



australian
nursing federation

Inquiry into independent contracting
and labour hire arrangements

March 2005

1. Introduction

- 1.1 The Australian Nursing Federation (ANF) welcomes the opportunity to make a submission to the Inquiry into Independent Contracting and Labour Hire Arrangements.
- 1.2 The ANF is the national union for nurses in Australia with branches in each state and territory. The ANF is also the largest professional nursing organisation in Australia. The ANF's core business is the industrial and professional representation of nurses and nursing in Australia.
- 1.3 The ANF's 145,000 members are employed in a wide range of enterprises in urban, rural and remote locations in the public, private and aged care sectors, including hospitals, health services, schools, universities, the armed forces, statutory authorities, local government, offshore territories and industries.
- 1.4 A significant number of nurses work in small businesses including aged care facilities, medical practices and private medical rooms in many small communities and domiciliary facilities.
- 1.5 The ANF participates in the development of policy in nursing, nursing regulation, health, community services, veterans affairs, education, training, occupational health and safety, industrial relations, immigration and law reform.
- 1.6 Nurses as members of the ANF are mainly employed under the awards and agreements of the Australian Industrial Relations Commission except for nurses employed in New South Wales and in the private sectors of Queensland, where industrial systems in the relevant states cover them.
- 1.7 Since the mid 1990's nurses in Australia have been progressively covered by collective bargaining agreements, negotiated on their behalf by the ANF. The introduction of enterprise bargaining agreements has led to significant differences in respect of wages and conditions of employment both within state boundaries and between states.¹

¹ Australian Nursing Federation, Nurses Paycheck, Vol 4 (2) March-May 2005 p.36-46

2. Demographics on the employment of nurses and nurses in small business settings

- 2.1 Nurses are the largest occupational group in the Australian health workforce representing 54% of the total number employed in 2001.²
- 2.2 According to the Australian Institute of Health and Welfare (AIHW), in 2001 there were 236,562 licensed nurses licensed³ in the Australia workforce. Of these 80% were registered nurses and 20% were enrolled nurses.⁴
- 2.3 A significant number of nurses work in small businesses including aged care facilities (14.6% n = 33,181), medical practices and private medical rooms (2.1% n = 4,844). Additionally, an increasing number of nurses and midwives are working in private practice as proprietors of small businesses or as independent contractors (0.8% n = 1,719).⁵
- 2.4 Additionally, a recent report commissioned by the Australian Government suggest there are 67,661 unlicensed nursing and personal care assistants employed, the majority of whom work in the private residential aged care sector assisting nurses in the provision of nursing services.⁶
- 2.5 There are a number of nursing workforce issues which are relevant to this Inquiry. For example, small business needs to be able to compete in an environment where there is a labour market shortage. It is widely acknowledged that there is a national and international shortage of nurses, with the AIHW reporting a decline in the number of full time equivalent (FTE) nurses in Australia per 100,000 population from 1127 (FTE) nurses per 100,000 population in 1995 to 1024 FTE nurses per 100,000 population in 2001⁷.

² AIHW 2003 *Health and Community Services Labour Force 2001* Canberra

³ Registered and enrolled nurses (enrolled nurses are called Registered Nurse Division 2 in the State of Victoria)

⁴ AIHW 2003 *Nursing Labour Force 2002* p.3

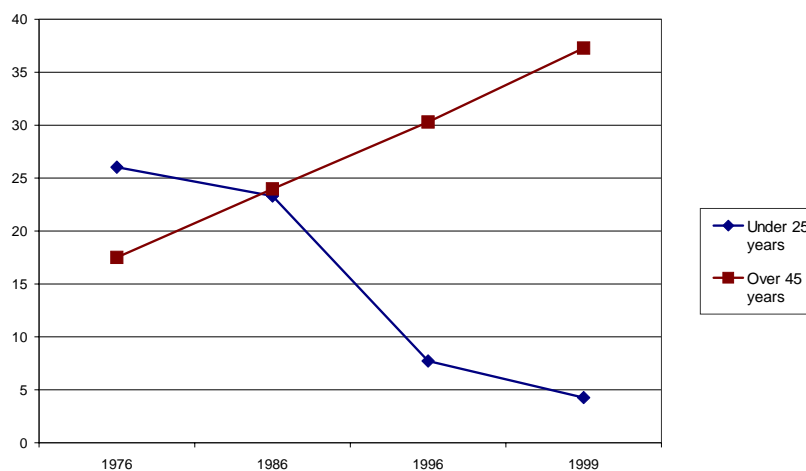
⁵ AIHW 2003 op cit p.15

⁶ Richardson S 2004 *The Care of Older Australians: A picture of the residential aged care workforce* National Institute of Labour Studies Flinders University Adelaide Australia

⁷ AIHW 2003 *Nursing Labour Force 2002* p.18

- 2.7 According to the Department of Employment and Workplace Relations (DEWR) National School Shortage Survey, the depth and breadth of the student shortages in nursing remains the greatest of all occupational groups.⁸
- 2.8 Additionally, nurses are getting older and the proportion of older nurses continues to grow. In 2001, the average age for a registered nurse was 42.1 years and for an enrolled nurse it was 42.5 years.⁹

Nursing Workforce 1976-1999



- 2.9 The ageing of the nursing workforce has implications for workforce planning as it is likely that the 40% of nurses who will be contemplating retirement over the next 15 to 20 years, will be those with most experience and with specialist qualifications or expertise.
- 2.10 The nursing workforce also has a disproportionate high number of part-time employees and this is increasing. In 1995, less than half (48.8%) of nurses were part time and by 2001, this figure had increased to 53.7%.¹⁰ At the same time, the average number of hours worked by nurses per week has decreased from 32.4 in 1995 to 30.5 hours in 2001.¹¹

⁸ Department of Employment and Workplace Relations (2004). National and State Skill Shortage Lists, Australia 2004

⁹ Australian Nursing Federation, Nurses Paycheck, Vol 4 (2) March-May 2005 p.13

¹⁰ AIHW (2003), Nursing Labour Force 2002, Canberra p.6

¹¹ AIHW (2003), Nursing Labour Force 2002, Canberra p.6

- 2.11 A key characteristic of the Australian nursing workforce at present then, is that it is relying heavily on the skills and experience of an increasing number of older women working part time who tend to be in the latter stages of their working life.

