

# Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015

No.        of 2015

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## 2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 December 2017 it comes into operation on that day.

## 3 Definitions

In this Act—

***acute ward*** means a multi-day inpatient ward in which any of the following are cared for—

- (a) patients who have an acute or chronic illness or an injury;
- (b) patients recovering from surgery;

***After Hours Coordinator*** means a registered nurse or a midwife who is responsible for overseeing the operations of the hospital when the Director of Nursing or Director of Midwifery is not on duty;

***aged high care residential ward*** means a ward at a location—

- (a) the operator of which is an approved provider within the meaning of the Aged Care Act 1997 of the Commonwealth; and
- (b) that, as at 30 June 2014, had at least one place within the meaning of that Act that was high care allocated;

***bed*** includes cubicle, trolley, treatment chair, cot and delivery suite;

***below ratios distribution*** means a proposal under section 34(1);

***coronary care unit*** means a unit of specialised critical care beds dedicated to acute care, treatment and monitoring of patients with serious or unstable cardiac diseases;

***Department*** means the Department of Health and Human Services;

***enrolled nurse*** means a person registered in Division 2 of the Register of Nurses kept by the Nursing and Midwifery Board of Australia under the Health Practitioner Regulation National Law, other than as a student;

***general medical or surgical ward*** means—

- (a) a multi-day inpatient ward in which either of the following are cared for—
  - (i) patients with an acute or chronic illness or an injury;
  - (ii) patients recovering from surgery;or
- (b) an area of a hospital into which patients admitted to the emergency department are transferred for the provision of short-term treatment, observation, assessment or reassessment when they no longer require emergency care;

***high care beds*** do not include—

- (a) aged person mental health beds for which supplementary funding is provided by the Department in accordance with the Victorian health policy and funding guidelines published by the Department from time to time; or
  - (b) low care allocated places as at 30 June 2014;
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***hospital*** means—

- (a) a level 1 hospital, a level 2 hospital, a level 3 hospital or a level 4 hospital; or
- (b) the following—
  - (i) Darlingford Upper Goulburn Nursing Home Inc.;
  - (ii) Indigo North Health Inc.;
  - (iii) Lyndoch Living Inc.;
  - (iv) Red Cliffs and Community Aged Care Services Inc.;

***level 1 hospital*** means a hospital specified in Part 1 of Schedule 1;

***level 2 hospital*** means a hospital specified in Part 2 of Schedule 1;

***level 3 hospital*** means a hospital specified in Part 3 of Schedule 1;

***level 4 hospital*** means a campus of any public hospital, denominational hospital, multi purpose service or public health service within the meaning of the **Health Services Act 1988** other than a public hospital, denominational hospital, multi purpose service or public health service that is a level 1 hospital, level 2 hospital or level 3 hospital;

***local dispute*** means a dispute between a nurse or midwife and the operator of a hospital initiated by way of a notification under section 41(1);

***midwife*** means a person registered in the Register of Midwives kept by the Nursing and Midwifery Board of Australia under the Health Practitioner Regulation National Law, other than as a student;

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***midwife in charge*** means a midwife who is undertaking, whether temporarily or permanently, the role of—

- (a) a midwifery unit manager or equivalent; or
- (b) an associate midwifery unit manager or equivalent;

***normal care nursery*** means a nursery for low risk newborns who are well or who have minor conditions and are medically stable;

***nurse*** means registered nurse or enrolled nurse;

***nurse in charge*** means a registered nurse who is undertaking, whether temporarily or permanently, the role of—

- (a) a nurse unit manager or equivalent; or
- (b) an associate nurse unit manager or equivalent;

***occupied*** includes available to be occupied;

***operator***, in relation to a hospital, means the entity that has day-to-day responsibility for managing and operating the hospital;

***ratio*** means a staffing requirement set out in a provision of Division 2 or 3 of Part 2;

***ratio variation*** means a variation to a ratio implemented under Division 4 of Part 2;

***redistribution principles*** means the principles prescribed under section 33(1);

***registered nurse*** means a person registered in Division 1 of the Register of Nurses kept by the Nursing and Midwifery Board of Australia under the Health Practitioner Regulation National Law, other than as a student;

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***relevant union*** means an organisation within the meaning of the Fair Work (Registered Organisations) Act 2009 of the Commonwealth that represents or is entitled to represent a nurse or midwife in a ward;

***safe patient care compliance direction*** means a direction given under section 37(1);

***Secretary*** means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department;

***special care nursery*** means a discrete ward in which any of the following are cared for—

- (a) newborn infants who are unwell;
- (b) newborn infants who require a higher level of care or treatment than newborn infants in a normal care nursery;

***ward*** means a ward, unit, department or component of a hospital managed by a nurse or midwife who is undertaking, whether temporarily or permanently, the role of—

- (a) a nurse unit manager or equivalent; or
- (b) a midwifery unit manager or equivalent.

