

# Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Amendment Bill 2018

## Introduction Print

### EXPLANATORY MEMORANDUM

#### Clause Notes

##### Part 1—Preliminary

- Clause 1 sets out the main purpose of the Bill, which is to amend the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015** (the Principal Act)—
- to provide a new rounding method for determining staffing in specified circumstances; and
  - to stipulate how nurse to patient, or midwife to patient, ratios are to be determined in relation to mixed wards to which different ratios are otherwise applicable; and
  - to change the nurse to patient, or midwife to patient, ratio applying to palliative care inpatient units, special care nurseries and birthing suites; and
  - to provide for a nurse to patient ratio in relation to oncology wards, acute stroke wards, resuscitation beds in emergency departments, and haematology wards; and
  - to enable, in specified circumstances, both nurses and midwives to staff a ward for the purpose of meeting staffing requirements for special care nurseries and postnatal wards; and

- to repeal various provisions by which ratios could be varied; and
- to specify certain hospitals as level 1 hospitals and to provide that Sunshine Hospital is restricted in its use of enrolled nurses.

Clause 2 provides for the commencement of the Bill. The commencement scheme for the Bill provides for the commencement of provisions over 3 years to allow for the phased implementation of new ratio requirements under the Principal Act.

Subclauses (1) and (4) provide that Parts 1, 2 and 5 of the Bill come into operation on 1 March 2019, or, as a contingency if the Act does not receive the Royal Assent before or on 1 March 2019, on the day after the day on which the Act receives the Royal Assent. Part 2 of the Bill introduces amendments to the Principal Act that include the provision of a new rounding method for determining staffing numbers to be phased into operation over 5 years, provisions for the calculation of ratios for mixed wards, amendment of the ratios that apply to special care nurseries to enable, in specified circumstances, both nurses and midwives to staff a special care nursery for the purpose of meeting the relevant ratio, the repeal of variation provisions by which ratios could be varied and the specification of certain hospitals as level 1 hospitals.

Subclause (2) provides that Part 3 of the Bill comes into operation on 1 March 2020. Part 3 of the Bill introduces amendments to the Principal Act that include the provision of new nurse to patient ratios to apply in acute stroke wards, oncology wards and haematology wards and amendment of the ratios that apply to special care nurseries.

Subclause (3) provides that Part 4 of the Bill comes into operation on 1 March 2021. Part 4 of the Bill introduces amendments to the Principal Act to amend the nurse to patient ratios that apply to emergency departments.

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.

## Part 2—Phase 1 amendments

Clause 4 sets out definitions of various words and expressions that will be amended or inserted into section 3 of the Principal Act on 1 March 2019 (or the day on which Part 2 of the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Amendment Act 2018** comes into operation if that Act does not receive the Royal Assent on or before 1 March 2019).

Subclause (1) inserts new definitions into section 3 of the Principal Act.

*neonatal intensive care unit* is defined to mean a specialist ward, or part of such a ward, that has the capacity to provide continuous life support and in which comprehensive multidisciplinary care is provided to newborn infants who are critically unwell. This definition is intended to provide certainty in the identification of a neonatal intensive care unit by distinguishing a neonatal intensive care unit from other wards in which care is provided to newborn infants who are well or unwell. A neonatal intensive care unit is distinguished from a special care nursery and a postnatal ward by the fact that a neonatal intensive care unit has the capacity to provide continuous life support and complex care to critically unwell newborn infants.

*nominated mixed ward* means a ward named in a notice published under section 12A of the Principal Act. Clause 6 of the Bill inserts new section 12A(1) into the Principal Act to provide a process for an operator of a hospital to nominate a ward as a mixed ward.

Subclause (2) substitutes the definition of *below ratios distribution* in section 3 of the Principal Act to mean a proposal made under section 34(1) before the repeal of that section by section 15 of the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Amendment Act 2018**. This amendment is required to reflect the repeal of section 34 of the Principal Act by clause 15 of the Bill.

Subclause (3) amends the definition of *ratio* in section 3 of the Principal Act to remove reference to "Division 2 or 3 of" Part 2. This amendment reflects that with the insertion of new section 12A of the Principal Act by clause 6 of the Bill the term now applies throughout Part 2 of the Principal Act.

Subclause (4) substitutes the definition of *special care nursery* in section 3 of the Principal Act to mean a ward, or part of such a ward, in which care is provided solely to newborn infants who are unwell but who do not require the level of care and treatment provided to newborn infants in a neonatal intensive care unit. This definition is intended to provide certainty in the identification of a special care nursery by distinguishing a special care nursery from a neonatal intensive care unit and a postnatal ward. A special care nursery is distinguished from a postnatal ward by the fact that a special care nursery provides care only to newborn infants and not to both newborn infants and their birth mothers.

Subclause (5) repeals definitions in the Principal Act that are no longer required. The repeal of the definition of *normal care nursery* reflects that hospitals no longer operate wards known as normal care nurseries. The repeal of the definition of *redistribution principles* is consequential upon the repeal of section 34 of the Principal Act by clause 15 of the Bill.

Clause 5 amends section 12 of the Principal Act to set out a new rounding method to be applied 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.

Subclause (1) substitutes section 12(1) and (2) of the Principal Act. New section 12(1) and (2) provide for a new rounding method to apply in specified circumstances. New section 12(1) provides that, on a specified date and 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 ratio. New section 12(1) effectively provides that the number of nurses or midwives (as the case requires) must be "rounded up" in specified circumstances when the relevant ratio is applied.

