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Our Ref: 2002/01/acc1

D02/970
RAC0008RHW

3rd January 2002

Mr Tim Grimwade
General Manager
Adjudication Branch
Australia Competition and Consumer Commission
PO box 1199
Dickson ACT 2602

Dear Mr Grimwade

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

I am writing to you in regards to the above applications for authorisation sought by Health Purchasing Victoria (HPV). As an entity with significant interest in the matters described by HPV we are submitting our objections to this application to your office.

We note that HPV has sought interim authorisation prior to substantive consideration of their application and are specifically concerned about this.

The reasons for our submission are as follows:

- We believe that irrevocable damage to the nursing labour market in Victoria may occur due to the rapid and permanent exit from the market of both suppliers and nurses.
- We are greatly concerned about the worsening of the professional nursing shortage which will result from the loss of flexibility in working conditions necessary to retain large numbers of nurses.
- We strongly refute the contentions of HPV in relation to the public benefit of interim authorisation in relation to aspects of cost saving and efficiency.

- The assumptions presented by HPV describing wage and cost relativities are unsubstantiated and misleading.

We would therefore request your consideration of our submission in this matter. Our submission document includes supporting information for purposes of explanation. Should your officers require any further information or clarification by Nursing Australia my office may be contacted on (03) 9254 2001 or by facsimile (03) 9254 2030.

Yours Sincerely

RUSSELL BATEMAN
Chief Executive Officer

<u>Application for Authorisation</u> – <u>Health Purchasing Victoria</u> – <u>A90811 and A90812</u>

Re: **<u>Submission from Nursing Australia dated 3 January</u>.**

The attachments relating to this submission are located with Gavin Jones and will remain with him until the matter has been completed. Please contact Gavin if you require copies of this material.

Submission by the Nursing Australia Group to the

Australian Competition and Consumer Commission;

Opposing the Application for Interim Authorisation Nos A90811 & A90812 lodged by Health Purchasing Victoria.

January 2nd 2002

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Restriction of Publication of Part Claimed

Commercial charge rates appear at page 8

Submission Opposing the Interim Application for Authorisation Nos A90811 & A 90812 lodged by Health Purchasing Victoria.

1.0 Introduction

The Nursing Australia group was established on 23rd August 1986. It was founded as a management group to administer the affairs of a number of nursing agencies. During the 15 year history of the group it has garnered many awards for excellence in enterprise, service and business. In 1993 it became the first employment services company in the world to be awarded ISO 9001 quality accreditation. Subsequently in 1995 the group was invited to actively participate and promote Australian business through the "Drum on Business" campaign conducted by the Federal Government. The organisation has twice won the Victorian Employer Chamber of Commerce and Industry award for enterprise and has for the past four years been recognised by *Business Review Weekly* magazine as being in the top 100 fastest growing companies in Australia.

Nursing Australia regards its principal goal as being to provide a level of service and support appropriate to;

- encourage nurses to remain in the nursing profession,
- encourage the return of nurses to the profession, and
- inspire students to enter the profession.

Nursing Australia is lodging this document as a response to a submission for authorisation for exemption from the *Trade Practices Act* 1974 prepared by Philips Fox on behalf of Health Purchasing Victoria (HPV).

The submission by HPV refers to a request to the Australian Competition and Consumer Commission (ACCC) for granting of authorisation to suspend the application of certain sections of the *Trade Practices Act* 1974 (TPA). The request from HPV specifically raises the following issues related to restrictive trade practices under Part IV of the *Trade Practices Act* 1974:

- exclusionary provision under section 45(2) (a) (i) of the TPA;
- anti-competitive agreements under section 45(2) (a) (ii) of the TPA; and
- price fixing under 45(2) (a) (ii) of the TPA (via section 45A).

We submit this document in order that the ACCC may be provided with a broader based representation of the industry sector being referred to by the HPV. We are also concerned that some of the content of the HPV request appears to contradict the policy position previously adopted by the Department of Human Services in Victoria in relation to matters of nursing recruitment and retention.

2.0 Position Statement

Nursing Australia does not in any way challenge the right of HPV or any other purchaser of health services to call for tenders for the supply of labour or any other good or service. We fully support the basis of national competition policy in ensuring that the best standards of consumer welfare are both met and enhanced. We are however gravely concerned that the implications of the HPV request may have seriously deleterious effects on competition within health care and that the claimed public benefit of this action has been misrepresented and may be seriously misunderstood. These concerns flow into the short and long term with specific regard to the longer term issue of recruiting and retaining young Australians into the nursing work force.