#### **4 Objective**

- (1) The objective of this Act is to provide for safe patient care in hospitals by establishing requirements for a minimum number of nurses or midwives per number of patients in specified wards or beds, recognising that nursing workloads impact on the quality of patient care.
  - (2) In meeting the objective of this Act, the operator of a hospital may apply the ratios in a flexible manner having regard to the following—
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- (a) variations in the number of patients who occupy or are expected to occupy beds;
- (b) variations in patient numbers that may lead to a period of peak demand.

**5 Change in name of hospital**

If the name of a hospital changes, the requirements of this Act continue to apply to that hospital after the change of name despite the change of name.

**6 Crown bound**

This Act binds the Crown in right of Victoria and, to the extent that the legislative power of the Parliament permits, the Crown in all its other capacities.

**7 Act not to affect employment contracts or workplace instruments**

Nothing in this Act is intended to constitute a term of or to alter or vary, or authorise or require the alteration or variation of—

- (a) any employment contract; or
- (b) any workplace instrument within the meaning of the Fair Work Act 2009 of the Commonwealth.

## **Part 2—Nurse to patient and midwife to patient ratios**

### **Division 1—General**

#### **8 Ratio includes ratio variation**

In this Division, *ratio* includes a staffing requirement that applies under a ratio variation, subject to any terms of that variation.

#### **9 Application of ratios**

(1) Except as otherwise provided—

- (a) a ratio applies to every ward in each hospital to which it is specified to apply; and
- (b) a ratio must be applied on the basis of the actual number of patients in each ward to which it applies; and
- (c) a ratio is a minimum requirement only and is not intended to prevent the operator of a hospital from staffing a ward with additional nurses or midwives beyond the number required by the ratio; and
- (d) a ratio may be applied in a flexible way in order to evenly distribute the workload, having regard to the level of care required by patients in a ward.

#### **Examples**

- 1 For subsection (1)(b), in a ward with 30 beds where only 26 beds are usually occupied, the operator of the hospital must not use the other 4 beds unless additional staff are available to meet the ratio requirements.
- 2 For subsection (1)(d), in a ward with 8 patients and a 1:4 ratio, if 3 patients require a higher level of care and 5 patients require a lower level of care then one nurse may be assigned to care for the 3 patients requiring the higher level of care and the other nurse to the other 5 patients.

- (2) Despite anything to the contrary in this Act, a ratio does not apply in respect of any ward that is being predominantly utilised for the care of persons being treated for a mental illness within the meaning of the **Mental Health Act 2014**.

#### **10 Application of ratios in small hospitals**

- (1) Despite anything to the contrary in a ratio applying to a level 4 hospital with one ward, the operator of the hospital must staff that ward with—
- (a) one registered nurse on all shifts; and
  - (b) one After Hours Coordinator or equivalent position (who is not supernumerary) during all off-duty periods of the Director of Nursing or Director of Midwifery.
- (2) The operator of a hospital with only 2 wards may count one After Hours Coordinator (who is not supernumerary) towards meeting any ratio during all off-duty periods of the Director of Nursing or Director of Midwifery.

#### **11 Out of hours coordination of hospitals**

The operator of a hospital with 3 wards or more must staff the hospital with one After Hours Coordinator during all off-duty periods of the Director of Nursing or Director of Midwifery, in addition to any ratio that applies.

#### **12 Rounding method**

- (1) If the number of patients in a ward or the number of beds (as the case requires) is not divisible into a whole number when a ratio is applied, the number of nurses or midwives must be rounded in accordance with subsections (2), (3) and (4), as applicable.

- (2) If the actual or expected number of patients in a ward or number of beds requires less than or equal to 50 per cent of one additional nurse or midwife to be rostered in applying a ratio, the operator of the hospital is not required to roster an additional nurse or midwife in order to comply with the ratio unless safe patient care may be compromised.
- (3) In addition to any requirement under subsection (2), the operator of a hospital may assign a nurse or midwife to care for patients—
  - (a) across multiple wards at night; or
  - (b) in the case of a nurse, across multiple beds in aged high care residential wards on any shift.
- (4) If the actual or expected number of patients in a ward or number of beds requires more than 50 per cent of one additional nurse or midwife to be rostered in applying a ratio, the operator of the hospital must roster an additional nurse or midwife to comply with the ratio.

### **13 Demand higher or lower than expected**

- (1) Beds in addition to the beds that have been staffed under a ratio may only be occupied if nurses or midwives are available to comply with the ratio.
- (2) If the actual or expected number of patients on a particular day falls below the number of patients for which a ward is staffed in accordance with a ratio, the number of nurses or midwives may be adjusted down before the commencement of a shift.

**Note**

See also section 7.

#### **14 Skill mix**

The operator of a hospital, other than a hospital specified in Schedule 2, may use no more than 20 per cent enrolled nurses in meeting ratios in an acute ward or a general medical or surgical ward.

### **Division 2—Nurse to patient ratios**

#### **15 Level 1 hospitals**

The operator of a level 1 hospital must staff a general medical or surgical ward as follows—

- (a) on the morning shift or the afternoon shift—
  - (i) one nurse for every 4 patients; and
  - (ii) one nurse in charge;
- (b) on the night shift, one nurse for every 8 patients.

