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The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
P.O. Box 19
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FILE No:

DOC:

Monday, 11 February 2002

Dear Mr. Grimwade

Re: Application for Authorisation Nos: A90811 and A90812 lodged by Health Purchasing Victoria

Thank you for the opportunity to forward this submission in response to the above application by Health Services Victoria.

We have kept this submission within the parameters set out by the RCSA so as to give you a guided perspective of how we as Alpha Nursing Australia Pty Ltd view the state of Nursing within Victoria and how the proposals as set out by HPV will impact on us as a small to medium sized agency. As you will see, the comments made and the arguments put forward are not based on flawed logic or exaggerated example, rather on existing mutual trade practices, independent comments and results from staff surveys.

We trust that you will be able to use our case, together with the others that you will no doubt receive, and put forward a fair and balanced point of view that will guide the commission to making a final judgement on this issue.

Yours truly,

Henk van Dalen
Development Manager
On behalf of Alpha Nursing Australia Pty Ltd.

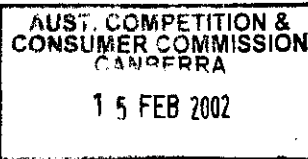


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1.0 Background information on the state of Nursing in Victoria

It has already been clearly documented, in the popular press, Industry magazines and Government studies that there is and will continue to be a shortage of Nursing labour force numbers in Victoria.

This is not just a state phenomenon though. Recently peak Nursing and general practitioner groups called on Senator Kay Patterson to work with these bodies and "address Australia's critical Nursing shortage as the first priority of her ministry". (ANJ, Feb. 2002, Pg. 7.)

There is no easy answer to explain why we are in this position today. Since 1985 Nurses have worked at becoming recognised as a profession. Upgrading training by taking it out of the hospital, into the University environment transformed a certificated qualification into a bachelor degree. It is our view that other medical and ancillary groups still could not accept or respect a better-educated group of nurses into the ranks of the medical "team". Having to take Union action, to improve pay and working conditions, in 1987, moved nurses away from the quiet clutches of servitude, into the open arena of political and industrial turmoil. With steady increases in pay and conditions and with the State in financial trouble the Kennett Government in the 1990s understood the heavy cost of providing nursing services to the public health system. This, in our opinion was not because nurses were paid too much; it was merely that there were so many of them in the system. The Government, as part of their mandate of economic rationalism, slashed the health budget by making 2000 nurses redundant. They could not return to work within the public health sector for three years, even though they were desperately needed. Those that wished to return to the system did so through agency work. Others simply left the system for good. Others, with their redundancy payout, travelled.

A more educated, militant group of professionals have become dissatisfied with the working conditions. A lack of professional respect and lack of not only recognition of qualifications but also career path has evolved into a negative labourforce growth

pattern that is not likely to recover till around 2007 to 2008. (Department of Human Services Vic. 1999. Pg. 23.) Since the mid 1980s nurses have learnt to "vote with their feet". The industry as a whole has not done much to address this situation in our opinion, the current crisis being the result of poor human resources and financial (budgetary) planning.

2.0 Use of agency services

As stated above, the 1990s saw a large influx of nurses from the public health sector into the agency nursing environment. With shortages of nursing staff on wards, hospital administrators needed to find additional staff. Hospital bank nurses could not fill all the positions. Agencies were contacted to help fill the demand for nurses. This has continued over the years. Hospitals have been able to contact any agency in a **freely competitive marketplace**.

Some agencies have developed specialities to fit niche market points whilst most have been able to provide the generalist nurse to fill some of the vacancies that exist within the public health sector. On average, our agency supplies around 75% of our available work force to the public health sector. The demand is always greater than what we are able to supply. We are unable to fill around 50% of the requested shifts. When this happens the hospital allocators ring another agency and try to fill as many shifts as they can with them and then, possibly move on again to another and so on. Inherently the "smart" operators do seem to have a favourites list. Because it is an **open and free** market they are aware that one agency may be able to provide experienced staff, sometimes a particular staff member by request at a fair rate. Agency rates vary with each business. Apart from the few larger organisations that have tried to entice nurses with big salaries and "add on" conditions, in order to gain a larger share of the available market, most agencies seem to be aware of the intricate balance between fragile market forces and the constraints on the health budget. There is anecdotal evidence that within the market place, a balance exists. If one agency begins to increase the rates for their services, client organisations tend to ring other agencies first, to try and find nurses to fill the shifts available. The result is that nurses working for the agency

that charges a higher rate works less shifts. After a while they tend to move to agencies that are getting the work because of more equitable rates.

