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The section 42 and the proposed tender planned by the Victorian Government and HPV is unfair, with the sole political objective of controlling of nurses and the expenditure on them. No activity that is designed to control nurses can be beneficial to the public. Nurses are as much a part of the public as patients.

The criteria put forward in this tender are stringent and anticompetitive. The government does not wish to be in a competitive situation against the agencies. The tender effectively destroys a market and attempts to set up a monopolistic situation in the hospital banks. Private enterprise is unable to pay any incentive to nurses as there is insufficient profit margin allowed by HPV to do so.

History
I would like to put a time line to the ACCC which depicts the historical happenings leading up to this tender. All actions can gain significance if put in time and place.

1990 – 96 transition of nurses agencies from commission agents to Employment agencies.

1996 – Code Blue begins to proactively promote specialists nurses as deserving greater recognition in the form of higher remuneration above the Victoria EBA.

1996 – 2000 The nursing agency industry consolidates itself creating a good competitive market offering recognition, greater choice and better income to a large cross section of nurses, especially in the high acuity areas. Wages are increased whilst not placing an excess burden on hospital budgets.

In 1999 the labour Government is elected in Victoria. The Australian Nurses Federation (ANF) openly campaigns for labour party votes in its official publications

In 2000 the ANF creates the "Agency code of Conduct" where it attempts to restrict the activities of the agencies and keep nurses rates of pay at the award. The agencies were expected to promote ANF membership.

The ANF lays a log of claims in the Arbitration Commission for wages, conditions, nurse patient ratios and restriction of agency utilisation to unplanned sick leave.

The Blair commission hears evidence and the ANF creates a major issue out of agency utilisation.

The Blair commission grants nurses patient ratios and proposes the employment and retraining of thousands of nurses. It is decided in the commission that the cutting out of nurses' agencies would fund the ratios. The government proposes to mail a letter to all nurses and is to be distributed at all hospital facilities telling nurses to join the hospital banks as there will no longer be nursing agencies and they will be banned.

HPV is set up in Victoria and the amendments to section 42 of the Health Services Act slip through parliament quietly.

2001 – The government sets about with its campaign that agencies are on the way out. Nurses are threatened of loosing all agency shifts. Rumours circulate that the government is waiting for the right time to action the phasing out of agencies. Agencies have too many nurses and much of the government's recruitment has not replaced the exit from the system. The nurse patient ratios create a massive demand for nurses which in turn creates more agency utilisation.

The Blair commission directive on agency utilisation is unenforceable as nurse's burnout over winter in the public hospital sector and look for a more autonomous way of working.

In August 01 Nursing Australia embark on a rapid and high escalation in nurses wages. The rate went up from $36 per hour to $51 per hour in 6 weeks. To keep market share all agencies were forced to follow the escalation and close the gap of wages offered so as to maintain their stock of nurses from being poached.

The impact was that many nurses freed themselves up to do more casual work enjoying the higher income levels. Nevertheless many nurses feared a government backlash and very few nurses were keen on nurses' rates going any higher than $50 per hour weekdays.

In December the agencies were notified just prior to Christmas that the government under HPV had applied for Authorisation for permission to conduct a tender which we all claimed is anticompetitive.

Southern Health ends its long term preferred provider contract with Nursing Australia.

2002 - The interim authorisation was rejected in March

It was the quiet time of the year when it was easy to coerce nurses onto nurse banks with fear of no shifts through the agencies.

March & April came a highly charged debate in the media portraying the agencies as mercenaries and profiteers whilst patient care was compromised because the government budgets were blown out. The government was saving the day to protect the public and stop the huge profits being made by private companies in the health sector. Exaggerated rates are publicly released to paint us as ripping off the hospitals.

A huge advertising campaign by government followed in an attempt to fill the hospital banks. It was targeted at getting nurses out of agencies and back into hospital control

Submissions were placed by all parties to the ACCC. The ANF backs the applications by HPV as it shares the same government ideals

March 2002 - When the tender does not pass through quickly the government through HPV sidesteps the ACCC and implements the amended section 42 and the hospitals are directed to cap and reduce all agency charges at whatever they deem is appropriate. Agency nurses leave agency to go to the hospital banks or leave the system entirely. Available agency nurses drop out by 50%.

The financial review slams the Health insurance companies that want rises in their fees to members and proceeds to blame nursing agencies as a primary cause of cost blow-out

Private hospitals are expressing their frustration to agencies because they cannot have the same rates as public hospitals. Specialist agency nurses were refusing to go to public hospitals as their rates have been reduced to levels below pre August 2001.

