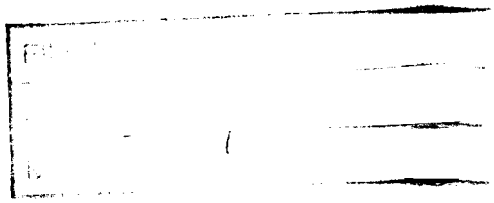


AUSTRALIAN MEDICAL ASSOCIATION

08/48

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Dr Chadwick

Re: Application for Authorisation

The AMA is seeking authorisation to collectively negotiate with relevant State/Territory health departments, the terms of contracts for rural general practitioners providing services as Visiting Medical Officers in public hospitals and health facilities in rural and remote areas of Australia (except for New South Wales).

Please find enclosed the following:

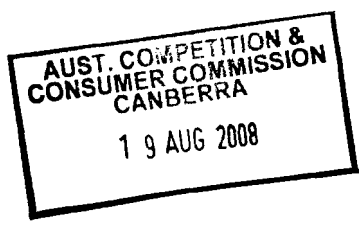
- Application Form B – both in hard copy and electronic format;
- Copies of written authorisations to lodge this application on behalf of State/Territory AMA organisations identified at 1(a) in Form B;
- A cheque payable to the Australian Competition and Consumer Commission for the amount of $7500.

Application Form B includes full details of relevant arguments in support of the application.

Yours sincerely

Mr Francis Sullivan
Secretary General

14 August 2008



D08/6340

Form B

Commonwealth of Australia

Trade Practices Act 1974 — subsection 88 (1)

AGREEMENTS AFFECTING COMPETITION:

APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of Applicant:

This application is made by the Australian Medical Association Limited (**AMA**) and also on behalf of the following State/Territory AMA organisations:

A91100

- Australian Medical Association (Victoria) Limited (**AMAVic**);
- Australian Medical Association (South Australia) Limited (**AMASA**);
- Australian Medical Association (Western Australia) Limited (**AMAWA**);
- Australian Medical Association (Northern Territory) Limited (**AMANT**);
- Australian Medical Association (Queensland) Limited (**AMAQ**); and
- Australian Medical Association (Tasmania) Limited (**AMATas**).

Where reference is made to the AMA in this application, it refers to all the abovementioned organisations, unless otherwise specified or the context otherwise requires.

(b) Short description of business carried on by applicant:

Australian Medical Association Limited

The AMA is the peak health advocacy organisation in Australia, representing more than 27,000 doctors. The AMA membership includes doctors employed in the public sector as well as private practice. The AMA membership encompasses all craft and special interest groups including salaried doctors, general practitioners, other specialists, academics, researchers and doctors-in-training. Membership encompasses rural, regional and metropolitan practitioners. Medical students are also eligible for membership.

The AMA is a national body with affiliated organisations in each State and Territory. When doctors join the relevant State/Territory organisation, they are granted membership of the AMA. The AMA's aims and objectives are to:

- promote and advance ethical behaviour by the medical profession and protect the integrity and independence of the doctor/patient relationship;
- promote and advance the public health;
- protect the academic, professional and economic independence and the well being of medical practitioners; and
- preserve and protect the political, legal and industrial interests of medical practitioners.

The AMA achieves these aims by:

- fostering and sustaining consultation, co-operation and communication within the medical profession;
- acting as the principal co-ordinating and lobbying body for the medical profession;
- fostering unity amongst medical practitioners by providing a forum for their opinions;
- promoting the achievement and maintenance of high clinical and ethical standards in medical practice; and
- fostering communication between the medical profession and the community.

The AMA has a strong history of patient advocacy and is well known for its advocacy on behalf of disadvantaged groups, such as Indigenous Australians.

The AMA works at the national level to provide a variety of services to rural medical practitioners, including:

- lobbying and industrial support;
- the provision of timely and relevant information to its members on current rural medical issues; and
- policy development.

The AMA has formed a specific committee to consider issues relating to the delivery of health care in regional, rural and remote areas of Australia - the AMA Rural Reference Group (**AMARRG**). The AMARRG is chaired by the well-respected rural general practitioner, Dr David Rivett (AO). The AMARRG reports directly to the AMA Federal President.

Australian Medical Association (Victoria) Limited

AMAVic is the peak body representing Victorian doctors. AMAVic provides advice, representation, professional support and additional services to members, with a view to advancing the medical profession and the health of Victorians.

Australian Medical Association (South Australia) Limited

AMASA is South Australia's peak medical body. It exists to provide advice, representation and professional support for South Australian medical practitioners and to advance the health and welfare of the community.

Australian Medical Association (Western Australia) Limited

AMAWA is the largest independent professional organisation for doctors in Western Australia representing doctors across all specialties and at all stages of their careers. It is also an independent association dedicated to protecting individual members and the collective interests of doctors. The AMAWA looks after the professional and personal needs of members and is committed to advancing the profession and the health of the community.

Australian Medical Association (Northern Territory) Limited

AMANT is committed to protecting and promoting the interests of members in the Northern Territory while endeavouring to ensure that the best possible health outcomes are achieved for all Territorians.

