

**INQUIRY INTO PROVISIONS OF THE PUBLIC HEALTH  
AMENDMENT (REGISTERED NURSES IN NURSING  
HOMES) BILL 2020**

**Organisation:** Uniting NSW.ACT

**Date Received:** 29 January 2021

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## **Submission to Inquiry into the provisions of the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020**

**29 January 2021**

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## About Uniting NSW.ACT

Uniting NSW.ACT is the service and advocacy agency of the Uniting Church in NSW and the ACT, and is one of the largest not-for-profit community service providers in those regions. We provide innovative and person-centred services to over 100,000 people, supporting vulnerable children, young people and families, early learning, aged care, and people with a disability.

Since its beginnings, the Uniting Church has been committed to social justice and addressing the social issues of the day as an integral part of its life and mission. We bring this to life through our purpose of inspiring people, enlivening communities and confronting injustice.

Across NSW and the ACT we operate a number of regulated Aged Care Services including 57 Residential Aged Care Homes (some feature multiple services on the one location) and Home and Community Care Services in 7 regions.

We employ approximately 6,000 people and 2,000 volunteers in our Ageing Services. Our Ageing Services relate to our regulated Residential Aged Care and Home and Community Care services which are within the remit of the Royal Commission. In 2019/20 we cared for approximately 7,400 residents and almost 8,500 home care clients. Additionally, our commitment to addressing the needs of older people also includes significant provision of housing to nearly 3,000 older people through our Retirement Villages and Independent Living.

We are the largest not for profit provider of Aged Care services in NSW and the ACT.

## Introduction

Registered Nurses (RNs) are a vitally important professional group in the provision of aged care services. They have been, are, and will continue to be an integral part of aged care service provision with or without any additional legislative impositions by the NSW Government.

The role of RNs in Residential Aged Care Services (RAC) is enshrined in requirements under the Commonwealth's Aged Care Act. The question at issue is: what is the role of the State Government in the prescription of standards for the operation of residential aged care services?

The Federal Government funds and monitors the quality of care within residential aged care services in Australia. The quality of care and the matter of RNs in aged care were extensively canvassed in the recently concluded Royal Commission into the Quality and Safety of Aged Care in Australia. Supporting the implementation of recommendations and lessons from this thorough review ought to be the focus of all who have an interest in transforming the future of care and support for older Australians.

Uniting believes NSW pursuing a requirement for 24/7 onsite RNs in aged care through State Government legislation is currently ill considered for the following reasons:

- A. Quality of care in Residential Aged Care is based on appropriate staffing, developed by the provider using a multi-disciplinary approach, and cannot be assured by 24/7 RNs.
- B. Aged Care providers need consistency of governance, as provided under the federally regulated and funded model.
- C. Action on staffing without federal funding and planning will compromise service viability and workforce planning.
- D. The Royal Commission is acting on staffing and quality of care and the NSW Government should work within this national process.

### **A. Quality of care in Residential Aged Care takes more than 24/7 RNs.**

Uniting believes that RNs are integral to the provision of care in RACs. RNs provide a high level of clinical expertise to residents. They are a precious resource and Uniting believes that they need to be allocated effectively at the right time and the right place to best support those residents with high or complex clinical care needs.

Uniting currently provides a range of RN staffing models within its RAC portfolio that respond to high care residents' RN requirements. These models can be divided into two main types:

1. 24/7 Registered Nurse support on-site: these facilities have RNs rostered 24 hours, 7 days a week. The care requirements in these services have residents who not only require initial and ongoing assessment, planning, management of care and interventions, but also have a care need for a RN 24/7 onsite to support changes in health due to identified health needs;
2. Scheduled and Planned Registered Nurse support on-site with on call Registered Nurse: these facilities allocate set times and hours for RNs onsite to provide residents with initial and ongoing assessment, planning, management of care and interventions. These services also have an defined on-call system to an RN to provide support for unforeseen resident needs and healthcare support.

All high care residents within Uniting RACs have access to RNs that provide the following care and support:

1. Planned care through RN assessment, development and planning of an individualised care plan and care plan evaluation;
2. Comprehensive case management of individuals;
3. RN hours allocated to provide assessed specialised nursing interventions, including wound management and pain management;
4. RN hours allocated to match identified residents' needs;
5. RN hours allocated at times when other key health care services, eg: General Practitioner services are operating/visiting;
6. Development of strong partnerships with specialised health services such as Hospital in the Home and palliative care services; and
7. RN services supported by allied health including physiotherapy, speech pathology and dietetics.

