

**Response to the Submission made by  
Melbourne East General Practice Network Limited  
(Outcome Health)  
regarding the Draft Determination  
of the ACCC for Authorisation AA1000577**

**WA Primary Health Alliance Ltd for and on behalf of Participating  
Primary Health Networks – Primary Sense Project**

**Tuesday 15 February 2022**

## Responses to Issues raised in the Submission by Outcome Health placed on the ACCC Public Register dated 9 February 2022

### 1. Market Failure

**Points Raised:** Outcome Health will be unable to compete. Outcome Health's products are targeted at PHNs, not GPs, so Primary Sense will cause a market failure. PHNs using their own product does not enhance PHN choice.

#### Response:

- 1.1 Mr McLeod's statement in the first paragraph of the first issue is not entirely accurate. WAPHA did not only note "the possibility of vendors moving to a direct to general practitioner (GP) market model." WAPHA explicitly stated that this already occurs.
- 1.2 Clause A2.2 of WAPHA's previous *Clarifications requested by the ACCC* stated "Many individual general practices already have a direct customer relationship with a commercial data extraction tool vendor and pay for tools themselves either instead of or as well as using any licenses made available for free by a PHN."
- 1.3 Mr McLeod's statements in the second paragraph of the first issue are accurate but do not only reflect the situation that will exist if PHNs other than Gold Coast PHN adopt Primary Sense, they also the situation that currently exists already. Each PHN already makes a commercial decision as to which data extraction tool(s) they will choose to make available to GPs for free, and that any GP Clinic that wishes to use a different tool would have to pay for it themselves. Primary Sense will not change this situation.
- 1.4 Accordingly, Mr McLeod's conclusion in the third paragraph of the first issue is incorrect and disproven by existing facts. Outcome Health may well not "expect a consumer to choose a product which it must acquire at a price when there is a few product..." but as referred to in point 1.2 above, this already occurs.
- 1.5 There are several reasons why a GP Clinic may choose to pay for a different product that the one provided by their PHN. This includes not wishing to provide the PHN with any data, a competing internal need for data collection within a corporate practice, or the individual preferences of general practitioners.
- 1.6 As stated in clause 8.6 of WAPHA's *Response to Submissions by Interested Parties*, "Based on publicly available information<sup>1</sup> the license cost of commercial data extraction tools is low enough that it should not by itself be a barrier to individual general practices considering its use, should they believe the products offer value for money in and of themselves and independent of any connection to a PHN." WAPHA acknowledges that the referenced "publicly available information" does not pertain to Outcome Health, as no such information is made publicly available.
- 1.7 A consumer will pay for a product if they see value for money, even if they already receive a similar service for free (as demonstrated by the success of streaming platforms competing against free-to-air television and radio stations).

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<sup>1</sup> <https://users.pencs.com.au/admin/public/store/shopfront.aspx>