Australian Medical Association (Queensland) Limited

AMAQ is the voice of medicine in Queensland. As the peak body representing more than 5,670 doctors, from residents and registrars through to public and private specialists and general practitioners, it provides strong representation to both members and their patients.

Australian Medical Association (Tasmania) Limited

AMATas provides a vital role in servicing the professional needs of medical practitioners throughout Tasmania. AMATas is also the prime body in Tasmania representing the interests of members, their patients and the whole community on health issues.

(c) Address in Australia for service of documents on the applicant(s):

Name	**Postal Address**	**Street Address**
Australian Medical Association Limited	PO Box 6090 KINGSTON ACT 2604	Level 4 42 Macquarie St BARTON ACT 2600

2. Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

Authorisation is sought for the AMA, AMAVic, AMASA, AMAWA, AMANT, AMAQ, and AMATas to collectively negotiate with relevant State/Territory health departments (**health departments**), the terms of contracts for rural general practitioners (**rural GPs**) providing services as Visiting Medical Officers (**VMOs**) in public hospitals and health facilities in rural and remote areas of Australia (except for New South Wales).

For the purposes of this application, a general practitioner is defined as a doctor who holds vocational recognition (**VR**) status under the *Health Insurance Act 1974* or has access to A1 Medicare rebates under Commonwealth Government workforce programs such as the Rural Other Medical Practitioners Program.

These agreements will be negotiated by the relevant AMA State/Territory organisation in each relevant State/Territory. The proposed collective arrangements will build on consultative processes already in place in most States/Territories.

Current contracting arrangements for VMO services vary between States and Territories and between hospitals. However, in most States/Territories, rural GPs are appointed as independent contractors.

A detailed analysis of the current arrangements regarding the representation of VMOs by the AMA, is provided below. In essence, in most States/Territories standard VMO agreements are set at the State/Territory level (except for Victoria where public hospitals in rural and remote areas negotiate directly with doctors regarding their appointment as VMOs). In general, under current arrangements a health department unilaterally determines the arrangement for the contracting of VMOs in public hospitals and health facilities in rural and remote areas.

The AMA notes that the Australian Competition and Consumer Commission (**ACCC**) issued a determination on 14 May 2008 that authorises the Rural Doctors Association of Australia (**RDAA**), along with its constituent State/Territory based organisations, to collectively bargain with State/Territory health departments for the contracting of rural GPs and 'rural generalists', as VMOs, in public hospitals and health facilities in rural and remote areas of Australia[1]. Over time this may alter the landscape described below. This application does not seek authorisation beyond the scope of the authorisation sought by and granted to the RDAA.

The AMA also notes that the ACCC issued a draft determination on 16 July 2008 proposing to authorise negotiations by the Australian Medical Association (NSW) Limited (**AMANSW**), on behalf of all visiting medical officers in NSW that wish to have the AMANSW negotiate on their behalf, (ie across all categories of craft groups) with:

- the NSW Department of Health regarding terms and conditions including remuneration; and
- public health organisations regarding terms and conditions other than remuneration.[2]

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1 Authorisation no:A91078

2 Authorisation no:A91088

The AMA agrees with the ACCC that there are features of the NSW health system that limit potential detriments that may arise from collective negotiation in that State. However, the AMA also notes that the scope of the current application is significantly more narrow than the application of AMANSW that is proposed to be authorised by the ACCC. Specifically, the present applications:

- only relates to the craft group characterised as rural GPs providing services as VMOs (and to no other craft groups); and
- only relates to negotiations on behalf of rural GPs with relevant State and Territory health departments (and not with public health organisations).

Victoria

In Victoria, the Department of Human Services has no direct involvement in setting contractual terms for VMOs as this role has been devolved to individual hospitals.

South Australia

In South Australia, the Department of Health, through Country Health SA (**CHSA**), operates as a single agency covering all health units in country SA. The Rural Doctors Liaison Forum is a consultative mechanism only, for CHSA – it is not a group through which fees are negotiated – at present fees are effectively set by CHSA of their own volition.

Western Australia

Traditionally AMAWA negotiated Visiting Medical Practitioner (**VMP**) contracts. AMAWA currently negotiates and maintains detailed salaried agreements for numerous salaried practitioners employed throughout rural WA particularly throughout the North West and Regional centers in the Southern and Goldfields regions such as Geraldton, Kalgoorlie, Bunbury, Busselton and Albany.

Up until the extension of the *Trade Practices Act 1974* in the mid 1990s, AMAWA was the sole negotiator of VMP contracts, fees, conditions and related matters.

Since the mid 1990s, however, AMAWA has not sought to collectively negotiate VMP contracts but has lobbied extensively over VMP contract and indemnity issues and related legislation. It has negotiated a MOU with the WA Minister for Health governing Clinical Privileges, Conduct and Governance including medical input. Detailed advice on the meaning of provisions and options has also been provided to individual doctors.

In addition AMAWA has made annual submissions and lobbied the WA State Government on adjustments/appropriate indexation to the State Government's Fees Schedule it uses to pay VMPs. The WA State Government has generally accepted these submissions.

Northern Territory

In the Northern Territory, only specialists provide visiting medical services in rural areas. When negotiating conditions of employment with specialist VMOs, the Department of Health and Community Services deals with the Australian Salaried Medical Officers Federation and AMANT.

