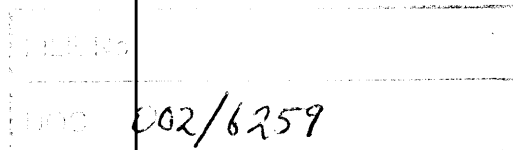




A.C.N. 006 040 964
Suite 2 / 47 Railway Road,
Blackburn, Victoria 3130.
Telephone 03 9877 2533
Facsimile 03 9878 6117
PO Box 399, Blackburn,
Victoria 3130

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
P.O. Box 1199
Dickson
ACT 2602

11 February 2002




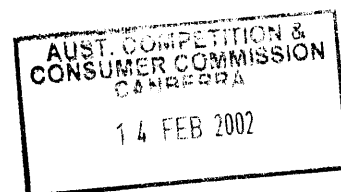
Dear Mr Grimwade,

Please find enclosed substantiated submission regarding Application for
Authorisation Nos A90811 & A90812.

If you have any concerns or issues regarding this submission, please do not hesitate
to contact me.

Yours Sincerely


Maria Bottaro (Hoey)
Managing Director
Belmore Nurses Bureau.



**Submission to
Australian Competition and Consumer Commission
Regarding
Application for Authorisation Nos A90811 & A90812**



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INTRODUCTION

In response to Health Purchasing Victoria's (HPV) application for approval from the Australian Competition and Consumer Commissioner, Belmore Nurses Bureau are formally writing to oppose HPV gaining any authorisation that will enable them to proceed with the proposed tendering process. Examination of HPV's proposal will reveal that many anti competitive behaviours will arise, and these will outweigh any of the suggested public benefits that would be gained from tendering.

Throughout the history of nursing in Victoria, nurses have been forced to deal with poor working conditions, poor remuneration packages, poor support and poor levels of training. Nurses have therefore been forced to use multiple avenues in order to rectify some of these negating factors, such as securing casual employment through nursing agencies, or working in non nursing related positions.

Recently, nurses lobbied successfully to gain greater benefits and entitlements. It was hoped that by securing these benefits it would attract nurses back into nursing. The level of success this has had on nurses is not fully apparent. Many nurses are still either working minimum shifts, or working casually through nursing agencies. This suggests that further improvements are still needed in order to correct the problems faced by nurses working in the public health. Reducing agency nurses wages will not rectify any of the problems as to why nurses are not prepared to work in nursing positions.

The nursing agency industry in Victoria has been successful for almost 50 years. The nursing agency market is now characterised by two distinctive groups of nursing agencies. Traditional agencies, such as Belmore Nurses Bureau, which has been established since 1957, and is operated by nurses, for nurses. Traditional agencies provide day to day allocations, and a professional service while paying its nurses according to their classification. Non traditional nursing agencies are operated by business people and are concerned with profit. These agencies do not pay their nurses according to their appropriate classification, and often charge hospitals excessive

amounts in commission, with large amounts remaining as profit, rather than being passed on to the nurse. This distinction occurred when the market was deregulated by the state government and agencies were no longer under the direction of the Nurses Board of Victoria. This resulted in individuals that had no health care or nursing experience being allowed to own and operate private nursing agencies.

There has been increased concern regarding the use of agency nurses within public health care sectors. This concern relates to the cost and clinical capabilities of the agency nurse. In order to reduce these concerns the State Governments only solution has been to tender out for the acquisition of agency staff. The underlying reasons for the high cost of agency nurses has not been addressed. If HPV are successful with their tendering process, it will only exacerbate the issues faced by the public health care system in relation to staffing trends.

BACKGROUND

HPV have stated in their background for grounds of authorisation that there is a "shortage of qualified nursing staff in Australia that are willing or able to be employed directly by hospitals". This statement is not supported by any relevant literature or current statics. In reality, between the period of July 2000 to July 2001, over 2300 nurses were recruited to work in public health care facilities. This indicates that many nurses are willing to be employed directly through hospitals. Further, HPV state that this problem is Australia wide. This perceived unwillingness of nurses to be employed directly by hospitals, should only be relating to Victoria, as HPV have no statutory powers in any other states.