- 1.8 Mr McLeod's statements in the fourth paragraph of the first issue relate to Outcome Health's commercial strategy of targeting their product at PHNs and electing for them to "have little value outside of the relationship between Outcome Health and the PHNs." It is still incumbent on Outcome Health as the vendor to demonstrate to PHNs as their chosen customer that their product delivers value for money. PHNs are not required to support or subsidise Outcome Health's chosen market strategy if they prefer to choose a different product.
- 1.9 WAPHA also notes that Outcome Health's own website<sup>2</sup> states that their POLAR product does, in fact, deliver value to GPs, stating that "POLAR supports General Practices with the tools to visualise and analyse patient data, enabling smart, insight-driven decision making for your patients and your practice."
- 1.10 Contrary to Mr McLeod's statement in that paragraph that "if the proposed conduct is authorised" it will be a "market failure", any decision by Outcome Health's prospective customers to choose a different product is not a failure of the market, but rather a failure of the market strategy.
- 1.11 WAPHA notes that none of the Participating PHNs are current customers of Outcome Health, and so the proposed Authorisation does not directly impact on their existing revenue base. Non-Participating PHNs may choose to use Primary Sense in the future, but they may also choose to use POLAR – that is the nature of a competitive market.
- 1.12 Mr McLeod's statements in the fifth paragraph of the first issue recapitulate statements made in their previous Submission dated 29 September 2021 and responded to by WAPHA in our *Response to Submissions from Interested Parties* dated 12 November 2021.
- 1.13 Clause B1.1 of WAPHA's *Response to Submissions by Interested Parties* states that "the development of Outcome Health's POLAR product was also largely funded by the PHNs, as noted in their Submission which acknowledges that the PHNs currently using POLAR 'have invested time and resources into co-design, building and implementation of the product.'"
- 1.14 Clause B5.2 of WAPHA's *Response to Submissions by Interested Parties* states that "WAPHA does not agree with Outcome Health that 'in an environment where PHNs are providing funding via their government grants to underwrite this type of functionality there is a strong risk of market failure'."
- 1.15 Clause B5.3 of WAPHA's *Response to Submissions by Interested Parties* states that "PHNs funding for data extraction tools comes from the same source regardless of the supplier, as has been the case for many years. Vendors and organisations across Australia have developed tools for their own purposes or target markets even though current data extraction tool vendors [are] paid by PHNs who "are providing [this] funding via their government grants'."
- 1.16 Mr McLeod's first statement in the fifth paragraph of the first issue is inaccurate and misleading. All funding used by PHNs to pay for any service or product is sourced from "public funds". Since the largest paying customer segment for these tools is the PHNs, that means that the majority of funds used by commercial vendors – including Outcome Health – to develop their product has also ultimately been sourced from "public funds".

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<sup>2</sup> <https://polargp.org.au/polar-gp/>

- 1.17 Mr McLeod’s last statement in the fifth paragraph of the first issue is also inaccurate and misleading. As clearly stated in the Application and subsequent Responses by WAPHA, and as acknowledged by Outcome Health, Primary Sense is not “a new product”. It is an existing product already in use by Gold Coast PHN that other PHNs have seen, been impressed by, and wish to use. The decision by the Participating PHNs to invest in scaling up Primary Sense so they can use it effectively was made in the current market environment where products by other vendors – including Outcome Health – are also available. Their decision reflects a choice, and since the Project will make Primary Sense easier for other PHNs to adopt, that makes Primary Sense a more viable and effective option to consider alongside other existing commercial products, which most definitely enhances the choices available to the consumer base.
- 1.18 Customers of technology products, especially software, have always had the option of using an “in house” developed solution or purchasing a “commercial off the shelf” product. This “buy vs. build” choice is a standard aspect of corporate business decision making and is not a new aspect of the software market in general, or the medical software market in specific. Commercial software products must always demonstrate that they deliver more value for money than internally developed (and owned) products.

## 2. Innovation is irrelevant

**Points Raised:** There will be no innovation if competing vendors must provide their product to GPs at zero cost. Outcome Health would have to redesign its product for it to be attractive to GPs.

### Response:

- 2.1 Mr McLeod’s statement in the first paragraph of the second issue that “the only way for [Outcome Health] to compete ... is to reduce the price for its product to zero” is either incorrect and misleading, or demonstrates a lack of understanding of the market.
- 2.2 As stated previously in point 1.2 above, other vendors already provide data extraction tools and related products at a non-zero price directly to GP Clinics who have not used the option of a free license from their PHN. It is therefore demonstrably not true that providing their product at no cost to GP Clinics is “the only way” they could compete.
- 2.3 WAPHA notes that Outcome Health would be free to compete against Primary Sense for the PHN market. As stated in clause 8.5 of WAPHA’s *Response to Submissions by Interested Parties*, “If participating PHNs believe an alternative to Primary Sense 2 available in the market offers better value for money, then transitioning to that product would be a sound business decision. Participating PHNs have already demonstrated their willingness to adopt a new or different product when they believe it is in their best interests to do so.”
- 2.4 As stated previously, in a healthy competitive market the onus is on a vendor – not the customer – to demonstrate that their product offers more value for money than a product they already use or other similar products they could pay for. A customer seeking to invest in and use an existing asset instead of buying from the market is not anti-competitive, however seeking to prevent them from having that option and to remove a choice from their consideration is anti-competitive.
- 2.5 Mr McLeod’s statement in the second paragraph of the second issue that “the level of innovation may become irrelevant if all products are not provided for free” is either inaccurate and misleading, or demonstrates a lack of understanding of the market.