Queensland

In Queensland, the State Government (acting through the Department of Health, the Department of Corrective Services and the Department of Communities) negotiates an agreement with AMAQ concerning the supply of VMO services by doctors who are engaged as employees.

In Queensland Mater Misercordiae Health Services Brisbane Ltd is also party to this agreement, which is commonly called the "*VMO Agreement.*" The VMO Agreement only applies to VMO employees of the listed Queensland Government departments and Mater Health Services Brisbane. AMAQ does not have any specific rights to participate in the negotiation of the VMO Agreement. Rather, its involvement is a result of long-standing custom and practice.

After each VMO Agreement is negotiated, Queensland Health undertakes an internal process to approve an increase to the rates payable to VMOs that are engaged as independent contractors. Traditionally the rates reflect the rates in the VMO Agreement plus a loading. Therefore, once a VMO Agreement is finalised, an increase to the independent contractor rates flows on.

AMAQ does not participate in the process of establishing conditions for VMOs engaged as independent contractors, nor has it had involvement with drafting the pro-forma VMO independent contractor agreement. Such arrangements are set by Queensland Health.

Tasmania

In Tasmania VMOs are employed under the Rural Medical Practitioners (Public Sector) Agreement.

AMA, AMAVic, AMASA, AMAWA, AMANT, AMAQ, and AMATas do not seek authorisation to negotiate on behalf of other medical practitioners other than rural GPs or on behalf of GPs in metropolitan areas. The proposed authorisation also does not extend to:

- any collective decision by current or future AMA members to engage in a collective boycott; and

- negotiations with individual hospitals or any group of hospitals.

(b) Description of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition:

The AMA anticipates that any contract collectively negotiated with health departments, on behalf of rural GPs, will include a common fee schedule. These fees would be paid by the health departments or by local hospitals to rural GPs for services provided to public patients in, or services provided to, public hospitals or health facilities in that State/Territory. The collectively negotiated contracts may also include common arrangements for rostering and on-call services. The AMA considers that these provisions are unlikely to "substantially" lessen competition, if at all.

The AMA notes that the development of a "collective" agreement is not intended to preclude rural GPs from negotiating specific contractual arrangements with local hospitals to suit their mutual needs, should such circumstances arise. Such an arrangement would obviously need to meet the needs of the hospital and the doctor alike.

It would also be possible to build flexibility into a collectively negotiated agreement by incorporating appropriate provisions that allow scope for variation (if agreed by the parties) over and above any "base" agreement.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

The proposed collective arrangements relate to the provision of medical services including, but not limited to, surgery, obstetrics, anaesthetics, emergency services and medical consultations, by rural GPs, as VMOs, in public hospitals and health facilities in rural and remote areas of Australia (except for New South Wales).

(d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The AMA seeks authorisation for a period of 5 years. The timing of negotiations for arrangements relating to the provision of medical services in rural and remote hospitals and health facilities varies between States/Territories. It is expected that once settled, any collective agreements would remain in force for an agreed period (usually a number of years) and would include an agreed fee indexation formula during the life of the agreement.

3. Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

The parties to the proposed arrangement are expected to be:

- State/Territory health departments/authorities, details of which are set out in Table 1 below.

Table 1

Party	Postal Address
Department of Health and Community Services – Northern Territory	PO Box 40596 Casuarina NT 0811
Queensland Health	GPO Box 48 Brisbane Queensland 4001
Department of Health – South Australia	PO Box 287 Rundle Mall Adelaide SA 5000
Department of Health and Human Services – Tasmania	GPO Box 125 Hobart TAS 7001
Department of Human Services – Victoria Victorian Hospitals' Industrial Association	GPO Box 4057 Melbourne VIC 3001 Level 1. 499 St Kilda Road Melbourne VIC 3004
Department of Health – Western Australia	PO Box 8172 Perth Business Centre Perth WA 6849

- the AMA on behalf of all current and future members of the AMA who are rural GPs providing services, as VMOs, in public hospitals and health facilities in rural and remote areas of Australia (except for New South Wales). Those rural GPs would be parties to the contracts with the above State/Territory health departments/Authorities.

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

This application is also made on behalf of AMAVic, AMASA, AMAWA, AMANT, AMAQ, and AMATas, details of which are set out in Table 2 below.

Table 2

Party	Postal Address
Australian Medical Association (Victoria) Limited	PO Box 21 Parkville VIC 3052
Australian Medical Association (South Australia) Limited	PO Box 134 North Adelaide SA 5006
Australian Medical Association (Western Australia) Limited	PO Box 133 Nedlands WA 6909
Australian Medical Association (Northern Territory) Limited	PO Box 41046 Casuarina NT 0811
Australian Medical Association (Queensland) Limited	PO Box 123 Red Hill QLD 4059
Australian Medical Association (Tasmania) Limited	147 Davey Street Hobart Tas 7000

Please see our response in section 1(b) for a description of the business carried on by the above parties.

4. Public benefit claims

(a) Arguments in support of authorisation:

Background

VMO fees for rural GPs are set by State/Territory health departments except in the case of Victoria where fees are negotiated by individual hospitals and health services. These organisations are the only purchasers of public hospital or health facility-based medical services in most rural and remote areas of Australia.

