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BUSINESS & TAXATION LAWYERS

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14 February 2002

BY EXPRESS POST

Attention: Mr Gavin Jones
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Australian Competition & Consumer Commission
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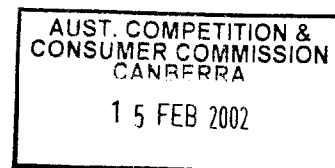
Dear Sir

**APPLICATIONS FOR AUTHORISATION NO. A90811 AND A90812
LODGED BY HEALTH PURCHASING VICTORIA
OUR CLIENT: PRN NURSES PTY LTD**

We refer to the above matter and **enclose** our client's submissions.

Yours faithfully


John Sesto
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**SUBMISSIONS IN RELATION TO SUBSTANTIAL APPLICATIONS
IN THE MATTER OF
APPLICATIONS FOR AUTHORISATION
NO. A90811 AND A90812
LODGED BY HEALTH PURCHASING VICTORIA**

**SUBMISSIONS FOR
PRN NURSES PTY LTD**

PREPARED BY:

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SUBMISSIONS FOR PRN NURSES PTY LTD

SUMMARY OF KEY SUBMISSIONS

J. P. S E S T O & C O

BUSINESS & TAXATION LAWYERS

14 February 2002

Your Ref: A90811 - Gavin Jones
Our Ref: P003016
Enquiries: John Sesto
P.Panagiotopoulos

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

Dear Sir

**APPLICATIONS FOR AUTHORISATION NO. A90811 AND A90812
LODGED BY HEALTH PURCHASING VICTORIA ("HPV")
OUR CLIENT: PRN NURSES PTY LTD**

We refer to the above matter and our letter of 21 December 2001.

PURPOSE OF THESE SUBMISSIONS

To assist the Commission in its consideration of HPV's application by setting out PRN's views on the likely public benefits and detriments including the effect on competition arising from the Proposed Arrangements ("Proposed Arrangements").

As the role of the Commission is presently confined to weighing the competing public interests, we have set out below the basis upon which our client intends to show that the public benefit associated with authorising the Proposed Arrangement pales in comparison to the fatal and irreversible effects such conduct will have on the nursing profession and the market for Nursing Services which is presently serviced by some 30 firms of various sizes.

SUMMARY OF KEY SUBMISSIONS

- 1. More Nurses Will Leave the Profession.**
The Proposed Arrangements will increase the rate of nurses leaving the profession thereby constituting a greater public detriment.
- 2. HPV has failed to Support its Submissions with Conclusive Evidence.**
HPV has failed to provide evidence and/or documentation of the degree required of adequacy to support its submission that there is a public benefit arising from the Proposed Arrangements.

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Therefore HPV has failed to establish the requisite criteria to satisfy the Commission that Authorisation should be granted.

3. HPV have failed to Address the Key Issue of Nurse Shortages

On the key issue of addressing the critical shortage of nurses, HPV bases its submission on the unrealistic expectation that nurses will increase their shifts (i.e. work harder) in order to make up for the significant reduction in their rate of pay.

4. Creation of an Oligopoly

The Proposed Arrangements will create an oligopoly. A direct consequence of the Proposed Arrangements will be that when the Contract Period ends, market power in the Nursing Services market will be confined to 3-4 large firms.

Beyond the Contract Period, there will be less competition to temper price increases, which will inevitably be sought by those large firms.

5. Public Benefit in Maintaining Status Quo

There is a greater public benefit in maintaining the status quo as nursing agencies offer nurses a flexible alternative to permanent placement from which nurses are leaving in droves.

By providing this alternative, nursing agencies are keeping experienced nurses in a profession they would have otherwise left years ago.

6. Nurse Rates are Set Below Market Levels

The Proposed Arrangements seek to set the maximum price for nurse rates below what the market has established. Fixing nurse rates below market levels, whilst the shortage of available nurses continues, is unsustainable.

Improper for Government Departments to use Authorisation Process

- 7.** Government Departments should not use the authorisation process offered under the Trade Practices Act to impose price ceilings in a particular market. It is unacceptable for a Government Department to use the authorisation process afforded under the Trade Practices Act as the forum to impose a price ceiling in a competitive market instead of taking the steps of addressing the fundamental economic issues, which are the cause of the price rises/shortages.

FURTHER OPPORTUNITIES TO RESPOND

As mentioned in the material submitted with respect to the application for interim authorization, the level of paucity in the details provided by HPV to date continues to be of concern.

Mindful of the above, we have formalised our submissions based on HPV's application as it now stands.

We request a further opportunity to respond, should HPV provide further information in support of its submissions that the public benefit arising from the arrangements outweighs any anti-competitive detriment.

CONFIDENTIALITY

PRN only requires confidentiality in respect of Appendix 1 (Cost Comparisons) and for that part of these submissions to be excluded from publication.

Kind regards



John Sesto
J.P. SESTO & CO

SUBMISSIONS FOR PRN NURSES PTY LTD

DETAILED NOTES
AND
EXPANSION OF KEY SUBMISSIONS

**IN THE MATTER OF APPLICATIONS FOR AUTHORISATION
NO. A90811 AND A90812
LODGED BY HEALTH PURCHASING VICTORIA ("HPV")
SUBMISSIONS ON BEHALF OF PRN NURSES PTY LTD
PREPARED BY J.P.SESTO & CO**

DETAILED NOTES AND EXPANSION OF KEY SUBMISSIONS

PART A: BACKGROUND

1. HPV's application comes at a time when the shortage of nurses has been prevalent for considerable number of years, both locally and across the country. As a result, the price of Nursing Services has increased significantly.
2. The Victorian Government appointed the Nurse Recruitment and Retention Committee to provide advice on matters relating to the registered nurse workforce in Victoria. Of particular concern were reports that around 20% of registered nurses were choosing not to work in the profession.
3. The Committee was charged with the investigation into why nurses were leaving the profession and to advise on strategies to encourage existing nurses to remain and to recruit nurses back in the public health system.
4. In May 2001, the Policy and Strategic Projects Division of Human Services, a Victorian Government Department, published a final report from the Nurse Recruitment and Retention Committee ("the Report").
5. The Commission is referred to the findings of the Report, which clearly demonstrate the reasons why there is a critical shortage of nurses in Victoria. We note the Commission has a copy of the Report.
6. On page 2 of its Executive Summary and Recommendations, the Committee states: -
"The issues surrounding recruitment and retention of nurses are complex and are influenced by a multitude of factors, not all of which are within the scope of the Government to control. The aging of the nursing workforce; the proliferation of career opportunities available to women; the increasing demands placed on the healthcare system by society; rapid changes in healthcare technology with associated requirements for educational preparation; and the trend towards community care for all but the sickest patient, have a direct effect on the demands made on the nursing workforce."

7. In the Report, the Committee identified problems within the profession. In particular, the increased workload of nurses was recognised as a key factor in nurses leaving the profession. The Committee further commented on the effects of high workload and its negative impact on attempts to entice nurses not to leave the field.
8. The Committee reported: -
"The perception that workloads have increased was articulated by clinical nurses, regardless of clinical setting, geographical location or level of practice. The increasing workload was given as the most common reason for nurses leaving the profession (Appendices 3 and 4). A number of factors appear to be contributing to this clear perception of increased workload." [Page 41]
9. The Commission is referred to detailed research analysis undertaken by Campbell Research and Consulting included as an annexure to the Report (See Annexure 3 of the Report).
10. Of the registered nurses who are currently not working as such, the most important reasons given for choosing to remain outside the profession are: -
 - (a) Increased workload;
 - (b) Conditions of work; and
 - (c) Satisfaction with nursing.

Family commitment also received a high rating.
11. Further, the Campbell research isolated the likely factors influencing these nurses to return to work. These were: -
 - (a) Working conditions;
 - (b) Flexible rosters;
 - (c) Employment opportunities;
 - (d) Professional development; and
 - (e) Training opportunities.*[Page 136 of the Report]*
12. The Report also highlighted the fact that **27%** of all registered nurses who have chosen to leave the profession, would consider returning by signing on with an Agency. *[Page 137]*
13. Given the nature of the problem and the institutionalized factors leading to the higher rate of nurse attrition within the profession, the Government and the relevant authorities have been unable to introduce measures to immediately combat the problem.
14. The Report unequivocally confirms that the current problem experienced by public hospitals is primarily a supply crisis accentuated by the growing rate of nurses leaving the profession.

