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NEW SECRETARY



Following a unanimous vote of Branch Council, Matthew Daniel has been elected as the new ANMF ACT Branch Secretary. Pictured: Matthew Daniel with Athalene Rosborough, Branch President.

Nothing is more important than our health and the ability to access safe, caring healthcare when we need it the most. Nurses and Midwives working in our hospitals and community centres, aged care facilities, Walk-in Centres, schools, GP clinics, policy development and higher education play a vital role in delivering healthcare to the Canberra community. As the newly appointed Secretary of the ANMF ACT Branch I feel privileged to be representing the professional, industrial and social justice aspirations of ANMF ACT Branch Nurses and Midwives and I look forward to advocating for safe and fair work places that respect and value the work of Nurses, Midwives and Assistants in Nursing. Through the development of happy, healthy and safe workplaces, Nurses and Midwives are supported to do what they do best – provide excellent care to the Canberra community.

Effective representation and advocacy by the Branch is contingent upon strong links between the Branch and our members and ANMF ACT Branch Workplace Delegates are well placed to know and understand the issues that are most important to Nurses and Midwives.

Authorised by Matthew Daniel, ANMF ACT Branch Secretary



The ACT Branch will continue to strengthen the Workplace Delegate framework in 2018. Get to know your Workplace Delegate, share your views with them and support them in the work that they do in promoting the interests of the Nursing and Midwifery professions. If your workplace doesn't have a Workplace Delegate, consider becoming one. Contact the ACT Branch Office to learn more about the role and the skills you can develop as a Workplace Delegate. Workplace Delegates are effective agents for change who can help to make your workplace a great place to work.

The ACT Branch will also have a strong focus on addressing workplace safety and workloads in 2018. ACT Branch members and Workplace Delegates have been clear when voicing concern about workplace safety and workloads and these issues are at the forefront of the Branch's plans for 2018. Our members working in the public sector have told us they expect reasonable, safe workloads and the Branch is pursuing the implementation of a mandated minimum nurse/midwife-to-patient ratios framework. The Branch is also working with ACT Health to achieve safer workplaces for Nurses and Midwives in the public sector through a safety strategy.

Not surprisingly, our members in aged care and the private sector also tell us that workload and Nurse and Midwife safety are key concerns. The importance of safe staffing levels is brought into sharp focus with The Australian Law Commission report Elder Abuse – A National Legal Response (2017) finding that the proportion of RNs and ENs working in aged care has declined while the number of Assistants in Nursing, some of who have no formal qualifications, has increased to 70%. Nationally, the ANMF Federal Office is leading the push for safe staffing and appropriate skills mix in aged care and has called on the Federal Government to introduce a skill mix of Registered Nurses (30%), Enrolled Nurses (20%) and Assistant in Nursing (50%) in aged care facilities. The ANMF is calling for residents of aged care facilities to receive an average of 4 hours and 18 minutes care per day, compared to the current 2.84 hours received. The ACT Branch will be involved

in a national campaign to shed light on aged care in Australia and I urge all ANMF ACT members to support their Nurse colleagues working in aged care by getting involved in planned activities as the campaign unfolds during 2018. In the meantime, visit the ANMF Federal website to review the National Aged Care Staffing and Skills Mix Project report, funded and commissioned by the ANMF, that provides evidence in relation to the right staffing levels and skills mix for residential aged care (visit <http://anmf.org.au/pages/anmf-reports> to review the report).

In 2018, the ACT Branch will continue to invest in our capacity to grow our membership and through increased membership, increase our potential to influence and consolidate the Branch's position as a respected and authoritative voice in the ACT.

Of course, the ACT Branch will continue to provide the same professional and industrial services, access to one free legal consultation with Maurice Blackburn lawyers, and access to member only services such as The Union Shopper.

More broadly, the ANMF ACT Branch will continue to protect your rights and entitlements by maintaining vigilance in relation to any potential changes to workplace laws, Medicare, workers compensation, penalty rates, and superannuation and the Branch will be involved in national and local campaigns to protect workers and communities.

While we look to our plans for 2018, it is important to acknowledge the many successes of the Branch to date. With this in mind, I wish to pay tribute to the previous ACT Branch Secretary, Jenny Miragaya, and acknowledge her many years of work undertaken in the interests of ACT Nurses and Midwives and the Canberra community more broadly. I wish Jenny all the best in her retirement.

Here's to a healthy, safe and successful 2018.

