



Nursing Agencies

Association of Australia

PO Box 84
Kogarah NSW 2217

19 February 2002

Mr. Tim Grimwade
General Manager
Adjudication Branch
Australian Competition
& Consumer Commission
Northbourne Avenue
Dickson ACT 2602

Dear Sir,

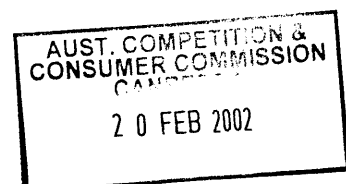
**Re: Application for Authorisation Nos A90811 & A90812
lodged by Health Purchasing Victoria**

Please find enclosed the submission from the Nursing Agencies Association of Australia relating to the above application. This submission was unanimously endorsed yesterday at a meeting of the Association. Thank you for the one-week extension of time to submit this application that permitted this consultation and endorsement to occur.

Yours sincerely,

R. Lorsch
Secretary

FILE No.
DOC



**A SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION
IN RESPONSE TO APPLICATIONS FOR AUTHORISATION
A90811 & A90812**

Submission lodged by: **Nursing Agencies Association of Australia**

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Secretary

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Nursing Agencies Association of Australia ("NAAA") is a non-profit organisation representing the interests of 27 nursing agency members Australia wide. This submission is presented to the Australian Competition and Consumer Commission ("ACCC") to argue against the ACCC granting authorisation (or notification of

immunity from court action) for exclusionary conduct, price fixing and proposed anti-competitive agreements to Health Purchasing Victoria ("HPV"). NAAA submits that the proposed conduct will not result in a public benefit that outweighs the anti-competitive effect of the proposed conduct. In fact, it is NAAA's submission that the conduct proposed by HPV will not achieve any result other than the erosion of a competitive market for nursing skills and will exacerbate the flow of skilled nurses out of the market.

BACKGROUND

The expansion in career opportunities for women outside of nursing and a corresponding decline in interest by younger-aged women in nursing careers have in part contributed to a global nursing shortage. A significant influence though, and one that has been well documented, is that retention strategies in health service units have been inadequate to accommodate the needs of nurses. Consequently, many nurses have left the health sector. NAAA submits that improvements in the services of NAAA's member agencies have been able to slow the loss of skilled nursing staff from the Australian health sector by providing the framework for a competitive market for nursing skills. In fact, the number of registered nurses in Victoria has increased by 1.5% over the last 12–18 months. Agency nursing is a positive strategy that provides nurses with a family friendly structure of work that offers:

- convenience of work hours;
- ability to balance work, leisure, family and social responsibilities;
- flexibility of shifts and control over work;
- choice of work and conditions to match physical capacities of individual nurse;
- recognition for qualifications and experience.

Within nursing there has been a long history of casual, bank or agency work. Within the health care sector, outsourcing of services such as nursing has proven an effective strategy to maintain skill mix, control costs, and facilitate efficiency. Members of NAAA have in place structures to attend to providing flexible work patterns, maintaining staff skills, maintaining professional standards and improving work conditions so as to ensure satisfaction of its workforce. In so doing, improvements made by NAAA member agencies to the services that these agencies offer have resulted in many nurses electing to work for these agencies.

PROPOSED CONDUCT

Under the proposed arrangements HPV will require that public health care providers in the Melbourne / Geelong area deal only with nursing agencies who have successfully tendered to HPV for the acquisition of nursing services. The successful tenderers will be required to enter into an exclusive agreement for the provision of nursing staff at fixed rates equivalent to the award or enterprise bargaining rate.

The proposed conduct is clearly anti-competitive and in contravention of the *Trade Practices Act, 1974* ("TPA").

PUBLIC BENEFIT

HPV must show that there is public benefit arising from the proposed conduct sufficient to outweigh any detriment to the community caused by the lessening of competition.