Alpha Nursing Australia Pty Ltd works hard at keeping placement rates fair together with employing only experienced staff that are capable of doing their work with minimal supervision. We also find it important to place staff in a familiar environment so that if possible they work in the same ward or facility on a regular basis, fostering continuity of care and a stable ward environment.

With further erosion of the base staffing levels in the public health sector, agency nurses have been increasingly used in positions that had previously been filled by permanent nursing staff. Increased pressure has again been put on the Government to work at solving the chronic shortages within the system. One method was to limit the use of agency staff to fill only unplanned and unexpected vacancies within the health system. The Australian Industrial Relations Commission added a clause in the 2000 Public Enterprise Bargaining Agreement to that effect, hoping that with a few other incentives nurses would come back into the public health system. This has not remedied the situation. Another initiative to reduce the reliance on agency nurses was to improve conditions, one area the nurse's unions had been working on, by reducing the nurse to patient ratio. This does not seem to have made any great impact on the availability of nurses in the system either. Now less staff will leave because of the stress and physical hardship of the work but the demand for extra staff is even greater.

The very nature of agency work and one of the main advantages as far as the staff are concerned (survey results Attachment 1.) is the ability to work **when** nurses want to. Therefore we have the staff numbers to fill vacant shifts on a day-to-day basis but they have not made themselves available. The survey was conducted as part of our response to the HPV proposal. The following section extrapolates the results.

6.3 Survey introduction and results

The Nursing Agencies Association of Australia felt that it was important that you hear the voices of our nurses. A survey was designed and distributed with the payslips of

those nurses who are currently available to work. We received 32 responses, a good return in terms of survey response.

The collated results are attached for your perusal. **The impact of the ACCC giving authorisation to HPV as far as this agency is concerned is obvious.**

94% of the respondents stated that agency work was their only form of income. Given the choice to rank elements they considered Very important, Important or not at all important, 72% stated that they felt that **being well paid was very important.** The remainder stated that they felt it important.

90% of the respondents felt that they chose to work for an agency because it **allowed them to work when they wanted to.** The remaining 10% stated that this was important to them. **No one stated** that it was not at all important. A critical element here is that within the health system there is no flexibility at all within the rostering system. Your life revolves around the roster and your family and social life have to fit around this. For the younger nurses, social life has great importance. For the older nurse the priority lies with family. Within the health system it is using a commodity to fill the shift.

75% of the respondents felt that **where they work** is important. With agency work, if a nurse does not like working within a certain environment they do not have to go back. **They have a choice.** Again the remaining percentage of respondent considered this factor important.

The variety of work available saw respondents more varied in their opinion. 59% felt that it was very important. 27% stated that it was important and the remaining 3% did not regard this factor to have any bearing on their working pattern.

All speciality and division 1 respondents indicated that **avoiding bureaucracy** was very important (13 out of 16) 81% with the remainder considering it important. The impact of bureaucracy diminished with division 2 and PCA staff.

Being treated well and feeling valued ranked high (84% very important) (16% Important) as a consideration to work for an agency.

Asked if their **pay reflected a true value of the skills and intensity** of the work 91% responded that it did. The remaining respondents felt that the pay was still too low. **No one thought that the pay rate was too high.**

If the agency were forced to use all it's available expertise within the current highly competitive market to ensure a place within the select few that would then have the privilege of staying in the market place under a restrictive trading agreement, staff pays and conditions would be seriously eroded. The response to that?

3% felt that they would work the same number of shifts with the agency.

9% stated that they would have to increase the number of shifts that they worked, mainly through financial obligations.

13% felt that they would reduce the number of shifts.

6% stated that they would probably add nurse bank shifts to their workload.

69% of the respondents stated that they would consider other career options and leave nursing. These highlighted points will be discussed further in section 6.5.

Only 3% of the respondents indicated that they worked for a nurse bank as well, one of them indicating that through the nurse bank she was allocated lighter physical work! It is quite clear that **working for an agency has many benefits** over the option of working within the public health system. It does not suit everybody though; otherwise there would be even fewer permanent staff within the health system.

