

J.P. SESTO & CO

BUSINESS & TAXATION LAWYERS

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3 May 2002

Your Ref: C2002/527
Gavin Jones
Our Ref: P003016
Enquiries: Peter Panagiotopoulos

FACSIMILE COVER SHEET

TO: THE GENERAL MANAGER
ADJUDICATION BRANCH
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FAX NO.: 02 6243 1199

FROM: PETER PANAGIOTOPOULOS

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Dear Sir

**APPLICATION FOR AUTHORISATION NO. A90811 & A90812
LODGED BY HEALTH PURCHASING VICTORIA
OUR CLIENT: PRN NURSES PTY LTD**

Further to your letter of 22 April 2002, we note that further submissions in response to the recent amendment of the abovementioned application are due by today. To that end, we attach copy of our client's further submissions by way of letter of even date.

The original will be posted to you.

Yours faithfully

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J. P. SESTO & CO
BUSINESS & TAXATION LAWYERS

3 May 2002

Your Ref:
Our Ref: P003016
Enquiries: John Sesto

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DIXON ACT 2602

Dear Sir

**APPLICATIONS FOR AUTHORISATION NO. A90811 AND A90812
LODGED BY HEALTH PURCHASING VICTORIA ("HPV")
OUR CLIENT: PRN NURSES PTY LTD**

We refer to your letter of 22 April 2002 inviting further written submissions regarding the likely public benefit and effects on competition attributable to the recent amendment of the abovementioned applications.

Our client does not propose to revisit the objections raised by it in its submission of 14 February 2002. However, it is common ground that pursuant to the tender arrangement contemplated by HPV, agency services will only be acquired from the successful tenderers who amongst other things, have offered to supply agency nurses at rates set out in accordance with the relevant grade.

Consequences of Direction

In light of the direction issued under Section 42 of the Health Services Act 1988, health services can only acquire such agency services if the agency does not charge in excess of a set formula calculated with reference to the relevant award.

Presumably, the motivation behind this direction is to reduce the cost to hospitals and to generally achieve those public benefits identified in the original application. As such, both the proposed conduct and the direction purport to secure the same public benefit.

Applying the "future with or without test", the proposed conduct cannot now be said to give rise to that public benefit identified in the application - that public interest already being served by the departmental direction. In this regard, we refer to the decision in *Re Queensland Independent Wholesalers Ltd* (1995) ATPR 41-438.

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Lack of justification

It is our position that HPV have failed to provide sufficient information to allow proper consideration of this matter. For instance, it is one thing to amend the proposed tender document and service agreement to keep it in line with the direction, but how is the proposed exclusive tender arrangement going operate to confer a broader or greater public benefit than the direction?

Notwithstanding the absence of proper particulars, we would submit that in light of the above, the application should in any event be refused.

Please keep us updated as to the progress of this matter and forward any further information that may be provided by HPV.

Yours faithfully

J.P. S E S T O & C O