3.0 Market Definition

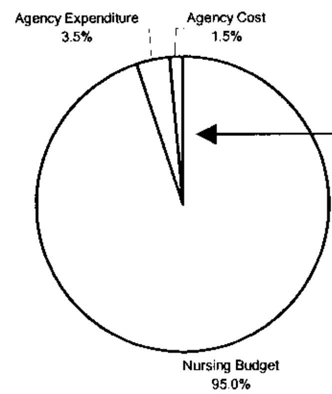
The Health Care Industry in Australia as reported by the Australian Institute of Health and Welfare (AIHW) reported a preliminary total expenditure of $50,335 million during the fiscal period 1998 – 1999. The Victorian Government reports total acute health expenditure of $4,391 million for the financial year ended 30th June 2001 (*DHS Annual report 2000-01, p122*).

Total Nursing Equivalent Full Time (EFT) numbers employed in Victoria during 1997 is reported by the AIHW as 48,813 with 69.2% or 33,778 EFT employed in the Public Sector (*AIHW, Nursing Labour Force, 1999, p80*). Extrapolation at an average employment cost of $50,000 per annum indicates aggregate Victorian public sector nurse salary expenditure of $1,689 million per annum. Expenditure on nurses employed via agency is calculated at 5% overall by HPV. As illustrated in scale in Figure (1) the differential cost incurred between a permanent staff member and a casual nurse employed through a nursing agency is approximately 30% of the 5% expenditure or 1.5% in total. The quantum of 1.5% includes all costs associated with statutory entitlements, recruitment, technology and administration of the nurse working through an agency.

One market obviously intended to be directly affected by the proposed tender and associated contracts is the nurse agency market. There is also another market which gets no mention in the HPV submission. That market is the market for providing nursing services. That market currently enables nurses via nursing agencies (they choose to be members of) to achieve the flexibility and conditions, which they cannot achieve as permanent employees of specific hospitals. Agency nurses are free to choose and leave their agencies at their absolute discretion. An under performing agency will lose nurses to a higher performing agency. An agency which is successful in attracting high quality nurses will receive more requests for placements from hospitals.

When viewed in context, at 1.5% nursing agency services are a marginal and immature component of Victorian public sector expenditure.

Agency Expenditure Relative to Total Nursing Expenditure – Victoria 2001
Figure 1



Agency cost includes all costs for:

- Insurances
- Recruitment
- Advertising
- Administration
- Statutory Entitlements

If the public sector employed these same agency nursing staff the additional transaction cost involved would be at least as great as for agencies, if not more. However the flexibility currently provided by agencies would be lost. In other words, we believe we can do more to attract and retain nurses with these moneys than can the public sector bodies.

The public sector reflects approximately 70% of the acute health care market in Victoria with the balance being provided by private sector operators of for profit and not for profit organisations. HPV is proposing to represent nearly three quarters of the market for nursing labour and therefore nursing agency services in Victoria.

We would contend that much of the solution to the reported problem of a nurse shortage leading to bed closures is reported in the literature. The Nurse Recruitment and Retention Committee report of 2001 conducted by the Department of Human Services (Victoria) and the National Review of Nursing Education Discussion Paper commissioned by the Federal Department of Education, Science and Training support a bounty of existing studies into the nursing labour market. Each presents recurring themes describing dissatisfaction amongst nurses with their working conditions including remuneration and flexibility.

The final report of the Nurse Recruitment and Retention Committee was submitted to the Victorian Government in May 2001. This document provides a snapshot of the issues surrounding nursing in Victoria. Indeed the report acknowledges the applicability of its findings to both the national and international communities. Paramount in the committee's findings is that potential entrants into the profession currently regard nursing poorly. The report identifies that of some 69,000 currently registered nurses in Victoria in excess of 20% are not working in their professional capacity.

A number of explanations are offered by the committee based on extensive research and consultation. An increasingly onerous workload is identified as a significant factor by those who have chosen to leave the profession. The factors creating this are many and varied, however a recurring theme is that nurses need to have more choice and control over their working conditions and environment. The ability to directly influence hours of work is regarded as a highly desirable factor by many nurses. The lifestyle cost of shiftwork is seen by many nurses as being a major factor in "wearing them down" and is a common reason for leaving or working fewer hours.

The National Review of Nursing Education discussion paper aptly describes and reinforces the fact that a substantial shortfall exists in both active nursing numbers and in the number of students entering the profession (DEST, 2001, p12). Repeatedly the negative aspects of the nursing workload are referred to as inhibitors in attracting students into nursing. Restrictive managerial practices, high workloads, inflexibility and poor remuneration not reflecting individual skill are described in both reports. The major contention that the HPV suggests is that restricting the flexibility and earning capacity of individual nurses will result in a more stable workforce. The above studies confirm that the HPV approach will however exacerbate the problem of retaining nurses and attracting students to enter the profession. That is, a significant public detriment will follow.

The proposal effectively ignores the portability of nursing qualifications and the ability of nurses to rapidly exit to other employment.