#### **16 Level 2 hospitals**

The operator of a level 2 hospital must staff a general medical or surgical ward as follows—

- (a) on the morning shift—
  - (i) one nurse for every 4 patients; and
  - (ii) one nurse in charge;
- (b) on the afternoon shift—
  - (i) one nurse for every 5 patients; and
  - (ii) one nurse in charge;
- (c) on the night shift, one nurse for every 8 patients.

#### **17 Level 3 hospitals**

The operator of a level 3 hospital must staff a general medical or surgical ward as follows—

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- (a) on the morning shift—
  - (i) one nurse for every 5 patients; and
  - (ii) one nurse in charge;
- (b) on the afternoon shift—
  - (i) one nurse for every 6 patients; and
  - (ii) one nurse in charge;
- (c) on the night shift, one nurse for every 10 patients.

#### **18 Level 4 hospitals**

- (1) The operator of a level 4 hospital must staff an acute ward as follows—
  - (a) on the morning shift—
    - (i) one nurse for every 6 patients; and
    - (ii) one nurse in charge;
  - (b) on the afternoon shift—
    - (i) one nurse for every 7 patients; and
    - (ii) one nurse in charge;
  - (c) on the night shift, one nurse for every 10 patients.
- (2) If some beds in an acute ward in a level 4 hospital are generally occupied as aged high care beds, the aged high care residential ward ratios will apply in respect of the patients in those beds.

#### **19 Aged high care residential wards**

The operator of a hospital must ensure that the high care beds in an aged high care residential ward are staffed as follows—

- (a) on the morning shift—
    - (i) one nurse for every 7 residents; and
    - (ii) one nurse in charge;
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- (b) on the afternoon shift—
  - (i) one nurse for every 8 residents; and
  - (ii) one nurse in charge;
- (c) on the night shift, one nurse for every 15 residents.

## **20 Emergency departments**

- (1) The operator of a hospital specified in Part 1 of Schedule 3 must staff a ward that is an emergency department as follows—
    - (a) on the morning shift—
      - (i) one nurse for every 3 beds; and
      - (ii) one nurse in charge; and
      - (iii) one triage nurse;
    - (b) on the afternoon shift—
      - (i) one nurse for every 3 beds; and
      - (ii) one nurse in charge; and
      - (iii) 2 triage nurses;
    - (c) on the night shift—
      - (i) subject to subsection (2), one nurse for every 3 beds; and
      - (ii) one nurse in charge; and
      - (iii) one triage nurse.
  - (2) If the operator of a hospital specified in Part 1 of Schedule 3 does not utilise all of the beds in a ward that is an emergency department on the night shift due to fewer presentations, it may staff that shift in that ward with the number of nurses calculated in accordance with the following formula instead of applying the ratio specified in subsection (1)(c)(i)—
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Part 2—Nurse to patient and midwife to patient ratios

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$$\frac{A}{B} \times \frac{C}{3}$$

where—

**A** is the number of annual presentations on the night shift;

**B** is the number of annual presentations on the morning shift;

**C** is the total number of beds available.

- (3) The operator of a hospital specified in Part 2 of Schedule 3 must staff a ward that is an emergency department as follows on all shifts—
- (a) one nurse for every 3 beds; and
  - (b) one nurse in charge; and
  - (c) one triage nurse.
- (4) The operator of a hospital specified in Part 3 of Schedule 3 must staff a ward that is an emergency department as follows—
- (a) on the morning shift or the afternoon shift—
    - (i) one nurse for every 3 beds; and
    - (ii) one nurse in charge; and
    - (iii) one triage nurse;
  - (b) on the night shift—
    - (i) one nurse for every 3 beds; and
    - (ii) one nurse in charge.
- (5) The operator of a hospital, the emergency department of which has had more than 7000 annual presentations (other than a hospital specified in Schedule 3), must staff the ward that is the emergency department as follows on all shifts—
- (a) one nurse for every 3 beds; and
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Part 2—Nurse to patient and midwife to patient ratios

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- (b) one nurse in charge; and
  - (c) in the case of an emergency department that had a regularly rostered triage nurse on one or more shifts immediately before the commencement of this section, one triage nurse for that shift or each of those shifts in that ward.
- (6) The operator of a hospital, the emergency department of which has had between 5000 and 7000 annual presentations (both inclusive) (other than a hospital specified in Schedule 3), must staff the emergency department with 2 registered nurses on all shifts.
- (7) The 2 nurses referred to in subsection (6) may be assigned to meet the ratios in other wards of the hospital if they are free to return to the emergency department immediately when required.
- (8) The operator of a hospital the emergency department of which has had fewer than 5000 annual presentations must staff the hospital with—
- (a) if the hospital has only one or 2 wards—
    - (i) 2 registered nurses on all shifts; and
    - (ii) an additional nurse who is available to assess and care for patients within the emergency department when required; and
  - (b) if the hospital has 3 or more wards—
    - (i) 2 registered nurses on all shifts; and
    - (ii) an additional nurse who is supernumerary and available to assess and care for patients within the emergency department when required.
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(9) If an emergency department to which this section applies experiences a seasonal fluctuation in the number of presentations such that a ratio required by a different subsection of this section would otherwise apply during the period of that fluctuation (if taken on an annualised basis) but for the operation of this section and the operator of the hospital determines to implement staffing changes based on the seasonal fluctuation, the operator of the hospital must staff the emergency department ward with the number of nurses, triage nurses and nurses in charge that would be required by that other subsection during the period of the fluctuation.

