

PUBLIC HEALTH AMENDMENT (REGISTERED NURSES IN NURSING HOMES) BILL 2016

First Reading

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Robert Brown.

Second Reading

The Hon. ROBERT BROWN (10:24): I move:

That this bill be now read a second time.

Even though this is a Shooters, Fishers and Farmers Party bill, I have introduced it with the support, I hope, of the crossbench and the Opposition. It is therefore a shared bill. It gives me great pleasure to introduce this legislation on International Nurses Day, when we mark the contribution that nurses make to society. Nursing is one of the few remaining noble professions. New South Wales has consistently led the way by mandating higher standards for aged care because the health and quality of life of people in their twilight years matters. I speak from personal experience, given that I am now officially an older person. Having at least one registered nurse on staff is not an onerous requirement, especially given the size of some aged care facilities. In public hospitals we have doctors on call after hours to respond to critical incidents, but we do not see anybody wishing to debate that issue.

The requirement to have a registered nurse on staff in an aged care facility at all times has been standard practice in this State for almost 30 years. Indeed, although the requirement is in section 104 of the Public Health Act 2010, my staff found that the standard has been required since the passage of the Nursing Homes Act 1988. Section 39 of that Act states:

The licensee of a nursing home shall, at all times while the nursing home is being conducted, cause a registered nurse to be on duty in the nursing home.

That seemed entirely reasonable in 1988, and old people have not changed much since then—they are still old people and people in aged care facilities still need care. The requirement may go further back, but 30 years for a minimum standard of care should be sufficient argument to convince anyone. I hope that Government members in this House and perhaps in the other place will support this bill.

I mention this because some of the arguments put by peak bodies representing nursing home operators, or indeed the operators themselves, suggest that this is a new requirement. That suggestion is blatantly false. Our present situation came about on 1 July 2014, when changes to the Commonwealth Aged Care Act 1997 came into effect. The amendments were designed to change funding arrangements for those in residential care, and to streamline transfers between low-care and high-care settings. As an indirect consequence—I would suggest an unintended consequence—the definition of a "nursing home" in Commonwealth legislation was removed. That had a flow-on effect to the New South Wales Public Health Act 2010 because it relied on this definition in the Commonwealth Act.

To give the Government its due, as a temporary measure New South Wales Minister for Health the Hon. Jillian Skinner grandfathered the status quo in this State to existing aged care facilities under the Public Health Amendment (Nursing Homes) Regulation 2014. However, any new facility that commenced operation after 1 July 2014 would be exempt. Automatically the Government introduced a standard that differentiated between an aged person in a facility prior to 2014 and an aged person in a facility established after 2014. Should that differentiation exist? Of course it should not; it is clear inequity.

Last year, a parliamentary inquiry of General Purpose Standing Committee No. 3, chaired by Ms Jan Barham, examined this very issue, as well as other regulatory matters in aged care. My office took great interest in the deliberations of that committee inquiry. The consensus from the Opposition and crossbench was clear: the requirement to keep a registered nurse in nursing homes at all times must be reinstated. That is quite clear in the recommendations.

It is not often that the Shooters, Fishers and Farmers Party is in complete lock-step with The Greens NSW. More often we are in lock-step with the Christian Democratic Party. But on this issue we are

even shoulder to shoulder with the Animal Justice Party and the Labor Opposition and, I hope, the majority of thinking, caring members of the Government. It may not be obvious to members of this House, but three former registered nurses are members of this place and two of them are on the government benches. This bill will right the problematic wrong, the unforeseen consequence of changes in the Commonwealth Act, and it will do so in a straightforward and simple manner. It simply omits in the New South Wales Public Health Act 2010 the definition of "nursing home" and inserts instead:

nursing home means a facility at which residential care within the meaning of the *Aged Care Act 1997* of the Commonwealth is provided, being:

- (a) a facility at which a high level of residential care (however described under or in accordance with that Act) is provided, or
- (b) a facility of a class prescribed by the regulations.

That allows a lot of latitude to the Government and the Minister to support this bill; they still have the wriggle room necessary to make things fit. It was designed that way. Since "nursing home" is replaced by "residential care" in the Commonwealth Aged Care Act 1997, and as this area remains tied to Federal subsidies, that linkage is not put at risk. I bring that to the attention of Government members in this House—nothing is put at risk. The bill also ensures specificity of facilities covered by this amendment and excludes:

- (a) care provided to a person in the person's private home;
- (b) care provided in a hospital or in a psychiatric facility;
- (c) care provided in a facility that primarily provides care to people who are not frail and aged;
- (d) care that is specified in the Subsidy Principles not to be residential care.

Again, this amending bill is very specific. Some members may wonder, "Why all the fuss about registered nurses?" Let me make it clear: This bill is not about registered nurses; it is about aged care. It is about the care of people like me—hopefully in 30 years time. Every citizen—every man, woman and child in this State at some stage and with God's blessing—is going to bump up against old age. Obviously some may not, due to misadventure or other reasons. But every one of us is affected in some way. Every one of us has a relative or knows someone in aged care. The youngest of my surviving siblings is 82 years old, and she is in aged care.

The Hon. Duncan Gay: So you are older than her?

The Hon. ROBERT BROWN: No, I am much younger. I acknowledge the interjection because it rightly places me in the very old brigade. We can use the term "OF" when we refer to men, but we cannot use it when referring to ladies. "Old fart" is probably the definitive term, Duncan.

Ms Jan Barham: No, you're not.

The Hon. ROBERT BROWN: Thank you, Jan.

The Hon. Duncan Gay: It could mean "old and female".