It is our concern that the proposed restrictions and anticompetitive outcomes will lead to the immediate loss of a number of nurses and the additional failure to attract new students to the profession.

The ability of nurses to balance their family and professional commitments is cited repeatedly as a major consideration in retaining the services of this group of professionals in the longer term.

It is of some significance that nursing agencies have existed in Victoria for in excess of 80 years and a review of the many companies involved will reveal a large degree of variation in terms of corporate structures, technology, size and systems. There are currently around 60 nursing agencies operating in the Victorian metropolitan environment. The market is generally characterised by specialist companies, which supply staff into the health care system. Few companies compete in the more general non-health care labour market areas.

As no opportunity to formally respond or comment regarding the Health Services (Health Purchasing Victoria) Act 2001 (No 18/2001) or authorisation request has at any stage been provided by HPV to the Nursing Australia Group we have adopted the approach of sequentially addressing each contention of the HPV document.

4.0 Response to the Proposed Conduct

As agents of the Victorian public hospital system, HPV will represent approximately 75% of the total health care market in Victoria (Australia's Health 2000, p235) and 100% of the public health care sector. A contract awarded on an exclusive basis will result in a significant reduction in potential market size for unsuccessful tenderers. Total exclusion from the public health sector would preclude the continuation of viable trading for many companies. Such exclusive dealing will in our view result in a substantial lessening of competition in the nurse agency market and also the market for providing nursing services. It is notable that HPV has not sought authorisation of such exclusive dealing (section 47 is not mentioned).

The HPV document describes its proposed conduct of calling for a tender for the supply of casual / agency nurses as being a response to a perceived correlation between the cost of agency nursing, and a reduced availability of nurses thus leading to potential bed closures. This contention is confusing in the context of the department of human services (Victoria) annual report for 2000/01, which reports an overall increase in nursing recruitment of some 2300 positions during the year.

The correlation that HPV draws between the use of agency nurses and bed closures does not seem clear. What can be reported is that nurses who choose to conduct their casual work through a nursing agency do so in order to work in the health care system. The HPV proposal is a clear attempt to limit the choice of nursing agencies available to a nurse and to place downward pressure on the incomes of casual nurses.

HPV are suggesting that the proposed tender process will be exclusive. That is, failure to gain a place upon the tender panel will result in an inability to supply staff. In a closed market as the health care industry is, a supplier denied access to a purchaser will be precluded from trading. Extended to its logical conclusion therefore the tender process will thus be finite, as at the expiry of the initial period all unsuccessful tenderers will have left the market, with only previously successful tenders being available to bid.

5.0 Response To The Public Benefit Test

The public benefits described by HPV as applying to the proposed tender process are not sustainable. We would agree that the public interest is paramount in such a process. Each of the proposed benefits or considerations is addressed in turn.

5.1 Decrease in Staffing Costs

Constraint of public expenditure is cited as the principal purpose of the tender, an unsupported claim is made that health services can pay 150 – 300% of the award or EBA rate for the services of a nurse. We find it difficult to support this contention and advise that it should be treated with circumspection.

The example quoted by HPV appears to compare the basic **weekday** earnings of a Registered Nurse **exclusive of on-costs** with the **weekend** charge rates of a specialist intensive care nurse **including on-costs**. The comparison is misleading as it compares two different positions.

Hospital / Agency Comparison
Table 1

	Grade	Rate per hour	Casual Loading (1) 25.0%	Agency Premium (2) 10.0%	FBT Concession (3) 34.0%	Super 8.0%	Workcover 3.0%	Professional Indemnity 1.0%	Provision for Long Service Leave 1.5%	Recruitment (4)	Payroll processing	General Administration (5) 22.0%	Per Hour	Per Week	Agency Premium
Hospital wage	RN 2:5	$ 21.02	$ 5.26	$ 2.10	$ 7.15	$ 1.68	$ 0.63	$ 0.21	$ 0.32	$ 7.27	$ 0.30	$ 4.62	$ 50.56	$ 1,921	
Agency charge	RN 2:5	$ 50.87												$ 1,933	1%

Notes:

(1) Casual Loading as per Nurses (Victorian Health Services) Award 2000

(2) Agency Premium represents the average over award payment made to attract agency staff.

(3) FBT Concession represents the non-taxable component of gross wages taken in the form of other benefits by Public sector employee nurses. This concession is equivalent to a 34% increase over the equivalent Agency nurse's remuneration for the same shift. Salary packaging is made available to most nurses in the Public sector with a participation rate of approximately 80%.

(4) Recruitment. This reflects the fully costed Nursing recruitment campaign undertaken by the Public sector over 2000/01 expressed over the number of nurses actually recruited.
cost $ 26.9 million and recruited 2,300 EFT nurses.