The Victorian Auditor Generals report is released stating how little data the hospitals had regarding agency and casual nurse utilization. It recommended that the government needed to start creating data on agencies and nurse utilisation.

The ACCC Hearing in Melbourne included passionate debate put forward by the agencies. HPV was refusing to answer specific questions and the hospital representative failed to be persuasive. Nursing Australia fails to protest against the applications and makes no comments in the hearing even though they are responsible for the price escalation

All major private hospitals are seeking rates cuts by agencies. Negotiations continue to come to nought as hospitals are demanding ever larger cuts. The results are smaller agency margins, continue to reduce the nurse pay rates or sell out.

September 02 - Mayne Health informs all agencies that they have 3 days to comply with their new written directive which is at follows.

1. Comply with our invoicing scale (created by Nursing Australia\Origin Health).
2. Sign a contract that you will only pay the agency nurses 10% above the award.
3. There is a preferred supplier agreement with Mayne and Origin Health (Nursing Australia)
4. Verbal threats by hospital administrators that if we do not comply we will have all our pre booked shifts cancelled and our services will no longer be required.

Origin does not appear to be under the same restriction of the 10% capping on nurse salaries under the proposed agreement

Code Blue is refused negotiation when approaching Mayne management. Code Blue decided not to comply with the restrictive nature of the proposal therefore withdraws from supplying the Mayne hospitals until communication can be re-established on fair terms

Code Blue sends a letter to adjudication at the ACCC regarding Mayne's behaviour – no response from ACCC

Financial Review and Herald Sun newspapers will not print the story even after extensive discussions with their journalists

September 02 - Five days later the Healthscope group bring in the same restrictive proposal except they are demanding us to sign off at paying the nurses 3 % above the award.

Mayne Health starts cancelling elective cardiac and complex surgery across Warringal, Knox and Melbourne Private hospitals. Intensive care and coronary care units have been scaled down and regularly closed. Surgeons are moving their patients to other hospitals and senior nurses are resigning their jobs. Once these Critical areas are closed it will be very hard to re open them, especially as many private Critical Care areas loose alot of money.

14\9\02 The Benchmark group issues a document of contract for agency services which is currently being assessed by our legal team

18\9\02 The Epworth hospital issues agencies with the same proposal as Mayne. It also contains the 10% clause which is not mandatory at this time.

19\9\02 St Vincent's Private demand compliance with their new low fee schedule by October.

The agencies are appealing to the unfair and harsh conditions inherent in the HPV tender and further comments regarding the activities of the private sector activities. Final responses to the ACCC due 20th September 02.

Public sector hospitals are experiencing large demands as Emergency departments waiting times blow out by 300%. Morale of agency nurses at an all time low as restrictions effect the livelihood of nurses who choose or need the freedom that agency offers.

The Players

Nurses have always been poor, virtuous, underpaid, overworked, and submissive to the doctors. Once described as doctors handmaidens. Predominantly female.

Doctors have been predominantly male, well paid, powerful, autonomous and domineering. They controlled nurse's education which was then taken over by hospitals.

Hospitals have been controlling, patrons of the community; many have origins in the religious orders and are the employers of nurses on mass. Once the major supplier of nurse training and predominantly run by females in nursing administrations. Doctors controlled financial and business areas.

The nurses unions (Australian Nurses Federation – ANF) have always had left wing idealism. They oppose specialty recognition as they believe it creates elitism, despite their eduction and experience. They believe in the generic nurse that does not need to be a specialist. Historically their achievements are limited to minor industrial wage claims. The ANF has large access to public hospitals and has militant union representatives. This solidifies its membership base. Membership has been attractive as they have always been able to offer PI cover. PI cover costs are rising and cover harder to achieve. Many nurses are seeing membership less important as university education promotes membership of the Royal College of nursing Australia.

Human Services make policy for the government. They do not believe in specialist nurses either. They create nurse policy. The Victorian government is looking for someone to blame for the poor performance of the healthcare system, the nurse shortages and blowouts in but budgets.

Nursing agencies are a group of small business people who have built up solid businesses with a lot of hard work. They have transformed the agency industry from a cottage industry to a professional business which respects hospitals and nurse alike.

Nursing Australia (Origin Health) is an agency with a philosophy of total market domination. It has a long history of acquisitions and aggressive market strategies. It is currently purchasing nursing agencies in all major cities. It believes in only paying nurses at award levels.

