

**Unfortunately, most nurse and midwife managers don't receive proper training regarding their rights and obligations during disputes.**

### What are my legal obligations?

Protected Industrial Action is legal, and indeed severe legal consequences can follow if a manager is found to have coerced an employee not to take part, or to breach a ban (e.g. open a closed bed). This is called adverse action (see over) and is covered by the General Protections provisions of the Fair Work Act. The individual manager and employer can both be fined.

ANF members who are participating in action covered by the protected industrial action bans are entitled to refuse to do that task or tasks and it would almost certainly be unlawful for management to take action against them.

As a manager you may be breaching the Fair Work Act if you counsel, discipline or report a nurse or midwife for taking protected action, or threaten to do those things.

### What are my legal rights?

You have the same legal rights as the employees you manage. Sometimes as a manager you can feel like the 'meat in the sandwich'. Often managers feel obliged, or are even directed, to oppose the industrial action and ensure as far as possible that the activities of the ward continue. This can then result in conflict with staff on the one hand and management on the other.

You have a right at any time to refuse an unlawful directive, including one that relates to the taking of lawful industrial action.

To avoid potentially breaking the law you should seek confidential advice from ANF or your solicitor if you are directed to take what might be 'adverse action' against another nurse or midwife. As an ANF member you are also protected against 'adverse action' for seeking this support.

For more information you can go to [www.fairwork.gov.au](http://www.fairwork.gov.au) or [www.fwa.gov.au](http://www.fwa.gov.au).

### What about pay docking?

During the 2007 EBA campaign, pay docking featured strongly, as well as harassment of some employees. Both issues created major rifts between some staff and managers during the nine day industrial action campaign that no one would wish to see repeated.

Fortunately the laws have changed with the 2007 election of the Federal Government. Employees taking protected industrial action are not required to have their pay docked.

The employer rationale for docking pay in 2007 was that the then Workplace Relations Act made it mandatory, and this no longer applies. An employer can legally accept the industrial action and continue to pay normally. They can, only if they apply to Fair Work Australia, dock pay 'proportionally', but only under very strict circumstances and there is no 4 hour minimum. ANF does not anticipate employers docking pay where it is no longer mandatory.

### What does ANF recommend I do?

No one wants a return to the days of severe nursing and midwifery shortages and permanent bed closures we endured in the 1990s. It is not good for patients, for nurses and midwives or for hospitals.

ANF understands managers will deal with the campaign in different ways. Some will step forward and lead their staff, others may take a neutral stance, and some may work co-operatively whilst supporting hospital management's position.

Whatever you choose to do, ANF strongly encourages you to engage with ANF staff and unit Job Reps to minimise any unnecessary impact on patients. Meeting with them to discuss how action can be managed, priorities for admissions and ensuring you are kept up to date with communications will mean that working relationships will remain intact and enable all parties to work together co-operatively after the campaign has ended.



**Nurses • Midwives •  
Mental Health Nurses**

**Respect  
our  
work.**

[www.anvic.asn.au](http://www.anvic.asn.au)

**A senior nurse's  
guide to managing  
the 2011 EBA  
campaign**



# Respect our work

**Lisa Fitzpatrick, Secretary, ANF (Vic Branch)**



Victorians respect the work nurses and midwives do, they respect our professional skills and experience and recognise and acknowledge the health benefits and support we bring to the community.

During the 2011 public sector and mental health EBA campaigns the ANF, on behalf of its members, is calling on State Government and employers to acknowledge the value of nurses, midwives and mental health nurses and respect our work and deliver improvements to wages and working conditions.

ANF and its members have achieved many improvements even as demands on Victoria's health system continue to rise, yet the employer and Government EBA claim against nurses and midwives demands efficiency improvements, shorter patient stays and money savings. Their claim seeks to make the care we deliver cheaper.

The following outlines information covering the 2011 EBA campaign, the Fair Work Act and how it applies to industrial action and to your role as a senior nurse, midwife or unit manager. I recognise the difficult situation senior nurses and midwives sometimes find themselves in during an EBA campaign - advocating for patient care, supporting their nursing staff and working with hospital administration and management.

I look forward to continuing to work with you during what will no doubt be a busy and challenging remainder of the year as together we make sure public sector nurses and midwives and mental health nurses continue to be respected for the work we do.

Yours sincerely

A handwritten signature in blue ink that reads "Lisa Fitzpatrick".

Lisa Fitzpatrick  
Secretary, ANF (Vic Branch)

## What is the campaign about?

Decades ago, all nurses and midwives in Victoria received the same wages and conditions for performing the same work – whether public sector, private sector, acute or aged care. In the early 1990s this changed when “enterprise bargaining” replaced Awards throughout Australia as the main source of improvements to wages and conditions.

This has seen variation across sectors. Public and private acute sector nurses and midwives receive higher wages than most private aged care nurses. Public sector nurses and midwives have mandated minimum ratios and private sector nurses and midwives don't. Union agreements consistently contain better conditions than agreements negotiated without a union.

The EBA campaign is about improving conditions for all nurses and midwives, achieving better salaries and ensuring safe workloads, all of which contribute to job satisfaction, recruitment, retention and ultimately safe care to the growing Victorian community.

There is no alternative to enterprise bargaining. It is a process that we must go through every three to four years in all sectors where nurses and midwives work.

The ANF has served a log of claims (the current EBA with a number of improvements) on each of the public and mental health sector employers and now seeks to negotiate those improvements.

## What can I expect?

Historically, public sector and mental health employers are hamstrung by two things:

1. Funding – the increased money needed to improve workloads, wages and conditions can only come from the Government
2. Government Policy – the State Government has issued a wages policy that employers must abide by, for example a wage increase of more than 2.5% can only be granted if offset by ‘bankable’ and agreeable productivity improvements.

This usually results in an unacceptable wage increase offer, coupled with proposals to cut important conditions such as double staffing time or skill mix, which are then rejected by ANF members. In the absence of an acceptable proposal, industrial action has been taken by Victorian ANF public sector members to force the Government to make an acceptable offer. After commencing industrial action in 1997, 2000, 2001, 2004 and 2007 an acceptable negotiated outcome occurred and was accepted by members.

## Is it legal for nurses and midwives on my ward or unit to take industrial action?

The Fair Work Act 2009 allows for “protected industrial action”. This means that it is legal for nurses to take industrial action – provided all the requirements of that Act are met. This includes, for example, the ANF providing your employer with three clear days notice of what action our members may take – allowing them to take the necessary steps to address any health service issues that may arise.

## What the Fair Work Act says about adverse action and industrial activities

The Fair Work Act says in section 346 that adverse action cannot be taken against another person because the other person:

- is or is not, or was or was not, an officer or member of an industrial association; or
- engages, or has at any time engaged or proposed to engage, in industrial activity; or
- does not engage, or has at any time not engaged or proposed to not engage, in industrial activity (which is defined in section 347).

If action is taken against an employee, the employee only has to prove to the Court that they engaged in industrial activity. It is then up to the manager or employer (as the case may be) to positively establish that any adverse action they have taken against the employee was not associated with the employee's industrial activity.

Because of the reverse onus of proof, the employer has to positively establish the adverse action was not taken for reasons that included a “prohibited” reason (such as the employee's involvement in an industrial activity).

## I am an ANF member too. Can I participate?

As a nurse or midwife manager, your terms and conditions are substantially if not solely set by the agreement ANF negotiates. The agreement, through nurse to patient ratios, also ensures you have the minimum staffing and resources to run your unit, which cannot be undermined by budget cuts.

You have the same right to participate in the ANF campaign as every other ANF member in your workplace.