

February 22, 2019.

Submission on Discussion paper “Protecting businesses and consumers from unfair commercial practices”

This submission is made on behalf of the NZ Association of Plastic Surgeons (**NZAPS**) and NZ Dermatological Society Incorporated (**NZDSi**). NZAPS and NZDSi represent the interests of New Zealand plastic surgeons and dermatologists respectively and welcome the opportunity to make this submission.

NZAPS and NZDSi support the proposals to strengthen legislative protections against unfair business-to-business conduct. NZAPS and NZDSi agree that a fair economy is one where businesses and consumers trust one another, businesses compete on their merits, all businesses have a reasonable opportunity to grow and thrive, and consumers are protected from high levels of detriment. In our view, the current legislation around unfair practices is not sufficiently robust to support these goals. The balance is not right in New Zealand’s laws.

In saying this we recognise that there can be value in robust commercial negotiations between parties. However, our experience is that small businesses have little real ability to negotiate (robustly or otherwise) with large counterparties whom those small businesses must deal with in order to sustain their business. Simply put, small businesses are often beholden to these larger counterparties.

Specifically in the case of NZAPS and NZDSi members, the majority of plastic surgeons and dermatologists work as small private businesses. A large proportion of these specialists’ private work is funded by large corporate health insurers.

While we acknowledge that health insurers have an important part to play in ensuring that patients have access to health care, New Zealand’s health insurance market is highly concentrated. Southern Cross Medical Care Society has around 70% of the market, and NIB, the second largest insurer has around 10-15% of the market, with a number of other smaller firms making up the balance.

This market structure creates the type of power imbalance that raises the very real potential for specialists to have to accept unfair contract terms or to be exposed to unfair conduct if they wish to continue to offer private services. Specialists have little ability to negotiate with health insurers and contracts are effectively offered on what feels like a take it or leave it basis.

Some examples of the types of conduct and contractual terms that are of specific concern to NZAPS and NZDSi include any:

- conduct that limits, or effectively limits, the number of specialists a consumer can choose from to have their work performed;

- contractual terms that limit (or effectively limit) the geographic regions in which a specialist may offer services to an insured patient;
- contractual terms that place significant additional administrative burden onto specialists, that specialists must fund at their cost; and
- contractual terms that unfairly discriminate between existing and new providers in respect of the terms and conditions they receive.

Such conduct is of concern because NZAPS and NZDSi believe that conduct would have the potential to adversely affect consumer choice and patient care and shift burden from private health insurers to the public health system.

In the context of plastic surgeons and dermatologists, there is currently a shortage of dermatologists in New Zealand. Furthermore, NZAPS estimates that one third of new Plastic Surgeons trained in New Zealand are choosing to work overseas rather than in New Zealand. Steps need to be taken to reverse this trend.

NZAPS and NZDSi consider that part of the solution is to ensure there is a robust framework for protecting small business owners so that they have the trust and confidence to apply their skills for the benefit of all New Zealanders.

Yours sincerely,



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