



THE ROYAL AUSTRALIAN COLLEGE OF GENERAL PRACTITIONERS

31 August 2001

Mr B Cassidy
Chief Executive Officer
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Mr Cassidy

I am writing in relation to the application of the *Trade Practices Act 1974* on the business models and conduct of general practitioners.

As the professional body representing general practitioners throughout Australia, and with the largest number of members who are general practitioners, the Royal Australian College of General Practitioners is making an application for Authorisation under the Act. We are also seeking an interim Authorisation.

Our application proforma is attached. Please note that we will provide an accompanying submission to your Office by 31 October 2001.

The reasons for seeking an interim Authorisation are as follows:

- There are approximately 20,000 'active' (ie. practising) general practitioners in Australia. A recent survey by the College of its members (who represent around 55% of the total general practitioners) indicates that approximately 83% of general practitioners are involved in business models which would be defined as 'anti-competitive' behaviour under the Act.
- However, we submit that such business models are appropriate business models for general practice as they are related to the quality and safety of patient care in primary care settings. For example, if a patient's 'regular' doctor within a practice is not available, they are able to obtain continuity of care and time-critical attention from another doctor within the practice, as general practitioners share patients – unlike other professional business entities (eg. barristers or medical specialists).
- We note that the Prime Minister announced on 29 August 2001 an Inquiry into the impact on the recruitment and retention of medical practitioners in rural areas of the application of the *Trade Practices Act*. We note also that the Terms of Reference of the Review are quite broad-ranging and include the matters for which we seek Authorisation (and interim Authorisation).
- However, we also note that the Inquiry is not due to report until February 2002 whereas, as noted above, we believe that around 83% of general practitioners are currently potentially in breach of the Act.

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- Further, we would note that the survey results for 'rural areas' (generally defined as towns of less than 10,000 people) are precisely the same as the national average of 83%. In other words, this is not just an issue which applies to rural doctors – as per the Inquiry - but to those working in regional areas (eg. larger centres such as Ballarat, Dubbo, Coffs Harbour, Rockhampton) and metropolitan city areas where 'anti-competitive' practice structures are measured at approximately 87% and 83% respectively.

We would, therefore, appreciate your early attention to our application for interim Authorisation in view of the large numbers of general practitioners, whose role is the provision of primary health care to the Australian community could be compromised by the application of the Act.

As noted above, our detailed submission will be provided by the end of October.

If, in the meantime, your officers wish to clarify any matters with the College, they may contact Ms Bonita Mersiades on 02 9428 5200 or Dr Nathan Pinski on 03 9532 9744.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Liz Furler', with a small dot at the end.

LIZ FURLER
Chief Executive Officer

FORM B

Commonwealth of Australia
Trade Practices Act 1974 – Sub-section 88(1)

**AGREEMENTS AFFECTING COMPETITION:
APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section

- to make a contact or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act or the Competition Policy Reform Acts of the States and Territories.
- (Strike out whichever is not applicable.

1(a) Name of Applicant

Royal Australian College of General Practitioners (the College) on behalf of general practitioners using the framework arrangements.

1(b) Short description of business carried on by applicant

The College is the peak professional organisation representing the interests of general practitioners throughout Australia. The College is involved in the setting of standards for the profession, education policy, award of the Fellowship of the College, research, advocacy on political, strategic, corporate and business issues and member services. It has approximately 11,000 members (or about 55% of the estimated total number of active general practitioners).

While it is a member-based organisation, the College nonetheless believes it has a responsibility to, and is broadly representative of, all general practitioners and overseas trained doctors working as general practitioners in Australia, regardless of their membership status with the College.

1(c) Address in Australia for service of documents on the applicant

College House
1 Palmerston Crescent
SOUTH MELBOURNE VIC 3205

2(a) Brief description of contract, arrangements or understanding and, where already made, its date

The College is seeking authorisation of a framework agreement to provide broad coverage for general practitioners and other medical practitioners to enable them to engage in conduct which might be defined as 'anti-competitive' within the meaning of the Act in respect of agreement to set, control or maintain fees at a certain level within a practice.