Matthew Daniel
Branch Secretary

So you've had a particularly difficult and busy shift. Patients requiring full care, family members wanting to sort out care plans have pressured you all shift to chase down a doctor from the treating medical team and you've missed your meal breaks to manage your workload. On top of this, one of your patients had a fall getting out of bed while you were showering one of your other patients. You've done what is required by assessing your patient for injury and organising a medical review, reviewed the patient's falls risk and made the necessary notes in the patient's records. But have you done everything necessary? It is important to ensure that you meet both your employer's requirements for reporting incidents as well as Nursing and Midwifery Board of Australia (NMBA) Standards for Practice.

The NMBA Standards for Practice require Registered Nurses to use "...the appropriate processes to identify and report potential and actual risk related system issues..." (Standards for Practice 6.6). This means that Nurses must use the local risk reporting system to report incidents such as patient falls. For Nurses working in the Public Sector, for example,

incidents must be reported via the Riskman system. For Enrolled Nurses, the relevant NMBA Standards for Practice relating to the reporting of incidents may include:

"Reports and documents safety breaches and hazards according to legislative requirements and institutional policies and procedures." (Standard 9.3)

"Practises safely within legislative requirements, safety policies, protocols and guidelines." (Standard 9.4)

For Midwifery, the relevant NMBA Competency Standard may include:

"Complies with policies and guidelines that have legal and professional implications for practice." (Element 1.2)

The NMBA may consider a practitioner's failure to comply with organisation policies and relevant NMBA Standards, in relation to the reporting of incidents, to be behaviour below the level expected of the practitioner.

Margaret Burton Fund

The Margaret Burton Fund was established in memory of Margaret Burton, a Registered Nurse and an active union member. Margaret became active in the fight for better conditions for nurses and the advancement of the nursing profession. The Margaret Burton Fund has been set up to assist current financial union members with the cost of participating in Continuing Professional Development.

Eligibility

To be eligible, members must have a minimum three (3) year financial membership with the ANMF and shown support for the aims of the ANMF ACT Branch.

How To Apply:

For full details on eligibility requirements and to obtain an application form, please contact the ANMF ACT Branch on (02) 6282 9455 or email: anmfact@anmfact.org.au.



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Bullying in the workplace can be by colleagues or by those with whom we interact with in just doing our jobs. Many ANMF members have either been bullied themselves; witnessed a colleague being bullied or know someone who has.

There has been legislative reform over recent years to enable workers to obtain orders to stop bullying but this article will look at what remedies there are for members injured as a result of bullying and in particular Workers Compensation, Common Law and Comcare. This instalment will look at workers compensation and common law and the next instalment will look at Comcare.

ACT Workers Compensation Act 1951

Workers Compensation is a no fault scheme providing benefits for injured private workers in the ACT. Section 4(1) defines injury as 'a physical or mental injury (including stress), and includes aggravation, acceleration or recurrence of a pre-existing injury. Section 4(2) however provides 'Mental injury (including stress) does not include a mental injury (including stress) completely or mostly caused by reasonable action taken or proposed to be taken, by or on behalf of an employer in relation to the transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of a worker or the provision of an employment benefit to a worker'. Workers Compensation although for the benefit of workers thus excludes mental injury that is either completely or mostly caused by reasonable action by the employer in certain circumstances. The result is that a worker who would otherwise have an accepted claim for Workers Compensation will have their claim rejected. That worker would then have to access sick leave for time off and is also excluded from other worker's compensation entitlements such as payment of treatment. This frequently causes argument over the extent of the contribution of work factors to the mental injury and the extent that those work factors might be reasonable. Unlike causes for other work injuries, bullying usually requires 'repeated unreasonable behaviour' directed towards a worker. However, there may be a behaviour directed towards a worker on one occasion only, that may cause a mental injury and an entitlement to claim workers

compensation. However, the worker still has to navigate the excluded injury provisions. Difficulties may emerge where there are complex work relationships or performance issues of a worker running in parallel with allegations of bullying. Where a worker is not performing, and the employer commences a reasonable performance management and the worker then suffers a mental injury, the injury might be excluded. However, in the workplace these issues are often not clear cut. Often there are situations where causes overlap. Interactions may take place over days, weeks or years. It can be very difficult to untangle the complex matrix of what happened and when. There may be difficult evidence issues. Bullies do not regularly bully in front of witnesses or always leave a paper trail. The bullying may not be readily apparent to observers, but may be part of a larger pattern of bullying behaviour only understood by the victim. If there is a dispute or the insurer denies the claim an Application is filed in the Industrial Court but thankfully most matters resolve well before a hearing. If the worker is successful then all of their legal costs are paid by the insurer in addition to their claim and if they are unsuccessful, then it is only in very exceptional circumstances that they would be ordered to pay the insurer's legal costs.

