

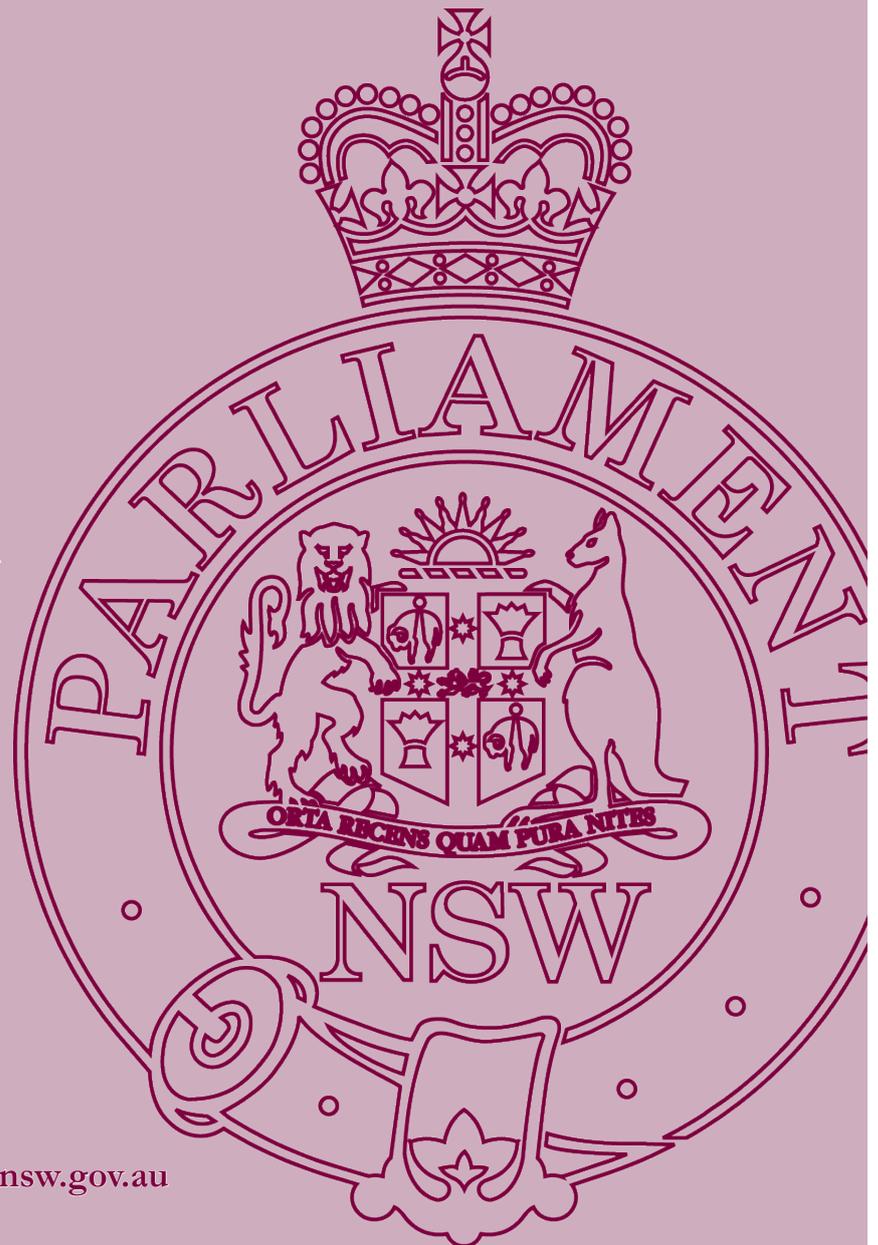


LEGISLATIVE COUNCIL

SELECT COMMITTEE ON THE PROVISIONS OF THE PUBLIC HEALTH
AMENDMENT (REGISTERED NURSES IN NURSING HOMES) BILL 2020

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

June 2021



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

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Terms of reference

That a select committee be established to inquire into and report on the provisions of the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020, and in particular:

- (a) the need to have a registered nurse on duty at all times in nursing homes and other aged care facilities with residents who require a high level of residential care,
- (b) the impact registered nurses have on the safety and dignity of people in care,
- (c) the impact on residential care of a lack of registered nursing staff on duty in a nursing home or other aged care facility at all times,
- (d) the need for further regulation and minimum standards of care and appropriate staffing levels in nursing homes and other aged care facilities,
- (e) the administration, procurement, storage and recording of medication by non-registered nurses in nursing homes and other aged care facilities with residents who require a high level of residential care, as compared with hospital clinical settings,
- (f) the potential for cost-shifting onto other parts of the public health system as a result of any legislative change to the current provisions for care in nursing homes or other aged care facilities,
- (g) the role of registered nurses in responding to critical incidents and preventing unnecessary hospital admissions and unnecessary ambulance call outs and the consequent effect of this upon the provision of ambulance services to the wider community,
- (h) the lessons that can be learnt in New South Wales from the impact of the COVID-19 crisis on private aged care facilities where staffing ratios are not mandated, and
- (i) any other related matter.

The terms of reference were referred to the committee by the Legislative Council on 21 October 2020.¹

¹ *Minutes*, NSW Legislative Council, 21 October 2020, pp 1468-1469.

Committee details

Committee members

| | | |
|---|-------------------------------------|---------------------|
| The Hon Courtney Houssos MLC | Australian Labor Party | <i>Chair</i> |
| The Hon Mark Banasiak MLC | Shooters, Fishers and Farmers Party | <i>Deputy Chair</i> |
| The Hon Greg Donnelly MLC | Australian Labor Party | |
| Ms Cate Faehrmann MLC* | The Greens | |
| The Hon Wes Fang MLC | The Nationals | |
| The Hon Natasha Maclaren-Jones MLC | Liberal Party | |
| The Hon Taylor Martin MLC | Liberal Party | |
| The Hon Daniel Mookhey MLC | Australian Labor Party | |
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Chair's foreword

The shocking conditions in so many residential aged care facilities has been known by residents, their families and the workers in aged care for years. But the national spotlight was shone onto these conditions with the 4Corners report in September 2018, throughout the Royal Commission into Aged Care Quality and Safety that followed and again during the COVID-19 pandemic.

What was clear in our inquiry, was that it is getting worse, not better.

We were told about the increasing needs of patients, with complex co-morbidities, yet there has been no increase in staff. Indeed, we heard that chronic under-funding, combined with the COVID-19 pandemic has put an increasing burden on nursing and personal care staff.

This inquiry was primarily established to investigate the provisions of the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020. However, the terms of reference were broader, covering cost-shifting onto the New South Wales public health system and lessons from the COVID-19 pandemic. As a result, our inquiry quickly became one into the broader issues facing aged care, and how to protect the safety and dignity of our elderly.

We deliberately did not seek to replicate the work of the Royal Commission into Aged Care Quality and Safety that was established in 2018, and delivered its final report during our inquiry. The Royal Commission received over 10,500 submissions, held 23 hearings and workshops with 641 witnesses and made 148 recommendations. Indeed we defer to them, and decided to focus more narrowly on the staffing issues, particularly given the state's limited role in aged care.

Our first finding emphasises the importance of all roles in providing holistic care: our registered nurses, our personal care workers, our allied health professionals, and our support services staff – our cleaners and our chefs. We must have safe staffing levels, particularly of our registered nurses, our personal care workers and our allied health professionals to ensure the safety, dignity and quality of care in our aged care facilities.

We accept that the funding and primary regulation of aged care occurs by the Australian Government. That's why we called on the Australian Government to increase funding to implement safe staffing levels. But if this doesn't occur within four years (the time frame recommended by the Royal Commission), we do recommend that the NSW Government investigates how it could be implemented for our state. In the meantime, the NSW Government regulation of aged care facilities should mirror the same arrangements: the requirement for registered nurses should be in proportion to the number and needs of the residents.

We also recommend that with this increased funding comes improved transparency and accountability measures for residents and their families. We must ensure that this increased funding goes directly into improving the quality of aged care by increasing the staffing levels, and reversing the ongoing cuts that staff reported to us; in particular, cuts to allied health professionals and support staff, including kitchen and cleaning staff.

In the midst of a global pandemic, the consequences of these cuts were deadly. The COVID-19 outbreak at Newmarch House in April 2020, led to 71 cases in staff and residents, and 19 deaths. 1 in 5 deaths from COVID-19 in NSW occurred in Newmarch House. Yet, just one month earlier, at Dorothy Henderson Lodge, in a similarly sized facility, an outbreak resulted in only 21 cases and 6 deaths. We

didn't get to the bottom of why this occurred, but it was clear that the outbreak at Newmarch House was not handled according to best practice.

To ensure long-term improvements to aged care, it is vital that we have a stable workforce. But we will only achieve this with better wages, secure employment and training and career pathways. That's why we recommended the Australian Government should develop a clear workforce plan for aged care across Australia.

Given the demographics of New South Wales and its ageing population, it is clear there will be an increasing need for specific facilities for our culturally and linguistically diverse and Aboriginal communities.

We heard anecdotal evidence of cost-shifting from residential aged care facilities without safe staffing levels, onto the public health system. Yet, NSW Health doesn't map any of this data. We also heard appalling statistics about the rates of sexual assault in aged care, which must be addressed urgently.

Thank you to all of the participants in our inquiry: those who made submissions, completed our online questionnaire and appeared at our hearings. Thank you to my fellow committee members, especially the Deputy Chair the Hon Mark Banasiak MLC, who proposed this bill. My sincere thanks also to the committee secretariat staff for their hard work and professionalism, and to Hansard.

I am hopeful that this renewed focus on aged care will bring genuine changes. With more funding – along with transparency and accountability – to deliver safe staffing levels, we can give our ageing population the safety and dignity they deserve.



The Hon Courtney Houssos MLC
Committee Chair

Findings

- Finding 1** **24**
That all aged care staff, including registered nurses, personal care workers, allied health professionals and support service staff, play a critical role in providing holistic care, to ensure that New South Wales nursing homes are safe and that residents are treated with dignity and respect.
- Finding 2** **39**
That the NSW Government response was not best practice at Newmarch House.
- Finding 3** **39**
That there is a need for increased transparency and accountability about the way nursing homes spend Commonwealth funding, particularly to provide information for residents and their families on staffing levels and the number of high and low care places.
- Finding 4** **40**
That there is a need to create a stable workforce in the aged care sector by providing better wages, secure employment, training and career pathways.
- Finding 5** **40**
That there is a need for:
- nursing homes which cater to the specific needs of Aboriginal people
 - specialised facilities to appropriately care for residents from culturally and linguistically diverse communities.

Recommendations

Recommendation 1

25

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.

Recommendation 2

26

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
- 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.

Recommendation 3

26

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.

Recommendation 4

26

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.

Recommendation 5

27

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.

Recommendation 6

40

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

Recommendation 7

40

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.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 21 October 2020.

The committee received 21 submissions and 1 supplementary submission. An online questionnaire was also conducted which received 94 individual responses.

The committee held three public hearings at Parliament House in Sydney.

A committee discussion paper was published in February 2021.

Inquiry related documents are available on the committee's website, including submissions, the committee's discussion paper, hearing transcripts, tabled documents, answers to questions on notice and the online questionnaire report.

Chapter 1 Background

This chapter sets out background information on the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020, namely the legislative framework for aged care in New South Wales and an overview of key inquiries previously conducted that explore staffing issues in aged care facilities.

Referral, background and purpose of the bill

- 1.1 The Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020 was introduced in the Legislative Council on 26 August 2020 by the Hon Mark Banasiak MLC.² The House resolved on 21 October 2020 to establish a select committee to inquire into and report on the provisions of the bill.³
- 1.2 The object of the bill is to ensure that the requirement in the *Public Health Act 2010* (NSW) for a registered nurse to be on duty in a nursing home at all times is continued, by updating the definition of the term 'nursing home' so that it is consistent with the terminology used under the Commonwealth legislation.⁴

Legislative framework for aged care in New South Wales

- 1.3 Aged care is a Commonwealth responsibility, with the Australian Government primarily responsible for its funding and regulation. In New South Wales, residential aged care facilities are also subject to state legislation, including public health laws and laws governing the dispensation of medicine.
- 1.4 At the federal level, the *Aged Care Act 1997* (Cth) is the key legislation providing for the funding and regulation of aged care, and applies to the states and territories. Under that Act, the term 'aged care' includes residential care, home care and flexible care. Section 41-3 defines 'residential care' as personal or nursing care that is provided in a residential facility in which the person is provided with accommodation that includes: appropriate staffing to meet their nursing and personal care needs; meals and cleaning services; and furnishings.
- 1.5 While section 54-1(b) requires that providers 'maintain an adequate number of appropriately skilled staff to ensure that the care needs of care recipients are met', the federal legislation does not currently mandate minimum staffing levels for residential aged care.
- 1.6 In New South Wales, aged care facilities are also subject to the *Public Health Act 2010* (NSW). Section 104 currently requires a nursing home to have a registered nurse on duty at all times:

(1) A person who operates a nursing home must ensure that—

(a) a registered nurse is on duty in the nursing home at all times, and

² *Minutes*, NSW Legislative Council, 26 August 2020, p 1235.

³ *Minutes*, NSW Legislative Council, 21 October 2020, pp 1468-1470.

⁴ Explanatory Note, Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020, p 1.

(b) a registered nurse is appointed as a director of nursing of the nursing home, and

(c) any vacancy in the position of director of nursing of the nursing home is filled within 7 days.

1.7 A ‘nursing home’ is currently defined in s 5(1) of the *Public Health Act 2010* as:

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 that care is provided in relation to an allocated place (within the meaning of that Act) that requires a high level of residential care (within the meaning of that Act), or

(b) a facility that belongs to a class of facilities prescribed by the regulations.

1.8 The definition of ‘nursing home’ thus relies on how ‘residential care’, ‘allocated place’ and ‘high level of residential care’ are defined in the *Aged Care Act 1997* (Cth). However, in 2013 the *Aged Care Act 1997* was amended to remove the distinction between low and high levels of residential care.⁵

1.9 As a result, s 104 of the *Public Health Act 2010* became inoperable as there was no longer a distinction between nursing homes which provided for those who required a high level of residential care, and those which provided a low level of care.

1.10 In response, the NSW Government agreed to maintain mandated minimum nursing requirements for facilities formerly designated as high care.⁶ This was achieved by inserting a clause into the Public Health Regulation 2012 which clarified that a facility that was a nursing home for the purposes of the Act immediately before 1 July 2014 was to be prescribed as a nursing home for the purposes of s 5(1)(b) of the *Public Health Act 2010*.⁷

1.11 This has since created a divide in the system, with a distinction between those facilities that existed prior to 2014, to which the requirement in s 104 of the *Public Health Act 2010* applies, and those which commenced operation after 2014. Whilst the latter may decide to have a registered nurse on duty 24 hours a day, they are not bound by s 104.

1.12 The Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020 seeks to address this situation by updating the definition of ‘nursing home’ in the Public Health Act 2010 as follows:

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

⁵ See the *Aged Care (Living Longer Living Better) Act 2013* (Cth). For a detailed discussion of the ‘Living Longer Living Better’ reforms see: Rebecca de Boer and Peter Yeend, *Aged Care (Living Longer Living Better) Bill 2013*, Bills Digest No 106, 9 May 2013.

⁶ Standing Committee on Community Affairs, Australian Senate, *Future of Australia’s Aged Care Sector Workforce* (2017), p 58.

⁷ *Public Health Regulation 2012*, 95A.

(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.

1.13 Throughout this inquiry, stakeholders used the terms nursing homes and residential aged care facilities interchangeably.

Other inquiries

1.14 The issue of staffing at aged care facilities, including whether there is a need for a registered nurse to be on duty at all times, has been considered in a number of inquiries at both the federal and state level, including most recently the Royal Commission into Aged Care Quality and Safety, and a 2015 Legislative Council inquiry into registered nurses in nursing homes.

Royal Commission into Aged Care Quality and Safety

1.15 The Royal Commission into Aged Care Quality and Safety was established on 8 October 2018 and handed its final report to the Australian Government on 26 February 2021, containing 148 recommendations.

1.16 The Royal Commission covered a wide scope of matters including: the quality of aged care services provided to Australians, how best to deliver aged care services, future challenges and opportunities for delivering accessible, affordable and high quality aged care services, what can be done to strengthen the system of aged care to ensure services are of quality and safe, and how to ensure that aged care services are person-centred.⁸

1.17 Overall, the Commissioners concluded that 'the extent of substandard care in Australia's aged care system is deeply concerning and unacceptable by any measure'. They further found that 'the extent of substandard care in Australia's aged care system reflects both poor quality on the part of some aged care providers and fundamental systemic flaws with the way the Australian aged care system is designed and governed'.⁹

1.18 In relation to staffing, the Royal Commission found that in many residential aged care facilities 'there are not enough workers to provide high quality, person-centred care'.¹⁰ In addition, it noted that the mix of staff is often inappropriately matched to the care needs of residents.¹¹

1.19 The Royal Commission recommended that the Australian Government require approved providers of residential aged care facilities to meet a minimum quality and safety standard for

⁸ Royal Commission into Aged Care Quality and Safety, *Terms of reference* (6 December 2018), <https://agedcare.royalcommission.gov.au/about/terms-reference>.

⁹ Royal Commission into Aged Care Quality and Safety, *Final Report – Executive Summary*, 1 March 2021, p 73.

¹⁰ Royal Commission into Aged Care Quality and Safety, *Final Report – Executive Summary*, 1 March 2021, p 73.