Agency work provides an alternative mode of employment that allows many nurses to stay working in the profession rather than leave completely because of the incompatibility between the requirements and constraints of the health system and those of the nurse.

6.4 Description of tender and general implications from a competition perspective

This tender process has many hidden elements. At present there are around fifty (50) nursing Agencies within Victoria. No one is aware of the tender parameters that HPV has in mind. Is there a "cut off" point in relation to the dollar value of the tender? Are there a set number of agencies that will be able to supply nurses at the end of the tender process? Agencies that are not part of the successful group will have their services restricted and are therefore unable to compete for the labour market and will inevitably cease to exist. This will result in the remaining agencies becoming bigger in size and commanding a larger share of the market. This will lead to less competition, takeover bids and purchases, something that is already happening within the industry.

Financially the tender process poses several headaches. Smaller agencies will find it more **difficult if not impossible to service loans** and overdraft costs (if they can get them) to cover the 30 days in arrears statements and the 30 days to pay conditions. Most organisations do not pay promptly leading to major cash flow problems for Agencies.

Budgeting for infrastructure change due to an unknown influx of staff from other agencies will also create problems. Working within a **restricted financial framework** the larger agencies who have "deeper pockets" will be able to outlay more resources for recruitment and consolidation of infrastructure. This gives them an unfair advantage and ultimately a greater share of the market as there is no longer a natural market balance created by unrestricted competition. After the three year contract there will be less "players on the field". Less competition ultimately leads to increased costs of service. That will not benefit the public interest.

5.0 Restrictive trade practices issues.

There is very little that we can tell you about the Trades Practices Act.

- You know that granting these authorisations will restrict, even destroy nursing Agencies abilities to operate within the current market. Section 45(2)(a)(i) will no longer apply.

- You know that competition as protected by section 45(2)(a)(ii) of the TPA will cease under an agreed price contract
- You know that Price Fixing as covered under section 45(2)(ii) via section 45A will be established.
- You know that it will foster larger nursing agencies with greater market shares making it almost impossible for smaller agencies to compete should a competitive market reappear. Equitable dealings within the market place will no longer exist.
- You understand that consumers will have less choice.

6.0 Proposed public benefits test

The only key issue that HPV wants to resolve is the increasing cost of health care. Is it **of benefit to the public** to put further pressure on a labourforce that from our perspective may well "vote with their feet" and leave the industry altogether?

6.5 Reduction in the overall Nurse staff costs to health services

The arguments put by HPV are ill conceived and flawed in structure. The examples of agency costs versus ward staff costs are an extraordinary example of the shortsighted approach taken. (Phillips Fox submission. Pg. 5.) To quote an extraordinary instance where a client may well have offered to pay a very high hourly rate to attract a nurse rather than not be able to provide the service paints a dishonest picture in relation to the industry norm.

We do not argue that there are some agencies that demand a higher price for their labour provision than others. Some of the bigger agencies have increased their price on several occasions to try and increase their market share of available nursing staff. By paying nurses higher rates and providing tangible benefits, the client end up paying a higher "per hour" cost. This has put further pressure on the health dollar but as stated before a free competitive market will eventually balance this out as clients move their custom to agencies that can supply at a lower cost.

The perception that agency staff cost more than permanent ward staff within the health system also warrants discussion. The hourly cost of an agency nurse covers the "on costs" carried by the agency. The quoted hourly rate of a ward nurse is seen as gross wages only. If the following provisions were taken into account **a clear case could be made that agency staff actually cost less!**

- Provision for Superannuation 8% of gross to increase to 9%.
- Workcover premiums also at around 8%
- Accrual of annual leave (190 Hours p/a) 10% of yearly pay.
- Accrual of personal leave (90 Hours p/a) 4.6% of yearly pay
- Accrual of long service leave (30 Hours p/a) 1.5% of yearly pay
- Maternity / Paternity leave (225 Hours) 11.54% of yearly pay
- Payroll processing
- General allocations and administration
- Replacement staff for accrued days off
- Provision of study leave including post graduate incentives
- Provision of uniforms
- Parking subsidies
- Free education including post graduate preceptor ship
- Immunizations
- Advertising and recruitment
- Public liability and professional indemnity insurance and
- Security Identification costs.
-

"On costs" as liabilities, funded or unfunded do not seem to be part of the equation. With agency staff they form part of the "per hour" rate.

