



NEW SOUTH WALES NURSES' ASSOCIATION

In association with the Australian Nursing Federation

BH:STO

6 November 2008

Australian Senate
Community Affairs
Parliament House
Canberra ACT 2600

To The Committee Secretariat

Aged Care Amendment (2008 Measures No.2) Bill 2008

Thank you for the opportunity for the NSW Nurses' Association to provide comment to the Community Affairs Committee on the proposed Amendment.

The NSW Nurses' Association (NSWNA) is the industrial and professional body that represents over 51,000 nurses and midwives in New South Wales, and works in association with the Australian Nursing Federation (ANF). The membership of the NSWNA comprises all those who perform nursing work: assistants in nursing, who are unregulated, enrolled nurses, registered nurses and registered midwives at all levels including management and education.

Overall, NSWNA supports the proposed Option B, and agrees this offers changes that will benefit care recipients, providers of aged care services and the government. Please find our specific comments on the attached document.

If you would like any further information from the NSW Nurses' Association, please contact Stella Topaz, Professional Officer, at this office.

Yours sincerely

BRETT HOLMES
General Secretary



The NSW Nurses' Association welcomes the proposed Amendment and supports the aims to

- maintain effective regulatory safeguards;
- ensure high quality care for frail older Australians;
- promote public confidence in the aged care system;
- provide a regulatory framework that is appropriate in an evolving corporate environment; and
- ensure, as far as practicable, that the financial interests of care recipients are protected.

NSWNA supports the overall approach in Option B, on the basis that implementation can significantly improve the outcomes for recipients of care, and better meet the changing structures and modes of operation within the aged care sector.

In addition, NSWNA submits the following as specific comments on particular areas of the Amendment.

IN RELATION TO THE REGULATION OF APPROVED PROVIDERS

Ongoing suitability of approved provider

NSWNA believes the quality of care of residents will be maximised if aged care providers are discouraged from breaching workplace laws. Compliance with workplace standards will ultimately benefit all stakeholders. It will:

- Facilitate higher care standards through continuity of care for residents with a stable, low turnover body of staff (this is particularly important for residents experiencing dementia);
- Ensure taxpayer dollars are spent appropriately;
- Protect good employers from competing with unscrupulous employers who do not comply with workplace laws;
- Encourage industrial harmony which is important for residents, the Commonwealth, aged care providers and employees;
- Assist the industry's large female and non-English speaking workforce, who often experience low bargaining outcomes, to enforce their entitlements;
- Discourage unscrupulous employers from lowering employment standards in the industry;
- Discourage unscrupulous employers from entering or remaining in the industry.



It is NSWNA's experience that non-compliance with workplace laws is more prevalent in the aged care sector than it is in any other area of nursing. Other governments have imposed sanctions in industries which experience non-compliance problems: for example in the security industry in New South Wales. See sections 16 of the *Security Industry Act 1997* (NSW) and Regulation 18 of the *Security Industry Regulation 2007* (NSW) which is found at; <http://www.legislation.nsw.gov.au/scanview/inforce/s/1/?TITLE=%22Security%20Industry%20Act%201997%20No%20157%22&nohits=y>

Therefore, NSW Nurses' Association recommends that the Aged Care Act 1997 be amended so that sanctions may be imposed upon aged care providers who repeatedly fail to comply with Commonwealth and State workplace laws.

Clarifying key personnel

The amendment details, in 8-3A, the 'meaning of key personnel', and within this, describes that: "A person referred to in sub-paragraph (1)(c) (i) or (1) (d) (i) must hold a recognised qualification in nursing"

Terminology around 'nursing' has become more widely used to describe work undertaken not just by registered and enrolled nurses, but also by unlicensed staff, where no baseline for qualification or regulation exists. In order to ensure safety of practice and standards of clinical skill, it is necessary to name explicitly the recognition required for a nursing qualification.

NSWNA recommends the person to in sub-paragraph (1) (c) (i) or (1) (d) (i) must be nurse, with a nursing qualification as regulated by the Nurses and Midwives Board, or the equivalent state, territory or national body.

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Compulsory registration of the Director of Nursing on a register held by the *NSW Department of Health* was a major safeguard for patient care detailed in the current *Nursing Homes, &c., Nurses' (State) Award*, and the *Notional Agreements Preserving State Awards* (NAPSA). Such registration no longer applies in spite of the Award provision as the Department no longer maintains same. The "Key Personnel" register under the current federal aged care legislation does not offer the same patient protection.

The advantage of "registration" on a properly maintained register is that failure to register would be a breach of the legislation, with penalties applying. However, this is of no effect unless the "Register" is available to all, especially those with an interest in maintaining adequate standards of patient care.

For the sake of the standard of patient care paid for by the Government, this is the best way of ensuring maintenance of a high standard.



It also makes it easier for the provider of care to comply with statutory regulation related to administration of drugs.

As nurses subject to professional registration carry the major professional responsibility for the provision of care in this industry, the NSWNA submits that they should have access to inspect the proposed register. Receptions of care and their guardians should also have access to information about those who are Key Personnel responsible for their care and care decisions.

It is cost neutral to the provider and the Government.

NSWNA recommends that a Register of Key Personnel be managed under Federal Legislation, and be available to those with interest in provision of care, including those who receive care or hold responsibility for care.

