



NSW GOVERNMENT RESPONSE

Select Committee on the Provisions of the Public Health Amendment
(Registered Nurses in Nursing Homes) Bill 2020

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INTRODUCTION

It is imperative that older people living in residential aged care facilities in NSW (and across Australia) have their clinical care needs met by skilled and appropriately trained staff.

The Select Committee on the provisions of the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020 reported into whether there is a need to enhance NSW legislation to stipulate that registered nurses are to be on duty at all times (i.e. 24/7) in all residential aged care facilities in NSW. A major theme of the report is mandatory staffing levels, particularly for registered nurses, personal care workers and allied health professionals.

The Australian Government has full policy, funding, and regulatory responsibility for the aged care system. The NSW Government's longstanding position is that the Commonwealth regulates the standards, staffing and quality of care in this sector, and any expansion of NSW legislation will duplicate the Australian Government's regulatory responsibility, but without the same capacity to fund and enforce the requirements.

The Royal Commission into Aged Care Quality and Safety examined all elements of the aged care system, from care in the community through to residential aged care. Of the 148 recommendations from the Royal Commission Final Report, there are specific recommendations focused on staffing and the quality of care provided in residential aged care facilities, which intersect with the issues that this NSW Select Committee examined. Pleasingly, the Australian Government accepted the majority of these recommendations and has started implementing the accepted recommendations.

NSW Health, on behalf of the NSW Government, has consistently supported the enhancement of regulatory instruments to ensure residents have access to skilled and appropriately trained staff to deliver the required clinical care. NSW Health will continue to formally urge the Australian Government to implement certain staffing standards in residential aged care facilities, including on-site registered nurses, personal care workers and allied health professionals, based on the needs of residents to ensure their safety and dignity at all times.

The NSW Government has reviewed the recommendations in the Select Committee's Final Report and thanks the committee for its detailed examination of these issues. The committee's specific recommendations are addressed below. Of note, there are recommendations that recommend the NSW Government raise certain issues with the Australian Government through the National Cabinet process. Although the NSW Government supports raising these issues with the Australia Government, the appropriate mechanism is bilaterally with the federal Department of Health.

RESPONSE TO RECOMMENDATIONS

Recommendation 1 Not supported

That the Legislative Council:

- amend the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020 during Committee of the Whole to incorporate a requirement for registered nurses to be on duty at all times in nursing homes at the appropriate level for the number of residents
- proceed to debate the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020 and pass the bill.

The Australian Government has full policy, funding, and regulatory responsibility for the aged care system and regulates the standards, staffing and quality of care in this sector.

The Royal Commission into Aged Care Quality and Safety examined all elements of the aged care system, from care in the community through to residential aged care.

In its response to the Royal Commission's report, the Australian Government has committed to implementing a registered nurse to be on duty at all times in nursing homes. Of the 148 recommendations from the Royal Commission's final report, there are specific recommendations focused on staffing and the quality of care provided in residential aged care facilities. Specifically, recommendation 86 details an incremental approach to a minimum staff time standard for registered nurses and personal care workers within residential aged care facilities, including at least one registered nurse on site at all times by 1 July 2024. The Australian Government accepted this recommendation.

Any expansion of NSW legislation will duplicate the Australian Government's regulatory responsibility, but without the same capacity to fund and enforce the requirements.

Recommendation 2a Noted

That the NSW Government:

- through the National Cabinet process, urge the Australian Government to implement a mandatory staffing mix ratio in aged care facilities, including on site registered nurses, personal care workers and allied health professionals, based on the needs of residents to ensure their safety and dignity at all times.

NSW Health, on behalf of the NSW Government, has consistently supported the enhancement of Commonwealth regulatory instruments to ensure residents have access to skilled and appropriately trained staff to deliver the clinical care that residents need. The NSW Government recognises that registered nurses are a critical part of this process.

While the Australian Government did not indicate a timeframe to implement recommendation 86 of the Royal Commission's report (as it related to the provision of a registered nurse in residential aged care facilities at all times), the Australian Government response did specify that a 200 minutes care time standard and a registered nurse onsite for 16 hours per day will become mandatory from 1 October 2023.

Other recommendations that focus on a staffing requirement include:

- Recommendation 38: Residential aged care to include allied health care;
- Recommendation 75: Aged care workforce planning.

The Australian Government accepted recommendation 38 in principle and accepted recommendation 75. These recommendations will be considered in the design of the Australian National Aged Care Classification funding model, and within the role of the Aged Care Workforce Industry Council.

In addition to an appropriately trained and staffed workforce, access to adequate levels of primary care is vital in ensuring the safety and dignity of residents.

NSW Health will provide a copy of the Select Committee's report to the federal Department of Health for its consideration.

Recommendation 2b

Not supported

That the NSW Government:

- investigate implementing this mandatory staffing mix ratio for registered nurses, personal care workers and allied health professionals for New South Wales nursing homes if the Australian Government does not act within the timeframe recommended by the Royal Commission into Aged Care Quality and Safety.

The NSW Government does not support implementing a mandatory staffing mix ratio for registered nurses, personal care workers and allied health professionals in nursing homes in NSW. It is the Australian Government's role to fund and regulate the standards, staffing and quality of care in this sector.

Many residential aged care providers who will be captured by the proposed amendment are small aged care operators, largely in regional and rural areas. The Stewart-Brown aged care provider survey found that 65 per cent of residential aged care facilities in regional and remote areas recorded an operating loss for the nine months to September 2020. This equates to an average operating loss of \$4,943 per bed, per annum. The survey found several factors influencing the financial performance of homes in regional areas, including staff shortages, higher cost of goods and services (including labour), lower accommodation prices and lower occupancy rates. The survey concluded that the situation will deteriorate into 2022.

