In AMA Victoria's notification, we provided the following information in relation to the "counter-factual":

"The ACCC must apply the "future-with-and-without test" to weigh the public benefit of this proposed arrangement against the public detriment (the "counter-factual"). AMA Victoria submits that the counter-factual in these circumstances will be that the market will continue to operate in substantially the same way it does currently. That is, Doctors will be required to negotiate individually with a hospital. Therefore, the current systemic inefficiencies would continue to operate.

Medical practitioners will continue to work collaboratively in private practice, including the provision to set intra-practice pricing (in some circumstances), whilst having to set up "Chinese walls" to protect certain information being made available to other medical practitioners with whom they work. A further disadvantage of the status quo remaining is that Doctors will be one of a diminishing class of medical practitioners unable to collectively negotiate with a hospital. Doctors who are hospital employees can negotiate collectively (or are subject to collectively negotiated terms of engagement). Further, medical practitioners in partnership arrangements and certain associateship arrangements can negotiate collectively (depending on the partnership/associateship structure).

Overall, for the market to continue operating in the same way is unsustainable in the medium to long term."

We now wish to expand on our assessment of the counter-factual in light of additional evidence at hand. Specifically, we wish to clarify the meaning of the market continuing to operate in substantially the way it does now.

As acknowledged by the ACCC and submitted by the Target, LRH operates in an area of workforce shortage. In fact, national benchmarks show that Gippsland as a whole requires approximately 210 EFT specialists to operate most effectively. The 2003 Medical Directory of Australia suggests that Gippsland has closer to 100 EFT specialists. In addition, Ballarat Hospital (which is a similar size hospital and also classified as a rural hospital) has about double EFT of LRH, according to its most recently tabled (2005/2006) annual report.

Therefore, it is evident that the way in which the market currently operates is both unsatisfactory and unsustainable. If the Department of Human Services and Target contend that there are limited substitutes in the market, they must also accept in the public interest that the future with-or-without test yields only suboptimal outcomes should the ACCC fail to provide the sought immunity.

On the other hand, with collective negotiations, an environment will be created that is more susceptible to recruitment and retention of doctors as demonstrated by the high level of interest of providers. Such environment can counteract the failure of DHS in developing adequately the LRH and broader Gippsland market. The current shortfall in medical workforce means that LRH is not able to provide the volume and scope of services expected of it. This is the status quo that will continue without the ACCC accepting the AMA Victoria notification.