New section 12(1)(a)–(e) of the Principal Act specify the wards and hospitals to which the new rounding method is to apply from specified dates. The new rounding method is to be phased into operation over 5 years, progressively applying to specified wards on 1 March 2019 (or the day on which Part 2 of the **Safe Patient**

**Care (Nurse to Patient and Midwife to Patient Ratios)**

**Amendment Act 2018** comes into operation if that Act does not receive the Royal Assent on or before 1 March 2019), 1 March 2020, 1 March 2021, 1 March 2022 and 1 March 2023.

*Example:*

*On 16 June 2021, in a 32 bed general medical or surgical ward in a level 3 hospital, the ratio requirements on an afternoon shift are one nurse for every 6 patients and one nurse in charge. The number of 32 occupied beds is not evenly divisible into a whole number when divided by 6 in applying the relevant ratio, as 32 divided by 6 equals 5, with 2 beds remaining. As 16 June 2021 is a date after 1 March 2021, the operator of the hospital must "round up" the number of staff for the ward and staff the ward with an additional nurse in order to comply with the ratio, in accordance with new section 12(1)(c)(ii)(A). Accordingly, the total number nurses required to be staffed on the ward is 6 nurses.*

New section 12(2) of the Principal Act provides that if on a date in relation to which a ward (other than a nominated mixed ward) or a number of beds is staffed to comply with a ratio for a particular category of ward or bed the new rounding method under new section 12(1) does not apply to that particular category, the operator is not required to ensure that the ward or number of beds is staffed with an additional nurse or midwife in order to comply with the relevant ratio unless—

- (a) safe patient care may be compromised if the ward or number of beds is not staffed with the additional nurse or midwife; and
- (b) the actual or expected number of patients in the ward or the number of beds requires more than 50 per cent of one additional nurse or midwife in order to comply with the ratio.

Effectively, new section 12(2) provides that if on a date the new rounding method does not apply to a ward in accordance with new section 12(1), the operator of the hospital is not required to engage an additional nurse or midwife to comply with a ratio requirement where safe patient care would not be compromised and under the application of the relevant ratio 50 per cent or less

of an additional nurse or midwife is required in order to comply with the ratio.

*Example:*

*On 16 June 2020, in a 32 bed general medical or surgical ward in a level 3 hospital, the ratio requirements on an afternoon shift are one nurse for every 6 patients and one nurse in charge. The number of 32 occupied beds is not evenly divisible into a whole number when divided by 6 in applying the relevant ratio, as 32 divided by 6 equals 5, with 2 occupied beds remaining, which is 33 per cent of the number of patients in occupied beds that would require an additional nurse to be staffed on the ward to comply with the ratio. New section 12(1)(c)(ii)(A) of the Principal Act provides that the new rounding method that would require an additional nurse to be staffed where the number of beds is not divisible into a whole number following the application of the relevant ratio is to apply from 1 March 2021 in respect of afternoon shifts for general medical or surgical wards in level 3 hospitals. As 16 June 2020 is a date before 1 March 2021, in accordance with new section 12(2) of the Principal Act the new rounding method does not apply and the operator of the hospital may "round down" the number of staff for the ward and not staff the ward with an additional nurse in order to comply with the ratio, where safe patient care would not be compromised and where the number of beds on the ward requires 50 per cent or less of one additional nurse in order to comply with the ratio. Accordingly, the operator in this case is not required to staff an additional nurse where safe patient care will not be compromised.*

Under the operation of new section 12(1) and (2) of the Principal Act the new rounding method will not apply in respect of the nurse to patient ratios applicable under section 19 of the Principal Act to aged high care residential wards for both the morning and afternoon shift and in respect of the nurse to patient ratios applicable under section 24(1) of the Principal Act to rehabilitation beds for the night shift, as these categories of ward or bed are not listed in new section 12(1).

Subclause (2) repeals section 12(4) of the Principal Act as this provision describes the old rounding method and is no longer required upon the substitution of section 12(1) and (2) of the Principal Act by subclause (1).

Clause 6 inserts new section 12A into the Principal Act.

New section 12A requires operators of hospitals to nominate wards to which more than one ratio requirement would apply and provides a mechanism for the calculation of unique ratios to apply to nominated mixed wards in place of the ratios that would otherwise apply to portions of the ward.

New section 12A(1) and (2) of the Principal Act require operators of hospitals to nominate wards to which more than one ratio would apply. New section 12A(1)(b) sets out the information that the operator must publish on the hospital's Internet site.

New section 12A(3)–(5) of the Principal Act directs how a ratio for a nominated mixed ward is to be determined, based on the details of a nominated mixed ward published by the operator of a hospital in accordance with new section 12A(1) or (8) (as the case requires). A ratio calculated for a nominated mixed ward in accordance with section 12A(3) is to apply to the nominated mixed ward for the relevant 6 month period referred to in new section 12A(1) or the remainder of the 6 month period referred to in new section 12A(8).

Under new section 12A(3)(a) of the Principal Act, the first step in calculating the ratio applicable to a nominated mixed ward is to apply the relevant ratio to the portion of the ward to determine the number of staff required for that portion.

