

SYDNEY | MELBOURNE | BRISBANE

Our ref DME 80566

25 June 2008

Attention: Ms Sharon Clancy
Australian Competition and Consumer Commission
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CANBERRA ACT 2601

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Dear Sirs

Australian Medical Association (NSW) Limited Application for Authorisation - A91088

We refer to the submissions made by interested parties to the Australian Medical Association (NSW) Limited's (AMA(NSW)) Application for Authorisation.

In relation to the submission made by NSW Health we are instructed as follows.

Negotiations with Public Health Organisations

We refer the Commission to our letter of 12 June 2008, and in particular the answer to question 2 (a copy of which we understand appears, or will appear) on the Commission's website.

Discussions and negotiations with PHOs currently take place at the local level. The application for authorisation does not seek to widen AMA(NSW)'s role in the public health system.

The role granted to Public Health Organisations in determining the terms and conditions of VMO contracts is, at the end of the day, a matter between Public Health Organisations and NSW Health.

AMA(NSW) seeks authorisation to engage in negotiations with PHOs at the local level regarding the terms and conditions (other than remuneration) of VMO contracts. Those

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discussions and negotiations may concern the services to be provided at a particular hospital in accordance with the relevant role delineation of the hospital or the services and resources required by VMOs to ensure the ongoing provision of services by those VMOs (for example, nursing staff and equipment to perform specified procedures).

Under the *Health Services Act 1997*, any variation of a term or condition of VMOs' contracts at the local level must be consistent with the relevant Determination. AMA(NSW) does not, and would not, be seeking variations at the local level which are inconsistent with the relevant Determination. In any event to do so would be nonsensical given that such a variation would be of no effect and as NSW Health have noted in their submission (undated), PHOs cannot approve or provide non-standard VMO conditions.

Collective Boycotts

As confirmed in our letter of 12 June 2008, AMA(NSW) does not seek authorisation to engage in collective boycott activities.

The Independent Contractors Act 2006

Our client notes NSW Health's views regarding the effect of the *Independent Contractors Act 2006* (Cth) on the provisions of Part 2 of Chapter 8 of the *Health Services Act 1997* (NSW).

While noting those views, if there are provisions of Part 2 of Chapter 8 that will continue to apply to VMO contracts those provisions will be very limited and of no substantive effect in terms of the actual terms and conditions of VMO contracts.

In any event, as noted by NSW Health, the provisions granting AMA(NSW) the right to represent VMOs in NSW are of no effect (for new VMOs entering the system after 1 March 2007) or will be of no effect (as of 1 March 2010).

AMA(NSW) notes NSW Health's advice that it has no intention of opting into the Federal system. Be that as it may, this will not, of itself, reduce the confusion on the part of individual VMOs, and nor necessarily the PHOs with whom those VMOs contract. The fact of the matter is that there are VMOs in the system to whom those provisions of Part 2 of Chapter 8 of the *Health Services Act 1997* are not preserved by the transitional provisions of the *Independent Contractors Act*. Accordingly, while some contracts continue to be regulated under the NSW system, others are not.

The fact that NSW Health may retain the ability to centrally determine the terms and conditions of VMO contracts while AMA(NSW) has no statutory role is the basis of AMA(NSW)'s application.

It remains our client's submission that there will be no regulation of VMO service contracts as a consequence of the *Independent Contractors Act*. For the sake of clarity, it is our client's submission that there will be no statutory regulation of those contracts as is currently the case under the *Health Services Act 1997*.

As a consequence of the *Independent Contractors Act* and AMA(NSW)'s associated loss of standing VMOs will be in a position where they will have to individually negotiate with NSW Health.

Other issues

Further to AMA(NSW)'s recent discussions with the ACCC, we note the following:

- AMA(NSW) seeks authorisation to represent the interests of VMOs across the State and across all craft groups. AMA(NSW) represents the broad diversity of all medical specialities in the New South Wales public hospital system, and balances the needs between different craft groups.
- If authorisation is not granted to AMA(NSW) it is likely that competition with respect to fees amongst craft groups will increase. This will either result in certain craft groups withdrawing their services from certain hospitals or the system generally, and/or certain craft groups being paid higher fees at the expense of other craft groups (which in turn may result in those craft groups withdrawing services on a hospital by hospital basis or more widely).
- Under the current system, as set out in AMA(NSW)'s submission, AMA(NSW) actively seeks input from VMOs working in the system regarding the terms and conditions of their contracts and negotiates amendments to the standard form contracts with NSW Health.
- If authorisation is not granted to AMA(NSW) the bargaining power of VMOs will be compromised. Of concern is NSW Health's claim that it will centrally regulate VMO contracts in New South Wales – this suggests that NSW Health may not be prepared to negotiate amendments to the standard form contracts with individual VMOs, or if negotiations do take place, the scope of same will be limited. If individuals are required to negotiate with NSW Health on a case by

case basis this will involve significant costs for VMOs – both in terms of time and money.

- If VMOs do not have the capacity (which they currently have through AMA(NSW)) to provide input into the terms and conditions of their contracts VMOs may well decide not to seek appointment at public hospitals in New South Wales to the detriment of the public in this State.
- In the private hospital sector there is no fee negotiation for the provision of services by VMOs between VMOs and the facilities. The contract for the provision of services is between the patient and the VMO. The fees to be paid are determined between the VMO and patient. No fees are paid by the hospital to the VMO for services.
- AMA(NSW) does not seek authorisation to negotiate changes to the Rural Doctors' Settlement Package arrangements.

Please contact Dominique Egan should you wish to discuss.

Yours faithfully

TressCox



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