While HPV attempt to emphasise the acuity of the nursing shortage, they highlight that only 5% of agency nurses are used to "top up" nursing staff requirements at public hospitals. Therefore 95% of nurses are employed directly by hospitals. This 5% figure is proportional to other states and countries, with reports stating that

England's National Health Service operates its total nursing staff with approximately 60% agency nurses.¹

HPV further attempt to substantiate their need for tendering by stating that nurses are unwilling to work overtime, and instead, register with nursing agencies. HPV should be made aware of two significant issues arising from their claim. Conversations with The Australian Nursing Federation revealed that they discourage nurses from working overtime.² However if a nurse works overtime, then he or she should receive between a 150% to 200% loading.³ Secondly, verbal reports from major metropolitan health services located in Melbourne have revealed that only a minority of facilities offer overtime, and that it is common for nurses to only receive 150% pay, not 200%, as should be offered.^{4,5,6} Therefore, if a nurse was to receive a higher amount than the award rate while working through a nursing agency, then this would then be comparative to working overtime.

Belmore Nurses Bureau, one of Victoria's most established nursing agencies, pass on any price increases directly to their nurses, with their operating profit margin remaining stable. The "regular" increase in rates, as HPV claim, occur as the result of competition with non traditional agencies. Further to this, HPV must also be aware, that over the past twelve months, there has been a significant increase in expenditures experienced by nursing agencies, such as the Work cover premiums. The market being characterised by a number of large nursing agencies, is purely the result of past tendering processes that have occurred. These agencies gained precedence at facilities that were previously supplied by other agencies, which were forced to close, when not awarded tenders. If tendering proceeds, this scenario will only worsen as nursing agencies not selected for the preferred supply of staff will have to increase their fees and commission to compensate for the amount of work that they will lose.

¹ Sloss, J. (1999) UK Nursing Agencies and the National Health Service. Thornbury Nursing Services.

² Australian Nursing Federation (December 2001) Conversation with Industrial Organiser

³ Australian Nursing Federation (2001) Overtime, work it and claim it. Australian Nursing Federation (Vic. Branch). Promotional Material.

⁴ The Alfred Hospital (January 2002) Conversation with Human Resources Department - Nursing

⁵ Box Hill Hospital (January 2002) Conversation with Registered Nurse Div 1.

⁶ St Vincent's Hospital Melbourne (January 2002) Conversation with Registered Nurse Div 1.

The above facts demonstrate that HPV have not researched the background regarding the use of agency nurses in Victoria's public health system, and supports the notion that this is a government knee jerk reaction to the increasing costs of health care.

PROPOSED CONDUCT

HPV have outlined the proposed conduct under the direction of the tender. These directions are based on economic reasoning, as opposed to the interest of the whole public health care system and the issue of nursing retention. The criteria on which tenders will be awarded, also stems from a highly economic point of view, with HPV clearly stating that preference will be given to the cheapest tenderers. While this may benefit the health budget, it does not solve the problems faced by nurses working in the public health care system.

HPV have stated that they are the overriding authority, that will enter into contracts with the agencies, on behalf of the health care services. This creates considerable concern. This body has only recently been established, and have stated in their public objectives that their main objective is to reduce government spending on health purchasing by 5 million dollars. This further supports their economic rationalism.

If HPV were to conduct further research, they would be aware that discounts offered for early payment of invoices is not applicable. Discounts for early payment is not relevant in the provision of health services. Agency invoicing terms are usually no more than 14 days, and are invoicing for services already rendered.

TRADE PRACTICE ISSUES

The *Trades Practices Act* 1974 offers consumer and corporate protection from unfair practices in the market place. This legislation ensures free trade in goods and services which are paramount to our free world economy. HPV's proposed tender contravenes s45(2)(a)(ii) of the *Trades Practices Act* 1974.

