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Dear Sir/Madam

GST and certain supplies to health insurers

Australian Unity welcomes the opportunity to comment on Treasury's Discussion Paper entitled "GST and certain supplies to health insurers" released on 7 June 2011 (the 'Discussion Paper'). We set out our comments on this Discussion Paper below.

We take this opportunity to express our thanks to Treasury for proposing to amend the A New Tax System (Goods and Services Tax) Act 1999 (*Cth*) (GST Act) to address the issue arising from the decision of the Full Federal Court in the *Commissioner of Taxation v Secretary to the Department of Transport (Victoria)* [2010] FCAFC 84.

Although the case did not specifically deal with the GST treatment of health related supplies, its application is far reaching in its approach to characterising multi-party arrangements between health insurers and health care providers. Applying the analysis from the case, there is a risk in some circumstances that health care providers would be considered to be making a taxable supply to the health insurer (even when they should not be as the supply is one made in the course of settlement of an insurance claim between the individual and the health insurer) for which the health insurer would not be entitled to claim an input tax credit because of the operation of section 78-30¹ of the GST Act.

¹ This is about acquisitions by insurers in the course of settling claims under non-taxable policies. It essentially denies claims of GST input tax credits despite section 11-15 which is about what is a 'creditable acquisition'.

The consequences of this decision is that acquisitions made by a health insurer referable to supplies by health care providers may be inadvertently treated as "input taxed" by virtue of the health insurer not being entitled to input tax credits in respect of such supplies. This was clearly not policy intent.

Retrospectively amending the GST Act to restore the GST-free policy intent will ensure that health insurers are not unnecessarily burdened with additional cost. In addition, we submit that restoration of policy intent via codification amendments to the GST Act removes uncertainty for both health insurers and health care providers. We fully support this initiative.

We take this opportunity to mention that Treasury will already be aware that the ageing population and the increasing prevalence of chronic diseases continue to increase strain on an already fragile health system. In Australia, chronic diseases make up 80% of hospital expenditure. Therefore, it is disappointing that chronic disease management programs which we believe are part of the broader solution are not currently given GST-free status under Subdivision 38-B of the GST Act.

Treasury may be aware that the aim of both hospital substitution programs and chronic disease management programs is to reduce the length of hospitalisation (including re-admissions) and to provide support for patients within the confines and comfort of their homes. We believe this of benefit not only to the patient but also to the health system by reducing further 'congestion'. Accordingly, a health insurer should not be disadvantaged in providing such programs by bearing the cost of unrecoverable GST.

Any unrecovered GST on acquisitions made in settlement of an insurance claim under a health insurance policy may lead to increased premiums due the increased cost of providing health insurance.

We welcome the opportunity to comment on proposed draft legislation as well as work with Treasury to ensure that out-of-hospital care and hospital prevention programs (including chronic disease management programs) have the same GST reflex for the health insurer as in-hospital care.

[Our response to Focus Question 1]

We submit that 'tri-partite' arrangements continue to be rather complex from a GST perspective in application. An example of the impact of the Court's decision in *Department of Transport* may be an arrangement where an employer arranges to pay for 'health related services' for and on behalf of their employee as part of an employment package administered by a health fund. This arrangement could lead to the same GST input tax credit denial in the hands of the health fund.

[Our response to Focus Question 2]

We believe that the proposed amendment should address any adverse implications from the Court's decision in *Department of Transport*. We would also welcome the opportunity to comment on draft legislation when made available.

[Our response to Focus Question 3]

We do not believe that the current Treasury proposals will have any unintended outcomes, as the purpose is to restore policy intent. We reiterate that we welcome the opportunity to comment on draft legislation to confirm this point.

If you would like further information or assistance in respect of our submission, please contact Mark Bird, Head of Group Taxation Services on (03) 8682 6004.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'A.V. Connon'. The signature is written in a cursive style with a large initial 'A' and 'V'.

A.V. CONNON
Chief Financial Officer
Public Officer