Submission No. 116
(Overseas Trained Doctors)
Date: 25/02/2011

HOUSE OF REPRESENTATIVES STANDING COMMITTE ON HEALTH AND AGEING - ENQUIRY INTO OVERSEAS TRAINED DOCTORS.

Submission

My name is Hugh Ford. I am a solicitor in the ACT. I am also an expert in the field of migration law.

I have a client who is an overseas trained doctor. When he was a temporary resident, he was entitled to practice anywhere in Australia. Furthermore, he was granted a Medicare provider number. This meant that patients could be treated by him and they would be able to claim a Medicare rebate.

This all changed however when he became a permanent resident/citizen. My client was advised that he would no no longer be able to receive a Medicare provider number, and therefore his patients would no longer be able to receive a Medicare benefit. As soon as my client became a permanent resident, he had to essentially move out of the city and practice in a rural/regional area. So one person who happens to be an Australian citizen can still practice in the city while another Australian citizen must now practice in the country and be content with about half of the money that the city doctor would receive.

The reason why my client could not receive a Medicare benefit is essentially because of sections 19AA and 19AB of the *Health Insurance Act 1973*. In reality what is happening is that one Australian citizen is now the subject of a rather crude form of discrimination.

Section 19AB of the Act

Essentially no overseas trained doctor can receive a Medicare benefit at all. There is a whole page of exclusions. If one wants to obtain a Medicare benefit, then one must avail themselves of an exemption pursuant to subsections 19AB(3)(4)(4A) and (4B) of the Act. Section 19AB is poorly drafted. Very few overseas trained doctors can claim for example to be a medical practitioner before 1 January 1997.

The exemptions and the conditions which are imposed must be in accordance with the guidelines, but the conditions which are imposed can really be any conditions that the Minister thinks fit. The Minister could if he/she desired stipulate that the doctor must attend all football matches that are played by the Sydney Swans. No attendance, no Medicare benefit. This is in my opinion quite a ridiculous situation. How can the Minister in all good conscience require one Australian citizen to work in Broome while allowing another Australian citizen to work in Sydney?

Furthermore, there may be a number of the more naive lawyers out there who may attempt to stipulate that that the conditions which the Minister may impose must be in accordance with the intention of the legislation. That is, the intention of the legislation is to regulate the payment of a Medicare benefit. Therefore a condition about the Sydney Swans would be unlawful given that it is ultra virus the Act.

The Health Insurance Act does not provide any legal authority at all to discriminate between Australian citizens. A condition which requires one Australian citizen to in effect waste ten years of their life in a rural and regional area is in my opinion ultra vires. Such a condition has nothing to do with the regulation of the payment of a Medicare benefit, rather it has everything to do with forcing some doctors to live outside of the city. 99.9% of Australians live in cities. There is no need or demand for doctors in the country. It is a complete waste of resources to place a doctor in the country when the same doctor could treat three times as many patients in the city.

***Competition and Consumer Act 2010* Section 2A**

The effect of requiring a medical practitioner to practice in a rural and remote area is to engage in a restraint of trade. I have no doubt however that the Department of Health or for that matter Medicare Australia would attempt to assert that they are not for the purposes of subsection 2A(1) of the Act, 'carrying on a business'.

It is clear to be however that they are required to conduct themselves in a business like manner as is evidenced from their annual reports. Further, I would expect that if the relevant Ministers were asked to give evidence, that they would assert that their Departments are conducting themselves in a business like manner, and are allocating resources in the most efficient manner possible. They are a government enterprise and are accountable for the money they spend.

What is really happening here is that the government is quite clearly engaging in a restraint of trade, yet it hides behind Section 2A of the Act hoping that no one will ever complain.

Hugh Ford