

ANMF (Tasmanian Branch) Member Representation Policy

Purpose

The purpose of this Policy is to outline the types of matters for which the ANMF Tasmanian Branch (ANMF) can advise and represent members. It also contains important information on what members who seek ANMF advice and/or representation can expect from the ANMF; the level of assistance that will be provided to new members seeking assistance with pre-existing matters; and the circumstances in which ANMF can determine to cease representation of members.

Policy Statement

1. Provision of Information, Advice and Representation

Financial members of the ANMF may be provided with information, advice and representation on a range of industrial, professional, employment and workplace health and safety issues, for example (but not limited to):

- classifications and entitlements;
- contract of employment;
- termination of employment;
- performance and conduct in the workplace;
- workers compensation;
- NMBA Notifications, registration; and,
- Allegations regarding misconduct and disciplinary proceedings.

In order to be eligible for assistance from an employee of the ANMF (Tas) a member needs to be a financial member at the time of a workplace issue/problem for which they require advice occurred.

Unfinancial members are not entitled to advice and representation in relation to pre-existing matters. New members have full rights to representation to future matters only, although they are immediately eligible for information regarding employment entitlements etc. ANMF (Tas) cannot assist members with matters that arose before they became financial members of ANMF (Tas).

There are two situations where the ANMF will consider providing representation and advice to members who have a pre-existing issue:

1. Where a member was not a member of ANMF Tasmania at the time they became aware of their issue they may request that the Branch Secretary considers an upfront 6 month back payment of their membership dues to allow

ANMF (Tasmanian Branch) Member Representation Policy

the Branch to provide advice and representation. Depending on the nature of the matter, back payment will also be required to the date of the actual pre-existing matter e.g. if the matter was 12 months prior.

2. Where a related matter arises from a matter that a member was aware of prior to becoming a member, for example a AHPRA report or Coroners Inquiry, the ANMF will provide support on the proviso that the member has continued as a financial member of ANMF (Tas) since their initial membership was activated.

It should be noted that the ANMF member professional indemnity policy may not cover an issue that arose before a person became a financial member of the ANMF (Tas), including any subsequent hearings or enquires relating to the matter. The question of coverage can only be answered (by the insurer) at the time of the matter being raised.

If assessed by ANMF staff to be necessary, legal advice to members who are financial at the time of an issue arising will be provided an initial free consultation with our legal representative. However, the decision to pursue an issue via legal avenues (including tribunals) or not depends upon the assessment made by ANMF industrial and legal advocates.

Guiding Principles

The following principles guide the ANMF process:

1. Any member who requests representation must call or email the ANMF Member Support Centre with their request and complete the ANMF Member Representation form with a minimum of 48hrs notice or as much in advance as possible.
2. The ANMF Member Support Centre staff will assess each case on its individual merits.
3. The ANMF Member Support Officer will advise the member regarding their options and/or an appropriate course of action in relation to the matter.
4. The ANMF reserves the right not to pursue matters which it holds to be unreasonable, unlawful, frivolous, or vexatious or deemed to be not in the best interests of its members generally.
5. If a member (as is their right) seeks their own legal representation the ANMF will no longer assist with that matter.

The ANMF will enquire into all legitimate complaints or grievances following due process. The ANMF will inform the member of the process at all times. However, this does not preclude the ANMF from offering advice regarding other, more appropriate assistance, such as referrals to other bodies where necessary.

On occasions, more than one member may make the same complaint or grievance that requires the ANMF to act on their behalf at the same time. The ANMF will uphold each members right to a fair hearing and representation.

The ANMF will allocate an appropriate officer to represent a member, depending on availability, subject matter and/or tribunal expertise, timeliness, and travel constraints. Representation may be in person, via teleconference, video conference, or Skype, again depending on ANMF resources.

If a member seeks a change in their designated ANMF representative, they must do so in writing to the Branch Secretary, detailing their reasons. The content of this correspondence may remain confidential if requested by the member, but this will be entirely up to the Branch Secretary's discretion, depending on whether the reasons should present a learning opportunity for the originally designated ANMF officer.

3. Member Complaints/Grievances Against Employers

ANMF may represent members who make a legitimate complaint or grievance where:

- the employer's decision, action or inaction has caused the complaint or grievance or has affected the member's ability to perform their work.
- the employer has taken action against the member, and/or;
- the employer has not dealt with the matter appropriately.

If a complaint or grievance gives rise to a dispute, the dispute exists between the member and the employer even if the subject of the dispute is the actions of another member in a more senior nursing position.

In these circumstances, ANMF's objective is to secure an outcome that is appropriate, encourages the employer to adopt fair management practices and which does not cause an unwarranted detriment to the employment conditions or status of any ANMF member.

ANMF will provide advice and advocacy as required for the member who has the grievance. If a second or more ANMF member(s) seek assistance from ANMF for the same matter (but as a Respondent to the grievance), separate and confidential ANMF representation will be provided.