15. It is in this context that HPV by seeking authorisation of the Proposed Arrangements seeks to reduce the market rates for Nursing Services, and effectively impose a price ceiling on nurses pay rates below the level the market has determined.
16. In doing so, HPV ignores the fundamental reality that it is the shortage of available nurses that is forcing up the cost of Nursing Rates as private and public hospitals try to attract an ever-reducing supply of nurses.
17. Somewhat simplistically, HPV's submission is based on the premise that agencies are the cause of the escalating prices.
18. HPV intends to impose price restrictions by manipulating the market to ensure that only 3 or 4 tenderers will be able to supply nurses at award rates, effectively cutting out of the market 20-25 nursing agencies currently in operation in Victoria.
19. By its very nature, the Proposed Arrangement gives rise to serious breaches of the Trade Practices Act both *per se*, and in substance.

PART B: HPV HAVE FAILED TO SUPPLY SUPPORTING EVIDENCE

1. HPV has outlined the public benefits arising from the Proposed Arrangements broadly relating to six areas of public interest as set out in Attachment B of its Application [refer to pages 2-7]
2. Yet on its present application HPV has failed to provide sufficient evidence of the adequacy required to support its submissions that the public benefit arising from the Proposed Arrangements outweigh any anti-competitive detriment.
3. Whilst we note that the ACCC have since denied the request for Interim Authorization, the absence of the necessary empirical evidence not only fails to substantiate HPV's submissions it also casts significant doubt on the connection between the claimed public benefit and the Proposed Arrangements sought to be authorised.
4. It would therefore be folly to accept the inaccurate and potentially misleading conclusions drawn by HPV without the empirical and statistical evidence required to facilitate their proper consideration.
5. We submit that these unsubstantiated assertions considerably distort the commercial realities presently confronting nurses and nursing agencies in Victoria.
6. In support of its submissions we would have expected HPV to undertake an economic analysis of the effect the Proposed Arrangement will have on the Nursing Services market.

7. In particular a proper analysis as to whether the Proposed Arrangement would: -
 - (a) Result in a decrease in the price of Nursing Services in the long-term;
 - (b) Result in an increase in the supply of Nursing Services in the long-term;
 - (c) Eventually create any oligopoly whereby the market is dominated by 3-4 large players;
 - (d) Impact on the 20-30 smaller agencies (predominantly small businesses) who supply Nursing Services to the public hospitals listed in HPV's Application.
8. Taking into account the nature of the material provided by HPV, together with the publicly available information documenting the plight of Victorian nurses and their colleagues across the country, we submit that in all the circumstances, the public detriment associated with the Proposed Arrangement will outweigh any public benefit that an authorisation would facilitate. [Refer to Attachment 2 to these submissions]

PART C: IMPROPER EXERCISE OF STATUTORY POWER

1. We understand that in assessing the public benefits associated by the Proposed Arrangement the Commission is required to take into account whether such conduct might be prohibited under another statute or otherwise be illegal. We refer the Commission to the case of *Hospital Benefit Fund of WA v ACCC (1997) ATPR 41-569* in support of this proposition.
2. Subject to the following paragraphs, the decision to call for tenders for the exclusive provision of nursing services in the manner contemplated by its application for authorisation may be an abuse of power on the part of HPV rendering it liable to challenge pursuant to the provisions under the Administrative Law Act 1978 (Vic).

Failure to take into account relevant considerations
3. In keeping with the terms of its legislative charter, HPV have sought authorisation from the ACCC in order to facilitate access to the supply of goods and services to health services and other health or related services on best value terms.
4. The functions required of HPV are listed in Section 131 of the Health Services (Health Purchasing Victoria) Act 2001 ("the HPV Act") and pursuant to Section 132, "*HPV has all the powers necessary to perform its functions.*"
5. In exercising this statutory power, HPV is required to take into account a number of considerations enumerated in Section 133 of that Act.

6. For ease of reference, Section 133 is reproduced below in its entirety:
"In performing functions and exercising powers under this Act, HPV must have regard to each of the following matters:
(a) *The clinical needs of patients and other users of health or related services;*
(b) *The ability of suppliers to supply goods and services required by health or related services;*
(c) *The price, quality and accessibility of goods and services supplies or proposed to be supplied to health or related services;*
(d) *The effect of tendering and contracting processes on the viability of small and medium-sized businesses;*
(e) *Local employment growth and retention. (Emphasis added)*
7. Accordingly, despite the plenary nature of the powers vested in HPV those powers can only be exercised within the framework contemplated by the Act and specifically, with regard to those factors listed at (a) to (e) above. In line with the structure and wording of the Section, the Act incorporates a mandatory direction compelling HPV to consider all of the listed factors.
8. From the available evidence, there is no suggestion that any regard has been had to either the effect of the tendering and contracting processes on the viability of small and medium-sized businesses or local employment growth and retention. Not surprisingly, it is in this context that the impact of the Proposed Arrangement will be most adversely felt.
9. At this point we would consider that the catastrophic impact on small business and on the recruitment and retention of nurses has been adequately discussed elsewhere in these submissions.
10. For the purposes of the present discussion it will suffice to say that the decision by HPV to proceed with the tender and authorisation process is prima-facie ultra vires and an abuse of power. See generally *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1985-86) 162 CLR 25; *Roberts v Hopgood* [1925] AC 578.
- Unreasonableness**
11. Adopting a more generous approach, should it transpire that HPV have had regard to all of the factors provided for in Section 133, it could be maintained that in view of the severe consequences to the small business and to employment growth the exercise of power was so unreasonable that no reasonable person could have so exercised the power.
12. In *Minister for Aboriginal Affairs v Peko-Wallsend Ltd*, Mason J highlighted that the unreasonableness ground of review would be available where there is a failure to give adequate weight to a relevant consideration of great importance, or an undue weighting of a relevant factor of no importance.

Similarly here, the decision by HPV is susceptible to attack for the lack of consideration given to clearly relevant and mandatory considerations under the Act.

13. Whilst the above discussion is by no means an exhaustive analysis of the administrative implications of the decision, we would submit that PRN along with a host of interested parties would have the necessary standing to seek judicial review of HPV's decision to pursue the exclusive tender arrangement.

PART D: REPLY TO HPV'S ASSERTIONS THAT PUBLIC BENEFIT OUTWEIGHS ANY ANTI-COMPETITIVE DETRIMENT

1. In support of the Proposed Arrangements, HPV has identified that the public benefit will arise from 6 specific areas, namely: -
 - (a) Decrease in staffing costs;
 - (b) Employment of quality of workplace harmonization;
 - (c) Price certainty;
 - (d) Reducing bargaining balance and promoting equitable dealings;
 - (e) Increase in nursing staff availability;
 - (f) Fostering business efficiency.
2. Despite correctly recognising that the supply of nurses is finite, HPV's objectives are underpinned by a number of erroneous assumptions: -
 - (a) That the same amount of nurses in public hospitals will remain with those public hospitals (indeed, the Service Agreement makes it a condition of its arrangements with the successful tenderer that it is not to recruit nurses from permanent public hospital staff [Refer to Clause 6.1 of the Tender Agreement])
 - (b) That the successful tenderers will be able to retain the nurses they currently have on their books for the same shifts at reduced rates, i.e. award rates;
 - (c) That the successful tenderers will be able to convince their nurses to leave private hospital shifts to work under the HPV arrangements for reduced remuneration;
 - (d) That the successful tenderers will presumably be able to source their nurses from other agencies who are not on the selected panel, in order to fill the necessary shifts.

Decrease in Staffing Costs

3. HPV states that the purpose behind the tender is to reduce the overall nurse staffing costs of the Health Services.
4. Our client submits that in the long run, reduction of the overall nurse staffing costs can only be achieved by increasing the number of nurses. In turn, this can only be achieved after successfully addressing the reasons why nurses are leaving the profession and implementing the required strategies to get them back in the profession. A key issue in all of this is the pay rates for nurses.

