NSW HEALTH

Ms Isabelle Arnaud
Director
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 3131
Canberra ACT 2601

Dear Ms Arnaud

Application for authorisation A91078 lodged by the Rural Doctors Association of Australia Limited

I refer to the draft determination issued by the Commission dated 6 March 2008 which would grant authorisation to the Rural Doctors Association of Australia Limited (**the RDAA**) and its constituent state associations to negotiate collectively with State health departments the terms of contracts for visiting medical officers (**VMOs**) in rural areas.

In discussions with you, it was agreed that a further submission would be provided by the NSW Department of Health outlining concerns about the implications of the draft determination being formally issued.

The NSW Department of Health remains opposed to the proposed authorisation. It wishes to draw attention to the following concerns.

Scope of the proposed Authorisation

The Rural Doctors Association of NSW (**the RDA**) at present seeks to represent VMOs at those specified facilities, which are generally smaller rural facilities, covered by the Rural Doctors Settlement Package, which was established in 1988 following the Country Doctors dispute of 1987/88. The terms of the proposed authorisation would cover 'all rural hospitals'. The term 'rural hospital' is not defined, which of itself would be a cause for difficulty and uncertainty.

Moreover, potentially the term would be held to cover district and base hospitals in NSW in respect of which the RDA has currently no role. A number of GP VMOs provide services at district and base hospitals. Hence, the effect of the proposed authorisation would be to give the RDA authority to intervene in respect of VMO arrangements at facilities where it currently has no role, and so would clearly have the potential to lead to demarcation disputes with the Australian Medical Association (NSW) Limited (**the AMA**) which currently provides representative services to VMOs at non-Rural Doctors Settlement Package facilities, consistent with the AMA's statutory role under Chapter 8, Part 2, Division 3 of the *Health Services Act 1997 (NSW)*.

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A further difficulty is that the term 'rural generalist' used in the proposed authorisation has no accepted meaning. The definition which the draft authorisation seeks to adopt, of a doctor who is eligible for the awarding of (but apparently does not hold) a fellowship from the Australian College of Remote and Rural Medicine, seems likely to cause confusion. By contrast the term 'general practitioner' has a generally accepted meaning.

Voluntary Nature of the Arrangements

The draft determination notes that the ACCC considers that the voluntary nature of the arrangements is a factor which would limit the potential detriment of the proposed authorisation. The draft determination states that 'The ACCC considers that state/territory health departments are under no obligation to participate in negotiations and should negotiations commence, the ... health departments are able to opt out of the negotiations at any time'.

The NSW Department of Health considers this assessment misconstrues the nature of the relationship it has with the RDA. The Department has a long-standing and ongoing relationship with the RDA in respect of the Rural Doctors Settlement Package. The Department considers the present arrangements for the representation of GP VMOs, as reflected in NSW Health policy and legislation, should continue. These arrangements are considered to have effectively balanced the competing interests involved in the delivery of rural health services and the effective representation of rural GP VMOs. The option of simply 'walking away' from dealing with the RDA, as suggested in the draft determination, is not one that would be practicable or in the public interest.

Collective Boycott Activities

Given that the nature of VMO appointments is that medical practitioners in private practice are engaged other than as employees to provide services in public hospitals, and given that a proportion of rural GPs do not hold VMO appointments and rely entirely on Medicare subsidised general practice income, in practice there would be difficulties in establishing collusive conduct by VMOs should it occur. Hence, the fact that the proposed authorisation would not permit collective boycott conduct may be of more limited significance than the draft determination would suggest.

Flow-on Potential

Should the proposed authorisation be approved, there is a real prospect of further applications by other organisations which represent VMOs working in the NSW public health system, or various categories or specialty groups of such VMOs, for similar authorisations. Such authorisations would be more difficult for the ACCC to decline having approved of an authorisation for the RDAA. However, a situation where there were fragmented or competing representative bodies seeking to negotiate on behalf of VMOs would not enhance the effective representation of VMOs in the NSW

public health system, but potentially be inefficient and administratively burdensome. This potential detriment should be taken into account by the ACCC in evaluating the merits of the present application by the RDAA.

Public Interest

The draft determination in its assessment of the benefits and detriments of the proposed authorisation does not reflect the strong bargaining power that rural VMOs possess, nor the potential detriments of interrupting current arrangements.

As the draft determination recognises, there is a medical workforce shortage in rural areas. As indicated above, GPs who practice in rural areas do not have to hold VMO appointments, and a proportion do not, particularly in larger locations, so that there is scope for GP VMOs to relinquish their VMO appointments (and associated hospital obligations such as on call responsibilities) and work exclusively in their private practices. As intimated in the NSW Health Department's previous submission, generally even where rural GPs hold a VMO appointment at a local hospital, their principal place of practice (and source of remuneration) is in a general practice setting . In these circumstances, GP VMOs possess considerable bargaining power.

Furthermore, in considering public interest considerations, the following matters need also to be recognised. First, the current arrangements for GP VMOs in NSW have brought a considerable degree of stability to the provision of VMO services in NSW rural areas since the 1987/88 dispute was resolved. Second, the obtaining of VMO services does not occur in a commercial context, such as to warrant the ACCC's intervention. The public health organisations that contract with VMOs for the provision of services rely very largely on public funding. The role of public health organisations is to provide essential health care services to local communities. Service delivery must be matched to the available funding.

Irrespective of the merits of the RDAA's application as it might apply in other States and Territories, the current arrangements in NSW have resulted in the effective representation of rural GP VMOs through the AMA and the RDA, and a relatively stable 'industrial' environment. In these circumstances, it is not appropriate to seek to introduce changes based on a perceived benefit that is assessed by the ACCC to be 'small', when potentially the consequences could adversely effect the delivery of, and the costs of delivering, essential health services to rural communities in NSW.

Conclusion

The NSW Department of Health contends that an assessment of the net public benefit of the proposed authorisation having regard to the above considerations would lead to a decision not to approve the authorisation.

Yours sincerely

Karen Crawshaw
Deputy Director General
Health System Support