN THE 1970s…

- **The Whitlam Government:**
  - focused on price control and alternatives to nursing home admissions
  - encouraged development of the voluntary sector through capital subsidies and deficit financing (intended to cater for disadvantaged, but found to be 'catering primarily for the middle-class')

- 1977 Committee on Care of the Aged and the Infirm expressed concern at lack of coordination and apparent *ad hoc* nature of many initiatives
- 1977-81 attempt to shift funding of private care to private health insurers failed

THE 1980s …

- By the mid-1980s, Australia had one of the highest rates of residential care in the world (only the USA and Denmark had higher rates), with a bias towards nursing home rather than hostel care
- 90% of funding to residential sector and 90% of that funding to nursing homes
- Further efforts to develop home-based sector
- 1985 Nursing Homes and Hostels Programs Review
  - » Establishment of bed ratios and shift to home-based care through HACC program
  - » Financing changes – cost containment, improved distribution of beds, capital funding to support hostels over nursing homes

MID-80s TO MID 90s

- Special programs for people with special needs
- Coordinated assessment to ensure appropriate care
- Standard grant for recurrent funding from July 1987
- Staffing standards
- Introduction of fee control (no resident to pay more than statutory contribution of 87.5%)
- Draft national standards released in 1986, 31 outcome standards gazetted in 1987
- Commonwealth inspection teams assessed compliance and supported managers to develop solutions
- Since 1990, standards monitoring reports available to the public
- National training and resource centre funded by government, established 1990
- 1992 – 7 days' notice of monitoring team visit reduced to 24 hours
- Endorsement of user rights philosophy and development of Charter of Rights and Responsibilities
- Better advocacy services
- Community visitors' scheme

CURRENT REGULATORY FRAMEWORK

- Set out in the *Aged Care Act 1997*
  - Approved providers
  - Allocation of aged care places
  - Approval and classification of care recipients
  - Accreditation of services
  - Subsidies paid by Australian Government
  - Provider responsibilities for quality and compliance

SUBORDINATE LEGISLATION

The current Aged Care Principles are:

- Accountability Principles 2014
- Aged Care (Transitional Provisions) Principles 2014 – made under the Aged Care (Transitional Provisions) Act 1997
- Allocation Principles 2014
- Approval of Care Recipients Principles 2014
- Approved Provider Principles 2014
- Classification Principles 2014
- Committee Principles 2014
- Complaints Principles 2014
- Extra Service Principles 2014
- Fees and Payments Principles 2014 (No.2)
- Grant Principles 2014
- Information Principles 2014
- Quality of Care Principles 2014
- Records Principles 2014
- Sanctions Principles 2014
- Subsidy Principles 2014
- User Rights Principles 2014

ROLES OF KEY REGULATORY PARTICIPANTS IN AGED CARE REGULATION

Australian Government	Funds the majority of aged care and regulates service delivery
Department of Health	Administers the *Aged Care Act 1997*. Determines if standards have been breached and can educate the provider, issue a notice of non-compliance or impose sanctions
Complaints Commissioner	Australian Government agency, reports to the Minister for Aged Care, independently resolves complaints and educates providers
Quality Agency	Australian Government agency, reports to the Minister for Aged Care, accredits residential services in accordance with the Quality Agency Principles and Accreditation Standards

Senate Community Affairs References Committee Interim Report February 2018

ACCREDITATION AND RESPONSE MECHANISMS

- Aged Care Standards and Accreditation Agency Ltd established in 1997
- Wholly owned Commonwealth Company Limited by Guarantee
- Appointed as the ‘accreditation body’ under Division 80 of the *Aged Care Act 1997*, and managed accreditation and ongoing supervision of government-funded aged care homes
- Replaced by the Australian Aged Care Quality Agency in 2013

CURRENT PERFORMANCE

From a consumer perspective:

- the quality of aged care services is variable and at times poor
- the current system is confusing
- consumers find it difficult to evaluate the quality of the care provided in a facility or to compare
- the services offered by providers; and the quality of care and access to care is variable for those with complex needs, including people with psycho-geriatric issues and in respect of end of life needs.

From a provider perspective:

- current regulation is excessive and takes up staff time that should be spent with residents
- the demarcations of responsibilities between the Department and the Accreditation and Standards Agency are confusing and result in inefficiency
- the focus should be on continuous improvement rather than regulation.