(5) General administration costs reflect co-ordination, communication, HR and associated infrastructure costs

Table (1) above addresses this disparity by building up the Hospital wage to incorporate the same elements as the Agency charge so that a meaningful comparison can be made. The Agency rate is the actual cost charged to the client for a basic shift and is inclusive of all on-costs.

It is also of note that during the 2000 and 2001 calendar years the Department of Human Services through its Health Care Services has undertaken a major advertising campaign. The campaign has reportedly resulted in 2,300 additional nurses being employed in Victoria. The cost of this campaign has been reported at in excess of $29 million. Adding this back to the costs of the additional recruits would add some $12,000 to the first year cost of each additional nurse. During this time Nursing Australia has recruited in excess of 5,000 nurses at similar costs.

When on-costs are added back to the Hospital Wage it becomes substantially greater and similarly when the 'more expensive' Agency rate is quoted for weekdays it becomes substantially lower. It maybe concluded that when Hospitals consider a fully inclusive employment cost basis, the cost disparity between direct employment and agency supply vanishes.

It is of significance that "over award" payments have been commonplace in specialist nursing areas for many years. This specifically includes critical care areas where the skill base concomitant responsibility and accountability are great. Such arrangements have traversed both public and private sectors and are commonplace across the major hospitals of Victoria. Payments greater than the base award / EBA being made to specialist nurses are therefore certainly not the sole province of the nursing agencies.

HPV expect that the tender process will result in Nursing Agencies paying a lesser amount to nurses than is currently the norm. It is also expected that a reduction in the "commission" fee will occur. This consideration is admirable but assumes that the cost of providing agency nurses is in itself highly elastic.

It is necessary for nurses' agents to undertake detailed recruitment processes, quality checking, education, advertising and support in a manner consistent with any recruitment or labour hire industry sector. The management of large numbers of personnel with vastly differing skill bases and preferences and the matching of those skills with the plethora of demands for staff from purchasers is a complex and sophisticated process. The smallest of nursing agencies will incur substantial costs in matching a few staff to a few orders, a larger company will expect proportionately greater infrastructure costs which are absorbed over a greater number of placements.

The public benefit accruing from a decrease in costs is thus expected to be attributed to an acceptance of a lower wage rate by a significant number of nurses. This would by observation appear to be a strategy more akin to that of waterfront reform than a process designed to increase the effectiveness of care delivery by professionals. HPV continually contend that nurses working through agencies are paid 1.5 – 3 times award / EBA rates. No evidence is provided to support this statement. In fact 90% of agency nurses working with the Nursing Australia group are paid around 10% above the award rates. Our management fee which includes all statutory and other costs averages [redacted] of wages. Our average net profits would be around 10% of wages after costs are deducted.

Number of Nurses Employed Throughout Australia
Table 2

Area of clinical nursing	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Australia
Mixed medical and surgical	3,809	9,849	5,874	4,561	3,973	727	301	199	29,293
Medical	8,901	2,421	2,426	1,542	1,041	492	162	76	17,059
Surgical	5,947	3,004	2,926	1,560	1,195	393	274	109	15,408
Coronary care or surgery	1,623	993	–	–	–	–	72	–	2,688
Geriatric/gerontology	9,750	13,147	5,087	2,417	3,417	1,061	281	134	35,294
Oncology	996	984	600	–	–	67	38	–	2,684
Perioperative /operating Theatre/recovery	4,472	3,588	2,503	1,358	1,309	404	238	102	13,974
Rehabilitation	1,592	1,686	–	–	–	64	33	–	3,375
Renal	477	400	–	–	–	–	49	–	926
Respiratory medicine/asthma	379	90	–	–	–	14	3	–	486
Critical care/intensive care	3,317	2,211	1,741	903	835	197	196	72	9,472
Casualty accident/emergency	2,134	1,499	1,067	589	455	159	119	117	6,139
Midwifery	4,263	4,060	2,360	1,192	1,354	426	325	212	14,192
Mental health/psychiatric	4,254	3,060	2,222	1,123	1,134	299	127	75	12,294
Community nursing	1,737	2,179	1,625	991	983	394	153	233	8,295
Developmental disability	1,502	371	186	180	190	92	12	2	2,535
Occupational health	168	305	221	108	149	6	5	16	981
Paediatric	886	1,057	1,089	632	486	119	110	144	4,522
Aboriginal health	50	17	–	–	–	–	–	–	67
Child and family health	707	865	446	209	255	131	88	28	2,729
School children's health	129	171	119	186	30	–	12	24	672
No one principal area	584	937	934	424	44	121	23	166	3,233
Other	1,623	2,771	3,105	1,409	1,065	339	331	252	10,894
Total	**59,297**	**55,665**	**34,528**	**19,385**	**17,916**	**5,507**	**2,952**	**1,961**	**197,211**

Table (2) sourced from the AIHW 1999 review of the nursing labour market illustrates the relative numbers of Registered Nurses in each major speciality group for each state. Table (3) indicates the estimated numbers of Registered Nurse positions (Division 1, 2 and 3) provided by nursing agencies in total in Victoria. This data is drawn from the known recruitment capacity of all agencies in conjunction with data supplied by hospitals across Metropolitan Melbourne. It should be noted that both Table (2) and (3) represent total nursing numbers including both public sector and private sector health services. Expressed as Equivalent Full Time positions the data changes to that reported in table (3) below.