This authorisation application is sought to apply in the following business models used by general practitioners and other medical practitioners:

- (i) a medical practice which is incorporated as an Australian company with more than one shareholder or director.
- (ii) a medical practice which operates as a unit trust.
- (iii) a medical practice which is a partnership of two or more doctors where none of the partners is a body corporate.
- (iv) a medical practice which is a partnership of two or more doctors where at least one of the partners is a body corporate.
- (v) a medical practice which is an associateship where two or more doctors, either incorporated or not incorporated, are co-located and share administrative and business facilities.
- (vi) a medical practice, either incorporated or not incorporated, which employs or engages from time-to-time general practitioners working as contractors or on a freelance *locum* basis.

The College will provide a supporting submission by 31 October 2001 which will set out the detail of the proposed framework arrangement.

2(b) Names and addresses of other parties or proposed parties to contract, arrangement or understanding

This application is sought on behalf of all current and future recognised general practitioners and other medical practitioners in general practice in Australia. Further detail can be provided if required.

3 Names and addresses (where known) of parties and other persons on whose behalf application is made

As for 2(b) above.

4(a) Grounds for grant of authorisation

The College is seeking authorisation on the basis of the public benefit nature of the alleged anti-competitive behaviour in general practice settings.

As the profession responsible for the delivery of primary health care to the entire Australian community, general practitioners have an important role within our society. As the initial – and sometimes only – link between a patient and the medical profession, general practitioners have considerable autonomy and operate within a context of care and trust with their patients on an individual basis. The College appreciates that general practitioners are also accountable for the decisions they make concerning the commercial aspects of their services against the standards enshrined by the community, through the Government, in legislation.

The essential difference between business structures for general practitioners and those for other professional groups (such as barristers and medical specialists) is that general practitioners share patients or clients. This is for the benefit of the patient and lies at the heart of quality and safety issues for the delivery of primary health care, and better health outcomes for patients.

If a patient is in need of medical attention, and their usual general practitioner is not on duty, the structures in place within a practice enable the patient to be treated by another general practitioner providing the patient with continuity of care and in the context of their overall health concerns and needs.

If general practitioners were forced to 'compete' by setting individual fee rates, it would be confusing for the patient and could mitigate against high quality standards of patient care.

Many of the business structures used by general practitioners were also as result of Commonwealth Government policy which has encouraged amalgamation and partnership-type structures. Generally speaking, such structures benefit the public through the realisation of economic efficiencies for patients by reducing overheads, lowering prices, increasing choice and by the better use of existing assets, particularly where the business structure has an element of shared risk for the business participants.

4(b) Facts and contentions relied upon in support of those grounds

The College has undertaken a survey of the business models being used by general practitioners around Australia. Full details will be provided in our submission provided by the end of October.

In summary, the survey results (from 3,647 respondents) show that the business models for which the College is seeking authorisation cover an estimated 83.3% of all general practitioners.

- incorporated company with more than one shareholder or director - (i) above: 18.5%
- unit trust – (ii) above: 1.2%
- partnership – (iii) and (iv) above: 17.3%
- associateship – (v) above: 28%
- short or long-term employment or engagement of contractors or *locum* – (vi) above: 10.7%.

In addition, a further 7.6% of business models combine two or more of the above practice structures.

The remaining 16.7% comprise unincorporated solo general practitioners or salaried general practitioners working with corporations or with organisations such as the Royal Flying Doctor Service and Aboriginal Medical Services.

5 This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understanding or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above mentioned contract arrangement or understanding.

(a) Is this application to be so expressed?

Yes, to the extent that giving effect to the arrangements results in proposed contracts, arrangements or understandings that will be in similar terms.

(b) If so, the following information is to be furnished:

(i) the names of the parties to each other contract, arrangement or understanding

See above.

(b) (ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application

See above.

6(a) Does this application deal with a matter relating to a joint venture.

No.

6(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture.

Not applicable.

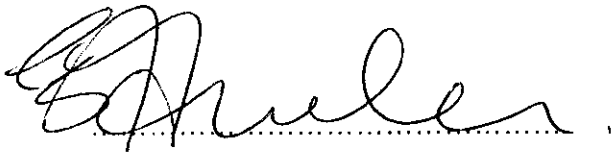
6(c) If so, by whom or on whose behalf are those other applications being made.

Not applicable.

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Names and address of person authorised by the applicant to provide additional information in relation to this application.

Ms Bonita Mersiades or Dr Nathan Pinskiar
C/- College House
1 Palmerston Crescent
SOUTH MELBOURNE VIC 3205



31 August 2001

ELIZABETH JANE FURLER
Chief Executive Officer