(10) In this section—

*annual presentations* means presentations in the 12 months immediately preceding the day on which the ratio is being applied;

*presentations* means persons who present to the emergency department for assessment.

**Note**

A local agreement may vary the application of these ratios and other ratios in this Division. See section 36.

**21 Coronary care units**

The operator of a hospital must staff a ward that is a coronary care unit as follows—

- (a) on the morning shift or the afternoon shift—
  - (i) one nurse for every 2 patients; and
  - (ii) one nurse in charge;
- (b) on the night shift, one nurse for every 3 patients.

## **22 High dependency units**

- (1) The operator of a level 1 hospital must staff a ward that is a stand alone high dependency unit as follows—
    - (a) on the morning shift or the afternoon shift—
      - (i) one nurse for every 2 patients; and
      - (ii) unless the unit is co-located with an intensive care unit, one nurse in charge;
    - (b) on the night shift, one nurse for every 2 patients.
  - (2) The operator of Central Gippsland Health Service (Sale campus), West Gippsland Hospital, Wimmera Health Care Group Hospital (Horsham campus) and Warrnambool Base Hospital must staff a ward that is a high dependency unit as follows—
    - (a) on the morning shift—
      - (i) one nurse for every 2 patients; and
      - (ii) one nurse in charge;
    - (b) on the afternoon shift or the night shift, one nurse for every 2 patients.
  - (3) The operator of Angliss Hospital, Bairnsdale Regional Health Service, Echuca Regional Health and Portland District Health must staff beds in a high dependency unit with one nurse for every 3 beds on all shifts.
  - (4) The operator of Swan Hill District Health and Williamstown Hospital must staff beds in a high dependency unit with one nurse for every 4 beds on all shifts.
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### **23 Palliative care inpatient units**

The operator of a hospital must staff a ward that is a palliative care inpatient unit as follows—

- (a) on the morning shift—
  - (i) one nurse for every 4 patients; and
  - (ii) one nurse in charge;
- (b) on the afternoon shift—
  - (i) one nurse for every 5 patients; and
  - (ii) one nurse in charge;
- (c) on the night shift, one nurse for every 8 patients.

### **24 Rehabilitation and geriatric evaluation management**

- (1) The operator of a hospital must staff rehabilitation beds as follows—
    - (a) on the morning shift or the afternoon shift—
      - (i) one nurse for every 5 patients; and
      - (ii) one nurse in charge;
    - (b) on the night shift, one nurse for every 10 patients.
  - (2) The operator of a hospital must staff geriatric evaluation management beds as follows—
    - (a) on the morning shift—
      - (i) one nurse for every 5 patients; and
      - (ii) one nurse in charge;
    - (b) on the afternoon shift—
      - (i) one nurse for every 6 patients; and
      - (ii) one nurse in charge;
    - (c) on the night shift, one nurse for every 10 patients.
-

- (3) If the beds referred to in subsections (1) and (2) together comprise less than 25 per cent of the occupied beds in a ward, the relevant ratio that applies to the majority of beds in that ward applies instead of the ratios specified in those subsections.
- (4) Despite subsections (1)(a)(ii) and (2)(a)(ii) and (b)(ii), if a ward has both rehabilitation beds and geriatric evaluation management beds, a hospital is only required to staff that ward with one nurse in charge.

## **25 Operating theatres**

- (1) The operator of a hospital must staff an operating theatre with the following—
  - (a) one instrument nurse;
  - (b) one circulating nurse;
  - (c) one anaesthetic nurse.
- (2) The operator of a hospital may reduce or increase the number of nurses with whom an operating theatre is staffed in accordance with the prescribed criteria.

### **Note**

See also section 7.

- (3) The operator of a hospital that complies with subsection (2) is taken to comply with the ratio in subsection (1).
- (4) In this section, *operating theatre* means an operating theatre that is being utilised to perform a surgical procedure.

## **26 Post-anaesthetic recovery rooms**

The operator of a hospital must staff a post-anaesthetic recovery room with one nurse for each unconscious patient on all shifts.

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## **27 Special care nurseries**

- (1) The operator of a hospital must staff a ward that is a special care nursery as follows on all shifts—
  - (a) in the case of a special care nursery with 9 or fewer occupied cots, one nurse for every 4 occupied cots;
  - (b) in the case of a special care nursery with 10 occupied cots, 3 nurses;
  - (c) in the case of a special care nursery with 11 or more occupied cots—
    - (i) 4 nurses; and
    - (ii) one additional nurse for every 3 additional occupied cots beyond 11.
- (2) Despite section 12, the operator of a hospital must staff a special care nursery with 6 occupied cots with 2 nurses on all shifts.

## **28 Neonatal intensive care units**

The operator of Mercy Hospital for Women, the Royal Women's Hospital, Monash Medical Centre (Clayton) and the Royal Children's Hospital must staff a ward that is a neonatal intensive care unit as follows on all shifts—

- (a) one nurse for every 2 occupied cots; and
- (b) one nurse in charge.

