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Partner
John Kench
Telephone (02) 9258 6037

Contact
Ayman Guirguis
Telephone (02) 9258 6360

Our reference
JGK:AAG:

Mr Greg Outzen
Australian Competition and Consumer Commission
National Office
470 Northbourne Avenue
DICKSON ACT 2602

By Express Post

Dear Greg

FILE No:	C2000/23-25	31 January 2000
DOC:	DOO/2877 - wr DOO/2875 - PR	

Application Authorisation of Hospital Members of the Independent Private Hospital's Association

We refer to your recent telephone conversations with Ayman Guirguis.

As discussed, we enclose:

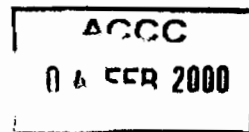
- (a) slightly amended Application for Authorisation (as requested by you, with the words "public register" appearing on the top of the document - the document is still dated 24 December 1999); and
- (b) a list of names and addresses of possible "likely interested persons" in relation to this application.

We look forward to the receipt of an outline of the likely timetable for the ACCC's consideration of the Interim Authorisation. We will also shortly forward a set to you a draft of the Inter-Hospital Agreement dealing with the issues raised in second part of the Application.

If you have any queries please contact Ayman Guirguis on (02) 9258 6360.

Yours sincerely


John Kench/Ayman Guirguis



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(Public Register)

FORM B

Regulation 7

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 88(1)

AGREEMENTS AFFECTING COMPETITION:

APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the Trade Practices Act 1974 for an authorisation under that sub-section

- To make a contract or arrangement, or arrive at understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- To give effect to a provision of a proposed Inter Hospital Agreement which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

1. (a) Name of applicant:

ALWYN REHABILITATION HOSPITAL; PENINSULA PRIVATE HOSPITAL;
CAPE HAWKE COMMUNITY PRIVATE HOSPITAL; WESTSIDE PRIVATE
HOSPITAL; HUNTER VALLEY PRIVATE HOSPITAL; WOLPER JEWISH
HOSPITAL; CALVARY HOSPITAL WAGGA WAGGA INC; HORNSBY DAY
SURGERY CENTRE; LONGUEVILLE PRIVATE HOSPITAL; TAREE MAYO
PRIVATE HOSPITAL; POPLARS COMMUNITY HOSPITAL; ST DAVID'S
PRIVATE HOSPITAL

(b) **Short description of business carried on by applicant:**

The provision of hospital and ancillary health care services.

(c) **Address in Australia for service of documents on the applicant**

Blake Dawson Waldron
Lawyers
Grosvenor Place
225 George Street
Sydney NSW 2000

Tel: (02) 9258 6000 Fax: (02) 9258 6999

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2. (a) **The proposed contracts, arrangement or understanding and, where already made, its date:**

The proposed contract, arrangement or understanding (hereafter referred to as the "proposed Inter Hospital Agreement") is one where the Applicants propose to agree to form a network for mutual co-operation which, subject to Authorisation, will involve several levels of co-operation:

(i) **Proposed conduct for which Interim Authorisation is sought**

- (a) the appointment of an agent to facilitate the sharing of fee/cost/price information and non-fee information.;
- (b) the collection of fee/cost/price sensitive information and non-fee information by the agent on behalf of the Applicants and the sharing of information by the Applicants through the agent;

The collection and sharing of information will be subject to the safeguards referred to in Annexure A to this document.

- (c) the agent to negotiate purchaser/provider contracts on behalf of each individual participant hospital with health funds or groups of health funds ("HPPAs") having in excess of 10% market share for the provision of private hospital services to health funds.

The manner in which the agent negotiates on behalf of the participate hospitals will be subject to the safeguards set out in Annexure A to this application.