Analysis of the current market

Why are nurses in such a position as they are now? The reasons are political. Nurses are such a large workforce and governments and don't want to loose control of them nor the wages paid to them. The ANF wants the wage structure they have created to be the only option and nurses to remain in hospital employment where they have direct access to them and to control them.

Private hospitals want the best deal for themselves and share holders. Non profit hospitals want the best deal to suit their idealism.

There is an underlying view that women as nurses are commodities and are exploitable. Nurses are the lubricant that keeps the wheels of the healthcare system running whilst the hospital system and the doctors pursue their ambitions and agendas.

The doctors do not want budgetary allocations to move from medical research and the funding of activities under control of the doctors to pay higher wages to nurses. If you pay nurses too much money the doctors will deem it that there needs to be monetary elitism between nurses pay and doctors pay levels.

The machinations of the last 2 years have been leading up to our current finale. The plan has been, whether constructed, or by sheer chance, to suppress and drive the agencies out of business. The result is to force the nurses back into the banks. This control is a violation of our fundamental right in Australia to choose and to have autonomy. Nurses have the right to offer their skills and services at whatever rate they deem appropriate regardless of who the client is.

Doctors somehow have enshrined in there practice the right to charge what ever they see fit above the Medicare levy. Whether it is by direct billing or by government compensation for the gap of private health cover, they can do as long as the rates are approved by the AMA.

Why is it that most sectors of health can be entrepreneurial and nurses not? The debate that raged in April 2002 fuelled by the government and the hospital CEO's painted the picture that nurses agencies were exploiting the public and damaging the viability of health to the public detriment. The facts are that 80% of the fees that are charged went to the nurses and not into the coffers of the agencies. The propaganda was unfair and misleading to the public.

The ACCC must recognise that the Victorian government is basing its actions on insufficient data. It is nothing more than a political agenda. It seems inconsistent that a methodology to start researching and

monitoring agency usage is implemented after the section 42 action has occurred. The demand for agency nurses has been altered by legislation and will never give an accurate data baseline. The 2002 Auditor Generals report makes widespread comments regarding the government's lack of data on nurses and nursing agency utilisation. To make a satisfactory decision and one that impacts on thousands of nurses and thousands of patients must be based on fact not speculation and agenda.

We consider the amounts quoted by the government of 50 million per annum in agency costs questionable and over inflated considering they have no agency utilisation data coming out the hospital network except Southern Health care which have spent a long time in an exclusive tender with Nursing Australia at what may be considered a higher than average rate.

Why is the government going to such great lengths and spending so much money advertising hospital banks to compete against the agencies. We have estimated our cost to the tax payer is between .6 and 1.2 % of the Victorian Health budget? The productivity input by efficient agencies and agency nurses could be considered wise spending.

Conclusion

In conclusion it is obvious that the ACCC can not act on the directive by HPV. Nevertheless HPV can not maintain the Directive without locking up and controlling the agency industry for 3-5 years. In essence the Directive is an extension of the Authorisations. The directive is tied to the Authorisations and this either links the directive to the authorisation legally or the Authorisation stretches beyond its boundary. Either way both the Directive and the Authorisation stretch beyond their intended bounds and cannot exist in a functional format without each other. If HPV cannot lock up demand and price with the tender then market forces should return to their rightful balance. Without the Directive the tender is unworkable because the market will still have choice and incentive which will make options outside the tender for all more viable once again establishing a demand and supply situation.

The ACCC has a large responsibility to decide that the Authorisations are in the public benefit. It is clear by the very actions and intensions of the government, HPV, ANF and Private hospitals that agencies and agency nurses are not welcome. The government talks about improving patient care and employing more nurses with the savings gained by eliminating agencies. How is this measured and how will we ever know that this actually occurs. So far the government can only claim some productivity gains in return for its actions. I challenge anyone to prove to me that the health care system is in better shape since the introduction of the Directive.

Finally the ACCC is on the verge of setting a massive precedent. If it allows the Authorisations, it sets a precedent for each state government to do exactly what HPV is doing. Followed swiftly by the private sector which will literally gang up on agencies and agency nurses as they have done in Victoria. Nursing Australia will continue its acquisitions unopposed and award rates only pay structure, as nurses are forced to comply or leave the industry seeking better pay elsewhere. More and more agencies will struggle to maintain higher rates and choice for their nurses. Finally succumbing to returning nurse rates to the poor award levels.

There will be no incentives, no choice, no autonomy and this will never add anything towards a public benefit. Granting the Authorisation is significantly detrimental to the public as it erodes the values that our society are built on and will do nothing to redress the nurse shortages we have in Australia today.

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