National Aged Care Alliance. Aged Care Reform Series – quality of care

THE ONE THING I WOULD CHANGE…

(a) independent reviews of aged care facilities

(b) sufficient funding for appropriate mental health aged care facilities, including funding for sufficient beds in more than one location

(c) a reporting hotline for the aged care sector

(d) appropriate training for staff, including on-the-job training in dementia care

(e) fixing the culture of mental health and aged care, particularly in relation to respect for residents

(f) more information for families about advocates, complaints mechanisms, and consumer rights

(g) encouraging a greater understanding of dementia and related issues.

Senate Community Affairs Reference Committee Interim Report
February 2018

REGULATORY PRINCIPLES FOR POLICY MAKERS

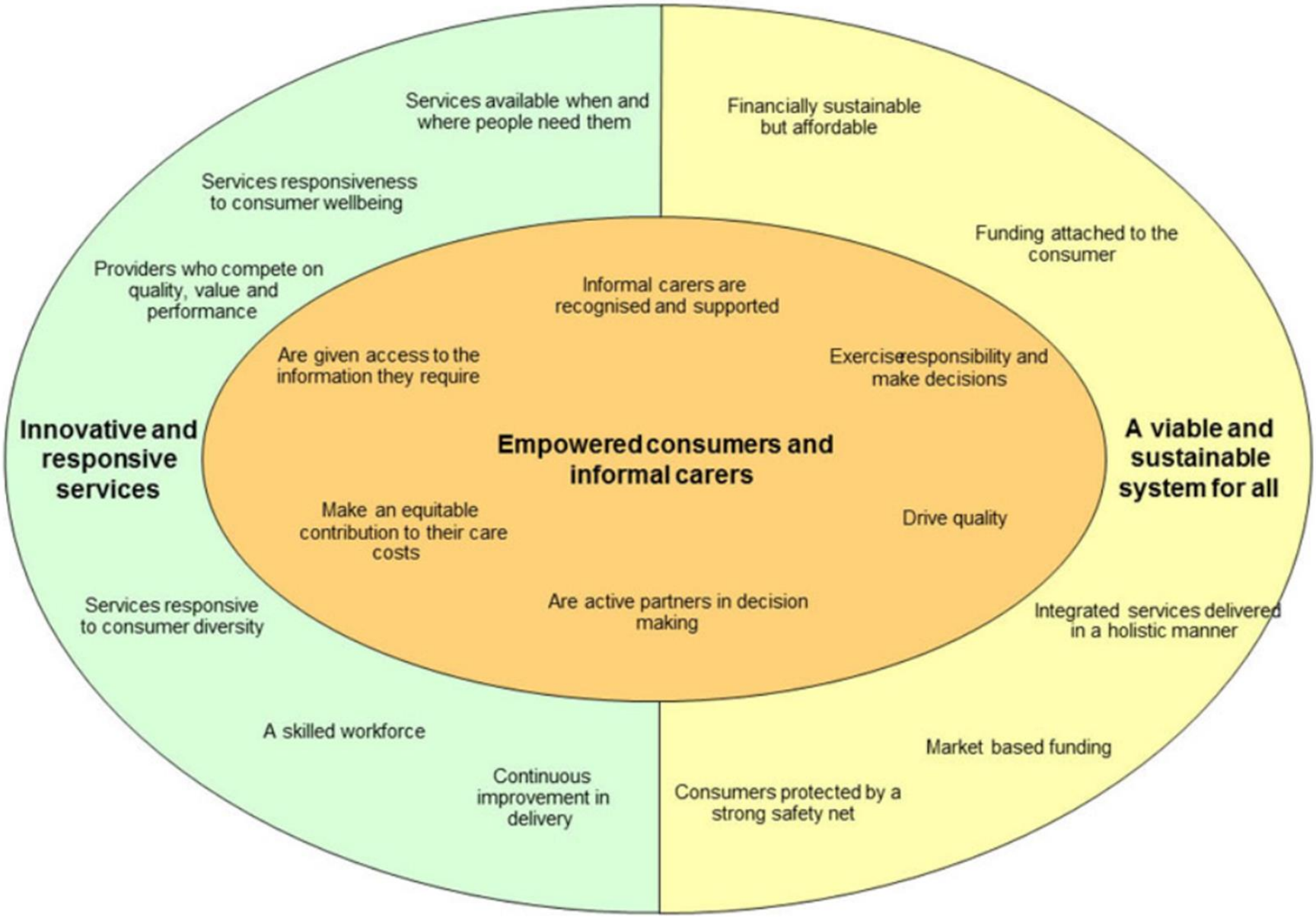
1. Regulation should not be the default option for policy makers: the policy option offering the greatest net benefit should always be the recommended option.
2. Regulation should be imposed only when it can be shown to offer an overall net benefit.
3. The cost burden of new regulation must be fully offset by reductions in existing regulatory burden.
4. Every substantive regulatory policy change must be the subject of a Regulation Impact Statement.
5. Policy makers should consult in a genuine and timely way with affected businesses, community organisations and individuals.
6. Policy makers must consult with each other to avoid creating cumulative or overlapping regulatory burdens.
7. The information upon which policy makers base their decisions must be published at the earliest opportunity.
8. Regulators must implement regulation with common sense, empathy and respect.
9. All regulation must be periodically reviewed to test its continuing relevance.
10. Policy makers must work closely with their portfolio Deregulation Units throughout the policy making process.