¹¹ Royal Commission into Aged Care Quality and Safety, *Final Report – Executive Summary*, 1 March 2021, p 124.

staff time, including registered nurses, enrolled nurses and personal care workers. In particular, the Royal Commission recommended daily minimum staff time per resident over two stages:

- **By 2022:** at least 220 minutes of care per day of which at least 40 minutes are provided by registered nurses, as well as at least one registered nurse on site for morning and afternoon shifts (16 hours)
- **By 2024:** at least 215 minutes of care per day of which at least 44 minutes are provided by registered nurses, as well as at least one registered nurse on site at each residential aged care facility at all times.¹²

1.20 The Royal Commission further recommended that the minimum staff time standard should be linked to a casemix-adjusted activity based funding model. This would mean that providers with a higher proportion of high needs residents would be required to engage more staff, and vice versa,¹³ allowing flexibility for approved providers to select the appropriate skills mix based on their model of care.¹⁴

NSW Legislative Council 2015 Inquiry into Registered Nurses in Nursing Homes

1.21 In 2015, General Purpose Standing Committee No. 3 held an inquiry into registered nurses in New South Wales nursing homes. The committee tabled its report with 17 recommendations on 27 October 2015. The NSW Government provided its response to the recommendations on 29 April 2016.

1.22 The committee self-referred the inquiry to look into the potential changes at the time to the Commonwealth legislation regarding staffing requirements in nursing homes. The committee considered the reasons for and concerns about the need for registered nurses in nursing homes at all times, the adequacy of the federal aged care framework, options for legislative reform, and alternative options in the absence of legislation.¹⁵

1.23 Relevantly, the committee recommended that the NSW Government:

- amend the *Public Health Act 2010* to retain the requirement for registered nurses to be on duty in nursing homes at all times
- allow nursing homes to apply for an exemption from the requirement on a case-by-case basis with exemptions only granted if the facility can show they can still provide a high level of quality care

¹² Royal Commission into Aged Care Quality and Safety, *Final Report – List of Recommendations*, 1 March 2021, pp 263-264.

¹³ Royal Commission into Aged Care Quality and Safety, *Final Report – List of Recommendations*, 1 March 2021, p 264.

¹⁴ Royal Commission into Aged Care Quality and Safety, *Final Report – Executive Summary*, 1 March 2021, p 130.

¹⁵ General Purpose Standing Committee No. 3, NSW Legislative Council, *Registered nurses in New South Wales nursing homes* (2015).

- through the Council of Australian Governments, urge the Australian Government to establish minimum staffing ratios in aged care facilities.¹⁶

1.24 In response, the NSW Government noted that it supported the availability of registered nurses where appropriate and recognised the concerns raised before the committee. However, the government also argued that the retention and expansion of the New South Wales legislation would create a regulatory duplication without addressing broader issues.¹⁷

1.25 Following the inquiry and government response, the Hon Robert Brown MLC introduced the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2016 in the Legislative Council on 12 May 2016. The intention of the bill was ‘to amend the *Public Health Act 2010* to bring the definition of a nursing home into line with relevant Commonwealth legislation so as to ensure that the requirement for a registered nurse to be on duty at all times at a nursing home is continued’.¹⁸ Whilst it passed in the Legislative Council, the bill did not pass the Legislative Assembly.

¹⁶ General Purpose Standing Committee No. 3, NSW Legislative Council, *Registered nurses in New South Wales nursing homes* (2015), pp xi-xiii.

¹⁷ Government response, *Registered Nurses in New South Wales nursing homes*, pp 2-3.

¹⁸ Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2016.

Chapter 2 Staffing in residential aged care facilities

This chapter focuses on the key issue of this inquiry – whether there is a need to mandate the presence of registered nurses at all times in aged care facilities, and related to that, whether there is a need to implement mandatory staffing levels or ratios more generally. The chapter begins with a profile of staffing and residents in aged care facilities before examining the reasons for and against the bill. The chapter then considers the argument that there is a need to mandate general staffing levels and ratios in nursing homes. Finally, the chapter explores the role of registered nurses in the NSW Poisons and Therapeutic Goods Regulation 2008.

Profile of staffing and residents in aged care facilities

2.1 Aged care facilities engage a range of staff such as nurses, personal care workers, medical professionals, allied health professionals and support service staff. In this inquiry, the key focus was on the mix of nurses and personal care workers (also referred to as assistants in nursing). Stakeholders outlined the difference between these roles:

- Nurses must complete a formally recognised nursing program and have a level of predetermined education and skill based on the attainment of safe outcomes for patients. Nurses are subject to professional regulation under the Australian Health Practitioner Regulation Agency.
 - A **registered nurse** must complete a three year Bachelor of Nursing. Registered nurses supervise enrolled nurses and personal care workers.
 - An **enrolled nurse** must complete an 18 month Diploma of Nursing.
- A **personal care worker/assistant in nursing** supports the delivery of nursing care by assisting residents with personal care and daily living. These staff members require no formal qualifications and there is no minimum training requirement. They are not accountable under the same regulation as nurses with accountability largely left to employers.¹⁹

2.2 The Australian Health Services Research Institute highlighted that there is a direct link between staffing levels and skills mix, and the quality of care provided to residents.²⁰ However, the committee heard that there has been a gradual decline over several decades in the number and mix of qualified health professionals.²¹ The research institute pointed to statistics indicating a decrease between 2003 and 2016 of health professionals working in aged care as well as an increase in less skilled, non-clinical personal care workers. Below is a table summarising these statistics.

¹⁹ Submission 4, NSW Nurses and Midwives Association, pp 11-13.

²⁰ Submission 1, Australian Health Services Research Institute, pp 1-2.

²¹ Submission 1, Australian Health Services Research Institute, p 1; Submission 4, Nurses & Midwives Association, p 17.

Table 1 Percentage of direct care staff employed by aged care facilities²²

| | 2003 | 2016 |
|-----------------------------|---------------|---------------|
| Registered nurses | 21 per cent | 14.6 per cent |
| Enrolled nurses | 14.4 per cent | 9.3 per cent |
| Allied health professionals | 7.6 per cent | 4 per cent |
| Personal care workers | 56.5 per cent | 71.5 per cent |

2.3 In addition, the Australian Health Services Research Institute indicated that overall staff numbers have declined, with the proportion of direct care employees dropping from 74 per cent in 2003 to 65 per cent in 2016.²³

2.4 While there has been a reduction in staffing and of clinical expertise in aged care facilities, the committee also heard that residents are increasingly entering residential aged care facilities with increased frailty, multiple co-morbidities, dementia and complex care needs.²⁴ Stakeholders emphasised that these residents often enter residential aged care facilities as a last resort after exhausting other care options or when they can no longer manage on their own.²⁵ To this end, Ms Anita Westera, Research Fellow at the Centre for Health Service Development, Australian Health Services Research Institute stated:

People do not go into residential aged care because they are old ... the fact is that people go into aged care because they have health issues. They have complex health conditions, functional as well as cognitive limitations that mean they can no longer live at home independently...

2.5 The Health Services Union suggested that 'staffing levels have entirely failed to keep pace' with the increasing high care needs of residents and in many cases are 'actually falling behind'.²⁶ Similarly, the Nurses & Midwives' Association submitted that 'the growth in residents with high complex care needs, and the reduction of clinical expertise' within residential aged care facilities suggest that aged care providers are not factoring in the needs of residents when making decisions about staffing and skills mix.²⁷

²² Submission 1, Australian Health Services Research Institute, pp 1-2. See also, Submission 4, Nurses & Midwives Association, p 17.

²³ Submission 1, Australian Health Services Research Institute, p 2.

²⁴ See for example, Submission 1, Australian Health Services Research Institute, p 2; Submission 4, NSW Nurses & Midwives' Association, p 8; Submission 5, Nurses Christian Fellowship Australia, p 1; Submission 8, Quality Aged Care Action Group, p 3; Submission 11, Health Services Union, p 4; Submission 18, Combined Pensioners and Superannuants Association of NSW Inc, p 5; Submission 19, NSW Aged Care Roundtable, p 1; Evidence, Mr Paul Versteeg, Policy Manager, Combined Pensioners and Superannuants Association of NSW Inc., 28 April 2021, p 32; Evidence, Ms Karen Appleby, Senior Policy Officer, Council on the Ageing NSW, 28 April 2021, p 37; Evidence, Ms Danica Leys, Chief Executive Officer, Country Women's Association, 28 April 2021, p 42.

²⁵ See, Submission 4, NSW Nurses & Midwives' Association, p 8; Submission 1, Australian Health Services Research Institute, p 1; Evidence, Ms Lisa Roberts, Transitional Nurse Practitioner, Palliative Care, and Member, NSW Nurses and Midwives' Association, 29 March 2021, p 18.

²⁶ Submission 11, Health Services Union, p 5.

²⁷ Submission 4, Nurses & Midwives Association, p 17.

- 2.6** Ms Westera highlighted four key requirements shown by the international evidence to ensure quality and safe care: 'registered nurses on the premises; a mix of staff according to the types of needs of residents; consistency of staff; and an organisational culture and governance that supports quality and safety'.²⁸
- 2.7** The following sections discuss the arguments put forward by stakeholders on the need for registered nurses in residential aged care facilities at all times, and the need for an adequate staffing and skills mix ratio more generally.

The need for registered nurses to be on duty at all times

- 2.8** Given the increasing frailty and complexity of residents' care needs outlined above, the majority of stakeholders argued that there is a need for registered nurses to be present in residential aged care facilities at all times, to provide skilled clinical care that personal care workers cannot.²⁹ For example, Chief Executive Officer of Anglicare Sydney, Mr Grant Millard remarked on the need for registered nurses by distinguishing aged care facilities from retirement living: 'Our experience is that people do not come to residential aged care as a form of retirement living—not at all. They are complex healthcare needs, and you need registered nurses'.³⁰
- 2.9** Inquiry participants in favour of having a registered nurse on duty at all times, as per the bill, drew a link between the presence of registered nurses and the quality of care received by residents. The reasons put forward in support of having a registered nurse on duty at all times can be summarised under three related themes:
- the skill of a registered nurse to appropriately assess residents, including the inadequacy of relying on on-call registered nurses and telehealth
 - the ability to provide holistic care to prevent critical incidents and avoidable hospital admissions
 - the role of registered nurses in appropriate medication management and palliative care.
- 2.10** To the first theme, stakeholders highlighted that registered nurses have a greater level of skill and expertise than enrolled nurses and personal care workers, enabling them to assess, identify, treat and escalate issues. Noting that residents' health can deteriorate at any time, the Combined Pensioners and Superannuants Association of NSW argued that the skill of registered nurses is especially important in nursing homes where there is generally no immediate access to a doctor, unlike in a hospital.³¹
- 2.11** The Nurses and Midwives' Association emphasised the role of registered nurses in ensuring the safety and dignity of residents, citing research that showed that a lack of registered nurses in

²⁸ Evidence, Ms Anita Westera, Research Fellow, Centre for Health Service Development, Australian Health Services Research Institute, 29 March 2021, p 40.

²⁹ See for example, Submission 15, Palliative Care Nurses Australia, p 2; Submission 4, NSW Nurses and Midwives' Association, p 12; Submission 8, Quality Aged Care Action Group, p 3; Submission 13, Carers NSW, p 2; Submission 18, Combined Pensioners & Superannuants Association of NSW Inc, p 18.

³⁰ Evidence, Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, 29 March 2021, p 9.

³¹ Submission 18, Combined Pensioners and Superannuants Association of NSW Inc, p 4.

residential aged care facilities can lead to missed care, including inadequate pain management, missed wound care and a failure to monitor vital signs and blood glucose levels.³²

- 2.12** Using delirium and dementia as an example, Associate Professor Maree Bernoth, registered nurse and Community Engagement Lead at Charles Sturt University described the importance of having skilled registered nurses to correctly assess and identify health concerns that untrained workers might miss:

[I]t takes a skilled registered nurse to be able to assess an older person and see if they have a delirium, which is treatable, or dementia. The issue there is that failing to identify and address a delirium can lead to serious illness—sepsis, for example—and death. An untrained person will have difficulty with differentiating between delirium and dementia...

- 2.13** In addition, both Associate Professor Bernoth and Dr Lyndal Newton, Head of Department of Geriatric Medicine, Northern Beaches Hospital highlighted that registered nurses have the skills to communicate effectively with patients who have dementia.³³ More specifically, Dr Newton pointed to the ability of registered nurses to recognise subtle signs of increased pain or anxiety associated with end-of-life care, particularly in dementia patients who may not be able to express themselves effectively. Dr Newton also explained the need to have a registered nurse physically present to conduct a full assessment as many signs would not be visible to a registered nurse via videolink.³⁴
- 2.14** On this note, the committee heard evidence on the inadequacy of relying on on-call registered nurses after hours. Inquiry participants argued that this places burdens on the personal care workers on site as well as the registered nurse providing advice remotely.
- 2.15** From the perspective of personal care workers, one aged care assistant based in regional New South Wales told the committee that personal care workers at their facility are reluctant to call a registered nurse unless there has been a serious incident they cannot deal with. The witness explained that the nurses 'do not appreciate us ringing them during the night if it is not a serious issue' and 'get quite upset about us ringing them' if it is an issue that can wait until they come in the next morning.³⁵
- 2.16** Additionally, the aged care assistant explained that the process of calling a registered nurse after hours is a time consuming task in itself, because it takes care staff away from the floor to call the registered nurse and seek advice, and there is paperwork which care staff must complete to justify phoning the nurse.³⁶

³² Submission 4, NSW Nurses and Midwives' Association, p 12.

³³ Evidence, Associate Professor Maree Bernoth, Registered Nurse, Community Engagement Lead at Charles Sturt University, 22 February 2021, p 8; Evidence, Dr Lyndal Newton, Head of Department – Department of Geriatric Medicine, 28 April 2021, p 25. See also, Evidence, Ms Danica Leys, Chief Executive Officer, Country Women's Association, 28 April 2021, p 42.

³⁴ Evidence, Dr Lyndal Newton, Head of Department – Department of Geriatric Medicine, 28 April 2021, p 25.

³⁵ Evidence, Witness C, Aged-care assistant, Monday 22 February 2021, pp 8 and 9.

³⁶ Evidence, Witness C, Aged-care assistant, Monday 22 February 2021, pp 10 and 11.

- 2.17** From the perspective of registered nurses, the Nurses and Midwives' Association argued that rostering registered nurses only during office hours is inappropriate as care needs do not disappear afterhours or on weekends. The association suggested that relying on an on-call registered nurse after hours, which requires the nurse to assess a patient without being able to see them, 'professionally compromises' the nurse and can be a 'wholly unsafe method of care delivery'.³⁷
- 2.18** In contrast, Ms Sue Thomson, Chief Executive Officer at McLean Care Ltd advocated for telehealth, arguing that a registered nurse can make assessments for pain, displacement and injury, such as bleeding and bruising, via videolink. She argued that 'the way forward in the future is to look to developing technological solutions to a workforce dilemma' to support registered nurses and personal care workers 'to make better clinical decisions for residents, to get the best possible outcomes'.³⁸
- 2.19** On the second theme, inquiry participants spoke to the role of registered nurses in providing holistic care to prevent critical incidents and avoidable hospital admissions. These stakeholders viewed this as a benefit to residents and to the hospital system, by ensuring residents are not unnecessarily distressed by hospital visits and by avoiding placing additional pressure on the public health system. For example, three registered nurses appearing on a panel before the committee agreed that a lack of registered nurses leads to poorer health outcomes and unnecessary hospitalisations.³⁹
- 2.20** The Nurses and Midwives' Association described health promotion and prevention as 'forgotten elements of nursing practice' but 'vital for residents' quality of life'.⁴⁰ The association also suggested that delays in acquiring nursing care can lead to 'exacerbation of health conditions, unmanaged pain and even death'.⁴¹ Professional Officer, Ms Helen Macukewicz, elaborated that registered nurses are trained in holistic care, provide clinical judgements and have a role in preventative health to prevent issues from reaching a crisis point and requiring hospitalisation.⁴²
- 2.21** Similarly, Palliative Care Nurses Australia noted that hospitalisation is often in opposition to a resident's advanced care plan or expressed wishes. The organisation further suggested that the transfer of residents to hospital is associated with 'adverse outcomes including clinical complications, inadequate quality of care and increased mortality within three months'.⁴³
- 2.22** From the perspective of a geriatrician, Dr Newton highlighted that registered nurses are skilled not only in recognising when a resident needs to go to hospital, but also when a resident does

³⁷ Submission 4, NSW Nurses and Midwives' Association, p 8.

³⁸ Evidence, Ms Sue Thomson, Member, Aged & Community Services Australia NSW & ACT Divisional Council, Chief Executive Officer, McLean Care Ltd, 28 April 2021, p 10.

³⁹ Evidence, Ms Catherine Shapre, Registered Nurse, CEO, The Wound Centre, Expert Witness Nurse Consultants Australia, pp 10-11; Associate Professor Bernoth, Registered Nurse, Community Engagement Lead, Charles Sturt University, pp 10-11; Ms Mary Gibbs, Registered Nurse, Nurses and Midwives Association, pp 10-11.

⁴⁰ Submission 4, NSW Nurses and Midwives' Association, p 9.

⁴¹ Submission 4, NSW Nurses and Midwives' Association, p 33.

⁴² Evidence, Ms Helen Macukewicz, Professional Officer, NSW Nurses and Midwives' Association, 29 March 2021, p 19.

