

fax

FILE No:

DOC:

MARS/PRISM.

NSW HEALTH

TO	Ms Sharon Clancy Assistant Director Adjudication Branch	FROM	Leanne O'Shannessy Director Legal and Legislation General Counsel
----	---	------	---

COMPANY	Australian Competition and Consumer Commission	BRANCH	Legal and Legislative Services Level 10, 73 Miller Street, North Sydney NSW 2060 Locked Mail Bag 961, North Sydney NSW 2059 DX 10674, North Sydney Email: losha@doh.health.nsw.gov.au
---------	--	--------	--

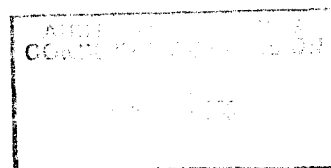
FAX	(02) 6243 1199	FAX	(02) 9391 9604
-----	----------------	-----	----------------

TEL	(02) 6243 1217	TEL	(02) 9391 9602
-----	----------------	-----	----------------

DATE	6 August 2008	PAGES INCLUDING THIS PAGE	3
------	---------------	---------------------------	---

SUBJECT	Application for authorisation A91088 lodged by the Australian Medical Association (NSW) Limited
---------	--

See letter attached.





Ms Sharon Clancy
Assistant Director
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Dear Ms Clancy

Application for authorisation A91088 lodged by the Australian Medical Association (NSW) Limited ("AMA")

I refer to the draft determination made by the ACCC in this matter on 16 July 2008.

The NSW Department of Health does not wish to make any submission in respect of the draft determination.

There are a number of minor factual errors in the draft determination which I wish to bring to your attention for correction in the final determination:

- In paragraph 2.15, it is said that the Health Services Act "*stipulates that any provision of a service contract that is inconsistent with a policy directive is, to the extent of the inconsistency, of no effect*". The reference to "*a policy directive*" in this sentence is incorrect, and should instead be a reference to "*a determination*" (ie a determination of an arbitrator under Division 3 of Part 2 of the Act) – see s98 of the Health Services Act.
- In paragraph 2.17, it is said the Independent Contractors Act commenced on 11 June 2007. In fact, it appears to have commenced on 1 March 2007.
- In paragraph 2.19, it is said that during the transition period of the Independent Contractors Act "*any VMO already working in the NSW public hospital system may choose to be subject to the Independent Contractors Act*". Of course, this could only occur with the agreement of the PHO with whom a VMO has a contract. This restriction on the ability of a VMO to opt-in to the Independent Contractors Act during the transition period should be noted.
- Paragraph 5.8 may give the impression that the AMA (NSW)'s application did not cover GPs (or at least GPs who are not GP proceduralists). In fact, as paragraph 5.67 notes, the proposed collective bargaining group is made up of both GPs and specialists. GPs who are either proceduralists or non-proceduralists may be appointed as VMOs.

NSW Department of Health
ABN 92 697 899 630

73 Miller St North Sydney NSW 2060
Locked Mail Bag 961 North Sydney NSW 2059
Tel (02) 9391 9000 Fax (02) 9391 9101
Website www.health.nsw.gov.au

If you have any questions, or wish to discuss further, please contact Dean Bell, Principal Legal Officer, on (02) 9391 9601.

Yours sincerely



Leanne O'Shannessy
General Counsel, and Director of Legal and Legislation

5 April 2008