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The relevant award contains provisions related to the position of *Deputy Director of Nursing* and *Assistant Director of Nursing*. Mandatory regulation of the requirement for a Director of Nursing is augmented by further mandatory requirement to provide assistance in the form of a "*Deputy/ Assistant Director of Nursing*" under certain set circumstances, related to the most easily administered and recognisable means of regulating the need for assistance, namely number of beds.

Prescribing the appointment of a DDon or ADoN further assists the maintenance of standards of care, and compliance with other regulation.

The *Public Health Act (NSW) 1991 No 10* requires the actual physical presence of a registered nurse "*on duty*" in the nursing home "*at all times*"; that a registered nurse be appointed as Director of Nursing at the facility; and any vacancy in this position be notified within 7 days.

However, "on duty" is not defined in this Act, and is open to a number of interpretations. Where there is a requirement to have a registered nurse "on duty" in the nursing home "at all times"; "on duty" must be defined to be "physically present" within the nursing home, not merely contactable by mobile phone, or pager, etc.

Cost neutral for the government.

NSWNA recommends that the Amendment specify mandatory experience and qualification to be held by the Director of Nursing at a nursing home.

NSWNA recommends that the Amendment specify 'on duty' to mean mandatory "physical presence" "at all times" of a Registered Nurse within the nursing home.



NSWNA recommends that the Amendment make mandatory provisions for Deputy Director of Nursing and Assistant Director of Nursing.

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IN RELATION TO REDUCING THE NUMBER OF UNNECESSARY ASSESSMENTS BY ACATs

Nurses working in aged care services, including ACATs, report delays of up to several weeks in seeking re-assessments which may be required primarily for administrative reasons rather than care needs. This impacts continuity of care for the older person, and also causes additional administrative follow up for nurses within the aged care services, and unnecessary pressure and workload within the ACATs.

As nurses are key providers in ACAT and other aged care services, improvement in this area is of particular interest to our membership. These proposed changes to facilitate best use of nurse skills and resources and better outcomes for older people, also contribute to nursing staff retention strategies by improving efficiency of role and job satisfaction in delivering services.

NSWNA supports moves to ensure best use of ACAT assessment resources.

IN ADDITION TO THE ABOVE AREAS

NSW legislation requires that a registered nurse is on duty at all times in a nursing home, (Section 52 NSW Public Health Act 1991). Recent attempts to call for changes to this legislation by an employer group, has met with assurances to NSWNA from the NSW Department of Health that there are no changes proposed to this requirement. NSWNA wishes to stress that any changes to Commonwealth legislation should not compromise this requirement for a registered nurse to be on duty 24/7 in a nursing home.

NSWNA recommends that any changes to the Aged Care Act through this Aged Care Amendment (2008 measures No. 2) Bill 2008 must not adversely affect quality of care and staffing requirements at a State level.

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¹ *Nursing Homes, &c., Nurses' (State) Award*

PART A

1. Definitions

- (x) *"Director of Nursing" means a registered nurse who is registered by her/his employer with the Health Administration Corporation as the person in charge of the facility. There shall be only one person in each facility entitled to be classified as Director of Nursing or whatever title the senior nursing administrator is known by in the individual facility and shall include "Chief Nurse" as defined by the Nursing Homes Act, 1988.*

¹ **32. Deputy Director of Nursing and Assistant Director of Nursing**

- (i) *Subject to subclause (ii) of this clause, the following appointments shall be made in nursing homes with daily averages of occupied beds as specified hereunder:*

Less than 150 beds - a Deputy Director of Nursing.

150 beds and over - a Deputy Director of Nursing and Assistant Director of Nursing.

- (ii) *There is no requirement to appoint a Deputy Director of Nursing in nursing homes of 40 beds and under in the following circumstances:*

(a) *the registered nurses at the nursing home are all given the same duties and no registered nurse is delegated Deputy Director of Nursing duties; and*

(b) *the Director of Nursing perceives no requirement for a Deputy Director of Nursing to be employed.*

Provided that no Deputy Director of Nursing employed as at 16 December 1994 shall be dismissed or demoted from that position as a result of the implementation of this subclause.

- (iii) *Where a decision is made, pursuant to subclause (ii) of this clause, not to appoint a Deputy Director of Nursing, the employer shall notify the Association in writing of that decision within 14 days and must certify that the requirements of paragraphs (a) and (b) of subclause (ii) have been met.*

¹ **Public Health Act (NSW) 1991 No 10**

52 Nursing requirements for nursing homes

- (1) *A person who operates a nursing home must:*

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

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

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

Maximum penalty: 20 penalty units.

- (2) *The regulations may prescribe the minimum necessary qualifications for a registered nurse to be appointed as a director of nursing at a nursing home.*

- (3) *In this section:*

director of nursing *of a nursing home means the registered nurse responsible for care of the residents of the nursing home.*



registered nurse has the same meaning as in the Nurses and Midwives Act 1991.

1 Public Health (General) Regulation 2002

20B Minimum qualifications for director of nursing at nursing home

For the purposes of section 52 (2) of the Act, the prescribed minimum necessary qualifications for a registered nurse to be appointed as a director of nursing at a nursing home are:

- (a) 5 years post-basic or post-graduate nursing experience, and*
- (b) 2 years full-time administrative experience in a position of, or more senior than that of, nursing unit manager in a hospital or nursing home.*