Different residents' needs within the RAC portfolio require different operating models. Uniting assesses a RAC's service requirements in order to determine the RN model to be implemented in the service. Considerations include:

1. Built environment;
2. Staffing mix;
3. Assessed residents' needs;
4. Local specialist support services;
5. Resident admission and transfer policy based on service type; and
6. Proximity to identified communities.

Uniting may work with a resident and his/her family to transfer them from one RAC to a more appropriate service, based on issues such as:

1. The built environment's capacity to support the resident. Issues usually arise when the service does not support a resident's decrease in mobility or a resident requires a higher level of safety and security;
2. A resident's care needs increase and require higher care support than can be provided at the existing service; or
3. A resident's needs become complex and require a higher level of monitoring and specialised care support.

It is Uniting's belief that appropriate staffing, developed by the provider using a multi-disciplinary approach with strong care management and care co-ordination, combined with effective, comprehensive care systems and support, is the key to quality care for all residents. The onsite presence of a single RN in a RAC does not guarantee safe, quality care.

The interactions of health services in Australia is complex - the Commonwealth is responsible for aged care and the States are responsible for acute health care. The NSW Government, through NSW Health, is directly responsible for the provision of health care services to patients. These health care services include acute health care and hospitals. It remains the right of a resident living within a residential aged care home to access acute health services through services such as hospitals, when required. Both sectors of health (aged care and acute) have a specific role to play in the continuum of health services for older people, but they do not have the same objectives and therefore should not be staffed similarly.

The outcomes provided for in an aged care ward and in an aged care home need to be understood in this process. A review by the Committee of patients within aged care wards would identify patients with acute, clinical needs that require responsive medical and nursing support. Aged care homes provide an environment that delivers care, lifestyle, and accommodation to aged persons who are affected by long term chronic illnesses. This environment is their home and they require long term support. The clinical care requirements of these two cohorts are significantly different and should therefore be considered and managed differently. Aged care homes are not hospitals!

Residents from Uniting's RACs often use acute health services such as emergency and public hospital beds when acute care is required. We view the interactions of our residents with the public health system as appropriate and responsive to residents' needs. An aged care facility is limited in its abilities to care for acute episodes, particularly trauma due to falls, or orthopaedic, acute cardiac and respiratory issues. Acute services are usually accessed by residents when specialist services are required and are outside the scope of care provision for most residential aged care homes.

We are aware that NSW Health is concerned to avoid potentially preventable admissions to hospitals from residential aged care facilities. We are also aware that this has been raised as a reason for implementing a requirement for onsite 24/7 RN presence across all residential aged care services in NSW. Uniting also wishes to reduce preventable hospital transfers of our residents. As a result, in 2015/16 Uniting commissioned Deloitte Access

Economics to analyse potentially preventable hospital admissions from a sample of Uniting's residential aged care facilities (**Attachment A**). That sample of eight residential aged care facilities covered services that have 24/7 Registered Nurse coverage and services which, while having the involvement of Registered Nurses, did not have such coverage. Uniting commissioned this research to determine whether or not a requirement to have a Registered Nurse on duty at all times would minimise potentially preventable hospital transfers.

Deloitte Access Economics found that "core drivers of PPH [potentially preventable hospital transfers] from RACF include access to primary care or access to diagnostics. Other driving factors include the influence of residents or relatives over the preferred locus of care." These were the core drivers, irrespective of whether the residential aged care service had 24/7 RN cover. It is these issues that must be addressed if we are to see substantial reductions in potentially preventable transfers to hospital.

The report also reinforces the importance of Local Health District initiatives such as the Aged Rapid Response Team (ARRT), Geriatric Flying Squad, and Virtual Aged Care Service (VACS) in reducing preventable hospital admissions. We note that the report indicates that any requirement for an onsite 24/7 RN presence in residential aged care facilities will not be the solution to reducing potentially preventable transfers to hospital of residents from residential aged care facilities.

We note your terms of reference includes learnings from addressing the COVID-19 pandemic in aged care. Uniting would argue that fundamental to some of the worst outcomes over the past year is the inherent ageism in our community, which does not value older people, especially those who are frail. More particularly, we have learnt that strong relationships between Local Health Districts and aged care services, strong collaboration/coordination between federal/state and local health authorities and enhanced clinical (esp. infection control) training and processes, are critical areas for improvement. The fundamental challenge of ageism and systemic areas for improvement in our health system and in our aged care sector are arguably the root cause of the concern the community rightly has about our support of older people. Tackling ageism and these systemic areas for improvement is what is needed rather than the simple mandating of 24/7 RNs, if we are to enhance the quality of support provided to older people.