## **Division 3—Midwife to patient ratios**

### **29 Meaning of *patient***

In this Division, *patient* does not include a newborn infant.

### **30 Antenatal and postnatal wards**

- (1) The operator of a level 1 hospital, a level 2 hospital, a level 3 hospital or a level 4 hospital must staff an antenatal ward or a postnatal ward with the following—
  - (a) on the morning shift or the afternoon shift—
    - (i) one midwife for every 4 patients; and
    - (ii) one midwife in charge or nurse in charge;
  - (b) on the night shift, one midwife for every 6 patients.
- (2) A midwife or nurse assigned to an antenatal ward or a postnatal ward at night may assist in a nursery other than a neonatal intensive care unit, if the hospital layout and workload permits, without the operator of the hospital being in contravention of the requirement set out in subsection (1)(b).

### **31 Delivery suites**

- (1) Subject to subsection (2), the operator of a level 1 hospital, a level 2 hospital or a level 3 hospital must ensure that 2 midwives are provided for every 3 nominated delivery suites.
  - (2) The operator of a hospital referred to in subsection (1) that has had fewer than 730 births in the 12 months immediately preceding the relevant day must staff the nominated delivery suites with one midwife on all shifts.
  - (3) A midwife rostered on under subsection (2) may be rostered to be on call for the hospital.
  - (4) A midwife rostered to a delivery suite may be redeployed to assist in another ward in addition to the ratio for that ward if not required in the delivery suite.
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- (5) If a midwife is redeployed from a delivery suite in accordance with subsection (4), the operator of the hospital is taken to comply with the ratio for the delivery suite.
- (6) In this section, *nominated delivery suite* means a delivery suite that the operator of the hospital has nominated as being open.

#### **Division 4—Variations from ratios**

##### **32 Quality of care paramount**

In any proposal under this Division to vary a ratio—

- (a) the primary consideration is the impact on the quality of patient care; and
- (b) any other considerations are as prescribed.

##### **33 Redistribution of nursing or midwifery hours**

- (1) The operator of a hospital or a nurse or midwife in a particular ward may propose that the nursing or midwifery hours generated by applying a ratio to that ward be redistributed or increased over a specified period in accordance with any prescribed redistribution principles.
  - (2) A proposal under subsection (1)—
    - (a) must be accompanied by information as to how the proposal accords with the redistribution principles; and
    - (b) must be provided at least 2 weeks in advance of the next roster period.
  - (3) The operator of a hospital that complies with a proposal made under subsection (1) and implemented in accordance with subsection (2) is taken to comply with the relevant ratio.
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### **34 Below ratios distribution**

- (1) The operator of a hospital or a nurse or midwife may propose that the full number of nursing or midwifery hours with which a ward is required to be staffed under a ratio not be utilised for a specified period.
- (2) A below ratios distribution may only be implemented if the operator of the hospital complies with any prescribed requirements.
- (3) The operator of a hospital that implements a below ratios distribution in accordance with subsection (2) is not required to comply with the relevant ratio during the period that the below ratios distribution is in effect.

### **35 Alternative staffing model**

- (1) The operator of a hospital may propose that, instead of applying a ratio, a trial of an alternative established staffing model based on nursing hours per patient day be applied.
  - (2) A trial under subsection (1)—
    - (a) may only run for an agreed period of not more than 14 months, but may be extended by subsequent agreement; and
    - (b) may only be agreed and implemented in accordance with any prescribed procedures.
  - (3) The operator of a hospital may continue to apply an alternative established staffing model based on nursing hours per patient day after the end of a trial period if the prescribed procedures are complied with.
  - (4) The operator of a hospital that is applying an alternative staffing model in accordance with subsection (2) or (3) is taken to comply with the relevant ratio for the duration of the application of that model.
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**36 Local agreements to vary**

- (1) The operator of a hospital and a relevant union may enter into an agreement to vary—
  - (a) a ratio; or
  - (b) the application of a rounding method under section 12.
- (2) An agreement under subsection (1) may only be implemented if the agreement is made in accordance with any prescribed procedures.
- (3) The operator of a hospital that complies with an agreement under subsection (1) is taken to comply with the relevant ratio or the requirement of section 12, as the case may be.

## **Part 3—Compliance and reporting**

### **37 Power to give safe patient care compliance direction**

- (1) The Secretary, for the purposes of giving effect to the objective of this Act, may give a written direction to the operator of a hospital in relation to the following matters—
  - (a) a requirement that the operator comply with a ratio or a ratio variation, including a requirement arising out of a declaration made or injunction granted under section 42(1);
  - (b) any other matter or thing necessary or appropriate to be directed in order to give effect to that objective.

#### **Note**

The objective of this Act is set out in section 4.

- (2) The Secretary must give a copy of a safe patient care compliance direction to a member of the public on request.
- (3) The Secretary must give a copy of a safe patient care compliance direction to any relevant union within a reasonable period after giving the direction.

