

# MinterEllison

5 June 2020

## BY EMAIL ONLY

Susan Philp  
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Merger & Authorisation Review Division  
Australian Competition & Consumer Commission  
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Dear Susan

### State of Queensland as represented by Queensland Health for authorisation AA1000493 – response to request for further information

1. On 7 April 2020, the Australian Competition and Consumer Commission (**ACCC**) granted interim authorisation to Queensland Health, together with specified owners or operators of private health facilities in Queensland (and their related bodies corporate) and each of Queensland's Hospital and Health Services (together, the **Applicants**) to discuss, enter into 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 **ACCC Interim Authorisation Decision**).
2. We refer to the email from the ACCC dated 1 June 2020, in which the ACCC set out a request for further information.
3. The purpose of this letter is to provide a response to this request, which is set out in the **Annexure** to this letter.

Please let us know if the ACCC has any questions.

Yours faithfully  
**MinterEllison**

Partner: Kathryn Finlayson

OUR REF: 1295011

## **Annexure 1 – Response to request for further information**

### **1. ACCC request for further information**

1.1 The ACCC has requested that Queensland Health explain how the approach to directing Private Hospital Operators' capacity aligns with the announcement of the Australian Health Protection Principal Committee on 15 May in relation to the restoration of elective surgery and hospital activity (the **Statement**), including in relation to Queensland Health's determination of:

- (a) what phase a Private Hospital Operator is in; and
- (b) the healthcare services that can be provided by Private Hospital Operators to private patients in each phase.

### **2. Response to request for further information**

#### ***Queensland Health's approach to directing Private Hospital Operators' capacity***

2.1 Queensland Health has determined that Private Hospital Operators can undertake up to 100 percent of normal elective surgical activity levels (including reportable and non-reportable) subject to the availability of personal protective equipment (**PPE**). The decision to maintain elective surgery at this level (Stage 3 in alignment with the National Cabinet guideline) will be regularly reviewed by Queensland Health and may change.

2.2 Queensland Health has confirmed that Private Hospital Operators who have entered into an Agreement are able to undertake private work at their facilities, where it does not diminish the Private Hospital Operator's ability to perform public work (including elective surgery) under the Agreement. Queensland Health has required those Private Hospital Operators to ensure availability of up to 50 percent of the increase in elective surgery capacity and PPE to support public patients. Queensland Health is currently seeking to agree with each Private Hospital Operator the level of elective surgery activity.

2.3 Queensland Health has reiterated to the Private Hospital Operators that:

- (a) it is the National Cabinet's expectation that private hospitals will continue to prioritise patients on the basis of clinical priority and should continue to ensure PPE usage is in alignment with national guidelines; and
- (b) the National Medical Stockpile should not be accessed to support the delivery of elective surgery activity.

2.4 As a condition on increasing elective surgery volumes, Queensland Health is requiring all Private Hospital Operators to provide Queensland Health with a fully completed stocktake of a defined list of surgical PPE. The Private Hospital Operators must submit a similar stocktake to Queensland Health each week. Queensland Health considers that it is absolutely critical to understand, and be able to quantify, the impact that increased elective surgery has on stock levels at each hospital.

2.5 Prior to entry into the Agreement, some Private Hospital Operators already had agreements in place with Queensland Health to provide services to public patients. For those Private Hospital Operators, Queensland Health has determined that those earlier agreements should be used as the vehicle for all referrals of public work to private hospital providers. Any existing or future work that has been referred to a Private Hospital Operators via an earlier agreement or other local Hospital and Health Service contracts will have the cost and revenue items (actual cost and actual revenue) recognised on a like for like basis in the financial viability payment reconciliation.

2.6 Queensland Health considers that its approach aligns with the Statement. Consistent with the Statement, Queensland Health may reintroduce restrictions on elective surgery depending on the COVID-19 pandemic, including in response to any COVID-19 outbreaks, PPE supply and usage and availability of medicines. Queensland Health may also introduce restrictions at a hospital or regional level in the event of an outbreak or should a second wave of COVID-19 occur.

#### ***Phases under the Agreements***

2.7 Queensland Health has not yet made a determination as to which phase the Private Hospital Operators are in, or the healthcare services that can be provided by the Private Hospital Operators to private patients in each phase.