⁴³ Submission 15, Palliative Care Nurses Australia Inc, pp 2-3.

not need to go, arguing that it is about the 'right care, in the right place, at the right time'. She further described the experience of going to hospital as 'very distressing' and 'unkind' for those with cognitive impairment or terminal illness. The presence of registered nurses in aged care facilities ensures they can then liaise with medical providers to provide 'high-level quality of care in the facilities in situ'.⁴⁴

2.23 On this point, stakeholders explained that GPs and other medical health professionals rely on registered nurses in aged care facilities to transfer information and medical history about the patient, and to carry out clinical instructions. These stakeholders argued that the absence of nurses to carry out those duties may result in unnecessary hospitalisation.⁴⁵

2.24 Similarly, the Nurses and Midwives' Association suggested that the absence of registered nurses renders telehealth, which rural and remote services are increasingly using, less effective which again may result in unnecessary hospitalisation.⁴⁶

2.25 Dr Nigel Lyons, Deputy Secretary, Health System Strategy and Planning Division, NSW Health acknowledged the importance of avoiding unnecessary hospital admissions:

Transferring somebody to a hospital emergency department when the care could actually be delivered effectively in the home we feel is a significant inconvenience to the resident and should be avoided wherever possible.⁴⁷

2.26 Dr Lyons explained that there has been analysis of hospital transfers from nursing homes at the local level which has prompted many local health districts to conduct outreach programs which provide 'additional expertise and back-up' for staff to enable in situ care where possible and avoid unnecessary hospital admissions.⁴⁸

2.27 While the Nurses and Midwives' Association described outreach programs as a 'better option' than hospitalisation, the association expressed concern about this shifting costs onto local health districts without any way to 'recoup associated costs from Commonwealth funding received by providers to provide high complex healthcare'. In addition, the association noted that these programs rely on the presence of registered nurses to receive and provide clinical advice and follow instructions from outreach geriatricians and nurse practitioners.⁴⁹

2.28 One key stakeholder disagreed with the premise that the presence of registered nurses minimises potentially preventable hospital transfers. Uniting NSW.ACT, the largest not-for-profit aged care provider operating in New South Wales, pointed to research it had commissioned from Deloitte Access Economics which found that the 'core drivers' of potentially preventable

⁴⁴ Evidence, Dr Lyndal Newton, Head of Department – Department of Geriatric Medicine, 28 April 2021, p 21.

⁴⁵ Submission 4, NSW Nurses and Midwives' Association, p 33; Evidence, Professor Dimity Pond, Professor of General Practice, University of Newcastle, 28 April 2021, p 28.

⁴⁶ Submission 4, NSW Nurses and Midwives' Association, p 33.

⁴⁷ Evidence, Dr Nigel Lyons, Deputy Secretary, Health System Strategy and Planning Division, NSW Health, 22 February 2021, p 22.

⁴⁸ Evidence, Dr Nigel Lyons, Deputy Secretary, Health System Strategy and Planning Division, NSW Health, 22 February 2021, p 22.

⁴⁹ Submission 4, NSW Nurses and Midwives' Association, p 30. See also, Mr Brett Holmes, General Secretary, NSW Nurses and Midwives' Association, 29 March 2021, p 16.

hospital transfers from residential aged care facilities include 'access to primary care or access to diagnostics' as well as the 'influence of residents or relatives over the preferred locus of care'. The provider also stated that the report 'reinforces the importance of Local Health District initiatives ... in reducing preventable hospital admissions'.⁵⁰

2.29 Finally, inquiry participants in support of the bill emphasised the role of registered nurses in the administration of medication and palliative care.

2.30 Palliative Care Nurses Australia argued that registered nurses are essential in the provision of palliative and end-of-life care by providing 'optimum assessment and treatment regimes, particularly for the relief of pain and other symptoms'. The organisation stated that they were aware of situations where residents do not receive the adequate care or pain relief due to the absence of a registered nurse in their facility.⁵¹

2.31 In evidence before the committee, Vice President of Palliative Care Nurses Australia, Mr Josh Cohen listed a number of concerns that arise in relation to palliative care when there is no registered nurse on duty:

- advanced planning discussions not held, resulting in a risk of inappropriate and futile care
- families being surprised by the death of a loved one due to a lack of assessment and communication with particularly vulnerable residents
- transferring a dying person to hospital where they will be subject to unnecessary and invasive procedures that will make no difference to their outcome and where they will spend the last hours of their life surrounded by strangers
- pain needs poorly recognised and understood, resulting in unnecessary hospital admission to manage the pain.⁵²

2.32 Mr Paul Versteeg, Policy Manager, Combined Pensioners and Superannuants Association of NSW, reflected that palliative care in nursing homes is conducted 'to a poor standard'. He suggested that a shortage of nurses means that there is not always a qualified member to administer medication, leaving family to 'be the nurse'.⁵³

2.33 Dr Newton highlighted that even though there were geriatric outreach services available to help with issues such as palliative care to avoid having residents present to hospitals within a short period before their death, these outreach services could not access aged care facilities during the COVID-19 pandemic. As such, she argued that there needed to be a registered nurse on site to take clinical instructions and assessments to enable the doctor to suggest the appropriate medication for the resident.⁵⁴

⁵⁰ Submission 12, Uniting NSW.ACT, p 6.

⁵¹ Submission 15, Palliative Care Nurses Australia Inc, p 4.

⁵² Evidence, Mr Josh Cohen, Vice President, Palliative Care Nurses Australia and Palliative Care Nurse Practitioner, Calvary Health Care Kogarah, p 49.

⁵³ Evidence, Mr Paul Versteeg, Policy Manager, Combined Pensioners and Superannuants Association of NSW Inc., 28 April 2021, p 35.

⁵⁴ Evidence, Dr Lyndal Newton, Head of Department – Department of Geriatric Medicine, 28 April 2021, p 23.

- 2.34** In relation to medication management, stakeholders outlined that incorrect administration of medication has the potential to do harm and that registered nurses are best placed to make assessments in relation to medication issues.⁵⁵
- 2.35** More specifically, the Nurses and Midwives' Association informed the committee that older people are among the highest risk category for prescribing medication due to the physiological changes associated with ageing which can lead to a build-up of toxins in the body from certain medications. The association asserted that the professional assessment skills of a registered nurse to decide whether to withhold medication is an often overlooked part of the role. Furthermore, the association went on to explain that medication administration requires an assessment of a patient and how the medication might impact them, emphasising that this is all the more important when a resident is cognitively impaired and cannot actively participate in the process or where a resident is taking multiple medications.⁵⁶
- 2.36** The New South Wales Poisons and Therapeutic Goods Regulation 2008 (NSW) requires that those aged care facilities which are considered nursing homes under the *Public Health Act 2010* (NSW) must procure, store, record and administer medication that have been prescribed for residents in accordance with the requirements as a hospital.⁵⁷
- 2.37** The committee heard that under the current legislative arrangements, whereby the *Aged Care Act 1997* (Cth) has rendered the definition of a 'nursing home' under the *Public Health Act* inoperable, there is a distinct difference in standards in relation to medication administration. For those residential aged care facilities approved pre-2014, medication must be managed and administered by a registered nurse or enrolled nurse with the required training.⁵⁸
- 2.38** However, a number of stakeholders contended that medication mismanagement has consistently ranked amongst the top areas of non-compliance in aged care facilities over at least five years.⁵⁹ For example, the NSW Nurses and Midwives' Association asserted that there is a widespread practice of personal care workers administering medication, even in facilities where the regulation applies, due to insufficient rostering and numbers of registered nurses and enrolled nurses in aged care facilities.⁶⁰
- 2.39** Ms Catherine Sharp, a registered nurse, shared an example of this where she witnessed incorrect medication administration in a nursing home even after she had reported the matter to the

⁵⁵ See, Submission 4, NSW Nurses and Midwives Association, p 23; Evidence, Ms Catherine Sharp, Registered Nurse, CEO, The Wound Centre, Expert Witness, Expert Witness Nurse Consultants Australia, 22 February 2021, p 2; Submission 18, Combined Pensioners and Superannuants Association of NSW Inc, p 7; Submission 19, NSW Aged Care Roundtable, p 3; Submission 13, Carers NSW, p 2; Evidence, Mr Paul Versteeg, Policy Manager, Combined Pensioners and Superannuants Association of NSW Inc., p 34; Evidence, Professor Dimity Pond, Professor of General Practice at the University of Newcastle and Dr Stephen Ginsborg, General Practitioner, 28 April 2021, pp 28-31.

⁵⁶ Submission 4, NSW Nurses and Midwives Association, p 29.

⁵⁷ Submission 4, NSW Nurses and Midwives Association, p 24.

⁵⁸ See, Submission 4, NSW Nurses and Midwives Association, p 24.

⁵⁹ See, Submission 4, NSW Nurses and Midwives Association, p 26; Submission 18, Combined Pensioners and Superannuants Association of NSW Inc, p 7; Submission 19, NSW Aged Care Roundtable, p 4.

⁶⁰ Submission 4, NSW Nurses and Midwives Association, p 25.

facility's Director of Nursing.⁶¹ Ms Sharp added that not only do registered nurses have the skills to adequately manage and administer medication, but they also have the ability to quickly identify an error and escalate immediately without having to wait for the adverse outcome.⁶²

- 2.40** In contrast, Aged & Community Services Australia disagreed that 24/7 nursing coverage is essential for appropriate medication administration. The organisation argued that many aged care facilities have 'suitable and safe policies and procedures in place, including on-call arrangements for the administration of PRN [pro re nata] medicines and clinical assessment support'.⁶³

Concerns about mandating registered nurses to be on duty at all times

- 2.41** The committee also heard from a number of stakeholders expressing concern with the bill's proposal to mandate the presence of registered nurses in nursing homes at all times. These stakeholders cited four key reasons for their opposition: financial viability of providers, the need for flexibility in staffing, the outcomes of the Commonwealth Royal Commission and consistency of governance.
- 2.42** NSW Health acknowledged that the Commonwealth regulatory framework does not 'currently adequately address the need for appropriately trained staff to deliver clinical care' and requires strengthening.⁶⁴ Nonetheless, NSW Health maintained that aged care policy, funding and regulation is a Commonwealth responsibility and that no legislative changes should be made at the state level until the Royal Commission's final report and the Australian Government's response have been considered.⁶⁵ The department also argued that the mandating of registered nurses under the bill would compromise the financial viability of small providers, particularly those in rural and remote areas where there is limited access to aged care services generally.⁶⁶
- 2.43** Echoing the views of NSW Health, Uniting NSW.ACT and Aged & Community Services Australia also recommended that the bill not proceed.⁶⁷ Additionally, while both organisations spoke to the value that registered nurses add to nursing homes, they were of the view that the presence of registered nurses at all times should be left up to the aged care provider, to allow them the flexibility to decide staffing matters based on residents' needs.⁶⁸

⁶¹ Evidence, Ms Catherine Sharp, Registered Nurse, CEO, The Wound Centre, Expert Witness, Expert Witness Nurse Consultants Australia, 22 February 2021, p 2.

⁶² Evidence, Ms Catherine Sharp, Registered Nurse, CEO, The Wound Centre, Expert Witness, Expert Witness Nurse Consultants Australia, 22 February 2021, p 7.

⁶³ Submission 16, Aged and Community Services Australia (ACSA), p 5.

⁶⁴ Evidence, Dr Nigel Lyons, Deputy Secretary, Health System Strategy and Planning Division, NSW Health, 22 February 2021, p 12.

⁶⁵ Evidence, Dr Nigel Lyons, Deputy Secretary, Health System Strategy and Planning Division, NSW Health, 22 February 2021, p 12; Submission 17, NSW Health, p 1.

⁶⁶ Submission 17, NSW Health, p 1.

⁶⁷ Submission 12, Uniting NSW.ACT, p 3; Submission 16, Aged and Community Services Australia (ACSA), p 1. See also, Evidence, Ms Anna-Maria Wade, State Manager (NSW & ACT), Employee Relations Manager, Aged & Community Services Australia, 28 April 2021, pp 2-3.

⁶⁸ Submission 12, Uniting NSW.ACT, pp 3-4; Submission 16, Aged and Community Services Australia (ACSA), p 2. See also, Evidence, Ms Anna-Maria Wade, State Manager (NSW & ACT), Employee Relations Manager, Aged & Community Services Australia, 28 April 2021, pp 3-4.

- 2.44** To support their position, Aged & Community Services Australia referred to data from the Aged Care Quality Commission to demonstrate that 'providers who do not engage registered nurses for 24 hours a day are consistently achieving the required quality outcomes'.⁶⁹ Similarly, Uniting NSW.ACT argued that the key to quality care for residents is appropriate staffing developed by the provider using a multi-disciplinary approach, and that the 'onsite presence of a single registered nurse in a residential aged care facility does not guarantee safe, quality care'.⁷⁰
- 2.45** Uniting NSW.ACT strongly argued that regulation of staffing should be left to the Australian Government but contended that if the NSW Government felt it was necessary to regulate in this area, it could implement the following measures rather than mandate the presence of registered nurses at all times:
- Implement a requirement for all RACs [Residential Aged Care] with high care residents to have access to a 24 hour RN on-call. This support could be provided by phone/telehealth etc.
 - Invest in more telehealth support between RAC and NSW Health/hospitals, building off the experience of telehealth in COVID.
 - Transparency of staffing could be provided to consumers: RACs could be required to publish staffing levels or state whether they have 24/7 onsite RN cover ... as this would provide transparency of staffing levels for all RACFs and facilitate consumer choice.
 - Proactively support increasing the numbers of General Practitioners and multidisciplinary specialists to regional, rural and remote areas to maintain and enhance care provided in RACs in these areas.⁷¹
- 2.46** In evidence before the committee, Uniting NSW.ACT Director Ageing, Mr Saviour Buhagiar contended that focusing just on registered nurses as the bill does is not enough, and that it is important to look more broadly at issues of home care, transparency, integration with health, workforce and sustainability. Mr Buhagiar continued that Uniting NSW.ACT is 'totally supportive' of the Royal Commission's recommended model of staffing and skills mix, because 'if implemented properly' it comes with a range of reforms addressing these issues.⁷²
- 2.47** The Council on the Ageing was supportive of the bill while being 'mindful of the possibility of this bill introducing additional reporting and unnecessary regulation if the bill's objectives are achieved by changes at a Commonwealth level'. Senior Policy Officer at the Council on the Ageing NSW, Ms Karen Appleby suggested that the committee wait for the Australian Government's response to the Royal Commission into Aged Care Quality and Safety to determine whether any reforms agreed to by the Australian Government would impact the proposed bill. Ms Appleby urged the committee to 'devise a mechanism that would only come into force in the absence of a Commonwealth requirement equal to or greater than the New South Wales legislation'.⁷³
- 2.48** Financial viability of providers and workforce issues were key points of discussion for the committee. Both Uniting NSW.ACT and Aged & Community Services Australia expressed

⁶⁹ Submission 16, Aged and Community Services Australia (ACSA), p 2.

⁷⁰ Submission 12, Uniting NSW.ACT, p 5.

⁷¹ Submission 12, Uniting NSW.ACT, p 9.

⁷² Evidence, Mr Saviour Buhagiar, Director Ageing, Uniting NSW.ACT, 28 April 2021, p 12.

⁷³ Evidence, Ms Karen Appleby, Senior Policy Officer, Council on the Ageing NSW, 28 April 2021, p 37.

concern that the bill would seriously affect the financial viability of providers, leading to possible closures, particularly of facilities in regional, rural and remote New South Wales and small metropolitan providers.⁷⁴

2.49 Ms Anna-Maria Wade, State Manager (NSW & ACT), Employee Relations Manager, Aged & Community Services Australia acknowledged that in an ideal world, where there were no funding or workforce concerns, Aged & Community Services Australia would welcome the requirement for registered nurses to be on duty at all times.⁷⁵ However if the bill passes, Aged & Community Services Australia noted that the additional cost of ensuring there is a registered nurse available at all times must be balanced against government funding which is not currently meeting growth in wage costs.⁷⁶ Even if the funding issue is addressed, the organisation claimed that there would still remain workforce issues, particularly in regional, rural and remote communities where there are difficulties in recruiting registered nurses. These issues include:

- challenges in recruiting and retaining qualified staff including extended time to fill vacancies, and difficulties in employing overseas staff due to visa requirements, now exacerbated by the COVID-19 pandemic
- a reluctance from registered nurses to work in remote locations if they are the sole registered nurse for the facility
- the need, in some cases, to pay higher wages to offer additional support such as accommodation, relocation and travel expenses.⁷⁷

2.50 While Chief Executive Officer of Anglicare Sydney, Mr Grant Millard suggested that it would be 'simpler at face value' to see staffing implemented by the Commonwealth under one source of regulation, he conceded that community expectations may require that the mandating of registered nurses at all times be implemented earlier under state regulation. However, he cautioned that 'there is a cost involved and it is not an insignificant cost, particularly for rural, remote and smaller providers'.⁷⁸

2.51 In contrast, some stakeholders questioned the argument around financial viability.⁷⁹ For example, Associate Professor Bernoth asserted that it would be difficult to comment on the issue when there is no transparency required of aged care facilities in terms of how they spend their money:

... We do not know how much they are spending on staff. We do not know how much they are spending on equipment. We do not know where our taxpayer money is being

⁷⁴ Submission 12, Uniting NSW.ACT, p 8; Submission 16, Aged and Community Services Australia (ACSA), p 3.

⁷⁵ Evidence, Ms Anna-Maria Wade, State Manager (NSW & ACT), Employee Relations Manager, Aged & Community Services Australia, 28 April 2021, p 4.

⁷⁶ Submission 16, Aged and Community Services Australia (ACSA), p 4.

