



Australian Competition & Consumer Commission

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Our Ref: C2002/527
Contact Officer: Gavin Jones
Contact Phone: 02 6243 1107

22 April 2002

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xx
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sent to attached

list

GP 22/4/02

Dear xx

**Application for Authorisation Nos A90811 & A90812
lodged by Health Purchasing Victoria**

I refer to the above listed application for authorisation in respect of which you have previously provided the Australian Competition and Consumer Commission (the Commission) with a written submission regarding the likely public benefits and effects on competition of the arrangements for which authorisation was sought.

As you will be aware, the Secretary of the Department of Human Services (DHS) issued a written direction under section 42 of the *Health Services Act 1988 (Vic)* on 1 March 2002 regulating the maximum price which can be paid by public hospitals for agency nursing services and the conditions under which agency nursing services may be utilised.

In particular the written direction provides that all public hospitals, metropolitan health services and multi-purpose services identified in Schedules 1, 2 and 3 of the Health Services Act must, from 4 April 2002, only engage agency nursing services in accordance with the following conditions:

1. Conditions under which Agency staff can be used

Agency nursing staff may only be used for unexpected absences; for example, sick leave, exceptional circumstances 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.



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4. Maximum Price

The amount that any Victorian public hospital pays to an 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 allowances provision included in the award.

On 12 April 2002 Health Purchasing Victoria (HPV) amended its application for authorisation in response to the DHS direction. The Request for Tender and the Service Agreement the subject of the application for authorisation have been amended so that the tender documents are consistent with the conditions of engagement of agency nursing services set out in the DHS direction.

A copy of the amended tender documents is attached to this letter. Clause 3.3 of Part B, Tender Conditions, of the Request for Tender and clauses 6.2, 10.2 and 10.3 of the Services Agreement have been amended to reflect the written direction issued by DHS.

As an interested party you are invited to make a further written submission to the Commission regarding the likely public benefits and effects on competition of the amendments to the application for authorisation.

As you would be aware, in order to grant authorisation the Commission must be satisfied that the public benefit arising from the arrangements outweighs any anti competitive detriment. In this respect, the Commission notes that many of the public benefits and anti competitive detriments identified by the applicant and by interested parties in submissions received to date by the Commission would appear to flow, possibly to a large degree, from the written direction issued by DHS, irrespective of whether authorisation is granted for the proposed tender arrangements.

The Commission is therefore seeking your views on the likely **additional** public benefits and effects on competition of the proposed tender process as amended, given that the written direction is already in place.

The Commission asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose and may be also placed on the Commission's website located at <http://www.accc.gov.au>. The Commission may, where it is considered appropriate, supplement written submissions with discussions with relevant parties on a mutually convenient basis.

Persons lodging a submission with the Commission may request that information included in the submission be treated as confidential and not placed on the public register or website. If confidentiality is granted in respect of information it may be taken into account by the Commission, even though not publicly available. Guidelines for seeking confidentiality are attached.

If you wish to lodge a submission would you please address it to:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
P O Box 1199
DICKSON ACT 2602

Submissions can also be lodged by e-mail to: adjudication@accc.gov.au.

Submissions should be made no later than Friday, 3 May 2002.

I would add that complaints were lodged with the Commission to the effect that the written direction itself and/or any agreements entered into by public hospitals in Victoria prior to the issuing of the written direction may be in contravention of the price fixing and anti competitive agreement provisions of the *Trade Practices Act 1974* (the Act).

The Commission investigated this matter but concluded that, as the Act prohibits anti-competitive arrangements between independent competitors, and as the public hospitals in question are all owned and operated by the one entity, the Victorian Government, the Act would be unlikely to apply to an agreement between those hospitals, the Department of Human Services and representatives of the Victorian Government. As a consequence, the Commission was unable to pursue the matter.

Should you have any queries or if you wish to discuss any aspect of the application further please contact Gavin Jones on (02) 6243 1107.

Yours sincerely

Tim Grimwade
General Manager
Adjudication Branch

1.	Name	Address	Sal	end	phor
2.	Ms Rose Hoey Director	Colbrow Nurses Agency PO Box 486 BLACKBURN 3130	Ms Hoey	sincerely	
3.	Mr Robert Lorsch Secretary	Nursing Agencies Association of Australia PO Box 84 KOGARAH NSW 2217	Mr Lorsch	faithfully	
4.	Ms Karen Taylor	Nursing Excellence The Agency Suite 1A, 6 th floor Foveaux Street SURRY HILLS NSW 2010	Ms Taylor	sincerely	
5.	Mr Russell Bateman Chief Executive Officer	Nursing Australia Pty Ltd Locked Bag 803 RICHMOND VIC 3121	Mr Bateman	sincerely	
Y	Ms Heather Stevenson	Melbourne Nursing Agency 241 Nicholson Street MELBOURNE VIC	Ms Stevenson	sincerely	
	Ms Rosalind Newis Managing Director	Twin Hills Nurses Agency PO Box 41 IVANHOE VIC 3079	Ms Newis	sincerely	
	Ms Elizabeth Schofield Director	Malvern Nurses Agency PO Box 1199 MALVERN 3144	Ms Schofield	sincerely	
	Mr George Dapiran Chief Executive Officer	Medistaff International PO Box 6317 St Kilda Road CENTRAL MELBOURNE 3004	Mr Dapiran	sincerely	
	Mr John Sesto	J.P Sesto & Co Level 10, 416 Collins Street MELBOURNE VIC	Mr Sesto	sincerely	