To be granted VMO rights, a doctor will generally be appointed by a hospital or Area Health service to provide specified medical services at a particular hospital. The services provided by the doctor can include accident and emergency services, basic surgery, obstetrics and anaesthetics.

Public benefits of granting an authorisation

The AMA submits that the proposed collective bargaining arrangements will deliver the following public benefits:

- more effective representation of rural doctors to the State/Territory health departments;
- reduced transaction times and costs associated with the contracting of GPs as VMOs, including for individual doctors; and
- a positive effect on the retention of rural GPs as VMOs.

Effective representation of rural doctors to the State/Territory health departments

In many States, arrangements for VMOs are already generally made at State level. In those States where the health department establishes the terms and conditions, including the level of remuneration in VMO contracts, the departments often consult with organisations that represent doctors, including the AMA. By participating in setting VMO arrangements this puts these representative bodies, including the AMA, at risk of possible breaches of the anti-competitive conduct provisions of the *Trade Practices Act 1974.* The granting of an authorisation would provide legal certainty and remove this legal risk, enabling the AMA to effectively represent the views of its member rural GPs to State/Territory health departments and agree a set of arrangements for the employment of rural GPs, as VMOs, in public hospitals and health facilities in rural and remote areas of Australia (except for New South Wales).

Current contracting processes between the AMA and the State/Territory health departments are limited to consultation so as not to raise the risk of allegations of anti-competitive conduct. The ability to negotiate, rather than just consult, with the State/Territory health departments, including on matters such as price, will make a significant, positive difference to the representation of rural GPs.

Collective negotiation will also provide rural GPs, through the AMA, with an opportunity for greater input into terms and conditions than a consultation process allows. The AMA is membership based and key decisions are driven by various Councils, Committees and Working Groups etc. Rural GPs are represented on most of these, while the AMA specifically formed the AMARRG to give advice on rural issues. It is anticipated that specific advisory groups would be formed to oversee the negotiation process and provide specific rural GP input. This ensures broad professional support for the agreed arrangements. Members would be kept up to date with negotiations through member publications and on-line communications and would be able provide input directly to the relevant State/Territory AMA.

Collective representation of rural GPs will also ensure that broader policy issues are taken into account in the negotiation of agreements, such as the need to maintain viable facilities and training and education.

The ACCC, in its draft determination in respect of the AMANSW application, stated that it was likely that a collective negotiation process will enable the VMOs in that State to provide greater input into contract terms and conditions than may occur through individual negotiations.[3]

The ACCC has granted authorisation allowing the RDAA and RDAA branches to collectively negotiate on behalf of rural GPs and 'rural generalists', with State/Territory health departments. While there is some cross-over of membership, many rural GPs are members of either the AMA or the RDAA, the granting of authorisation to the AMA would allow doctors who are members of the AMA and not the RDAA to enjoy the benefits of collective negotiations without having to join the RDAA.

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[3] At paragraph 5.60 – the ACCC made a similar statement in its determination of the application by the RDAA at paragraph 5.54

Reduced transaction times and costs associated with the contracting of GPs as VMOs, including for individual doctors

The proposed collective bargaining arrangements will streamline the process for the contracting of rural GPs, as VMOs, reduce 'red tape' and transaction times and costs, and remove the burden of negotiation from individual doctors.

In general, rural GPs do not have significant scope to, and in practice do not, vary the terms and conditions of their contracts. However, there are still significant costs for each individual doctor associated with entering into contracts with State/Territory health departments, including obtaining professional advice and obtaining the information necessary to make an informed choice. If the AMA collectively negotiates on behalf of its current and future rural GP members it will be able to consolidate and share such costs.

The use of experienced AMA negotiators will streamline the contracting process for all parties involved.

In Victoria, individual doctors do negotiate with public hospitals and health facilities in rural and remote areas for the supply of services as VMOs. If the Victorian health department were to alter its current arrangements so that arrangements are set at the State level, rather than at hospital level, the potential transaction savings in Victoria would be significant.

The AMA further notes that the commonality of interests of the single craft group, the subject of this application, will result in greater potential for transaction cost savings.

Positive influence on the retention of rural GP VMOs

The AMA expects that unless it is authorised to negotiate collectively on behalf of its rural GP members, an increasing number of them will find the individual contracting process too time consuming and/or that the State-imposed contractual terms and conditions simply do not adequately recognise their needs. While they may reluctantly accept these conditions, over time it is likely that rural GPs may withdraw or reduce the services they provide to public hospitals and health facilities in rural and remote areas, or may withdraw from rural practice altogether.

The AMA considers that by reducing the burden on individual doctors, the proposed collective bargaining arrangements will (relative to the counterfactual – see below) result in an increase in the number of GPs providing services, as VMOs, to public patients in public hospitals and health facilities in rural and remote areas of Australia, and assist in retaining current rural GPs providing those services.