Other factors not discussed are the infrastructure expenses HPV and hospital nurse banks will incur should this proposal for exemption of the TPA be granted.

Understanding that large public bureaucracies can grow very quickly, what checks and balances are in place to **ensure that the public benefits** from a perceived reduction in overall costs is achieved?

If the results of our survey show an industry wide trend, then to make the proposed exemptions to the TPA available to HPV may well see the public health sector collapse further into crisis.

6.2 Employment equality and workplace harmonization

Considering the argument put above this is not an issue. The perception is that agency staff are paid more than public health sector staff. It is true that they will walk away with more money in their pockets at the end of the day. That is the nature of casual work as they are not accruing any type of leave and do not have some of the benefits afforded the ward staff. The real benefits that agency staff have are intangible. They have a freedom to dictate their own hours of work in their chosen environment.

As previously stated Alpha Nursing Australia Pty Ltd tries to place staff so as to advance continuity of provision of care. This leads to harmony on the work coalface as staff are known and trusted to carry out their work confidently. Often clients will request a specific person for this reason.

6.6 Price Certainty

This provides a stable budgeting tool for the Government for a period of three years. The nature of the agreement gives no recourse for award increases or increases in GST or CPI. It is price fixing, dismembers the nature of a free competitive market and worst of all reduces the earning capacity of the casual worker in an environment that is trying to entice that very person to work more.

6.7 Reduction in bargaining Imbalance and promotion of equitable dealings

There is very little to be said here. **The tender process will create a bargaining imbalance by fixing prices. It will exclude part of the market. Equitable dealings cannot take place.** Competition will reduce and because of the restrictive cutbacks in pays and conditions available labourforce numbers will drop. **The public will not benefit.**

6.5 Increase in nursing staff availability

HPV argue that by reducing wages, nurses will work more shift to make up what they have lost. This way more shifts will be filled and the shortages seen at present will be alleviated. We can only wonder whose brainchild this is. Historically we have seen nurses vote with their feet and leave the system. **Our survey results indicate that the majority of our skilled and valued workers will seriously consider leaving the health system if their livelihood is "tampered" with.** Would this happen in any other Industry? Maybe the Government would like to try this behaviour with the doctors in the health system. How far would they get? **The fact that we are able to give nurses flexibility in their lives and balance that out with a fair pay structure they are remaining in a system that they would have abandoned had agencies not existed.** Now we see a plan to further erode the perceived value of these people where they become a low paid consumable within the health system. As already stated, with the addition of all the on costs the disparity in pay appears to lean in favour of the ward staff. **We consider that this strategy put forward by HPV is seriously flawed and may well "backfire"!**

6.6 Fostering business efficacy

We submit that with the involvement of HPV there would be no public benefit, especially in the perceived savings in administration costs. Currently health services leave the administration for the provision of staff to the agency. It is the agency that does all the work to obtain staff. By moving any administrative functions from one section of Government to another will only duplicate the administrative costs. Health services who benefit from the additional agency staff will still need to account for and report to HPV in order to maintain accurate records from which HPV can administrate. The tender document also requires new reporting mechanisms that will further increase the administrative workload of agencies. This too requires additional personnel to administer within HPV. There is also a concern that the nature of reporting required may contravene sections of the privacy act and we would need to look into this further.

Overall an additional administrative layer will only serve to delay and obstruct the good working relationship between the agencies and the health services.

7.0 Conclusions

We believe that the submission put forward by HPV is based on a flawed supposition that agency nurses cost more than the nurse in the health services. As such there is no public benefit to this proposal.

We believe that agency nurses are being made the scapegoat of a much bigger problem within the health system and health budget. Neither has effectively planned for the provision, retaining and payment of quality staff.

It is clear that the health system needs more nurses to cope with the requirements / demands put on it. The fact that agency nurses are being used more indicates a continuing erosion of permanent staff numbers. This issue is not being addressed in Victoria but pressure has been put on Senator Kay Patterson to investigate this phenomenon.

Reducing the perceived "value" of agency staff will have many consider leaving the industry altogether. This will have an adverse and potentially irreversible effect on the market.

Allowing authorisation of A90811 and A90812 will set a precedent of restricting free competitive trade and undermining the whole spirit of the Trade Practices Act 1974, opening the door for further submissions into other industries.

