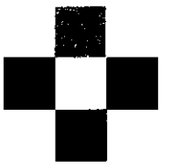
Psychiatric Care

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



Psychiatric Care
Consultants Pty Ltd
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Melbourne Office
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Sydney Office
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Dear Sir/Madam

Application for Authorisation Numbers A90811 and A90812 lodged by Health Purchasing Victoria

We refer to your letter of 10 December 2001 inviting Psychiatric Care Consultants Pty Ltd (**PCC**) to make a written submission to the Commission as an interested party regarding the likely public benefits and effects on competition of the abovementioned Applications for Authorisation.

1. Background to PCC

PCC is a Nursing Agency with 10 years' experience in the public health sector, which specialises in the provision of psychiatric nurses to client hospitals in the public hospital system, private hospitals, nursing homes and to private clients, and currently represents 182 EFT nurses in Victoria.

PCC has always paid its nurses Award rates and charged what PCC considers a reasonable rate to our clients. Many of our nurses have been with PCC for ten years, and many of our nurses have other full or part time employment in the public health system and add extra income and variety by working agency shifts. PCC has developed a sophisticated database for tracking and matching nurses' availability and clients' needs.

2. Basis for PCC's Submission

Having reviewed the submission lodged on behalf of Health Purchasing Victoria (**HPV**) (**HPV Application**) in relation to the proposed tender and contract arrangements for the provision of agency nurses to public hospitals, PCC is concerned that the proposed arrangements will not result in the public benefits described in the HPV Application, and will instead have an adverse effect on the efficient operation of the public health system and an anti-competitive effect on the delivery of agency nursing services to the overall public and private health care market.

Consequently, PCC is making this submission to outline the difficulties and shortcomings it sees in the proposed arrangements, and to assist the ACCC in determining whether the public benefits of the proposed tender arrangements outweigh their anti-competitive effect.

3. Submission

It is PCC's submission to the Commission, that the public benefits of the proposed tender arrangement do not outweigh the anti-competitive effect of the arrangement described in the HPV Application, and that the Commission should therefore not grant authorisation for the proposed conduct.

4. Reasons for Submission

The HPV Application predicted that the proposed tender arrangement would lead to:

(a) decreased staffing costs;

(b) employment equality and workplace harmonisation;

(c) price certainty;

(d) an increase in nursing staff availability; and

(e) fostering of business efficiency,

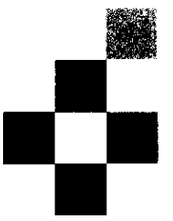
for public hospitals in Victoria.

PCC is concerned that the submissions on those public benefits contained in the HPV Application fail to consider the full range of implications of the proposed tender arrangement. For the reasons set out below, PCC believes that not all of the public benefits described in the HPV Application will eventuate.

(a) Reasons Nurses work through Agencies

The HPV Application fails to recognise that most nurses do not make the decision to work through agencies on the basis of receiving higher remuneration than they would as hospital employees. Indeed PCC pays its own nurses the same Award rates under the same conditions as would be payable to the nurses in a public hospital. Instead, many nurses decide to work through agencies for non-monetary reasons, including:

- true flexibility in working hours - agency nurses have the choice to work or not from day to day and hour to hour;
- not being confined to one workplace or one set of colleague relationships;
- the ability to spend time studying to improve professional skills and qualifications, then apply those skills in a range of workplaces;
- the increased variety through the agency, and potential to experience clinical areas that would not otherwise be available on a short term basis; and
- gaining experience, particularly for new graduates who are unable to find a placement in a hospital



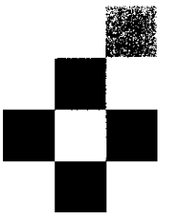
Consequently, PCC is concerned that the premise in the HPV Application that fixing agency nurses' remuneration to Award rates will lead to a decrease in staffing costs is misconceived. Instead, PCC is concerned that the effect of the proposed tender arrangement may in fact be to reduce opportunities for nurses to work through agencies, and thereby reduce the number of nurses available to the system either by the departure of agency nurses from the system altogether due to lack of a truly flexible work arrangement, or agency nurses deciding to work a lower number of shifts in favour of pursuing other work or lifestyle options which enable them to achieve the objectives outlined above.