In preparing this submission, it is the understanding of NAAA that public benefit must be public and derive purely from the proposed anti-competitive conduct. Additionally, it is acknowledged that all health sector organisations (including NAAA member agencies) and professionals (eg. agency nurses) are subject to the provisions of the TPA and that this does not only involve some restrictions but also affords protection. The TPA emphasises the importance of competition and by encouraging competition, the outcome expected for consumers is greater choice in price, quality and service. "The TPA is not designed to harm business or prevent fair and fierce competition – in fact it protects both consumers and businesses from unlawful anti-competitive conduct and unfair market practices" (ACCC Regional Director, Tony Wing – Speech to NSW Royal Australian College of Ophthalmologists, 9 September 1998, page 9). The consumer in this instance being the public.

Given the global nursing shortage and the aging population globally (including nurses), it is imperative that practices adopted by health sector organisations and health professionals, "stimulate the development of products and services desired by consumers" (Wing, page 2). The product in this instance is a nurse who has specific skills required by health service units to provide much needed services to consumers.

There are not enough Agency nurses and employed nurses available in the system to meet the current need. It is a "seller's market" and the seller of this skilled product will go to the highest bidder.

To ensure consumer choice, Wing comments that "competitive suppliers should not pre-empt the working of the market by deciding what their customers need, rather

than allowing the market to respond to what consumers demand.” With high consumer demand for the ‘product’ (nurses with nursing skills), potential purchasers (hospitals serving public patients in Melbourne and Geelong) of the ‘product’ through HPV will have limited, if any, genuine chance of acquiring quality ‘product’ by paying lower prices than those prevalent in the market.

In a seller’s market quality nurses will naturally be attracted to agencies, like NAAA members, which provided flexible working conditions and the remuneration that is reasonable in the market.

Many nurses with the nursing skills required by public health service providers are currently not working in some health service units as a result of appropriate retention strategies having not been addressed by many public health service providers. Many nurses have undertaken ongoing professional education and fail to receive the remuneration for their additional education and associated skill development within many health services units. Morale and in turn productivity are enhanced when people are recognised and rewarded for their contributions. NAAA members recognize and reward their skilled nursing staff.

Agencies that provide nurses to HPV at the award rate will not be able to reward nurses for those contributions. Quality nurses will not be willing to work for those agencies at those rates, and will be lost to the system.

Australia already suffers the loss of nursing staff to overseas agencies who pay substantial sums for our highly skilled workers. The inability to receive appropriate reward and recognition in Australia will only increase these losses.

DECREASE IN STAFFING COSTS

The HPV application presents misleading information about what NAAA member agencies charge and also misrepresents claims about the proposed reduction of costs to health service units.

The HPV application fails to acknowledge:

- how administrative practices of public hospitals in Melbourne and Geelong, contribute to the inability of those workplaces to attract and retain nurses;
- the actual number of nursing agencies that are involved in charging excessively high prices;
- that the average or median pricing of agency nursing skills by all nursing agencies is much lower than the prices quoted in the application. Health service units do not have to pay the prices that are quoted as these are at the highest end of the spectrum;
- the actual costs that a health service must allocate for health professionals like nurses; and
- the actual cost to public hospitals in Melbourne and Geelong if their nursing requirements were fulfilled by fulltime nursing staff employed by them

NAAA member agencies provide to health service units a way of reducing unit labour costs in the face of variations in demand of services over a week. This is because

productivity differences enables the health service unit (the client) to stipulate the when and for how long the client requires nursing services, and what specific services are needed. It is also important to highlight that NAAA member agencies cover the costs that are usually the fixed costs of employment such as:

- recruitment costs / orientation / induction;
- training costs (no training costs to the client as the client requests the skill of staff required);
- redundancy/holiday leave, long service leave and sick leave entitlements;
- Workcover (or its equivalent);
- Professional indemnity, public liability and other insurances;
- Superannuation;
- Infrastructure costs / administration costs.