5. If there is no strategy in place to increase the available supply of nurses, then it is an economic fact that any attempt to reduce nurse rates (a key component of staffing costs) below the current market rate is artificial and unsustainable.
6. As the Commission must also consider the impact on the market over a longer term as well as the immediate benefit, the Commission must consider what will happen to the market at the end of the Contract Period when 3 or 4 large suppliers dominate the market. The Commission is referred to Queensland Independent Wholesalers Ltd (1995) ATPR 41-438].
7. Therefore, it is submitted that any decrease in staffing costs that are a product of the Proposed Arrangements can only be transitory.

Employment Equality and Workplace Harmonisation

8. We consider that it is impossible for HPV to maintain any contention as to the level of employment equality and workplace harmony currently experienced by nurses.
9. Any submission in this respect must take into account the fact that nurses with different levels of experience and years of service work side by side at different rates of pay and have done so for many years.
10. Universally reducing rates of pay or at the very least, making sweeping generalizations with respect to nurse remuneration ignores this reality.

Price Certainty

11. HPV states that the cost of agency nurses has risen significantly over the past 12 months with large suppliers notifying Health Services price increases up to every 6 weeks.
12. Whilst under the Proposed Arrangements, Health Services may enjoy price certainty during the Contract Period, beyond that period this position cannot be sustained if, as expected, the shortage of nurses continues and the demand for their services increases.
13. If, as observed by HPV, large suppliers continue to dominate the market, then after the Contract Period expires, and assuming the demand for Nursing Services continues to increase, it is submitted the following will occur: -
 - (a) The market will be dominated by 3 or 4 large suppliers (the successful tenderers under the Proposed Arrangements);
 - (b) Demand for Nursing Services will still exceed available supply;
 - (c) The 3 or 4 large nursing agencies will be able to dictate price without the tempering forces of competition.
14. In this regard, it is interesting to note that in 1998, the Department of Human Services commissioned a nursing workforce study to establish labour force projections for the period 1999-2008.

15. The 1998 study found that on current high demand projections, Victoria would be facing a shortage of up to **5,500** nurses by **2008** [See Page 35 of the Report].
16. If these projections are correct, then the Contract Period will end on or around 2008, a time when available supply will not be able to meet with the demand.
17. This will give substantial power to 3 or 4 successful tenderers who will have little competition in submitting its prices to the public hospitals. Public hospitals will continue to be price takers for Nursing Services in a market dominated by a small number of large players. This is exactly what the Commission is entrusted to police and monitor (namely abuse of market power).

Proposed Arrangements are Unsustainable

18. The Proposed Arrangements will: -
 - (a) Artificially set Nurse Rates below what the market has determined;
 - (b) Reduce the available supply of nurses, as nurses forced to accept prices lower than what they were accustomed to receive, leave the industry and seek more financially rewarding alternative employment;
19. As a consequence of suppressing Nurse Rates, the supply of available nurses will continue to diminish. This will manifest itself by more nurses leaving the workforce rather than accepting agency work at award rates.
20. After the Contract Period ends, nurse rates must increase in the face of falling supply and growing demand.

Increase in Nursing Staff Availability

21. As has been oft repeated, it is our client's key submission that the only way to reduce the cost of Nursing Services is to increase the available supply of nurses. One certain way to do this is to increase their rate of pay.
22. HPV submit that the Proposed Arrangements will increase nursing staff availability (see HPV submission "*Increase in Nursing Staff Availability*").
23. As the critical shortage of nurses has been identified as the reason why the market price for the services continues to increase it would be incumbent on HPV to satisfy the Commission that the Proposed Arrangements address this fundamental issue and provide the requisite public benefit.
24. In the proposed tender documents provided in support of its submission, HPV states that the sufficient availability of appropriate qualified nursing staff is essential for the provision of quality public health care. This is in fact occurring at present. We are instructed that agencies are currently only able to supply 60% of shifts, even with the attractive rates of pay being offered.

25. In the current environment, many health services are unable to meet the nurse staffing needs because there are insufficient numbers of qualified nurses available in Australia.
26. In addressing the key fundamental supply issue, HPV states as follows: -
"Whilst the number of nurses available to work in Health Services is finite, it is hoped that the changes in remuneration structures for agency nurses will encourage nurses to increase their availability by working more shifts."

"By making agency nurses work more hours, this will help ease the pressure on overworked employee nurses or understaffed wards, thereby facilitating the provision of better quality health services to the public." (Page 6 Attachment B).
27. Therefore, HPV's key submission the critical supply issue is based on an unsubstantiated hope.
28. In essence, HPV's solution to the fundamental supply issue is that by reducing nurse pay rates, they will work harder by increasing their shifts and at the same time accept a reduction in pay. Economic reality and human nature will guarantee that this will not happen.
- Nurse Attrition**
29. A significant factor for nurses leaving the profession is that they are stressed and overworked, a situation that leads to a reduction in the quality of their professional services [Refer to Page 41 the Report].
30. However, HPV attempts to establish a public benefit in making nurses work a greater number of shifts at a reduced rate of pay. There is no logical or economic rationale to accept such proposition and HPV recognises this by basing this aspect of its application on an unsubstantiated expectation.
31. Such a contention belies all the empirical evidence and published research data that sets out the reasons why there is a supply shortage. The supply shortage of nurses arises because of increase in workload resulting in nurses leaving the profession.
32. The Commission is referred to page 41 and 43 of the Report that identifies an increase in workload as one of the main reasons why nurses leave the workforce.
33. One of the effects of high workloads is that there is a reduction in the quality of patient care. On page 43 of the Report the Committee comments:-
"In addition to the reported effect of experienced nurses leaving the work force, there are a number of other effects of high workload. The first most worrying factor has been a reduction in the quality of patient care".

34. In contrast, HPV maintains that by making nurses work harder, the public can expect better quality health services (Page 6 Attachment B).

Nurses will not increase their shifts

35. We **enclose** copies of an independent survey conducted by PRN of its own agency nurses to see whether the payment of award rates will encourage nurses to work more shifts [Attachment 3].
36. Whilst we note that the results are drawn from a confined section of the nursing profession, namely PRN's own contractors (those HPV seek to recruit), we would submit that the overwhelming nature of their responses are indicative of the attitudes of the nursing profession at large. Moreover, participation in this survey was voluntary. We are therefore confident that opinions drawn from a more representative sample of nurses will be similarly discouraging of the Proposed Arrangements.
37. We submit HPV has failed to satisfactorily address the fundamental issue of supply. This failure is a fatal flaw in its application.
38. The above rationale ignores fundamental economic principles and fails to take into account the acute shortage of nurses presently experienced in the health sector.

PART E: AGENCIES ARE SINGLED OUT AS THE CAUSE OF THE PROBLEM

1. HPV isolates agencies as being the sole and only cause of the escalating price increases in Nursing Services and there is a presumption by HPV that all the increases in nurse rates are pocketed by the agencies.
2. Such a view is simplistic in the extreme and ignores a wide range of issues concerning the recruitment and retention of nurses, which are varied, many and complex. Many of the issues are well documented and available to the Commission to consider.
3. First the Commission should note agencies receive a fixed commission regardless of the pay rate of the nurse and that after on-costs and profit margin is covered the nurse in fact receives the bulk of the fee.
4. Second the reduction in nurse availability is, inter alia, a result of the recently revised nurse-patient ratios to **1:4**, which occurred in September 2000. i.e. one nurse to every four patients, which instantaneously increased the demand for nurses.
5. PRN's own analysis of shift enquiries confirms a spike in demand for nurses when nurse patient ratios were reduced to 1:4.

6. The change in nurse patient ratios has caused a spike in the demand for nurses which the market has had difficulty supplying. There has been a consequential increase in nurse rates because of the supply shortage.
7. We submit any submission, which purports to hold agencies responsible for the increase in nurse rates, reflects a short, sighted approach to proper management of hospital resources and an ignorance of the many and varied complex issues that have caused the nurses shortage in the first place.