ANMF expects that all members will act responsibly in relation to their ANMF membership by maintaining confidentiality in any negotiations or discussions that they may be party to, and to recognise the distinction between their role as an employee and an employee who is operating in a management position.

4. Member Complaints/Grievances against another Health Professional or Worker

If the complaint relates to a conduct, competency or health issue regarding another member which could result in the Nursing and Midwifery Board of Australia (AHPRA) limiting or suspending professional registration, the ANMF will encourage the member to raise the complaint with their employer in the first instance.

ANMF will assist the member with the procedures.

As a general rule, members should exhaust all internal procedures before they approach any external agency such as the AHPRA or the Health Complaints Commission (HCC). A member should only make a complaint directly to an external agency in circumstances where the member is firmly of the view that an immediate risk to patient health and safety exists.

5. Sexual Harassment and Anti-discrimination Matters

ANMF will support any member who believes they have been sexually harassed or discriminated against in the workplace. The level of support is at the discretion of the ANMF and may include general advice, representation to the employer, representation before the Anti-Discrimination Commission (ADC), the Australian Human Rights Commission or other statutory body or court.

In matters before the ADC, ANMF, at its discretion, will only support action by members against their employer. In determining the level of support, ANMF will take into account the relevant action/inaction of the employer.

Members who wish to take action against individuals other than employers before the ADC may do so, but the member bears the costs of such action (this is a personal rather than a workplace issue, even if it arises in the workplace). Members who are accused of sexual harassment have the right to seek advice and assistance from ANMF to ensure that their rights and entitlements are appropriately protected. In these cases, ANMF will assess the allegations and

ANMF (Tasmanian Branch) Member Representation Policy

determine whether ongoing assistance to the respondent member is warranted. ANMF does not condone sexual harassment and our role is merely to ensure a fair process.

Members have the right to appeal decisions where the ANMF has exercised its discretion to not assist, to the ANMF Branch Council through the Branch Secretary.

6. Where can members make complaints?

In the first instance, ANMF will assist the member(s) with advice on the relevant process for making a complaint and will suggest the appropriate statutory or other body if necessary. ANMF may make formal complaints, on behalf of members and in relation to organisations, to relevant statutory bodies, government departments or courts of competent jurisdiction in relation to:

- matters affecting the safety and welfare of the public, and
- as legislation mandates (such as the Children, Young Persons and Their Families Act 1997, as amended 2009).

Where a member has a legitimate complaint about the standards of care in a health agency or facility, ANMF may raise these concerns with the employer on behalf of the member. If the parties cannot resolve the issue at the workplace, ANMF will encourage the member to report the matter to the appropriate statutory or other body.

If the matter relates to an immediate health and safety risk to patients or workers, ANMF will encourage members to seek immediate representation. ANMF will then decide whether to report the matter immediately to the employer or a statutory or other body.

Where a member requests ANMF involvement in lodging complaints concerning another health professional/worker with a statutory or other body for example the NMBA or another regulatory body or the HCC, ANMF may offer advice with regard to drafting the complaint.

However, it is the member's responsibility to write the complaint and forward their documentation to the statutory or other body.

7. Representation in Tribunals & Legal Proceedings

ANMF may provide representation where appropriate in the following tribunals:

- Fair Work Commission (FWC)
- Tasmanian Industrial Commission (TIC)
- Workers Compensation Tribunal (WCT)
- NMBA
- Anti-Discrimination Commission, and/or
- Specially constituted commissions of inquiry

Representation may be provided by either an ANMF official (e.g. an Organiser, Industrial Officer) or by an external solicitor referred by the ANMF. If a member is successful in recovering costs in any proceedings, ANMF will seek

ANMF (Tasmanian Branch) Member Representation Policy

reimbursement from the member of any costs paid by the ANMF on the member's behalf in respect of such proceedings.

ANMF will not seek reimbursement from the member if costs are not recovered in the proceedings.

Furthermore, the ANMF will not pay for any costs which are unable to be recovered from the other party in this event. ANMF will not pay for costs for other parties if they are awarded against a member.

ANMF will not provide legal representation through its solicitors for the following types of matters:

- Criminal proceedings
- Actions by members for damages
- Defamation
- General civil proceedings

In some circumstances, ANMF-referred solicitors may offer a free face-to-face consultation, but in general, the costs of any legal work required beyond an initial telephone consultation are the responsibility of the member. ANMF referred solicitors offer ANMF members discounts on their usual fees for a range of matters.

8. Member Expectations

When a member contacts the ANMF they can expect the following:

- prompt response to their request for information and advice and replies to their communications.
- a summary of the issues, clear advice, and a discussion of expectations.
- advocacy on their behalf where they may have been denied or have not received an employment entitlement.
- an appropriate level of guidance and representation in relation to the matter.
- referral to the appropriate official with contact details.
- confidential treatment of the issues.
- no approaches made to organisations or individuals without their knowledge.
- ANMF officers will declare potential conflicts of interest and where a conflict of interest exists, remove themselves from any involvement in and access to material about the issue.
- ANMF maintains confidence in the ability of all its officers to carry out their responsibilities competently.