If a mandatory staffing mix ratio is introduced in isolation, without corresponding Commonwealth funding, the financial viability of aged care operators, particularly in the regions, could be compromised and be detrimental to residents and the wider community.

In addition, any expansion of NSW legislation would duplicate the Australian Government's regulatory responsibility, but without the same capacity to fund and enforce the requirements.

Recommendation 3

Supported

That the NSW Government, through the National Cabinet process, urge the Australian Government to provide additional Commonwealth funding for aged care, conditional on implementing a mandatory staffing mix ratio at all times to ensure the safety and dignity of residents in aged care facilities.

The Australian Government has full policy, funding, and regulatory responsibility for the aged care system.

In response to the Royal Commission, the Australian Government announced additional funding of \$17.7 billion, which was allocated in the 2021/22 budget. Funding was committed to enhance clinical care, provide greater access to primary care, and increase front line care.

NSW Health will address this recommendation by writing to the federal Department of Health and sharing a copy of the Select Committee's report.

Recommendation 4

Partially supported

That the NSW Government undertake detailed analysis of the cost-shifting that occurs in the New South Wales public health system due to nursing homes failing to have a registered nurse on duty, on site at all times.

The NSW Government partially supports this recommendation, including the need to better understand cost-shifting that occurs in the NSW public health system. However, NSW Health considers this recommendation should be part of its bilateral work with the Australian Government.

The NSW Government is a party to the Addendum to the National Health Reform Agreement 2020-25 and is working to implement its commitments. The interface between health, disability, and aged care systems reform aims to ensure a person's experience of transferring and navigating between these systems is timely, well-coordinated and streamlined, particularly for those with complex or chronic conditions or disabilities.

Key activities under the interface reform that are relevant to aged care include:

- establishing health, primary care, aged care and disability interface performance indicators;
- monitoring and analysing interface performance and effectiveness of system and interface improvement strategies; and
- monitoring, reporting on, and addressing service gaps and the effect of policy or service changes across systems.

Through these reforms, the NSW Government will continue to advocate and improve how people move between the acute hospital, primary care, and aged care systems, and access the care they need, in the right environment, at the right time.

The agreement subjects parties to a mid-term review of any unintended consequences of policy changes resulting in cost shifting. This recommendation could be captured as part of that review.

As part of the Australian Government's response to the Royal Commission, the Independent Hospital Pricing Authority was provided with an expanded role that allowed preliminary work on aged care pricing to commence from 1 July 2021. Further scope to investigate the impact of cost-shifting may arise as a result of this expanded role.

NSW Health will argue against any consequential cost shifting, especially in relation to appropriate clinical care in residential aged care facilities, by writing to the federal Department of Health and sharing a copy of the Select Committee's report.

Recommendation 5	Noted
That the NSW Government enhance the Poisons and Therapeutic Goods Regulation 2008, currently subject to review, to ensure the availability of registered nurses on site at all times to safely manage, procure and administer medications as required by residents, particularly with respect to end-of-life and palliative care, in all residential aged care facilities in the state.	

The NSW Government regulates medicine supply within residential care facilities. These facilities may hold stock of a range of Schedule 2 and 3 medications for administration to patients as nurse-initiated medications. They are also approved to stock certain (prescription-only) medicines for urgent treatment when the retail pharmacy which dispenses residents' medicines is closed.

The review of the *Poisons and Therapeutic Goods Act 1966* and its regulation provides an opportunity to consider the framework regulating the supply-chain for prescription-only medication (including specified drugs of addiction) in residential aged care facilities.

However, the assessment of who will oversee administration will be skills-based, as it is currently the case in NSW public hospitals. While registered nurses will have the relevant skill set, it may also be appropriate for other professional groups working within lawful scope of practice to be given this role.

Recommendation 6	Supported in principle
That the NSW Government, through the National Cabinet process, urge the Australian Government to develop a clear workforce plan for aged care across Australia.	

The NSW Government has supported improved Commonwealth workforce models that provide effective clinical care to be implemented in residential aged care facilities.

The NSW Government supports the Royal Commission recommendation that the Australian Government ensure the provision of at least one registered nurse on site at a facility at all times by 2024, subject to proportionate and additional Commonwealth funding.

The Australian Government has accepted several other recommendations from the Royal Commission that are directly aligned to this recommendation of the Select Committee and aim to improve the aged care workforce. These include:

- Recommendation 75: Aged care workforce planning;
- Recommendation 76: Aged Care Workforce Industry Council Limited; and

- Recommendation 77: National registration scheme.

NSW Health will contribute, where appropriate, to the implementation of these recommendations, and continue to advocate for a clear workforce plan for aged care. NSW Health will also address this recommendation by writing to the federal Department of Health.

Recommendation 7

Supported in principle

That the NSW Government work to address sexual assault in nursing homes by advocating for:

- a national register that will enable providers to check if staff have been implicated in the sexual assault of a resident
- a review of the Serious Incident Response Scheme to ensure incidents of sexual assault are appropriately classified as critical incidents.

The NSW Government supports this recommendation in principle, noting that both a national register and a review of the Serious Incident Response Scheme would be the responsibility of the Commonwealth.

Any additional workplace check for employees, should be considered in the context of existing checks, such as national police checks and NDIS checks, so as to minimise the administration, duplication, and costs associated with such checks.

NSW Health commits to progressing this recommendation by writing to the federal Department of Health.