(ii) **Proposed conduct for which Authorisation is sought**

- (a) the proposed collection and sharing of current fee/cost/price information and non-fee related information by the Applicants through the agent on a disaggregated or alternatively on an aggregated basis;
- (b) the proposed collection and sharing of one month old fee/cost/price information and non-fee related information by the Applicants on a disaggregated or alternatively an aggregated basis through the agent;
- (c) joint negotiations by the Applicants by way of the agent, with all health funds and the Department of Veterans' Affairs ("DVA"), on a non-exclusive basis; or
- (d) joint negotiations by the Applicants, by way of the agent, with health funds or groups of health funds having greater than 10% share of the market for the supply of private hospital services to health funds and the DVA, on a non-exclusive basis; and
- (e) joint negotiations and acquisition of goods and services, on a non-exclusive basis.

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The proposed Inter Hospital Agreement will include:

- a written Inter Hospital Agreement (annexed to this Application).
Note - the attached document only sets out the Agreement as per the issues that are the subject of the Interim Authorisation. A further document will be submitted following the ACCC's Determination about the Application for Interim Authorisation; and
- a common form agency contract, the terms of which will be settled with the prospective agent and revised from time to time to achieve the purposes set forth in the proposed Inter Hospital Agreement;

The proposed Inter Hospital Agreement has not been made.

(b) Names and addresses of other parties or proposed parties to contract, arrangement or understanding

ALWYN REHABILITATION HOSPITAL - 1 Emu Street, Strathfield, NSW, 2135

PENINSULA PRIVATE HOSPITAL - 12 McDonald Street, Harbord, NSW, 2096

CAPE HAWKE COMMUNITY PRIVATE HOSPITAL - 44 Breckenridge St, Forster, NSW, 2428

WESTSIDE PRIVATE HOSPITAL - 55-57 Burwood Road, Concord, NSW, 2137

HUNTER VALLEY PRIVATE HOSPITAL - 20 Mawson Street, Shortland, NSW, 2207

WOLPER JEWISH HOSPITAL - 8 Trelawney Street, Woollahra, NSW, 2025

CALVARY HOSPITAL WAGGA WAGGA INC - Hardy Avenue, Wagga Wagga, NSW, 2650

HORNSBY DAY SURGERY CENTRE - 1A Northcote Road, Hornsby, NSW, 2077

LONGUEVILLE PRIVATE HOSPITAL - 47 Kenneth Street, Longueville, NSW 2066

MAYO PRIVATE HOSPITAL - Lot 1 Potoroo Drive, Taree, NSW, 2430

POPLARS COMMUNITY HOSPITAL - 66 Norfolk Road, Epping, NSW, 2121

ST DAVID'S PRIVATE HOSPITAL - 5-7 Rowe Street, Eastwood, NSW, 2121

3. Names and addresses (where known) of parties and other persons on whose behalf application is made

ALWYN REHABILITATION HOSPITAL - 1 Emu Street, Strathfield, NSW, 2135

PENINSULA PRIVATE HOSPITAL - 12 McDonald Street, Harbord, NSW, 2096

(Public Register)

CAPE HAWKE COMMUNITY PRIVATE HOSPITAL - 44 Breckenridge St, , NSW, 2428

WESTSIDE PRIVATE HOSPITAL - 55-57 Burwood Road, Concord, NSW, 2137

HUNTER VALLEY PRIVATE HOSPITAL - 20 Mawson Street, Shortland, NSW, 2207

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MAYO PRIVATE HOSPITAL - Lot 1 Potoroo Drive, Taree, NSW, 2430

POPLARS COMMUNITY HOSPITAL - 66 Norfolk Road, Epping, NSW, 2121

ST DAVID'S PRIVATE HOSPITAL - 5-7 Rowe Street, Eastwood, NSW, 2121

4. (a) **Grounds for grant of Authorisation**

In all the circumstances the provisions of the proposed Inter Hospital Agreement, and the conduct required to give effect thereto would result, or be likely to result, in a benefit to the public and that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or likely to result, if the proposed Inter Hospital Agreement was made, or the proposed understanding were arrived at, and the provision concerned were given effect to as the case may be.

(b) **Facts and contentions relied upon in support of those grounds**

Annexure A to this Application.