Number of Nurses Employed in Victoria
Table 3

Speciality of Nursing	Nurses	Agency	Agency Percentage
Mixed Medical and Surgical	9,849	1,100	7%
Medical	2,421	-	
Surgical	3,004	-	
Coronary Care	993	-	
Geriatric	13,147	867	7%
Oncology	984	-	
Operating Theatre	3,588	63	2%
Rehab	1,686	-	
Renal	400	-	
Respiratory	90	-	
ICU	2,211	203	9%
Emergency Dept	1,499	265	18%
Midwifery	4,060	260	6%
Mental Health	3,060	203	7%
Community Nursing	2,179	3	0%
Developmental Disability	371	-	
OHS	305	-	
Paediatric	1,057	66	6%
Aboriginal Health	17	-	
Child and Family Health	865	-	
School Health	171	-	
No Specific Area	937	-	
Other	2,771	-	
	55,665	3,030	5%

The 2000 edition of the Hospital and Health Services Yearbook lists some 147 public hospitals in Victoria with 12,337 public beds available. Private hospitals total 123 with 6,322 beds available. All data reflects the combined public and private sector markets. As such the data should be discounted by between 30% to 40% in each speciality to reflect the actual distribution between public and private employment.

Number of Equivalent Full Time Nurses Employed in Victoria. (AIHW, Nurse Labour Force 1999)
Table 4

1999/2000 EFT Statistics	Data
Nursing EFT	40,000
Agency EFT	1,200
Agency nursing as % of total	3%
Agency Growth Reported in 2001	4%
Total Agency EFT increased by 4%	1,248
Revised Agency Percentage	3.1%

As can be demonstrated the actual level of nursing agency utilisation as a percentage of total Equivalent Full Time staff is approximately 3.1% of total establishments. There is no data to support the contention that a significant migration has occurred from the public sector to agency nursing. This analysis does not preclude a shift of employed staff from the public sector to the private sector.

The HPV submission does not make mention of the availability of salary packaging to public sector nurses. This benefit which is exempt from Fringe Benefit Tax (FBT) provisions up to $17,000 per annum effectively provides a net pay increase of $8,500 to permanently employed nurses. This is not available to agency nurses but represents a redistribution of Commonwealth tax revenues to the State Government Health Sector. In consideration of any argument which involves income relativities cognisance should be given to this factor. In other words the nurse agents have to offer an additional 34% in wages rates to match the Victorian Governments benefits alone.

An essential consideration in any discussion regarding the cost of nurses or the ability to recruit nurses is the vast range of skills and qualifications which characterise the profession. Appendix (1) lists in excess of 280 basic qualification or skill sets which are then applied across the relative experience gradings which apply to each nurse. The permutations are significant and go toward indicating why chronic shortages of skills may exist in specific areas of nursing for prolonged periods.

In addition, unlike general employment agents that typically receive days or weeks notice to supply a placement that may extend for weeks or months, nursing agencies offer a service were notice averages 3 or 4 hours for a placement averaging 8 hours. This process is intensive and expensive by its nature in terms of both technology and human resources required to administer such a system. Without such a system the shortfalls that occur each day in hospitals world wide would be greatly exacerbated.

5.2 Price Certainty

We concur that price certainty is a desirable factor. We also note that the actual quantum that is under discussion is marginal. Nursing Agencies provide only a few percentage points of a health services' staffing requirements. The actual cost of using the agency nurse is the small margin between the cost of the nurse's wages including on costs and the charge rate and we contend this is less costly to the public than the Victorian Government's true costs.

Price certainty has previously been achievable via individual tender / contract arrangements between hospital purchasers and providers. We would suggest that revisiting this strategy is a simple, cost effective and competitive mechanism that individual health services can administer

5.3 Reducing Bargaining Imbalance and promoting equitable dealings

HPV asserts that the demand for agency nurses has increased by 4%. Subsequently it is asserted that "many health services are unable to meet their nurse staffing needs because there are insufficient numbers of qualified nurses in Australia". It is also asserted that "employee nurses have been reducing their employment shifts with health services and increasing shifts as an agency nurse".

National Nursing Shortages

Table 5

Specific shortages and difficulties

DEWRSB data provide a grim picture of particular shortages across Australia by State and Territory (see Table 6.3).