- 2.6 PHNs do not currently offer “all products” for free and despite the current market being dominated by a single vendor, others including Outcome Health have continued to innovate to improve existing products and develop new ones. Mr McLeod has not indicated how the current one-sided duopoly market is somehow more competitive and conducive to innovation than the situation likely to arise if Primary Sense is Authorised, where the market share is more distributed across the three current products.
- 2.7 Mr McLeod’s statements in the third paragraph of the second issue are likely to be accurate, but as stated in clause 8.1 of WAPHA’s *Response to Submissions by Interested Parties*, both the “Threat of Substitute Products” and the “Threat of New Entrants” are standard commercial forces operating in a healthy market. While the entrance of a new product (or the improvement of an existing product) in a market may be disruptive it is not anti-competitive, even if existing providers within that market need to change their products to remain competitive. It is instead the normal operation of a healthy market, especially in the technology sector where development, innovation and disruption are part of the standard commercial environment.

### 3. Cost Benefit Analysis

**Points Raised:** No public information has been provided to substantiate claims of cost savings under Primary Sense. PHNs should not be competing with private sector entities. Primary Sense will increase costs for PHNs. Government oversight of PHN spending in this area has not been demonstrated.

#### Response:

- 3.1 Mr McLeod’s statement of that “The Application does not contain any material to substantiate [the claimed cost benefits]...” is technically correct, in that the Application did not contain any financial information, but are incorrect in that WAPHA has not provided any such information to the ACCC.
- 3.2 WAPHA did provide specific information to the ACCC in our *Clarifications Requested by the ACCC* dated 12 November 2021, which included not only the clause quoted in the following point 3.3, but also the estimated annual saving in dollars that the Participating PHNs are expecting from the use of Primary Sense. WAPHA also provided the ACCC with an independent Economic Analysis report commissioned by WAPHA. This information has not been made public as it is commercial-in-confidence.
- 3.3 Clause B3.2 of WAPHA’s *Clarifications Requested by the ACCC* stated “Business decisions made with respect to the scope and approach of the Project are in line with the assumptions underpinning scenarios that showed significant cost savings for PHNs that use Primary Sense instead of paying for a commercial third party tool, and indicated a potential 100% return on the investment in the Project within two years.”
- 3.4 Clause 1.9 of WAPHA’s *Response to Submissions by Interested Parties* stated “The independent business case also identified significant cost savings for PHNs. As publicly funded organisations operating under contract to the Australian Government, PHNs are under an obligation to critically assess the costs and benefits of how they deliver their core functions. Any reduction in administrative overheads for organisations that exist to improve the scope, delivery and quality of primary healthcare in the community is a clear public benefit.”
- 3.5 Mr McLeod’s statement that Outcome Health is “concerned that cost of providing an end-to-end solution may not be cost effective” may be true, but it is also uninformed.