Under new section 12A(4) of the Principal Act, when undertaking the first step in calculating the ratio applicable to a portion of a nominated mixed ward in accordance with new section 12A(3)(a), if the number of occupied beds in a portion is not divisible into a whole number following the application of the relevant ratio for that portion, the number of staff for that portion may be rounded down to the nearest whole number if at least one (but not all) of the portions of the nominated mixed ward is a portion to which new section 12(2) of the Principal Act would apply if the portion were a ward. That is, where in a nominated mixed ward there is a mixture of at least one portion to which an applicable ratio would require staff numbers to be "rounded up" in accordance with new section 12(1) of the Principal Act and at least one portion to which staff numbers would be available to be "rounded down" under the operation of new section 12(2) of the Principal Act as under the application of the relevant ratio

the actual or expected number of patients or the number of beds requires 50 per cent or less than one additional staff member, the figure of staff required for a portion available to be rounded down may be rounded down to the nearest whole number at this first step in section 12A(3)(a).

*Example:*

*On 16 June 2020, on the morning shift in a level 3 hospital a 30 bed nominated mixed ward contains 2 portions. Portion A is a portion of 17 beds operated as general medical or surgical beds. Portion B is a portion of 13 beds operated as beds for palliative care patients. Under section 17(a) of the Principal Act, the relevant ratio requirement for Portion A on the morning shift is one nurse for every 5 patients, plus one nurse in charge. The relevant ratio requirement for Portion B on the morning shift is one nurse for every 4 patients, plus one nurse in charge. The number of staff (excluding any nurse in charge) required for the Portion A is determined by dividing 17 by 5, returning a figure of 3.40 nurses required. The number of staff (excluding any nurse in charge) required for Portion B is determined by dividing 13 by 4, returning a figure of 3.25 nurses required.*

*New section 12(1)(b)(i)(A) of the Principal Act provides that the new rounding method that would require an additional nurse to be staffed where the number of beds is not divisible into a whole number following the application of the relevant ratio is to apply from 1 March 2020 in respect of the morning shift for general medical or surgical wards in level 3 hospitals. That is, on 16 June 2020 the ratio applicable to general medical or surgical wards in level 3 hospitals is a ratio that is required to be "rounded up".*

*New section 12(1)(c)(i)(A) of the Principal Act provides that the new rounding method that would require an additional nurse to be staffed where the number of beds is not divisible into a whole number following the application of the relevant ratio is to apply from 1 March 2021 in respect of morning shifts for palliative care inpatient units in all hospitals. As 16 June 2020 is a date before 1 March 2021, in accordance with new section 12(2) the new rounding method does not apply and the operator of the hospital may "round down" the number of staff for a palliative care inpatient unit and not staff the ward with an additional nurse in order to comply with the ratio, where safe patient care would not be compromised and where the number of beds on the*



*ward requires 50 per cent or less of one additional nurse in order to comply with the ratio.*

*As this nominated mixed ward contains at least one portion that would be required to be "rounded up" if it was a ward (Portion A), and one portion that would be available to be "rounded down" if it was a ward (Portion B), the figure of staff required for the portion of the nominated mixed ward that would be available to be rounded down if the portion were a ward (Portion B) may be rounded down to the nearest whole number. Accordingly, the figure of staff required for Portion A is unaltered and is 3.40, whereas the figure of staff required for Portion B may be rounded down to give an adjusted figure of 3.*

Under new section 12A(3)(b) of the Principal Act, the second step in calculating the ratio applicable to a nominated mixed ward is to add the number for each portion of the ward to ascertain the total number of staff required for the nominated mixed ward. This staff figure is reflective of the proportions of the ratios that apply to the portions of the ward.

*Example:*

*Where the staff figure for a Portion A of a nominated mixed ward has been calculated to be 3.40 nurses and the staff figure for a Portion B of the ward has been calculated to be 3 nurses, the total number of nurses required for the entire nominated mixed ward is 6.40 nurses.*

Under new section 12A(3)(c) of the Principal Act, the third step in calculating the ratio applicable to a nominated mixed ward is to divide the total number of occupied beds in the nominated mixed ward by the total number of staff required for the nominated mixed ward that has been ascertained under new section 12A(3)(b) by adding the numbers of staff required for each portion of the ward.

*Example:*

*Where the total number of nurses required for an entire nominated mixed ward of 30 occupied beds is 6.40 nurses the ratio for the nominated mixed ward is calculated by dividing 30 by 6.40, returning a ratio of one nurse for every 4.69 patients.*

New section 12A(5) of the Principal Act provides if the number of occupied beds in the nominated mixed ward is not divisible into a whole number following the application of the ratio for

the ward determined under new section 12A(3)(c), the operator of the hospital must ensure that the ward is staffed with an additional nurse or midwife (as the case requires) in order to comply with that ratio unless section 12(2) would apply to each portion of the ward if each portion were a ward. That is, in applying a nominated mixed ward ratio to the number of occupied beds in the nominated mixed ward, the figure of staff required must be "rounded up", unless all portions of the nominated mixed ward would be available to be "rounded down" if they were wards and less than or equal to 50 per cent of one additional staff member would be required in order to comply with the ratio and safe patient care would not be compromised if the ward is not staffed with the additional staff member.

