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24 January 2002

Mr Tim Grimwade  
A/g General Manager  
Adjudication Branch  
Australian Competition &  
Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

CC: Mr Gavin Jones  
Contact officer  
Adjudication Branch  
Australian Competition &  
Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

By mail and fax: (02) 6243 1211

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Adelaide  
Brisbane  
Canberra  
Melbourne  
Perth  
Sydney  
Auckland  
Wellington  
Hanoi  
Ho Chi Minh City



Dear Mr Grimwade

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

I refer to my letter of 16 January 2002, setting out amongst other matters the reasons for interim authorisation, and to our telephone conference on 14 January 2002, during which you advised that we cannot reasonably expect a determination on the substantive application for authorisation before May 2002.

The purpose of this letter is to advise you that a number of proposals for addressing the nurse agency issue are currently under consideration by the Victorian Department of Human Services ('DHS'), with a view to ensuring that you are fully apprised of all matters that may be relevant to your consideration of our application for interim authorisation and our substantive application.

Attached is a copy of a DHS letter of 21 December 2001 in which DHS sets out the range of initiatives that it is considering including:

- Setting the maximum amount payable for agency nurses by public hospitals; and
- Giving directions to public hospitals under various powers contained in the Health Services Act 1998.

Some of these proposals are considered by DHS to be complementary to, and some of these proposals are considered by DHS to be an alternative to, the proposed tender process currently before the Commission pursuant to my client's application for authorisation. The consideration of a direction indicates to my client the gravity with which the nurse agency issue is viewed by DHS. It is my client's understanding that DHS considers a direction under

the Health Services Act 1988 to be a measure of last resort and that DHS has not issued such a direction in over 15 years.

As stated in my letter of 16 January, in the absence of interim authorisation, the tender process will not proceed until after the receipt of a positive final determination by the ACCC with the result that the benefits set out in my letter of 16 January 2002 will be lost. My client has been informed by DHS that DHS also considers it critical to implement measures to address the nurse agency issue by March. As explained in my letter of 16 January, the level of supply of nurses in Victoria is at its highest level for the year in March as a result of the influx of new graduate nurses at this time in the year, minimising the risks associated with instability in the Victorian nurse workforce as a result of the measure adopted. Accordingly, it is my client's understanding that the decision by DHS as to which proposal to pursue is, in part, dependent on the outcome of the Commission's decision on my client's application for authorisation.

In addition, the proposals under consideration by DHS to address the nurse agency issue may potentially significantly change the structure of the market in which the nurse agencies operate in Victoria. Accordingly, the proposal pursued by DHS (if any) may have significant implications for the assessment of my client's substantive application for authorisation.

I would be happy to discuss this matter with you further.

Yours sincerely



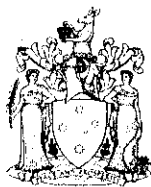
**Simon Uthmeyer**

Partner

Direct +61 3 9274 5470

Email [simon.uthmeyer@phillipsfox.com](mailto:simon.uthmeyer@phillipsfox.com)

Encl



# Department of Human Services

Incorporating: Health, Aged Care, Housing and Community Services

555 Collins Street  
Melbourne Victoria 3000  
GPO Box 4057  
Melbourne Victoria 3001  
DX210081

21 December 2001

Telephone: (03) 9616 7777  
Facsimile: (03) 9616 8329

Mr Steve Sant  
Chief Executive  
Health Purchasing Victoria  
260 Kooyong Road  
CAULFIELD 3162

Our Ref:  
Your Ref:

Dear Mr Sant

## Utilisation of Agency Nurses

I am writing to you in relation to the increasing use by public hospitals of agency nurses and the associated increasing costs. The Department of Human Services (DHS) is concerned about this trend and its implications for patient care.

There is a clear preference for public hospitals to employ ongoing staff who are best placed to provide high quality continuous care for patients. The current levels of utilisation by public hospitals is reportedly leading to decreased morale and is a significant factor in the retention of nurses. The increasing cost of agency nurse utilisation places major cost pressure on public hospitals.