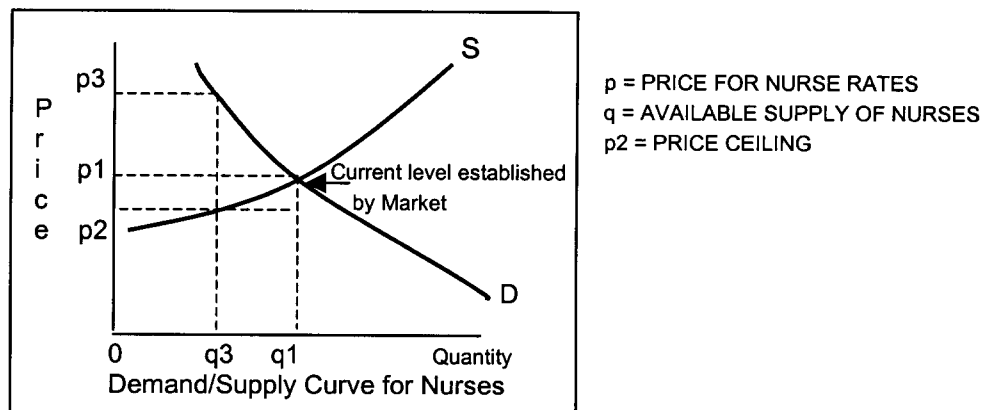
PART F: GREATER PUBLIC BENEFIT IN MAINTAINING STATUS QUO

1. Any perceived public benefit in reducing the cost of Nursing Services can only be realised by either: -
 - (a) Reducing the demand for Nursing Services; or
 - (b) Increasing the supply of available nurses beyond the level of demand.
2. As the demand for Nursing Services is beyond regulation, we submit that only an increase in the supply of available nurses will reduce the cost of Nursing Services.
3. At present, the fact that there are 20-30 nursing agencies operating in Victoria, ensure that there is healthy competition amongst them to provide the best possible rates to the hospital.
4. The simple fact is that the acute shortage of nurses is causing the rates offered to nurses to rise as nurses can now choose at which hospital to work according the pay being offered.
5. There is by far a greater public benefit in maintaining the status quo.
6. Amongst other things, nursing agencies provide an alternative career path to nurses, allowing greater flexibility with regards to workload and lifestyle considerations, thereby keeping more nurses in the workforce.
7. PRN's own experience with its nurses indicate: -
 - (a) The attractive pay rates offered by PRN to its nurses, result in nurses in fact increasing their shift availability. In other words they are willing to work more because the pay is better;
 - (b) If necessary, nurses will arrange their family or child minders around suitable shift hours to increase their availability
 - (c) Part-timers do not increase their hours at all but are basically happy to stay part time.
8. The Commission is again referred to the Campbell Research that states that of the nurses currently not working in the profession, 27% would more likely return to an agency.

9. Our client submits that if agencies are cut out of the supply side because of the Proposed Arrangements, then of the nurses currently not working almost one third will be lost to the profession forever.

PART G: ECONOMIC IMPACT AND CREATION OF OLIGOPOLY & CONCENTRATION OF MARKET POWER.

1. Applying basic economic principles of supply and demand to the market for Nursing Services, the following predictions can be made:
"In a competitive market, the setting of a maximum price will cause a shortage of the commodities/service (maximum price set below the equilibrium price) reducing the quantity actually bought and sold below its equilibrium value".
2. The above principle can be found in any modern economic textbook commenting on the effect of imposing a price ceiling in a competitive industry.
3. The following supply/demand curve shows that by setting a price below the market equilibrium, there is a resulting reduction of available supply to that market.



4. Reducing nurse rates to levels below what they currently expect to earn, will lead to a greater number of nurses leaving the workforce and clearly exacerbate the nursing shortage.
5. By way of illustration, in terms of the demand/supply curve above setting a maximum price for nurse rates below the equilibrium price (i.e. from p1 to p2) will result in the available supply of nurses falling from "q1" to "q3".
6. Empirical evidence proving this economic theory is readily available from the plethora of publicly available information.

7. For example, the Commission has to look no further than the Report to find evidence that the rate of nurses leaving the profession currently exceeds the intake of nurses entering the profession. This is a real life manifestation of the economic principal referred to above.
 8. Whilst increased workload is seen as the common reason for the nurses leaving the profession, the fact is that what they are saying is that nurses are not being paid enough for what they are expected to do.
- Anti Competitive Consequences: Lessening of Competition.**
9. The Commission must be aware that Public Hospitals control **75%** of the publicly available hospital beds and of the **25%** offered by private hospitals one organization controls at least **90%** of that market.
 10. At the heart of HPV's tendering process is the desire to force agencies to provide nurses at rates, which are currently below what the market has determined with the anticipated objective of bringing about a reduction in the overall nurse staffing cost to health services.
 11. Further, it is submitted that the current market with 20 or 30 agencies competing for the public hospital Nursing Services market will maintain better competition in the long-term, than the Proposed Arrangements which will ultimately concentrate market power within 3-4 large agencies.
 12. HPV itself has already recognised in its submission that the large firms have regularly increased their rates.
 13. Without the 20-30 agencies competing in that market, the same large agencies will have less competition to temper prices. Therefore, price increases will be more frequent and pronounced when the Contract Period contemplated by the Proposed Arrangements ends.
 14. The unavoidable impact of such blatant price fixing and the elimination of competition within the nursing labour-hire market will be to further concentrate market power in the successful tenderers and bring about the demise of those agencies who cannot absorb the new price structures.
 15. The anti-competitive consequences of authorizing the Proposed Arrangement is extremely serious to the extent that after completion of the tender arrangements, the marker power will be effectively concentrated in a minority of agencies.
 16. If authorisation is granted, then approximately 25 nursing agencies (predominantly small businesses) will be severely affected; some may even be forced to close its doors.

17. This is because: -
 - (a) Most of these agencies heavily rely on income derived from public hospitals;
 - (b) Not all agencies will be able to supply nurses at the rates demanded by HPV in the tender.
18. The Proposed Arrangement will lessen competition and will ultimately create an oligopoly leaving the few successful tenderers with total market share when the Contract Period of the arrangement ceases.
19. Ultimately, this will have a severe detrimental impact on the Nursing Services market, as 3 or 4 large players will dominate the Nursing Services market.
20. In this regard, when considering the public benefit we trust that the Commission will not only look at the immediate impact, but the impact on the market in the future. The Commission is referred to *Re Media Council of Australia* (1996 ATPR 41-497).
21. Eventually, only only a few firms will control the market for Nursing Services, each having sufficient market power to dictate the price of Nursing Services.
22. The inevitable behaviour of these firms will result in further price increases if the current shortage continues [Refer to "*Demand for Nursing*" in Report].

Impact of an Oligopoly

23. In summary, the creation of an oligopoly in this market, will have a number of detrimental effects including: -
 - (a) Concentrating market power to 3 or 4 large players;
 - (b) Assuming the shortage trend continues, allowing these large players to dictate the price for Nursing Services at the end of the Contract Period;
 - (c) Eventually, nurse rates will increase at a faster rate as the market is devoid of the competitive pressure of other agencies to compete with these 3 or 4 large firms;
 - (d) The tendency towards joint profit maximization will be greater for a small number of firms supplying essentially the same services. A small number of firms in this industry will be able to coordinate their policies with less difficulty than in circumstances where there are a large number of firms in the market;
 - (e) Prices will tend to be more inflexible as agreement between the smaller numbers of players is easier to achieve.
24. Given the likely impact on competition, and the likely demise of the smaller agencies, which cannot provide its services within that public hospital market, the Commission must be mindful of the fact that such Proposed Arrangements will have a significant effect on these agencies, the majority of which comprise small businesses.

25. The fatal consequences of the Proposed Arrangement to the nurses and the operators of the nursing agencies have been completely overlooked by HPV, or at the very least, not considered by HPV, as it is so obliged to do.
26. Accordingly, we would submit that the grave anti-competitive consequences of the Proposed Arrangement would warrant refusing authorization.

