FAQs – nurses and midwives

The Victorian Government has delivered on its election commitment and has enshrined Nurse and Midwife to Patient Ratios in law.

The Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015 ensures the number of nurses and midwives per patient are preserved and protected.

Victoria is the first state in Australia to legislate nurse and midwife to patient ratios. This means that all Victorians accessing public hospitals can be assured that wards will be staffed with a minimum number of nurses or midwives.

This is landmark patient safety legislation for Australia and arguably the most comprehensive nursing and midwifery staffing Act anywhere in the world.

Why have Nurse and Midwife to Patient Ratios been legislated?

The Victorian Government has delivered on its election promise to legislate Nurse to Patient and Midwife to Patient Ratios to ensure quality care and better outcomes for patients.

The Government acknowledges the hard work of nurses and midwives across Victoria, and the very significant contribution they make to people's lives, health and wellbeing.

Ratios have contributed to better patient outcomes since they were introduced via the Enterprise Agreement in 2000, and by legislating ratios, the level of nurses and midwives delivering care to Victorians within public hospitals are guaranteed into the future.

What are the ratios that have been legislated?

The legislation replicates the ratios that were contained in the current Nurses and Midwives (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2012–2016.

The hospital levels and different ward types are replicated from the enterprise agreement, ensuring that the current arrangements are maintained once the legislation commences.

Additionally, the legislation includes key elements of the enterprise agreement that relate to the application and interpretation of the ratios.

These provisions ensure that there is sufficient flexibility in the legislation for the ratios to continue to meet the evolving needs of patients, nurses and midwives into the future.
Why have the ratios (Schedule C) been removed from the Enterprise Agreement?

Ratios (Schedule C) needed to be removed from the Nurses and Midwives (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2012–2016 as they cannot coexist in the new Act and the Enterprise Agreement. When ratios existed in the Enterprise Agreement they were enforceable under federal law. Under the Act, ratios are now enforceable under state law.

If under a circumstance where the Act ceases, is repealed, amended or is varied in such a manner as is likely to result in a detriment to the level of safe patient care and nurse/midwife to patient ratios facilitated by the Act, provisions in the amended enterprise agreement provide for a process whereby previous ratio provisions can take effect and be enforceable through the enterprise agreement.

Does this change the way I work?

No. The new legislation does not change the way that nurses and midwives work.

Ratios are already in place within Victorian public hospitals, as required by the enterprise agreement, and this new law guarantees that nurse and midwife ratios will not be threatened during future enterprise agreement negotiations.

When did the legislation commence?

The legislation came into force on 23 December 2015

Who does this new legislation apply to?

The legislation applies to nurses and midwives working in hospitals covered by the Nurses and Midwives (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2012–2016.

What types of services aren’t covered by this legislation?

This legislation only applies to certain wards within Victoria’s public hospitals.

Wards within public hospitals that are not currently obliged to meet ratios under the enterprise agreement are not impacted by this legislation. This includes public mental health services, low and mixed care residential aged services, same-day wards including day surgery, day procedural, chemotherapy and renal dialysis areas.

Services that are not covered by this new legislation include:

- public day admission and procedural wards
- public mental health services
- public low and mixed care residential aged care services
- private and not-for-profit hospitals,
- private and not-for-profit residential aged care services, and
- private and not-for-profit day procedural centres.

Is there any intention to improve ratios into the future?

The Government is committed to working with stakeholders to improve nurse to patient and midwife to patient ratios over time.

What happens if hospitals don’t follow the legislation?

The legislation requires that a local dispute resolution process is followed in the event of an alleged breach of the ratios. This process is be outlined in Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios)
Regulations 2015. It is anticipated that most disputes will be dealt with at a local hospital level, as is currently the case under the Enterprise Agreement.

If the matter cannot be resolved at a local level, an application can be made to the Magistrates’ Court to make a declaration on the alleged breach. This replaces the process under the current enterprise agreement whereby an application can be made to the Fair Work Commission or the Federal Court.

The Magistrates’ Court is empowered to impose a discretionary civil penalty of up to 60 penalty points on the operator of a hospital in the event of a serious and wilful breach of the ratios.

Additionally, the Secretary of the Department of Health & Human Services has powers to issue a Safe Patient Care Compliance Direction to operators of hospitals in regard to any breaches of the legislation. The legislation requires operators of hospitals to comply with an issued directive.

What will happen if I am working in an area that rosters above or below ratios?

The intent of the new legislation is to preserve ratios as were set out in current Enterprise Agreement. Variations to these ratios will remain in place, providing there is a formal written agreement between parties entitled to make the agreement.

Where a ward works below ratio and no formal written agreement exists, operators of the hospital have 12 months from the commencement of the new legislation to meet the required ratios or to propose a ratio variation under the Act.

How much will this new legislation cost the Victorian Government annually?

Ratios are already in place within Victorian public hospitals, as required by the Enterprise Agreement.

It is intended that the ratios in the new legislation will closely replicate those arrangements already in place, therefore there should not be any new costs associated with the introduction of this legislation.