Enhanced representation of rural GPs by the AMA is also likely to provide those rural GPs with greater confidence with respect to the stability and development of medical services in rural and remote areas of Australia, which may itself have a positive influence on the retention and future attraction of rural GPs. The ACCC also accepted that such a public benefit was likely to result from the applications proposed by the AMANSW and the RDAA respectively.[4]

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[4] see paragraph 5.75 of the draft determination in Authorisation no: A91088 and paragraph 5.67 of the determination in Authorisation no: A91078.

The counterfactual: effect of non-granting of authorisation

The AMA considers that in the absence of authorisation:

- the status quo will continue into the foreseeable future; and
- the AMA will not be in a position to fully represent the interests of rural GPs providing services, as VMOs, in public hospitals and health facilities in rural and remote areas of Australia, because it will not be able to collectively negotiate on their behalf with State/Territory health departments and authorities (in particular, not with respect to payments for services provided to public patients or for on-call services and rostering).

As described above, the AMA's current participation in consulting with State/Territory health departments on the setting of VMO arrangements puts the AMA at risk of possible breaches of the anti-competitive conduct provisions of the *Trade Practices Act 1974*. In light of that existing uncertainty, it is unlikely that the AMA can, without the authorisation, sustainably participate in such discussions in support of its members.

If State/Territory health departments continue with the status quo, VMOs will continue to be offered contracts on what is, in effect, a take it or leave it basis. Individual doctors, in particular, would continue to incur unnecessary transaction costs such as professional advice, on an individual basis.

The AMA respects the role played by the RDAA. However, not all rural GPs are members of the RDAA. The AMA has a substantial rural membership base that wants effective input into the content of VMO contracts. Many members of the AMA, such as junior doctors, are likely to work in public hospitals and health facilities in rural and remote areas of Australia at some point in the future. Without broad rural GP input (including the input of potential future rural GPs) into the development of VMO contracts, it is likely that these contracts will not meet the needs of the current and future rural GP workforce. This will make it more difficult to attract and retain VMO services.

Rural GPs who are members of the AMA and not the RDAA will be denied effective input into the development of VMO contracts and would be given no alternative but to join the RDAA if they wish to be part of a collective process, thereby incurring additional costs.

If the authorisation is not granted, it is likely that rural GPs will over time reduce the services they provide as VMOs in public hospitals and health facilities in rural and remotes areas of Australia, and may withdraw from rural practice altogether and migrate to areas where their practice is likely to be more lucrative, where the on-call burden is less and/or where the workloads are more manageable.

(b) Facts and evidence relied upon in support of these claims:

More than 6.8 million Australians live in regional, rural and remote areas.

According to the Australian Institute of Health and Welfare (AIHW), they generally have poorer health than their major city counterparts, reflected in their higher levels of mortality, disease and health risk factors[5].

[5] *Australia's Health 2008*, Australian Institute of Health and Welfare, 2008

Specific health status measures illustrate the generally poorer health of people living in regional, rural and remote areas. Life expectancy decreases with increasing remoteness. Compared with major cities, the life expectancy in regional areas is 1 to 2 years lower and for remote areas it is up to 7 years lower.

Death rates in regional, rural and remote areas are higher than in major cities, and it is estimated that there are around 4,400 additional deaths annually in these areas than would be expected if the death rates were the same as in major cities[6].

People in regional, rural and remote Australia have lower life expectancy; higher rates of disability, higher injury rates and many face the prospect of the closure or downgrading of their local hospital. It is estimated that more than 130 maternity units have closed across Australia since 1995[7].

Country communities are finding it harder and harder to recruit and retain doctors. The Government recently released a report on an audit of the rural health workforce, which made a number of findings in relation to the rural medical workforce[8].

This report highlighted that the number of full time work equivalent GPs per 100,000 population is 97/100,000 in urban Australia. This compares to 74.2/100,000 in outer regional areas, 68.2/100,000 in remote areas and 47.1/100,000 in very remote areas.

In the Executive Summary on page 3 of that report, the Government states:

- Rural and remote Australia has experienced medical workforce shortages for a considerable period, particularly in terms of general practice services and some specialist services, such as obstetrics and gynaecology.
- Numbers of GPs in proportion to the population decrease significantly with greater remoteness, with the lowest supply to 'very remote' areas, particularly in New South Wales and Western Australia.
- There is also considerable variation across jurisdictions. Northern Territory and Western Australia, as well as the Australian Capital Territory, have lower number of GPs proportional to the population.
- In recent years, the medical workforce in rural and remote Australia has increased modestly, mostly due to restrictions on Medicare provider numbers for overseas trained doctors to encourage them to work in rural and remote areas of workforce shortage.
- One-third of doctors currently working in Australia were trained overseas.
- The proportion of overseas trained doctors is significantly higher in rural and remote areas where 41% of all doctors have trained overseas.
- Although the number of GPs continues to grow, this growth does not indicate increased availability of GPs over time, as the growth in the medical workforce has not kept pace with the rate of population growth.

[6] *Australia's Health 2008*, Australian Institute of Health and Welfare, 2008
[7] *Maternity Services for Australia*, Rural Doctors Association of Australia, February 2006.
[8] Report on the Audit of Health Workforce in Rural and Regional Australia April 2008

GPs operating in rural and remote areas often have an expanded skill set, including emergency care and public health activities due to the lack of close supporting medical specialists and professional and geographic isolation.[9] In addition, to compensate for limited specialist availability, GPs often extend their skills to include procedural skills in areas such as obstetrics, general surgery and anaesthetics. To maintain these skills, it is essential that these doctors have access to public hospitals and health facilities in rural and remote areas.

