

# Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Amendment Bill 2020

## Introduction Print

### EXPLANATORY MEMORANDUM

#### Clause Notes

##### Part 1—Preliminary

- Clause 1 sets out the main purposes of the Bill, which are—
- to amend the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015** (the Principal Act)—
    - to amend the rounding method used when determining staffing requirements; and
    - to amend certain nurse to patient and midwife to patient ratios on specified shifts in certain wards; and
    - to reclassify Warrnambool Base Hospital as a level 2 hospital; and
  - to amend the **Child Wellbeing and Safety Act 2005** to require providers of certain maternal and child health services to employ or engage nurses for those services only if the nurses have prescribed maternal and child health nursing qualifications.
- Clause 2 sets out commencement arrangements for the Bill.
- Clause 2(1) provides for the provisions of the Bill to come into operation by proclamation subject to the commencement arrangements set out.

Clause 2(2) provides that clauses 8, 9, 10, 11 and 14 come into operation on the day after the day on which the Bill receives the Royal Assent.

Clause 2(3) provides that clause 6 comes into operation on 1 March 2021.

Clause 2(4) provides that clauses 4, 5, 7, 12, 13 and 15 come into operation on 1 July 2022.

Clause 2(5) provides for clauses other than clauses 4 to 15 to come into operation on a day or days to be proclaimed, or on the day that is the anniversary of the day on which the Bill receives the Royal Assent.

## **Part 2—Amendment of Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015**

Clause 3 provides that in the Bill the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015** is called the Principal Act.

Clause 4 amends section 3 of the Principal Act to amend an existing definition and insert a new definition.

Subclause (1) amends the definition of *general medical or surgical ward* in section 3 of the Principal Act to substitute paragraph (b) of that definition so that it refers to a short stay observation area.

Subclause (2) inserts the new definition of *short stay observation area* into section 3 of the Principal Act, which is defined to mean 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. It is necessary to include this new definition to distinguish a short stay observation area from a general medical or surgical ward, as clause 7 of the Bill amends the method for determining a ratio for mixed wards under section 12A of the Principal Act in a way that makes specific provisions for a nominated mixed ward that consists of a short stay observation area as a portion of the nominated mixed ward.

Clause 5 amends section 10 of the Principal Act to amend the application of ratios in small hospitals, in particular the requirement to staff a hospital with an After Hours Coordinator.

New section 10(2) of the Principal Act requires the operator of a hospital with only 2 wards to staff, in addition to any other ratio that applies to that hospital if it is a level 4 hospital with only 2 wards, the hospital with one After Hours Coordinator or equivalent position during all off-duty periods of the Director of Nursing or Director of Midwifery.

**Example**

On a Saturday night shift during the off-duty period of the Director of Nursing, a level 4 hospital with 2 acute wards must be staffed with one After Hours Coordinator or equivalent position. This requirement to staff an After Hours Coordinator is in addition to the requirement to staff one nurse for every 10 patients in respect of each of the 2 acute wards (in accordance with the ratio applying under section 18(1)(c) of the Principal Act). Subject to new section 10(3) of the Principal Act the After Hours Coordinator is not required to be supernumerary.

Under new section 10(3) of the Principal Act the After Hours Coordinator staffed at a level 4 hospital with one ward in accordance with section 10(1)(b) of the Principal Act or staffed at a hospital with only 2 wards in accordance with section 10(2) of the Principal Act is not required to be supernumerary (that is, the operator of a hospital in each case may choose to have the staffed After Hours Coordinator meet any other ratio requirement during the off-duty periods of the Director of Nursing or Director of Midwifery), unless the hospital has at least one of an emergency department that has had at least 2500 annual presentations in the 12 months immediately preceding the day on which the ratio is being applied or a nominated birthing suite, in which case the operator of the hospital must separately staff and count the After Hours Coordinator in addition to any ratio that applies.

**Example**

On a Sunday morning shift during the off-duty period of the Director of Nursing, a level 4 hospital with 2 wards, one of which includes a nominated birthing suite, must be staffed with one After Hours Coordinator or equivalent position. In this case the After Hours Coordinator must be supernumerary (the After Hours Coordinator cannot be counted as contributing to or

fulfilling any other ratio). This requirement to staff an After Hours Coordinator at the hospital is a requirement additional to the requirement to staff one nurse for every 6 patients and one nurse in charge required to be staffed in respect an acute ward (in accordance with the ratio applying under section 18(1)(a) of the Principal Act).

#### **Example**

On a Sunday afternoon shift during the off-duty period of the Director of Nursing, a level 4 hospital that does not have a nominated birthing suite but consists of one acute ward and an emergency department that has had 2000 annual presentations in the 12 months immediately preceding that Sunday must be staffed with one After Hours Coordinator or equivalent position. In this case the After Hours Coordinator is not required to be supernumerary (the After Hours Coordinator can be counted as contributing to or fulfilling any other ratio). This requirement to staff an After Hours Coordinator at the hospital is a requirement additional to the requirement to staff one nurse for every 7 patients and one nurse in charge required to be staffed in respect of an acute ward (in accordance with the ratio applying under section 18(1)(b) of the Principal Act), however in this case the After Hours Coordinator can also be counted towards meeting the ratio applicable to an acute ward and accordingly can be counted as one nurse or nurse in charge in meeting the applicable ratio.