The proposed tender will lessen competition within the public health care system. This is seen by restricting the preferred supply of nurses from particular agencies. Under the *Trades Practices Act* 1974, the lessening of competition must be substantial. As the proposed tender is for a period of three years, with the possibility of extending this a further two years, it would be expected that the lessening of competition is substantial enough to contravene the *Trades Practice Act* 1974.

The proposed tender also states that nurses are not to return to a hospital where they are employed through a nursing agency. This lessens competition on two platforms. Nurses choices are reduced if they are unable to select when and where they want to work. Under HPV's proposed service agreement, nurses would be unable to attend nursing agency shifts at other hospitals that are part of the same health service. This substantially lessens competition for the nurse and nursing agency. Small nursing agencies that only service a specific geographical region, will be severely limited to where they can send their nurses. This substantial lessening of competition has the potential to cause closure of many well established nursing agencies, further lessening competition.

The lessening of competition is also applicable to nursing agencies that are selected for the exclusive supply of staff. These agencies will be unable to compete with other agencies that are not contracted by the tender, ultimately refraining the contracted agency from competing in the market.

PUBLIC BENFITS TEST

Decrease in Staffing Costs

After the deregulation of nursing agencies, Victoria experienced a boom in the number of operating nursing agencies. This has created excessive work loads for nursing agencies and health services. Many health care facilities will book for long periods in advance, and will often then cancel these shifts closer to the day that the shift is booked for. Further, hospitals will book with up to ten agencies when booking shifts. While several agencies may be able to supply, they will be cancelled if their preferred nursing agency is able to supply. This results in unnecessary

allocations, and becomes very time consuming. In some circumstances it can take over one hour to fill just one shift. When supplying over 100 individual nurses per day, this process can become very lengthened. The level of commission charged to hospitals by nursing agencies is entirely reasonable considering the level of performance required by allocations staff.

Nurses are the professionals that enable hospitals to operate. Without nurses, hospital beds are closed, as nurses are irreplaceable. Their wages when working through private nursing agencies are examples of how valuable they are. Eastern Health's report to the community, revealed that their Chief Executive Officer is earning more than six times the amount of the nurse. This highlights the governments poor attitude towards the value that nurses have in the public health care system.

HPV's estimated costs for a Southern Health hospital employed nurse compared to an agency nurse is not comparative. HPV give no indication as to the breakdown of Southern Health's costs as to whether the shift is on a casual, part time or permanent basis. Further to this, HPV would also be aware that a large proportion of nurses supplied to Southern Health are from an agency that was previously awarded the tender for the supply of staff to that network. This demonstrates that tendering will only offer financial benefits in the short term, and will not solve long term staffing costs.

The amount that a nurse is paid is driven by the nurses, not the nursing agencies. The demand for nurses in Victoria is significantly outweighs the supply.⁷ With the demand for nursing being so high, and the supply being so low, nurses are able to dictate that they will not attend shifts at particular hospitals unless they receive significant remuneration packages. This scenario is also applicable to the night duty allowance offered by some agencies. At present it is not uncommon for nurses to dictate their prices, by clearly voicing to the agency that they will join a higher paying agency if there pay scale is not increased.

⁷ Department of Human Services (1999) Nurse Labour Force Projections Victoria. 1998-2009

A breakdown of agency costs will reveal that there has been increased costs associated supplying agency staff. The Goods and Services Tax is an example of this, with hospitals having to pay an extra 10% on top of the nurses wage, which is then returned to the health care facilities. It appears that HPV are including the cost of the GST in their costing of agency staff. Mandatory increases in Work Cover premiums and superannuation have also contributed to the higher amount of commission being invoiced to hospitals. Further to this, in order to provide higher educational standards to our agency nurses, increased education seminars are also required. A percentage of this cost has also been passed onto the hospitals. However, hospitals would also be required to finance educational needs of hospital employed nurses. This money is not included in any of HPV's breakdown of agency staffing costs. Educational packages were instigated due to suggestions by health care facilities and the Department of Human Services that agency nurses were not as clinically capable as staff nurses.