⁷⁷ Submission 16, Aged and Community Services Australia (ACSA), pp 4-5. See also, Evidence, Ms Anna-Maria Wade, State Manager (NSW & ACT), Employee Relations Manager, Aged & Community Services Australia, 28 April 2021, p 6.

⁷⁸ Evidence, Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, 29 March 2021, p 11.

⁷⁹ See, Submission 4, NSW Nurses & Midwives Association, p 20; Evidence, Associate Professor Maree Bernoth, Registered Nurse, Community Engagement Lead at Charles Sturt University, 22 February 2021, p 3.

used. That lack of transparency ... means that the aged-care facilities cannot claim that they are going out of business. We need to see where their money is being spent and then maybe we can make some comment, but until then we cannot.⁸⁰

- 2.52** The issue of transparency is discussed further in Chapter 3. Additionally, Associate Professor Bernoth argued that there are aged care facilities in rural New South Wales that 'are doing very well' and that it is possible to work with facilities to make them financially viable.⁸¹
- 2.53** Mr Corey Irlam, Deputy CEO, Council on the Ageing Australia believed that 'it is a stretch to say somebody will close because they cannot get nurses'. He suggested that financial viability is not a reason not to implement a requirement to ensure registered nurses are on duty at all times, but rather is a reason to appropriately fund these providers. Nevertheless, he suggested that there needs to be a mechanism for individual providers to receive an exemption from the requirement if needed.⁸²
- 2.54** In a similar vein, Ms Danica Leys, Chief Executive Officer of the Country Women's Association rejected the argument around financial viability of providers in regional, rural and remote communities, arguing that if there is an issue with 'recruiting, retaining and resourcing registered nurses in country areas', the committee and the government must look at the deeper systemic issues as to why resourcing may be an issue in these areas.⁸³
- 2.55** Some stakeholders spoke to the value of multipurpose services which pool Commonwealth and state services into one facility, and outreach programs run by local health districts to support regional, rural and remote aged care providers that may be struggling.⁸⁴
- 2.56** Dr Lyons explained that multipurpose services were developed as a policy response to the issue of financial viability of smaller providers particularly in smaller rural areas. These services include an emergency department model to provide after-hours care, rooms for a general practitioner and outpatient community health services, and aged care places. Dr Lyons described this as a successful model with a lot of community support in the areas in which they exist.⁸⁵
- 2.57** Dr Lyons also suggested that multipurpose services allow for 'scarce resources to be better utilised, for people who have skills to be retained and maintained in their communities and for people to have access to services that might not otherwise be there'. Acknowledging the difficulties in workforce availability in regional, rural and remote communities, Dr Lyons warned that a bill

⁸⁰ Evidence, Associate Professor Maree Bernoth, Registered Nurse, Community Engagement Lead at Charles Sturt University, 22 February 2021, p 3.

⁸¹ Evidence, Associate Professor Maree Bernoth, Registered Nurse, Community Engagement Lead at Charles Sturt University, 22 February 2021, pp 2-3.

⁸² Evidence, Mr Corey Irlam, Deputy CEO, Council on the Ageing Australia, 28 April 2021, p 39.

⁸³ Evidence, Ms Danica Leys, Chief Executive Officer, Country Women's Association, 28 April 2021, p 42.

⁸⁴ See, Evidence, Associate Professor Maree Bernoth, Registered Nurse, Community Engagement Lead at Charles Sturt University, 22 February 2021, pp 2-3.

⁸⁵ Evidence, Dr Nigel Lyons, Deputy Secretary, Health System Strategy and Planning Division, NSW Health, 22 February 2021, p 21.

that would mandate the presence of registered nurses at all times could create the 'unintended consequence of competing for scarce resources' in these regions.⁸⁶

The need for a minimum mandated staffing and skills mix ratio

2.58 While most inquiry participants were generally supportive of the bill, many also argued for adequate staffing levels of registered nurses and other relevant staff, including enrolled nurses, personal care workers, allied health workers and support services staff to reflect the needs of residents. These stakeholders therefore called for minimum mandated staffing levels and ratios in aged care facilities.

2.59 As part of its work for the Royal Commission on Aged Care Quality and Safety, the Australian Health Services Research Institute found that more than half of nursing home residents in Australia are in nursing homes that have inadequate staffing levels, based on the rating system used by the US Centers for Medicare and Medicaid Services. Under this system, nursing homes are given a star rating between one and five based on the number of care minutes dedicated to each resident, part of which includes care minutes provided by a registered nurse.⁸⁷ Below is a table demonstrating this system.

Table 2 Star rating system: minutes per resident per day⁸⁸

| Staff type | 1 star | 2 stars | 3 stars | 4 stars | 5 stars |
|------------------|--------|-----------|-----------|-----------|---------|
| Registered nurse | ≤ 19 | 19 - 30 | 30 - 44 | 44 - 63 | ≥ 63 |
| Total | ≤ 186 | 186 - 215 | 215 - 242 | 242 - 264 | ≥ 264 |

2.60 Ms Westera explained that a score below three stars – where each resident is afforded at most 215 minutes of care time, of which 30 minutes is provided by a registered nurse – means there is a likelihood that there will be risks to care and quality. In Australia, on average each nursing home resident receives 180 minutes of care time, of which 36 minutes are provided by registered nurses.⁸⁹

2.61 Referring to the increasing frailty and complex care needs of residents, the Nurses and Midwives' Association suggested that aged care facilities 'need to look more like sub-acute hospital rehab or a geriatric assessment ward with staffing and skills mix aligned'.⁹⁰ In relation to registered nurses, the association pointed to evidence which suggests that the more registered nurses are available on a given shift, the better the quality of care for residents, including lowered mortality rates and reduced resident falls.⁹¹

⁸⁶ Evidence, Dr Nigel Lyons, Deputy Secretary, Health System Strategy and Planning Division, NSW Health, 22 February 2021, p 26.

⁸⁷ Submission 1, Australian Health Services Research Institute, p 2.

⁸⁸ Submission 1, Australian Health Services Research Institute, p 2.

⁸⁹ Evidence, Ms Anita Westera, Research Fellow, Centre for Health Service Development, Australian Health Services Research Institute, University of Wollongong, 29 March 2021, p 41. See also, Submission 1, Australian Health Services Research Institute, p 2.

⁹⁰ Submission 4, NSW Nurses and Midwives Association, p 9.

⁹¹ Submission 4, NSW Nurses and Midwives Association, pp 11 and 31.

- 2.62** However, a number of stakeholders spoke to the importance of looking at the entire staffing and skills mix, and not just the ratio of registered nurses to residents.⁹² Stakeholders argued that the failure to mandate ratios for the entire sector has effects on the workload of both personal care workers and registered nurses, and thus the quality of care for residents.
- 2.63** In this regard, some stakeholders expressed concern that implementing staffing ratios for registered nurses only would create a risk of a reduction of care staff to cater for increased registered nurses.⁹³ Ms Lauren Hutchins, Manager, Aged Care Division, Health Services Union elaborated that there is a fear that if one part of the workforce is mandated without looking at the entire care service, the money will come from other areas such as diversional therapy, support services such as catering and cleaning, and care staff. Ms Hutchins argued that if there is a mandate to schedule registered nurses at all times and no requirement to maintain caring hours, then caring staff will be reduced and their workload will increase.⁹⁴ As such, the Health Services Union called for mandatory staffing levels for all types of aged care workers.⁹⁵
- 2.64** As explained in the previous section, a key aspect of a registered nurse's role is their clinical skills in assessing residents before critical incidents arise. In particular, Dr Newton highlighted that a 'registered nurse has the perspective of looking across a facility and being able to see who needs help and who does not'. As such, registered nurses need to have the appropriate support in place to be able to apply 'good clinical practice' and 'not necessarily be caught up in the nitty-gritty of documentation'.⁹⁶
- 2.65** Ms Helen Macukewicz, Professional Officer, Nurses and Midwives' Association, also highlighted the importance of a director of nursing to provide 'a layer of clinical governance' in nursing homes. She explained that often a registered nurse working on their own is so busy that they would not be able to 'attend to the big picture issues as well' such as clinical governance audits and infection control.⁹⁷
- 2.66** The committee heard from a panel of three personal care workers who shared stories of their work in aged care facilities which exemplified the value of both nurses and personal care workers in aged care facilities. One assistant-in-nursing demonstrated this by recounting her experience in dealing with a 99 year old resident's fall in a two-storey facility with three care staff on night duty and no registered nurse.

⁹² See for example, Submission 4, NSW Nurses and Midwives Association, p 21; Submission 11, Health Services, p 10.

⁹³ See, Submission 11, Health Services Union, p 5; Evidence, Mr Paul Versteeg, Policy Manager, Combined Pensioners and Superannuants Association of NSW Inc., 28 April 2021, p 33.

⁹⁴ Evidence, Ms Lauren Hutchins, Manager, Aged Care Division, Health Services Union, 29 March 2021, p 30.

⁹⁵ Submission 11, Health Services Union, p 5.

⁹⁶ Evidence, Dr Lyndal Newton, Head of Department – Department of Geriatric Medicine, 28 April 2021, p 25.

⁹⁷ Evidence, Ms Helen Macukewicz, Professional Officer, NSW Nurses and Midwives' Association, 29 March 2021, p 18

Case study

One resident fell after trying to go the toilet by herself because the care staff could not get to her quickly enough after she had buzzed for assistance. With no registered nurse on duty, the care staff checked for any obvious injuries and placed the resident back in bed to wait for a registered nurse to come in hours later.

It turned out she had broken her clavicle and pelvis, and was still bedridden with a catheter six weeks after the incident. The witness described the resident's quality of life as zero and said the resident now often expresses her wish to die.

The witness reflected on the incident, explaining that a registered nurse on duty would have been 'beneficial to all involved' to provide the medical knowledge needed to consider whether to send the resident to hospital or not. However, more importantly, the witness considered that had there been more than three staff on duty, the resident's fall may have been prevented to begin with as one of the care staff would have gotten to the resident quicker after she had buzzed for assistance.⁹⁸

- 2.67** To best implement appropriate staffing levels, two staffing models were presented to the committee: a model recommended in the Royal Commission on Aged Care Quality and Safety and one from the Australian Nursing and Midwifery Federation.
- 2.68** The Health Services Union supported the recommendation made by Counsel Assisting, and endorsed by the Royal Commission on Aged Care Quality and Safety in its final report, to engage the required staff, including personal care workers, enrolled nurses and registered nurses, to provide the following care hours for residents by July 2024:
- 215 minutes of staff time per day, with at least 44 minutes of that time provided by a registered nurse, or
 - 264 minutes of staff time per day, with at least 36 minutes of that time provided by a registered nurse.⁹⁹
- 2.69** In contrast, the Nurses and Midwives' Association and the Quality Aged Care Action Group, as well as a number of respondents to the committee's online questionnaire, endorsed a model of staffing developed by the Australian Nursing and Midwifery Federation [ANMF], which is flexible to accommodate fluctuating residents' needs. Under this model, each resident would receive as a minimum standard, on average 4 hours and 18 minutes of care per day with a skills mix requirement consisting of 30 per cent registered nurses, 20 per cent enrolled nurses and 50 per cent personal care workers.¹⁰⁰

⁹⁸ Evidence, Witness C, Aged-care assistant, 22 February 2021, pp 2 and 5.

⁹⁹ Submission 11, Health Services Union, p 11.

¹⁰⁰ Submission 11, Health Services Union, p 18. See also, Submission 8, Quality Aged Care Action Group, pp 3-4; Online questionnaire report, 25 May 2021 p 9.

- 2.70** The Nurses and Midwives' Association described the Royal Commission's preliminary recommendation as an improvement on current levels but fell short of the 'five-star care standard the ANMF model would provide'.¹⁰¹
- 2.71** Ms Kylie Miskovski, National Policy & Strategy Advisor, Dementia Australia was generally supportive of a mandated ratio but considered it 'a bit of a blunt instrument'. Rather she argued that it needed to be responsive to residents' care needs which will be differ across different nursing homes.¹⁰²
- 2.72** The committee also heard evidence on the importance of allied health workers and other support staff in aged care facilities as part of the staffing and skills mix in aged care facilities.
- 2.73** In relation to allied health staff, the Health Services Union argued that allied health staff are 'crucial to an aged sector that prioritises resident wellbeing'. The union referred to the recommendation by Counsel Assisting in the Royal Commission that aged care providers be required to engage at least one of the following allied health professionals: an oral health practitioner, a mental health practitioner, a podiatrist, a physiotherapist, an occupational therapist, a pharmacist, a speech pathologist, a dietician, an exercise physiologist and a music or art therapist, as well as access to audiology and optometry services for those residents that need them.¹⁰³
- 2.74** In evidence, the Health Services Union Secretary, Mr Gerard Hayes expanded on this, suggesting that in regional areas, where it is difficult to attract allied health professionals, an allied health hub would be beneficial from which allied health professionals could go to several different facilities utilising the hub.¹⁰⁴
- 2.75** Furthermore, Palliative Care Nurses Australia highlighted that the current funding model focuses on disability, whereby more money is provided to aged care facilities when people require more care or assistance rather than focusing on independence and rehabilitation. The organisation suggested that allied health professionals such as occupational therapists, physiotherapists, speech therapists, psychologists and social workers are 'vital in ensuring that older people achieve maximal quality of life'.¹⁰⁵
- 2.76** In terms of support staff, the Health Services Union explained that job cuts in support roles such as catering, cleaning, administration and maintenance are frequent, with this work then shifted onto personal care workers on top of their existing care demands. The union pointed out that a drop in the standard of catering and cleanliness in aged care facilities 'reflect the inability of workers to cope with these added duties'.¹⁰⁶ The union also argued that it is important to maintain appropriate levels of support staff to 'prevent overworked and fatigued care staff from being too time-poor' to provide the appropriate care to residents.¹⁰⁷

¹⁰¹ Submission 11, Health Services Union, p 18.

¹⁰² Evidence, Ms Kylie Miskovski, National Policy & Strategy Advisor, Dementia Australia, 29 March 2021, p 49.

¹⁰³ Submission 11, Health Services Union, p 11.

¹⁰⁴ Evidence, Mr Gerard Hayes, Secretary, Health Services Union, 29 March 2021, p 34.

¹⁰⁵ Submission 15, Palliative Care Nurses Australia, p 3.

¹⁰⁶ Submission 11, Health Services Union, p 6.

¹⁰⁷ Submission 11, Health Services Union, p 11.

2.77 One personal care worker told the committee of the additional challenges faced by personal care workers to provide adequate support assistance. She explained that in her facility personal care workers are asked to provide assistance in the kitchens such as serving residents in the dining room, transporting meal trolleys and cleaning. She also highlighted that residents do not enjoy the food provided by the catering company in her facility and thus ask care workers to cook for them.¹⁰⁸

NSW Poisons and Therapeutic Goods Regulation 2008

2.78 The NSW Poisons and Therapeutic Goods Regulation 2008 relies upon the definitions described in the *Public Health Act 2010* (NSW). Therefore, the committee heard that if there were no requirement to schedule a registered nurse on site at all times in a residential aged care facility, the management, procurement, storage and administration of medicines, including dangerous drugs of addiction, could fall to care workers with no minimum training requirements, resulting in greater risk to residents.

2.79 The NSW Nurses and Midwives' Association submission recognised that:

Removing or limiting the scope of the *NSW Public Health Act (2010)* effectively limits already inadequate medication safeguards afforded to residents in NSW. It is impossible to consider whether to extend or remove this legislation without considering its impact in relation to the safety of medication management in NSW RACF [residential aged care facilities].¹⁰⁹

2.80 The Combined Pensioners and Superannuants Association submission identified:

Medications are scheduled because they pose a risk to public safety. It appears to be a nonsense that the law allows unlicensed care workers with minimal training to administer medications to residents in some NSW RACFs yet safeguards others by only allowing RNs, or ENs working under supervision of an RN to administer.¹¹⁰

2.81 In his evidence to the committee, Dr Lyons, NSW Health confirmed legislation currently exists in New South Wales which applies to residential aged care facilities covering 'pharmaceuticals, medications, and schedule 4 and schedule 8 drugs and the requirements for those to be administered in certain ways', in recognition that 'health care is being provided in the settings'.¹¹¹

2.82 However, current regulations do not extend to those facilities licensed after 1 July 2014 and those offering low care only pre-1 July 2014. Mr Versteegen, representing the Combined Pensioners and Superannuants Association, provided supplementary evidence on notice which identified a growing number of facilities being licensed, estimating around 138 new residential

¹⁰⁸ Evidence, Witness B, Homemaker, 22 February 2021, p 13.

¹⁰⁹ Submission 4, NSW Nurses and Midwives' Association, p 7.

¹¹⁰ Submission 18, Combined Pensioners & Superannuants Association of NSW Inc, p 7.

¹¹¹ Evidence, Dr Nigel Lyons, Deputy Secretary, Health System Strategy and Planning Division, NSW Health, 22 February 2021, p 20.

aged care facilities had started operation in New South Wales (with 15,468 places) after 30 June 2014.¹¹²

2.83 The NSW Nurses and Midwives' Association submission stated:

Medication administration requires clinical judgment with full understanding of the implications for patient safety. The act of administering a medication requires an assessment of the resident and deep understanding of how the medication might impact them physiologically and psychologically. This is even more important where a resident is cognitively impaired and cannot actively participate in the process and where a person is taking multiple medications.¹¹³

Committee comment

2.84 The state of aged care in New South Wales is extremely concerning. It is unacceptable that staffing numbers and levels have continued to drop over the years, while at the same time the needs of residents have only increased and become more complex. Stakeholders painted a worrying picture of the aged care sector, highlighting the link between staffing levels in aged care facilities and the quality of care delivered to residents. Every part of the staffing mix plays an important role in maintaining a safe, dignified and respectful space for residents, from nurses and care staff to allied health professionals and support service staff, including cleaning and kitchen staff.