PART H: TRADE PRACTICES ISSUES

1. In the absence of the relevant authorization, the Proposed Arrangement would be a breach of the Trade Practices Act and contrary to the most basic principles the Act seeks to promote including the prohibition of anti-competitive conduct and encouraging competitive markets.
2. It follows that an appropriate outlook is the position in Part IV of the Act, that conduct involving price fixing and making arrangements with exclusionary provisions warrant blanket prohibition regardless of the actual effect of the conduct.
3. We note the relevant test for authorization is to be found in Section 90(6) which provides that the Commission must be satisfied that in all circumstances the conduct would, or would be likely to, result in a benefit to the public which would outweigh the detriment to the public caused by any lessening of competition flowing from the conduct.
4. We submit that HPV has failed to satisfy the Commission that the public benefits of the Proposed Arrangements outweigh the detriment. The comparison between the future as contemplated by the Proposed Arrangements and the future, if the status quo were to be maintained, is so stark as to suggest that the public interest would be more appropriately served by the withholding of authorisation.
5. We note that this future "with or without" test is a factor to which the Commission must have regard when assessing the competing public interests. In that regard, we understand that general statements about possible or likely benefits cannot be given much weight unless supported by factual material and note the decision in *Re Howard Smith Industries Pty Ltd* (1977) 28 FLR 385.

PART I: COSTS COMPARISONS

1. Considerable reliance is placed on the costs comparisons between the nurses provided by agencies and employee nurses.
2. These comparisons are based solely on the relevant Award rate and are presented in a manner, which would indicate that the actual cost to the Hospital for an employee nurse is equivalent to that rate.

3. No provision is made for annual leave and other entitlements, nor the substantial costs involved in recruitment, training, insurances, Workcover and other incidentals.
4. We are instructed that once these matters are accounted for, the actual cost to the hospital for an employee nurse is roughly equivalent to the cost of an agency nurses.
5. However, HPV have not made mention of this nor provided the relevant accounting in order to substantiate its claims.
6. It is submitted, the costings provided by HPV under this heading, are calculated on an incorrect basis. In this regard, the following information prepared by PRN is supplied as Annexure 1 to these submissions set out calculations of the true comparative costing between a nurse employed on a permanent basis by a public hospital and the same nurse supplied by an agency.
7. After comparing like with like and after taking into consideration all relevant factors, we submit that the cost of engaging an agency nurse is roughly equivalent to the costs of directly employing a nurse.
8. It is therefore incorrect and simplistic in the extreme to attribute bed closures in public hospitals to nursing agencies.

PART J: SUMMARY

In the main, we believe the significant anti-competitive effect of the Proposed Arrangements is beyond question.

The public benefit analysis set out by HPV does not take into account crucial factors for the present shortage of nurses and makes unsubstantiated comparisons in support of its push for uniform and significantly lower rates of pay.

We submit that such a lopsided approach should not be sanctioned in light of the dramatic impact it would have on nursing agencies and the nurses who rely on them.

Our client strongly objects to the authorization of the Proposed Arrangement and we respectfully request that the Commission be mindful of our client's views as it determines the issue of authorization.

Should the need arise, please feel free to contact this office so that we may address any query you may have with respect to any aspect of this letter.

J.P. SESTO & CO

SUBMISSIONS FOR PRN NURSES PTY LTD

ATTACHMENT 1

**COST COMPARISONS
(CONFIDENTIAL)**

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ATTACHMENT 2

RELEVANT NEWSPAPER ARTICLES

State moves to set up 'nurse banks'

By RICHARD BAKER

The Victorian Government has moved to establish its own "nursing banks" to try to end the stranglehold of private nursing agencies.

Acting Premier and Health Minister John Thwaites said yesterday that Victoria's public hospitals were spending more than \$1 million a week on agency fees, which had increased by more than 5 per cent in seven months.

Mr Thwaites told *The Age* the government had asked the Australian Competition and Consumer Commission to grant an exemption under the Trade Practices Act to allow it to tender for agency nurses on behalf of all public hospitals.

He said many of Victoria's 50 private nursing agencies were holding the state to ransom by taking advantage of a nationwide shortage of skilled specialist nurses.

"Since May, fees for emergency and critical-care nurses have increased from \$50 to \$88 an hour, while on public holidays, hospitals have been forced to pay \$195 an hour for an agency nurse, instead of \$44 for a salaried nurse," he said.

"More than half of this money goes directly to the private companies, not the nurses, and this money could be better used to employ more permanent staff to treat an extra 7000 patients from our waiting lists."

Mr Thwaites said he was also concerned to hear reports of agencies charging hospitals up to \$3000 in "release fees" if a contracted nurse was approached by a

hospital to become a full-time staff member. The proposed "nurse banks" would be funded by the government-owned Health Purchasing Victoria, and administered by local public hospitals.

The government believes locally run nurse banks would be able to provide higher-quality care than private nursing agencies because the nurse bank staff would be familiar with the standards, procedures and expectations of the hospital they belonged to.

If the government was successful with its ACCC application, nurses working for the public hospital-administered nurse banks would receive pay in line with award rates, which are among Australia's highest, Mr Thwaites said.

Australian Nursing Federation secretary Lisa Fitzpatrick said the government's move would improve care for patients, and ease the workload of full-time public hospital nurses.

Ms Fitzpatrick said the unfamiliarity of many agency nurses with different hospital practices and layouts often created extra work for permanent staff.

She admitted that the fees charged by private agencies were "getting out of hand" and causing resentment among some hospital staff. "Obviously, nurses who are working next to an agency nurse earning four times the hourly rate creates some frustrations," she said.

The government is also considering capping nurse agency payments by hospitals and only using agency nurses for unplanned absences and exceptional circumstances.

Nursing bank ads are misleading: opposition

Gabrielle Costa
State Political Reporter

The Age,
04-01-02

Taxpayer-funded advertisements calling on nurses to join a "nurse bank" were misleading and prompted an investigation by the nation's consumer watchdog, the State Opposition said yesterday.

The Australian Competition and Consumer Commission recently rejected the Victorian Government's urgent request for exemption under the Trade Practices Act to establish immediately a centralised nurse bank.

The bank would have provided a nursing pool for public hospitals, minimising reliance on private agency nurses that cost hospitals more than four times the award rate. The government pays about \$1 million a week for agency nurses to fill shifts.

The government is arguing its case before the ACCC — but advertisements calling on nurses to register for the nurse bank appeared in weekend newspapers.

Opposition health spokesman Robert Doyle said the ads should not have been published until the competition and consumer commission had made its decision.

A State Government spokesman said the advertisements were related to specific hospitals' own nurse banks, which were separate from the bank that Health Minister John Thwaites proposed.

The Age,
07-01-02

Government plan to drive down agency nurses' wages

By MEAGHAN SHAW
WORKPLACE REPORTER

Agency nurses would be encouraged to work more shifts because they would be paid less under the Victorian Government's proposed restructuring of nurse staffing arrangements.

As part of the plan, a centralised statutory authority, Health Purchasing Victoria, would provide agency staff exclusively to public hospitals in Melbourne and Geelong.

The government has asked the Australian Competition and Consumer Commission to exempt it from prosecution under the Trade Practices Act.

While the ACCC considers the matter, the government has called for tenders from nursing agencies to enter into agreements with HPV to provide staff to public hospitals.

Any agency that is unsuccessful in

tendering, or refuses to tender, will be able to provide nurses to private hospitals or private nursing homes only.

The government's submission to the ACCC, written by the law firm Phillips Fox on behalf of HPV, states that tenderers would be given preference if they agreed to pay agency nurses the relevant award rate.

"It is hoped that the proposed tender arrangements will encourage the nursing agencies to offer to pay agency nurses the applicable award/EBA rate (or at least it will place downward pressure on the wages payable) and will encourage the providers to offer a more competitive commission fee," the submission said.

"... It is hoped that the changes in remuneration structures for agency nurses will encourage nurses to

increase their availability by working more shifts."

The government is also considering restricting how much a hospital can spend on agency fees, to encourage hospitals to use their own nurse banks.