Members should expect and receive a similar quality and quantity of service and advice from relevant ANMF officials.

Therefore, ANMF allocates servicing matters to the relevant official based on the nature of the case and not on the basis of a member's personal preference for a specific individual.

9. ANMF Expectations

ANMF expects that members will:

- maintain full financial membership of the ANMF;
- provide full information on the matters raised, including relevant correspondence and permit ANMF access to relevant documents and records;
- ensure the ANMF has sole carriage of the matter for which they have sought representation unless agreed otherwise;
- follow the ANMF's verbal and written advice in relation to the matter;
- refrain from seeking a second opinion from another ANMF official;
- refrain from communicating with organisations or individuals regarding the matter if it is agreed ANMF is the single point of contact;
- observe appropriate conduct and neither harass nor bully ANMF officials or staff;
- refrain from public comment unless such action is expressly authorised by the ANMF official who is handling the matter;
- refrain from making defamatory statements or speaking publicly or writing disparagingly about any person or organisation in relation to the issue including Letters to the Editor, online social media such as Facebook, Twitter, Instagram, etc.
- refrain from requesting that ANMF officers liaise with third parties (including family members and friends) in relation to their matter unless they have a specific capacity or health-related reason which makes this request necessary.
- maintain confidentiality.

9. Member Behaviour

ANMF reserves the right to limit or withdraw support for members whose behaviour makes it difficult or impossible for an official to handle their matter. These can include, but are not limited to:

- verbally abusing staff;
- interacting in a professional manner and not respecting the professional boundaries of ANMF staff;
- consistently ignoring, or acting contrary to, the advice provided by ANMF;
- arranging alternative representation or acting on external advice;
- concealing or withholding relevant information from ANMF;
- making unreasonable demands on the ANMF such as frequent phone calls and/or visits;
- Pursuing unrealistic expectations, despite advice given, and seeking to direct ANMF in its actions;

ANMF (Tasmanian Branch) Member Representation Policy

- making public comments about their matter without the authorisation of the ANMF;
- making defamatory statements about ANMF in any public forum including all forms of social media;
- harassing or vilifying ANMF officers and/or staff or otherwise acting vexatiously;
- Any other behaviour that might be considered to risk the health and safety of an ANMF officer or employee.

11. Threats of Harm to Self or Others

If an ANMF member in their interactions with an ANMF employee threatens harm to themselves, another individual or ANMF staff member the following immediate action will be taken:

1. The member will be advised that ANMF Member Support Team have a duty of care to ensure members safety and that all threats of self-harm or harm to others will be escalated.
2. The Branch Secretary will be informed as soon as possible about the threat.
3. The whereabouts of the member will be sought and the Police and if applicable Ambulance Tasmania will be informed of the situation by ANMF (Tas) Branch by either the individual staff member, or Branch Secretary.
4. Members are to be encouraged to seek support via their employer provided EAP or via Nurses and Midwives support and to reach out to other applicable services such as Lifeline if deemed appropriate.

12. Discontinuing Support

The ANMF does not want to discontinue support but, in the circumstances below, this radical step will be considered.

i. 12.1 Breach of policy warning

Where a member fails to comply with formal ANMF advice regarding their behaviour or actions, a warning about their behaviour may be considered. In these circumstances the following will happen:

- If an ANMF member of staff is interacting with the member they may cease this interaction and advise the member that their behaviour is in breach of this policy and will be referred to the Branch Secretary of the ANMF (Tas).

As part of this warning the member will be provided formally with the following information:

- A copy of this policy
- A written account of their actions that led to the warning being issued, signed by the Branch Secretary, including:
 - » An outline of how the member is acting in breach of this policy
 - » A request that the member refrain from continuing the actions or behaviour that puts them in breach of this policy.
 - » A request that the member review the supplied information and recontact ANMF (Tas) in 24 hours if they are willing to interact with ANMF member support staff in line with the expected behaviours as outlined in the ANMF Member Representation Policy.

ANMF (Tasmanian Branch) Member Representation Policy

Where a warning is being considered for an ANMF (Tas) member the ANMF (Tas) Branch Secretary will to be notified as soon as practically possible prior to the warning being issued to the member.

ii. 12.2 Breach of policy warning

In a case where a member's actions or behaviour are in significant breach of this policy or continue to be in breach of this policy after a warning has been issued, the Branch Secretary may decide to withdraw or limit support for the member. The Branch Secretary will provide the member with a written statement of the matters that are prompting consideration of the withdrawal or limitation of support giving the member adequate opportunity to respond.

If the behaviour is of a such a significant breach, the ANMF may consider taking the matter to ANMF Branch Council to consider terminating the membership of the individual according to the ANMF Federal Rules.