References

Application for Authorisation: Exclusionary provision Trade Practices Act 1974 – sub section 88 (1) (2001) Health Purchasing Victoria including attached written submission by Phillips Fox on behalf of Health Purchasing Victoria.

Australian Nursing Journal. Feb. 2002. Vol. 9. No. 7.

Nurse Labourforce Projections Victoria 1998-2009 (1999) Victorian Government Department of Human Services, Melbourne, Victoria, Australia.

Appendix 1

Staff Survey results.

Statement	Option	Specialist	Div1	Div 2	PCA
1. Number of replies from each area		3	13	14	2

2. Agency work is	A) My only source of income	3	9	13	2
	B) Supplements my full time nursing wage	0	2	0	0
	C) Supplements my part time nursing wage	0	2	1	0
	D) Supplements my income while I work in another profession	0	0	0	0

	Very Important	Important	Not at all important	Very Important	Important	Not at all important	Very Important	Important	Not at all important	Very Important	Important	Not at all important
3. I work with an Agency because	1	2	0	10	3	0	10	4	0	2	0	0
A) The Agency pays me well												
B) I can choose when I wish to work	2	1	0	13	0	0	14	0	0	0	2	0
C) I can choose where I wish to work	1	2	0	12	1	0	11	3	0	0	2	0
D) I enjoy working in a variety of hospital settings	2	0	1	10	3	0	7	7	0	0	2	0
E) I avoid any bureaucracy within the hospital setting	2	1	0	11	2	0	8	4	2	1	1	0
F) The Agency staff treat me with respect and values my services	2	1	0	12	1	0	11	3	0	2	0	0

4. I believe that the rates I am being paid	A) Reflect the true value of my skills and the intensity of work	3	11	13	2
	B) Are too low as they do not reflect the true value	0	2	1	0
	C) Are too high	0	0	0	0

5. If the Agency was forced to pay award etc I would:	A) Continue to work the same number of shifts that I currently work	1	0	0	0
	B) Increase the number of shifts I work to maintain my income	1	1	1	0
	C) Reduce the shifts I work because it is no longer worth doing extra	0	2	1	1
	D) Move to a hospital Nurse bank and increase the shifts I work	1	0	1	0
	E) Consider other career options and leave Nursing	0	10	11	1

6. I also work in a hospital bank	A) No	2	12	13	2
	B) Yes Go to 7.	1	1	1	0

7. I work in a hospital bank because	A) The Agency can not provide me shifts at this hospital				
	B) I enjoy working bank				
	C) I am happy with the rate of pay				
	D) The bank gets me extra shifts when the Agency can't				
	E) Other				
	Need more shifts		As bank get lighter work load than Agency staff	Just in case Agency can't get the shift	

Other Comments.

Specialists

In hospital settings the long hours put in by staff are not recognised and unpaid

Nurses upgrade their skills and qualifications without recognition

Medical staff have no idea what nurses do and are often disrespectful

	<p>There is no flexibility of working hours in the hospital setting</p> <p>The Government has given incentives to work a little harder but as time goes on they are eroded away.</p> <p>The hospital expects well trained staff but unlike other professions Nurses are poorly remunerated for their level of skill</p> <p>If the Agency wages drop then I will leave the industry and supplement my income with the family assistance payments with no effort</p>
Div 1	<p>There is so much waste in the system. Double staff between 13.30 and 15.00 as one example. Leave Agency staff alone.</p> <p>\$23.00 an hour for years of study for good Nursing, management, education and public relations skills. Ridiculous. Only seen in Nursing.</p> <p>NOT greedy! Deserving. Those who criticise have no knowledge of what the Nurse does. Come and work a shift and see!</p> <p>A decrease in pay makes the work unviable as a casual labourer</p> <p>Would this happen if we were looking at the medical profession? Are we discriminated against because we are mainly women?</p> <p>If our conditions are again further eroded it does tell us we are not valued!</p> <p>Decreased wages will see more nurses vote with their feet, out of the industry</p> <p>I work when I want to. Not when HPV tell me I can.</p>
Div 2	<p>I can balance my work and family life with agency work</p> <p>I think that the pay is fair for a casual worker</p> <p>Flexible work hours allow me to do further study</p> <p>Our work is not understood</p> <p>The variety of places increases the ability to learn more and increases our confidence</p> <p>University trained staff don't seem to like the basic Nursing duties. They want to be managers.</p>
PCA	<p>Do not stop the running milk from the breast</p>