

Submission  
No 19

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

**Organisation:** NSW Aged Care Roundtable

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**Submission to the Select Committee Inquiry into the Public Health Amendment  
(Registered Nurses) Bill 2020  
NSW Aged Care Roundtable  
March 2021**

The NSW Aged Care Roundtable consists of medical, nursing, carer advocacy and consumer advocacy organisations. Collectively, we represent the frontline healthcare workforce and those accessing services.

### The need for a state-based response to staffing and skills mix

New South Wales has the highest number of residential aged care facilities (RACF) across all Australian states and territories. People entering these facilities are older and frailer than ever before, many with chronic and complex care needs. Living in a RACF is no longer a lifestyle choice, it's a necessity for people requiring around the clock care and supervision.

Currently, around 80 per cent of all people living in RACF have been assessed as having high-care needs and these facilities appropriately receive funding at a high-care level.

The *NSW Public Health Act (2010)* protects people with high care needs living in or accessing respite services in many RACF by requiring aged care providers to have a minimum of one Registered Nurse (RN) on site at all times and a Director of Nursing (DoN) to provide clinical governance. However, this legislation only applies to those funded to provide high care before 1 July 2014, the number of which is gradually being eroded.

The NSW Aged Care Roundtable published a report in 2019 highlighting the consequence of poor staffing and skills mix in residential aged care facilities, and absence of registered nurses from the skills mix, particularly out of hours. It identified cost-shifting onto NSW Public Healthcare services as a consequence<sup>1</sup>.

Whilst we believe older people have the right to access public services, this should not be a consequence of a failure to ensure they receive adequate healthcare in-place. This is particularly important in rural and remote areas where older people face overstretched public health services, and challenges of distance. Indeed, the final report recommendations

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<sup>1</sup> NSW Aged Care Roundtable (2019) Joint report on avoidable hospitalisations from residential aged care facilities in NSW and delayed discharge. Available at:  
<http://www.asmfnsw.org.au/NSW%20Aged%20Care%20Roundtable%202019%20LR%20FINAL.pdf>

released by the Royal Commission into Aged Care Quality and safety highlighted that '*older people should have equal access to support and care irrespective of their location*'<sup>2</sup>.

The final report recommendations also present a potential cost-implication for NSW, since Recommendation 70 suggests States and Territories provide RACF with access to their health services by 1 July 2022 including, but not limited to, palliative care and clinically appropriate subacute rehabilitation. Where RNs in suitable numbers are not available on-site in RACF this will clearly have a bearing on the amount of input required from state-funded health services and performance-targets mentioned in relation to this recommendation.

We believe that older people in NSW need equity of access to a well skilled aged care workforce regardless of geographical location and whether it falls within the scope of the existing *NSW Public Health Act (2010)*. We therefore agree with the provisions of this Bill in that they will extend the current requirement for a DoN to be appointed and at least one RN on site at all times to those RACF not currently captured.

However, we believe a single RN is insufficient for many large RACF. The number and skills mix of the workforce should be determined by needs analysis, using a methodology that allows for scheduling of staff determined by resident need as evidenced in a ANMF Staffing and Skills Mix research report<sup>3</sup> and recommended by the Royal Commission in their final report.

While the roundtable appreciates the Aged Care Royal Commission has made recommendations about staffing, states and territories also have a role to play in safeguarding their citizens from neglect in aged care. The Royal Commission has recommended what amounts to a regime of mandatory staff-to-residents ratios. Indications are that the federal Department of Health and providers prefer a case-mix model of funding which is subject to acquittal. Their argument is that this model will automatically ensure the round-the-clock presence of RNs and Enrolled Nurses (ENs).

However, NSW should act to ensure that the state's mostly highly vulnerable nursing home residents have access to at least one RN on-site at all times.

The federal Department of Health has said in a response to staffing recommendations by Counsel Assisting the Royal Commission that the Department supports "the goal" of a continuous presence of a RN. The Roundtable submits that a "goal" is not a hard

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<sup>2</sup> Aged Care Royal Commission Final Report: Recommendations, Recommendation 3bix. Available at: <https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-recommendations.pdf>

<sup>3</sup>ANMF (2016) National Aged Care Staffing and Skills Mix Report. Available at: [http://www.anmf.org.au/documents/reports/National\\_Aged\\_Care\\_Staffing\\_Skills\\_Mix\\_Project\\_Report\\_2016.pdf](http://www.anmf.org.au/documents/reports/National_Aged_Care_Staffing_Skills_Mix_Project_Report_2016.pdf)

requirement. For that reason, NSW should legislate for a RN to rostered on 24/7 in every NSW RACF.