### **38 Procedure for giving safe patient care compliance direction**

- (1) At least 48 hours before giving a safe patient care compliance direction, the Secretary must—
    - (a) give a copy of the proposed direction to the operator of the hospital; and
    - (b) indicate when the Secretary intends to give the direction.
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- (2) The operator of a hospital given a proposed direction under subsection (1) may give the Secretary written comments in relation to the proposed direction before the time at which the Secretary intends to give the direction.
- (3) The Secretary must take into account any comments given in accordance with subsection (2)—
  - (a) in deciding whether to give the direction; and
  - (b) if the Secretary decides to give the direction, in determining the content of the direction.

### **39 Effect of safe patient care compliance direction**

- (1) The operator of a hospital to which a safe patient care compliance direction applies must comply with that direction.
- (2) A safe patient care compliance direction has effect despite anything to the contrary in either of the following having effect in relation to the hospital to which the safe patient care compliance direction applies—
  - (a) a health service agreement within the meaning of the **Health Services Act 1988**;  
or
  - (b) an interim funding statement within the meaning of that Act.

### **40 Obligation to report certain matters**

The operator of a hospital to which any of the following applies must report that matter in its report of operations for a financial year under Part 7 of the **Financial Management Act 1994**—

- (a) any finding by the Magistrates' Court under section 42(1)(a) during that year that the operator did not comply with any of the following—
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Part 3—Compliance and reporting

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- (i) a ratio;
  - (ii) a ratio variation;
  - (iii) a requirement by or under Division 4 of Part 2 to undertake consultation in good faith with respect to the making of a ratio variation;
- (b) whether any injunction has been granted by the Magistrates' Court under section 42(1)(b) during that year in respect of the operator;
  - (c) whether any civil penalty has been imposed on the operator by the Magistrates' Court under section 43 during that year and, if so, the amount of that penalty;
  - (d) whether the operator has been issued with a safe patient care compliance direction during that year;
  - (e) the action taken during that year by the operator subsequent to any finding referred to in paragraph (a).

## **Part 4—Enforcement**

### **41 Local dispute resolution**

- (1) A nurse or midwife who works at a hospital covered by a ratio or a relevant union (as representative of the nurse or midwife) may notify the operator of the hospital of an alleged breach of the ratio or a ratio variation.
- (2) A local dispute must be resolved in accordance with any prescribed resolution procedures.
- (3) The parties to a local dispute must act in good faith during the resolution of that dispute under subsection (2).
- (4) If a party to a local dispute incurs costs in resolving that dispute, that party must bear the party's own costs.

### **42 Referral to Magistrates' Court**

- (1) If the parties to a local dispute are not able to resolve the dispute in accordance with section 41, the Magistrates' Court, on an application by a party, may do any or all of the following—
  - (a) make a declaration that the operator of the hospital complied with or did not comply with any or all of the following—
    - (i) a ratio;
    - (ii) a ratio variation;
    - (iii) a requirement by or under Division 4 of Part 2 to undertake consultation in good faith with respect to the making of a ratio variation;
  - (b) grant an injunction restraining the operator of the hospital from contravening or continuing to contravene any or all of the following—

- (i) a ratio;
  - (ii) a ratio variation;
  - (iii) a requirement by or under Division 4 of Part 2 to undertake consultation in good faith with respect to the making of a ratio variation.
- (2) Subsection (1) applies despite section 100(2)(a) of the **Magistrates' Court Act 1989**.
- (3) If an application is made under subsection (1), the Magistrates' Court may grant an interim injunction in respect of that application restraining the operator of the hospital from engaging in or continuing the course of conduct the subject of the application pending the determination of the application.
- (4) An interim injunction has effect until either of the following occurs—
- (a) the application under subsection (1) is determined;
  - (b) the interim injunction is revoked by a court.
- (5) If the Magistrates' Court grants an interim injunction, the Magistrates' Court must determine the substantive application as a matter of urgency.
- (6) In deciding whether to make a declaration or grant an injunction under this section, the Magistrates' Court must not consider the clinical aspects of the matter the subject of the dispute.

#### **43 Civil penalty**

- (1) If the Magistrates' Court makes a declaration under section 42(1)(a) that the operator of a hospital did not comply with a ratio or a ratio variation, the Magistrates' Court may make an order imposing a penalty not exceeding 60 penalty units on the operator.
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- (2) The Magistrates' Court may impose a penalty on the operator only if satisfied that the non-compliance was wilful and serious.
- (3) A penalty imposed under this section is to be paid into the Consolidated Fund.
- (4) An order imposing a penalty under this section is taken, for the purposes of enforcement, to be an order made in a civil proceeding.
- (5) Nothing in this section is to be taken as creating an offence for non-compliance with a ratio or a ratio variation.

#### **44 Notification requirements**

- (1) A person who makes an application to the Magistrates' Court under section 42(1) must notify the Secretary of that application as soon as practicable, but in any case not more than 7 days after the application is made.
- (2) If the Magistrates' Court makes a declaration or grants an injunction under section 42, the principal registrar within the meaning of the **Magistrates' Court Act 1989** must notify the Secretary of the making of that declaration or the granting of that injunction within 7 days.