Finding 1

That all aged care staff, including registered nurses, personal care workers, allied health professionals and support service staff, play a critical role in providing holistic care, to ensure that New South Wales nursing homes are safe and that residents are treated with dignity and respect.

2.85 It is therefore clear to the committee that there is a need for regulation to not only lift the standard of care for residents but to relieve the pressure on overworked staff. The committee notes that the NSW Government has acknowledged that more needs to be done to raise the quality of care in our nursing homes. We believe it is unacceptable to wait for the Australian Government to act, particularly considering that the Royal Commission's recommendations on staffing, if implemented, will be implemented over four years.

2.86 The crux of the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020 is to ensure that there is a registered nurse on duty at all times in all nursing homes in New South Wales. This would remove the divide that exists under the current legislation whereby the requirement under the *Public Health Act 2010* to have a registered nurse on duty at all times only applies to nursing homes that commenced operation prior to 2014.

¹¹² Answers to questions to notice, Mr Paul Versteeg, Policy Manager, Combined Pensioners and Superannuants Association of NSW, 4 May 2021, p 1.

¹¹³ Submission 4, NSW Nurses and Midwives' Association, p 29.

- 2.87** We know that registered nurses are a critical part of the staffing mix in nursing homes. The requirement that at least one be on duty at all times is the very least we should do, considering their level of clinical skill, including their ability to provide holistic care to prevent critical incidents and prevent avoidable hospital admissions, and to manage medication and provide palliative care.
- 2.88** However, we also recognise that it is not just about one having on registered nurse on duty. We agree with stakeholders that there should be an appropriate number of registered nurses based on residents' needs in a facility. Therefore, we recommend 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, and to proceed to debate and pass the bill.

Recommendation 1

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.

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- 2.89** Of course, if the bill passes, the NSW Government should remove the regulation that effectively grants an exemption to nursing homes established after 1 July 2014.
- 2.90** This committee has also heard that there is a need to regulate staffing in a holistic manner to ensure that all clinical and direct care needs of residents are met. This means ensuring that not only registered nurses but also other staff are rostered on at the appropriate level for the number of residents and their needs in any given facility.
- 2.91** We appreciate the concerns raised that if 24/7 registered nurses are mandated without considering the rest of the staffing mix, then some aged care facilities may cut care staff or other support services, creating an extra burden on staff and thus not effectively improving the quality of care for residents. Therefore, we recommend 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. If this is not implemented within the timeframe recommended by the Royal Commission, then we recommend that the NSW Government investigate implementing this mandatory staffing mix ratio for New South Wales nursing homes.
- 2.92** We also recommend 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.

Recommendation 2

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
 - 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.
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Recommendation 3

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.

- 2.93** Given the evidence received on the critical role registered nurses play in preventing critical incidents and avoidable hospital admissions, we believe there is a need for detailed analysis to be undertaken of the cost-shifting that occurs in our public health system, due to nursing homes failing to have a registered nurse on duty, on site at all times.
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Recommendation 4

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.

- 2.94** In relation to the possibility that medication management, procurement, storage and administration could fall to care workers, this would be a significantly lower standard than for people receiving care in New South Wales public hospitals and residential aged care facilities across most other Australian states and territories. The growing number of New South Wales residents accommodated in facilities outside the scope of the NSW Poisons and Therapeutic Goods Regulation 2008 is a significant issue, facilitating an inconsistent medication safety standard that requires urgent resolution.
- 2.95** Given the overwhelming evidence in submissions to the inquiry and witness testimonies during hearings to support the high level of need amongst the resident cohort in New South Wales residential aged care facilities, particularly with respect to end-of-life and palliative care, it would appear that the NSW Poisons and Therapeutic Goods Regulation 2008, currently subject to review, should be enhanced to ensure the availability of registered nurses on site at all times to safely manage, procure and administer medications to residents in all residential aged care facilities in the state.
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Recommendation 5

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.

Chapter 3 Other issues

This chapter considers a range of issues raised during the inquiry beyond the need for registered nurses and mandatory staffing ratios. The chapter begins by exploring the lessons learnt by the aged care sector from the COVID-19 pandemic, with a focus on the outbreak in Newmarch House. The chapter then moves on to consider funding and workforce issues, including a discussion of whether there is a need for greater transparency from aged care providers, and challenges in attracting and retaining the appropriate workforce.

Finally, the chapter ends by considering a number of issues relating to specific groups accessing aged care services, including: caring for residents with dementia, the needs of ageing Aboriginal Australians, barriers for older people from culturally and linguistically diverse communities, the experience of young people in nursing homes, and the need to prevent sexual assault in nursing homes.

Lessons learnt from the COVID-19 pandemic

3.1 The committee heard that the aged care sector was not sufficiently prepared for the COVID-19 pandemic, with stakeholders informing the committee that the pandemic has exposed vulnerabilities particularly around staffing and infection control.

3.2 According to the Australian Health Services Research Institute, as at December 2020, there were 685 deaths from COVID-19 in residential aged care facilities out of a total of 908 deaths in Australia.¹¹⁴ The research institute highlighted that the Royal Commission noted a lack of preparedness in the sector as well as issues with staffing, workforce and personal protective equipment:

The Royal Commission's view of COVID-19 in aged care noted a lack of preparedness at both the system (government) and local (care homes) levels, compounded by poor staffing levels, inadequate access to and use of personal protection equipment (PPE), and a highly casualised workforce, contributed to the rapid transmission amongst residents in care homes.¹¹⁵

3.3 Some stakeholders raised staffing of nurses as a key factor in the prevention of the spread of COVID-19 in residential aged care facilities. Inquiry participants looked to the experience in Victoria where, as at December 2020, all 665 aged care residents who died from COVID-19 were from private facilities. In contrast, the committee heard that public facilities had no deaths or outbreaks due to mandated ratios of registered nurses which enabled the rapid implementation of infection control measures.¹¹⁶ Similarly, the Australian Health Services Research Institute referred to a US study which found that 'homes deemed high-performing in terms of nurse staffing levels had fewer COVID-19 cases than low-performing care homes'.¹¹⁷

¹¹⁴ Submission 1, Australian Health Services Research Institute, p 3. See also, Submission 4, NSW Nurses and Midwives' Association, p 35.

¹¹⁵ Submission 1, Australian Health Services Research Institute, p 3.

¹¹⁶ See, Submission 1, Australian Health Services Research Institute, p 3; Submission 4, NSW Nurses and Midwives' Association, pp 21 and 35.

¹¹⁷ Submission 1, Australian Health Services Research Institute, p 3.

- 3.4** During its public hearings, the committee heard evidence regarding the COVID-19 outbreak in Newmarch House, a residential aged care facility run by Anglicare Sydney, one of the largest aged care providers in New South Wales. Newmarch House experienced the outbreak early in the pandemic, between 11 April 2020 and 15 June 2020, during which there were 71 cases of COVID-19 in staff and residents and 19 deaths (17 of which were directly attributed to COVID-19).¹¹⁸
- 3.5** Mr Grant Millard, Chief Executive Officer of Anglicare Sydney, discussed Anglicare's response during the outbreak at Newmarch House, including testing, deployment of a surge team, training of new staff and requests for personal protective equipment (PPE).
- 3.6** Mr Millard informed the committee that testing began on 12 March 2020 with testing completed for all residents who were suitable for swab testing by 14 April 2020. Anglicare Sydney deployed their own surge team on 12 April 2020 when two registered nurses were sent to assist with 'larger numbers of Anglicare surge staff' deployed on 13 April 2020. While NSW Health representatives began attending Newmarch House from 12 April 2020, Mr Millard noted that no crisis team of nurses or care staff were supplied by NSW Health.¹¹⁹
- 3.7** Mr Millard highlighted that there were challenges with staffing during the outbreak as a result of staff having to be removed due to being identified as close contacts. He further stated that they were 'seriously understaffed' with a 'critical period ... of no more than a week', at which Anglicare Sydney reached out to agency staff through the Commonwealth surge workforce.¹²⁰
- 3.8** Furthermore, Mr Millard outlined that all new staff who came onboard during the COVID-19 outbreak were required to attend an induction training workshop on arrival prior to entering the facility. The induction was 'designed to familiarise new-starters with the COVID-19 outbreak at Newmarch House and to outline Anglicare-specific protocols, rather than to provide whole-topic training', with 'a significant portion' of the workshop focusing on infection control procedures, particularly donning and doffing of PPE.¹²¹
- 3.9** The committee also heard that from 24 April 2020 to 10 May 2020, Anglicare appointed BaptistCare at the direction of the Aged Care Quality and Safety Commission to take responsibility for the management of the outbreak. Mr Millard highlighted that during this time, 'BaptistCare suspended the Anglicare induction workshop and instead provided a very short briefing (understood to have been less than 15 minutes) to staff regarding their roles'. Mr Millard also stated that he was 'not aware of what training new staff received during this period under BaptistCare management'.¹²²

¹¹⁸ Professor Lyn Gilbert AO Adjunct Professor Alan Lilly, *Newmarch House COVID-19 Outbreak [April-June 2020] Independent Review Final Report*, 20 August 2020, pp 4 and 8.

¹¹⁹ Answers to questions on notice, Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, received 15 April 2021, pp 1-2; Evidence, Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, 29 March 2021, pp 2-3.

¹²⁰ Evidence, Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, 29 March 2021, p 5.

¹²¹ Answers to questions on notice, Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, received 15 April 2021, p 3.

¹²² Answers to questions on notice, Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, received 15 April 2021, p 3.

- 3.10** On the issue of staffing and training, an aged care worker who worked at Newmarch House as part of the surge team shared her experience. The witness explained that she was hired as part of the surge team due to her prior experience with Anglicare Sydney. She observed that 'residents were not properly cared for' as agency staff 'did not know the routine of the residents'. She commented that 'it was very hard to train up the agency staff as well as look after the residents at the same time'.¹²³
- 3.11** When asked whether the Australian Government had an operational plan to deal with an outbreak in aged care facilities, Mr Millard stated that there was not one specific to aged care and that they were relying on a healthcare plan based on the Communicable Diseases Network Australia guidelines. He added that in hindsight, this plan was not enough.¹²⁴
- 3.12** In terms of accessing PPE, Mr Millard confirmed that Anglicare Sydney 'faced significant difficulties in accessing PPE and initially received rejections' of their requests with statements that PPE was only for use for residents who were COVID-positive or suspected of being COVID-positive. In addition, Mr Millard stated that they made requests to both the state and Commonwealth governments for access to PPE and that there was much confusion about who was responsible for what. While it was established that there would only be access to the national PPE stockpile if there was an outbreak, there were challenges in contacting the responsible people to deal with the request as the outbreak began on Saturday evening during the Easter weekend.¹²⁵
- 3.13** When asked whether he believed that the state government may have had an attitude of 'other priorities above aged care', Mr Millard stated:
- ... I understand that the State Health bore a tremendous responsibility to cover the interests of the entire community. I do not believe there was any evidence of ageism ... but I believe at the time there was great concern to keep COVID positive cases in Newmarch House and not risk a contamination beyond that place.¹²⁶
- 3.14** Based on evidence from the Royal Commission, the Nurses and Midwives' Association stated that Anglicare Sydney had rated all their facilities as achieving best practice in a self-assessment of COVID-19 preparedness issued by the Aged Care Quality and Safety Commission. However, the association contended that Anglicare had 'underestimated their level of preparedness and had made inaccurate statements including around staffing', and that 'infection control was poorly regulated in the 18 months prior to the first recorded COVID-19 case at Newmarch House'.¹²⁷
- 3.15** The committee sought evidence from Anglicare Sydney and NSW Health on the steps taken to prevent future outbreaks similar to the one experienced in Newmarch House. Mr Millard referred to infection control practices including competency in the use of PPE as a 'clear identifying issue'. He also noted a requirement imposed by the Australian Government to have at least one infection control practitioner in every residential aged care home.¹²⁸

¹²³ Evidence, Witness A, Aged-care worker, Newmarch House, 22 February 2021, pp 3-4.

¹²⁴ Evidence, Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, 29 March 2021, p 11.

¹²⁵ Evidence, Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, 29 March 2021, p 3.

¹²⁶ Evidence, Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, 29 March 2021, p 13.

¹²⁷ Submission 4, NSW Nurses and Midwives' Association, p 36.

¹²⁸ Evidence, Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, 29 March 2021, p 9.

- 3.16** When asked about Anglicare Sydney's recent decision to cut staffing costs given the experience at Newmarch House during the pandemic, Mr Millard responded that while he is 'not comfortable with reducing the number of hours', there is 'very little else' that can be done if the organisation is to remain financially viable. Mr Millard also highlighted that the cost reductions 'are not really focused on direct care delivery' but rather 'operational matters' such as catering and administrative roles.¹²⁹
- 3.17** From the perspective of NSW Health, Dr Lyons outlined some key changes:
- 'more aggressive infection prevention control' including baseline training and support and an 'immediate ramping up' of support into a facility if there were a COVID-19 case
 - a response from the local health district consisting of a risk assessment about the environment in which the care was provided, including the ability to cohort residents appropriately to keep potentially infected residents and staff separate, and support in specialist, infection control and aged care staffing.¹³⁰
- 3.18** In addition, two providers shared with the committee the lessons they learnt from the COVID-19 pandemic. McLean Care, a regional aged care provider, offered their insights, including:
- the need to support the workforce emotionally, mentally, spiritually and physically as frontline workers deal with heightened anxiety of residents and families
 - the importance of having robust communication tools for staff, families and the broader communities
 - the benefits of sharing resources with local health districts and communicating more openly
 - the importance of 'solid and concise' government direction through mechanisms such as public health orders and aged care directives to make operating in difficult circumstances 'much more achievable'.¹³¹
- 3.19** Uniting NSW.ACT observed that the pandemic has reinforced a number of issues already affecting the aged care sector. These included:
- the need for greater integration between aged care and health care
 - the pandemic's impact on the financial viability of the sector when it was already under financial pressure, through additional staff costs, communication and procurements costs, and the provision of PPE and cleaning supplies and services
 - the aged care workforce's 'inherent vulnerabilities' in attracting and retaining staff, including low wages and lack of career development, further exacerbated by current visa and travel restrictions which prevent providers from hiring workers from overseas
 - the need to support and value the aged community to reduce isolation.¹³²

¹²⁹ Evidence, Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, 29 March 2021, p 8.

¹³⁰ Dr Nigel Lyons, Deputy Secretary, Health System Strategy and Planning Division, NSW Health, 22 February 2021, p 16.

¹³¹ Answers to questions on notice, Aged & Community Services Australia, received 10 May 2021, pp 3-4.

¹³² Answers to questions on notice, Uniting NSW.ACT, received 10 May 2021, pp 2-3.

- 3.20** Also related to the staffing issues discussed earlier, the Health Services Union argued that 'given the need for stringent cleaning protocols to prevent the spread of COVID-19, the frequent stories of poor hygiene, to the extent in some cases of infestation, are alarming'. The union highlighted that cleaning and laundry staffing in the sector is 'negligently low or non-existent'.¹³³

Workforce issues

- 3.21** In addition to the staffing issues discussed in Chapter 2, stakeholders raised further concerns in relation to the importance of transparency in how funding is spent, and the stability of the aged care workforce.
- 3.22** On the issue of transparency, many stakeholders argued that the aged care sector has lacked transparency thus far. These stakeholders called for increased transparency to ensure that funding is spent appropriately and to ensure residents and their families can verify that their provider is meeting required standards.¹³⁴
- 3.23** Ms Anita Westera, Research Fellow at the Australian Health Services Research Institute recommended the five star rating system discussed in Chapter 2 'so that the public has some transparency and there is accountability for the funding for aged care'. She acknowledged that the aged care sector has been underfunded, but that 'the primary problem' with increasing funding is that there is no mechanism to identify whether the additional funding will be spent on care.¹³⁵
- 3.24** The issue of transparency was also raised in the context of the concern expressed by some stakeholders that rostering registered nurses on at all times would render some aged care facilities financially unviable, particularly in regional, rural and remote areas (discussed in Chapter 2).
- 3.25** The Nurses and Midwives' Association challenged this argument, noting that in 2019-20, the government spent \$13.4 billion on residential aged care, with providers in New South Wales receiving almost \$4.4 billion of that total, a 2.5 per cent increase above inflation on the previous year. The association explained that a lack of transparency about how government funding is spent makes it difficult to establish whether claims of unviability are based on the actual cost of providing a registered nurse at all times, or are due to a failure to 'ring-fence' funding to staffing.¹³⁶

¹³³ Submission 11, Health Services Union, p 7.

¹³⁴ See, Evidence, Mr Paul Versteeg, Policy Manager, Combined Pensioners and Superannuants Association of NSW Inc., 28 April 2021, p 32; Evidence, Mr Corey Irlam, Deputy CEO, Council on the Ageing Australia, 28 April 2021, p 38; Evidence, Ms Danica Leys, Chief Executive Officer, Country Women's Association, 28 April 2021, p 46; Evidence, Ms Beverly Baker, Chair, Older Women's Network, 28 April 2021, p 49; Evidence, Ms Margharet Zanghi, President, Quality Aged Care Action Group, 29 March 2021, p 56; Evidence, Mr Gerard Hayes, Secretary, Health Services Union, 29 March 2021, p 27.