Clause 6 amends section 12 of the Principal Act to stipulate when the new rounding method applies to specified wards or beds.

The new rounding method was introduced by section 5 of the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Amendment Act 2019** on 1 March 2019 and pertains to how staff numbers are calculated when the number of patients in a ward is not evenly divisible by the number of nurses or midwives following the application of the relevant ratio.

Clause 6 amends section 12 of the Principal Act to stipulate the date on which the new rounding method applies in respect of an acute stroke ward, a haematology ward, an oncology ward, the morning shift and the afternoon shift in an aged high care residential ward in all hospitals, and the night shift in a rehabilitation bed in all hospitals.

The amendments by clause 6 of the Bill provide for the complete phasing in of the application of the new rounding method for all ratios applying under the Principal Act, so that in relation to a particular ward on a specified shift, where the actual or expected number of patients in a ward or the number of beds is not divisible into a whole number when the relevant ratio is applied, the operator of the hospital must ensure that the ward or number of beds is staffed with one additional nurse or midwife (as the case requires) in order to comply with the relevant ratio.

- Clause 7 inserts new section 12A(6A) into the Principal Act to stipulate that the provisions under section 12A(6) and (7)(b) of the Principal Act do not apply, in relation to night shifts, to a short stay observation area if the short stay observation area is co-located with an emergency department in a hospital specified in Part 1 of Schedule 3 to the Principal Act and the total number of occupied beds in the short stay observation area and emergency department is 30 or more. This has the effect to require that in respect of such a short stay observation area that is one portion of a nominated mixed ward or a ward that has not been nominated as a mixed ward but otherwise would be required to be nominated as a mixed ward, a nurse in charge must be staffed (in accordance with the ratio that applies respectively under section 15, 16 or 17 of the Principal Act), in addition to any nurse in charge or midwife in charge required to be staffed in relation to any other portion of the nominated mixed ward or ward that has not been nominated as a mixed ward but otherwise would be required to be nominated as a mixed ward.
- Clause 8 amends section 15(b) of the Principal Act to amend the ratio applying to general medical or surgical wards in level 1 hospitals by introducing a requirement to staff one nurse in charge on the night shift on and from 1 July 2021.
- Clause 9 amends section 16(c) of the Principal Act to amend the ratio applying to general medical or surgical wards in level 2 hospitals by introducing a requirement to staff one nurse in charge on the night shift on and from 1 July 2022.
- Clause 10 amends section 17(c) of the Principal Act to amend the ratio applying to general medical or surgical wards in level 3 hospitals by introducing a requirement to staff one nurse in charge on the night shift on and from 1 July 2023.

- Clause 11 amends section 24(2)(c) of the Principal Act to amend the ratio applying to geriatric evaluation management beds by introducing a requirement to staff one nurse in charge on the night shift on and from 1 July 2023.
- Clause 12 amends section 27 of the Principal Act to amend the ratio applying to special care nurseries by introducing a requirement to staff one nurse in charge or midwife in charge on the night shift for special care nurseries which have 8 or more occupied cots.
- Clause 13 substitutes section 31(1)(b) of the Principal Act to amend the ratio applying to birthing suites by introducing a requirement for hospitals with 6 or more nominated birthing suites to staff one midwife in charge on the afternoon shift (on and from 1 July 2023) and on the night shift.
- Clause 14 substitutes section 31A(1)(b) of the Principal Act to amend the ratio applying to postnatal wards by introducing a requirement to staff one midwife in charge or nurse in charge on the night shift on and from 1 July 2022.
- Clause 15 amends Schedule 1 to the Principal Act to list Warrnambool Base Hospital in Part 2 of Schedule 1, making that hospital a level 2 hospital for the purposes of the Principal Act.

### **Part 3—Amendment of Child Wellbeing and Safety Act 2005**

- Clause 16 inserts new Part 7B (sections 46ZAA to 46ZC) into the **Child Wellbeing and Safety Act 2005**.

New sections 46ZAA and 46ZAB of the **Child Wellbeing and Safety Act 2005** provide that the operator of a Maternal and Child Health Centre and a person who operates a state-wide telephone advice service that provides maternal and child health advice must not employ or engage a nurse to provide a prescribed maternal and child health nursing service unless the nurse has a prescribed specialist maternal and child health nursing qualification.

New section 46ZAC of the **Child Wellbeing and Safety Act 2005** provides that new Part 7B is not intended to alter or vary or authorise or require the alteration or variation of an employment contract or any workplace instrument within the meaning of the Fair Work Act 2009 of the Commonwealth. This provision is intended to clarify that where a council has

entered into an enterprise agreement which specifies workplace conditions for nurses employed as maternal and child health nurses, the provisions of the enterprise agreement continue to apply and are not altered or varied by new Part 7B.

- Clause 17 inserts new 46ZD into the **Child Wellbeing and Safety Act 2005** to provide the Governor in Council a regulation making power with respect to any matter or thing required or permitted to be prescribed or necessary to be prescribed to give effect to new Part 7B.

#### **Part 4—Repeal of this Act**

- Clause 18 provides for the automatic repeal of the Bill on 1 July 2023. The repeal of the Bill does not affect in any way the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation Legislation Act 1984**).