## **B. Aged Care is federally regulated and funded.**

The provision of residential aged care is provided in accordance with the *Aged Care Act 1997 (Cth)*. This is defined in section 41-3 of the Act as :

*"Residential care is personal care or nursing care, or both personal care and nursing care, that:*

*(a) is provided to a person in a residential facility in which the person is also provided with accommodation that includes:*

*(i) appropriate staffing to meet the nursing and personal care needs of the person; and*

*(ii) meals and cleaning services; and*

*(iii) furnishings, furniture, and equipment for the provision of that care and accommodation; and*

*(b) meets any other requirements specified in the Subsidy Principles.”*

The *Quality of Care Principles 2014*, also list the minimum care and services that need to be provided to care recipients. Schedule 1, Part 3 - Care Services states that

*“residents who have been assessed as needing high level care and services are entitled to:*

- Nursing services: initial and ongoing assessment, planning and management of care for residents carried out by a registered nurse. Nursing services carried out by a registered nurse or other professional appropriate to the service;*
- Therapy services: maintenance therapy or intensive therapy on a temporary basis only delivered or directed by health professionals including: recreational therapy, speech therapy, podiatry, occupational or physiotherapy.”*

There is no stipulation in the Act to provide 24 hour RN onsite coverage 7 days per week. The intention of the Commonwealth legislation is to provide appropriate nursing services.

Aged Care Providers are required under Commonwealth Government funding arrangements to provide care and services in accordance with the Aged Care Quality and Safety Standards. The combination of all the requirements and standards represents a comprehensive assessment of the governance, systems, practices and environment against which accreditation is assessed.

Requirement 7 (3) (a) of the Aged Care Quality and Safety Standards requires that:

*“The workforce is planned to enable, and the number and mix of members of the workforce deployed enables, the delivery and management of safe and quality care and services.”*

The Federal Department of Health has the power to apply sanctions at any time to aged care providers, which can result in imposing external administrators, loss of government funding and ultimately loss of Approved Provider status. It is difficult to see how State Governments can provide more appropriate oversight or exercise more appropriate responses to service shortcomings than those already undertaken by the Federal Government.

In adhering to Requirement 7 (3) (a), Uniting will continue to see the majority of Uniting residential aged care services have 24 hour 7 days per week RN onsite cover. Unless the residents' profile changes, this staffing mix will not change.

Other States have determined that the responsibility for monitoring aged care facilities lies with the Commonwealth Government. Uniting believes that the NSW approach should be consistent with that approach.

If 24/7 onsite RN cover becomes a requirement for all residential aged care facilities in NSW, the following issues will arise and would need to be addressed:

1. Who will monitor and enforce the 24/7 onsite RN requirement?
2. What penalties will apply for failure to comply with 24/7 RN onsite requirements? The Federal Government can apply sanctions, including restricting funding, impose administrators, and close a service and/or withdraw Approved Provider status. What is the capacity of the NSW Government to impose penalties, particularly if this is ongoing and the service is unable to recruit suitable RNs?
3. Given that the 24/7 onsite RN requirement will result in thousands of beds becoming economically unviable, including in rural areas, what transition period and process will apply? A minimum of five years would be required.

### **C. Action on staffing without federal funding and planning will compromise service viability and workforce planning.**

If implemented, the proposal would have significant unintended consequences, including making a number of existing residential aged care services financially unviable and preventing the development of innovative new models of care. Those outcomes would place significantly greater pressure on NSW health systems, as well as reducing access for people to aged care services in their local communities. While it will affect all of NSW, the greatest adverse impact will be in regional, rural and remote areas.

Uniting has 21 residential aged care facilities, out of a total 73 facilities, that currently offer services to residents classified as high care in facilities without 24/7 Registered Nurses onsite. The cost of a single RN onsite 24/7 in a residential aged care facility, regardless of staffing ratios and minimum number of beds within a service, is approximately \$650,000 per annum.

Taking into account current RN coverage, the total net cost impact of requiring 24/7 onsite RNs at all RACs would be \$8.8 million per annum for Uniting.

Of the 21 services affected, 6 would, as a result of the proposed change, incur annual losses of greater than \$200,000 per annum. For those services, closure in the short term would seriously be considered. Those 6 services account for 292 beds and directly employ approximately 270 people. The viability of the remaining 15 services would be considered over the following two years.

It is estimated that the proposal would require Uniting to add 92 Full Time Equivalent (FTE) RNs to its staff, which would require the employment of over 168 RNs given that an RN at Uniting works, on average, 21 hours per week. As Uniting provides approximately

8% of all residential aged care services in NSW, a simple extrapolation of the impact of the proposal is the requirement for approximately 1,150 additional FTE RNs. This would require almost 2,100 additional Registered Nurses to be recruited for the aged care sector in NSW, many in rural environments. The supply of RNs, as well as the ability to recruit and retain appropriately skilled and experienced RNs with aged care experience is a further factor for concern.