Health Minister John Thwaites announced the plan this week, claiming private nursing agency rates cost the public health system more than \$1 million a week.

Russell Bateman, the chief executive of the Nursing Australia agency, said he couldn't imagine "any other profession in the country where government would consider regulating their earning capacity downwards."

Australian Nursing Federation state secretary Lisa Fitzpatrick said casual nurses had to be compensated for their lack of job security and entitlements.

OPINION: Editorial Team

The Age

Fels foils state's nurses plan

The CC rejects a government bid to cut public hospital wages.

By ANNABEL CRABB and TOM NOBLE

The national competition watchdog has stymied an attempt by the Victorian Government to save money by cutting the inflated wages of agency nurses in public hospitals.

Australian Competition and Consumer Commission chairman Allan Fels said yesterday he had refused interim permission for the government to set up its own exclusive agency of nurses to undercut existing agencies, which charge hourly rates up to four times the award.

The government now faces continuing agency fee bills of more than \$1 million a week while it argues a lengthy case before the ACCC on whether it can pursue the strategy.

A nursing shortage has forced the government's public hospitals body, Health Purchasing Victoria, to employ nurses from private agencies, which can cost up to \$200 an hour.

The government wants to set up a pool of cheaper nurses by instructing public hospitals to stipulate that they will deal only with agencies who pay nurses award rates.

Such an arrangement could amount to a collective boycott under the competition provisions of the Trade Practices Act.

The government sought temporary immunity from the act's provisions, which would have allowed it



to establish the new system while the ACCC deliberated on its merits.

Professor Fels said yesterday the ACCC had decided not to grant the temporary permission.

"We're not convinced that the matter is urgent ... and given its controversial nature, there are also

concerns about the market's ability to get back to its current state if permission was revoked in the final decision," he said.

"It's such a complicated matter, it will take at least a few months."

A spokeswoman for Victorian Health Minister John Thwaites said the government welcomed the ACCC's decision. "We are happy for all the issues to be heard out in the commission."

"In the interim, we are consulting with hospital sectors on internal ways to address the issue of the cost of agency nurses."

She said this included hospitals establishing their own "nurse banks" and capping the amount spent on agency nurses.

"This is all about the best patient care, and continuity of care."

Tony Formosa, managing director

of PRN, one of Melbourne's largest nursing agencies, said the ACCC had considered the arguments properly.

He said his company was preparing a submission for the ACCC, stating why the government's arguments were "ill-conceived and simplistic".

Mr Formosa said the key issues were why people were not joining the profession, and why those in it were leaving.

Critical Solutions agency director Michael Croft said if the government set up its own agency, nurses would either leave the profession or reduce their hours. "The agencies have in general got it right in what has got nurses working again."

Australian Nursing Federation secretary Lisa Fitzpatrick said it was clear the ACCC had not reached a final decision.

The Age, 25 January 2002

The Age, 8 January 2002

Agencies attack 'nursing bank' plan

Casual nurses will face massive pay cuts, it is claimed.

By RICHARD BAKER

Private nursing agencies yesterday attacked a Victorian Government plan to reduce the use of agency nurses in public hospitals, warning that it would lead to an exodus of nurses from the state.

Tony Formosa, managing director of PRN, one of Melbourne's largest nursing agencies, said the plan would result in massive pay cuts for casual nurses, forcing them interstate, overseas or out.

But a spokeswoman for Health Minister John Thwaites said last night that the government was not seeking to cut casual nurses' pay, rather it was trying to stop agencies from taking advantage of continuing nursing shortages. The spokeswoman said agencies were taking 35 per cent of the fees paid by public hospitals for use of their nurses.

Mr Formosa said agency nurses would leave Victoria or the nursing profession in droves if the government proceeded.

"Very few agency nurses would accept lower wages in the Victorian public health system when they can get paid what they deserve in the private sector or overseas," Mr Formosa said.

"Agencies aren't setting the

prices, nurses are. They are getting what they think they are worth. It is a classic supply-and-demand situation."

The Age reported yesterday that the government was seeking to

establish its own "nursing banks" to reduce the reliance on agencies, which, it claimed, were costing public hospitals more than \$1 million a week.

The government has asked the Australian Competition and Consumer Commission to exempt it under the Trade Practices Act so it can tender for agency nurses on

behalf of public hospitals in a bid to lower agency fees. Fees have increased by as much as 70 per cent in the past year, it says.

Under the government's plan, tenders would be awarded to

agencies that provided nurses at closest to award rates.

At present, agencies are charging hospitals up to four times award rates for casual nurses.

Critical Solutions agency director Michael Croft said Mr Thwaites was being misleading about how much most agencies were charging, saying he was using the most extreme

examples and that he was not taking into account the fact that the agency fees included nurses' WorkCover, superannuation and leave entitlements.

But Mr Thwaites, who said yesterday that he was confident the ACCC would approve the government's proposal, continued his attack on private agencies, describing some as "greedy" and "profiteering".

"This is about the government getting the best value for the taxpayers' dollar and by tendering out the provision of agency nursing we'll get better value," he said.

Melbourne Nursing Agency director Heather Stevenson said nurses would never work at a lower rate in a public hospital when they could work for an agency in the private

sector at their preferred rate. She also questioned the government's timing in seeking ACCC exemptions, saying agencies received documents about the attempts to set up a tendering process only on December 20.

State Opposition health spokesman Robert Doyle said Victorians should be concerned by the government's attempts to fix wages for agency nurses and claimed its actions were an admission it had failed to recruit adequate numbers to the private system.

Mr Doyle said the government's wish to bolster hospital-run nurse banks was nothing but "a recruiting drive for the union who are committed to destroying agency nursing".

Nurses opt for healing respite in casual care

By MEAGHAN SHAW
WORKPLACE REPORTER

For the first time after a decade of working in public hospitals, Sally Moon was recently able to accept an invitation for a friend's engagement party without having to firstly check her roster.

"It's unreal," she said. "It's the first time in 10 years that I've got flexibility."

Ms Moon is one of the increasing number of nurses choosing to register with nursing agencies rather than working on staff at a hospital.

She has been with one of Victoria's largest agencies, Nursing Australia, for the past month and works three to five shifts a week when she chooses.

Like many nurses, she also has a permanent shift at a major metropolitan hospital because she is reluctant to cut all ties with the public system.

"I don't do earlys anymore," she said, referring to the early shifts that begin at 7am and require rising from bed by 4.30am.

"If I work from 7am until 3pm, you can guarantee by 4.30pm I'm asleep in bed," she said. "So it's not very social."

But for Ms Moon, flexibility is more important than money. Despite years of experience in intensive care units, she has chosen to have a break from stress and rely on agency work in general nursing, which cuts her potential pay by about \$20 an hour.

When she was an associate charge nurse at a major metropolitan hospital, looking after a 26-bed unit, she earned about \$22 an hour during the week. As an agency nurse, she now receives about \$35 an hour during the week and \$53 at weekends. If she registered for intensive care work, she could be earning \$50 an hour Monday to Friday, and \$80 at weekends.



Free agent: Sally Moon sees flexibility of working hours as more important than money.

Picture: NICOLE EMANUEL

But Ms Moon believes many agency nurses would leave the system if their pay was cut.

"It would force a lot of people to think about something else," she said. "So many are just hanging in there and the fact that now you can earn money that you think you deserve is a real bonus."

Melbourne Nursing Agency director Heather Stevenson said the average age of nurses was 38, with many looking after dependent children or older parents.

She said many casual nurses registered with hospital nursing banks would be penalised if they did not take a shift on offer. Agency nursing was therefore a way to balance work and family life.

For Denise Hoban, 57, agency work was the best option when bringing up three children as a single mother. Originally, she used to quit each job before Christmas to ensure she could spend the holiday period with her children.

"But after a while my resume started looking like patchwork even though I was an intelligent, good nurse," she said. "So I found working agency kept my resume valid."

For Ms Hoban, agency work also meant she could avoid the politics of hospitals and the pressures that came from management to reduce costs. "I find that I can walk in and do an excellent day's work with no other priority but patient care," she said.