(b) Staffing Costs

Furthermore, figures relied upon by HPV in comparing costs to public hospitals of nurses employed directly by those hospitals, and costs of nurses procured through nursing agencies, fail to take into account the efficiencies of administration afforded by nursing agencies compared to the overheads and administration costs incurred by a public hospital in its management of its own workforce. Agencies are set up specifically to employ staff for short term casual work, and have little or no other permanent staff to concern them unlike public hospitals.

Agency rates are often compared to only the basic cost of employment, being hourly wage rates. With Agencies there is a set rate per nurse per hour, unlike hospitals, which need to take into consideration increased

administrative time, increasing Workcover costs, disciplinary procedures, superannuation and other payroll costs, loss of clinical time by senior nurses in co-ordinating casual staff placements and all other staff entitlements. When the respective costs are compared in their full and proper context, it is submitted that nursing agency staff will in many cases be more cost effective than the management of a hospital-employed workforce.



It is submitted that in procuring the services of nurses to fill hospital requirements, a nursing agency is far better streamlined and structured to minimise the overheads and administration costs involved. HPV may find it a more productive solution to tender for the management and or sale of the nurse banks at centralised agencies and make better use of the available nursing staff, as nurse banks in hospitals are otherwise often managed by senior nurse whose time would be better spent in the clinical areas

HPV also has not taken into consideration the current nursing shortage. Currently, all agencies are called on a regular basis to provide staff to the majority of public hospitals in Victoria. Therefore, even if HPV is successful in its bid to tender for nursing services and only a few "large" agencies are successful then due to the current shortage, agencies that are not successful will still get calls to fill shifts when the others cannot supply.

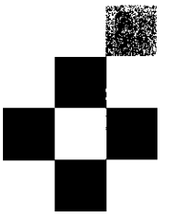
(c) Staff Availability

The HPV Application also anticipates that the proposed tender arrangement will lead to an increase in nursing staff availability, on the basis that it will encourage nurses to work more shifts. In PCC's experience, and given that its agency nurses are currently paid Award rates, this argument is not supported by fact, as for the reasons noted above, it does not recognise the many other reasons that nurses desire to work through agencies.

In respect of PCC's large number of nurses, it is not anticipated that the tender arrangement would lead to any increase in the number of shifts worked by PCC's nurses. Currently PCC nurses work as many shifts as they desire, they will not automatically alter their work availability should the tender arrangement be implemented. In fact many will choose to work less shifts as nurses if their flexibility is curtailed. The premise too, seems to be that more nurses will be introduced into the

system. PCC is of the view that this is a false assumption, as some nurses will leave the profession if they cannot work for the agency of their choice, thereby creating a greater staff shortage than currently exists.

What the HPV Application fails to recognise is that agencies are currently effectively "statewide nurse banks", providing nurses with a truly flexible work environment and function very well in that capacity, as they are able to focus entirely on the provision of quality staff, rather than add this task to all other facets of operating a hospital.



Consequently, all the ancillary benefits which are identified in the HPV Application, including increases in quality of care by reducing turnover of nurses, maximising hospital beds remaining open and minimising the incidence of ambulance by-pass, are unlikely to eventuate.

(d) Staff Quality

By creating a disincentive to nurses working through agencies, HPV risks reducing the ability for nurses to develop specialist skills and thereby improve the skill base of the workforce. Agencies are able to provide suitable staff who require little "on the job" training and also supply highly skilled staff from other hospitals/networks not available through nurse banks.

In the case of agencies with specialised workforces like PCC, the services offered by an agency can simply not be replicated by a hospital as an employer in its own right. PCC offers its clients access to a range and depth of specialised skill that hospitals would not otherwise be able to source.

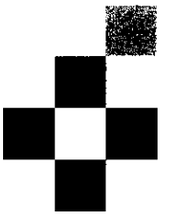
PCC office staff provide specialist support to field staff (unlikely to be the case in a large nurse bank situation), and the sourcing of specialist staff from other hospitals and health areas unlikely to take place in individual hospitals. Some specialist staff are only able to work one shift per month or less and are likely to be lost in a large generalist nurse bank. PCC can track these nurses' availability with ease and accommodate their requests.

PCC also provides ongoing training and graduate programs to ensure that the specialist skills of our staff are maintained or improved. Again these specialist skills

are often ignored or overlooked in a large hospital environment.

(e) Long Term Anti-Competitive Effect

The longer term consequences of the proposed tender process would, in PCC's view, have adverse implications for consumers of nursing agency services in the future. Most agencies rely on volume of work to survive rather than margin on rates, so if the volume of their work diminishes they may have to close. To the extent that the tender process significantly reduced the number of nursing agencies in the market during the term of the exclusive contract arrangements, the amount of competition for the provision of agency nursing services will be significantly diminished.