5. **This Application for Authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above-mentioned contract, arrangement or understanding.**

(a) **Is this Application to be so expressed?**

YES

(b) **If so, the following information is to be furnished:**

(i) **the names of parties to each other contract, arrangement or understanding**

ALWYN REHABILITATION HOSPITAL - 1 Emu Street, Strathfield, NSW, 2135

(Public Register)

PENINSULA PRIVATE HOSPITAL - 12 McDonald Street, Harbord, NSW, 2096

CAPE HAWKE COMMUNITY PRIVATE HOSPITAL - 44 Breckenridge St, Forster, NSW, 2428

WESTSIDE PRIVATE HOSPITAL - 55-57 Burwood Road, Concord, NSW, 2137

HUNTER VALLEY PRIVATE HOSPITAL - 20 Mawson Street, Shortland, NSW, 2207

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POPLARS COMMUNITY HOSPITAL - 66 Norfolk Road, Epping, NSW, 2121

ST DAVID'S PRIVATE HOSPITAL - 5-7 Rowe Street, Eastwood, NSW, 2121

and parties not known at present.

- (ii) **The names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this Application**

The names other than as set out in section 5(b)(i) are not known as at the date of this application.

6. (a) **Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?**

NO

- (b) **If so, are any other Applications being made simultaneously with this Application in relation to that joint venture?**

N/A

- (c) **If so, by whom or on whose behalf are those other Applications being made?**

N/A

(Public Register)

7. **Name and address of person authorised by the applicant to provide additional information in relation to this Application**

John Kench
Blake Dawson Waldron
Lawyers
Grosvenor Place
225 George Street
Sydney NSW 2000

Tel: (02) 9258 6000
Direct Dial: (02) 9258 6037
Fax: (02) 9258 6999

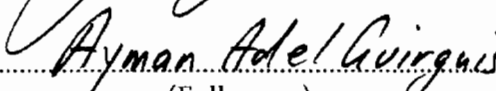
Ayman Guirguis
Blake Dawson Waldron
Lawyers
Grosvenor Place
225 George Street
Sydney NSW 2000

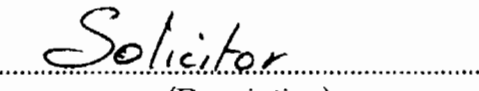
Tel: (02) 9258 6000
Direct Dial (02) 9258 6360
Fax: (02) 9258 6999

Dated ~~24~~ December, 1999

Signed by / on behalf of the Applicant


.....
(Signature)


.....
(Full name)


.....
(Description)

(Public Register)

[Back of Form]

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorized by the corporation to do so.
3. In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorization is sought. Those particulars shall be furnished:
 - (a) In so far as the particulars or any of them have been reduced to writing – by lodging a true copy of the writing; and
 - (b) In so far as the particulars or any of them have not been reduced to writing – by lodging a memorandum containing a full and correct statement of the particulars that have been reduced to writing.
5. Where the application is made also in respect of other contracts, arrangements or understandings which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contracts, arrangement or understandings referred to in item 2.

NOTICES

6. In relation to item 4, your attention is drawn to subsections 90(6) and (7) of the *Trade Practices Act 1974* which provide as follows:
 - "(6) *The Commission shall not make a determination granting an authorization under subsection 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an inclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct, unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:*

(Public Register)

- (a) *the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;*
 - (b) *the proposed covenant were given, and were complied with; or*
 - (c) *the proposed conduct were engaged in,*
- as the case may be.*

(7) *The Commission shall not make a determination granting an authorization under subsection 88(1) or (5) in respect of a provision (not being a provision that is or may be an inclusionary provision) of a contract, arrangement or understanding or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant."*

7. If an authorization is granted in respect of a proposed contract, arrangement or understanding the names of the parties to which are not known at the date of this application, the authorization shall, by subsection 88(14) of the *Trade Practices Act* 1974, be deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so required by the Commission, furnish to the Commission the names of all parties to the contract, arrangement or understanding.

(Public Register)

ANNEXURE A

4.(b) Facts and contentions relied upon in support of the ground for Authorisation.

1. Background

Patients have the option of attending public or private hospitals when seeking the provision of hospitals services. Where a patient chooses to enter a public hospital as a public patient the patient has free access to the services provided by the hospital. Where the patient chooses to enter either a public or private hospital as a private patient (either privately insured in a health fund or using their own resources) he/she is charged for medical treatment and accommodation.