*Examples:*

- 1 A ratio of one nurse for every 4.69 patients is determined under new section 12A of the Principal Act to be the ratio for a nominated mixed ward. Applying the ratio to the ward when it has 20 occupied beds requires dividing 20 by 4.69, returning a figure of 4.26. As the figure of 4.69 is not divisible into a whole number when applied to the number of 20 occupied beds, an additional nurse is required in order to comply with the ratio and the figure of 4.26 nurses to be staffed on the ward must be rounded up to 5 nurses.*
- 2 A nominated mixed ward of 32 beds consists of 2 portions, Portion C and Portion D, both of which have ratios to which section 12(2) of the Principal Act would apply if each portion were a ward. The figure of nurses required to be staffed for the ward in respect of Portion C is calculated to be 4.20 nurses. The figure of nurses required to be staffed for the ward in respect of Portion D is calculated to be 2.75 nurses. The total number of nurses required for the entire nominated mixed ward is 6.95 nurses. The ratio for the nominated mixed ward is determined by dividing 32 by 6.95, returning a ratio of one nurse for every 4.60 patients. Applying the ratio to the ward when it has 24 occupied beds requires dividing 24 by 4.60, returning a figure of 5.21. As all portions of the nominated mixed ward would be available to be rounded down, the figure of 5.21 nurses may be rounded down to 5 nurses if safe patient care would not be compromised if the ward is not staffed with the additional staff member.*

New section 12A(6) of the Principal Act provides that where there is more than one category of patients or beds within a nominated mixed ward to which a ratio applies that requires a nurse in charge or a midwife in charge (as the case requires), only one nurse in charge or midwife in charge (as the case requires) is required to be staffed for the entire nominated mixed ward, rather than multiple nurses in charge, multiple midwives in charge, or a mixture of nurses and midwives in charge.

New section 12A(7) of the Principal Act sets out the default position in respect of the application of ratios to a mixed ward where the operator of a hospital fails to nominate a ward as a mixed ward in accordance with new section 12A(1).

New section 12A(8) of the Principal Act requires that where the operator of a hospital takes action to change the configuration of a nominated mixed ward during the 6 month period of 1 March–31 August or 1 September–the final day of February, resulting in significantly different categories of patients or beds to which a particular ratio applies or significantly different numbers of occupied beds in these categories, the operator is required to make a new nomination for the remainder of the relevant 6 month period. A new ratio for the nominated mixed ward is to be determined in accordance with new section 12A(3) of the Principal Act using the updated data published in accordance with new section 12A(8).

New section 12A(9) of the Principal Act provides that a ward that contains a special care nursery with 8 or more occupied cots or a ward with 6 or more birthing suites is not to be nominated as a mixed ward in accordance with new section 12A.

New section 12A(10) of the Principal Act defines *portion* to mean, for the purposes of section 12A, in relation to a mixed ward, a category of patients or beds in a mixed ward to which a particular ratio applies.

Clause 7 repeals section 18(2) of the Principal Act, which provides that 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 apply in respect of the patients in those beds, rather than the ratio that might otherwise apply in respect of an acute ward in a level 4 hospital. Section 18(2) will not be required from 1 March 2019 (or the day on which Part 2 of the **Safe Patient Care (Nurse to Patient and Midwife to Patient**

**Ratios) Amendment Act 2018** comes into operation if that Act does not receive the Royal Assent on or before 1 March 2019) as clause 6 of the Bill inserts new section 12A into the Principal Act which directs how a ratio is to be calculated for a ward that is configured to provide a mixture of clinical services, including a ward in a level 4 hospital that operates partly as an acute ward and partly as a ward that provides care to aged high care residents.

- Clause 8 repeals section 20(2) of the Principal Act and makes an amendment to section 20(1)(c)(i) that is consequential to that repeal.
- Clause 9 repeals section 24(3) and (4) of the Principal Act. Section 24(3) will not be required from 1 March 2019 (or the day on which Part 2 of the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Amendment Act 2018** comes into operation if that Act does not receive the Royal Assent on or before 1 March 2019) as clause 6 of the Bill inserts new section 12A into the Principal Act which directs how a ratio is to be calculated for a ward that is configured to provide a mixture of clinical services, such as in the case referred to in section 24(3). Section 24(4) will not be required from 1 March 2019 (or the day on which Part 2 of the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Amendment Act 2018** comes into operation if that Act does not receive the Royal Assent on or before 1 March 2019) as clause 6 of the Bill inserts new section 12A(6) into the Principal Act which provides that only one nurse in charge or one midwife in charge (as the case requires) is required for a ward where there is a mixture of beds such as the mixture described in section 24(4).
- Clause 10 substitutes section 27 of the Principal Act to set out the ratios that apply to special care nurseries from 1 March 2019 (or the day on which Part 2 of the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Amendment Act 2018** comes into operation if that Act does not receive the Royal Assent on or before 1 March 2019) and to provide that, in specified circumstances, a midwife is eligible to be staffed in order to meet ratio requirements applicable to a special care nursery. Section 27(1) of the Principal Act is substituted a second time on 1 March 2020 by clause 24 of the Bill.

New section 27(3) of the Principal Act sets out the requirements for a nurse or a midwife to be eligible in order to be staffed to meet a ratio applicable to a special care nursery. Specifically, a nurse or a midwife must have completed the equivalent of at least 64 hours' employment per fortnight as a nurse or a midwife during a 12 month period or a minimum of 64 hours' placement in a special care nursery supernumerary to the relevant ratio.