The Hon. ROBERT BROWN: Yes. Let us talk about registered nurses. First, a registered nurse can respond appropriately to critical incidents. Registered nurses have the clinical knowledge and expertise to be able to assist a resident in care either in place of or as an adjunct to NSW Ambulance paramedic support, if that is required. I do not mean to decry our TAFE system or the training of assistants in nursing [AINs], but a simple two-day first aid certificate at a TAFE college or with a private training operator is no match for three years of university level training and 600 to 1,000 hours of practical clinical placement provided by Bachelor of Nursing courses.

My darling wife probably will not be happy with me saying this—because she is a very private person—but she recently graduated as a registered nurse. I know how much time and effort is put into the

training of registered nurses because I lived with it for three years. It is essential that a registered nurse is on hand who can perform resuscitation or recognise the onset of more serious conditions and respond appropriately. Moreover, a registered nurse, based on clinical judgement, can decide whether hospital admission is required. If it is not, this will prevent an exacerbation of the "trolley block" that is occurring in our emergency departments.

Secondly, a registered nurse is able to administer schedule 8 medications. These are drugs of dependence under our medication scheduling regulations and essentially cover any pain relief medication stronger than a Panadol tablet, such as morphine or oxycodone. I cannot fathom that any member of this House would want a friend or relative—or indeed themselves at some time in the future—to remain in serious pain because an appropriate staff member who is able to administer such medication was not on hand, as a result of a definition in a harmonisation bill.

I have heard whispers that the Government may be wishing to change the law on medication scheduling and loosen these restrictions. But, quite frankly, I am sure nobody—particularly the registered nurses who are members of this House—would agree with that. Current requirements in aged care mirror those in public hospitals, and so they should. That is appropriate for those in residential aged care, given the risk of poly-pharmacy as well as the multiple comorbidities often presented in seniors—shaky old buggers like me.

Finally, a registered nurse is equipped with the clinical judgement and assessment skills to know when and when not to administer medication. At first glance, this may appear, as motherhood stuff, straightforward. But it is the case that enrolled nurses and the few medication-endorsed AINs in residential aged care in New South Wales do not necessarily have the insight to know when a drug should or should not be administered, instead defaulting to a doctor's medication order. Medication errors in these circumstances could be life threatening—for example, administering medication to lower blood pressure when the resident's blood pressure may already be low or not picking up that multiple medications that have been prescribed attack the kidneys and thus place a resident at risk of renal failure.

One of my father's brothers—the youngest of his brothers, Uncle Jack—who lived in Tamworth, lost a lung from serving in the Middle East and was eventually put into a State hospital at a level of care higher than would normally be associated with aged care. Unfortunately, the inappropriate application of drugs by a staff member, a non-registered nurse, sent Uncle Jack blind. In retirement, his life had been wrapped up in the pastime of amateur gunsmith. He liked to fiddle with and make things. He could use a file and engrave; he was adept at all the fine arts that are required of a high-quality technician. Suddenly, he was blind and he could not do it anymore. My dear Uncle Jack lasted about six months after that.

Medication errors in an aged care facility can be life threatening.

Members need not contemplate a suggestion that this bill, if passed, will signify the end of the world and that aged care facilities across the State will be closed. I will call it as it is, and I hope my language is parliamentary. It is bullshit. It is a senseless beat-up and calls into question the fact that we have had successful aged care facilities in New South Wales for the past 30 years. I was going to talk about profits, but I will not do that. Caps on nursing home bonds have been loosened and, under the new system, there are more than enough subsidies to cover requirements should registered nurses be required to be on call 24/7. We have an ageing population. Everyone knows that from the statistics.

As at 2011, 1.4 million people in New South Wales were aged over 55. Ms Jan Barham talked about those statistics in her notice of motion. This figure increased by 22 per cent between 2001 and 2011 and it continues to grow—because we do not stop ageing, unless we depart. It is no surprise that some aged care operators are dazzled by the dollar signs in their eyes at the prospect of near limitless opportunities for profit. Employing registered nurses on shifts 24/7 does not mean that five assistants in nursing will be fired, as was put to me recently in correspondence. That is garbage and it is a scare tactic. The past 30 years attest to the fact that for-profit and not-for-profit aged care facilities can be run without going broke. Perhaps we do not have enough of them.

In the wake of the changes to the Commonwealth Aged Care Act 1997 coming into effect in July 2014, three major nursing home operators—Estia Health, Japara Healthcare and Regis Aged Care—floated on the Australian Stock Exchange. A private company is not floated on the stock exchange without a prospectus stating that profit expectations are such that the company will not only survive but also deliver dividends to its shareholders. Each of the companies has been going from strength to strength. The 2015 annual report of Estia Health stated that it achieved \$44.6 million in revenue, which is 104.7 per cent on its original forecast. Aged care is a captive market. Like taxes and undertakers, those industries will not go away; they will only grow. That is why it is important that the minimum requirements relating to standard of

care should include that a registered nurse is on staff at all times. That requirement will not send healthcare operators, whether private or not-for-profit, into receivership.

This bill was not difficult to draft. Barely a full day was needed, because it is a simple and easy bill. It is easy to understand and easy to absorb. I hope—in fact, I beg—that Government members give this bill due consideration and support it. Every day of the week Government members approach members on the crossbenches and Opposition members in this House and in the corridors asking them to support their legislation. I am asking on behalf of crossbench members that other members support this bill. I thank Parliamentary Counsel for their assistance in drafting the bill. In particular, I mention my policy adviser, John Townsend, who is a registered nurse in training, for championing this issue from my office. That is why I have a jump on some of the other members. The Shooters, Fishers and Farmers Party never lets the grass grow under its feet. I may be introducing this bill, but I am relying on the Animal Justice Party, the Christian Democratic Party, The Greens and the Opposition for their support. I hope the Government will also support it. I commend the bill to the House.

Debate adjourned.