¹³⁵ Evidence, Ms Anita Westera, Research Fellow, Centre for Health Service Development, Australian Health Services Research Institute, University of Wollongong, 29 March 2021, p 42.

¹³⁶ Submission 4, NSW Nurses and Midwives' Association, p 20.

- 3.26** In a similar vein, Associate Professor Maree Bernoth expressed the view that 'until we see where money is going, we cannot make comment about what extra financial support' is needed in aged care facilities.¹³⁷
- 3.27** Both Uniting NSW.ACT and Aged & Community Services Australia indicated that they would be willing to commit to increased transparency if provided with increased funding.¹³⁸ More specifically, Mr Saviour Buhagiar, Director Ageing at Uniting NSW.ACT outlined that Uniting has been clear that there is a need for increased transparency around clinical indicators, staffing, complaints and incidents, and has encouraged its facilities to be transparent with families. He stated: 'If we are serious about wanting more funding, which we desperately need, then a function of that is to be more transparent about how we use that funding.'¹³⁹
- 3.28** In addition to the issue of funding, the committee heard evidence on the need to create a more stable workforce. Beyond the need for appropriate staffing, the Health Services Union identified two key workforce issues for aged care workers, based on feedback from members who have left the sector:
- wages that are lower than other industries like retail or those that have had some review of their wages such as disability
 - employment security, where employers have the flexibility to increase or decrease hours, meaning that some workers may need to work multiple jobs.¹⁴⁰
- 3.29** One registered nurse, Ms Mary Gibbs, argued that the aged care sector consists largely of an unskilled workforce, stating that while aged care workers have some minor education, many do not have the skills required to 'manage and work within an aged care facility'. She added that many in the workforce see aged care 'as a stepping stone to other career paths', and that aged care workers are an unregulated workforce with no accountability.¹⁴¹

Other concerns

- 3.30** A number of stakeholders raised concerns regarding specific groups of people accessing aged care services. These concerns include:
- caring for residents with dementia
 - the needs of ageing Aboriginal Australians
 - barriers for older people from culturally and linguistically diverse communities
 - the experience of younger people in nursing homes

¹³⁷ Evidence, Associate Professor Maree Bernoth, Registered Nurse, Community Engagement Lead, Charles Sturt University, 22 February 2021, p 10.

¹³⁸ Evidence, Ms Anna-Maria Wade, State Manager (NSW & ACT), Employee Relations Manager, Aged & Community Services Australia, 28 April 2021, p 11.

¹³⁹ Evidence, Mr Saviour Buhagiar, Director Ageing, Uniting NSW.ACT, 29 March 2021, p 13.

¹⁴⁰ Evidence, Ms Lauren Hutchins, Manager, Aged Care Division, Health Services, 29 March 2021, p 32. See also, Evidence, Mr Corey Irlam, Deputy CEO, 28 April 2021, p 41.

¹⁴¹ Evidence, Ms Mary Gibbs, Registered nurse, 22 February 2021, pp 2, 4 and 9.

- the need to do more to prevent sexual assault in nursing homes.

Caring for residents with dementia

- 3.31** According to Dementia Australia, more than two thirds of residents in aged care facilities have moderate to severe cognitive impairment.¹⁴² Considering the significant number of residents with dementia, Dementia Australia highlighted the importance of staffing ratios, continuity of care and staff training to reflect these residents' needs.
- 3.32** The organisation explained that the increasing pressure on aged care staff leads to critical mistakes, notably the 'overuse of physical and chemical restraints, where restraints are used inappropriately to keep residents "in place" when a facility is short on staff'.¹⁴³
- 3.33** Ms Kylie Miskovski, National Policy & Strategy Advisor, Dementia Australia was supportive of the presence of registered nurses in nursing homes at all times but stressed that this requirement alone, along with mandated nurse ratios, will not guarantee quality dementia care.¹⁴⁴ Rather, Dementia Australia argued that there are two additional key factors to ensure quality dementia care:
- mandatory dementia education and training for all staff in the aged care sector
 - continuity of care, as staff changes can be confusing and distressing and exacerbate dementia symptoms, therefore making the use of casual and agency staff 'problematic'.¹⁴⁵

Older people in Aboriginal communities

- 3.34** Professor Tony Broe, Senior Principal Research Fellow, Neuroscience Research Australia, University of New South Wales detailed the experience of ageing Aboriginal Australians and advocated for Aboriginal-specific aged care services.
- 3.35** Professor Broe highlighted that there are specific medical and cultural considerations for older Aboriginal people. He informed the committee that the Aboriginal elderly population is 'ageing with serious disability', referring to statistics which show that Aboriginal people face increased co-morbidities compared with non-Indigenous Australians and experience dementia at three or four times the average rate in Australia. Professor Broe also highlighted that those who are descended from a Stolen Generations ancestor 'have very low resilience' to stress and trauma.¹⁴⁶

¹⁴² Submission 10, Dementia Australia, p 4.

¹⁴³ Submission 10, Dementia Australia, p 8. See also, Witness C, Aged-care assistant, 22 February 2021, p 9.

¹⁴⁴ Evidence, Ms Kylie Miskovski, National Policy & Strategy Advisor, Dementia Australia, 29 March 2021, p 48.

¹⁴⁵ Submission 10, Dementia Australia, pp 7-8; Evidence, Ms Kylie Miskovski, National Policy & Strategy Advisor, Dementia Australia, 29 March 2021, p 48; Evidence, Ms Jenny Fitzpatrick, Carer and Dementia Advocate, Dementia Australia, 29 March 2021, p 48. See also, Evidence, Ms Anita Westera, Research Fellow, Centre for Health Service Development, Australian Health Services Research Institute, 29 March 2021, p 41.

¹⁴⁶ Evidence, Professor Gerald Anthony Broe, Senior Principal Research Fellow, Neuroscience Research Australia, University of New South Wales, 28 April 2021, pp 53-54.

- 3.36** In addition, Professor Broe outlined some of the cultural differences associated with ageing in Aboriginal communities including a respect for Elders, and the importance of community attitudes, support systems and the kinship system. He remarked that there is a lack of aged care facilities that provide group-centred or family-centred care, in contrast to person-centred care which is the current model.¹⁴⁷
- 3.37** In terms of accessing residential aged care, Professor Broe identified four reasons why Aboriginal and Torres Strait Islander Australians do not currently receive, or receive inadequate or inappropriate residential aged care, including: limited culturally safe and appropriate options; inadequate access pathways; incorrect assessment; and system design.¹⁴⁸
- 3.38** Professor Broe stipulated that there is a need to provide culturally appropriate aged care services for Aboriginal Australians with an understanding of their cultural relationships as well as their life experiences of trauma and racism.¹⁴⁹ Referring to studies that show that 55 to 60 per cent of Aboriginal people prefer to use Aboriginal medical services for their healthcare, Professor Broe argued that Aboriginal medical services or Aboriginal Community Controlled Organisations [ACCOs] are best placed to provide aged care services. However, Professor Broe noted that 'inflexible regulation requirements and a lack of capacity building support from Government' to meet these requirements is a key barrier in providing aged care services specific to Aboriginal Australians.
- 3.39** To this end, while Professor Broe supported the presence of registered nurses in residential aged care at all times, he stipulated that this requirement should be modified 'in terms of prioritising Aboriginal care by using Aboriginal health workers who have less than RN [registered nurse] training'.¹⁵⁰ In support of this point, Professor Broe also referred to the Royal Commission's recommendations which he argued 'recognises the importance of ACCO providers and the need for Government support and tailored approaches to grow the sector'.¹⁵¹

Older people from culturally and linguistically diverse communities

- 3.40** The committee also received some evidence to suggest that older people from culturally and linguistically diverse communities are less likely to access health and aged care services. Stakeholders outlined a number of specific challenges faced by older people from these communities, including:
- language barriers
 - lack of awareness and knowledge of the services available in the Australian health and aged care systems

¹⁴⁷ Evidence, Professor Gerald Anthony Broe, Senior Principal Research Fellow, Neuroscience Research Australia, University of New South Wales, 28 April 2021, pp 56-57.

¹⁴⁸ Submission 20, Professor Tony Broe, p 2.

¹⁴⁹ Evidence, Professor Gerald Anthony Broe, Senior Principal Research Fellow, Neuroscience Research Australia, University of New South Wales, 28 April 2021, p 55.

¹⁵⁰ Evidence, Professor Gerald Anthony Broe, Senior Principal Research Fellow, Neuroscience Research Australia, University of New South Wales, 28 April 2021, p 55. See also, Submission 20, Professor Tony Broe, p 3.

¹⁵¹ Submission 20, Professor Tony Broe, p 3.

- lower access to essential health and aged care services, resulting in presenting too late for health checks and diagnosis
- fear of authority (such as the government) and reliving of trauma
- system complexity
- lack of culturally and linguistically appropriate aged care providers
- shame associated with dementia
- the continuing need to build the capacity of the aged care sector to work across different cultures and faiths, and to respond to new, emerging and refugee populations.¹⁵²

3.41 Aged & Community Services Australia noted that many aged care providers 'offer specific diets, activities, languages and/or spiritual needs' to support residents who identify with a specific culture or language.¹⁵³ However, the organisation also referred to the Royal Commission's findings that there is a 'need for increased staff training in culturally safe practices and the need for increased understanding of the additional needs of people from diverse backgrounds'.¹⁵⁴

Young people in nursing homes

3.42 Aged & Community Services Australia stated that as of 1 July 2018, there are approximately 6,000 people under 65 years of age living in aged care facilities in Australia.¹⁵⁵ The committee heard some evidence on the experience of these younger people in aged care facilities.

3.43 Registered nurse, Ms Mary Gibbs, estimated that 10 per cent of residents at her facility are under the age of 65, with the youngest being 40 years of age. Ms Gibbs explained that these residents tend to fall under the National Disability Insurance Scheme, and enter aged care facilities due to their serious comorbidities which make them unsuitable for home placement. However, she highlighted that a key issue for these residents is socialisation and the difference in ages between them and the rest of the residents in nursing homes.¹⁵⁶

3.44 NSW Health provided information on residents under 65 years of age in state-run nursing homes. As at 30 June 2018, there are 40 people under the age of 65 across 7 state-run aged care facilities. Some of these facilities provide a range of leisure, lifestyle and social support programs for these residents, some of which may be run through the National Disability Insurance Scheme.¹⁵⁷

3.45 Dr Nigel Lyons, Deputy Secretary, Health System Strategy and Planning Division, NSW Health informed the committee that NSW Health has advocated for the need for improvements in the

¹⁵² Answers to questions on notice, Aged & Community Services Australia, 10 May 2021, p 2; Answers to questions on notice, Uniting NSW.ACT, 10 May 2021, p 2.

¹⁵³ Answers to questions on notice, Aged & Community Services Australia, 10 May 2021, p 2.

¹⁵⁴ Answers to questions on notice, Aged & Community Services Australia, 10 May 2021, p 2.

¹⁵⁵ Answers to questions on notice, Aged & Community Services Australia, 10 May 2021, p 1.

¹⁵⁶ Evidence, Ms Mary Gibbs, Registered nurse, NSW Nurses and Midwives Association, 22 February 2021, p 4.

¹⁵⁷ Answers to questions on notice, NSW Health, received 18 March 2021 – Attachment A, p 2.

interface between the health and aged care system, including the interface with the disability care system, which is particularly relevant for young people living in aged care facilities.¹⁵⁸

Prevention of sexual assaults in nursing homes

- 3.46** Finally, the committee also heard that adequate staffing can play a role in preventing sexual assaults in aged care facilities.
- 3.47** The Older Women's Network estimated that there are at least 50 sexual assault cases in nursing homes every week. The network was most concerned about the Serious Incident Response Scheme, which asks providers to categorise incidents based on the impact an incident has on a resident – critical incidents have a high impact while serious incidents are considered low impact. Ms Yumi Lee, Manager of the Older Women's Network referred to research which suggested that 58 per cent of sexual assault cases were categorised as not having any impact on the victim.¹⁵⁹
- 3.48** In addition, Ms Lee raised concerns about the way in which the Aged Care Quality and Safety Commission deals with reports of sexual assaults in aged care facilities. Ms Lee argued that the commission has been recording an increasing number of assaults over the years but there is no transparency in relation to where that information goes.¹⁶⁰
- 3.49** In addition to minimum standards of care and staffing levels to ensure that there are enough staff available to prevent sexual assault taking place, the Older Women's Network called for:
- training around sexual assault for all staff in nursing homes including how to prevent and identify it and what to do when it happens
 - a national register to enable providers to check if staff have been implicated in the sexual assault of residents.¹⁶¹

Committee comment

- 3.50** The experience of COVID-19 in New South Wales nursing homes was a tragic low point of the pandemic, especially considering the relatively low numbers of cases and deaths in the state generally. As such, we felt it was important to consider as part of this inquiry what stakeholders in the aged care sector have learnt from the pandemic.
- 3.51** We believe that the experience at Newmarch House showed the importance of preparedness and coordination between the government and aged care facilities as well as infection control measures and appropriate staffing to prevent and control such an outbreak in the future. The deaths at Newmarch House were tragic, and we are encouraged to hear that lessons have been learnt and implemented from this experience.

¹⁵⁸ Evidence, Dr Nigel Lyons, Deputy Secretary, Health System Strategy and Planning Division, NSW Health, 22 February 2021, p 12.

¹⁵⁹ Evidence, Ms Yumi Lee, Manager, Older Women's Network, 28 April 2021, p 48.

¹⁶⁰ Evidence, Ms Yumi Lee, Manager, Older Women's Network, 28 April 2021, p 49.

¹⁶¹ Evidence, Ms Yumi Lee, Manager, Older Women's Network, 28 April 2021, pp 48 and 50.

- 3.52** In Victoria, it was very telling that there were no deaths in public aged care facilities, where nursing ratios are mandated, while sadly there were 655 deaths in private aged care facilities where these ratios do not apply. We reiterate our recommendation in Chapter 2 that registered nurses must be present in all nursing homes at all times rostered at the appropriate level for the number and needs of residents.
- 3.53** Despite repeated questioning, the committee was unable to get a clear answer on when NSW Government health officials first entered Newmarch House and took charge of the response. As was seen during the outbreak at Dorothy Henderson Lodge a month earlier, this coordinated and immediate intervention by New South Wales public health specialists was crucial to their success. As a result we conclude that the NSW Government response was not best practice at Newmarch House.

Finding 2

That the NSW Government response was not best practice at Newmarch House.

- 3.54** On the theme of transparency, the committee agrees with stakeholders that transparency is needed in the aged care sector to ensure that there is a level of accountability in terms of how aged care providers are spending taxpayer funds. As discussed in Chapter 2, some stakeholders raised concerns that this bill would put some aged care facilities out of business, particularly those in regional New South Wales. However, considering there is little transparency in terms of how these facilities spend their government funding, we cannot make a judgement on this other than to reiterate there is a need to ensure transparency for residents and their families, and for taxpayers more generally.

Finding 3

That there is a need for increased transparency and accountability about the way nursing homes spend Commonwealth funding, particularly to provide information for residents and their families on staffing levels and the number of high and low care places.

- 3.55** In addition to the issues around transparency, we also agree with stakeholders that the aged care workforce is largely underpaid and undervalued. In the context of the increased burdens on personal care workers we noted in Chapter 2, there is no question that attracting and retaining staff is a significant challenge for the industry. We believe that there is a clear need to create a stable workforce in the aged care sector by providing better wages, secure employment, training and career pathways. We note that the Fair Work Commission is currently hearing a work value case initiated by the Health Services Union, to increase aged care workers' pay by approximately 25 per cent.
- 3.56** Further on this issue, we recommend that the NSW Government, through the National Cabinet process, urge the Australian Government to develop a clear workforce plan for aged care across Australia.

Finding 4

That there is a need to create a stable workforce in the aged care sector by providing better wages, secure employment, training and career pathways.