The financial impact of a 24/7 onsite RN requirement would limit services' capability to dedicate financial resources to a range of care workers and allied health practitioners who are also required to respond to the high care residents' needs. These include physiotherapy for improved safety in mobility, speech therapy in swallowing, nutrition management and behavioural specialists for residents with needs to support confusion and disorientation. Uniting believes in a multidisciplinary approach to care provision. High quality care is achieved through a number of disciplines supporting the resident. There is no evidence to support a 24/7 onsite RN as being the best resource to provide good, quality care to a resident.

Whilst Uniting strongly believes that the Federal Government should be solely responsible for monitoring the quality of residential aged care services, if the NSW Government formed the view that it was necessary to intervene in the regulation of aged care services, it could supplement current practice with the following measures:

1. Implement a requirement for all RACs with high care residents to have access to a 24 hour RN on-call. This support could be provided by phone/telehealth etc.
2. Investing in more telehealth support between RAC and NSW Health/hospitals, building off the experience of telehealth in COVID.
3. 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. Uniting has called for this in submissions to the Royal Commission as this would provide transparency of staffing levels for all RACFs and facilitate consumer choice.
4. Proactively supporting 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.

#### **D. Royal Commission is acting on staffing and quality of care - support this national process**

Whilst there is no final report and as such, no formal response by the Federal Government to the recently concluded Royal Commission into the Quality and Safety of Aged Care in Australia, the recommendations in Counsel Assisting's final submission extensively canvass quality of care and staffing.

The recommendations signal fundamental reform and system redesign. Significant reform is proposed to governance arrangements with an independent statutory body to exercise

system governance, system management and regulatory responsibility and a separate independent pricing body. The reform agenda is bold and far reaching, cutting across all parts of the sector with a root and branch re-shaping of the quality of aged care in our country.

Significantly, in recommendation 47, Counsel Assisting the Commission calls for a minimum staff time standard for residential care. Providers of residential aged care should be required to meet a minimum staff time quality and safety standard. The standard should allow approved providers to select the appropriate skills mix in accordance with their model of care.

The Counsel Assisting went on to recommend that:

From 1 July 2022, the minimum staff time standard should require approved providers to engage registered nurses, enrolled nurses, and personal care workers for at least 215 minutes per resident per day for the average resident, with at least 36 minutes of that provided by a registered nurse. In addition, the standard should require at least one registered nurse on site per residential aged care facility for the morning and afternoon shifts (16 hours per day).

From 1 July 2024, this should increase to:

- a) 215 minutes per resident per day for the average resident, with at least 44 minutes of that staff time provided by a registered nurse, or
- b) 264 minutes per resident per day for the average resident, with at least 36 minutes of that staff time provided by a registered nurse.

In addition, the standard should require at least one registered nurse on site per residential aged care facility at all times.

Importantly, according to the Counsel Assisting the minimum staff time standard should be linked to the casemix adjusted, activity-based funding model for residential aged care facilities. This means that approved providers with a higher than average proportion of high needs residents would be required to engage additional staff and by implication, those higher staffing levels would need to be viably funded.

In a series of recommendations in the Counsel Assisting's final submission, an extensive reform of workforce planning and training/development is also canvassed. Without effective sector wide workforce planning and a reform of training and development, simply regulating higher staffing levels and higher proportions of registered staff will fail.

Uniting, in its submission following the final recommendations put forward by Counsel Assisting, said:

After a long year dominated by the challenge of COVID-19 and a long two year Royal Commission process, Uniting takes hope from the recent recommendations. If subject to extensive consultation and properly funded, we genuinely believe they

offer a bold opportunity to finally give older people with support needs a fair go – it is what they deserve.

We believe all levels of Government, as well as the whole community, need to support this national transformative process.

## **Recommendation**

Uniting recommends that the NSW Government not pursue the imposition of Registered Nurse requirements in Commonwealth-funded residential aged care facilities.

Uniting believes that the Federal Government, through the Aged Care Quality and Safety Commission (ACQSC), is the most appropriate organisation to assess the quality of the overall provision of care and appropriate staffing for individual services, rather than the NSW Government setting one requirement relating to RNs, with no regard to the other care systems, overall staffing structure and resident needs profile for individual services.

Uniting believes that the NSW Government supporting the implementation of the recommendations of the Aged Care Royal Commission, a national and potentially transformative process, presents the best pathway in decades to looking after Australians with dignity in their senior years.