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6.	Mr Murray Erwin Manager	AustraHealth PO Box 7280 MELBOURNE VIC 3004	Mr Erwin	sincerely	
7.	Mr Peter Magerl General Manager	Nursing Agency of Australia 250 Glen Osmond Road FULLARTON SA 5063	Mr Magerl	sincerely	
8.	Mr Ian Stacy Vice President	RCSA PO Box 243 CARLTON SOUTH VIC 3053	Mr Stacy	sincerely	
9.	Mr Henk Van Dalen Development Manager	Alpha Nursing PO Box 115 Centreway KEILOR EAST VIC 3033	Mr Van Dalen	sincerely	
10.	Ms Lina Cornell Director	Victorian Nursing Specialists PO Box 399 BLACKBURN VIC 3130	Ms Cornell	sincerely	
11.	Ms Maria Bottaro Managing Director	Belmore Nurses Bureau PO Box 399 BLACKBURN VIC 3130	Ms Bottaro	sincerely	
12.	Ms Deborah Penglase Managing Director	Psychiatric Care Consultants Pty Ltd PO Box 373 HEIDELBERG VIC 3084	Ms Penglase	sincerely	
13.	Mr Phillip Della Principal Nursing Adviser	Australian Nursing Council 3 rd Floor 'A' Block, 189 Royal Street EAST PERTH WA 6004	Mr Della	sincerely	
14.	Mr Eric Smith Manager	Australian Nursing Agency PO Box 1377	Mr Smith	sincerely	

		FITZROY NORTH 3068			
15.	Mr Graham Moss Director	Oxley Group GPO Box 62 BRISBANE QLD 4001	Mr Moss	sincerely	
16.	Dr David J Hillis Chief Executive Officer	Peter MacCallum Cancer Institute Locked Bag 1 'A' Beckett Street VICTORIA 8006	Dr Hillis	sincerely	
17.	Mr Rodney J Hancock Managing Director	Code Blue Specialist Nursing Agency PO Box 7176 DANDENONG VIC 3175	Mr Hancock	sincerely	
18.	M Crichton	Critical Solutions 5-158 Toorak Rd West SOUTH YARRA 3141	Sir/Madam	sincerely	
19.	Ms Monique Bensemann	Australian Nursing Solutions 364 Albert Street EAST MELBOURNE	Ms Bensemann	sincerely	
20.	A/Prof Janet A Secatore	Director of Nursing The Alfred Commercial Road PRAHRAN VIC 3181	Ms Secatore	sincerely	
21.	Mr Geoffrey Wilson Solicitor	Wilson Lawyers Level 12, 575 Bourke St MELBOURNE VIC 3000	Mr Wilson	sincerely	
22.	Dr Stan Capp	Southern Health Locked Bag 29 CLAYTON VICTORIA 3168	Dr Capp	sincerely	
23.	Dr Kathy Alexander Chief Executive Officer	Women's & Children's Health Level 1, 132 Grattan Street	Dr Alexander	sincerely	

		CARLTON VIC 3053			
24.	Mr Tim Naylor A/g Chief Executive	Easternhealth PO Box 94 BOX HILL 3128	Mr Naylor	sincerely	
25.	Ms Lisa Fitzpatrick Secretary	Australian Nursing Federation PO Box 12600 A Beckett Street Melbourne vic 8006	Ms Fitzpatrick	sincerely	
26.	Ms Jennifer Williams Chief Executive Officer	Austin & Repatriation Medical Centre Locked Bag 25 HEIDELBERG 3084	Ms Williams	sincerely	
27.	Ms Kate Snowden Access Nurses Agency	96 Morrison Rd UPPER PAKENHAM 3810	Ms Snowden	sincerely	
28.	Ms Jill Davis Linklater Chief Nursing Officer	Barwon Health PO Box 1855 GEELONG VIC 3220	Ms Linklater	sincerely	
29.	Mr Sebastian Greene Partner	Middletons Lawyers GPO Box 4388 QQ MELBOURNE VIC 3001	Mr Greene	sincerely	