Recommendation 6

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

- 3.57** The committee appreciates that there are unique barriers for people from Aboriginal and culturally and linguistically diverse communities to access residential aged care facilities. High quality aged care services should be accessible to all in our community. While we did not receive extensive evidence on this issue, we believe that there is a need for aged care facilities which cater to the specific needs of Aboriginal people. In addition, we also see the benefit of specialised facilities to appropriately care for residents from culturally and linguistically diverse communities.
-

Finding 5

That there is a need for:

- nursing homes which cater to the specific needs of Aboriginal people
 - specialised facilities to appropriately care for residents from culturally and linguistically diverse communities.
-

- 3.58** Finally, the committee was very concerned to hear about sexual assaults occurring in aged care facilities. Even more concerning was hearing that some facilities are not addressing this serious issue when they are responsible for the safety of a vulnerable group of people. We believe that there is a need for a national register that allows providers to check if current or prospective staff have been involved in the sexual assault of any residents. In addition, it is unacceptable to think that providers may be reporting sexual assault in their facilities as serious, rather than critical incidents, to avoid having to deal with the issue. Therefore, we also see a need for a review into this mechanism.
-

Recommendation 7

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.
-

Appendix 1 Submissions

| No. | Author |
|-----|---|
| 1 | Australian Health Services Research Institute, University of Wollongong |
| 2 | Ms Jo Russell |
| 3 | Mr Peter Connell |
| 4 | NSW Nurses and Midwives' Association |
| 5 | Nurses Christian Fellowship Australia |
| 6 | Professor Colleen Cartwright |
| 7 | Dr Marie Dela Rama |
| 8 | Quality Aged Care Action Group |
| 9 | Country Women's Association of NSW |
| 10 | Dementia Australia |
| 11 | Health Services Union |
| 12 | Uniting NSW.ACT |
| 13 | Carers NSW |
| 14 | Aged Care Crisis Inc. |
| 15 | Palliative Care Nurses Australia Inc |
| 16 | Aged and Community Services Australia (ACSA) |
| 17 | NSW Health |
| 18 | Combined Pensioners & Superannuants Association of NSW Inc |
| 19 | NSW Aged Care Roundtable |
| 19a | NSW Aged Care Roundtable |
| 20 | Professor Tony Broe |
| 21 | Name suppressed |

Appendix 2 Witnesses at hearings

| Date | Name | Position and Organisation |
|--|--|---|
| Monday 22 February 2021 Macquarie Room Parliament House | Witness A | Aged-care worker, Newmarch House, Anglicare |
| | Witness B | Homemaker |
| | Witness C | Aged-care assistant |
| | Associate Professor Maree Bernoth <i>(via videoconference)</i> | Registered Nurse, Community Engagement Lead, Charles Sturt University |
| | Ms Mary Gibbs <i>(via videoconference)</i> | Registered Nurse, General Manager |
| | Ms Catherine Sharp <i>(via videoconference)</i> | Registered Nurse, Wound Care Consultant, Expert Witness |
| Dr Nigel Lyons | Deputy Secretary, Health System Strategy and Planning Division, NSW Health | |
| Monday 29 March 2021 Macquarie Room Parliament House | Mr Grant Millard | Chief Executive Officer, Anglicare Sydney |
| | Mr Brett Holmes | General Secretary, NSW Nurses and Midwives' Association |
| | Ms Helen Macukewicz | Professional Officer, NSW Nurses and Midwives' Association |
| | Ms Lisa Roberts | Transitional Nurse Practitioner Palliative Care, and Member, NSW Nurses and Midwives' Association |
| | Mr Gerard Hayes | Secretary, Health Services Union |
| | Ms Lauren Hutchins | Manager, Aged Care Division, Health Services Union |
| | Ms Anita Westera | Research Fellow, Centre for Health Service Development (CHSD), Australian Health Services Research Institute |
| | Mr Josh Cohen | Vice President, Palliative Care Nurses Australia, and Palliative Care Nurse Practitioner, Calvary Health Care Kogarah |

| Date | Name | Position and Organisation |
|--------------------------------|---|---|
| | Professor Deb Parker | Member, Palliative Care Nurses Australia, and Professor of Nursing Aged Care (Dementia), School of Nursing and Midwifery, University of Technology Sydney |
| | Ms Kylie Miskovski | National Policy & Strategy Advisor, Dementia Australia |
| | Ms Jenny Fitzpatrick | Carer and Dementia Advocate, Dementia Australia |
| | Ms Margaret Zanghi | President, Quality Aged Care Action Group |
| | Mr Dean Murphy | Member, Quality Aged Care Action Group |
| Wednesday 28 April 2021 | Ms Anna-Maria Wade | State Manager (NSW & ACT), Employee Relations Manager, Aged & Community Services Australia |
| Macquarie Room | Ms Sue Thomson <i>(via videoconference)</i> | Member, Aged & Community Services Australia NSW & ACT Divisional Council, and Chief Executive Officer, McLean Care Ltd |
| Parliament House | Mr Saviour Buhagiar | Director Ageing, Uniting NSW.ACT |
| | Dr Lyndal Newton | Head of Department, Department of Geriatric Medicine, Northern Beaches Hospital |
| | Professor Dimity Pond <i>(via videoconference)</i> | NSW & ACT Provost, The Royal Australasian College of General Practitioners |
| | Dr Stephen Ginsborg <i>(via videoconference)</i> | Member, The Royal Australasian College of General Practitioners |
| | Mr Paul Versteegen | Policy Manager, Combined Pensioners and Superannuants Association of NSW |
| | Mr Corey Irlam <i>(via videoconference)</i> | Deputy CEO, Council on the Ageing Australia |
| | Ms Karen Appleby <i>(via videoconference)</i> | Senior Policy Officer, Council on the Ageing NSW |

| Date | Name | Position and Organisation |
|-------------|---------------------|--|
| | Ms Danica Leys | Chief Executive Officer, Country Women's Association |
| | Ms Yumi Lee | Manager, Older Women's Network |
| | Ms Beverly Baker | Chair, Older Women's Network |
| | Professor Tony Broe | Senior Principal Research Fellow, NeuRA, UNSW |

Appendix 3 Minutes

Minutes no. 1

Friday 13 November 2020

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

Room 1043, Parliament House, Sydney at 1.32 pm

1. Members present

Mrs Houssos, *Chair*

Mr Banasiak (via videoconference)

Ms Boyd

Mr Donnelly

Mr Fang

Mrs Maclaren-Jones (via videoconference)

Mr Martin

Mr Mookhey

Mr Pearson (until 1.45 pm)

2. Tabling of resolution establishing the committee

The Chair tabled the resolution of the House establishing the committee, which reads as follows:

- (1) That a select committee be established to inquire into and report on the provisions of the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020, and in particular:
 - (a) the need to have a registered nurse on duty at all times in nursing homes and other aged care facilities with residents who require a high level of residential care,
 - (b) the impact registered nurses have on the safety and dignity of people in care,
 - (c) the impact on residential care of a lack of registered nursing staff on duty in a nursing home or other aged care facility at all times,
 - (d) the need for further regulation and minimum standards of care and appropriate staffing levels in nursing homes and other aged care facilities,
 - (e) the administration, procurement, storage and recording of medication by non-registered nurses in nursing homes and other aged care facilities with residents who require a high level of residential care, as compared with hospital clinical settings,
 - (f) the potential for cost-shifting onto other parts of the public health system as a result of any legislative change to the current provisions for care in nursing homes or other aged care facilities,
 - (g) the role of registered nurses in responding to critical incidents and preventing unnecessary hospital admissions and unnecessary ambulance call outs and the consequent effect of this upon the provision of ambulance services to the wider community,
 - (h) the lessons that can be learnt in New South Wales from the impact of the COVID-19 crisis on private aged care facilities where staffing ratios are not mandated, and
 - (i) any other related matter.
- (2) That, notwithstanding anything to the contrary in the standing orders, the committee consist of nine members comprising:
 - (a) three government members,

- (b) three opposition members, and
 - (c) three crossbench members, with one being Mr Banasiak.
- (3) That the Chair of the committee be an opposition member.
- (4) That, unless the committee decides otherwise:
- (a) submissions to inquiries are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,
 - (b) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement,
 - (c) the sequence of questions to be asked at hearings is to alternate between government, opposition and crossbench members, in order determined by the committee, with equal time allocated to each,
 - (d) transcripts of evidence taken at public hearings are to be published,
 - (e) supplementary questions are to be lodged with the Committee Clerk within two days, excluding Saturday and Sunday, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within seven calendar days of the date on which questions are forwarded to the witness, and
 - (f) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration.

3. Election of Deputy Chair

The Chair called for nominations for the Deputy Chair.

Mr Donnelly moved: That Mr Banasiak be elected Deputy Chair of the committee.

There being no further nominations, the Chair declared Mr Banasiak elected Deputy Chair.

4. Conduct of committee proceedings – media

Resolved, on the motion of Mr Mookhey: That unless the committee decides otherwise, the following procedures are to apply for the life of the committee:

- the committee authorise the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007
- the committee webcast its public proceedings via the Parliament's website, where technically possible
- the committee adopt the interim guidelines on the use of social media and electronic devices for committee proceedings, as developed by the Chair's Committee in May 2013
- media statements on behalf of the committee be made only by the Chair.

5. Conduct of the inquiry into the provisions of the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020

5.1 Proposed timeline

The Chair briefed the committee on her proposal to request a background paper from the Parliamentary Library for the purposes of informing the preparation of a discussion paper, which includes key issues the committee anticipates to focus on, to be released in early February, prior to the first hearing.

Resolved, on the motion of Mr Pearson: That the committee adopt the following timeline for the administration of the inquiry:

- Submissions close:

- Friday 29 January 2021
- Hearings: Two to three hearings in February/March/April 2021
 - Monday 22 February 2021
 - Monday 29 March 2021
- Reporting: early May 2021.

5.2 Stakeholder list

Resolved, on the motion of Mr Martin: That the committee invite the stakeholders on the attached stakeholder list to make a submission, and that members be given 2 days to nominate any additional stakeholders.

5.3 Advertising

All inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

It is no longer standard practice to advertise in the print media. The committee should pass a resolution if it wishes to do so.

5.4 Online questionnaire

Resolved, on the motion of Mr Mookhey: That the committee use an online questionnaire to capture individuals' views, and that members be given 2 days to provide feedback or additional questions to the questionnaire.

Resolved, on the motion of Mr Donnelly: That:

- the committee not accept proformas
- the media release announcing the establishment of the inquiry and emails to stakeholders note that there will be an online questionnaire to capture individuals' views
- that the following wording be included on the committee's website:
 - Submissions: Individuals are invited to submit their comments on the terms of reference [here](#) [hyperlink to online questionnaire]. This is a way for individuals to participate in inquiries and it means we will no longer accept proformas.
- that wording be added to the website to advise that the committee will not be investigating individual cases.

Resolved, on the motion of Mr Mookhey: That:

- the secretariat prepare a summary report of responses to the online questionnaire for publication on the website and use in the report, and that the committee agree to publication of the report via email, unless a member raises any concerns
- the committee defer consideration of the publication status of individual responses to the questionnaire.

5.5 Discussion paper

Resolved, on the motion of Ms Boyd: That the committee publish a discussion paper in early February, prior to the first hearing.

6. Adjournment

The committee adjourned at 1.50 pm, *sine die*.

Shaza Barbar
Committee Clerk

Minutes no. 2

Thursday 18 February 2021

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

Members' Lounge, Parliament House, Sydney at 2.36 pm

1. Members presentMrs Houssos, *Chair*Mr Banasiak, *Deputy Chair*

Mr Donnelly

Ms Faehrmann (substituting for Ms Boyd for the duration of the inquiry into the provisions of the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020)

Mr Fang

Mr Martin

Mr Mookhey

Mr Pearson

2. Correspondence

The committee noted the following items of correspondence:

Received:

- 20 January 2021 – Email from Ms Abigail Boyd MLC to the secretariat, advising that Ms Cate Faehrmann will be substituting for her for the duration of the inquiry
- 15 February 2021 – Email from Ms Donna Austin, Research Officer, Health Services Union, to the secretariat, requesting that committee hear evidence from the witnesses appearing as part of the aged care workers panel *in camera*
- 15 February 2021 – Email from Mr John Bellamy, Senior Researcher, Social Policy & Research Unit, Anglicare, declining the invitation to appear at the hearing on Monday 22 February 2021
- 17 February 2021 – Letter from Ms Sarah Lark, Partner, MinterEllison, on behalf of Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, to the Chair, declining a further invitation to appear at the hearing on Monday 22 February 2021 and requesting that the committee send Anglicare Sydney written questions instead
- 17 February 2021 – Email from Ms Donna Austin, Research Officer, Health Services Union to the secretariat, requesting that a number of HSU staff be permitted to attend the *in camera* hearing as support persons for their members.

Sent:

- 16 February 2021 – Letter from the Chair to Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, reissuing the invitation to attend the hearing on Monday 22 February 2021 and noting the committee's power to issue a summons.

3. Attendance of Anglicare Sydney at the hearing on 22 February 2021

Anglicare Sydney declined an invitation to attend the hearing on Monday 22 February 2021. The committee agreed via email that a formal letter be sent to Anglicare Sydney reissuing the invitation and noting the committee's power to issue a summons. Ms Sarah Lark, Partner, MinterEllison, on behalf of Mr Grant Millard, Chief Executive Officer, Anglicare Sydney declined the second invitation, citing potential prejudice to their interests in the current coronial inquest into the deaths of 19 residents of Newmarch House following an outbreak of COVID-19, and requested that the committee send written questions instead. The committee received further correspondence requesting that Mr Millard appear *in camera* for the entirety of his evidence and advising that he has other commitments on Monday 22 February 2021.

Resolved, on the motion of Mr Banasiak: In view of Mr Millard's unavailability on Monday 22 February 2021, the secretariat be authorised to liaise with Anglicare Sydney to confirm Mr Millard's availability to attend a hearing on Monday 29 March 2021.

4. Appearance of the aged care workers panel

Resolved, on the motion of Mr Mookhey: That the committee agree to the request from the Health Services Union to hear evidence from the witnesses appearing as part of the aged workers panel *in camera*.

Resolved, on the motion of Mr Donnelly: That the committee agree to the request from the Health Services Union that the following HSU staff be permitted to attend and observe the *in camera* hearing as support persons for their members:

- Lauren Hutchins – Manager, Aged Care
- Marion Jennings – Organiser, Aged Care
- Alison Goodwin – Research Officer
- Donna Austin – Research Officer.

5. Adjournment

The committee adjourned at 2.53 pm until Monday 22 February 2021, 9.45 am, Macquarie Room Parliament House (public hearing).

Shaza Barbar
Committee Clerk

Minutes no. 3

Monday 22 February 2021

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

Macquarie Room, Parliament House, Sydney at 9.48 am

1. Members present

Mrs Houssos, *Chair*

Mr Banasiak, *Deputy Chair* (from 9.51 am until 11.55 am)

Mr Amato (substituting for Mr Martin) (via videoconference, from 9.53 am)

Mr Donnelly

Ms Fachrmann (via videoconference, until 11.02 am)

Mr Fang

Mrs Maclaren-Jones (via videoconference)

Mr Mookhey

Mr Pearson

2. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 1 be confirmed.

3. Discussion paper

The committee noted that it agreed via email to publish a discussion paper on Thursday 4 February 2020 providing background to the inquiry.

4. Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-17.

5. Online questionnaire

The committee noted that it agreed via email to reopen the online questionnaire for responses until Friday 26 March 2021.

6. Report deliberative date

The committee noted that the report deliberative has been confirmed for 10.00 am Wednesday 28 April 2021.

7. Appearance of the aged care workers panel

Resolved, on the motion of Mr Mookhey: That the committee agree to a request from the Health Service Union that Mr Adam Hall, Political Manager be permitted to attend and observe the *in camera* hearing as a support person.

8. Allocation of questioning

Resolved, on the motion of Mr Pearson: That allocation of questions be left in the hands of the Chair.

9. In camera hearing

The committee previously resolved to take *in camera* evidence from a panel of aged care workers.

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Ms Sharon Ohnesorge, Ms Shaza Barbar, Ms Taylah Cauchi, Hansard reporters and support persons.

The following witnesses were sworn and examined:

- Witness A
- Witness B
- Witness C.

The evidence concluded and the witness withdrew.

10. Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Associate Professor Maree Bernoth, Registered Nurse, Community Engagement Lead, Charles Sturt University (*via videoconference*)
- Ms Mary Gibbs, Registered Nurse, General Manager (*via videoconference*)
- Ms Catherine Sharp, Registered Nurse, Wound Care Consultant, Expert Witness (*via videoconference*).

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Nigel Lyons, Deputy Secretary, Health System Strategy and Planning Division, NSW Health.

The evidence concluded and the witness withdrew.

The public and the media withdrew.

The public hearing concluded at 2.00 pm.

11. Adjournment

The committee adjourned at 2.00 pm until Monday 29 March 2021, Macquarie Room, Parliament House (hearing).

Shaza Barbar

Committee Clerk

Minutes no. 4

Thursday 18 March 2021

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

Members' Lounge, Parliament House, Sydney at 2.31 pm

1. Members present

Mrs Houssos, *Chair*

Mr Banasiak, *Deputy Chair*

Mr Donnelly

Ms Faehrmann

Mr Fang

Mrs Maclaren-Jones

Mr Martin

Mr Mookhey

Mr Pearson (from 2.32 pm)

2. Previous minutes

Resolved, on the motion of Mr Mookhey: That draft minutes nos. 2 and 3 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 22 February 2021 – Email from Ms Michelle Vo, Business Partner, Parliament and Cabinet, Executive and Ministerial Services, NSW Health to the secretariat, requesting that NSW Health be given 14 days to return post-hearing responses
- 23 February 2021 – Email from Ms Sarah Spencer, Legal Support Officer to the secretariat, advising that Mr Grant Millard is available for a hearing on 29 March 2021, that he declines the invitation and that if the committee wishes to hear from Anglicare, it should issue a summons
- 8 March 2021 – Email from Ms Grace Cherrington, Carer Representation Program Officer/Policy Officer, Carers NSW to the secretariat, declining the invitation to attend the hearing on Monday 29 March 2021.

4. Public submissions

The committee noted that the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 18.

5. Attendance of Anglicare Sydney at the hearing on 29 March 2021

Resolved, on the motion of Mr Mookhey: That, under the authority of s 4(2) of the *Parliamentary Evidence Act 1901*, the committee issue a summons to Mr Grant Millard, Chief Executive Officer, Anglicare Sydney to attend and give evidence before the committee on Monday 29 March 2021 at 10.00 am.

Resolved, on the motion of Mr Mookhey: That Mr Millard be permitted to be accompanied by and have reasonable opportunity to consult a legal advisor during the hearing.

Resolved, on the motion of Mr Mookhey: That the committee reserve the last 30 minutes of Mr Millard's appearance time to be held *in camera*, if required.

6. Hearing date

The committee noted that it agreed via email to use the previous report deliberative of Wednesday 28 April 2021 as a third hearing date, and that the report deliberative will be held on Tuesday 1 June 2021.

7. Online questionnaire

Resolved, on the motion of Mr Banasiak: That the committee extend the deadline for responses to the online questionnaire until Wednesday 28 April 2021.

