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Gavin Jones Adjudication Branch

To the Australian Competition & Consumer Commission (ACCC) Response to Application for Authorisation Nos A90811 & A90812

Dear Gavin Jones

I am writing in response to the second round of application by the Health Purchasing Victoria (HPV) in their attempt to create a public hospital system tender in Victoria. It is my understanding that the role of the ACCC is to assess the economic value of the expenditure by HPV as in value for money and the benefit to the community as a whole. The issues that are of concern and the ACCC needs to be aware of the ramifications of their decision. There is the potential of creating a duopoly.

Every state in Australia is looking closely at the decision by the ACCC. It is widely stated and I have heard said by nursing administrators across Australia. "The cost of agency nurses is not sustainable". I do have to ask the question as to why this is so? Is it not true that this cost is not sustainable because the public hospital system has not budgeted for the changes that are occurring in the system? The federal government seems to be able to dig into their coferers and support the doctors' crisis on Professional Indemnity Insurance, especially as their ability to practice is deemed essential to society. It would seem that the federal government can spend 2.3 billion dollar subsidising "the out of pocket expenses" incurred by those in private health insurance because doctors are permitted to be as entrepreneurial and charge what they consider they are worth. The federal government subsidises drug companies for untold amounts of dollars via Pharmaceutical Benefits Scheme . Does this not give those companies large market share and guaranteed profits?

I have been talking on a national level but it is important to recognise that if the ACCC permits a tender process such as this to occur, we will be looking at a national conglomerate of public hospitals. The ACCC has already decided that the Victorian hospitals can be recognised as one collection as they are owned by the government of Victoria. This principle must then flow on to all other states. If we have each state of Australia with their government owned public hospital system undergoing a tender process, do we not then set up a national monopoly consisting of co operating states? It could be argued that not all states would do the same thing. That may be true but we currently have labour governments in all states with similar ideals. This creates a dangerous possibility, not to say that liberal governments may not do the same thing, except that liberal governments always decrease the size of government and not increase it with attempts to control all public utilities.

There is also a second consideration. In Australia there is a nursing agency which has a platform of domination. This agency has the largest overall number of nursing agencies under its banner in Victoria and has purchased the largest majority of agencies in Sydney. We are also led to believe that this organisation now has purchased the largest nursing agency in Queensland. They also have offices in all states of Australia. If the ACCC permits the tender process in Victoria to proceed then this agency would certainly be chosen as one of the preferred, or the preferred agency. If this process extends to all other states in Australian this group would certainly be in consideration for a preferred supplier or once again the preferred supplier.

There is a very strong danger of Australia having a monopolistic style of health care system where one nursing agencies dominates the whole country. It is my assessment that this is the long term objective of

this organisation. One government umbrella and one agency preferred supplier with the majority of the market.

This cannot be good for nurses, hospitals, the nursing agency industry or the government. Why is it not good for nurses? If there is a preferred supplier or group of preferred suppliers, then the nurses who choose to work in the public system are forced to make themselves available to the preferred supplier regardless of the pay rates and service they supply to the nurse. They loose all choice. Why is it that nurses being 92% female, must have their choices limited in a society where women are considered to have equality. This style of restriction of choice would clearly not be tolerated in a male balanced profession.

Why is it that doctors are allowed to be entrepreneurial? It is clear what happens to doctors when this restrictive attitude is adopted as in the case of Mayne Health. We should learn a lesson here that the same fate will meet the public hospital systems in regards to nurses and their long term commitment as met Mayne Health with the doctors.

Why are drug companies and health funds permitted to make profits from the public health sector whilst specialist nurses who have been exploited from the day the first intensive care unit was built in Australia? Lets put all the media hype aside for a moment. The agencies that have exploited the health care system are limited and in all economies where market forces determine price the equilibrium price will always settle at the correct price and those attempting to exploit the system are self limiting, especially if they do not have total control over the supply. Specialist nurses have been receiving between 70 - 85% of the cost to hospitals in wages, superannuation and Workcover. One can hardly call the margin that agencies charge as exploitive.

Unfortunately one of the healthcare networks in Victoria historically put themselves into a situation over many years where they were contracted to an agency with nearly exclusive supplier status. The statistics on costs to the hospital from this network are far in excess of what the agency industry represents. The tender process leaves the entire country open to a monopoly by one supplier and if given exclusive rights will put Victoria and maybe the remainder of the country in the same position as this hospital. When the other agencies drop away because competition only exists in the private sector then a true duopoly will occur.

