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31 July 2006

Dear Mr Gregson and Ms Everett

I am responding to the letter to Clayton Utz dated 13 July 2006 in order to clarify the operation of Anaesthesia Systems.

The clarification points you requested were:

**1. A description of Anaesthesia Systems Pty Ltd (AS), including its background and main functions.**

AS was incorporated in NSW on 17 May 2005. The business name anaSyst has also been registered as a registered business name with the New South Wales Office of Fair Trading.

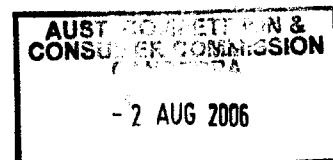
AS was started by Dr Ross Smith as a vehicle to market software which enabled the integration of the internet and the mobile phone as business tools. The web based software enables individual anaesthetists to indicate their availability for anaesthetic work. Web based operators can administer this system and generate requests for anaesthetists, which are distributed by SMS text messaging to anaesthetists depending on their personalised availability profile.

To date there have been no services offered by AS. The aims of the company are:

- in general, to aid in the integration of communications technology to provide efficient and novel forms of contact between participants in the health care industry; and
- specifically, to assist requestors of anaesthetic services to make efficient contact with those providing anaesthetic services.

**2. An outline of the number of hospitals in NSW at which the notified conduct will be implemented.**

The system proposed by AS involves communication between requestors of anaesthetic services and anaesthetists. The requestors may be surgeons, private hospitals, public hospitals or other anaesthetists (e.g. to find an anaesthetist to cover work when they go on vacation). Thus, it is difficult to give an accurate idea of the number of hospitals in which AS' referral service would be used.



It is AS's intention to market this service in the Sydney metropolitan area.  
The number of hospitals in the Sydney area is:

Private Hospitals and Day Surgery Centres	52
Public Hospitals	27

The first area in which AS' referral service will be trialled is in western Sydney.

**3. An outline of the 'other locations' in Australia (other than NSW) in which AS intends to implement the notified conduct in the future, and the extent to which conduct will be implemented.**

The AS referral service will start off in Sydney as a trial run to see if AS is financially successful and viable. This depends on the take-up rate by requestors including anaesthetists, public and private hospitals and surgeons.

If the service is successful in Sydney it is anticipated that it would be launched in other metropolitan areas of Australia where there are a sufficient number of anaesthetists to allow such a service to gain traction. Initially, plans are for the service to be launched in Melbourne and Brisbane if the service in Sydney is viable.

**4. Clarification of how the proposed exclusivity covenant will operate.**

AS simply acts to provide anaesthetists, who have indicated their availability on a web-based calendar, with a way of receiving notifications of anaesthetic work by SMS text messages. These SMS messages will be sent to anaesthetists as AS is notified of such requests by requestors of anaesthetic services.

AS' referral service will supplement, not replace the current informal system. Registration and use of AS' referral service will be voluntary for both anaesthetists and requestors.

There is no obligation on registered anaesthetists to register availability with AS for a particular time and location. Anaesthetists are free to seek anaesthetic work from other sources for any times and locations of their choosing.

The exclusivity covenant is proposed to apply to registered anaesthetists in respect of particular work sessions requested by requestors that are referred to registered anaesthetists by AS. Once the anaesthetist has registered their availability for a particular session they will then receive text messages notifying them of requests for anaesthetists for that session. They then have the option of indicating their preparedness to accept this specific episode of work through the AS system. They are not obliged to take this offer of work. They are not required to make themselves exclusively available to AS for the particular session in question and therefore they may offer their services or take any other offers of work for the particular time period or session in question. They are however, requested to communicate their acceptance of the offer of work referred by AS, through the AS system. If they are successful in obtaining work through a referral by AS they will be levied a fee.

In essence, the registered anaesthetist is in control of how much they use the system and in respect of which sessions they accept offers from time to time in their absolute discretion.

There is no obligation on requestors to accept registered anaesthetists referred to them by AS, even after requesting an anaesthetist from AS for a particular procedure.

Moreover, the exclusivity obligations imposed on anaesthetists by AS are temporary and only apply to registered anaesthetists in respect of particular sessions requested by requestors that are referred to anaesthetists by AS.

**5. Clarification of how the fee charged by AS for its services will be imposed.**

The fee will be levied on an anaesthetist who is successful in obtaining work through the AS referral system, except in the case where the requestor is a public hospital, where the fee will be levied on the hospital.