Table 6. 3 Shortages of Registered Nurses by specialisation/Enrolled Nurses – March 2001

Nursing occupation	AUST	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
Registered Nurse (general)	N	S	S	S	S	S	S	S	S
Accident/Emergency	N	S	S	S	S	S	S		
Aged Care	N	S	S	S	S	S	S		S
Cardiothoracic	N	S	S	S	S	S	S		
Community	N	S		S		S	S	S	
Critical/Intensive Care	N	S	S	S	S	S	S		S
Indigenous Health				R	S	S		S	
Neo-Natal Intensive Care	N	S	S	S		S	S		
Neurology	N	S	S	S	S	S			
Oncology	N	S	S	S	S	S	S		S
Operating Theatre	N	S	S	S	S	S	S	S	S
Orthopaedics	N	S				S	S		
Paediatric	N	S	S	S	S	S	S		
Palliative Care	N	D	S		S	S			
Perioperative	N	S	S	D	S	S			
Rehabilitation	N	S		D			S		
Renal/Dialysis	N	D	S	S	S	S	S	S	
Respiratory	N	S							
Registered Midwife	N	S	S	S	S	S	S		
Registered Mental Health	N	S	S	S	R	S	S		S
Enrolled Nurse	N	S	S	S	S	S	S		

N = National shortage S = State or Territory wide shortage

D = Recruitment difficulties R = Regional shortage (outside capital city only)

These assertions do not appear to withstand any degree of scrutiny. As indicated in the accompanying table (4) there are approximately 40,000 Equivalent Full Time Registered Nurses in Victoria, the number at any one time acting as agency nurses is less than 5% of total head count and only 3.1% of total full time staffing. It is of note however that the actual number of individual nurses making up that small percentage is as many as 25% of the workforce or 10,000 people. This reflects the highly casual nature of agency nursing where in many instances an individual nurse may choose to work no more than one additional shift as an agency nurse per year.

Shortages in various skill specialities are reported in the National Review of Nursing Education Discussion Paper as indicated in table (5) above. Specialist areas are particularly represented as requiring increased participation. The issue raised by HPV relating to the price premium payable to some categories of nurses is factual in relation to critical care nurses. As described elsewhere it has been common practice in both the public and private sector to remunerate these highly skilled individuals at a premium "above award" rate for many years.

Nursing agencies are to some extent actually in competition with private and public sector employers for the services of skilled nurses wishing to work casually. As private and public sector facilities remunerate staff at specific levels it becomes necessary for nursing agencies to respond and match these rates as a matter of competition. In an attempt to compress the remuneration of a small number of nurses, specifically critical care nurses, the HPV proposal is likely to result in a significant decrease in availability of these persons as they elect not to sell additional hours of their labour at the proposed rates. Critical care nurses by way of example have opportunities to supplement their income through acting as casual lecturers where market rates are between $70 and $100 per hour. As indicated in Table (3) Intensive Care or Critical Care nurses effectively constitute approximately 9% of the calculated nursing agency workforce. There would seem little public benefit in implementing a strategy designed to reduce the earning capacity of 9% of 5% of the total nursing workforce (9% representing the percentage of agency nurses working in intensive care units). This is specifically germane to this discussion as critical care areas are regarded as having difficulty in attracting appropriately qualified staff worldwide.

The marginal economics necessary to attract highly skilled nurses to offer more of their labour is regarded by Nursing Australia as a short term solution. Longer-term solutions must reflect the need to attract more persons into the nursing profession and specifically the critical care areas. Market forces will then bring about a resolution of this apparent earning disparity. It must be emphasised however that the short-term requirement to attract nurses to these areas addresses a vital aspect of the health care delivery system of acute services.

It is apparent if HPV has absolute discretion in an exclusive tender process that control of 70% of the market will provide it with a disproportionate degree of market power. As a discrete non-substitutable market those companies failing to be appointed to the panel of suppliers will be forced from the market. Similarly all competitive forces within the nursing labour supply market will be removed thus introducing regulation at a time when the general economy is moving to deregulation.

5.4 Increase in Nursing Staff Availability

HPV assume that nurses will draw a fixed level of income and adjust their working hours to maintain this income. This is an interesting economic observation. The contention is however of great concern in the longer term context of retaining nurses in the health system and facilitating entry for new graduates. A disturbing assumption is made that if a nurse is paid less money per hour then they will work longer hours to maintain the same marginal utility. That this suggestion is raised in this document is surprising: it is also quite contradictory to the findings of both of the reports cited earlier. Nurses are exiting the profession because of inadequate remuneration, inflexible working hours and workloads.

It is our contention based upon the experience of recruiting in excess of 5,000 individual nurses per year, that a significant number of nurses who have been drawn back to the profession as a result of opportunities for flexibility and recognition of their specific skills will in fact return to employment opportunities outside of nursing. Many nurses have elected to pursue a career in industries such as sales, customer service, and other avenues where their training in human resource management allows them to have portability. Failing to recognise the right and ability of nurses to choose their working environment is a significant failing of the HPV approach to the nursing shortage.

