



Media release from the General Practice Owners Association of Aotearoa New Zealand

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With unfair contracts harming primary healthcare, General Practice implores Commerce Commission to intervene

Efforts by family doctors to keep GP visits affordable and cut waiting times are being impeded by unfair terms imposed on them by Health New Zealand |Te Whatu Ora.

Wanting to force changes to address the primary healthcare crisis, the General Practice Owners Association of Aotearoa New Zealand (GenPro) has lodged a formal complaint that Te Whatu Ora is breaching the Fair Trading Act 1986 (Fair Trading Act).

Filed yesterday with the Commerce Commission, the complaint says that general practices are effectively excluded from decisions crucial to achieving the best outcomes for the primary, urgent and mental health of New Zealand patients.

“GenPro has tabled the complaint on behalf of its members, but this affects the healthcare of all New Zealanders.”

“The contracts imposed on us with no effective input are unfair. We believe they are illegal and breach the Fair Trading Act. General practices are forced to accept terms which have been pre-agreed by Te Whatu Ora (TWO) and primary health organisations (PHOs), with no input from general practices, a breach of the Fair Trading Act,” said Dr Angus Chambers, Chair of GenPro.

General practices are compelled to sign unfair standard form contracts with PHOs, who are intermediaries to channel funding to primary healthcare, based on terms agreed independently by Te Whatu Ora and PHOs. This creates a clear power imbalance.

“General practices should not have to accept a contract which mirrors an entirely separate agreement between Te Whatu Ora and PHOs. We are not party to the Primary Health Organisation Services Agreement (PHOSA), cannot materially influence any negotiations about the terms of the PHOSA, and have no real ability to negotiate the terms.

“The result of the unfair contracts is that general practices are struggling to remain solvent, recruit and retain staff, and patients may be paying a lot more for GP services. General practices are reducing their services and hours, which results in longer waiting times and more demand pressure on emergency departments.” Ultimately, this harms the health of all New Zealanders.

GenPro’s complaint cites four examples that make the imposed contract unfair to general practice owners:

- GP owners cannot effectively negotiate the terms on which they provide primary care. Instead the terms are agreed by Te Whatu Ora and PHOs, and are presented to GP owners as a "take it or leave it". This creates a power imbalance, particularly where Te Whatu Ora and PHOs operate as monopoly acquirers of primary healthcare services..



- GP owners are prohibited from charging what they need to pay staff, meet costs, and make their businesses viable. Te Whatu Ora/PHOs fund only part of the cost of primary care. GP owners may also charge patients a further amount per visit. But the contract allows a PHO to interfere with those charges by commencing a dispute which could go to court. In some cases, Te Whatu Ora has purported to unilaterally decline to accept increases in charges, contrary to the contractual dispute provisions (highlighting the power imbalance).
- There's no ability for GP owners to negotiate the amount payable by Te Whatu Ora for the services they provide. Te Whatu Ora simply prescribes the amount payable for those services with no consultation with the GPs providing those services. There is no ability for GPs to dispute Te Whatu Ora's decision or to escalate their concerns, and this leads to chronic underfunding of general practitioner services.
- The contract between Te Whatu Ora and PHOs can be varied compulsorily through a direction from the Crown. This change is then mirrored in the PHO/GP contract. Compulsory variation is an unfair term, as there is no requirement for Te Whatu Ora or the PHO to negotiate and agree these variations with GP owners, and there is no practicable ability for GP owners to terminate, as Te Whatu Ora and PHOs operate as monopoly acquirers of primary healthcare services. While PHOs are given the opportunity to provide feedback on the variation and have an opportunity to agree to the variation before it is implemented, no such consideration is given to GP owners, who are forced to accept varied prices for relevant services.

The Fair Trading Act allows the Commerce Commission to apply to the Court for a declaration that terms of a standard form trade contract are unfair. Unfair contract terms cannot be enforced and attempts to do so can lead to large fines.

"GP owners are facing funding shortfalls, cannot pay the staff they need, and are restricted by Te Whatu Ora in how best to provide the services required by New Zealanders.

"GP owners might be able to address these issues if they had some power. But they have none. The monopoly funders impose contracts, vary them as they choose, and cause GP owners to bear what should be funded costs.

"If these unfair terms are not addressed, GPs cannot best serve their communities."

GenPro's solutions include addressing the legislative and regulatory breaches of the current contractual agreements, including implementing direct contracting and funding for general practice services.

"We look forward to engaging with the Commerce Commission on our complaint, which we expect will lead to improvements that strengthen services to our communities," Dr Chambers said.

The General Practice Owners Association of Aotearoa New Zealand Incorporated represents general practice owners to ensure that their population health services are appropriately supported and that their businesses are sustainable.

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