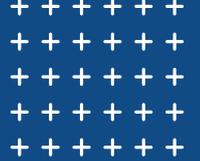


EBA 2020.

- > PUBLIC SECTOR NURSES AND MIDWIVES
- > PUBLIC SECTOR MENTAL HEALTH SERVICES
- > VICTORIAN INSTITUTE OF FORENSIC MENTAL HEALTH



EBA CAMPAIGN UPDATE # 9

26 JUNE 2020

General public health services AND public mental health services.

Public sector EBA drafting continues, ANMF and its legal team working to ensure that the HACSU action won't delay benefits

The ANMF, the Victorian Hospitals' Industrial Association and the Department of Health and Human Services continue with the necessary drafting work to put together a 2020-2024 EBA to replace the Nurses and Midwives (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2016-2020 (the 2016 Public EBA). That work involves amending the previous agreement to reflect all the improvements endorsed by members at the statewide meeting on 16 April 2020.

The improvements around some provisions are very complex, such as long service leave, parental leave and the disputes panel, and are being progressed in separate meetings – but are nearing completion - and these clauses will be inserted into the new proposed EBA once complete. The last piece of the drafting jigsaw puzzle is the revised classifications and career streams, particularly for those nurse and midwife managers who are at Level 5 or above. Drafting on this was expected to occur in the week commencing 22 June 2020.

Single interest approval

The 2016 Nurses and Midwives EBA applies to over 100 employers, as will the 2020 Nurses and Midwives EBA. To have one enterprise agreement apply to more than one employer, the law requires very strict rules to be followed. S.248 of the Fair Work Act 2009 states that two or more employers may apply to the Fair Work Commission (FWC) for an authorisation (a single interest employer authorisation) under section 249 in relation to a proposed enterprise agreement. That application has been made by the employers and is supported by ANMF. The employers that will be

covered by a proposed enterprise agreement had to first apply to the Federal Minister for Industrial Relations, Christian Porter, for a declaration that they may bargain together. Minister Porter issued that declaration on 12 June 2020.

However, Fair Work Commissioner Harper-Greenwell has delayed issuing the single interest authorisation as a consequence of a HACSU scope application to the Fair Work Commission.

What is the HACSU claim about?

One of the negotiated outcomes endorsed by ANMF members at the 16 April meeting was the revised definitions of registered nurse and enrolled nurse. The 2016 Public EBA defines RN and EN according to their respective registration but excludes “a person employed solely or predominantly in the provision of public mental health services.” HACSU refer to this as “the exclusion clause”.

The purpose of these words in the 2016 Nurses and Midwives EBA was to recognise that some Victorian public sector nurses are employed under the Victorian Public Mental Health Services Enterprise Agreement 2016-2020 (the 2016 Mental Health EBA), which contains a similar provision that limits its coverage to employees employed by an employer (covered by the 2016 Mental Health EBA) and “engaged solely or predominantly in the provision of Mental Health Services”. The 2016 Mental Health EBA applies to nurses in public mental health services, and also to allied health professionals, administrative, cleaning and other staff employed in public mental health services.

The history of the 2016 Mental Health EBA goes back to before

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1997, when the Victorian Government of the day ‘mainstreamed’ the mental health services it operated into the general hospital system. The seventeen employers that the 2016 Mental Health EBA applies to were the employers who took over operating those public mental health services. Before mainstreaming the employees of public mental health services, including nurses, were employees of the state. Historically employees of public mental health services who chose to join a union were members of the Health Services Union. The Health Services Union operates multiple branches in Victoria, including the Health Workers Union (HWU) and the Health and Community Services Union (HACSU). Since mainstreaming nurses have been eligible to join ANMF, and more than half of all nurses who work in public mental health services are ANMF members.

Negotiations for the 2016 Nurses and Midwives EBA involved ANMF and, to a limited degree, HSU who retain some enrolled nurse members. This has been the case for numerous previous EBAs.

Negotiations for the 2016 Mental Health EBA involved ANMF (in respect to registered nurses and enrolled nurses working in public mental health services) and HACSU in respect to the broad coverage of that EBA, including some nurses, allied health staff and administrative staff. This too has been the case for decades.

The new ‘exclusion clause’

A registered nurse may choose to specialise in critical care, renal, alcohol and other drugs or mental health, amongst many other specialities, but this does not mean you change EBA coverage. Regardless of where you may choose to specialise, you remain covered by the 2016 Nurses and Midwives EBA – unless you became an employee of a public mental health service, in which case you would be covered by the 2016 Mental Health EBA. The ANMF sought to ensure this remained the case by both keeping the existing clause that excludes “a person employed solely or predominantly in the provision of public mental health service’ and including a definition of public mental health service in the 2020 General EBA. The proposed new clause states:

In this Agreement, ‘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.

Example: 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.

The example reflected an issue that ANMF was confronting in a couple of health services who are in the process of introducing emergency department mental health and alcohol and other drug hubs (ED Hubs). Patients presenting to ED Hubs are emergency department patients, being cared for by nurses operationally responsible to the Emergency Department Nurse Unit Manager. Just like the staffing of Behavioural Assessment Rooms before ED Hubs the skills of a nurse who specialises in mental health nursing is a welcome addition to the ED team. But specialising in mental health nursing does not make you an employee of a public mental health service, it never has.

This is a different proposition to a nurse employed by a public mental health service, such as an ECATT nurse who despite being stationed in the ED, acts as a gatekeeper for and remains an employee of the public mental health service and therefore covered by the 2016 Mental Health EBA.

ANMF has discussed the new exclusion clause with HACSU numerous times, including in writing and in conferences before the Fair Work Commission. We have even agreed to try and accommodate any concerns they had, including by adding other examples such as the ECATT nurse above, without success. Counterintuitively, HACSU appear to agree that, on their preferred approach, an enrolled nurse working in the ED Hub would be covered by the 2020 Nurses and Midwives EBA, while a registered nurse would be covered by the 2020 Mental Health EBA. Clearly that is not a logical outcome.

The HACSU scope application

The HSU Branch that covers employees of public mental health services, HACSU, who share coverage with ANMF of nurses employed by public mental health services, has taken issue with the proposed new ‘exclusion clause’, and has made an application to Fair Work Australia for what is called a “Scope Order” in relation to the 2020 Nurses and Midwives EBA. While it is proving difficult to pin down what HACSU are actually seeking, it seems they want the 2016 Nurses and Midwives EBA clause to remain the same in the 2020 General EBA, contrary to what was agreed in negotiations with ANMF, VHIA, HSU and Government and endorsed by ANMF members.

That application will not be heard before 3 September 2020.

What does that mean for the Nurses and Midwives EBA 2020?

ANMF will continue to work with the VHIA and DHHS to conclude the steps required to complete the drafting of the Nurses and Midwives EBA 2020. ANMF anticipate this will conclude well before 3 September 2020.

HACSU’s scope application may delay the Fair Work Commission making the single interest authorisation, which in turn will delay the approval of the new Nurses and Midwives EBA 2020.

ANMF anticipates that HACSU will oppose the 2020 Nurses and Midwives EBA being put out to ballot while its scope application is before the FWC. The ballot is a necessary step before the FWC can approve the agreement, and its coming into legal force.

ANMF will vigorously oppose any attempts to delay the 2020 Nurses and Midwives EBA.

What about the 2020 Mental Health EBA?

Both ANMF and HACSU have served their respective logs of claims, as have the employers. Meetings are taking place weekly and have been since 14 May 2020

Notices of Representational Rights for employees have now been finalised and are expected to be issued in coming days

Bargaining meetings for the new Mental Health EBA are not affected.