In his recommendations of 31 August 2000, Commissioner Blair said that *'agency staff should only be used for unexpected absences, such as sick leave'* (paragraph 5). In a subsequent recommendation on 13 March 2001, Commissioner Blair restricted agency use on *'ICU units to be one agency nurse per shift from 14 May 2001'*.

Information collected by DHS clearly identifies that these recommendations are not currently being met by all public hospitals.

The Victorian Government Nurse Recruitment and Retention Committee (NRRC) Report released in May 2001 identified a number of problems and identified quality of care concerns associated with the excessive employment of agency nurses. These included:

- An individual agency nurse's level of competence is not necessarily known when attending a shift and the nurse in charge is likely to allocate the less acute or complex patients to the agency nurse.
- The agency nurse's skills may not always match those of permanent staff, particularly if they are working in a ward with which they are unfamiliar.
- Agency nurses are often only present for one shift and the permanent staff reports that they shoulder the responsibility for ensuring that there is continuity of care from one shift to another as well as responsibility for orientation and supervision of agency nurses.
- Permanent staff suffer increasing dissatisfaction with their workplace and may leave or reduce their hours.



The NRRC Report made a number of recommendations concerning the use by public health facilities of agency nurses, including:

“That the health care facilities ensure that:

- Strategies are being implemented to employ nurses on a permanent basis to fill permanent vacancies
- Recruitment procedures for replacement of permanent positions are developed to ensure that vacancies are filled within eight weeks of notice of resignation.
- Use of agency nurses is restricted to unplanned absences only”.

*(Recommendation 53)*

“That the Department of Human Services monitors state wide trends in agency usage in the public healthcare industry on a quarterly basis”.

*(Recommendation 54)*

“That the health facilities are encouraged to (re) establish nurse banks to meet the adhoc staffing needs of the facility and that these nurses have access to the ongoing education program of the facility”.

*(Recommendation 56)*

Accordingly, DHS intends to consider a range of initiatives to reduce the reliance of public health facilities on agency nurses. The initiatives being considered include:

- Encouraging public hospitals to provide flexibility through the provision of nurse banks.
- Placing restrictions on public hospitals concerning agency nurse utilisation to unplanned absences or other exceptional circumstances.
- Setting the maximum amount payable for agency nurses by public hospitals.
- Monitoring agency utilisation by public hospitals.
- Giving directions to public hospitals under various powers contained in the Health Services Act 1998 including giving such directions as are permitted under section 42 of that Act.

The Department intends to implement its initiatives on the use of agency nurses by public hospitals no later than March 1, 2001.

In order that the DHS finalise its plans, you are invited to make comment on the proposed initiatives.

In preparing any comments interested parties should examine the recommendations of Commissioner Blair contained in his decision of 31 August 2000 (S 9958). A copy of the decision may be obtained by going to [www.aire.gov.au](http://www.aire.gov.au). Interested parties should also have regard to the Report of the Victorian Government Nurse Recruitment and Retention Committee released in May 2001 a copy of which can be obtained by going to <http://nursing.health.vic.gov.au>.

Written submissions should be addressed to:

Ms Belinda Moyes,  
Director, Nurse Policy Branch/  
Principal Nurse Advisor  
Department of Human Services  
Level 12, 555 Collins Street  
MELBOURNE 3000

to reach the above address by 25 January 2002.

Telephone enquiries can be made to either myself (9616 7828) or Belinda Moyes 9616 6929.



Andrew Stripp

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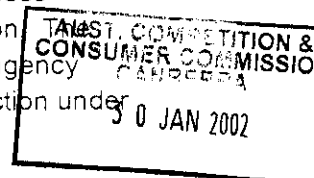
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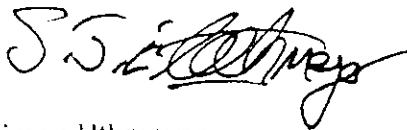
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