New section 27(1)(a) of the Principal Act provides that the operator of a hospital must staff a special care nursery with 9 or fewer occupied cots with one nurse or midwife and, for every 4 occupied cots beyond 4, one other person, being either a nurse or a midwife. New section 27(2) of the Principal Act directs that in all circumstances the operator of a hospital must staff a special care nursery with 6 occupied cots with 2 persons, each being either a nurse or a midwife.

*Examples:*

- 1 A special care nursery with 6 occupied cots must be staffed with 2 persons, each being either a nurse or a midwife.*
- 2 A special care nursery with 8 occupied cots must be staffed with 2 persons, each being either a nurse or a midwife.*
- 3 A special care nursery with 9 occupied cots must be staffed with one nurse or midwife in respect of the first 4 occupied cots. In respect of the 5 occupied cots beyond 4, a ratio of one other person, being either a nurse or a midwife, for every 4 occupied cots beyond 4 applies. When applied, this ratio requires one nurse or a midwife and 25 per cent of one additional nurse or a midwife to be staffed in order to comply with the ratio. As the ratios applying to a special care nursery from 1 March 2019 (or the day on which Part 2 of the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Amendment Act 2018** comes into operation if that Act does not receive the Royal Assent on or before 1 March 2019) until 29 February 2020 are available to be "rounded down" in accordance with new section 12(2) of the Principal Act to be inserted by clause 5 of the Bill, the operator of the hospital may elect to not staff an additional nurse or a midwife where safe patient care would not be compromised. The total number of staff required for 9 occupied cots may be 2 persons, each being either a nurse or midwife.*

New section 27(1)(b) of the Principal Act provides that the operator of a hospital must staff a special care nursery with 10 occupied cots with 3 persons, each being either a nurse or a midwife.

New section 27(1)(c) of the Principal Act provides that the operator of a hospital must staff a special care nursery with 11 or more occupied cots with 4 persons, each being either a nurse or a midwife, and one additional nurse or midwife for every 3 additional occupied cots beyond 11.

*Examples:*

- 1 *A special care nursery with 14 occupied cots must be staffed with 4 persons, each being either a nurse or a midwife, in respect of the first 11 occupied cots, and one additional nurse or midwife in respect of the 3 additional occupied cots beyond 11. The total number of staff required for 14 occupied cots is 5 persons, each being either a nurse or a midwife.*
- 2 *A special care nursery with 15 occupied cots must be staffed with 4 persons, each being either a nurse or a midwife, in respect of the first 11 occupied cots, and one additional nurse or midwife in respect of each 3 additional occupied cots beyond 11. In respect of the 4 occupied cots beyond 11, a ratio of one other person, being either a nurse or a midwife, for every 3 occupied cots beyond 11 applies. When applied, this ratio requires one nurse or a midwife and 33 per cent of one additional nurse or a midwife to be staffed in order to comply with the ratio. As the ratios applying to a special care nursery from 1 March 2019 (or the day on which Part 2 of the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Amendment Act 2018** comes into operation if that Act does not receive the Royal Assent on or before 1 March 2019) until 29 February 2020 are available to be "rounded down" in accordance with new section 12(2) of the Principal Act to be inserted by clause 5 of the Bill, the operator of the hospital may elect to not staff an additional nurse or a midwife where safe patient care would not be compromised. The total number of staff required for 15 occupied cots may be 5 persons, each being either a nurse or a midwife.*

New section 27(4) of the Principal Act requires an operator of a hospital to consider prescribed criteria in assessing whether a special care nursery should be staffed beyond the minimum number of staff required when the relevant ratio under section 27(1) is applied to the ward.

Clause 11 amends section 28 of the Principal Act.

Subclause (1) amends section 28 of the Principal Act to provide that the ratios that apply to neonatal intensive care units apply to all hospitals.

Subclause (2) inserts new section 28(2) into of the Principal Act to require the operator of a hospital to take into account prescribed criteria in assessing whether a neonatal intensive care unit should be staffed beyond the minimum number of staff required when the ratio under section 28(1) is applied to the ward.

Clause 12 amends section 30 of the Principal Act to remove any references in that section to postnatal wards. The ratios applicable to postnatal wards are provided for in a new standalone provision in new section 31A of the Principal Act inserted by clause 14 of the Bill.

Clause 13 amends section 31 of the Principal Act.

Subclauses (1)–(4) substitute all references to "delivery suites" in section 31 to "birthing suites".

Subclause (5) substitutes section 31(6) and inserts new section 31(7)–(10) into the Principal Act to provide for a mechanism by which the operator of a hospital must determine and publish notice of the nominated birthing suites of the hospital.

Under new section 31(6) of the Principal Act the operator of a hospital must publish a determination of the number of occupied birthing suites for the 6 month period of 1 March–31 August by the end of February and for the 6 month period of 1 September–the final day of February by the end of August in each year.

New section 31(7) of the Principal Act provides that in making a determination under new section 31(6) the operator of a hospital must take into account the number of birthing suites used for birthing or midwifery assessments during the preceding 12 months and any factors which are likely to vary the number of birthing suites to be used during the following 6 month period.

New section 31(8) of the Principal Act provides that if the operator determines that fewer birthing suites were used during the preceding 12 months on Saturdays and Sundays, the operator may determine the number of occupied birthing suites in the hospital that is applicable only on Saturdays and Sundays for the relevant 6 month period.

