

Hospital and Health Boards (Safe Nurse-to-Patient and Midwife-to-Patient Ratios) Amendment Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Hospital and Health Boards (Safe Nurse-to-Patient and Midwife-to-Patient Ratios) Amendment Bill 2015 (the Bill).

Policy objectives and the reasons for them

The objective of the Bill is to establish a legislative framework to ensure safe nursing and midwifery staff numbers and improve patient outcomes, through mandating nurse-to-patient and midwife-to-patient ratios ('ratios') and workload provisions in public sector health service facilities.

International research has shown that the number of nurses or midwives to the number of patients, and the work environment, have a clear impact on patient outcomes. A higher percentage of nurses or midwives to patients can lower patient mortality. Through minimum ratios, persons receiving care and treatment will benefit from improved patient safety and quality of care. In turn, this provides greater patient satisfaction and improved patient outcomes, including reduced re-admission rates and reduced post-operative mortality rates. Minimum ratios also provide safer workloads for the front-line public sector nursing and midwifery workforce, to improve recruitment and retention, staff satisfaction, and greater workforce sustainability.

Currently, ratios are not legislatively mandated in Queensland. Instead, public sector health facilities utilise the *Queensland Health Business Planning Framework: Nursing Resources* (BPF) to determine appropriate nursing and midwifery staff levels to safely meet service requirements. The BPF is industrially-mandated under the *Nurses and Midwives (Queensland Health) Certified Agreement (EB8) 2012*.

The BPF sets out the methodology to assist a Hospital and Health Service (Service) to calculate the nursing and midwifery hours required to provide an appropriate, professional and safe standard of health service. Factors taken into account when determining these hours include: activity, acuity/complexity, performance targets, technology, physical layout and environment of the work area, workforce supply, service quality, and patient and staff safety. The BPF aims to achieve a balance between health service demand and the supply of nursing resources to meet that demand.

Under the *Nursing Guarantee* policy, the Government has committed to legislate mandated ratios and workload provisions to ensure patient safety and high quality patient care. These

ratios will set the minimum nursing and midwifery numbers required to appropriately and safely manage service requirements. Their legislated use within the public sector will further support existing nursing and midwifery workload management frameworks and processes such as the BPF.

Achievement of policy objectives

The Government has endorsed ratios of one nurse or midwife to four patients (1:4) for morning and afternoon shifts, and one nurse or midwife to seven patients (1:7) for night shifts. The ratios will apply to prescribed acute wards, units or departments within prescribed public sector health service facilities. It is proposed that ratios will be gradually implemented in Services, in a phased manner, from 1 July 2016.

The Bill amends the *Hospital and Health Boards Act 2011* (Hospital and Health Boards Act) to establish the legislative framework for mandating ratios in public sector health service facilities. The Hospital and Health Boards Act provides for the delivery of public sector health services and other health services in Queensland. In line with the objects and guiding principles of this Act, which include ensuring quality and safety in the delivery of public sector health services, the Act is an appropriate legislative instrument for mandating ratios in the public sector.

The Bill inserts a new division into part 6 of the Hospital and Health Boards Act to provide the required heads of power and associated provisions for mandated ratios.

The Bill inserts a primary head of power that enables the Government to legislate for minimum ratios. The actual ratios will be prescribed in a regulation ('a nursing and midwifery regulation') rather than being prescribed in the Act. Additional flexibility and specificity is provided by enabling ratios to be prescribed in a nursing and midwifery regulation by stated Services; at stated facilities and parts of facilities (i.e. wards, units or departments); and at stated times and circumstances. This approach has been taken to ensure that the legislative scheme has sufficient flexibility to enable ratios to be gradually implemented in Services in a phased manner. The Bill also makes provision for a nursing and midwifery regulation to prescribe requirements about the skills or qualifications of the nurses or midwives included in the ratios, if necessary.

The Bill enables the Minister to grant a Service a temporary exemption from compliance with a nursing and midwifery regulation. This will enable the Government to respond to extenuating circumstances that may temporarily prevent a Service from complying with ratios. A temporary exemption may exempt a Service from compliance with all or part of the regulation or vary the application of the regulation to the Service so that it imposes a lesser requirement. The Minister may also place conditions on the exemption.

Before deciding to apply a nursing and midwifery regulation to a Service, or grant or extend a temporary exemption from compliance with a nursing and midwifery regulation, the Minister will be required to consider the Service's capability to comply with the regulation and also consider the likely effects of compliance.

In addition to requiring prescribed facilities to comply with ratios, the Bill requires those facilities to comply with workload provisions, as a means of ensuring safe staffing levels. To achieve this, the Bill enables the chief executive of the department to make a standard that

outlines requirements about nursing and midwifery workload management by a Service. A standard may include requirements for how a Service calculates its nursing and midwifery staffing requirements; develops and implements strategies to manage staff supply and demand; or evaluates staff performance. A standard will be binding on a Service in respect of those wards to which ratios will apply.