- i. and (ii) . With respect to the situation where the patient is a private patient in a private hospital the fee for the AS referral service will be levied on the successful registered anaesthetist who performs the procedure. The individual anaesthetist will determine how this fee will be incorporated into his/her cost structure on an individual basis. It is up to each anaesthetist to decide how he or she will do so and AS has no role nor knowledge of the charging decisions made by those anaesthetists.
- iii. The fee will be calculated as a multiple of the estimated duration of surgical work that is made by the requestor at the time they initiate a request. The current fee structure is \$25 per hour of estimated duration, capped at \$100.

**6. Clarification of how the proposed conduct will operate in practice.**

It is anticipated that the different types of requestors as detailed in the answer to question 2 may wish to use the services of AS in the following situations:

- i. **Ad hoc cover of extra surgical lists:** Time delay – hours to days. Requestor in this case may be a surgeon or hospital. This may occur where a session has become available within a hospital because a session regularly allocated to a surgeon is vacant because he/she is absent e.g. annual leave. The hospital offers the session to another surgeon who wishes to operate and then a search is commenced for an anaesthetist. If the normal avenues of communication do not prove fruitful, a single telephone call to anaSyst may be viewed as a particularly effective way of obtaining a list of available anaesthetists from which to choose.
- ii. **Anaesthetic cover for a specific semi-urgent case:** Time delay more than 3 hours. Requestor may be a surgeon or a hospital. It is not uncommon for extra one-off semi-urgent surgical cases to be performed in any hospital. Again, if the regular channels of communication are proving fruitless then a single call to anaSyst may be of use. Free and unfettered communication between the surgeon and anaesthetist regarding the clinical nature of the surgical case is allowed under the AS terms and conditions.

- iii. **Anaesthetic cover where the regular anaesthetist unable to attend due to illness** : Time delay – hours. Requestor may be a hospital, anaesthetist or surgeon. In the situation of unavailability of an anaesthetist a requestor may initiate a request in the situation where the surgical work is to take place more than 3 hours from the time of the initial request.
- iv. **Anaesthetic cover required by an anaesthetist who is taking planned annual leave and needs to find a suitable anaesthetist to replace him/her during their absence**: Time delay - days; Requestors will be anaesthetists.

In the situation of an ultra-urgent case e.g. an obstetric emergency it is anticipated that the AS System would be of little use because:

- during working hours such cases are often transported to the operating theatre where an on-site anaesthetist is requested or an elective surgical list is interrupted to perform the surgery. In the case of after-hours emergencies, there is often a specific on-call roster in place or other arrangements made for the management of such cases.
- It seemed inappropriate to place anaesthetists at risk of potential involvement in an adverse medical outcome where they may not be able to respond in time or assess the clinical situation appropriately prior to attending such an emergency.

7. **Clarification of the pool of Anaesthetists who are like to make their services available to anaesthetists.... and further noting our understanding that anaesthetists would generally be rostered by hospitals to provide their services in advance.**

Anaesthetist's time is generally allocated in advance in a planned way in association with surgeons on a regular basis. However because the situations outlined in question 6 above frequently arise and there is a significant fluidity in the working arrangements on a week-to-week basis, a service such as that offered by AS, which would enable anaesthetists to indicate their availability in a new web-based service, was seen to be possibly advantageous for requestors and registered anaesthetists alike.

The current informal referral system operating relies upon anaesthetists' personal contacts and the patronage of a requestor to obtain referrals for surgical and procedural work. To the extent this may result in all anaesthetists not receiving enough referrals at the hospitals at which they are accredited. Registered anaesthetists will gain potential access to a larger number of procedures at the hospitals at which they are accredited.

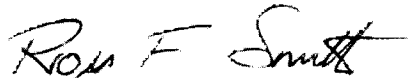
AS will provide a service where medically qualified anaesthetists can make the services available at their accredited hospitals for the available pool of surgical and procedural work thus removing a barrier to obtaining work as a qualified anaesthetist.

AS has calculated that there are approximately 3355 requests for anaesthetic services initiated by surgeons per month in Australia and 1179 in New South Wales; 5780 requests initiated by anaesthetists per month in Australia and 1930 in New South Wales making the estimated total number of requests per month at 9135 in Australia and 3109 in New South Wales.

The Australian and New Zealand College of Anaesthetists (Workforce Survey 2003) noted that there are 824 ANZCA qualified anaesthetists in NSW and 2477 in Australia. It is anticipated that metropolitan anaesthetists may benefit from a more efficient communication tool to notify them of available work. AS estimates that 20% of anaesthetists may be interested in the services from AS.

Regards

Yours Sincerely

A handwritten signature in black ink that reads "Ross F Smith". The signature is written in a cursive style with a long horizontal stroke at the end.

Ross F Smith  
Director  
Anaesthesia Systems Pty Ltd