New section 31(9) of the Principal Act provides that the operator of a hospital must provide information used by the operator to make a determination under section 31(6) or (8) of the number of occupied birthing suites to the relevant union upon request.

New section 31(10) of the Principal Act defines *midwifery assessment* to mean, for the purposes of section 31, an assessment of an outpatient by a midwife in a birthing suite for the purposes of assessing the outpatient in relation to the outpatient's pregnancy. New section 31(10) of the Principal Act defines *nominated birthing suite* to mean, for the purposes of section 31, a birthing suite that is one of a number of birthing suites determined to be occupied under section 31.

Clause 14 inserts new section 31A into the Principal Act. New section 31A sets out ratio requirements for postnatal wards in all hospitals. New section 31A(1)(a) provides that the operator of a hospital must staff a postnatal ward with one midwife or nurse for every 4 patients and one midwife in charge or a nurse in charge on both the morning and afternoon shift. New section 31A(1)(b) provides that the operator of a hospital must staff a postnatal ward with one nurse or midwife for every 6 patients on the night shift.

New section 31A(2) of the Principal Act requires the operator of a hospital to ensure that in meeting a ratio applicable to a postnatal ward under section 31A(1)(a)(i) or (b), at least one midwife must be staffed on all shifts and not more than one nurse can be staffed on a shift. New section 31A(3) of the Principal Act sets out the requirements for a nurse to be eligible to be staffed to meet a ratio applicable to a postnatal ward. Specifically, a nurse must have completed a minimum of 48 hours' placement in a postnatal ward supernumerary to the relevant ratio, and must be undertaking a postgraduate midwifery program while employed by the hospital.

New section 31A(3)(c) of the Principal Act also allows for



further eligibility requirements in respect of nurses to be prescribed in the regulations.

Clause 15 repeals sections 33, 34 and 35 of the Principal Act.

The repeal of sections 33, 34 and 35 of the Principal Act removes the ability of an operator of a hospital to vary ratios by way of a redistribution of nursing or midwifery hours, a below ratios distribution or a trial of an alternative established staffing model. Existing variations to ratios made under these provisions that are in operation before the repeal of sections 33, 34 and 35 are saved under new section 50 inserted into the Principal Act by clause 17 of the Bill.

Clause 16 inserts new section 41(5) into the Principal Act.

New section 41(5) of the Principal Act provides that the local dispute resolution process under section 41 does not apply to alleged breaches of staffing requirements introduced under Part 2 of the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Amendment Act 2018** for a period of 180 days commencing on the day on which that Part comes into operation. It follows that there can be no referral of a local dispute (being a dispute initiated by way of a notification under section 41(1)) to the Magistrates' Court under section 42 of the Principal Act of any alleged breaches of staffing requirements introduced under Part 2 of the amending Bill during this 180 day period. This is to ensure that the operators of hospitals have sufficient time to recruit additional nurses and midwives to meet the new staffing requirements under Part 2 of the amending Act.

Clause 17 inserts new section 50 into the Principal Act.

New section 50(1) of the Principal Act sets out a saving provision for any redistribution of nursing or midwifery hours made and implemented under section 33 of the Principal Act (or a redistribution of nursing or midwifery hours taken under section 49(1) of the Principal Act to be a redistribution under section 33(1)) which is in operation immediately before the repeal of section 33 by clause 15 of the Bill. An operator of a hospital that complies with this redistribution proposal will be taken to comply with the relevant ratio during the relevant period of the redistribution proposal.

New section 50(2) of the Principal Act sets out a saving provision for any below ratios distribution implemented under section 34 of the Principal Act (or a distribution of nursing or midwifery hours taken under section 49(2) of the Principal Act to be a below ratios distribution) that is in effect immediately before the repeal of section 34 by clause 15 of the Bill. An operator of a hospital that has implemented this below ratios distribution will be taken to comply with the relevant ratio during the relevant period of the below ratios distribution.

New section 50(3) of the Principal Act sets out a saving provision for any alternative staffing model being applied under section 35(2) or (3) of the Principal Act (or taken under section 49(3) of the Principal Act to be a trial under section 35(1)) immediately before the repeal of section 35 by clause 15 of the Bill. An operator of a hospital that is applying an alternative staffing model will be taken to comply with the relevant ratio during the relevant period of the alternative staffing model.

- Clause 18 amends Part 1 of Schedule 1 to the Principal Act to classify Casey Hospital, Monash Children's Hospital and Sunshine Hospital as level 1 hospitals.
- Clause 19 amends Part 2 of Schedule 1 to the Principal Act to omit Sunshine Hospital from classification as a level 2 hospital, consequential to the classification of Sunshine Hospital as a level 1 hospital by clause 18 of the Bill.
- Clause 20 amends Schedule 2 to the Principal Act to omit the reference to "Sunshine Hospital". Sunshine Hospital is re-categorised as a level 1 hospital, rather than a level 2 hospital, under the operation of clauses 18 and 19 of the Bill. The intent of the amendment by clause 20 is to provide that Sunshine Hospital is not unrestricted in its use of enrolled nurses in meeting ratios in relation to general medical or surgical wards. In accordance with section 14 of the Principal Act, Sunshine Hospital will not be able to use more than 20 per cent enrolled nurses in meeting ratios in relation to general medical or surgical wards.