The Bill also includes provisions enabling the chief executive of the department to require Services to provide the chief executive with nursing and midwifery workload management information, and enabling the chief executive to publish that information. Nursing and midwifery workload management information may include information about a Service's compliance with ratios, the standard and the BPF. It is intended that Services will be required to provide data on compliance with ratios and a standard for prescribed facilities and wards, and compliance with the BPF for non-prescribed facilities and wards.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives of the Bill.

Estimated cost for government implementation

Implementation of the legislative framework for mandated ratios and workload management standards will cost approximately \$25.9 million in the first year, to be funded from within existing Service budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. A potential breach of fundamental legislative principles is addressed below.

Whether legislation has sufficient regard to the institution of Parliament – *Legislative Standards Act 1992, sections 4(4) and 4(5)*

New section 138E, inserted by clause 5 of the Bill, empowers the chief executive of the department to make standards about nursing and midwifery workload management by a Service, as a means of ensuring safe nurse staffing levels. A standard made under this provision will not be subordinate legislation. Given this, it may be argued that this power does not have sufficient regard to the institution of Parliament.

To address this potential breach of fundamental legislative principles, the Bill provides that the Minister must notify the making of a standard and that the Minister's notice is subordinate legislation. As subordinate legislation, a notice made by the Minister is subject to the requirements of section 49 of the *Statutory Instruments Act 1992*, which specifies that in order for subordinate legislation to come into effect, it must be tabled in the Legislative Assembly within 14 sitting days after it is notified under section 47 of the *Statutory Instruments Act 1992*. Once a notice is tabled, the notice could be disallowed under section 50 of the *Statutory Instruments Act 1992*. Should a notice be disallowed, the relevant standard would cease to have any effect.

Consultation

Targeted consultation on the Bill was undertaken by providing an exposure draft to the following stakeholders:

- Hospital and Health Services
- Queensland Nurses' Union
- Australian Workers' Union
- Together Union
- Australian College of Nursing
- Australian College of Midwives
- Australian College of Nurse Practitioners
- Australian College of Mental Health Nurses
- Australian Medical Association Queensland
- Health Ombudsman
- Schools of Nursing and Midwifery (Australian Catholic University, Griffith University, James Cook University, Queensland University of Technology, University of Sunshine Coast, University of Queensland, University of Southern Queensland)
- Private Hospitals Association of Queensland
- Brisbane North Private Hospitals Network
- Anglicare Southern Queensland
- Mater Health Services
- Uniting Care Health
- Pindara Private Hospital Ramsay Health
- Ramsay Health Greenslopes Private Hospital
- The Wesley Hospital Uniting Care Health
- Friendly Society Private Hospital
- Maternity Choices Australia
- Midwifery and Maternity Provider Organisation Australia
- BUPA
- Royal Flying Doctor Service Queensland.

Stakeholder feedback was considered during the development of the Bill and, where appropriate, incorporated into the Bill.

Consistency with legislation of other jurisdictions

Nurse-to-patient and midwife-to-patient ratios have been in place in Victoria under an enterprise bargaining framework since 2000. In October 2015, the Victorian Government legislated to mandate minimum ratios. The *Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015* enshrines in legislation the ratios currently set out in the *Nurses and Midwives (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2012-2016* (Enterprise Agreement). The Act will come into operation on a date to be proclaimed, and will apply to those departments and wards that are currently required to have ratios under the Enterprise Agreement. This includes certain wards within public health services, public hospitals, publicly operated denominational hospitals and multi-purpose services, and residential aged care facilities.

No other Australian jurisdiction has mandated compliance with ratios or workload management provisions in legislation. New South Wales (NSW) has implemented minimum staffing in public sector health facilities from 2010, as part of their wages and working conditions industrial instrument. The NSW *Public Health System Nurses' and Midwives' (State) Award 2015* provides for specific nursing hours per patient day (NHPPD) to be nominated based on location categories or “peer groups”. The NHPPD are then converted into nurse-to-patient ratios.

Notes on provisions

Short title

Clause 1 provides that, when enacted, the short title of the Act will be the *Hospital and Health Boards (Safe Nurse-to-Patient and Midwife-to-Patient Ratios) Amendment Act 2015*.

Commencement

Clause 2 provides for the Act to commence on 1 July 2016.

Act amended

Clause 3 provides that this Act amends the *Hospital and Health Boards Act 2011*.

Amendment of s 46 (Delegation by chief executive)

Clause 4 amends section 46(2) to provide that the chief executive's power to make a nursing and midwifery workforce management standard under new section 138E must not be delegated. This position is consistent with an existing provision in section 46(2) that prevents the chief executive of the department from delegating their power to issue a health service directive or health employment directive.

Insertion of new pt 6, div 4

Clause 5 inserts new division 4 into part 6 of the Hospital and Health Boards Act comprising new sections 138A-138F.

New section 138A defines key terms used in new division 4 including *midwife*, *nurse*, *nursing and midwifery regulation* and *nursing and midwifery workload management information*. Consistent with other health portfolio legislation, the terms *midwife* and *nurse* have been defined with reference to the Health Practitioner Regulation National Law. However, they have also been defined separately in this Bill to recognise their status as separate professions. The term *nurse* will include both a registered nurse and an enrolled nurse.

