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Tessa King
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Commerce Commissioning | Te Komihana Tauhokohoko
Via email: [redacted]

Tēnā koe Tessa,

Thank you for the opportunity for ACC to comment on the New Zealand Gynaecology Association (NZGA) Inc application for authorisation and interim authorisation to collectively bargain with Southern Cross Health Insurance and/or hospitals.

This submission reflects ACC's commissioning and commercial business perspective. We have not sought legal advice on our response.

ACC's position

- ACC does not support the proposed authorisation.
- The proposed arrangements create credible risks to competition and commissioning effectiveness.
- The claimed benefits do not appear to require collective negotiation and could be achieved through other means.

ACC's role and interest

ACC is a significant public funder and purchaser of health, treatment and rehabilitation services. We use contracting and commissioning tools to manage access, quality, price, and ensure timely and appropriate return to work or independence outcomes for injured people. These tools support the long-term sustainability of New Zealand's Accident Compensation Scheme.

ACC's interest extends beyond private gynaecology services. The issues raised, particularly collective negotiation by competing providers, are relevant to a range of specialist service markets in which clinical providers can materially influence Scheme performance through treatment decisions, utilisation, recovery timeframes, and return to work outcomes.

This influence is particularly relevant in secondary care, where ACC's funding of Elective Surgery, High-Tech Imaging and Specialist Clinical Services account for approximately $940 million in annual spend and are associated with approximately $1.4 billion in weekly compensation exposure.

ACC is shifting toward more structured commissioning, with clearer provider expectations, and greater use of contract levers to influence access, quality and outcomes. The proposed arrangements could constrain that shift if they reduce ACC's ability to negotiate differentiated terms or respond to variation in provider performance and clinical practice.

Public benefit assessment

We understand that, under the Commission's framework, the key question is whether the proposed arrangements are likely to result in public benefits that outweigh the detriments. ACC is not satisfied that this threshold is met.

The application identifies potential efficiencies, such as reduced transaction costs, improved information flows, and more effective engagement. In ACC's view, these benefits can largely be achieved without collective negotiation on behalf of competing providers.

Structured consultation, independent clinical advice, and targeted engagement on coding and pathway design can achieve similar outcomes without coordinating commercial positions.

By contrast, the proposed arrangements introduce a material risk of cost escalation for New Zealanders, including through reduced competitive tension and potential alignment on commercial terms.

Impact on negotiation dynamics

ACC purchases specialist services through two models that would be directly affected by the authorisation sought: individual contracts with specialists (via our Clinical Services contracting) and purchasing via private hospitals (e.g. elective surgery services contracting).

Collective negotiation could constrain both channels by limiting ACC's ability to contract selectively with individuals and to test pricing tension within hospital-based packages.

Bilateral negotiation, while not without challenges, preserves independent decision-making, provider-level differentiation, and flexibility in contract design. For example, ACC may be willing to fund some providers at higher where they have strong performance records, deliver better recovery outcomes, or provide services in under-served regions.

These features are important in thin markets, where competition is already limited and a small number of providers are critical to service continuity. Existing vertical integration, combined with the proposed horizontal arrangement, compounds ACC's concerns. Specialists' involvement, and often significant shareholdings, in hospitals and high-tech imaging has already created aligned provider ecosystems across the secondary care and treatment pathway. This reduces contestability and limits ACC's ability to isolate or substitute components. Evidence shows provider integration weakens purchaser leverage and is associated with higher prices.

These risks are amplified because many specialist service markets have limited provider numbers, workforce constraints, geographic concentration, and high barriers to entry. In these circumstances, modest levels of coordination can have a disproportionate effect on bargaining dynamics and competitive tension.

This creates a risk that negotiated outcomes reflect coordinated supplier positions rather than efficient, value-based contracting. It also narrows the scope for arrangements that reflect differences in provider performance, cost structures, or clinical practice.

Commissioning and Scheme impacts

From ACC's perspective, the implications extend beyond price. Independent negotiation and differentiated contract terms help ACC to:

- shaping treatment and rehabilitation pathways
- managing utilisation and appropriateness
- setting provider-specific performance and outcome expectations
- hold providers accountable for results.

Common reference terms and coordinated negotiation could reduce ACC's ability to use these levers, respond to provider variation, and influence recovery and return to work outcomes .

It may also reduce flexibility to develop and test alternative contracting approaches, including outcome-based arrangements or alternative payment models.

Over time, these effects may have implications for Scheme costs and sustainability, particularly in specialist markets that are already supply constrained.

Precedent risk

ACC considers precedent risk to be a central issue. Authorisation would signal that collective negotiation between competing providers may be acceptable in specialist service markets with similar structural conditions, such as orthopaedics, anaesthetics, radiology, surgical and medical specialties, and other health care provider groups. These markets often involve concentrated provider groups, strong professional bodies, and limited substitutability, making coordinated negotiation feasible and attractive.

In these markets, coordinated supplier behaviour is likely to have a more pronounced effect on bargaining dynamics.

There is also a risk of secondary precedent effects. Terms and pricing established through collectively negotiated agreements may become reference points for other providers, including those negotiating independently. This could anchor expectations across the market and reduce effective price and variation over time.

Of particular concern is the cumulative effect if multiple arrangements were authorised. Over time, this could shift markets away from independent bilateral negotiation toward coordinated supplier-side bargaining, reducing competitive tension and limiting funders' ability to maintain differentiated contract terms.

Clinical engagement

ACC supports meaningful clinical engagement and recognises its importance in designing effective and clinically appropriate services. However, the proposed arrangements go beyond this kind of engagement by enabling competing providers to coordinate on commercial terms and contracting positions.

ACC recognises the legitimate role of professional bodies in supporting clinical input and service improvement. That input can be achieved without collective negotiation, including through structured consultation, targeted engagement on technical matters such as coding

and pathways, and aggregated or anonymised information. These approaches support service design while preserving competition and independent decision-making.

Funder sustainability

The application emphasises provider sustainability, which ACC recognises as important. Funder sustainability is also a relevant public interest consideration. ACC is a statutory scheme funded through levies and public funds. If funders have reduced ability to negotiate price, manage volumes, and maintain performance expectations, particularly in constrained specialist markets, the effects will flow through to Scheme costs, levy settings, and affordability over time.

These impacts should be considered alongside any anticipated benefits to providers.

Interim authorisation

ACC considers the Commission should take a cautious approach to interim authorisation.

The proposed conduct could shift bargaining dynamics and coordinate provider behaviour before the Commission completes its substantive assessment. Such changes may be difficult to reverse if the application is ultimately declined.

If interim authorisation is granted, it should be tightly constrained. In particular:

- it should not allow collectively negotiated agreements to be entered into or given effect,
- it should preserve the ability of individual providers to negotiate independently,
- it should limit the exchange of competitively sensitive information,
- it should be time-limited and focused on structured engagement only.

Conclusion

ACC does not support the proposed authorisation for the reasons set out in this letter.

If any interim authorisation is granted, it should be tightly limited and should not enable collectively negotiated agreements to be entered into or given effect prior to a final determination.

We would be happy to meet with the Commission or provide additional detail if required.

Ngā mihi nui,

[redacted]

Lisa Williams
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