The rate of Medicare benefits and medical treatment for private patients at public or private hospitals is 75% of the Medicare Benefit Scheduled fee for medical services rendered while hospital treatment is provided to a patient who has been admitted to the hospital. Health funds are able to cover the gap between the Medicare rebate and the scheduled fees. In addition, where the hospital or the health fund, has negotiated a Medical Purchaser-Provider Agreement ("MPPA") with the doctor, the health fund is able to cover some if not all of the gap between the Scheduled fee and the actual fee of the doctor.

Private patients are increasingly being treated in private hospitals rather than as private patients in public hospitals (about 40% of private patients were treated in public hospitals in 1989/90, dropping to 31% in 1994/95).

About 33.5% of the population in Australia is covered by private health insurance. The young and healthy have been the largest proportion terminating health insurance contracts or not entering into health insurance contracts, leaving the funds with an older and sicker contributor base, which has, in part, caused health insurance premiums to rise. The increases in premiums also result from the Commonwealth's commitment to community rather than to risk rating on insurance. That is, instead of allowing premiums to reflect the actual risk associated with various ages, lifestyles and other actuarial indicators of likely hospital use, which would inevitably result in older people paying higher premiums than younger people, the Commonwealth requires that health insurance premiums costs be equalised by all members. Premiums vary only as a function of the level of coverage provided.

In order to address these problems, in 1995 the Commonwealth introduced amendments to the Health Insurance Act 1973 and the National Health Act 1953 to provide increased competition between health funds and to give them greater power to negotiate with private hospitals and medical practitioners on behalf of their members. For the first time, the health funds were able to offer 100% coverage to members who agreed to use hospitals and medical practitioners under contract to the fund.

Private hospitals enter into a variety of contracts with health funds containing provision relating to:

- methods of billing;
- methods of payment;
- provision of information;

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- establishment of communications;
- arrangements upon termination;
- services to be funded;
- renegotiation; and
- dispute resolution.

Each private hospital that is not economically integrated into a network of hospitals is required to negotiate the HPPAs on a "one on one" basis with each health fund. The process is repeated depending on the number of contracts the private hospital proposes to conclude.

The HPPAs may require each hospital to establish a multiplicity of systems for contract administrations and review. This process is particularly costly and time consuming for the stand alone private hospitals in comparison with hospitals that operate within economically integrated structures that are able to coordinate negotiation strategies and processes.

Health funds, by virtue of the fact that they negotiate with a large number of stand alone and integrated private hospitals are able to centralise and consolidate the negotiation process. The health funds are in a position of knowledge about health costs across the range of hospitals by virtue of their negotiations with a large number of hospitals and gain an expertise in the process. The Applicants understand that the larger health funds and groups of alliances have, since the 1995 amendments, had full time contract negotiators for HPPAs and MPPAs.

In addition, the larger health funds with which hospitals, in effect, must have a HPPA to ensure their viability have significant bargaining power in their negotiation with private hospitals.

The above conditions create a very unequal position particularly for stand alone private hospitals. The ACCC in its Determination of Authorisation No. A50019 referred to this inequality of power in stating that "the importance of the individual private hospital to the health fund is likely to be far less than the importance of the major health fund to the hospitalfor the small hospital, the possibility of losing 35-40% of business could be catastrophic and so it will seek to obtain a contract." (pp43-44 of 78 ACCC Determination of Authorisation No50019). Similarly the Productivity Commission, in its report into Private Hospitals in Australia (December 1999) stated that " ... small hospitals have less scope to dedicate resources to the negotiating process." (page 83).

In addition, the cost of providing the hospital and ancillary health care services in the private sector has continued to rise in the intervening period. This has meant that it has become increasingly difficult to maintain and improve the quality and scope of hospital and ancillary health care services.

Private hospitals attempt to deal with those difficulties by way of:

- (a) cost reduction strategies;
- (b) the development of greater efficiencies in a delivery of services; and

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- (c) improved contracting processes that will produce more efficient outcomes.