Workers Compensation – Common Law

Where a worker sustains an injury in the course of their employment and the cause of the injury was the 'negligence' of the employer, a separate claim alleging negligence and claiming Common Law damages might be able to be made. Common Law damages are separate to workers compensation and are in addition to workers compensation entitlements. Damages includes damages for full loss of wages (i.e. more than 65% after 26 weeks); gratuitous home help and assistance and 'pain and suffering or damages for non-economic loss'. For more seriously injured workers if they are able to make a common law claim their damages will exceed what they may be able to recover under workers compensation. But there are risks and If the worker is unsuccessful then ordinarily the court would order them to pay the insurer's legal costs and these can be substantial. Common law claims are complex and workers have to

consider this carefully when instructing lawyers. There is a three year time period to commence the claim and it can only be extended in limited circumstances. Additionally, although most, but not all the legal costs will be paid by the insurer and there is ordinarily some legal costs paid by the worker which are called Solicitor/Client legal costs. A common law claim once concluded will bring an end to the workers compensation entitlements. Establishing a common law claim will not necessarily be easy. However, if there has been a pattern of bullying against various workers over time and the employer is aware of the bullying and has not taken appropriate steps and another

worker is bullied and sustains injury they may have a common law claim. Evidentiary challenges will remain. The process will be stressful and workers may prefer to rely upon a workers compensation claim then pursue a common law claim.

So it is important that if you or a colleague are bullied at work or the insurer has declined your workers compensation claim that you contact the ANMF who will be able to refer you to Maurice Blackburn Lawyers for legal advice.

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Ask your ANMF Industrial Officer

Dear ANMF,

I work part-time at the Canberra Hospital and have been thinking about supplementing my shifts by doing some extra shifts with a private agency. Am I allowed to take up a second job?

--Amy

Q&A

Dear Amy,

Thank you for contacting the ANMF.

As you are employed by the ACT Public Service, an issue may arise under the Public Sector Management Act (PSM Act) in regards to you taking on a second job.

Under section 244(1) of the PSM Act, a public servant must have the approval from their manager if they wish to take up a second job.

The process for applying for a second job is outlined under section 108 of Public Sector Standards 2016 which states:

- The public servant in question must tell the head of service, in writing, about an activity as soon as practicable before the public servant plans to start the activity.
- The head of service must tell the public servant if the activity has been approved, in writing, as soon as practicable.

While approval for a second job is ultimately up to the discretion of your manager, section 244(3) states the head of service must not approve any second job which the head of service reasonably believes may:

- (a) Not be consistent with ACT Public Sector principles; or
- (b) Create a real or perceived conflict of interest for the public servant.

However, if your manager refuses your application to take up a second job, you may apply for a review of the decision. So, if you are dissatisfied with their reasoning, contact the ANMF and we can assist you in initiating an Internal Review as outlined under Section Q of the Agreement.

Hope that helps Amy!



Jess Hawkins

Administrative Assistant



It has always been important to me to work for an organisation whose values and ethics match my own, so when a position became available with the Australian Nursing and Midwifery Federation ACT Branch I seized the opportunity with enthusiasm.

Ever since I can remember, I have had a strong sense of right and wrong. As the eldest of three children “standing up for the little guy” is something I have frequently been called upon to do, because no one messes with a sibling, especially one of mine! In my first retail job at 15 years old, I was fortunate enough to be treated very well by my employer, however I

was shocked to witness many friends and classmates enduring less favourable working conditions. I naively thought that everyone was as lucky as I was. A Public Service position five years later gave me my first glimpse of Unions and how important they are in the fight to protect and enhance employee rights and safety. Since then, I have had a keen interest in Unions and what they do.

It has been a dream of mine for many years to become a Registered Nurse, however with a very full plate and three young daughters, I needed to put that on hold for a few years, so I switched my Bachelor of Nursing for a Bachelor of Science (Psychology). While I thoroughly enjoyed my Psychology studies, I could not ignore how passionate I felt about becoming a nurse, so I transferred back across as soon as my youngest was ready for school and I could better manage my study load. Even though my clinical exposure has been limited, watching the Nurses and Midwives strive every day to provide a high standard of care to their patients (including myself and my children on more than one occasion), I know I am following the right path, and working for the ANMF ACT Branch is only enhancing that passion. Since commencing work at the ANMF ACT Branch, I have watched my colleagues provide advice and assistance to many members and it makes me so proud to be a part of the team that is dedicated to protecting our hardworking Nurses and Midwives.