Consequently, if the exclusivity is abandoned because of impracticality, or alternatively at the expiry of the exclusivity period, consumers in the market (being public and private hospitals) will be vulnerable to exploitation from a reduced number of service providers. The lack of competition in the market at that time would enable the service providers to dictate terms.

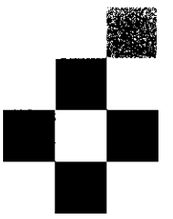
Currently, the number of service providers in the market are such that there will always be competition between nursing agencies to secure contracts. PCC is concerned that this would not always be the case in the event of a significantly diminished number of service providers.

(f) Anti-Competitive Effect – Private Hospitals

Furthermore, the Commission should be aware that agencies provide nurses to both public and private hospitals. To the extent that agencies become commercially unviable as a result of being ineligible to provide nurses to public hospitals, and consequently leave the market, the market for acquisition of nurses by private hospitals will be significantly and adversely affected. PCC currently provides specialist and generalist nurses to the value of 20 EFT to most private hospitals in Melbourne.

Agencies will not be obliged to cap their rates to private hospitals. As private hospitals will be dealing with a reduced number of service providers, in the absence of the usual amount of market competition, the risk arises that service providers may artificially inflate prices to a

captive market segment. This would not occur if the full range of existing service providers continued to operate their businesses in both sectors. Moreover, to the extent that nurses were able to demand a higher hourly rate to work in private hospitals by virtue of the lack of competition, it is submitted that the public hospital system would risk losing even more nurses when agency nurses determine to work only in private hospitals.



(g) Impracticality of Exclusivity

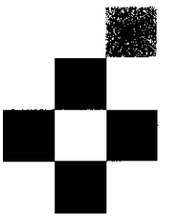
It is also submitted that by restricting the ability of a public hospital to use a nursing agency of its choice, HPV risks the possibility that "approved" nursing agencies may be unable to fulfil a hospital's request at any given time. This is particularly the case in respect of specialist nursing services such as those provided by PCC. Specialist nurses prefer to work for those employers who understand their needs and workplaces and where they can get support.

A hospital is likely to be able to meet a requirement for nurses in these circumstances currently given the existing range of service providers. Any limitation on this range risks negative consequences for the public health sector. PCC is concerned that by effectively excluding some service providers, public hospitals will also lose access to the nursing staff of those agencies, further reducing the number of nurses available to work in the public system.

HPV needs to recognise that the health system as a whole needs to have as many choices as possible to attract and maintain nurses in the job. Too many trained nurses are leaving, not enough new nurses are training and of those who do train, many drop out. The "Australian Institute of Health and Welfare" report 4000 less nurses employed in 1999 compared to 1994 and the average age of nurse is 40.4 years". This cannot be sustained. The focus currently should be on retaining nursing staff in the industry. This can be achieved by closer alignment between hospitals and agencies. By hospitals choosing to partner with agencies there is an opportunity to provide nurses with a greater degree of flexibility and opportunity, which will in turn give them greater job satisfaction and ensure that they remain in the health system.

Summary

On the basis of the aspects outlined above, PCC is of the view that the proposed tender arrangement will not give rise to the public benefits described in the HPV Application. PCC is concerned that the HPV Application did not effectively canvass all of the consequences of the proposed tender arrangement, including:



- reducing the number of staff available to the public health system;
- creating a disincentive for nurses to work in the public health system;
- increasing administration costs for public hospitals in administering workforces rather than relying on nursing agencies for these services;
- potentially transferring significant market power to nursing agencies in the future when exclusivity and fixed tender rates have expired;
- increasing potential costs of nursing agency services to private hospitals; and
- restricting public hospitals from being able to explore all possibilities of finding general and specialist nursing staff on short notice.

Consequently, PCC is concerned that by restricting public hospitals from the flexibility of making their own arrangements for the engagement of agency nurses, the proposed arrangement will have significant detrimental effects, rather than benefits, for the public and private health systems as a whole. PCC believes that the above aspects warrant careful consideration by the Commission when addressing HPV"s Application.

We would be pleased to provide further information in support of the above, or to discuss any of the aspects above, should that be of assistance to the Commission in its deliberations.

Yours sincerely,

Deborah Penglase
Managing Director
Psychiatric Care Consultants Pty Ltd