## **Part 5—General**

### **45 Regulations**

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
  - (a) may be of general or limited application;
  - (b) may differ according to differences in time, place or circumstances;
  - (c) may require matters affected by the regulations to be—
    - (i) in accordance with specified standards or specified requirements; or
    - (ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies; or
    - (iii) as specified in both subparagraphs (i) and (ii);
  - (d) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person;
  - (e) may provide in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations—
    - (i) whether unconditionally or on specified conditions; and
    - (ii) either wholly or to such an extent as is specified.

## **Part 6—Savings and transitional**

### **46 Meaning of Agreement**

In this Part—

**Agreement** means the Nurses and Midwives (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2012–2016 [2012] FWAA 5560 made under the Fair Work Act 2009 of the Commonwealth;

**CWMA** has the meaning given by clause 4(f) of the Agreement, but including any variations made in accordance with clause 42 of the Agreement.

### **47 Pre-existing higher staffing arrangements**

- (1) If an above ratio CWMA is in effect immediately before the commencement of this section, a staffing requirement provided for in that CWMA—
    - (a) applies for the purposes of this Act as if it were a ratio, instead of or in addition to (as applicable) any ratio that would apply under this Act; and
    - (b) is taken to be a ratio for the purposes of Division 4 of Part 2.
  - (2) In subsection (1), **above ratio CWMA** means a CWMA that—
    - (a) requires the operator of a hospital to staff a ward with a higher number of nurses or midwives than otherwise required under a ratio; and
    - (b) is the subject of a formal written agreement with a person who or body that is entitled to make that agreement; and
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- (c) except in the case of an agreement at hospital level to provide equivalent full-time nurses or midwives with no additional recurrent funding, is funded by a person who or body that has responsibility to provide that funding.

#### **48 Pre-existing lower staffing arrangements**

- (1) If a below ratio CWMA is in effect immediately before the commencement of this section, a staffing requirement provided for in that CWMA applies for the purposes of this Act as if it were a ratio, instead of the ratio that would otherwise apply under this Act, until that CWMA is terminated or otherwise ceases to have effect.
- (2) A below ratio CWMA applying as if it were a ratio under subsection (1) terminates and ceases to have effect on the first anniversary of the commencement of this section.
- (3) In this section, *below ratio CWMA* means a CWMA that permits the operator of a hospital to staff a ward with a lower number of nurses or midwives than required under a ratio.

#### **49 Saving of pre-existing variations**

- (1) A redistribution of nursing or midwifery hours under clause 42.2 of the Agreement that permits a hospital to staff a ward with a lower number of nurses or midwives than required under a ratio, and as in effect immediately before the commencement of this subsection, is taken to be a redistribution under section 33(1).
  - (2) A distribution under clause 42.3 of the Agreement that permits a hospital to staff a ward with a lower number of nurses or midwives than required under a ratio, and as in effect immediately before the commencement of this subsection, is taken to be a below ratios distribution.
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- (3) An alternative staffing model under clause 42.4 of the Agreement that permits a hospital to staff a ward with a lower number of nurses or midwives than required under a ratio, and as in effect immediately before the commencement of this subsection, is taken to be a trial under section 35(1).
- (4) Any arrangement other than that specified in subsection (1), (2) or (3) made under the Agreement to reduce the number of nurses or midwives in a ward to a level that is lower than that required by any ratio and as in effect immediately before the commencement of this subsection is taken to be an agreement under section 36(1).

## **Schedule 1—Level 1, 2 and 3 hospitals**

### **Part 1—Level 1 hospitals**

Alfred Hospital  
Austin Hospital  
Box Hill Hospital  
Dandenong Hospital  
Footscray Hospital  
Frankston Hospital  
Heidelberg Repatriation Hospital  
Monash Medical Centre (Clayton)  
Northern Hospital  
Peter MacCallum Cancer Centre  
St Vincent's Hospital  
The Royal Children's Hospital  
The Royal Melbourne Hospital  
University Hospital Geelong

### **Part 2—Level 2 hospitals**

Ballarat Base Hospital  
Bendigo Hospital  
Goulburn Valley Health  
Latrobe Regional Hospital  
Maroondah Hospital  
Mercy Hospital for Women  
New Mildura Base Hospital  
Northeast Health Wangaratta  
Sunshine Hospital

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The Royal Women's Hospital

Werribee Mercy Hospital

### **Part 3—Level 3 hospitals**

Albury Wodonga Health (Wodonga campus)

Angliss Hospital

Bairnsdale Regional Health Service

Castlemaine Health

Central Gippsland Health Service (Sale campus)

Echuca Regional Health

Hamilton Base Hospital

Monash Medical Centre (Moorabbin)

Portland District Health

Rosebud Hospital

Sandringham Hospital

Swan Hill District Health

The Royal Victorian Eye and Ear Hospital

Warrnambool Base Hospital

West Gippsland Hospital

Williamstown Hospital

Wimmera Health Care Group (Horsham campus)