EMPLOYMENT EQUALITY AND WORKPLACE HARMONISATION

Agency nursing provides agency nurses with choice and recognition for their skills. Choice of where, when and how to work. NAAA considers that the HPV proposed conduct is an attempt to take away this right of choice and recognition of skills. Agency nursing also provides health service units with cost effective high quality nursing staff. Taking away these rights of choice and recognition of additional skill will be to the detriment of patient care and workplace harmony. More highly qualified nurses may no longer make themselves available to work in the public hospital sector if only low rates of pay are offered. Those nurses will move to work solely in the private sector or overseas, escalating the understaffing problems in the public health services.

PRICE CERTAINTY

How can price certainty be promised, when there is no certainty on what demand there will be at any given time for nursing services. The requirements for nursing staff fluctuates, both seasonally and on a day-to-day basis. This is so in both the public and private sector. HPV agencies will be competing at times of high demand for nurses who will choose to work for the private sector for higher prices. In times of low levels of demand, nursing staff have less work available. Again, they can choose to work in the private sector for a higher price or not work at all. The salaries to be paid under the proposed arrangements may provide price certainty, but no workforce willing to work at that price. If the public health services cannot get nursing staff at the prices offered, beds will be closed, elective waiting lists will increase and outpatient clinics will be closed.

REDUCING BARGAINING IMBALANCE AND PROMOTING EQUITABLE DEALINGS

Nurses with specific and additional skills to that of a general nurse should not be paid the same as a general nurse. Medical officers with specific skills that are in demand are often paid more than other medical officers. The situation should not be different for nurses as a result of anti-competitive conduct endorsed by the ACCC.

The nursing population is ageing. Older, highly skilled nurses are leaving the workforce due to the high stress levels in the field. To lure some of these nurses back in times of high demand high wages must be paid.

These experienced nurses are also essential to assist in the preparation of younger Registered Nurses. Also, the time-lag in prepare younger Registered Nurses to these same levels of expertise is many years and this is exacerbated by the lower numbers of student Registered Nurses in the system. Fewer university places in nursing courses, lack of sufficient government funding to enhance nursing as a valuable career path and lack of funding / prestige attached by universities to the nursing courses as a career path are continuing to make the skilled nursing staff shortage a long-term problem.

INCREASE IN NURSING STAFF AVAILABILITY

The HPV application fails to consider the potential consequence of an increase in the number of nurses moving overseas or interstate to practice nursing rather than stay in Victoria. Likewise, the proposal fails to address the issue that nurses can earn proper remuneration outside the HPV system and may choose not to work for "HPV Agencies" This will substantially decrease staff available to work in the public sector. We reiterate our previous comments regarding shortages of nursing skills.

FOSTERING BUSINESS EFFICIENCY

There will be no business efficiency if nursing staff are working for wages they consider undervalue their contributions and skills. Morale will be low and inefficiency will follow. The product here is nursing skills that belong to an individual professional who, in a seller's market, has the choice to work where, when and under whichever conditions he or she chooses. Working in a poor system for poor wages will not be a highly rated choice for skilled nurses.

Once these impacts are felt in the market place by reducing hospital services able to be offered and generally downgrading health services available in the public sector, it will be very difficult to reverse those impacts.

Downgrading the perception of nursing as a valuable profession by these measures only works against the health service in the longer term and produces no public benefit.

CONCLUSION

NAAA submits that granting authorisation to HPV would allow a process to be put into place that will:

1. diminish business efficiency of participating public hospitals in Melbourne and Geelong due to an inability to attract and retain nurses in the public sector;
2. decrease the quality of the 'product' that is assigned to work in participating public hospitals;
3. fix or control the salaries of some nurses at an unfairly low rate;
4. prevent third persons from supplying the 'product' to a health service unit (including interstate agencies and nurses);
5. remove choice for health services to seek nurses from other agencies;
6. impede competition and consumer welfare;
7. further exacerbate the nursing shortage in the industry through actions like focussing attention away from the need for improved retention strategies in public hospitals and possibly increase Australian nurse migration;
8. have an adverse and potentially irreversible effect on the market.