In 2007, the AMA conducted a survey of 400 rural doctors (including GPs working as VMOs) seeking input on what policy measures needed to be put in place to improve the delivery of health services in rural areas. The number one ranked priority was support for improved staffing levels at rural hospitals. Clearly, rural doctors have significant concerns over current staffing levels and there is no doubt that they want to see measures put in place to ensure that sustainable staffing arrangements are in place in rural hospitals.

By putting in place effective systems for collectively negotiating VMO contracts for rural GPs, it is anticipated that more cohesive, efficient and effective arrangements can be put in place to improve the delivery of health care in rural and remote areas and lift the health standards of people living in these areas.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

In its determination of the RDAA's application for authorisation and its draft determination of the AMANSW's application for authorisation, the ACCC stated that it did not consider it necessary to precisely define the market.

For the purposes of this application, the AMA considers it appropriate that the ACCC apply the same market definition as applied in determining the RDAA's application, ie. the provision of VMO services by GPs, within defined local geographic areas, that relate to public hospitals and health facilities in rural and remote areas of Australia.

6. Public detriments

Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets.

The AMA considers that there is little, if any, public detriment likely to result from the authorisation of the proposed collective arrangements.

The AMA understands that the ACCC is likely to be concerned that collective agreements to negotiate terms and conditions can interfere with price signals generated by competition between individual businesses, and accordingly lead to an inefficient allocation of resources. However, the extent of the detriment and the likely impact on competition of the collective agreement will depend on the specific circumstances involved.

[9] Australian Medical Workforce Advisory Committee, (AMWAC) "The General Practice Workforce in Australia: supply and requirements to 2013" Report 2005.2 (2005), p97.

The ACCC has previously identified that the anti-competitive effect of collective bargaining arrangements constituted by lost efficiencies is likely to be more limited where the following four features are present:

- the current level of negotiations between individual members of the group and the proposed counterparties on the matters that they seek to negotiate is low;
- the are restrictions on the coverage and composition of the bargaining group;
- participation in the collective bargaining arrangements is voluntary; and
- there is no collective boycott.

The AMA submits that each of the above four features are present in the circumstances of the collective arrangements the subject of this application for authorisation.

Current level of negotiations between individual members of the AMA and the State/Territory health departments

The AMA submits that the current level of individual bargaining between:

- rural GPs providing services, as VMOs, in public hospitals and health facilities in rural and remote areas of Australia; and
- the State/Territory health departments (and any other contracting authorities),

is low. The difference between the level of competition with or without the proposed collective arrangements is accordingly low.

The AMA submits that the State/Territory health departments unilaterally determine the arrangements for the contracting of doctors in public hospitals and health facilities, with the exception of Victoria where fees are negotiated by individual hospitals and health facilities. In many States, the health department does, however, consult with representative bodies such as the AMA in setting VMO arrangements.

The AMA has provided detail in response to section 2(a) above as to the existing practices for establishing employment conditions for GP VMOs.

Although in the majority of States, GP VMOs do have some ability to vary their terms and conditions of employment, including with respect to theatre access, after hours needs and quality and safety factors, to reflect their particular practice needs and that of the hospitals and populations they serve. However, this limited ability is rarely exercised in practice by GP VMOs and the current extent of individual contracting is low.

To the extent there is cross-over membership between the AMA and the RDAA, some rural GPs may already be collectively represented (or entitled to be collectively represented) by the RDAA.

Coverage or composition of the bargaining group

The bargaining group for the purpose of the AMA's application for authorisation is limited to rural GPs providing services, as VMOs, in public hospitals and health facilities in rural and remote areas of Australia (except for New South Wales). That bargaining group does not include medical practitioners other than GPs in rural or remote areas, 'rural generalists', or GPs or medical practitioners other than GPs in metropolitan areas.

The AMA notes that the category of medical practitioners that are the subject of this application is equal to or smaller than the bargaining group the subject of the RDAA's recent, successful application for authorisation (which included not only rural GPs but also 'rural generalists') and significantly smaller than the categories of craft groups the subject of the application by the AMANSW.

As described elsewhere in this application, arrangements for GP VMOs in most States are already made at the State level. While rural GP VMOs may have a stronger bargaining position when negotiating with a small public hospital in rural or remote areas of Australia, the position of the rural GP VMOs is different when negotiating with a State/Territory health department. Those health departments have significant countervailing buyer power. The AMA notes that collective negotiations with individual public hospitals or groups of public hospitals are not included in the proposed collective arrangements and accordingly not part of this application for authorisation.

Voluntary participation in the collective bargaining arrangements

The proposed collective arrangements are voluntary for AMA members and the State/Territory health departments. The provision of authorisation will remove a legal impediment to the proposed collective negotiations taking place, but does not mandate them.