The NSW Government stepped in to legislate all NSW RACF have a fire sprinkler system when the federal regulator would not act. In doing so, the NSW Government demonstrated it has a vital role to play in nursing home regulation. It should do so again with the mandatory 24/7 rostering on of RNs in NSW nursing homes to protect NSW citizens where the federal regulator has dropped the ball.

***We recommend the provisions of this Bill be mandated in NSW to secure a RN on site at all times and a Director of Nursing.***

***We recommend NSW Government advocate at federal level for mandated minimum staffing and skills mix, determined by an evidence-based methodology as outlined in the ANMF Staffing and Skills Mix report.***

## Medication arrangements in NSW

Each State and Territory has different legislation and regulations governing the use of scheduled medicines. Medicines that are prescribed by a doctor and cannot be purchased over the counter at a pharmacy are referred to as schedule 4 medications (s4) and dangerous drugs of addiction, schedule 8 (s8) medications.

The *NSW Poisons and Therapeutic Goods Regulations 2008*<sup>4</sup> (The Regulation) relies upon the definitions described in the *NSW Public Health Act (2010)*. Therefore RACF that included one or more high level of residential care allocated places approved under the *Aged Care Act 1997* on 30 June 2014 are required to procure, store, record and administer medications that have been prescribed and dispensed for residents (s4 and s8) in accordance with the requirements for a 'nursing home' as a 'hospital' under the Regulation<sup>5</sup>.

The fact the Regulation only applies to selected RACF falling within the *NSW Public Health Act (2010)* means many residents in NSW RACF are not assured their medications will be managed and administered by RNs and ENs working under their direction. Poor management of medications can lead to avoidable hospitalisation<sup>6</sup> and even death, so medication safety is vitally important.

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<sup>4</sup> *NSW Poisons and Therapeutic Good Regulations (2008)*. Available at: <https://www.legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2008-0392>

<sup>5</sup> <https://www.health.nsw.gov.au/pharmaceutical/Pages/residential-care-facilities.aspx#bookmark1>

<sup>6</sup> NSW Aged Care Roundtable (2019) *Joint report on avoidable hospitalisations from residential aged care facilities in NSW and delayed discharge*, Available at: <https://www.nswnma.asn.au/nsw-aged-care-roundtable-hospitalisations-report/>

The consequence of poor staffing and skills mix on medication practices in NSW residential aged care facilities, has been evidenced in a report by the NSW Nurses and Midwives' Association<sup>7</sup>. It found 50% of medication administration was undertaken by care workers, despite over 75% of those requiring total help to administer their medications.

The report also found the level of clinical oversight of medication management was also impacted by poor staffing and legal loopholes arising from the *NSW Public Health Act (2010)* definitions, including failure to provide timely pain relief to residents arising from lack of access to RNs out of hours.

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.

Whilst the Final Report Recommendations of the Royal Commission into Aged Care Quality and Safety highlight the importance of tightening standards around medication safety, years of ineffectual regulation offer no assurance that this will enhance safeguards for older people. Indeed, medication management has remained a top area of non-compliance over a period of at least five years without any meaningful regulatory action to both enhance safeguards or pursue systemic improvement across the sector.

***We recommend the provisions of this Bill be mandated in NSW to secure a RN on site at all times and Director of Nursing to ensure medication safety.***

***We recommend NSW Government advocate at federal level for mandated minimum staffing and skills mix, determined by an evidence-based methodology to secure sufficient numbers of RNs and ENs to safely administer all medications in RACF.***

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<sup>7</sup> NSWNMA (2017) The state of medication in NSW residential aged care, available at: <https://www.nswnma.asn.au/wp-content/uploads/2017/12/Medication-in-NSW-RAS-FINAL-LR.pdf>

To date, the Federal Governments response to the Royal Commission final recommendations has been to throw an extra \$452.2m at the sector with no clear plan as to how this will enhance safeguards for older people. There is no plan to address the recommendations, nor accountability for how the extra funding will be spent.

We believe all NSW residents require equitable access to RNs and a DoN when entering RACFs either permanently, or for respite. This is fundamental to achieving a dignified end of life and must be accepted as a state rather than commonwealth responsibility. Victoria and Queensland, with less RACF than NSW have taken steps to mandate staffing and skills mix ratios in aged care. We consider residents of NSW are no less deserving.

Supported by the following organisations:



Enc. NSW Aged Care Roundtable Joint report on avoidable hospitalisations from residential aged care facilities in NSW and delayed discharge