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7/05/2020

Geoff Carter  
Partner  
Minter Ellison  
525 Collins Street  
Melbourne VIC 3000

By e-mail: [REDACTED]

Dear Mr Carter

**State of Victoria as represented by the Department of Health and Human Services  
application for authorisation AA1000491- request for further information and update**

I refer to the interim authorisation granted by the Australian Competition and Consumer Commission (the **ACCC**) on 7 April 2020 in response to the authorisation application lodged by the State of Victoria as represented by the Department of Health and Human Services (the **DHHS**) on 3 April 2020.

The DHHS, together with specified private healthcare providers operating in the State of Victoria (the **Participating Providers**) and public hospitals and healthcare facilities (the **Victorian Public Providers**) (together, the **Applicants**) have sought authorisation to discuss, enter and give effect to contracts, arrangements or understandings (**Agreement(s)**) which have the broad purpose of maximising healthcare capacity and ensuring the State-wide coordination of healthcare services to facilitate the most efficient and effective allocation of healthcare during the period of the COVID-19 pandemic (the **Proposed Conduct**).

The purpose of this letter is to formalise with you the content of and timeframes for providing updates to the ACCC under Conditions 1 and 2 of the interim authorisation (set out in **Attachment 1** to this letter).

**Condition 1**

Condition 1 requires that the DHHS provide regular updates to the ACCC. Pursuant to this requirement we request that the DHHS provide the following:

- a) a summary of each of the Agreements entered into under the interim authorisation, which:
  - i. identifies the parties to the Agreement; and
  - ii. outlines the key features of the Agreement.
- b) a summary of matters discussed at any meetings of the Private Hospital Coordination Group (**PHCG**).

We request that the DHHS provide these updates to the ACCC every **14 days** commencing **13 May 2020**. If no new Agreements are made or no meetings of the PHCG are held in a given fortnight, please confirm that in the fortnightly update. The frequency of these updates may be reduced in future if appropriate.

Subject to any requests for exclusion, it is expected that the DHHS' updates will be placed on the ACCC's public register for this matter (see [Guidelines for Excluding Information from the Public Register](#) for more information on how to make a request for exclusion and how we assess requests).

## **Condition 2**

Condition 2 of the interim authorisation requires the DHHS to notify the ACCC of future parties to the arrangement. We request that this notification be given within **three working days** of the DHHS determining that a party participate in the authorised conduct. Please note that the notification will be included on the ACCC's public register for this matter.

## **Request for further information**

The ACCC is progressing its assessment of the authorisation application. To assist in this assessment it is requested that the DHHS provide the following information:

1. The Applicants have identified a number of key features of the Agreements to be entered into between the DHHS and Participating Providers. Item (c) of the key features listed in the application for authorisation provides that each Participating Provider will be permitted to continue to provide healthcare services to private patients but only to the extent permitted by the Agreement or by the DHHS in accordance with principles to be agreed.

It is requested that the Applicants provide further detail expanding on item (c), including:

- a. a summary of how the Agreement(s) entered into by the parties implement this key feature;
- b. a summary of any principles agreed between the DHHS and Participating Providers implementing this key feature.

It is requested that the Applicants, to the extent possible, provide an illustrative example of how a Participating Provider's capacity may be directed in response to a surge in demand for the Victorian Public Providers' services and resources due to the COVID-19 pandemic.

2. Information as to the impact of the Commonwealth Government's easing of restrictions on elective surgeries on the Applicants' submissions in support of the application for authorisation.

We request that the DHHS provide this information by **Friday, 15 May 2020**. Please note that subject to any request for exclusion, the DHHS' response will be placed on the ACCC's public register for this matter.

## **Provision of information to the ACCC**

Please send all updates and information to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) copying [emma.stiles@acc.gov.au](mailto:emma.stiles@acc.gov.au).

This letter has been placed on the public register.

If you wish to discuss this letter, please contact Emma Stiles on 02 9102 4036 or Sophie Matthiesson on 03 9910 9456.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "S Philp".

Susan Philp  
Director  
Adjudication

## **Attachment 1 – Conditions of Interim Authorisation**

### **Condition 1 – Reporting Requirements**

The DHHS must provide regular updates to the ACCC at a frequency agreed between the DHHS and the ACCC, and provide any additional information reasonably requested by the ACCC.

### **Condition 2 – Notification of future parties**

To the extent that DHHS believes it necessary or desirable for any other private healthcare providers (other than the private healthcare providers listed in Attachment 1 to the interim authorisation decision) to participate in the Proposed Conduct, the DHHS must notify the ACCC of the identity of those parties.