

From: Grimwade Tim
Sent: Monday, 7 January 2002 9:01 AM
To: Jones Gavin
Cc: Palisi Paul; Gilbert Jewel
Subject: FW: Submission against the Health Purchasing Victoria Submission



HPV submission.doc

fya



-----Original Message-----

From: Simone Millman [mailto:sixisami@hotmail.com]
Sent: Sunday, 6 January 2002 2:43
To: adjudication@accc.gov.au
Subject: Submission against the Health Purchasing Victoria Submission

Attention of the General Manager, Adjudication Branch, ACCC

I wish to submit the following submission against the submission by Health Purchasing Victoria to the ACCC for permission to be excluded from provisions of the Trade Practices Act 1974 with proposed legislation for the supply of Nursing Services to Victorian Public Hospitals.

Regards

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4th January 2002

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

I wish to submit the following submission against the submission by Health Purchasing Victoria to the ACCC for permission to be excluded from provisions of the Trade Practices Act 1974 with proposed legislation for the supply of Nursing Services to Victorian Public Hospitals.

My submission is based on my experience as a practising medical professional (State Registered Nurse) currently working in both public and private hospitals in Victoria.

I understand that Health Purchasing Victoria (HPV) is seeking to tender out agency services, making it illegal for a health service to utilise any agency not approved as a successful tenderer. Amongst the criteria upon which a contract will be awarded is that successful tenderers will be required as closely as possible to pay the current award rate for each grade/specialist field in nursing.

Prospective tenderers to this arrangement will be required to disclose the rates which a nurse will be paid in relation to the award rates, commissions and fees for the provision of nurses.

The intent of this proposal is that public hospitals will only be able to secure agency nurses under an exclusive arrangement from successful tenderers. Those not successful will not be allowed to offer their services. In effect this means that those agencies that are not included in the limited group of "authorised" agencies will be severely constrained in their ability to operate as a business. This legislation will therefore be substantially responsible for forcing many agencies out of business with subsequent losses of investment, employment opportunities and freedom of choice with regards to the provision of services.

I also understand that the proposed legislation also has provisions that preclude a nurse who works, full-time, part-time or nurse bank at a particular public hospital from working at any other hospital within that network via an agency.

I contend that this proposed legislation would be a serious contravention of the Trade Practices Act 1974 as follows:

Fee setting

The best approach for a health professional is to **individually** determine the fees to be charged for his or her services. Discussing fee scales with colleagues who compete with you raises the possibility that an agreement or understanding will be reached that fixes, controls or maintains the level of those fee scales. (This would fall within s. 45A and would be deemed to substantially lessen competition.)

Agreements with other professionals

Any agreements with professional colleagues that have the purpose or effect, or likely effect, of lessening competition in a market are at risk under the Act. If that lessening amounts to 'substantial' lessening then the Act will be breached. The following are examples of behaviour at risk.

1. All general practitioners in an area collectively agree to refer patients requiring paediatric care to a particular specialist. The purpose or effect of this agreement may be to prevent other health care providers, for example other specialists, from competing in the market for paediatric care.

2. All specialists in an area **agree** not to sign contracts with hospitals in that area. This would amount to a primary boycott and would be deemed to substantially lessen competition.

Source: ACCC website <http://www.accc.gov.au/docs/health/health22.htm>

I understand that it is the contention of HPV that this proposed legislation will have beneficial affects such as the reduction of costs within the public health system of Victoria and ultimately the reduction of waiting lists. In addition HPV contends that health services enter into ***an "exclusive tender arrangement with nursing agencies for the acquisition of nurses"***.

Exclusivity, I contend, will not only be against the spirit of restrictive trade and price fixing provisions of the Trades Practice Act but also have the opposite effect to the desired outcome of HPV. In other words nurses will vacate the system leading to nurse shortages and therefore ultimately increasing longer waiting lists at public hospitals. This is surely not a desired outcome for any government. Naturally this undesired outcome would not be in the best interests of the public who already suffer from long waiting lists.

From my wide experience within the public hospital sector I would contend the following:

- Bed closures are not related directly to the costs of nursing staff but from the lack of staff to meet required demands, agency, and bank or otherwise.
- Capping agency-nursing rates will substantially restrict the numbers of nursing staff willing to remain in the nursing profession, particularly within Victoria.
- Proposals submitted by HPV will in effect amount to undue control, price fixing, and reduction of choice, reduction of suitably qualified people in the system and negative influence in wage control. Ultimately the public will be the long-term losers should this proposal be successful.
- Nurses are an essential professional service that has suffered from unrealistic base pay rates that are not commensurate with the dedication and professionalism exhibited by them. Nursing numbers have dropped considerably over recent years as a direct result of unrealistic pay rates. The provision of nurses via agencies has helped to stem this decline. Whilst it is undeniable that nurses supplied via agencies are paid higher rates this must be expected to retain many experienced nurses within the system.
- Other professionals are not restricted by draconian legislation that undermines their ability to operate within their chosen field. This legislation seeks to produce exactly that undesirable effect. The Trades Practice

Legislation has worked successfully to remove many negative influences from both business and government business in the interests of the public. I believe that the legislation should be used as it is intended in this case, otherwise the ultimate result will be detrimental to the public; a direct contravention of the spirit of the act.

- By applying restrictions, seeking to control pay rates and other conditions will reverse the trend leaving public hospitals understaffed. Those staff remaining will work under increased work stress and therefore could be substantially detrimental to patient welfare.
- Many nurses will be forced to seek work either outside the profession or leave to work overseas in countries where health authorities recognise the importance of the nursing profession and therefore offer conditions and pay rates that are superior to those offered in Australia.
- If Australia is to have an equitable and quality health service then the importance of nursing professionals must be recognised. The proposal of HPV goes contrary to this desired result.

Yours faithfully

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