Employment equality and workplace harmonisation

Discussions conducted with a majority of the agency nurses working for Belmore Nurses Bureau, have indicated that they are received in a friendly and appropriate manner by hospital employed nurses working in health care facilities across all of Melbourne. Any unrest that may be evident between health care facilities and agency nurses may be the result of unfamiliarity with the health care facilities rather than based on a monetary inequality. However, the lack of workplace harmonisation is not the reason for poor nurse retention rates. Conditions of hospital employed nurses including pay, education and inflexible rostering need to be investigated firstly.

Price Certainty

In a free world economy, supply and demand dictate prices, not the government. The issue of price certainty needs to be addressed by examining the reasons why there is such a chronic nursing shortage. While HPV suggest that tendering is the only method of achieving price certainty, they do not indicate what will happen if major industrial action takes place amongst nurses, or if there is a change in nursing agency expenditures. This may mean that nursing agencies may be forced to operate at a profit loss in order to meet their contract requirements. A similar scenario may be present if tendering proceeds.

Reducing Bargaining imbalances and promoting equitable dealings

Health services have little bargaining power for the acquisition of agency nurses, primarily due to past tendering dealings with nursing agencies and Health Services.

Two specific examples can be given between the former North Western Health Care Network and the Southern Health Care Network. During the tender period one particular agency gained a monopoly of the agency nurses choosing to work at the two networks. This agency had been exclusively supplying staff to the two health care networks for several years and had secured a large number of nurses. When contracts expired with the former health care networks, this agency was able to implement frequent price increases, leaving the health care facilities with little choice but to continue using that agency as they had the monopoly of staff within those two regions. Agencies that were not selected for the tender were forced to increase the amount of commission being charged to fulfil their profit margin.

Agencies that are not selected for the exclusive supply of agency nurses will ultimately be forced to close down, as without public sector access, there is only minimal avenues for the supply of staff. This scenario was evident with the tendering of Southern Health in 1996, when an agency with a history of preferred supplying to Southern Health was not awarded a tender, and was forced to sell to another agency. If tendering proceeds, this scenario will only worsen, causing detriment to the health care industry as the market will be further characterised by a group of large non traditional nursing agencies, monopolising agency nurses and health care facilities.

Increase In Nursing Staff Availability

HPV purports that by reducing the remuneration package of an agency nurse, they will be required to work more shifts to maintain their income. This may be true in theory, however the reality is very different. Reports by Federal and State bodies reveal that one of the key factors limiting nursing retention is high levels of stress amongst nurses working in public health.⁸ The Nursing Recruitment and Retention

⁸ Nursing Recruitment and Retention Committee (2001) Final Report to the Minister of Health.

Committee (2001) also support the idea of reducing agency wages to make agency nurses work more. However, this committee was unable to provide evidence that nurses would continue working, and were only able to hypothesize that nurses would work more to maintain their income.⁹ They fail to address the issue, that if agency nurses wages are reduced that they will leave the profession entirely.

The idea that making nurses work harder for their money will only worsen stress levels amongst nurses, and will worsen any nursing retention levels. Belmore Nurses Bureau, have many nurses who enjoy being employed directly by hospitals, however, feel it is necessary to maintain their income by working one shift per week through an agency. If tendering was successful, these nurses would be unable to maintain their income, and would be forced to leave the profession, or work in the private health sector. Therefore, it may be more feasible to have nurses working only one shift a week, receiving higher than the award rates, than to have no nurse working at all. Agency's are therefore providing more support to the public health care system, than the government would have the public believe.