8. Adjournment

The committee adjourned at 2.33 pm until Monday 29 March 2021, 9.45 am, Macquarie Room, Parliament House (hearing).

Sharon Ohnesorge

Committee Clerk

Minutes no. 5

Monday 29 March 2021

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

Macquarie Room, Parliament House, Sydney at 9.49 am

1. Members present

Mrs Houssos, *Chair*

Mr Banasiak, *Deputy Chair (via teleconference, until 9.55 am)*

Mr Martin (from 9.50 am)

Mr Donnelly

Ms Faehrmann (from 12.30 pm)

Mr Fang (from 9.51 am)

Mr Mookhey (from 9.51 am until 1.30 pm)

Mr Pearson

2. Apologies

Ms Faehrmann (until 12.30 pm)

Mrs Maclaren-Jones

3. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 4 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 4 March 2021 – Email from Ms Catherine Sharp, Registered Nurse, providing additional information following her hearing on 22 February 2021.

5. Public submission

The committee noted that the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 19.

6. Answers to questions on notice

The committee noted that the following answers to questions on notice and additional information were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Answers to questions on notice from NSW Health, received 18 March 2021.

7. Publication of *in camera* transcript

Resolved, on the motion of Mr Pearson: That the committee authorise the publication of the *in camera* transcript from the hearing on Monday 22 February 2021, with the exception of identifying information which is to remain confidential, as per the request of the witnesses.

8. Extension of due date for answers to questions on notice

Resolved, on the motion of Mr Martin: That the committee extend the deadline for answers to questions on notice to 14 days after receipt of the transcript for witnesses appearing on Monday 29 March 2021.

9. Request to play video during opening statement

Resolved, on the motion of Mr Donnelly: That the committee permit the witnesses from the Health Services Union to show a video during their opening statement.

10. Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Grant Millard, Chief Executive Officer, Anglicare Sydney.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Brett Holmes, General Secretary, NSW Nurses and Midwives' Association
- Ms Helen Macukewicz, Professional Officer, NSW Nurses and Midwives' Association
- Ms Lisa Roberts, Transitional Nurse Practitioner Palliative Care, and Member, NSW Nurses and Midwives' Association.

Mr Holmes tendered the following document:

- Report entitled 'National Aged Care Staffing and Skills Mix Project Report 2016'.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Gerard Hayes, Secretary, Health Services Union
- Ms Lauren Hutchins, Manager, Aged Care Division, Health Services Union.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Anita Westera, Research Fellow, Centre for Health Service Development (CHSD), Australian Health Services Research Institute.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Josh Cohen, Vice President, Palliative Care Nurses Australia, and Palliative Care Nurse Practitioner, Calvary Health Care Kogarah
- Professor Deb Parker, Member, Palliative Care Nurses Australia, and Professor of Nursing Aged Care (Dementia), School of Nursing and Midwifery, University of Technology Sydney
- Ms Kylie Miskovski, National Policy & Strategy Advisor, Dementia Australia
- Ms Jenny Fitzpatrick, Carer and Dementia Advocate, Dementia Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Margaret Zanghi, President, Quality Aged Care Action Group
- Mr Dean Murphy, Member, Quality Aged Care Action Group.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

The public hearing concluded at 4.50 pm.

11. Tendered documents

Resolved, on the motion of Mr Donnelly: That the committee accept and publish the following document tendered during the public hearing:

- Report entitled 'National Aged Care Staffing and Skills Mix Project Report 2016', tendered by Mr Brett Holmes, General Secretary, NSW Nurses and Midwives Association.

12. Adjournment

The committee adjourned at 4.56 pm, until 9.45 am Wednesday 28 April 2021, Macquarie Room, Parliament House (public hearing).

Shaza Barbar

Committee Clerk

Minutes no. 6

Wednesday 28 April 2021

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

Macquarie Room, Parliament House, Sydney at 9.47 am

1. Members present

Mrs Houssos, *Chair*

Mr Martin (from 9.48 am)

Mr Donnelly

Ms Faehrmann

Mr Fang

Mr Mookhey (from 10.08 am until 1.00 pm)

Mr Pearson

2. Apologies

Mr Banasiak, *Deputy Chair*

Mrs Maclaren-Jones

3. Previous minutes

Resolved, on the motion of Mr Fang: That draft minutes no. 5 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 14 April 2021 – Email from Ms Mary Karras, Chief Executive Officer, Ethnic Communities' Council of NSW, declining the invitation to attend the hearing on Wednesday 28 April 2021

- 15 April 2021 – Email from Mr Chris Lacey, Chief Executive Officer & Co. Secretary, Multicultural Communities Council of Illawarra, declining the invitation to attend the hearing on Wednesday 28 April 2021
- 21 and 22 April 2021 – Emails from Professor Tony Broe, Senior Principal Research Fellow, NeuRA, UNSW, attaching three relevant documents ahead of his appearance at the hearing on Wednesday 28 April 2021.

5. Answers to questions on notice

The committee noted that the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Answers to questions on notice from Dementia Australia, received 1 April 2021
- Answers to questions on notice from Ms Anita Westera, Australian Health Services Research Institute, received 6 April 2021
- Answers to questions on notice from Quality Aged Care Action Group, received 12 April 2021
- Answers to questions on notice from the Nurses and Midwives Association, received 14 April 2021
- Answers to questions on notice from the Health Services Union, received 14 April 2021
- Answers to questions on notice from Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, received 15 April 2021.

6. Transcript correction

Resolved, on the motion of Ms Faehrmann: That the committee authorise the correction to Mr Grant Millard's transcript of evidence and add a footnote noting the change.

7. Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Anna-Maria Wade, State Manager (NSW & ACT), Employee Relations Manager, Aged & Community Services Australia
- Ms Sue Thomson, Member, Aged & Community Services Australia NSW & ACT Divisional Council, and Chief Executive Officer, McLean Care Ltd (*via videoconference*).

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Saviour Buhagiar, Director Ageing, Uniting NSW.ACT.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Dr Lyndal Newton, Head of Department – Department of Geriatric Medicine, Northern Beaches Hospital.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Professor Dimity Pond, NSW & ACT Provost, The Royal Australasian College of General Practitioners (*via videoconference*)
- Dr Stephen Ginsborg, Member, The Royal Australasian College of General Practitioners (*via videoconference*).

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Paul Versteeg, Policy Manager, Combined Pensioners and Superannuants Association of NSW.

The evidence concluded and the witness withdrew.

The committee proceeded to deliberate in private.

Witnesses, the media and the public withdrew.

8. Acting Chair

Resolved, on the motion of Mr Fang: That Mr Donnelly act as Chair when the Chair is absent from the room.

9. Public hearing

Witnesses, the media and the public were re-admitted.

The following witnesses were sworn and examined:

- Mr Corey Irlam, Deputy CEO, Council on the Ageing Australia (*via videoconference*)
- Ms Karen Appleby, Senior Policy Officer, Council on the Ageing NSW (*via videoconference*).

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Danica Leys, Chief Executive Officer, Country Women's Association.

The evidence concluded and the witness withdrew

The following witnesses were sworn and examined:

- Ms Yumi Lee, Manager, Older Women's Network
- Ms Beverly Baker, Chair, Older Women's Network.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Professor Tony Broe, Senior Principal Research Fellow, NeuRA, UNSW.

The evidence concluded and the witness withdrew.

The public hearing concluded at 4.33 pm.

The public and the media withdrew.

10. Adjournment

The committee adjourned at 4.33 pm, until 10.00 am Tuesday 1 June 2021, Room 1254, Parliament House (report deliberative).

Shaza Barbar
Committee Clerk

Draft minutes no. 7

Tuesday 1 June 2021

Select Committee on the Provisions of the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2021

Room 1043, Parliament House, Sydney at 10.04 am

1. Members present

Mrs Houssos, *Chair*

Mr Banasiak, *Deputy Chair* (via videoconference)

Mr Martin

Mr Donnelly

Ms Faehrmann

Mr Fang (via videoconference)

Mrs Maclaren-Jones (via videoconference)

Mr Mookhey

Mr Pearson (from 10.07 am)

2. Previous minutes

Resolved, on the motion of Ms Faehrmann: That draft minutes no. 6 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 24 March 2021 – Affidavit of service from Ms Jenelle Moore, Usher of the Black Rod to the committee, advising that she issued a summons to Mr Grant Millard, Chief Executive Officer, Anglicare Sydney
- 13 May 2021 – Email from Dr Stephen Ginsborg, Member, The Royal Australasian College of General Practitioners to the secretariat, supporting Professor Pond's answer to supplementary questions.

Sent:

- 18 March 2021 – Summons from the Chair to Mr Grant Millard, Chief Executive Officer, Anglicare Sydney, ordering Mr Millard to attend a hearing on 29 March 2021.

Resolved, on the motion of Mr Mookhey: That the committee keep confidential correspondence from Ms Donna Austin, Research Officer, Health Services Union, dated 15 February 2021, requesting that the committee hear evidence from the witnesses appearing as part of the aged care workers panel *in camera*.

4. Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 19a and 20.

5. Partially confidential submission

Resolved, on the motion of Mr Donnelly: That the committee keep the following information confidential, as per the request of the author: names and/or identifying information in submissions no 21.

6. Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to supplementary questions from Palliative Care Nurses Australia, received 23 April 2021
- answers to questions on notice, Combined Pensioners and Superannuants Association of NSW, received 4 May 2021
- answers to questions on notice and supplementary questions, Aged & Community Services Australia, received 10 May 2021
- answers to follow up questions, NSW Health, received 10 May 2021

- answers to questions on notice, Uniting NSW.ACT, received 10 May 2021
- answer to supplementary question, Professor Dimity Pond, received 12 May 2021
- answer to supplementary question, Dr Lyndal Newton, received 16 May 2021.

7. Online questionnaire report

The committee note that the committee agreed via email to publish the online questionnaire report on the committee's website.

8. Consideration of Chair's draft report

The Chair submitted her draft report entitled 'Provisions of the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020', which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Donnelly: That footnote 52 be amended by inserting at the end: 'Evidence, Professor Dimity Pond, Professor of General Practice at the University of Newcastle and Dr Stephen Ginsborg, General Practitioner, 28 April 2021, pp 28-31'.

Mr Donnelly moved: That the following new section be inserted after paragraph 2.77:

'NSW Poisons and Therapeutic Goods Regulation 2008

The NSW Poisons and Therapeutic Goods Regulation 2008 relies upon the definitions described in the *Public Health Act 2010* (NSW). Therefore, the committee heard that if there were no requirement to schedule a registered nurse on site at all times in a residential aged care facility, the management, procurement, storage and administration of medicines, including dangerous drugs of addiction, could fall to care workers with no minimum training requirements, resulting in greater risk to residents.

The NSW Nurses and Midwives' Association submission recognised that:

Removing or limiting the scope of the *NSW Public Health Act (2010)* effectively limits already inadequate medication safeguards afforded to residents in NSW. It is impossible to consider whether to extend or remove this legislation without considering its impact in relation to the safety of medication management in NSW RACF [residential aged care facilities].

[FOOTNOTE: Submission 4, NSW Nurses and Midwives' Association, p 7.]

The Combined Pensioners and Superannuants Association submission identified:

Medications are scheduled because they pose a risk to public safety. It appears to be a nonsense that the law allows unlicensed care workers with minimal training to administer medications to residents in some NSW RACFs yet safeguards others by only allowing RNs, or ENs working under supervision of an RN to administer.

[FOOTNOTE: Submission 18, Combined Pensioners & Superannuants Association of NSW Inc, p 7.]

In his evidence to the committee, Dr Lyons, NSW Health confirmed legislation currently exists in NSW which applies to residential aged care facilities covering "pharmaceuticals, medications, and schedule 4 and schedule 8 drugs and the requirements for those to be administered in certain ways" in recognition that "health care is being provided in the settings".

[FOOTNOTE: Evidence, Dr Nigel Lyons, Deputy Secretary, Health System Strategy and Planning Division, NSW Health, 22 February 2021, p 20.]

However, current regulations do not extend to those facilities licensed after 1 July 2014 and those offering low care only pre 1 July 2014. Mr Verstege, representing the Combined Pensioners and Superannuants Association, provided supplementary evidence on notice which identified a growing number of facilities being licensed, estimating around 138 new residential aged care facilities had starting operation in New South Wales (with 15,468 places) after 30 June 2014.

[FOOTNOTE: Answers to questions to notice, Mr Paul Versteegen, Policy Manager, Combined Pensioners and Superannuants Association of NSW, 4 May 2021, p 1].

The NSW Nurses and Midwives' Association submission stated:

Medication administration requires clinical judgment with full understanding of the implications for patient safety. The act of administering a medication requires an assessment of the resident and deep understanding of how the medication might impact them physiologically and psychologically. This is even more important where a resident is cognitively impaired and cannot actively participate in the process and where a person is taking multiple medications.

[FOOTNOTE: Submission 4, NSW Nurses and Midwives' Association, p 29.]

Question put.

The committee divided.

Ayes: Mr Banasiak, Mr Donnelly, Ms Faehrmann, Mrs Houssos, Mr Mookhey, Mr Pearson.

Noes: Mr Fang, Mrs Maclaren-Jones, Mr Martin.

Question resolved in the affirmative.

Resolved, on the motion of Mr Pearson: That paragraph 2.79 be amended by omitting 'simply not enough' and inserting instead 'unacceptable'.

Mrs Maclaren-Jones moved: That recommendation 2 be amended by omitting at the end:

'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 three years'.

Question put.

The committee divided.

Ayes: Mr Fang, Mrs Maclaren-Jones, Mr Martin.

Noes: Mr Banasiak, Mr Donnelly, Ms Faehrmann, Mrs Houssos, Mr Mookhey, Mr Pearson.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That:

- paragraph 2.85 be amended by omitting 'within three years' and inserting instead 'within the timeframe recommended by the Royal Commission'.
- recommendation 2 be amended by omitting 'within three years' and inserting instead 'within the timeframe recommended by the Royal Commission into Aged Care Quality and Safety'.

Mr Donnelly moved: That the following new committee comment and recommendation be inserted after Recommendation 4:

Committee comment

'In relation to the possibility that medication management, procurement, storage and administration could fall to care workers, this would be a significantly lower standard than for people receiving care in New South Wales public hospitals and residential aged care facilities across most other Australian states and territories. The growing number of New South Wales residents accommodated in facilities outside the scope of the NSW Poisons and Therapeutic Goods Regulation 2008 is a significant issue, facilitating an inconsistent medication safety standard that requires urgent resolution.

Given the overwhelming evidence in submissions to the inquiry and witness testimonies during hearings to support the high level of need amongst the resident cohort in New South Wales residential aged care facilities, particularly with respect to end-of-life and palliative care, it would

appear that the NSW Poisons and Therapeutic Goods Regulation 2008, currently subject to review, should be enhanced to ensure the availability of registered nurses on site at all times to safely manage, procure and administer medications to residents in all residential aged care facilities in the state.

Recommendation X

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.'

Question put.

The committee divided.

Ayes: Mr Banasiak, Mr Donnelly, Ms Faehrmann, Mrs Houssos, Mr Mookhey, Mr Pearson.

Noes: Mr Fang, Mrs Maclaren-Jones, Mr Martin.

Question resolved in the affirmative.

Mr Donnelly moved: That the following new committee comment and finding be inserted after paragraph 3.52:

'Committee comment

Despite repeated questioning, the committee was unable to get a clear answer on when NSW Government health officials first entered Newmarch House and took charge of the response. As was seen during the outbreak at Dorothy Henderson Lodge a month earlier, this coordinated and immediate intervention by NSW public health specialists was crucial to their success. As a result we conclude that the NSW Government response was not best practice at Newmarch House.

Finding X

That the NSW Government response was not best practice at Newmarch House.'

Question put.

The committee divided.

Ayes: Mr Banasiak, Mr Donnelly, Ms Faehrmann, Mrs Houssos, Mr Mookhey, Mr Pearson.

Noes: Mr Fang, Mrs Maclaren-Jones, Mr Martin.

Question resolved in the affirmative.

Resolved, on the motion of Mr Mookhey: The draft report as amended be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, responses to the online questionnaire, online questionnaire report and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions and individual responses to the online questionnaire be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The report be tabled on Thursday 10 June 2021.

9. Adjournment

The committee adjourned at 10.38 pm, *sine die*.

Shaza Barbar

Committee Clerk

Appendix 4 Dissenting statement

The Hon Natasha Maclaren-Jones MLC, Liberal Party

The Hon Taylor Martin MLC, Liberal Party

The Hon Wes Fang MLC, National Party

The Government members oppose Recommendation 2, dot point 2 as aged care is the responsibility of the Commonwealth Government.

We do not support staffing ratios as the number and nature of staff needs to be flexible and reflect the circumstances, including the complexity of the care required.

On 11 May 2021, the Commonwealth Minister for Health announced a \$17.7 billion aged care reform package that would address:¹⁶²

1. Home care – at home support and care based on assessed needs,
2. Residential aged care services and sustainability – improving service suitability that ensures individual care needs and preferences are met,
3. Residential aged care quality and safety – improving access to and quality of residential care,
4. Workforce – growing a bigger, more highly skilled, caring and values based workforce; and
5. Governance – new legislation and stronger governance.

Furthermore, the Commonwealth Government have announced a new Aged Care Act that will be legislated by mid-2023.

It is not appropriate for the NSW Government to be legislating in an area of Commonwealth responsibility and should wait for their reforms and legislation to be introduced.

¹⁶² <https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/177-billion-to-deliver-once-in-a-generation-change-to-aged-care-in-australia>