ADDITIONAL READING:

1. NAAA Submission to Senate Inquiry into Nursing – Annexure A.
2. Commonwealth Code of Practice for International Recruitment of Health Workers
– Annexure B.

ANNEXURE A

Nursing Agencies Association of Australia Submission to the Senate Inquiry into Nursing

Summary

This submission to the Senate Community Affairs References Committee addresses matters referred to the committee by the Senate namely:

1. The shortage of nurses in Australia and the impact this is having on the delivery of health and aged care services; and,
2. Opportunities to improve current arrangements for the education and training of nurses, encompassing enrolled, registered and postgraduate nurses.

This submission will elaborate why the Nursing Agencies Association of Australia ("NAAA") considers agency nursing to be a positive strategy to:

- retain nurses in the workforce,
- attract nurses back into the profession including the aged care sector and regional areas;
- make a nursing career more family friendly; and,
- improve occupational health and safety of the nursing workforce.

Nursing Agencies Association of Australia was originally formed in 1970. NAAA provides a professional forum for member organisations to discuss matters of mutual concern to actively work towards providing quality staff to health facilities. NAAA is also a means to inform and respond in a collective approach, to matters impacting on the organisation and responsiveness of members to provide such a service. Nursing Agencies Association Australia represents labour-hire firms that provide casual workers to the health industry. These workers include Registered Nurses, Enrolled Nurses and care workers. Staff who work for agencies choose to work for the organisation. It is the choice of the agency staff member to determine their conditions of service in relation to extent of work, location of work, nature of duties, the type of shifts worked, and if they continue to work in the health industry. Given the current shortage of nurses, agency staff are able and will continue to be able to exercise their option to choose when, where and how often to work. Consequently, staff of the agency are **NOT** undervalued, under-paid, under-skilled or under-utilised. Nursing has a long history of casual, bank or agency work. What is of necessity to the health industry is the provision of a highly skilled workforce. What is of necessity to staff is flexibility of work coupled with professional development opportunities. The NAAA is committed to ensuring flexibility and job satisfaction for nurses and quality of care outcomes for members of our community. The NAAA acknowledges that its workforce is first and foremost human beings. As such, it is important to understand and acknowledge individual circumstances facing staff in their daily lives. Morale and in turn productivity, are enhanced when people are recognised and rewarded for their contributions.

In summary, nursing agencies offer work to a large number of people in a variety of different roles and to people of which the majority are female and many have young children. The staff are experienced people who elect to work many to a few shifts per week. Agency nursing provides to nurses a more family friendly structure. Agency nursing offers:

- **Convenience of work hours**
- **Ability to balance work, study, leisure, family and community responsibilities**
- **Flexibility of shifts and control over work**
- **Diversity of work**

- **Choice of work and conditions to match physical capacities of individual**
- **Recognition for qualifications and experience**

It is *choice* that agency work offers to staff registered with agencies.

Discussion

It is the understanding of NAAA that the expansion in career opportunities for women outside of nursing and a corresponding decline in interest by younger-aged women in nursing careers has resulted in:

- a low number of women becoming RNs
- shortage to specialist areas (eg., Intensive Care, operating theatre) given that these areas have predominantly attracted younger aged RNs and retirement of older-aged RNs.
- Increase in the costs of health care.