A survey conducted of agency nurses revealed that if tendering proceeds, 45% of people surveyed will leave the profession to consider other career options. Further to this, only 9% of people surveyed would increase the number of shifts they work to maintain their income. Full details of the survey are available in Appendix A.

HPV claim that by increasing nurses working hours, by reducing their salaries, there will be an decrease in Ambulance bypasses by having more beds open. However, annual reports to the community by Peninsula Health and Eastern Health show that ambulance bypasses have decreased over 2000/2001, compared to 1999/2000. Further, Eastern Health reported that out of their critical care beds available, they were filled and staffed at 100%. These reports do not support the assertion that the high cost of agency nurses increases the number of ambulance bypasses.

⁹ Nursing Recruitment and Retention Committee (2001) Final Report to the Minister of Health.

Fostering business efficiency

The aspect of business efficiency has not been explained or examined by HPV. No indication is given as to what “administration costs” HPV are referring to i.e. is it referring to the cost of allocations, or is it referring to the cost of each agency nurses. HPV do not indicate how getting ACCC approval for tendering will foster business efficiency. If HPV are unable to clarify this aspect then it has absolutely no impact on their success of the public benefits test.

HPV acting on behalf of health services appointing and awarding tenders for the health care services creates serious detriment to the agency industry. Conversations with HPV revealed that not all members of their board are from a nursing background, and therefore may be unaware of nursing agency modalities. Traditional nursing agencies often remain loyal to specific health care facilities, if HPV were to gain authority to appoint what they see fit as appropriate tenders, these rapport's may be broken, ultimately not fostering business efficiency.

CONCLUSION

The Governments knee jerk reaction to the cost of health care by tendering out for the supply of agency nurses, will not resolve any of the issues faced by nurses working in the public health care system.

If HPV's proposed tender is successful, it raises many anti competitive behaviours, that clearly out weigh any public benefits. The proposed tender is in direct contravene to the *Trades Practices Act* 1974 Section 45 (2)(a)(ii). Under this section, the lessening of competition must be of a substantial nature. The proposed length of time illustrates how substantial the lessening of competition will be. Agencies that are not selected in the tendering process will be forced to close down, or to sell to larger non traditional agencies, which will only exacerbate long term nursing retention and public benefits. The total availability of working nurses in Victoria would be reduced, if the tendering process continues, further worsening nursing retention issues within the public health arena. Tendering in the past has been unsuccessful in fixing

the Victoria's chronic nursing shortage. The past tendering out of nursing agencies is one of the key contributors of the reliability by health services on agency staff.

HPV's suggest that by reducing agency nurses incomes, agency nurses will be required to work more, effectively fixing some aspects of the nursing shortage. However, HPV are unable to provide evidence that nurses will work more. Further, the Nursing Recruitment and retention Committee, a government body established to research nursing trends, was also not able to provide evidence that reducing nurses wages will make them work more, they were only able to hypothesis that this would occur. When dealing with such a delicate and fundamental issue, government bodies should have to provide adequate research and evidenced based solutions prior to implementing radical plans.

Examination of HPV's grounds for requesting authorisation from the ACCC, will reveal that there are many components that require serious and detailed evaluation, prior to any tendering processes being instigated. Research into the trends that have developed as a result of past tendering, will reveal that they do not benefit the public, and that any economical befits would only be present in the short term only.

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Appendix A

Survey conducted of nurses working for Belmore Nurses Bureau. The sample consisted of 87 subjects. The survey was mailed to 100 samples, the high level of response is a key indicator as to the level of importance this has on nurses working for nursing agencies.