### Part 3—Phase 2 amendments

Clause 21 sets out definitions of various words and expressions that will be amended or inserted into section 3 of the Principal Act on 1 March 2020.

Subclause (1) inserts new definitions into the Principal Act that are required to provide certainty in identification of the types of ward to which new ratios to be inserted into the Principal Act by the Bill are to apply.

***acute stroke ward*** means a multi-day inpatient ward, or part of such a ward, in which comprehensive care and monitoring of patients with strokes in the hyperacute or the acute phase is provided and that has the capacity to provide thrombolysis.

***haematology ward*** means a multi-day inpatient ward, or part of such a ward, that is dedicated to the care of patients with blood cancers and related diseases primarily affecting bone marrow or blood cells and in which—

- (a) treatment is provided involving complex and high dose chemotherapy regimens and stem cell transplants; and
- (b) symptoms including, but not limited to, sepsis, febrile neutropenia, tumour lysis syndrome and disseminated intravascular coagulopathy are managed.

It is not intended that all patients must be receiving treatment involving both complex and high dose chemotherapy regimens and stem cell transplants on a haematology ward at any one time for the ward to be defined as a haematology ward, only that the ward has the capacity to provide such treatment to those patients and manage associated symptoms.

***oncology ward*** means a multi-day inpatient ward, or part of such a ward, dedicated to the care and non-surgical treatment of patients with cancer (other than those receiving treatment in a haematology ward) that has the capacity to administer complex chemotherapy.

Subclause (2) amends the definition of ***acute ward*** in section 3 of the Principal Act to ensure that an acute stroke ward is not to be considered to fall within the definition of an acute ward.

Clause 22 inserts new sections 21A, 21B and 21C into the Principal Act.

New section 21A of the Principal Act sets out new ratio requirements for acute stroke wards in all hospitals.

New section 21A provides that the operator of a hospital must staff an acute stroke ward with one nurse for every 3 patients and one additional nurse in charge on all shifts.

New section 21B of the Principal Act sets out new ratio requirements for oncology wards in all hospitals.

New section 21B(a) provides that the operator of a hospital must staff an oncology ward with one nurse for every 4 patients and one nurse in charge on both the morning and afternoon shift. New section 21B(b) provides that the operator of a hospital must staff an oncology ward with one nurse for every 8 patients and one nurse in charge on the night shift.

New section 21C of the Principal Act sets out new ratio requirements for haematology wards in level 1 hospitals.

New section 21C(a) provides that the operator of a level 1 hospital must staff a haematology ward with one nurse for every 3 patients and one nurse in charge on both the morning and afternoon shift. New section 21C(b) provides that the operator of a level 1 hospital must staff a haematology ward with one nurse for every 5 patients and one nurse in charge on the night shift.

Clause 23 amends section 23 of the Principal Act.

Subclause (1) amends section 23(b)(i) of the Principal Act to provide that the operator of a hospital must staff a ward that is a palliative care inpatient unit with one nurse for every 4 patients on the afternoon shift.

Subclause (2) amends section 23(c) of the Principal Act to provide that that the operator of a hospital must staff a ward that is a palliative care inpatient unit on the night shift with one nurse for every 6 patients and one nurse in charge.

Clause 24 substitutes section 27(1) of the Principal Act to set out the ratios that apply to special care nurseries from 1 March 2020. The effect of this substitution is essentially to amend the ratios that apply to special care nurseries so that in addition to the existing ratios (applicable under section 27 of the Principal Act as substituted by clause 10 of the Bill) a nurse in charge or a midwife in charge is required to be staffed on both the morning

and afternoon shift where a special care nursery has 8 or more occupied cots.

New section 27(1)(a) of the Principal Act requires that the operator of a hospital must staff a special care nursery with 7 or fewer occupied cots, on all shifts, with one nurse or midwife and for every 4 additional occupied cots beyond 4, one other person, being either a nurse or a midwife.

New section 27(1)(b)(i) of the Principal Act requires that the operator of a hospital must staff a special care nursery with 8 or 9 occupied cots, on both the morning and afternoon shift, with one nurse or midwife and for every 4 additional occupied cots beyond 4, one other person, being either a nurse or a midwife, and a nurse in charge or midwife in charge.

New section 27(1)(b)(ii) of the Principal Act requires that the operator of a hospital must staff a special care nursery with 8 or 9 occupied cots, on the night shift, with one nurse or midwife and for every 4 additional occupied cots beyond 4, one other person, being either a nurse or a midwife.

New section 27(1)(c)(i) of the Principal Act requires that the operator of a hospital must staff a special care nursery with 10 occupied cots, on both the morning and afternoon shift, with one nurse or midwife and 2 other persons, each being either a nurse or a midwife and a nurse in charge or midwife in charge.

New section 27(1)(c)(ii) of the Principal Act requires that the operator of a hospital must staff a special care nursery with 10 occupied cots, on the night shift, with 3 persons, each being either a nurse or a midwife.

New section 27(1)(d)(i) of the Principal Act requires that the operator of a hospital must staff a special care nursery with 11 or more occupied cots, on both the morning and afternoon shift, with 4 persons, each being either a nurse or a midwife, and one person for every 3 additional occupied cots beyond 11 and a nurse in charge or midwife in charge. New section 27(1)(d)(ii) of the Principal Act requires that the operator of a hospital must staff a special care nursery with 11 or more occupied cots, on the night shift, with 4 persons, each being either a nurse or a midwife and one person for every 3 additional occupied cots beyond 11.