One of the many things I love about the ANMF as an employer (besides the abundance of Tim Tams) is that they practice what they preach. They are so flexible and understanding when it comes to ensuring their staff have a healthy work/life balance and I can honestly say I enjoy waking up and heading to work each day because no two working days are the same, and I feel respected as an employee. I would like to extend a heartfelt thank you to Matt, Thomas, Michael, Tom, Ryhannon and Helen who have all been so welcoming in my first few months. I look forward to a long and fulfilling career within the nursing sector.

Historically, the nursing profession has been dominated by women. Even today, over 88% of Australian nurses identify as female. However, the nursing profession is a distinctly unique sector of the employment market. Traditionally, men and women occupied distinctly separate spheres of life, with men freely participating in the civic and economic life of society while women were too often consigned to unpaid care work, serving the domestic needs of their male providers. It is only in the last several decades that we have witnessed this phenomenon begin to erode with the presence of women. However, the labour laws under which women operate have been largely blind to their presence. It is only very recently that Australian employment law has begun to introduce concepts such as flexible working arrangements, paid parental leave and carer's leave and our labour laws will require further reform such as paid domestic violence leave, if the workplace is to become an accommodating place for women seeking employment.

The History of the 'Ideal Worker'

That the legal definition of an 'employee' was a man was a concept which became firmly established early on in Australian history. Justice H.B. Higgins' famous decision of *Harvester* in 1907 proclaimed that every wage from then on would have to be adequate enough to provide for a “labourer's home of about five persons”: that is, the working man, his wife and their two or three children. That women were to be excluded from this 'living wage' was confirmed in Justice Higgins' later decision of *Federated Clothing Trades* in 1919 in which he declared that a woman's earning capacity “should only be necessary to satisfy the normal needs of an average female employee, who has to support herself from her exertions”. Thus, for a large part of the twentieth century, if a woman was forced to work due to her economic circumstances, Australian labour law ensured that a distinction was enforced between her and her male co-workers which prevented her from earning a 'living wage'—if a woman wanted that, then the law was very clear that she would have to find a husband.

Perhaps the most pernicious aspect of this legally enforced division was that the work women were regulated to do—that is looking after a man's house and his children—was not judged as 'work' of any economic value. For men, the home was not a site of work but, as Justice Higgins surmised in the case of the *Australian Timber Workers' Union v John Sharp*

and Sons Limited (1920), a space for leisure, where a man could pursue “higher things—art, education, science, literature, even hobbies and amusements as he selects”, though not presumably the care of his family. This convenient fiction allowed employers to demand excessive hours and harsh conditions from their male workers because it was presumed that every man had a wife at home to take care of him and his domestic needs. So long as a man could earn a wage, there was no need to consider legal concepts such as paid parental leave, flexible working arrangements or carers' leave because there was always the working man's wife who could take care of such things.

The Modern 'Ideal Worker'— more work, more hours

So where does that leave us today? While women have entered the workforce in larger numbers than ever before, the law still retains the myth that every worker has someone at home looking after their domestic needs. Employers constantly take advantage of this pervading fantasy demanding more work and hours from their workers irrespective of gender. As Sarah Faludi notes, modern feminism, of the 'lean-in' and 'a woman can have it all' variety, “is proffered as a tool to soften—very slightly—the work-till-you-drop corporate work ethic, while leaving the corporate wall (and sixty-hour work week) firmly in place”.

The myth of 'having it all' is even reflected in the trend of the increased casualisation of the workforce: rather than empower employees, the field of short-term, customised contracts has led to the creation of a class of 'secondary workers' who struggle to earn enough on part-time and casual wages while taking on the heavy burden of caring for their families. The economic security and comfort of these secondary workers are too often dependent upon the day by day whims of their employers. Defy their bosses to care for their families and a secondary worker may see their hours cut down or lose their job altogether; work longer and harder to appease their employer and a worker runs the risk of neglecting their family.

So what can be done?

Fundamentally, the last few decades have proven that women entering the workforce is simply not enough to promote positive change. To ensure that work serves us and not the other way around, a more nuanced critique of the greater outrages of modern capitalism—

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longer working hours, mass casualisation, declining wages and employment conditions that do not recognise a worker's family and caring duties—need to be taken head on. As previously mentioned, legal reforms such as Flexible Working Arrangements, paid parental leave and carer's leave are all steps in the right direction, but ultimately, we will need to see greater changes like the 30-hour working week and extensive

carer's leave, before the concept of the 'ideal worker', the worker who can put in 40, 50, 60 hours a week at the office while still managing their domestic duties, is finally put to rest.

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