

# EBA 2020.

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## PUBLIC SECTOR EBA CAMPAIGN UPDATE #11 PUBLIC SECTOR MENTAL HEALTH SPECIAL EBA UPDATE 11 SEPTEMBER 2020

# Nurses and Midwives Enterprise Agreement 2020-2024 and the Mental Health Enterprise Agreement 2020-2024

### Drafting of the public sector Nurses and Midwives Enterprise Agreement 2020-2024

The work to include all the benefits ANMF members achieved in bargaining for nurses and midwives employed in the public sector (but not nurses employed in a public mental health service) is expected to be completed in the week commencing 14 September 2020.

This work has involved some of the most complex drafting ever undertaken due to some of the achievements we have made, requiring a complete re-write of:

- the long service leave clause to address all the different sources of the entitlement, the improved circumstances that will count as service, and the phasing in of access to long service leave after seven years of service.
- the classifications and grades to properly reflect a contemporary four stream nursing and midwifery career structure, with the addition of a disputes panel to ensure every nurse and midwife is properly classified under the agreement.

You can read full details of the changes (as discussed and endorsed at our statewide April meeting) via EBA update 8 – [anmfvic.asn.au/EBAupdate8](http://anmfvic.asn.au/EBAupdate8)

### Next steps for the Nurses and Midwives Enterprise Agreement 2020-2024

Ordinarily, the next step would be for the proposed Nurses and Midwives Enterprise Agreement 2020-2024 to be distributed to employees who will be covered by it, and then a vote take place to seek majority support for the proposed agreement. The agreement would then be the subject of an application to the Fair Work Commission for approval and becomes legally enforceable seven days after that approval.

### Does your ward/unit/small workplace have two Job Reps?

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However, following the endorsement of the outcome by members in April, the Health Services Union (HSU) No. 2 Branch (Health and Community Services Union or HACSU) commenced various proceedings in the Fair Work Commission against the ANMF and/or the Victorian Hospitals' Industrial Association (VHIA) which represents public health service employers. This included HACSU writing to the Federal Attorney General and Industrial Relations Minister Christian Porter seeking to stop the Nurses and Midwives Enterprise Agreement 2020-2024 from being capable of approval by Fair Work.

### What is the dispute about?

There are two main enterprise agreements applying to nurses in the public health sector:

- the Nurses and Midwives Enterprise Agreement – which applies to all nurses and midwives in the public health sector, except nurses employed solely or predominantly in the provision of public mental health services.
- the Mental Health Agreement – which applies to all employees employed solely or predominantly in the provision of public mental health services, whether nurses or not.

In negotiations for the proposed Nurses and Midwives Enterprise Agreement 2020-2024, the VHIA agreed to a minor amendment sought by the ANMF to the EBA definition of registered nurse and enrolled nurse. This amendment sought to explain what the term *employed solely or predominantly in the provision of public mental health services* meant to avoid future disputation over which EBA applies. This was particularly relevant in the context of Andrews Government's election commitment to create a number of "hubs" within emergency departments to enhance early treatment and intervention for those presenting to the emergency department in crisis related to alcohol and other drugs (AOD) or mental health.

It was (and remains) ANMF's view that patients presenting to emergency departments are emergency department patients, and nurses employed to provide care for emergency presentations are emergency department nurses, and the Nurses and Midwives Enterprise Agreement should apply. These circumstances could not logically result in the emergency department, or part of it, becoming solely or predominantly a public mental health service.

HACSU argue that it is mental health nursing, rather than employment by or in a public mental health service, that should determine which EBA applies. This proposition is not consistent with either the previous words, or the long-standing way in which the two EBAs have operated.

The change we negotiated makes it clear that being '**employed solely or predominantly in the provision of Public Mental Health Services**', refers to **the service, department, unit or program of the employer rather than the duties of the individual employee**. This is entirely consistent with how the two EBAs have always operated.

To further clarify, we added an example relating to the ED hubs which states "*a Registered or Enrolled Nurse who works in an ED Hub in an Emergency Department providing treatment for people that present with mental health and alcohol and other drug issues is covered by this Agreement given the work of the relevant department as a whole*"

There are mental health nurses working in emergency departments who are, and will remain covered by the Mental Health Agreement, such as ECATT nurses, this is so because they are part of the employer's mental health program. ANMF has repeatedly confirmed this with HACSU in writing.

### **Full Bench Fair Work proceedings**

In order to avoid these multiple proceedings further delaying the Nurses and Midwives Enterprise Agreement 2020-2024, ANMF entered into an agreement with the HSU to have the dispute with HACSU arbitrated before a Full Bench of the Fair Work Commission. This is to be in full and final settlement of all matters.

The Full Bench will hear the matters as follows:

- an initial two-day block on Wednesday, 7 October 2020 and Thursday, 8 October 2020;
- a second two-day block on Thursday, 29 October 2020 and Friday, 30 October 2020; and
- if a fifth day is required, on Friday, 6 November 2020.

### **How does this impact on finalising the Nurses and Midwives Enterprise Agreement 2020-2024?**

The decision of the Full Bench will determine whether the 'new words' remain in the Nurses and Midwives Enterprise Agreement 2020-2024 or whether we revert back to the 'old words'.

Until that is determined we cannot proceed to have a vote on, or seek Fair Work approval for the Nurses and Midwives Enterprise Agreement 2020-2024, the same applies to the replacement Mental Health Agreement.

### **Negotiations for the 2020-2024 Mental Health Agreement**

ANMF and HACSU continue to meet with VHIA and DHHS to finalise negotiations for the replacement Mental Health EBA.

Negotiations are proceeding well, with many matters agreed in principle.

ANMF welcomes the many new nurse members joining us from public mental health services, details of previous ANMF mental health campaign updates can be found via [anmfvic.asn.au/EBA2020mentalhealthnursing](https://anmfvic.asn.au/EBA2020mentalhealthnursing)

There have been some difficulties arising from HACSU not wanting ANMF to be at the table while they discuss non-nursing claims. To protect the interests of our mental health nurse members, and indeed the integrity of mental health nursing in public mental health services, it is critical that ANMF understands the impact of HACSU's non-nursing claims on nurses.

The creation of new roles may result in substitution of nurses for other mental health workers or may require nurses to take responsibility for the work of others. It is crucial that we are not dealt out of those discussions.

### **Stay informed and involved**

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