It is in attempting to realise the above efficiencies and attempting to equalise their bargaining power with health funds that the Applicants seek to make this Application.

The Applicants also seek to rely in part, on The Statements of Antitrust Enforcement Policy in Health Care issued by the US Department of Justice ("DOJ") and the Federal Trade Commission ("FTC") in August 1996. These United States competition agencies have undertaken considerable research into the competitive effect of horizontal arrangements in the American health industry. In their introduction to the statements, they state that:

"healthcare markets have continued to evolve in response to consumer demand and competition in the market place. New arrangements and variations on existing arrangements involving joint activity by health care providers continue to emerge to meet consumers, purchaser and payers' desire for more efficient delivery of high quality health care services....." (page 3 of 63 internet version of these statements).

The regulators state that their goal in making these Statements is to:

"ensure a competitive market place in which consumers will have the benefit of high quality, cost effective health care and a wide range of choices, including new provider/ controlled networks that expand consumer choice and increase competition" (page 3 of 63 internet version of these statements).

The Applicants also refer to Authorisation No. A50019 and the ACCC's Determination of that Application on 1 September 1999 as background to this Application. The Applicants have relied upon the ACCC's Determination in seeking Interim Authorisation for the proposed Inter Hospital Agreement referred to in paragraph 2(a) above.

The Applicants have also noted the ACCC's Draft Determination of Authorisation No. A90679 dated 3 December 1999.

The Applicants also refer to the changing conditions in the market for the supply of private hospital services to health funds in Queensland on or about the time that the ACCC's Determination of Authorisation No. A50019 was published and continues to take place, namely the selective tender processes beginning to be used by health funds as part of the 'next round' of proposed HPPAs with private hospitals. The Applicants will elaborate further on this issue further below.

The Applicants submit that the changing market conditions necessitate the expeditious Determination of this Application.

2. Parties and their areas of practice

Each of the Applicants is a private hospital located in NSW and provides a range of hospital and ancillary health care services. The following details are provided with respect to each applicant.

(Public Register)

(a) Alwyn Rehabilitation Hospital

Alwyn Rehabilitation Hospital is owned and managed by Alwyn Holdings Pty Limited ACN 000 479 434.

It is a specialist rehabilitation hospital located at Strathfield in the Inner Western Suburbs of Sydney.

The hospital has 26 beds and specialises in rehabilitation. The majority of admissions are for post-operative orthopaedic cases as well as neurological admissions.

The primary catchment area for the hospital is the Inner Western Suburbs of Sydney. However, the hospital draws patients from the St George region and the Eastern Suburbs of Sydney.

During the financial year 1998/99, the total admissions to the hospital were 380 of which 99% were rehabilitation admissions and 1% was medical admissions.

(b) Peninsula Private Hospital

The Peninsula Private Hospital is located at Harbord in Sydney and is independently owned by a company limited by shares consisting of 9 local private members. The hospital consists of 47 acute medical/surgical beds and is supported by a 3 bed High Dependency Unit. It provides the following range of services:

- Day Surgery;
- Ear Nose & Throat;
- Endoscopy;
- General Medicine;
- General Surgery;
- Gynaecology;
- Ophthalmology;
- Dental surgery;
- Paediatrics;
- Palliative Care;
- Plastic Surgery;
- Respiratory Medicine;
- Urology; and

(Public Register)

- Vascular Surgery

During the financial year 1998/99, the total admissions to the hospital were 4208 of which 91% were surgical admissions and 9% were medical admissions.

The primary catchment area is the upper North Shore bounded by the Roseville Bridge to the west, the Spit Bridge to the south and Pittwater to the north.

(c) Westside Private Hospital

Westside Private Hospital is located at Concord and is owned by Bumot Pty Limited (ACN 001 426 777) trustee for the Westside Private Hospital Trust.

Westside Hospital is a 43 bed surgical and medical hospital supporting the following ranges of services:

- Day Surgery;
- Ear Nose & Throat;
- Endoscopy;
- Gastro-enterology;
- General Medicine;
- General Surgery;
- Gynaecology;
- Orthopaedic Surgery;
- Plastic Surgery;
- Radiology;
- Respiratory Medicine; and
- Urology.