The Survey sent to 100 nurses working for Belmore Nurses Bureau

I work in the following area:

- Specialist ☐
General DIV1 ☐
Enrolled DIV2 ☐

Agency work is:

- a) My only source of income. ☐
b) Supplements my full time nursing wage. ☐
Supplements my part time nursing wage. ☐
c) Supplements my income while I work in another profession. ☐

1. I work with an Agency because:

- a) The Agency pays me well.
b) I can choose when I wish to work.
c) I can choose where I wish to work.
d) I enjoy working in a variety of hospital settings.
e) I avoid any bureaucracy within the hospital system.
f) The Agency staff treat me with respect and values my services

Very Important	Important	Not At All Important
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. I believe that the rates I am paid with the Agency:

- Reflect the true value of my skills and intensity of the work. ☐
Are too low as they do not reflect my true value. ☐
Are too high. ☐

3. If the Agency was forced by the Victorian State Government to pay my salary at or close to the Award rate of pay and therefore reduce my income, I would:

Please tick one of the following:

- a) Continue to work the same number of shifts that I currently work. ☐
b) Increase the number of shifts I work to maintain my income. ☐
c) Reduce the shifts I work because it is no longer worth doing extra. ☐
d) Move to a hospital nurse bank and increase the shifts I work. ☐
e) Consider other career options and leave nursing. ☐

4. I also work in a Hospital Bank

- a) No ☐
b) Yes ☐

5. I work in a Hospital Bank because:

- a) the agency cannot provide me shifts at this hospital ☐
b) I enjoy working Bank. ☐
c) I am happy with my rate of pay ☐
d) The Bank gets me extra shifts when the agency can't. ☐
e) Other reasons (please specify) ☐

Thank you very much for your time and participation in this survey.

Additional Comments in Relation to Health Purchasing Planned Tendering

The survey results will remain anonymous, however, if you are happy for us to contact you in the future for any further comment, could you please provide your name and contact details:

Name:

Contact No:

PLEASE RETURN THIS SURVEY TO

Belmore Nurses Bureau

2/47 Railway Rd.

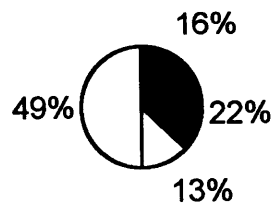
Blackburn 3130

OR

e-mail: info@belmorenursesbureau.com.au

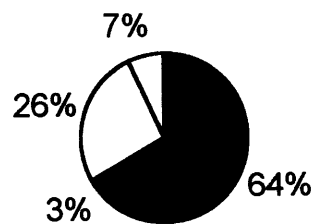
COULD YOU PLEASE SEND YOUR COMPLETED SURVEY
BY 25 JANUARY 2002

Response Nurse Classification



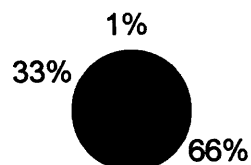
- NUMBER OF SPECIALIST NURSES
- NUMBER OF GENERAL DIVISION 1 NURSES
- NUMBER OF DIVISION 2 NURSES
- TOTAL NUMBER OF NURSES SURVEYED

Agency Work Is



- MY ONLY SOURCE OF INCOME
- SUPPLEMENTS MY FULL TIME NURSING WAGE
- SUPPLEMENTS MY PART TIME NURSING WAGE
- SUPPLEMENTS MY INCOME WHILE I WORK IN ANOTHER PROFESSION

I Work Agency Because (The Agency Pays Me Well)



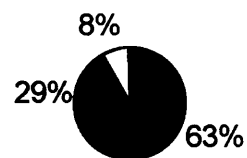
- VERY IMPORTANT
- IMPORTANT
- NOT AT ALL IMPORTANT

I Work Agency Because (I Can Choose When I Wish To Work)



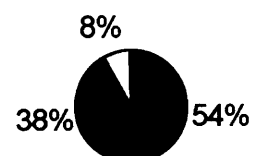
■ VERY IMPORTANT ■ IMPORTANT □ NOT AT ALL IMPORTANT

I Work Agency Because (I Can Choose Where I Work)