3. Independent contractors and labour hire agencies

- 3.1 The vast majority of nurses are directly employed by health and community services facilities on a full time/part-time or casual basis. Additional staffing requirements (ie. as a result of sick leave and other unplanned absences) are met in two discrete ways. Internally, by existing employees working overtime or by accessing the internal nursing banks of employees; or externally, by using agency nurses through labour hire firms.
- 3.2 While it is difficult to calculate the national usage of agency nurses at any particular time, it is estimated that agency nurses may represent up to 5% of the nurses working in public and private hospitals and in aged care facilities.
- 3.3 The Australian Nursing Federation does not oppose the use of agency nurses through labour hire firms to cover the unplanned absences of permanent staff. However, the use of agency nurses can be problematic for a number of reasons, including:
- Agency nurses may be unfamiliar with the unit or workplace, requiring orientation and additional supervision.
 - Agency nurses may not have the qualifications and the level of experience necessary to the workplace.
 - The use of agency nurses may have a detrimental impact on the continuity of patient care;
 - The often significant differences in the pay rates between agency nurses and permanent nursing staff may be perceived to be a destabilising factor for many nurses.

- 3.4 There are also public interest issues regarding nursing agencies and labour hire firms, particularly with regard to the provision of public health services. The national nursing shortage coupled with the requirement that public hospitals provide a level of services consistent with state and territory government policy has led to hospitals facing significant financial exposure to labour hire firms.
- 3.5 In 2001, the seriousness of this situation led the Victorian government to make application under sub-section 88(1) of the Trade Practices Act 1974 for authorisation for arrangements that would allow Victorian metropolitan public hospitals to source agency nurses from a small group of labour hire firms with the consequent effect of reducing competition. In support of the application, it was argued that such an approach would decrease staffing costs, improve employment equity and workplace harmonisation, ensure price certainty, reduce bargaining imbalance, and promote equitable dealings and improve the quality of patient care.¹²
- 3.6 In supporting the application the Australian Competition and Consumer Commission held:

The Commission considers that the proposed collective tender process will generate some, limited, public benefit. The Commission considers that the proposed tender arrangements will result in some administrative costs savings to health services, which are likely to be directed to improve the quality of patient care. Additionally, the Commission considers the proposed arrangements will generate some, small public benefit through the requirement that successful tenders adhere to service level targets, and through ensuring that once a nursing agency has committed to provide a nurse for a shift, one will be available and will also assist in the providing of patient care.¹³

¹² ACCC Determination (December 2002), Agreements Between HPV and the Victorian Public Health Service for Exclusive Award Tendered to Nursing Agencies (Public Register No. C 2001\1712) page 13.

¹³ ACCC Determination (December 2002), Agreement between HPV and the Victorian Public Health Services for the Exclusive Award of Tender to Nursing Agencies (Public Register No. C2001\1712), page ii

4. Independent contractors, labour hire agencies and industrial regulation

- 4.1 The Australian Government is advocating for separate industrial legislation for independent contractors in part on the questionable basis of needing to protect independent contractors from the jurisdiction of industrial tribunals that may constrain their freedom to operate as genuine independent contractors.
- 4.2 In nursing historically agency nurses have received wages and conditions of employment, which are not less than that enjoyed by the nurses directly employed at the establishment.
- 4.3 The ANF would support changes to industrial laws that ensure that employees of labour hire companies, independent contractors, and dependent contractors: are covered by covered by awards and collective agreements; have the right to join and fully participate in their unions; and are generally subject to the jurisdiction of the relevant industrial tribunal(s). Industrial relations systems do, and should continue to accommodate non-standard forms of employment.
- 4.4 The ANF would therefore, support an increase in the powers of the Australian Industrial Relations Commission (AIRC) to ensure that independent contractors and employees of labour hire companies are treated fairly. The minimal powers available to the AIRC pursuant to s.127A of the Workplace Relations Act 1996 (WRA) are simply not strong enough.
- 4.5 s.127A of the WRA is ineffectual in comparison to the powers that are available to the state industrial tribunals of New South Wales and Queensland. In New South Wales, s.106 of the NSW Industrial Relations Act 1996 provides that a tribunal may declare a contract void if, in the view of the tribunal, the performance of the work constituted an unfair contract where:
- it is unfair, harsh or unconscionable;
 - unfair tactics or pressure were exerted on the parties to get agreement;

- it is against the public interest;
- the total remuneration is less than that received by an employee performing the work;
- it avoids, or is designed to avoid, the provision of an award or agreement.¹⁴

5. Conclusion

- 5.1 In the event that the government is able legislate for the industrial separation of those with non-standard forms of employment it will, in the view of ANF, entrench disadvantage rather than promote flexibility and efficiency. In nursing it will exacerbate the disadvantage that comes with precarious employment including the lack of certainty in work and therefore earnings.
- 5.2 In the absence of compelling arguments in support of the Government's wishes and in the absence of evidence that independent contractors and others will be adequately protected in the future, the ANF is strongly of the view that there needs to be consistency in the treatment of all workers regardless of the form of employment.

¹⁴ NSW Department of Commerce Office of Industrial Relations
www.industrialrelations.nsw.gov.au/scripts/isiswebext.dll