The danger for the hospitals is that the tender process does not work. The result may be short term financial gains but long and sustained damage to the psyche of nurses and those working with nurses in the system. The only way the tender process can work in the public sector is that all the hospitals are forced to comply. Lets take the Northwest network tender 1999 in Victoria. It included the Royal Melbourne, Western Footscray, Williamstown and Northern. After 2 years the entire tender was dropped after most hospitals revolted and wanted to exercise some choice as to the management of their nurses and to have choice of agency nurse suppliers. It was nothing short of a wast of time and resources. Why did it fail? Nurses had choice of other hospitals to work at, the agencies could choose not to supply to the tender hospitals, and ultimately it attempted to remove choice, but failed to have the control to do so.

Here we are again but the essence of this tender is to remove all choice from the nurses and the agencies. There is no competition when there is no choice. If a nurses or an agency wants to operate within the public hospital sector they will have to comply with the terms of the tender regardless of what the conditions are. This denies the uniqueness that exists within the health industry, removes all competition and denies any free market activity.

In 2000 the nurse - patient ratios were agreed on when the Victoria government knew it could not meet the staff requirements nor afford them. It was an interesting approach to drive nurses back into the hospital system against their will by removing incentive and threatening, that they would not be able to obtain work if they did not become an employee of a public hospital. This destroys any free market competition amongst agencies. I thought there was equal opportunity laws and laws against workplace bullying. It would appear that this does not apply to nurses. I wonder if government would consider taking this style of action against the doctors. I forgot, they are an essential service whereas nurses are not.!!

It was a deliberate design by the Australian Nurses Federation and the Victorian government to eradicate the agencies within the legitimate confines of the Blair commission decision. This of course has failed as

demand in the public health system outstripped supply. The first round of the tender proposal did not slide through over Xmas as hoped by HPV. The next step was price fixing by Human services in Victoria. The reality is that the government cannot sustain this position. At present it has effectively crushed agency demand by closing beds, cutting back on all but emergency surgery and scaring nurses onto their banks thus leaving the agencies short staffed. Nevertheless winter is coming. When the system is under extreme pressure and the nurses are tired of the over usage applied to them in meeting unattainable nurses patient ratios they will return to the agencies and market forces will undue much of the price fixing.

The Victorian government analysts know this is so and hence the second attempt at requesting the ACCC to grant their demand for an exclusive tender of agency nurses. The tender if permitted by the ACCC will effectively destroy any market forces giving the government control over every nurses working in the public hospital system. Who knows maybe every nurses across Australia will be controlled if they have to work in a public hospital within a couple of years.

The only thing that is not sustainable is the morale of nurses. The governments do not have a position where the cost of agency nurses are unsustainable. We know that all governments can spend money on what they deem important. What the government in Victoria cannot sustain is an outbreak of nurses being autonomous, entrepreneurial and receiving remuneration equivalent to their qualifications and skills. The real issue is that through competition and normal market forces nursing agencies have done more to create social and financial equality for nurses and women than the Australian Nurses Federation, Governments and commissions have done in 50 years.

We live in a country that is capitalist and free market. Government is only supposed to interfere in market forces when the parties to those forces need to be protected. Nurses do not need protection from choice and market forces. Agencies have a right to operate fairly in a competitive free market economy. The public do not have to be protected from happy and contented nurses. Government does not need protection from exploitation as it creates laws to protect itself. If government had a history of creating fair conditions for nurses and addressing the issues of medical domination and exploitation of women in the hospital system the ACCC would not be facing this decision today

If the ACCC permits the tender process to proceed it will be responsible for the future destruction of the morale of all nurses as it will take away most of their choices and any of their autonomy especially in the largest hospital sector being the public hospitals. It could be said that agency nurses only form a small part of the nurses EFT but the choice should remain for any nurse to utilise an agency any time they see fit to do in any way they see fit. Choice does not need to be exercised but it must exist.

Lastly there is absolutely no substantial evidence to substantiate the claim by the Victorian government that the public will benefit from this anticompetitive tender and price fixing. This entire exercise is politically motivated with little to do with patient care. The ACCC must recognise that the culture of all nurses must be preserved and nurtured or there is no substantial patient care.

Sincerely

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