**Schedule 2—Hospitals not restricted in use of  
enrolled nurses**

Albury Wodonga Health (Wodonga campus)  
Alexandra District Hospital  
Alpine Health (Bright campus)  
Alpine Health (Mt Beauty campus)  
Alpine Health (Myrtleford campus)  
Angliss Hospital  
Ararat Hospital  
Bairnsdale Regional Health Service  
Beaufort and Skipton Health Service  
Beechworth Health Service  
Benalla Health  
Boort District Health  
Calvary Health Care Bethlehem Limited  
Casterton Memorial Hospital  
Castlemaine Health  
Caulfield Hospital  
Central Gippsland Health Service (Heyfield campus)  
Central Gippsland Health Service (Maffra campus)  
Central Gippsland Health Service (Sale campus)  
Cobram District Health  
Cohuna District Hospital  
Colac Area Health  
Djerriwarrh Health Services  
Dunmunkle Health Services  
Eastern Health (Peter James Centre)

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Eastern Health (Yarra Ranges Health)  
East Grampians Health Services (Ararat Services)  
East Wimmera Health Service (Birchip campus)  
East Wimmera Health Service (Charlton campus)  
East Wimmera Health Service (Donald campus)  
East Wimmera Health Service (St Arnaud campus)  
East Wimmera Health Service (Wycheproof campus)  
Echuca Regional Health  
Edenhope and District Memorial Hospital  
Goulburn Valley Health (Tatura campus)  
Goulburn Valley Health (Waranga campus)  
Hamilton Base Hospital  
Heathcote Health  
Hepburn Health Service (Creswick campus)  
Hepburn Health Service (Daylesford campus)  
Hesse Rural Health  
Heywood Rural Health  
Hopetoun Hospital  
Inglewood and Districts Health Service  
Jeparit Hospital  
Kaniva Hospital  
Kerang District Health  
Kilmore and District Hospital  
Kooweerup Regional Health Service  
Korumburra Hospital  
Kyabram and District Health Services  
Kyneton District Health Service

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Schedule 2—Hospitals not restricted in use of enrolled nurses

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Leongatha Hospital  
Lorne Community Hospital  
Maldon Hospital  
Mallee Track Health and Community Service  
Mansfield District Hospital  
Maryborough District Health Service  
Monash Health (Monash Health Community)  
Moorabbin Hospital  
Moyne Health Services  
Nathalia District Hospital  
Nhill Hospital  
Numurkah and District Health Services  
Omeo District Health  
Orbost Regional Health  
Otway Health  
Penshurst and District Health  
Portland District Health  
Queen Elizabeth Centre  
Rainbow Hospital  
Robinvale District Health Services (Manangatang campus)  
Robinvale District Health Services (Robinvale campus)  
Rochester and Elmore District Health Service  
Rosebud Hospital  
Rural Northwest Health (Warracknabeal campus)  
St Vincent's Palliative Care Services (Kew)  
Sandringham Hospital  
Seymour Health

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South Gippsland Hospital  
South West Healthcare  
Stawell Regional Health  
Sunshine Hospital  
Swan Hill District Health  
Tallangatta Health Service  
Terang and Mortlake Health Services  
The Royal Victorian Eye and Ear Hospital  
Timboon and District Healthcare Service  
Upper Murray Health and Community Services  
West Gippsland Hospital  
West Wimmera Health Service (Natimuk Centre)  
Western District Health Service (Coleraine campus)  
Williamstown Hospital  
Wimmera Health Care Group (Dimboola campus)  
Wimmera Health Care Group (Horsham campus)  
Wonthaggi Hospital  
Yarram and District Health Service  
Yarrawonga Health  
Yea and District Memorial Hospital

## **Schedule 3—Categories of hospitals for emergency department ratios**

### **Part 1**

Alfred Hospital  
Ankliss Hospital  
Austin Hospital  
Ballarat Base Hospital  
Bendigo Hospital  
Box Hill Hospital  
Casey Hospital  
Dandenong Hospital  
Footscray Hospital  
Frankston Hospital  
Goulburn Valley Health (Shepparton campus)  
Latrobe Regional Hospital  
Maroondah Hospital  
Monash Medical Centre (Clayton)  
New Mildura Base Hospital  
Northern Hospital  
St Vincent's Hospital  
Sunshine Hospital  
The Royal Children's Hospital  
The Royal Melbourne Hospital (City campus)  
University Hospital Geelong  
Werribee Mercy Hospital

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## **Part 2**

Albury Wodonga Health (Wodonga campus)

Bairnsdale Regional Health Service

Rosebud Hospital

Sandringham Hospital

Warrnambool Base Hospital

Williamstown Hospital

Wimmera Base Hospital (Horsham campus)

## **Part 3**

Central Gippsland Health Service (Sale campus)

Echuca Regional Health

Northeast Health Wangaratta

Swan Hill District Health

The Royal Victorian Eye and Ear Hospital

The Royal Women's Hospital

West Gippsland Hospital

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly:*

*Legislative Council:*

The long title for the Bill for this Act was "A Bill for an Act to specify requirements that the operators of certain publicly funded health facilities staff certain wards with a minimum number of nurses or midwives, to provide for the reporting of compliance with, and enforcement of, those requirements and for other purposes."