

PROTOCOL APPLYING TO MEDICAL PRACTITIONERS PARTICIPATING IN THE AMBULATORY SURGERY INITIATIVE AND/OR THE PRIVATELY REFERRED NON- INPATIENTS MODEL

The State is of the view that the Ambulatory Surgery Initiative ("ASI") and the Privately Referred Non-Inpatients Model ("PRNI") Model which have been established are consistent with the requirements of the Health Insurance Act 1973 (Cth) and, in particular, lawfully permit the claiming of Medicare benefits in the circumstances contemplated by the models. It is in the interests of the State to ensure that medical practitioners who in good faith participate in the ASI or the PRNI on the assumption that those models do comply with the Health Insurance Act are appropriately protected in the event that Medicare Australia or some person or other body exercising powers for public purposes ("government person or body") inquires into or investigates the validity, or seeks to assert the invalidity, of either model.

Accordingly, the State adopts the following protocols:

1. In the event of any inquiry or investigation by Medicare Australia or a government person or body, a civil claim by Medicare Australia, or a prosecution under the Health Insurance Act involving a participating doctor, in circumstances where the issue the subject of inquiry, investigation, claim or prosecution is a model's compliance with the Health Insurance Act:
 - 1.1 The Minister for Health will take all reasonable steps to ensure that any inquiry, investigation, civil claim or prosecution by Medicare Australia or a government person or body is managed in a manner that fully supports and protects the interests of participating medical practitioners.
 - 1.2 Where an inquiry or investigation by Medicare Australia or a government person or body involves a participating medical practitioner, the State Solicitor or legal practitioners appointed by the State Solicitor will in the ordinary course represent, on behalf of the Minister, the interests of the doctor at and for the purposes of any hearing. If it emerges that the interests of the doctor and of the Minister for Health are not or may not be identical so that it is apparent that the doctor ought to be represented in his or her own right (a circumstance which will ordinarily only arise where issues going beyond the validity of the ASI or the PRNI are the subject of inquiry or are being investigated), consideration will be given as and when the circumstances are clear to the reimbursement on an ex-gratia basis of the doctor's reasonable legal expenses.
 - 1.3 Where a civil claim is brought by Medicare Australia against a participating medical practitioner, then the practitioner will, subject on subrogation principles to the instructions of the Minister for Health, be represented by the State Solicitor or legal practitioners appointed by the State Solicitor and the State will meet any liabilities of the practitioner to Medicare Australia arising from the claim. Again, if it emerges that the interests of the doctor and of the Minister for Health are not or may not be identical so that it is apparent that the doctor ought to be represented in his or her own right, consideration will be given as and when the circumstances are clear to the reimbursement on an ex-gratia basis of the doctor's reasonable legal expenses.

- 1.4 In the event of a participating medical practitioner being prosecuted under the Health Insurance Act, the doctor will engage his or her own legal representation and the State will meet all reasonable legal costs and any fines and other liabilities of the practitioner consequential upon the ASI or the PRNI not complying with the Health Insurance Act.
2. To safeguard the integrity of the ASI and the PRNI:
 - 2.1 the Minister will commission annual audits to monitor compliance with the specifications, policies and processes of the two models; and
 - 2.2 the Minister will, through the Department of Health, liaise with Medicare Australia as appropriate in relation to any concerns which arise regarding consistency between the operation of the ASI and PRNI models and the Health Insurance Act.
3. If a medical practitioner, in his own right or through the AMA (WA), seeks support or protection under this Protocol in respect of a particular enquiry, investigation, claim or prosecution and the Minister decides not to provide the support or protection requested:

Generally

- 3.1 The Minister will give the medical practitioner and the AMA (WA) notice in writing of that decision, with reasons.
- 3.2 The medical practitioner and the AMA (WA) on the medical practitioner's behalf will then have two weeks (unless the circumstances warrant an extension) to make written submissions to the Minister as to why the Minister should reconsider his or her decision.
- 3.3 If after considering such submissions, the Minister remains of the view that the original decision should stand, he or she will give the medical practitioner and the AMA (WA) written notice to that effect, with reasons.
- 3.4 The medical practitioner, or the AMA (WA) on the medical practitioner's behalf, may within two weeks of receipt of the Minister's further notice under 3.3, request the Minister to convene a review panel.

The review panel will consist of:

- (i) a nominee of the Director General, Department of Health;
 - (ii) a nominee of the President of the AMA (WA);
 - (iii) a nominee of the State Solicitor.
 - (iv) a person nominated by agreement between the Director General of the Department of Health and the President of the AMA (WA)
- 3.5 The review panel, after consideration of the information available to it, shall make such recommendations it thinks fit to the Minister.
 - 3.6 The Minister shall exercise his or her discretion in relation to the original decision after considering the recommendations of the review panel.