New section 138B is the primary head of power that enables the Government to legislate for minimum ratios. The actual ratios will be prescribed in a regulation (known as a *nursing and midwifery regulation*). The amendments will enable ratios to be prescribed by stated Services; at stated facilities or parts of facilities; at stated times; and in stated circumstances. For example, a regulation may require that, in each acute surgical ward in a particular public sector hospital, between 7am and 3pm each day, that there be at least one nurse for every four patients. New section 138B also enables a nursing and midwifery regulation to prescribe requirements relating to the skills and qualifications of midwives and nurses included in the ratios. For example, a nursing and midwifery regulation may prescribe requirements about the percentage of nurses of a particular type that may be used to meet ratios on a ward.

Nurses or midwives who are included in ratios may include nurses and midwives who are physically present at or near the place where the health service is being delivered (i.e. a prescribed ward) and are available to become immediately involved in delivering patient care on the ward if needed. The intent of this provision is to give Services the flexibility to determine appropriate staffing solutions in response to health service requirements by utilising the skills and abilities of nursing and midwifery staff such as shift co-ordinators,

when required. The provision is also intended to ensure that if a nurse or midwife temporarily leaves a prescribed ward, but remains proximate to it, the Service will remain compliant with the prescribed ratio during their temporary absence.

New section 138C allows the Minister to temporarily exempt a Service from the requirement to comply with a nursing and midwifery regulation. A temporary exemption may exempt a Service from compliance with all or part of a nursing and midwifery regulation, or temporarily vary the application of a nursing and midwifery regulation to a Service so that it imposes a lesser requirement. This will enable the Government to respond to extenuating circumstances that may temporarily prevent a Service from complying with ratios. Such circumstances may include, but are not limited to, challenges in:

- recruiting and training staff,
- providing appropriate levels of supervision and support, or
- providing accommodation and other infrastructure for additional staff.

The Minister may grant a temporary exemption for a stated period of not more than three months, and place conditions on the exemption. The Minister may also extend an exemption for a further stated period of not more than three months. Thus, the total continuous period of a temporary exemption must not be more than six months. The Minister's notice of exemption must be made in writing and published on the department's website.

New section 138D applies if the Minister proposes to prescribe a Service under a nursing or midwifery regulation, or temporarily exempt a Service from compliance with a nursing and midwifery regulation. It provides that the Minister must consider the Service's capability to comply with the regulation, and the likely effects of compliance. This is similar to the approach taken in section 46 of the Hospital and Health Boards Act for prescribing Services to administer the human resource management and industrial relations processes for employees. The Bill includes examples of matters the Minister may consider including:

- the likely financial costs of compliance;
- any matter that may affect the ability of the Service to recruit and retain staff;
- the infrastructure that the Service has, or can acquire, to support staff; and
- the potential effects, on health services delivered by the Service, of actions the Service may reasonably need to take to comply with the regulation.

New section 138E provides a head of power enabling the chief executive of the department to make standards about nursing and midwifery workload management by a Service. A standard may include requirements about how a Service:

- calculates its nursing or midwifery human resource requirements,
- develops and implements strategies to manage nursing and midwifery resource supply and demand, or
- evaluates the performance of its nursing or midwifery staff.

A standard may also include requirements about reporting nursing and midwifery workload management information to the chief executive. A standard will be binding on a Service, but will only apply to those wards that are subject to ratios pursuant to a nursing and midwifery

regulation made under section 138B. It is intended that the methodology in the BPF will provide the basis for the standard.

Once the chief executive has made a standard the Minister must notify the making of the standard. The Minister's notice is subordinate legislation, and is therefore subject to Parliamentary scrutiny and potential disallowance pursuant to the tabling and disallowance provisions in sections 49 and 50 of the *Statutory Instruments Act 1992*, respectively. This approach is consistent with legislative models for making standards and guidelines in the *Private Health Facilities Act 1999*, *Public Health (Infection Control for Personal Appearance Services) Act 2003* and *Radiation Safety Act 1999*.

New section 138E(10) clarifies the relationship between a standard made under new section 138E and a regulation. It provides that if it is not possible for a Service to comply with both the standard and a regulation in relation to a particular matter because of an inconsistency between them, the regulation prevails to the extent of the inconsistency.

New section 138F provides for the collection and publishing of nursing and midwifery workload management information. It is intended that under this provision, Services will provide the chief executive of the department with information regarding their compliance with ratios and the standard in respect of prescribed facilities and wards, and their compliance with the BPF in respect of non-prescribed facilities and wards. The chief executive may then publish that information.

Amendment of section 279 (Delegation by Minister)

Clause 6 amends section 279 to provide that the Minister's power to grant or extend a temporary exemption under new section 138C must not be delegated.

Amendment of sch 2 (Dictionary)

Clause 7 amends the dictionary in schedule 2 to insert definitions for those key terms introduced in new section 138A.