A strategy actively designed to exacerbate the issues regarded as deleterious by nurses does not seem to serve the public interest in the short or long term. It is of note that the Chief Nursing Officer of Victoria reported in a paper presented to the International Council of Nurses in June 2001 entitled "*managing the contemporary workforce*" that;

> "One could argue that the "old" leadership model or way of doing things in nursing was about command and control – this was in keeping with history and health care organizations that had a formal hierarchy, layers of management and employees who stayed with the organization for life. Unfortunately, this model still exists, yet the workplace today is vastly different – there are flatter structures, some nurses want to challenge the status quo which can be very unsettling for older, experienced nurses, nurses are not necessarily loyal to one organization and there is a greater need for flexibility both in terms of approach and response given the casualisation of the workforce and greater career choice for women. There are benefits in being less controlling, more consultative and more empathetic. This is how people will be attracted to nursing. There is a real imperative to treat nurses differently and invest in them if the nursing workforce is to be managed more effectively. It would seem that very few health care organizations have a planned approach to identifying leaders and developing their people. This is a contributing factor in nursing's inability to attract and retain younger nurses." (Moyes, 2001)

We concur with these sentiments in terms of the cultural aspects associated with the shortage of nurses in health care systems world wide. It is however inconsistent with the approach promoted by HPV, which suggests lowering remuneration levels to force nurses to increase their base hours of availability.

An emotive argument is placed regarding the desirability of permanently employed nurses enhancing patient care. This argument is raised periodically in discussions regarding nursing labour force issues. The argument pre-supposes that the agency nurse is a discrete individual, who only appears once and disappears, never to be seen again at the same institution. The reality is very different and illustrates the potentially misleading nature of poorly researched opinion. With reference to a data base of "tens of thousands" of nurses we can report that the "average" agency nurse actually already works either part time or full time and merely supplements their income with a flexible approach to work. That is the nurse decides where and when they wish to undertake their additional duties, but typically and in the greater majority these people are concurrently employed within the public or private health systems. Similarly most agency nurses prefer to return to the same workplace on a relatively frequent basis, the contention that patient care quality suffers as a result of agency nurses being present is effectively a version of events that is difficult to substantiate in the extreme.

5.5 Fostering Business Efficiency

We have some difficulty with this aspect of the document as reference is made to health funds as the purchasers of agency nurse services. It is assumed that any involvement of private health funds in a government tender for the provision of services would be subject to a separate process.

With regard to the efficiency principles described by HPV, the transaction costs involved in tendering are clearly significant. It is not clearly understood how administration costs will be reduced by forcing nursing agencies to set a standard price.

The utilisation of the terms "encourage prospective tenderers" and "offer competitive wages" are somewhat juxtaposed compared to their normal usage. We would suggest that a supplier not chosen to participate on the "panel" will effectively be required to exit the industry sector.

HPV are perversely suggesting that the misuse of market power that would result from an aggregation of purchasers would somehow improve business efficiency. The market is actually regulated by the availability of skilled nurses rather than by any tender process. At this time no tender system operates within the public sector. To suggest that the costs of administering a single tender is less than the costs of multiple tenders is therefore misleading. Currently agencies are chosen by health services on the basis of their capacity to supply appropriate staff. There is no apparent business efficiency to be gained in this process.

6.0 Objection

HPV conclude that the public benefit arising from the tender outweighs the detriments from anti competitive behaviour. We would indicate that this conclusion appears to be drawn on inconclusive unsupported data and supposition. It also disturbingly fails to take into account the very damaging effects that a restriction on flexibility and choice will have on the nursing workforce as a whole. The potential detriment to the public should therefore not be understated.

That the nurse staffing situation is referred to as creating a funding crisis is also difficult to understand in the context of the entire nursing agency market being limited to supplying no greater than 5% of staffing requirements. As the "cost" of using agency nurses is a small margin over the base costs the marginal effect that will occur to 5% of expenditure is questionable. We would in fact contend that at most if no profit were made the savings would be in the order of 12% of 5% or <u>0.6%</u> of the total expenditure on Victorian public sector nurses. This saving actually presupposes that the transaction costs involved in the suggested tendering process are virtually zero. It may be suggested that what is being sought by HPV is a simplistic solution to a highly complex multi factorial set of issues defining health care in general. Again we consider that the approach taken by HPV has been simplistic and thus does not reveal the true nature of the aspect of the healthcare industry under consideration.

We would indicate that the final point made by HPV that an "easy" reversion to the previous market conditions could occur is also erroneous. Denial of access to 70% of the market base will result in immediate exit for many companies. Competition will be significantly reduced. Failure of the tender process and a reinstatement of present conditions will not be possible; fewer participants will result in greater market influence for each with a discernible lessening of public benefit.