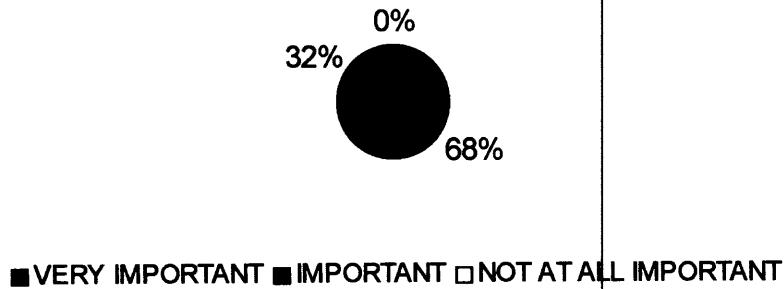
■ VERY IMPORTANT ■ IMPORTANT □ NOT AT ALL IMPORTANT

I Work Agency Because (I Enjoy Working At A Variety Of Hospital Settings)

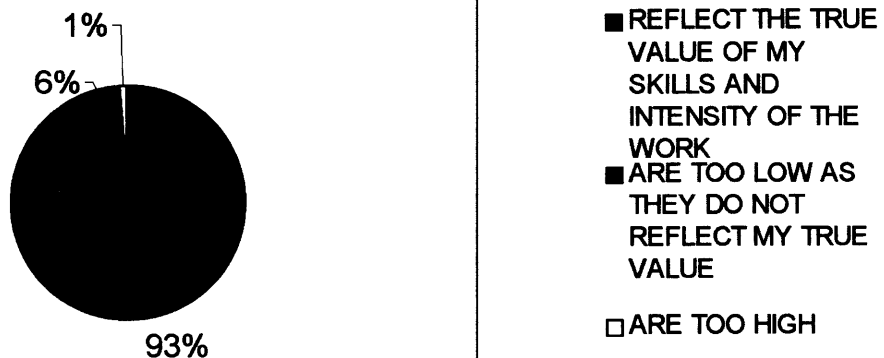


■ VERY IMPORTANT ■ IMPORTANT □ NOT AT ALL IMPORTANT

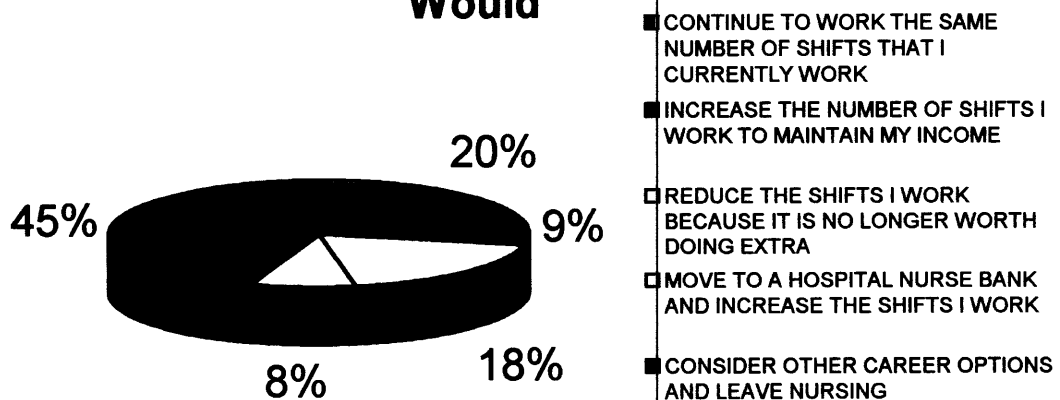
I Work Agency Because (The Agency Treat Me With Respect & Value My Services)



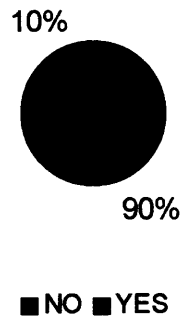
The Rates That I Am Paid With The Agency



If The Agency Was Forced By The Victorian State Government To Pay My Salary At Or Close To The Award, Therefore Reducing My Income, I Would



I Also Work In A Hospital Nurse Bank



I Work In A Hospital Nurse Bank Because