The AMA considers that an agreement will only be reached if it is beneficial to both AMA members and the relevant State/Territory health department. The AMA will not be able to force or demand that any State/Territory health department deal with it, vary or re-negotiate existing arrangements, or negotiate new arrangements. The State/Territory health departments are under no obligation to participate in negotiations with the AMA and can opt out of negotiations that have commenced, at any time. Importantly, the AMA cannot compel any State/Territory health department to agree to any terms, including price, that the department does not consider acceptable.

Although it may be suggested that rural GPs have the ability to exert pressure on State/Territory health departments by individually withdrawing, or threatening to withdraw, VMO services, the AMA notes that this possibility exists with or without authorisation and accordingly cannot be said to result from the authorisation.

Of course, rural GPs are not entitled, with or without the authorisation, to collectively withdraw, or threaten to withdraw, VMO services as this would amount to a collective boycott. The proposed authorisation does not extend to any collective decision by current or future AMA members to engage in a collective boycott (see below).

The AMA also notes that individual rural GPs remain free to negotiate specific contract terms with local hospitals, to suit their mutual needs.

Collective boycott activity

The AMA does not apply for authorisation to engage in collective boycott activity. Such conduct, if it were to occur, would not be protected from legal action under the *Trade Practices Act 1974*. The AMA presumes that if such conduct did occur, the ACCC would investigate accordingly.

It is possible that the granting of an authorisation may impact on the costs of labour in public hospitals and health facilities in rural and remote areas of Australia (except for New South Wales) as the 'take it or leave it' purchasing arrangements of the State/Territory health departments to date may itself have had the distorting effect of reducing prices for VMO services provided by rural GPs. However, given that rural doctors have over a long period demonstrated their commitment to providing quality services to public patients, and this is generally a relatively small part of their weekly workload, the AMA does not expect that the pricing impact of authorisation will be significant.

It is not expected that there will be any impact on any other markets. In particular, it is not expected that the authorisation will impact pricing by:

- rural GPs for the provision of services in their private practices; or
- medical practitioners other than GPs (not covered by the authorisation) for the provision of services as VMOs in public hospitals and health facilities, or in their private practices, in rural and remote areas of Australia; or
- GPs or medical practitioners other than GPs (not covered by the authorisation) for the provision of services as VMOs in public hospitals and health facilities, or in their private practices, in metropolitan areas of Australia.

Conclusion

On the basis of the above information, the AMA submits that there is little, if any, public detriment which would arise from the collective negotiation proposed in this application.

Further, the AMA considers that the public benefits identified in response to section 4(a) above outweigh the public detriments, if any, resulting from the proposed collective arrangements, and that the ACCC should accordingly authorise the proposed conduct.

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

(a) Is this application to be so expressed?

No

(b) If so, the following information is to be furnished:

(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

(iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

8. Joint Ventures

(a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

No

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

(c) If so, by whom or on whose behalf are those other applications being made?

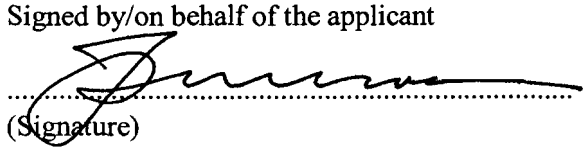
9. Further information

Name and address of person authorised by the applicant to provide additional information in relation to this application:

Mr Warwick Hough
Senior Manager
General Practice, Legal Services and Workplace Policy Section
Australian Medical Association Limited
PO Box 6090
Kingston ACT 2604
By email: whough@ama.com.au

Dated: 14 August 2008

Signed by/on behalf of the applicant



(Signature)

Francis Sullivan
(Full Name)

Secretary General
(Position in Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing the application for authorisation.

   Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.

3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.

4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition.

In providing these details:

   (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
   (b) to the extent that of any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.

5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.

7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.

8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

AMA QUEENSLAND

www.amaq.com.au

88 L'Estrange Terrace
Kelvin Grove 4059

PO Box 123
Red Hill 4059

Ph: (07) 3872 2222
Fax: (07) 3856 4727

amaq@amaq.com.au

ACN: 009 660 789
ABN: 17 009 660 280

8 July 2008

Mr Francis Sullivan
Secretary-General
Australian Medical Association
PO Box 6090,
KINGSTON ACT 2604

Dear Francis

Re: ACCC Authorisation

Authorisation is granted to the Australian Medical Association Ltd by AMA Queensland to lodge on our behalf an application for authorisation to collectively negotiate with relevant State/Territory health departments (health departments), the terms of contracts for rural general practitioners (rural GPs) providing services as Visiting Medical Officers (VMOs) in public hospitals and health facilities in rural and remote areas of Australia (except for New South Wales and the ACT).

This application is made under subsection 88 (1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

Yours sincerely

(Mr) Kerry G Gallagher
Chief Executive Officer

AUSTRALIAN MEDICAL ASSOCIATION
(SOUTH AUSTRALIA) INC.

7 August 2008

Mr Francis Sullivan
Secretary General
AMA Limited
PO Box 6090
KINGSTON ACT 2604

Dear Francis

Re: AMA(SA) authorization to AMA Ltd to lodge ACCC Application

Authorization is granted to the Australian Medical Association Ltd by AMA(SA) to lodge on our behalf, an application for authorisation to collectively negotiate with relevant State/Territory health departments (health departments), the terms of contracts for rural general practitioners (rural GPs) providing services as Visiting Medical Officers (VMOs) in public hospitals and health facilities in rural and remote areas of Australia (except for New South Wales and the ACT). This application is made under subsection 88 (1) of the Trade Practices Act 1974 for an authorisation under that subsection:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

Yours sincerely

Peter Ford.

