



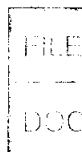
**Recruitment &
Consulting Services
Association**

Leading the Recruitment Industry

RCSA
Victoria/Tasmania
PO Box 243
Carlton South VIC 3053

Telephone: 61 3 9662 2152
Facsimile: 61 3 9639 2427
Email: assign1@ozemail.com.au
Website: www.rcsa.com.au
ABN 41 078 606 416

11 April 2002



Mr Tim Grimwade
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
Dickson ACT 2602

Dear Mr Grimwade

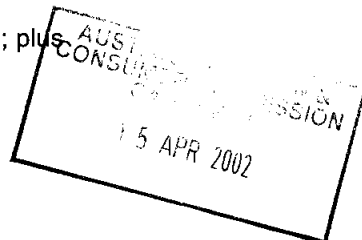
The Recruitment & Consulting Services Association (RCSA) wishes to draw to the attention of the Commission an initiative taken by the Victorian Minister for Health, which we believe impacts upon Applications for Authorisation Nos. A90811 and A90812 by Health Purchasing Victoria currently under consideration by the ACCC and endeavours to pre-empt the outcome of any decision by the ACCC.

The Secretary of the Victorian Department of Human Services recently issued a Directive in accordance with section 42 of the Health Services Act to all public hospitals, metropolitan health services and multi-purpose services regulating the conditions upon which agency nursing agencies may be utilised. The public hospitals are required to comply with this Directive by virtue of section 42 of the Act.

Pursuant to the Directive given by the Secretary of the Department of Human Services, as from Thursday, 4 April 2002, public hospitals (inter alia) must only engage the services of agency nurses in accordance with the conditions set out below:

- 1. Conditions under which agency staff can be used**
Agency nursing staff may only be used for unexpected absences, for example, sick leave or compassionate leave.
- 2. Replacement Grade**
Where an agency nurse is required to perform services that would otherwise be performed by a permanently employed nurse, the replacement nurse must be engaged and paid at the same grade as the permanently employed nurse.
- 3. Existing Staff working for agency with employing health service**
Nurses who are permanently employed by a Health Service Organisation must not be engaged to perform nursing services for the Health Service Organisation that permanently employs them.
- 4. Maximum Price**
The amount that any Victorian public hospital may pay to any employment agency for the services of a temporary nurse must not exceed:
 - 80% above the basic award rate for the replacement grade nurse; plus
 - 15% above the allowance provision included in the award.

..../2



Seize
the day.



RCSA's Partner in Recruitment Excellence



The Commission recently decided not to grant an Application for Interim Authorisation by Health Purchasing Victoria in this matter. A decision as to whether or not the Commission will grant a final authorisation is yet to be determined.

In a letter dated 24 January 2002 signed by you reference is made to this Directive and that our "submission may wish to address the likely consequences of such a direction on the public benefits and anti-competitive detriments of the arrangements for which the authorisation is sought."

The RCSA submits that the 4 April 2002 Directive by the Secretary of the Victorian Department of Human Services is an endeavour to now subvert the decision by the Commission in respect to the interim authorisation and to ensure that its immediate objectives are still implemented despite the Commission's decision. The arrangements now proposed by the Directive suffer the same concerns that resulted in the Commission not granting an interim authorisation and that the Directive is simply an arrangement to circumvent the Commission's decision and its consequences.

We believe that the Directive does not provide a public benefit and that there is again significant anti-competitive detriments pertaining to this action. Further, it is creating confusion and uncertainty amongst nurses themselves and impacting upon staff morale in the nursing sector. Some nurses are currently refusing to take shifts within public hospitals at the lower rate and have indicated their intention to leave nursing as a result of the Directive.

In addition, we believe that the anti-competitive effect of this action has commenced, whereby smaller nursing agencies are being forced to review their viability. If the Department of Human Services Directive is allowed to remain in force, smaller agencies may have no option but to consider selling, merging with others or going out of business, further impacting on the competitive choices that are currently available to the market.

Further, it is submitted that the Directive is an attempt to pre-empt the decision by the Commission in respect to a final authorisation. We seek the view of the Commission as to whether the action taken via the Directive is contrary to the provisions of the Trade Practices Act and whether such action is legitimate given the current Application for Authorisation before the Commission.

The Directive appears to be a deliberate approach to side step the ACCC processes and procedures for properly evaluating the role of agency nurses in the health sector in Victoria.

We would be grateful for your response to this now very urgent issue.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Zammit', with a stylized flourish at the end.

George Zammit
President
RCSA Victorian/Tasmanian Region