The application is already having disturbing effect on the market (*The Australian*, 3rd January 2001, p4). If interim authorisation is granted concerns of nurses will be realised. Nurses will depart the industry and agencies will close. This will preclude an ability for the market to return to a competitive basis.

Already meetings of disgruntled concerned nurses and agents have resulted in plans to depart the industry by both nurses and agents. We believe that significant damage is currently occurring as may be illustrated by the communiqué from the Department of Human Services on December 20th 2001. This letter addressed to nurses agent's sets out an agenda of strategies relating to nursing agencies. The letter appears to pre suppose that various provisions of the *Trade Practices Act* (1974) will in fact be suspended and that price and wage fixing arrangements will be introduced by March of 2002. This document is included in the attachments to our submission.

7.0 Conclusion

In summary our concerns are that:

- There is a severe shortage of nurses in Victoria relative to demand
- The dynamics of the nurse labour force and its interaction with the public healthcare sector and nursing agency is complex and requires a multilateral approach to solve in the short, medium and long term.
- The costs of services provided by nursing agencies are insignificant in context and are comparable to other labour hire agencies in other sectors.
- The premium paid to agency nurses is at the margin and simply reflects a market mechanism to increase supply in the short term.
- The suggestion that permanent staff are less well paid than agency counter parts ignores the effective 34% premium enjoyed by the former as a result of salary packaging.
- Interference in the operation of the nursing labour market by such a large purchaser of nursing staff services will create new distortion in the nursing labour market and ultimately exacerbate the problems that are allegedly addressed by the applicant.

- Granting authorisation will result in the effective regulation of casual nursing in Victoria and destroy competition and choice for large numbers of Victorian nurses.

- The public interest grounds presented by the applicant are not accurate and do not justify the removal of competition from this market.

- The market distortions and exacerbation of the nursing problem likely to result from authorisation cannot be justified.

- Accordingly the HPV proposal will promote neither progress nor efficiency.

By admission of HPV a failure of the tender process would be ameliorated by a return to current practices. Whilst we contend that even an interim authorisation process would irrevocably affect the capacity of the market to recover to its previous level of activity we also regard this admission by HPV as an acceptance of the status quo as acceptable. We find it difficult to understand the urgency with which HPV regard the granting of an interim authorisation.

In conclusion the HPV proposal is grossly inconsistent in its approach. The alleged public benefits are not substantiated and are therefore misleading. We contend that granting of interim authorisation would result in irrevocable harm to the market for the supply of nursing services. Somewhat perversely the HPV proposal will contribute to a shortage of nurses and is therefore to the public detriment.

Accordingly, the applications for interim authorisation are opposed. Nursing Australia Pty Ltd as the representative of a number of affiliated nurse agencies claims for the purposes of section 90A of the Trade Practices Act to have an interest in the application which is real and substantial. The Nursing Australia Group is a significant player in the Victorian nurse agency market. Accordingly, Nursing Australia Pty Ltd wishes to be treated as an "interested person".

Russell Bateman
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Chief Executive Officer

2nd January 2002

ATTACHMENTS

The following attachments are included with this submission. These are included by way of supporting documentation and broader information.

Department of Human Services - Letter of 20th December 2001 – Communication describing DHS concerns regarding utilisation of agency nurses.

Nursing Agencies : Victoria – Listing of nursing agencies currently operating in Victoria.

Nursing Australia - Nursing Skill Base : Nursing Qualifications/Skills – a listing of the primary breakdown of skills and qualifications that are called for in placing a nurse through an nursing agency.

Nursing Australia – Story Board: Three pages describing the background, history and values of the Nursing Australia Group.

The Age of Saturday December 8th 2001– Article describing the activities of Nursing Australia in recruiting nurses to the practising workforce.

The Australian of Thursday January 3rc - article describing one response to the proposed HPV tender process.

Department of Human Services – Nurse Recruitment and Retention Committee, Final Report – May 2001

State Government of Victoria - Nurse Recruitment and Retention Committee, Government Response

Department of Employment, Science and Training - National Review of Nursing Education – Discussion Paper

Department of Human Services Victoria - Managing the Contemporary Nursing Workforce – paper presented to the International Council of Nurses in June 2001 by the Chief Nursing Officer of Victoria.

Hospital and Health Services – Year Book 2000, Edition 24

Australian Institute of Health and Welfare - Nursing Labour Force 1999 – A statistical and empirical review of nursing labour force issues.

Nursing Australia – The Magazine – Publication developed by Nursing Australia as the premier magazine for nurses in Australia. Included for further background information regarding the needs of nurses.

Melbourne Yellow Pages – Rear cover of all major city Yellow pages are utilised by Nursing Australia as part of its "value" recruitment campaign.