Peter Ford
President

0140 PF Sull 08-07 dv

Postal: PO Box 134 North Adelaide SA 5006 First Floor Newland House 80 Brougham Place North Adelaide SA 5006
Phone: (08) 8267 4366 Fax: (08) 8267 5349 Email: admin@amasa.org.au Web site: www.amasa.org.au

AMA
AUSTRALIAN MEDICAL ASSOCIATION NORTHERN TERRITORY INC.
ABN 61 628 117 024

1 August 2008

Mr Francis Sullivan
Secretary General
Australian Medical Association
PO Box 6090
KINGSTON ACT 2604

Dear Mr Sullivan

Authorisation is granted to the Australian Medical Association Ltd by the Australian Medical Association Northern Territory Inc. to lodge on our behalf an application for authorisation to collectively negotiate with relevant State/Territory health departments, the terms of contracts for rural general practitioners (rural GPs) providing services as Visiting Medical Officers (VMOs) in public hospitals and health facilities in rural and remote areas of Australia (except for New South Wales and the ACT). This application is made under subsection 88 (1) of the Trade Practices Act 1974 for an authorisation under that subsection:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

Yours sincerely

Fiona Stacey
Executive Officer

Ph: (08) 8927 7004
Fax: (08) 8927 7475
Email: amant@amant.com.au
PO Box 41046, Casuarina NT 0811
Unit 1/9 Symes Street, Nakara NT 0810
www.amant.com.au

FAXED 01/08/08

Recd via fax
1/8/08
08/48
D08/6065

AUSTRALIAN MEDICAL ASSOCIATION
(VICTORIA) LIMITED.
ABN 43 064 447 678
293 Royal Parade
PO Box 21
Parkville, Victoria 3052
t 03 9280 8722
f 03 9280 8786
w www.amavic.com.au
Country Freecall 1800 810 451

01 August 2008

Mr Francis Sullivan
Director-General
Australian Medical Association
P O Box 6090
CANBERRA ACT 2604

Dear Francis

Authorisation is granted to the Australian Medical Association Ltd by Australian Medical Association (Victoria) Limited to lodge on our behalf an application for authorisation to collectively negotiate with the Victorian Department of Human Services, the terms of contracts for rural general practitioners providing services as Visiting Medical Officers in public hospitals and health facilities in rural and remote areas of Australia (except for New South Wales and the ACT).

We understand that this application is made under s.88 (1) of the *Trade Practices Act* 1974 for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

Yours sincerely

Jane Stephens
CHIEF EXECUTIVE OFFICER

08/48
D08/5776

AUSTRALIAN MEDICAL ASSOCIATION

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WESTERN AUSTRALIA

T-20-1A

17 July 2008

RECEIVED
25 JUL 2008
Australian Medical Assoc.

Mr Francis Sullivan
Secretary General
Australian Medical Association
42 Macquarie Street
BARTON ACT 2600

Dear Mr Sullivan

RE: Revised draft ACCC Application

Authorisation is granted to the Australian Medical Association Ltd by the Australian Medical Association Western Australia Inc to lodge on our behalf an application for authorisation to collectively negotiate with relevant State/Territory health departments, the terms of contracts for rural general practitioners (rural GP's) providing services as Visiting Medical Officers (VMO's) in public hospitals and health facilities in rural and remote areas of Australia (except for New South Wales and the ACT). This application is made under subsection 88(1) of the Trade Practices Act 1974 for an authorisation under that subsection:

- To make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of sustainability lessening competition within the meaning of section 45 of that Act.
- To give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

Yours sincerely

PAUL BOYATZIS
EXECUTIVE DIRECTOR

14 STIRLING HIGHWAY, NEDLANDS, WESTERN AUSTRALIA 6009
TELEPHONE: (08) 9273 3000 • FACSIMILE: (08) 9273 3073
Email: mail@amawa.com.au

08/48
D08/5779

AMA
TASMANIA
ABN 11 009 484 931

July 22 2008

Mr Francis Sullivan
Secretary General
Australian Medical Association
PO Box 6090
KINGSTON ACT 2604

Dear Francis

Authorisation is granted to the Australian Medical Association Ltd by AMA Tasmania to lodge on our behalf an application for authorisation to collectively negotiate with relevant State/Territory health departments (health departments), the terms of contracts for rural general practitioners (rural GPs) providing services as Visiting Medical Officers (VMOs) in public hospitals and health facilities in rural and remote areas of Australia (except for New South Wales and the ACT). This application is made under subsection 88 (1) of the Trade Practices Act 1974 for an authorisation under that subsection:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

Yours sincerely

Carmel Clark

Carmel Clark
Chief Executive Officer
AMA Tasmania

STATE OFFICE 147 Davey Street, Hobart, Tasmania 7000
Tel: (03) 6223 2047 Fax: (03) 6223 6469 Email: ama@amatas.com.au Web: www.amatas.com.au