The Australian Government Guide to Regulation

PRINCIPLES FOR THE AGED CARE SECTOR

The Aged Care Sector Statement of Principles (the Principles) establishes four guiding themes for the aged care system of the future:

- consumer choice is at the centre of quality aged care
- support for informal carers will remain a major part of aged care delivery
- the provision of formal aged care is contestable, innovative and responsive
- the system is both affordable for all and sustainable.


Services available when and where people need them
Financially sustainable but affordable
Services responsiveness to consumer wellbeing
Funding attached to the consumer
Providers who compete on quality, value and performance
Informal carers are recognised and supported
Are given access to the information they require
Exercise responsibility and make decisions
Innovative and responsive services
Empowered consumers and informal carers
A viable and sustainable system for all
Make an equitable contribution to their care costs
Drive quality
Services responsive to consumer diversity
Are active partners in decision making
Integrated services delivered in a holistic manner
A skilled workforce
Market based funding
Continuous improvement in delivery
Consumers protected by a strong safety net

Aged Care Sector Statement of Principles:

"Government intervention will be focused on areas of potential market failure and consumer protection. A light touch approach to regulation will give providers freedom to be innovative in how they deliver services."

Carnell Paterson Review:

"*The market is an inadequate mechanism to ensure the safety and wellbeing of highly vulnerable residents. Elderly citizens living in care facilities, many of whom suffer from disabilities and dementia associated with ageing, are especially in need of protection*."

THE REGULATORY PYRAMID (AYRES AND BRAITHWAITE)

THE REGULATORY PYRAMID

- The base is firm, anchored through agreement that harm is being done and must be stopped
- Listening is present at every level
- If harm continues, regulatory interventions become more forceful
- Most of the activity is at the bottom of the pyramid

Applications of Responsive Regulatory Theory in Australia and Overseas, an Update

Regulatory Institutions Network (2015)

NEW REGULATORY REFORMS

- Following Carnell-Paterson review
  - Unannounced visits to be implemented July 2018
  - Independent Aged Care Quality and Safety Commission from 1 January 2019, bringing together the functions of the Australian Aged Care Quality Agency, the Aged Care Complaints Commissioner and the aged care regulatory functions of the Department of Health

WILL IT WORK?

- Is it safe to aggregate regulation, accreditation and complaints functions?
- Is there/will there be an adequate focus on minimum standards of care (as opposed to consumer-driven continuous improvement)
- Can quality of care be reliably assessed through accreditation processes?
- Does quality of care as defined by the standards correlate with freedom from abuse in residential aged care?
- Is there sufficient clarity about the desired/achievable balance between autonomy/risk and safety/protection?
- Will the workforce be adequately sized and skilled?
- Will consumers be sufficiently empowered?
- Are accountability mechanisms adequate (especially accountability of corporate leaders)?
- Will vulnerable people be:
  - protected from abuse
  - supported to achieve their maximum potential
  - enabled to enjoy their lives?

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