- 3.6 As stated in clause 6.5 of WAPHA's *Response to Submissions by Interested Parties*, "There is no obligation on WAPHA or participating PHNs to provide individual vendors or a representative industry body with any information on the suitability, security, functionality or cost of Primary Sense 2. As with any other software product Primary Sense 2 must only demonstrate its value to those paying for or using its capabilities."
- 3.7 Clause 11.3 of WAPHA's *Response to Submissions by Interested Parties* also stated "The participating PHNs made the decision to invest in Primary Sense 2 on the basis of a properly developed Business Case which led their Boards to agree that the Project will deliver value for money and assist them in meeting their objectives and priorities."
- 3.8 In the absence of detailed commercial information regarding the forecast cost to develop and operate Primary Sense 2 or the technical specifications of the product, Mr McLeod is not in a position to make any informed statement as to whether or not the Project will increase or decrease costs to PHNs.
- 3.9 Clause B4.1 of WAPHA's *Response to Submissions by Interested Parties* stated "WAPHA's 'claims throughout the application' [related to cost savings] are based on over four years of experience by the Gold Coast PHN in using Primary Sense, on an independent assessment of Primary Sense commissioned by WAPHA in 2020 and undertaken by Deloitte Consulting, and a subsequent Business Case developed for the participating PHNs by Deloitte Consulting."
- 3.10 For the sake of clarity, the Business Case and the resulting estimated costs for Participating PHNs have modelled the direct costs of operating Primary Sense 2 within PHI but have not modelled any additional PHI-specific costs that a PHN might incur as a result of storing or analysing additional data within their lockbox.
- 3.11 The cost modelling and forecasts undertaken for Primary Sense are based on the full potential data volume for all applicable General Practices within the Participating PHNs. Since it will take time for PHNs to adopt Primary Sense and roll it out to General Practices, the initial data volume and processing load will actually be smaller than the figures used in the estimates, which mean initial costs are also likely to be lower.
- 3.12 Participating PHNs currently already store and analyse General Practice data within their PHI Lockbox and pay any relevant costs for doing so. 27 of the 31 PHNs nationally currently use and pay for PHI, including all of the Participating PHNs. Adopting Primary Sense will not result in those incurring any significant additional PHI costs.
- 3.13 Of the four PHNs that do not currently use PHI, none have expressed any interest in adopting Primary Sense. If one did decide to adopt Primary Sense they would have to first migrate into PHI, since Primary Sense is hosted on PHI. This would involve them paying for both Primary Sense and PHI, but also obtaining savings both systems (either from no longer paying for other data extraction tools, or no longer paying for independent secure storage or analytics tools).
- 3.14 Participating PHNs already store data from their current data extraction tools within PHI and pay the relevant data storage and processing costs as part of the cost of PHI. The cost of the data extraction tool (whether Primary Sense or a third-party commercial tool) and the cost of PHN-operated storage (whether in PHI or elsewhere) are separate.

