

**Submission
No 108**

INQUIRY INTO REGISTERED NURSES IN NEW SOUTH WALES NURSING HOMES

Organisation: Leading Age Services Australia NSW-ACT (LASA NSW-ACT)
Date received: 23/07/2015

Thursday, 23 July 2015

The Director
General Purpose Standing Committee No. 3
Parliament House
Macquarie St
Sydney NSW 2000

Inquiry into registered nurses in New South Wales nursing homes

Thank you for the opportunity to provide a Submission to the Committee for this inquiry.

The Inquiry is a timely review of the measured withdrawal of the NSW Parliament from regulating “nursing homes”.

In the view of this Association, the withdrawal of New South Wales specific regulation of nursing homes is a sound and responsible outcome for older citizens in New South Wales. All older Australians are now covered by a comprehensive national system of aged care through the reforms to the *Aged Care Act 1997* (Cth) – these comprehensive reforms provide for care and services to be by personalised assessment for each eligible individual. A full range of age services is now available by providing support to remain independent at home, by providing care in the home and by providing residential care facilities.

The passage of the *Aged Care Act* in 1997 was the beginning of the end of an aged care system grounded in “nursing homes”. The reforms introduced by the *Aged Care (Living Longer Living Better) Act 2013* conclude any notion of a “nursing home” system, in favour of a range of age services, including residential aged care.

Leading Age Services Australia NSW-ACT (LASA NSW-ACT) submits to the Committee that care outcomes are best delivered by aged care providers operating within the comprehensive national framework of regulation, funding and quality control of the *Aged Care Act 1997* and associated legislation.

We submit that it is prudent for the NSW Parliament to continue a measured withdrawal of regulation where there is clear overlap with the comprehensive national aged care system - in this instance staffing and training and qualification standards in aged care facilities.

We would further submit that is equally prudent for the NSW Parliament to continue to regulate elements of the aged care system that do not fall within the comprehensive national aged care system, for example:

- retirement villages and independent living through the NSW Retirement Villages legislation;
- medication management and administration in residential care through the NSW Poisons and Therapeutic Goods legislation;
- planning and development of aged care services through the NSW Environmental Planning and Assessment legislation.

About LASA and LASA NSW-ACT

Leading Age Services Australia NSW-ACT (LASA NSW-ACT) is a part of Leading Age Service Australia (LASA).

LASA, the voice of aged care, is the peak body for service providers of retirement living, home care, and residential aged care. LASA is committed to improved standards, equality and efficiency throughout the industry and in so doing, helping older Australians live well. We advocate for the health, community and accommodation needs of older Australians, working with government and other stakeholders to advance the interests of all age services providers, and through them, the interests of older Australians.

LASA NSW-ACT members provide age services in New South Wales across retirement living, home care and residential care, and do so across the state, in communities large and small. These services have continued to evolve and expand in line with increased consumer expectations and the generational reforms refining the comprehensive, national aged care system.

LASA NSW-ACT and its predecessors have supported providers of aged care services in New South Wales since 1935, and in that time we have evolved our own name to follow the expansion and evolution of aged care and services. Since 1935 LASA NSW-ACT and its predecessors have been known as:

- Private Hospitals Association NSW
- Private Hospitals and Nursing Homes Association NSW
- Australian Nursing Home and Extended Care Association NSW
- Aged Care Association Australia NSW
- Leading Age Services Australia NSW-ACT

Leading Age Services Australia recognises that an older Australian today wishes to live as independently as possible, with a range of support and services to live well, including the option of a first class residential care system if required.

In the view of LASA NSW-ACT these consumer wishes are best delivered by a comprehensive national system of aged care.

A short history of the measured withdrawal of the NSW regulatory model for “nursing homes”

The *NSW Nursing Homes Act 1988* was repealed as at 30 November 2004.

In Health Legislation Further Amendment Bill, Second Reading Speech, 22 September 2004, Morris Iemma, Minister for Health, stated:

The bill also proposes the repeal of the Nursing Homes Act 1988. I commence with the repeal of the Nursing Homes Act and the associated amendments to the Public Health Act. The Nursing Homes Act was enacted in 1988 and requires all nursing homes in New South Wales to obtain a licence to operate from the Director- General of Health. The Act does not apply to those facilities that were previously known as hostels.

The Nursing Homes Act predates the Commonwealth Government's Aged Care Act 1997, which establishes a comprehensive funding and regulatory regime for aged care facilities for both nursing homes and hostels. Therefore, nursing homes in New South Wales are

currently regulated by both State and Commonwealth governments. This is in contrast to other States, where the Commonwealth alone regulates nursing homes. As part of the Government's obligations under the competition principles agreement the Department of Health conducted a review of the Nursing Homes Act. That review concluded that as the Commonwealth's Aged Care Act provides a comprehensive regulatory and funding system for aged care the Nursing Homes Act adds an additional and unnecessary layer of regulation to the aged care sector.

In repealing the *NSW Nursing Homes Act 1988*, the NSW Parliament at the time maintained a requirement for a registered nurse to be on duty at all times in a nursing home – the historical provision now contained as section 104 of the *NSW Public Health Act 2010*.

The NSW Parliament has again been compelled to review the statutory definition of a “nursing home” by further reforms to the *Aged Care Act 1997 (Cth)* – effective from 30 June 2014 there is no legal framework for “nursing homes” to be found in the comprehensive national aged care system.