As baby boomers reach 65 years of age this will accelerate the demand for RNs. At the same time there is a need to provide a medium for RNs and ENs considering retirement to remain working in the workforce in a manner of their own choosing. Increasing wages of RNs may induce some RNs to remain in the workforce, or encourage some RNs to work overtime, and even encourage some persons to choose nursing as a career option. Though, it must also be understood that increasing wages will also reduce the number of RNs. This will occur for several reasons. Firstly, as cost of labour increases this will bring about incentive to reduce costs by employing less higher-waged RNs and employing lower-waged health personnel. Secondly, younger-aged RNs and / or those without family or social responsibilities may well be attracted to travel overseas where higher wages are offered as a means to attract RNs given the shortage of RNs all countries are experiencing. Thirdly, increasing RNs wages will elevate health care costs.

What agencies and agency work enables is recognition of the reality of the factors influencing the nursing workforce and:

1. a means to provide for an ageing nursing workforce;
2. a mechanism for RNs nearing retirement to extend their working life in a manner of their own choosing;
3. a way in which priority needs of health settings can be met in a more systematic and coordinated manner by better utilisation of a scarce resource (RNs);
4. ease of movement across diversity of areas and locations;
5. a strategy to minimise adverse effects on nurses' physical, mental and emotional health status;
6. an ergonomic strategy (choice of work and conditions) that addresses the changing physical capacities of an ageing workforce minimising neck, back and foot injuries;
7. an acceptance of the changing nature of work, enabling the development of tripartite partnerships between health settings, educational settings and agencies that will in turn give status to, and valuing of, agency work;
8. family-friendly nature provided;
9. supplement full / part-time work in a manner of their own choosing

Casualisation of a scarce workforce must be understood for the benefits this form of employment gives to the individual and the health setting. Casual employment is not synonymous with deregulated employment. Placement agencies cover the following costs that are fixed costs of employment:

- recruitment
- training (no training costs as request the skill of staff you want)
- redundancy

In a nursing shortage, recruitment costs to agencies is greater. Labour on-costs for permanent employees has increased, but not for casuals. Productivity differences enables the client to stipulate the length and timing they require services which is a way of reducing unit labour costs in the face of variations in demand over the week.

Within the current political, economic and health context, trends which influence the work role of nurses include:

- the cost of health care
- the efficient use of resources, both human and material
- technological change
- lifestyle issues
- growing interest in complementary and natural therapies
- and ethical questions.

Within the health care environment, outsourcing of services such as nursing has proven an effective strategy to maintain skill mix, control costs, and facilitate efficiency. Maintaining quality in nursing practice in an environment that is continually changing is of utmost concern to all nurses. Retaining qualified nurses within the workforce is also imperative. Members of NAAA have in place structures to attend to providing flexible work patterns, maintaining staff skills, maintaining professional standards, and improving work conditions, so as to ensure satisfaction of its workforce that is predominantly female. Flexible work patterns account for the multiple commitments of individuals, and thus enhance autonomy and work satisfaction.

What have been previously expressed as concerns or disadvantages related to casual work no longer exists as progressive business practices, in response to changing workforce needs, have embedded the organisational structure and processes of agencies. The following table elaborates the changes that have occurred.

<i>Changes in conditions for agency staff</i>	
OUTDATED VIEW	CURRENT PRACTICES
No prorata access to leave entitlements Casual employment is defined by the ABS (1989a; 27) as persons who in employment “are not entitled to either annual leave or sick leave in their main job”.	Agency workers receive 20 - 25% more salary that offsets the need for prorata access to leave entitlements and provides the agency worker with flexibility about when to take annual leave, how often and for what length of time. It is the choice of the agency staff member to determine their conditions of service in relation to extent of work, location of work, nature of duties and the type of shifts worked. No staff member is under any obligation to work and their placement to work is only driven by the skills classification and competency required by the client <i>and</i> , the staff member’s wish not to be sent to any specific work place / client.
No superannuation	Agency staff get paid superannuation if working above the threshold. Employees must earn \$450.00 per month to be eligible for the SGL (Superannuation Guarantee Legislation) on all their earnings.