- 3.15 The costs for a PHN to store or analyse data within their PHI Lockbox are passed on from publicly available Azure costs<sup>3</sup>. For example, data storage costs between \$0.05 and \$0.16 per Gb per month (depending on where and how the data is stored), and analysis processing paid by PHNs costs on average \$8.00 per Tb of data processed. The total cost for a PHN to store and analyse Primary Sense data in their PHI Lockbox is estimated at between \$50 and \$100 per month. This is not an excessive cost.
- 3.16 Mr McLeod's statement that "as more data is extracted and processed within the PHI environment, it is likely that this will increase the computing costs" is correct, however the statement is also not specific or unique to Primary Sense. The purpose of PHI is for PHNs to store more data and process it more within PHI instead of in separate, individual systems. So the cost of using PHI – whether for Primary Sense or otherwise – is expected to increase over time, however this is also expected to be more than offset by savings in not using separate and independent data storage and analytics tools.
- 3.17 PHNs already store data and process it within in PHI, and any decision to store more data – from Primary Sense or elsewhere – and process it within PHI will cost more. This cost is marginal, however, as indicted by point 3.15, and would be made by a PHN on the basis of value received from holding additional data or undertaking more analysis.
- 3.18 Mr McLeod's statement that Outcome Health "question what cost benefit analysis has been undertaken to substantiate the claim" and "believe this action will increase expenditure" appears to indicate either that our previous Responses were not read, or a belief that Outcome Health without any access to any relevant data is in a better position to do a cost benefit analysis than a top-tier global consulting firm that did have access to all relevant data.
- 3.19 Mr McLeod's statements in the fifth paragraph of the third issue relating to "a purpose of the PHN Grant Program Guidelines is to avoid, wherever practicable, duplicating efforts of other private or public sector entities" demonstrate a lack of understanding of the role of PHNs, and were addressed several times in WAPHA's previous Responses.
- 3.20 Clause 1.2 of WAPHA's *Response to Submissions by Interested Parties* stated "Since the proposed conduct does not involve the delivery of 'medical or health services', PHNs are not required to only directly participate in providing a solution if there are no other providers capable of doing so."
- 3.21 Clause 5.5 of WAPHA's *Response to Submissions by Interested Parties* stated "Primary Sense 2 is not a 'medical or health service' and is therefore neither 'purchased' nor 'commissioned' within the meaning and context of section 1.6 of the Guidelines. All references to how PHNs must operate with respect to the 'commissioning of services' applies only to 'medical and health services' and do not apply to the proposed conduct."
- 3.22 Mr McLeod's statements in the sixth paragraph of the third issue relating to the formation of an Unincorporated Joint Venture (UJV) are uninformed.
- 3.23 A UJV is only a contractual structure via which different entities agree to work together, it is not a separate entity by itself (unlike a normal incorporated Joint Venture). All arrangements, contracts, and relationships between PHNs and the Department of Health (as the responsible agency within the federal Government) remain fully in force

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<sup>3</sup> <https://azure.microsoft.com/en-au/pricing/calculator/>

and apply in full to any actions undertaken by the PHNs either individually or collectively through the UJV.

- 3.24 For the sake of clarity, any actions undertaken by PHNs through the vehicle of the UJV do not "sit outside of the usual PHNs funding structure."
- 3.25 The Department of Health has been consulted and informed about the Primary Sense Project, and their Submission dated 27 September 2021 made their position clear.
- 3.26 The framework through which the Department of Health oversee PHNs are contained in the *PHN Grant Program Guidelines*<sup>4</sup>. Any use of funds by a PHN can be subject to audit or review by the Department and spending on Primary Sense is no different.
- 3.27 WAPHA is not able to comment on the internal processes used by the Department to make their decisions but believes the PHN Grant Programme is overseen in accordance with normal government standards and practices for grant programme administration.

#### 4. Duration of authorisation

**Points Raised:** The ACCC should not issue an Authorisation for five years. Public detriments will occur as a result of Primary Sense.

#### Response:

- 4.1 WAPHA disagrees with Mr McLeod's statement that "the ACCC's proposed duration is inappropriate". It is WAPHA's belief that the ACCC has undertaken the Authorisation process properly and in issuing their Draft Determination has taken all relevant matters into consideration. Outcome Health's view to the contrary is irrelevant.
- 4.2 Mr McLeod's statement that "The authorisation of the proposed conduct will, in effect, remove 70% of the market" is incorrect and misleading. PHNs use of Primary Sense does not remove them from the market, they are simply choosing to use a product other than one provided by Outcome Health, which is already the current situation for the Participating PHNs.
- 4.3 Mr McLeod's statement "if the funding [of PHNs] were to change" is irrelevant, as it relates to hypothetical future decisions for which Outcome Health have provided no basis – or even claim – as to their likelihood. It is true that "if the funding were to change then the operational paradigm will shift" however no argument has been presented that this is likely within the proposed Authorisation period. WAPHA considers it to be a highly unlikely decision that has not been proposed or discussed by the Department.

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<sup>4</sup> <https://www.health.gov.au/sites/default/files/documents/2021/04/primary-health-networks-phn-grant-program-guidelines-phn-grant-program-guidelines.pdf>