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

**What are my obligations under the new legislation?**

As an employer or a manager you are obliged under law to meet the requirements of a nurse to patient ratio or midwife to patient ratio or ratio variation.

**Is there the ability to apply staffing numbers flexibly?**

Yes. The *Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015* replicates the flexibility provisions around ratios that were contained within the current Enterprise Agreement.

This includes allowing for future proposals for varied arrangements to be considered at a hospital level.

The Act requires that, in any proposal to vary a ratio, the primary consideration must be the impact on the quality of patient care. The basis for ratio variation proposals can be:

- Any redistribution of nursing or midwifery hours;
- Proposals to implement a below-ratios distribution of nursing or midwifery hours;
- A trial of an established alternative staffing model; or
- Entering into a local agreement between the hospital and a relevant union to vary the rostering requirements imposed under a ratio, or the application of the ratios

**What if I 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 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 Industrial Division of the Magistrates’ Court to make a declaration on the alleged breach or to grant an injunction. This replaces the process
under the current enterprise agreement whereby an application can be made to the Fair Work Commission or the Federal Court.

Following an application to the Industrial Division of the Magistrates’ Court, the proceeding shall be listed for a directions hearing and the court will notify the parties of that date.

At the directions hearing the presiding Magistrate will endeavour to ascertain the matters in dispute between the parties and explore the possibility of settlement. If the proceeding cannot be resolved at the directions hearing it will be either:

• referred for mediation to be conducted by a Judicial Registrar of the court at a date to be arranged, or
• listed for hearing before a Magistrate sitting in the Industrial Division

The Magistrates’ Court is empowered to impose a discretionary civil penalty not exceeding 60 penalty points on the operator of a hospital in the event of a wilful and serious breach of the ratios.

Additionally, the Secretary of the Department of Health & Human Services has the 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.

How does a hospital demonstrate compliance with the new legislation?

Hospitals need to be able to demonstrate that all reasonable efforts are being made to comply with legislation.

This could include having documentation of required nurse and midwife staffing levels for each ward, documented evidence of any local agreements and variations to ratios, or documented processes for staff replacement.

Any non-compliance with the legislation declared by the Magistrates’ Court or via the receipt of a Safe Patient Care Directive by the Secretary of the Department of Health & Human Services needs to be reported in the hospital’s Annual Report.

What are the hospitals reporting responsibilities?

Health services must report in their Annual Report the following:

• If the Magistrates’ Court declares that a ratio or a ratio variation was breached, together with the action taken and the details of any civil penalty imposed;
• If the Magistrates’ Court imposes an injunction relating to the legislation;
• If the Magistrates’ Court declares that the hospital has not consulted in good faith with nurses, midwives and relevant unions in respect to a proposed variation to ratio; or
• If a Safe Patient Care Compliance Direction has been issued by the Secretary of the Department of Health & Human Services.

Some hospitals may have struggled to meet ratios due to lack of availability of nurses. Now ratios are law, how will this be managed?

The Government recognises that for some hospitals there may be circumstances where it is challenging to meet the ratio requirements. The legislation therefore includes some flexibility provisions that replicate arrangements within the enterprise agreement.

Where a formal variation to ratio exists as set out in clause 42 of the current Enterprise Agreement, current nurse and midwife staffing levels can be continued following the commencement of the legislation.

Where a formally documented variation to ratio does not exist, operators of hospitals affected by the legislation have 12 months following the commencement of the legislation to either meet the required ratio or to propose a variation to ratio under the provisions in the legislation.

What support is being provided to hospitals to ensure compliance with the new legislation when implemented?
The Department of Health and Human Services has developed an implementation guide for managers, nurses and midwives and to assist hospitals implement the new legislation.

These resources are available via the website: www2.health.vic.gov.au/health-workforce/nursing-and-midwifery/safe-patient-care-act As the legislation is replicating existing arrangements, the impact on hospitals is expected to be minimal.

Any queries relating to the legislation or implementation can be sent to ratios@dhhs.vic.gov.au.

How much will this new legislation cost the Victorian Government and hospitals 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 closely replicate those arrangements already in place, therefore there should not be any new costs associated with the introduction of this legislation.