*Examples:*

- 1 On 16 June 2020, on the night shift, a special care nursery with 14 occupied cots must be staffed with 4 persons, each being either a nurse or a midwife, in respect of the first 11 occupied cots, and one additional nurse or midwife in respect of the 3 additional occupied cots beyond 11. The total number of staff required for 14 occupied cots is 5 persons, each being either a nurse or a midwife.*
- 2 On 16 June 2021, on the night shift, a special care nursery with 15 occupied cots must be staffed with 4 persons, each being either a nurse or a midwife, in respect of the first 11 occupied cots, and one additional nurse or midwife in respect of each 3 additional occupied cots beyond 11. In respect of the 4 occupied cots beyond 11, a ratio of one person, being either a nurse or a midwife, for every 3 occupied cots beyond 11 applies. When applied, this ratio requires one nurse or a midwife and 33 per cent of one additional nurse or a midwife to be staffed in order to comply with the ratio. As the ratios applying to a special care nursery must be "rounded up" in accordance with new section 12(1)(c)(v)(A) of the Principal Act to be inserted by clause 5 of the Bill, the operator of the hospital must staff an additional nurse or a midwife as the number of 4 additional cots beyond 11 is not divisible into a whole number following the application of the ratio of one nurse or a midwife for every 3 additional occupied cots beyond 11. The total number of staff required for 15 occupied cots is 6 persons, each being either a nurse or a midwife.*

Clause 25 substitutes section 31(1) of the Principal Act.

New section 31(1) of the Principal Act requires the operator of a level 1 hospital, a level 2 hospital or a level 3 hospital with 6 or more nominated birthing suites to provide a midwife in charge on the morning shift. The midwife in charge is in addition to the 2 midwives required for every 3 nominated birthing suites on the morning shift. (The requirement to ensure that 2 midwives for every 3 nominated birthing suites are provided on all shifts is re-enacted in new section 31(1)(a).)

#### Part 4—Phase 3 amendments

- Clause 26 inserts a definition of *resuscitation bed* into section 3 of the Principal Act on 1 March 2021. A resuscitation bed is a bed in an emergency department that is allocated for the assessment, resuscitation and treatment of patients with critical conditions and that is being used for that purpose. A bed that has been allocated as a resuscitation bed is intended to only be a resuscitation bed for the purposes of the Principal Act (including in respect of the ratios that apply to a resuscitation bed) where the bed is being used as a resuscitation bed. A bed in an emergency department that is allocated as a resuscitation bed that is being used for the care of a patient other than for the assessment, resuscitation and treatment of a patient with critical conditions is not a resuscitation bed.
- Clause 27 amends section 20(1) of the Principal Act to set out new ratio requirements for resuscitation beds in the emergency departments of hospitals specified in Part 1 of Schedule 3 to the Principal Act.
- Subclause (1) inserts the words "(including any resuscitation bed)" after the word "beds" into section 20(1)(a)(i) of the Principal Act. This amendment clarifies that the new ratio requirements for resuscitation beds that apply on the afternoon and night shifts of emergency departments of hospitals specified in Part 1 of Schedule 3 to the Principal Act do not apply on the morning shift.
- Subclause (2)(a) inserts the words "(not including any resuscitation bed)" after the word "beds" in section 20(1)(b)(i) of the Principal Act while subclause (2)(b) inserts new section 20(1)(b)(ia) into the Principal Act. New section 20(1)(b)(ia) provides that the operator of a hospital specified in Part 1 of Schedule 3 to the Principal Act must staff a ward that is an emergency department with one nurse for each resuscitation bed on the afternoon shift. The nurse assigned to the resuscitation bed is in addition to the ratios set out in section 20(1)(b)(i), (ii) and (iii) of the Principal Act.
- Subclause (3)(a) inserts the words "(not including any resuscitation bed)" after the word "beds" in section 20(1)(c)(i) of the Principal Act while subclause (3)(b) inserts new section 20(1)(c)(ia) into the Principal Act. New section 20(1)(c)(ia) provides that the operator of a hospital specified in Part 1 of Schedule 3 to the Principal Act must staff a ward that is an

emergency department with one nurse for each resuscitation bed on the night shift. The nurse assigned to the resuscitation bed is in addition to the ratios set out in section 20(1)(c)(i), (ii) and (iii) of the Principal Act.

The operator of a hospital will continue to be able to apply a ratio in a flexible way under section 9 of the Principal Act in order to evenly distribute the workload in an emergency department. For instance, a nurse assigned to a resuscitation bed under new section 20(1)(b)(ia) or (c)(ia) may be redeployed to staff a bed in an emergency department that is not a resuscitation bed, having regard to the level of care required by patients in the emergency department. It is not intended that a nurse staffed in respect of a resuscitation bed can only provide care to patients in a resuscitation bed.

#### **Part 5—Repeal of amending Act**

Clause 28 provides for the automatic repeal of this amending Act on 1 March 2022. The repeal of this Act does not affect in any way the continuing operation of the amendments made by this Act (see section 15(1) of the **Interpretation Legislation Act 1984**).