NURSES' PAY: WHO GETS WHAT

■ Salaried nurse:	\$23.07 an hour
■ Agency nurse:	about \$35 an hour
■ What the agency charges hospital:	\$34.50
■ Average hourly rate for Australian workers:	\$22.00

*Based on the standard 38-hour week. Some working less than 38 hours will receive a reduced rate. The above rates are for casual nurses.

Kennett cuts led to new practices

By MEAGHAN SHAW

Nursing agencies were traditionally used to fill unplanned vacancies but a decade ago there were only about six operating.

In those days, nurses paid a commission of between 8 and 12 per cent to the agency to help them find work and typically were paid the award rate plus 25 per cent casual loading.

Now the number of nursing agencies is estimated to be between 40 and 50, with two or three large agencies, including Nursing Australia, which manages several smaller agencies, and many niche agencies specialising in types of care and particular suburbs.

Australian Nursing Federation state secretary Lisa Fitzpatrick said agencies began to flourish when the Kennett government cut 2000 nurses from the public-hospital system.

With hospitals expected to do the same amount or more work with less staff, many nurses, oppressed by excessive workloads, dropped to part-time and picked up extra shifts through agency work, she said.

"The way that they [the agencies] tried to attract those nurses was predominantly by the rates of pay," Ms Fitzpatrick said. "That's how it became ingrained."

She said the latest enterprise agreement, arbitrated by Australian Industrial Relations Commissioner Wayne Blair, recommended agency staff be used only for unplanned vacancies.

Agencies yesterday rejected the Victorian Government's contention that they were profiteering at the expense of the hospital system.

Critical Solutions managing director Michael Croft said that of the \$65 charged by his agency for a critical-care nurse, \$30 would go to the nurse, \$7 would be lost in superannuation and WorkCover charges, and \$1.30 in bank overdraft fees.

September 2001

NSW nurses ask: What's a nurse worth?

NSW Nurses' Association (NSWNA, ANF NSW) members have established campaign committees at public hospitals and other public health facilities around the state as part of the NSWNA's *What's a nurse worth?* campaign.

The campaign was launched on 7 August by the NSWNA to help solve the NSW nurse shortage through improved wages and conditions.

It came after the State Government rejected a NSWNA request for the Industrial Relations minister to initiate an urgent case before the NSW Industrial Relations Commission (IRC) aimed at improving nurse wages and conditions, to help relieve the shortages.

'The shortage has reached critical point and has already led to bed closures and service cuts in parts of the State,' NSWNA General Secretary Sandra Moait said.

'The situation will only get worse unless something is done to again make nursing an attractive career option.'

In conjunction with the campaign, the NSWNA intends running its own Special Case in the NSW IRC to get better wages and conditions for nurses.

Each local campaign committee is responsible for: conducting a strong awareness campaign in its community; developing and implementing a local industrial action plan that includes such things as work bans, rallies and stop work meetings; and, monitoring nurse staffing levels in its facility and identifying vacancy levels.

If inadequate staffing and nursing vacancies put patient safety at risk then beds will be closed.

The NSWNA's three-day annual conference in Sydney in July was told the State was short by 1500 full-time nurses.

The conference heard while public sector nursing was in crisis, nurses in the private aged care sector were also struggling with a critical shortage as well as inequities in pay.

Speaking at the conference, Federal opposition health spokesperson Jenny Macklin said a Federal Labor Government would make the current nursing crisis a national issue because nursing was a national responsibility.

To view and print the order form you need Acrobat Reader (version 3 or greater) installed on your computer. This is available free of charge by clicking the icon above.

'We do have a national shortage of nurses and what I would say is that nursing shortages need to become a national priority and not left to each individual state,' Ms Macklin said.

'Experienced nursing staff are always telling me today's patients are sicker and require more intensive nursing care than in the past.

'Because of the increased workloads, nurses have to work faster and therefore their connection to their patients, which has always been at the heart of their work, is often lost.'

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Plan to drive down nurses' wages

Author: MEAGHAN SHAW, WORKPLACE REPORTER

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Section: News

Page: 4

Agency nurses would be encouraged to work more shifts because they would be paid less under the Victorian Government's proposed restructure of nurse staffing arrangements.

As part of the plan, a centralised statutory authority, Health Purchasing Victoria, would provide agency staff exclusively to public hospitals in Melbourne and Geelong.

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While the ACCC considers the matter, the government has called for tenders from nursing agencies to enter into agreements with HPV to provide staff to public hospitals.

Any agency that is unsuccessful in tendering, or refuses to tender, will be able to provide nurses to private hospitals or private nursing homes only.

The government's submission to the ACCC, written by the law firm Phillips Fox on behalf of HPV, states that tenderers would be given preference if they agreed to pay agency nurses the relevant award rate.

"It is hoped that the proposed tender arrangements will encourage the nursing agencies to offer to pay agency nurses the applicable award/EBA rate (or at least it will place downward pressure on the wages payable) and will encourage the providers to offer a more competitive commission fee," it said.

"... It is hoped that the changes in remuneration structures for agency nurses will encourage nurses to increase their availability by working more shifts."

The government is also considering restricting how much a hospital can spend on agency fees, to encourage hospitals to use their own nurse banks.

Health Minister John Thwaites announced the plan this week, claiming private nursing agency staff rates cost the public health system more than \$1 million a week.

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Russell Bateman, the chief executive of the Nursing Australia agency, said he couldn't imagine "any other profession in the country where a government would consider regulating their earning capacity downwards".

Australian Nursing Federation state secretary Lisa Fitzpatrick said casual nurses had to be compensated for their lack of job security and entitlements.

OPINION 10: Editorial, letters

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Nurses winners in fierce bidding war

Author: Meaghan Shaw

Date: 12 Jan 2002

Words: 850

Publication: The Age

Section: News

Page: 9

Work close to home and earn free return tickets to London or Los Angeles. — Staffing Synergy website

Refer a nurse who works two shifts prior to the end of August and receive \$200. — Melbourne Nursing Agency website

From poorly paid carers 20 years ago, nurses are now highly trained and skilled professionals at the centre of a fierce bidding war between private nursing agencies.

A shortage of nurses, particularly in specialist areas such as intensive care and emergency departments, has led to hospitals having to rely on agencies to fill unplanned vacancies.

Over the past six months, several large agencies seeking to dominate the market have tried to secure as many available nurses as possible, offering overseas trips, poaching fees, free parking, free uniforms, movie tickets, paid study leave and, of course, more money.

The result has been spiralling costs for public hospitals paying the higher fees charged by agencies.

Australian Nursing Federation assistant state secretary Jan Brownrigg said it was all a far cry from the wages and conditions offered two decades ago.

"Twenty years ago nurses were very poorly paid," she said. "In those days we weren't as busy, so you had more time to provide nursing care, but the pay was minuscule by comparison."

Ms Brownrigg said nurses used to have fewer patients, who required less intensive treatment, and who stayed in hospital longer.

"In my day, 20 years ago, if you had someone with really intensive care needed, they were in intensive care. Whereas, nowadays, they're on the wards," she said.

"You didn't have the highly complex cases and you did have more time but the negative side of that is you didn't have a proper career structure."

Ms Brownrigg said a new career structure was adopted in 1986 and, about 10 years ago, the position of clinical nurse specialist was introduced to keep experienced nurses at the bedside rather than moving into administration.

She said nurses had also received a 33per cent wage

increase over the past decade.

Lyn Wallace, the nurse unit manager for neurosciences at the Monash Medical Centre, said that wages and conditions for nurses were now much better than when she started in 1974.

"I recall as a student nurse, I would be in charge of a ward for a shift and we might have 30 patients on the ward and I would be responsible as a very junior student nurse, and I don't ever want to go back to those days," she said.

"But our patients stayed in hospital longer and went home more well. Now patients stay in hospital for such a short period of time that what makes the wards busier is that the patients who are in hospital are sicker and they move quicker so there are always admissions, discharges, transfers and lots of documentation and processes."

Ms Wallace said she did not think nurses were poorly paid compared to many other professions and allied health workers.

"If nursing is what you like, I think we receive a reasonable wage," she said.