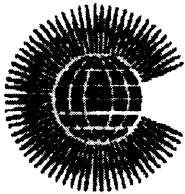
No Long Service Leave	Some agency staff who have continuous service with an agency get paid long service leave that is dependent on continuous service.
No redundancy pay	The key issue here is that agency staff are not redundant as there is an abundance of work and indeed demand exceeds supply. The changing nature of work as revealed in research studies by the NCVER demonstrate that in the labour market, people have less security in employment and are working longer hours with no financial gains.
No rights against unfair dismissal	All employees have these rights. No agency can refuse work on an unfair basis and indeed agencies work to ensure a matching of skills of agency staff to client needs and the opportunity for an agency staff member to elect where they work based on their own appraisal of their skills.
No opportunities for job mobility and transfers to full-time work	Agency staff can work as often as they like, where they like and when they like. The nature of agency staff's work commitments, change based on the agency staff member's needs. Some nursing agencies have formalised business sponsorship of overseas nurses to assist in increasing the Australian pool of nursing resources.
left unrewarded for productivity increases	Agency staff reap the benefits of productivity increases as the demand for nurses increases and diminishing supply results in increases in salary based on the attainment of specific skills required by specific clients.
lack of promotional opportunities	The flexibility and opportunities that agency work provides to an individual nurse and careworker actually places the agency staff member in a position that if they so want to go for promotion they will be well placed to achieve this goal. Agency staff are placed in positions based on skills they possess that are matched to skills needed by a client. Where a skill relates to a specific award structure level, the payment for service is at that specific level. In this way, agency staff are provided with the an ability to utilise skills and recoup expenses spent on education by providing to them work related to these skills.
seen as unprotected form of employment Definition of casual employment in the labour economics literature is "employment devoid of any expectation of a continuing relation between worker and employer"	Demand exceeds supply and in Australia is unlikely to change given the ageing population. It must be understood that any full time work is no longer a more secure form of employment, as tenure is replaced by performance management and dependent on economic situations of a business or service. Results from a previous survey of staff (1998) funded by one of our member organisation

	<p>(Nursing Agency of Australia) informs us that the manner in which agencies function provides to staff:</p> <ul style="list-style-type: none"> • Flexibility in work hours and area of work • Good salary • Freedom in hours work • Freedom in work settings • Opportunity to maintain diverse clinical skills • Access to education • Opportunity to practice nursing rather than be involved in politics of organisation.
No access to, and participation in, structured training	<p>Agency work provides the mechanism for supporting mixed work and study programs. Member organisations (case study in point-Nursing Agency of Australia) do not shift the burden or training or minimise investment in training. Indeed, the Nursing Agency of Australia has Recognised Training Organisation status with the Accreditation and Registration Council and delivers VET programs. Agency staff know that to get repeat work they need to deliver the skills needed by a specific client and in this understanding undertake diverse training to ensure they maintain and develop skills. Agencies in turn provide the mechanism for agency staff to recoup the investment they have placed in training by the provision of suitably matched work placements. Included with this submission are examples of education and training programs offered by some of the NAAA's members.</p>

ANNEXURE B

**COMMONWEALTH CODE OF PRACTICE FOR INTERNATIONAL
RECRUITMENT OF HEALTH WORKERS**

Commonwealth Secretariat



13th Commonwealth Health Ministers Meeting

Christchurch, New Zealand, 25-29 November 2001

Agenda Item 3(b)

HMM(O1)9

COMMONWEALTH CODE OF PRACTICE FOR INTERNATIONAL RECRUITMENT OF HEALTH WORKERS

Paper by the Commonwealth Secretariat

INTRODUCTION

1. Many Commonwealth countries, both developed and developing, are experiencing shortages of skilled health workers. These shortages reduce countries' capacity to provide good quality health services to their populations. The impact of shortages is most severe in small island states such as those in the Caribbean and Pacific regions.

2. Some countries are responding to the problem by systematic international recruitment of nurses, doctors, dentists, and other health care workers. Whilst this is helping some recipient

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