Section 104 of the *NSW Public Health Act 2010* maintains the historical pre-1988 provision that predated the original passage of the *Aged Care Act 1997 (Cth)*. Section 104 has even less relevance since the comprehensive reforms of the *Aged Care (Living Longer Living Better) Act 2013*.

The artificial fiction that the NSW Parliament has adopted to maintain an historical requirement is now evidenced by the insertion of a new clause 95A into the *NSW Public Health Regulation 2012*,

95A Nursing homes

A facility that was a nursing home for the purposes of the Act immediately before 1 July 2014 is prescribed for the purposes of paragraph (b) of the definition of nursing home in section 5 (1) of the Act.

LASA NSW-ACT submits this to be poor regulatory practice by the NSW Parliament.

The report of the NSW Health Aged Care Steering Committee evidences NSW to be alone with a statutory requirement as narrow as section 104 of the *NSW Public Health Act 2010*.

LASA NSW-ACT submits that it is sound and responsible for the NSW Parliament to continue its measured withdrawal of regulating “nursing homes” in favour of the comprehensive national aged care system.

The practical effect of this submission is that Section 104 of the *NSW Public Health Act 2010* may be responsibly repealed.

A short history of the reform and operation of the comprehensive national system of aged care

It was commonly accepted prior to the 2013 amendments that the *Aged Care Act 1997 (Cth)* was in need of comprehensive reform.

On 21 April 2010 the Australian Government announced the Terms of Reference for a Productivity Commission Inquiry into Aged Care (Assistant Treasurer, Senator Nick Sherry, and the Minister for Ageing, Justine Elliot MP).

On 8 August 2011, the Productivity Commission released its final report, *Caring for Older Australians*.

(accessible at www.pc.gov.au/inquiries/completed/aged-care)

The National Aged Care Alliance published its Blueprint for Aged Care Reform in February 2012.

(accessible at www.naca.asn.au)

On 20 April 2012, Prime Minister Gillard and Minister Butler announced a comprehensive package of reforms designed to build a better, fairer, more sustainable and more nationally consistent aged care system – the package was announced as Living Longer. Living Better.

(accessible at

<http://webarchive.nla.gov.au/gov/20130410102018/http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-aged-care-review-measures-living.htm>)

In June 2013, the Australian Parliament passed the Aged Care (Living Longer Living Better) Act 2013, further evolving a comprehensive national aged care system.

(accessible at <https://www.comlaw.gov.au/Details/C2013A00076>)

The Living Longer Living Better reforms contained milestone dates for progressive implementation at 1 August 2013, 1 January 2014, 1 July 2014 and 1 July 2015.

The comprehensive reforms to the *Aged Care Act 1997 (Cth)* as conceived by the Gillard Government have largely continued to be implemented by the Abbott Government.

The most recent Commonwealth Administrative Arrangements Order, 9 July 2015, provides for aged care at Part 16, with the associated legislation making up the national age care system extracted as:

PART 16 THE DEPARTMENT OF SOCIAL SERVICES

Aged Care (Accommodation Payment Security) Act 2006

Aged Care (Accommodation Payment Security) Levy Act 2006

Aged Care Act 1997

Aged Care (Consequential Provisions) Act 1997

Aged Care (Living Longer Living Better) Act 2013

Aged Care (Transitional Provisions) Act 1997

Australian Aged Care Quality Agency Act 2013

Australian Aged Care Quality Agency (Transitional Provisions) Act 2013

This legislation and associated Principles creates the comprehensive national framework for aged care.

The Australia Government provides an Annual Report on the Operation of the Aged Care Act 1997. The most recent 2013-2014 Report, and Previous Years' Reports are accessible at:

<https://www.dss.gov.au/our-responsibilities/ageing-and-aged-care/tools-and-resources/ageing-and-aged-care-research-and-statistics/general-ageing-and-aged-care/report-on-the-operation-of-the-aged-care-act-1997>

LASA NSW-ACT submits the comprehensive national aged care system provides the best care options and outcomes for older citizens in New South Wales.

LASA NSW-ACT submits that it is sound and responsible for the NSW Parliament to continue its measured withdrawal of regulating "nursing homes" in favour of the comprehensive national aged care system.

Further comments addressing the Terms of Reference – *Inquiry into registered nurses in New South Wales nursing homes*

LASA NSW-ACT submits that the need for registered nurses in nursing homes and other aged care facilities is best regulated by the comprehensive national aged care system under the *Aged Care Act 1997* (Cth) and associated legislation, and that the NSW Parliament may responsibly rescind the remaining remnants of its historical regulation of "nursing homes".

LASA NSW-ACT submits that regulation by the NSW Parliament of assistants in nursing and other employees operating within the national aged care system is not necessary.

LASA NSW-ACT submits that quality care outcomes in aged care, including appropriate levels and skills of staffing in residential care are best regulated by the comprehensive national aged care system under the *Aged Care Act 1997* (Cth). Staffing and quality care outcomes are the legal responsibility of the Approved Provider under the *Aged Care Act 1997*, and must match the needs of each resident. This legal obligation is derived from the both the *Aged Care Act 1997* (Cth) and the principles of Duty of Care.

LASA NSW-ACT was a member of the NSW Health Aged Care Steering Committee, and consistent with this Submission, advocated Option 3, Repeal of the NSW provisions as the measured, reasonable and responsible option for the NSW Parliament.

LASA NSW-ACT would welcome the opportunity to give evidence to the Committee in any public hearings of the Committee.

Kind regards

Charles Wurf
Chief Executive Officer