

NOTICE OF LODGMENT

AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: Statement

File Number: ACT 4 of 2021

File Title: APPLICATION FOR REVIEW OF AUTHORISATION
AA1000542 DETERMINATION MADE ON 21 SEPTEMBER 2021

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a 'U'.

REGISTRAR

Dated: 16/05/2022 12:25 PM

Important information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.



STATEMENT

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 4 of 2021

RE:

APPLICATION FOR REVIEW OF
AUTHORISATION DETERMINATION
MADE ON 21 SEPTEMBER 2021

APPLICANT:

NATIONAL ASSOCIATION OF
PRACTISING PSYCHIATRISTS

Statement of	Dr Peter Sumich
Address	6/183 Wickham Terrace, Brisbane QLD 4000
Occupation	Eye Surgeon / Ophthalmologist
Date	13 May 2022

I, Dr Peter Sumich, say as follows:

1. I am Vice President of the Australian Society of Ophthalmologists and am authorised to make this statement on the Australian Society of Ophthalmologists' behalf.
2. Except where otherwise stated, I make this statement from my own knowledge.
3. I have been an eye surgeon in private practice for 20 years. Over that time, I have had daily experience in observing how Health Insurer contracts and policies have declined in value for patients.
 - a. The status quo
 - i. The traditional practice of medicine allows doctors to choose the treatment a patient receives with no reference to an insurance contract. This is usually done after discussion and then consent with an informed patient. Such treatment includes decisions on techniques, prosthetic implants, hospitalisation, and rehabilitation.
 - ii. The fee a doctor charges is set by the surgeon and may be aligned with the insurers recommended fee or may be more. Increasingly the insurers fee has

not kept pace with medical inflation. Never-the-less the insurer fee acts as a collectively bargained fee for service which many surgeons have agreed to charge because they have signed the insurer contract for this amount. This has always been acceptable in an open and competitive environment.

b. The new paradigm includes clinical management obligations

- i. The new paradigm presented by the Honeysuckle contract goes further than just a surgeon's fee. It also includes a contractual obligation to manage a patient according to the insurer's protocols. In such a way the insurer is bundling together the payment moiety with a treatment protocol which involves the insurer in clinical decision making. This is an unwelcome development.
- ii. The analogous situation for a lawyer would be a contracted legal fee but the strategy and precedents used by a lawyer to be decided by an insurer. The art of law and of medicine and legal techniques are a very individual choice for each practitioner.

c. The patient detriments

- i. Resource limitation will be encouraged. Patient detriments could result from such restrictions in technology, technique, time course and patient choice as a surgeon bends his technique and management to conform with an insurers protocol. For example: early discharge, limited chemotherapy courses, restriction on prosthetic implants, capping of costs and many other ways in which a contracted clinician could be forced. Insurers are motivated by cutting costs and limitations to patient resources should not be part of any agreement.
- ii. Patient choice may suffer. Choice is a very individual decision and is usually a blend of a patient's informed choices and a surgeons preferred management protocols and skill set.
- iii. Patient privacy is a basic right. Any insurance contract in which a treatment decision or a series of treatment decisions are not in accordance with the insurer contract may result in an investigation by the insurer which would jeopardise patient privacy.

d. The market power and advantage of contracted providers

- i. The likelihood that a surgeon would be forced into signing such a contract increases as more of his competitors sign up and move as a herd towards the common position of the insurer contract. This may be across a region or city but might also be *within an institution* as more surgeons sign on. Again, it is emphasised that it is not the fee moiety that is disputed but rather the requirement to adhere to a 3rd party clinical protocol of treatment designed by an insurer within a bundled arrangement.

- ii. Anecdotally, surgeons at institutions which sign such insurance contracts are compelled to join the programme or face limitations in referrals or resource allocation such as clinic time or theatre rosters. A colleague was recently asked to come and sign a contract without the benefit of her lawyer's access to the contract. The reason given to her was that it is a confidential contract which all were expected to sign. She refused and now my colleague risks being excluded from that hospital's clinical programme.

Date: 13 May 2022



Dr Peter Sumich

Vice President