But about 20 per cent of the registered nursing workforce choose not to work in the profession.

With university training, and skills that include not only health and technical knowledge but management and decision-making experience, nurses can pick and choose jobs elsewhere, including as academics, educators and drug representatives.

The Nurse Recruitment and Retention Committee set up by the Bracks Government identified heavy workloads, inflexible working conditions, the absence of a clinical career structure, lack of recognition for and support of nurses, difficulties with education and the image of nursing as reasons nurses left the profession.

In response to the nursing crisis and an industrial campaign, the government boosted funding to the sector, increased wages, introduced nurse-patient ratios and ran a recruitment campaign that has led to 2650 extra nurses in the system. Other improvements include a qualifications allowance, paid study leave, improved maternity leave, a new rostering system, accrued days off and a range of new career structure initiatives.

Despite better wages and conditions, nurses are attracted to the higher rates and flexibility offered by agencies, which offer the chance to work fewer shifts at more social hours with less responsibility.

The government is trying to cut agency fees by applying to the Australian Competition and Consumer Commission for an exemption to allow its health purchasing body, Health Purchasing Victoria, to exclusively tender and supply agency nurses to public hospitals.

Health Minister John Thwaites said that if health care was allowed to operate like the market, people would have to pay \$10,000 to have a cancer removed.

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NURSING is suffering from an image problem and is in desperate need of a marketing makeover, analysis of a new report reveals.

The problems begin in the school system, where it has been found school careers advisers do not appreciate what nursing has to offer in career prospects. This is a significant factor in the low take-up of nursing at university level.

The discussion paper, produced by the National Review of Nursing Education, reports a low level of visibility and understanding of nursing among governments and the wider community.

It also says other health care leaders appeared to have a minimal knowledge and are generally ill-informed about nursing.

The study cites one Internet search of an Australian job site using the words "nursing" or "registered nurse" that revealed the occupational category listed under a career in "health, fitness, hair and beauty".

"School students have very stereotyped views of nursing and portray it as an unattractive occupation," it says.

The report is timely following the recent announcement by Victorian Health Minister, John Thwaites that the government will establish a centralised statutory authority, Health Purchasing Victoria, to provide nurses exclusively to public hospitals in Melbourne and Geelong.

Mr Thwaites says private nursing agency staff rates cost the public health system more than \$1million a week.

In effect, nurses would be encouraged to work more shifts because they would be paid less under the Thwaites proposal.

The National Review of Nursing Education paper notes shortages of nurses in almost every state and territory and across all areas of health care. It says the shortages had reached a humanitarian "crisis point" in rural and remote Australia. The Australian Private Hospitals Association, in its submission to the review, said the severity of the shortage was being masked by nurses doing many extra shifts, the use of

SITE MAP

agency nurses, the closure of beds and services and poor statistics. The reduced length of stay by patients in hospitals had also increased pressures on staff.

Yet despite the shortages, enrolments in university nursing courses had stalled or fallen since 1994. The report notes this coincides with the change away from hospital training to, in most states, university-based training.

The study says the number of Australian students undertaking the bachelor degree level fell from a peak of 11,653 in 1994 to 8423 last year. The shortfall has been partly made up by overseas students, who can remain working in Australia on extended visas after they complete their courses.

From a very low number in 1994, overseas students studying nursing in Australian universities now number almost 2000.

The review also looks at why nurses are leaving the profession in such large numbers.

Difficulties in working conditions was the main reason cited. These include:

- lack of autonomy in nurses' work;
- poor workplace safety;
- reduced capacity to function effectively due to staff shortages;
- lack of proper recognition of their skills;
- childcare issues;
- constant shiftwork and pay levels.

Nurses under 30 were the most likely to be planning to leave within a year. Since the late 1980s, there has been a sharp fall in the number of younger nurses, while more than a quarter of the total nursing workforce of 184,000 was in the 45-54 age group and likely to retire within 10 years.

"Comparative international research suggests that countries like the US, Canada, England and Scotland, which are experiencing similar shortages to our own, have had 30-40 per cent of nurses dissatisfied with their job and a high burn-out rate, much of this associated with inadequate numbers of nursing staff to provide quality nursing care," the report says.

The head of the Royal Australian College of Nursing, Rosemary Bryant, recently attended a conference in the US organised by the World Health Organisation and the International Council of Nurses.

Recently elected to the board of the ICN, Ms Bryant says the main theme of the US meeting was to discuss global strategies for creating a sustainable nursing workforce. It drew together nurses and government officials from more than 70 countries.

Australia did not send an official representative - Indicative, Ms Bryant believes of the federal lack of support for nursing.

"The two most salient points I can make in relation to the current nursing debate are that, first, nurses need to have control over their professional lives and, two, happy nurses give good care," Ms Bryant says. "Nurses need to be recognised as professionals who provide an essential service -

without them there would be no health system.

"In the magnet hospital (health jargon for hospitals that can attract and retain nurses through various programs) I visited in the US It was stated up front that the hospital organisation revolved around nurses and structures were put in place which enabled nurses to undertake their role in a hassle-free environment: in other words, to enable them to care for patients at a level of nursing excellence."

She says this was in stark contrast to the current situation in Australia where nurses are hindered at every step of the way.

One of the most critical points made at the Atlanta conference, she says, was the notion that to retain a qualified nurse staff in a competitive labour market, hospitals have to develop personnel policies and benefits comparable to those in other lines of work and businesses.

This included developing opportunities for career advancement, lifelong learning, flexible work schedules, and policies that promote institutional loyalty and retention.

A final report of the National Education Review will go to the federal government in June.

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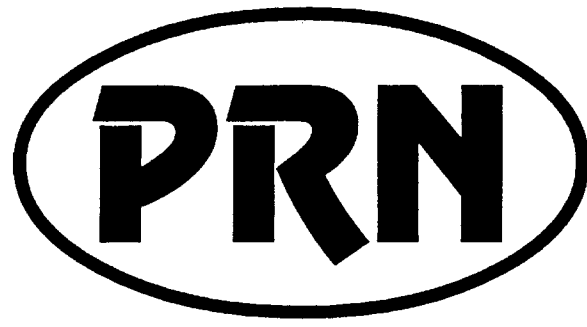


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SUBMISSIONS FOR PRN NURSES PTY LTD

ATTACHMENT 3

PRN NURSES SURVEY



NURSES SURVEY

Q 1 Why do you choose to work with an Agency ?

	Responses	% Resp.
Financial Rewards	110	84.62
Flexibility days and hours	107	82.31
Variety of workplace	52	40.00
No Politics	29	22.31
Job Satisfaction	27	20.77
Better Management	26	20.00
Childcare	13	10.00
Choose Holiday times	12	9.23
Maintain/Increase Skills	12	9.23
No Night Duty/ weekends/On-call	9	6.92
Other professions earn much more	5	3.85
Disatisfaction with hosp system	5	3.85
Availability of work	5	3.85
Cancell at short Noitice	4	3.08
More Incentive to work more	4	3.08
Advise others	3	2.31
Work less	2	1.54
ACN spend less time looking for staff	2	1.54
Weekly pay	2	1.54
Abilty to Study	2	1.54

Q 2 If PRN was to Tender for work with the HPV, would you be happy to be paid?

	Responses	% Resp.
Award Rate	0	0.00
Between	35	26.92
Current	108	83.08

Q 3 Would you stay in Nursing if forced to work for award rates?

	Responses YES	% Resp.	Response NO	% Resp.
Stay in Nursing for Award Rates	25	19.23	99	76.15
Stay in Nursing, but not for long	5	3.85		

Q 4 What do you believe the outcome of the HPV's proposal will be ?

	Responses	% Resp.
More Nurses Will Leave Prof	102	78.46
Lower moral	33	25.38
Lower standard of care in P/Hosp	33	25.38
More Bed Closures	24	18.46
Move to Private system	22	16.92
Agencies with Aw/Rates have no staff	19	14.62
Increase Waiting Lists	10	7.69
N/Patient Ratio's Worsen	8	6.15
Nurses Going overseas	6	4.62
Patients will die	4	3.08

130 NURSES SURVEYED