During the financial year 1998/99, the total admissions to the hospital were 2918 of which 87.56% were surgical admissions and 12.44% were medical admissions.

(d) Wolper Jewish Hospital

Wolper Jewish Hospital (ACN 000 071 741) is a company limited by guarantee. It is a non-profit organisation having exemption under the Charitable Collections Act. It is located at Woollahra.

Wolper Hospital's aim is to cater to the health care needs of the community by providing quality hospital service, community health programmes, community assistance and providing other services to meet the needs of the community

(Public Register)

within a framework of Jewish Religious requirements and traditions. Wolper Hospital is also open to people from all religions and culture backgrounds.

Wolper Hospital has 66 beds providing surgical and medical services as follows:

- Day Surgery;
- Ear Nose & Throat;
- General Medicine;
- General Surgery;
- Gynaecology;
- Opthamology;
- Oral and Maxillofacial Surgery;
- Orthopaedic Surgery;
- Palliative Care;
- Plastic Surgery;
- Rehabilitation; and
- Urology.

During the financial year 1998/99, the total admissions to the hospital were 2874 of which 63.8% were surgical admissions and 36.3% were medical admissions including rehabilitation..

The primary catchment area for the hospital is the Eastern Suburbs of Sydney. However, as Wolper Hospital is the only hospital in Australia that caters for orthodox Jewish requirements its patients come from diverse areas. 45% of patients come from the Eastern Suburbs, 7% from Sydney CBD and Inner Western suburbs, 9% from the North Shore, 6% from Sydney South East, 5% from the Sutherland Shire, 6% from other Sydney areas, 9% of patients from NSW are from outside the Sydney metropolitan area, and there are 2% of patients from outside of NSW.

(e) Hornsby Day Surgery Centre

Hornsby Day Surgery Centre is owned by Banir Pty Limited (ACN 001 505 602) and is located in Hornsby, Sydney.

Hornsby Day Surgery Centre conducts day surgery requiring 1 night post operation recovery care. It has four overnight beds and 17 day beds and provides the following range of services:

- Day Surgery;

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- Ear Nose & Throat;
- Endoscopy;
- Gastro-enterology;
- General Surgery;
- Gynaecology;
- Ophthalmology;
- Oral and Maxillofacial Surgery;
- Orthopaedic Surgery;
- Paediatrics;
- Plastic Surgery;
- Urology; and
- Vascular Surgery.

During the financial year 1998/99, total admissions to the hospital were 2019.

The primary catchment area is the upper North Shore of Sydney to the Central Coast to the north, south to Chatswood and west to Parramatta.

(f) Longueville Private Hospital

Longueville Hospital is owned by Angaria Pty Limited and is located at Longueville in Sydney.

Longueville Hospital is a 32 bed medical/surgical hospital providing the following services:

- Day Surgery;
- Oral and Maxillofacial Surgery;
- Orthopaedic Surgery;
- Palliative Care;
- Plastic Surgery; and
- Microsurgery.

During the financial year 1998/99, the total admissions to the hospital were 1180 of which 61% were surgical admissions and 34% were medical admissions and 5% were palliative care and nursing home admissions.

(Public Register)

The primary catchment area for the hospital is the lower North Shore and upper North Shore of Sydney.

(g) Poplars Private Hospital

Poplars Private Hospital is owned by Doran Health Care Pty Limited (ACN 068 228 482) and is located at Epping in Sydney.

Poplars has 43 beds licensed to provide or support the following range of services:

- Day Surgery;
- Endoscopy;
- General Medicine;
- General Surgery;
- Gynaecology;
- Ophthalmology;
- Oral and Maxillofacial Surgery;
- Orthopaedic Surgery;
- Paediatrics;
- Palliative Care;
- Plastic Surgery;
- Radiology;
- Urology;
- Vascular Surgery; and
- Rapid Opioid Detoxification

During the financial year 1998/99, the total admissions to the hospital were 2931 of which 92.7% were surgical admissions and 7.30% were medical admissions.

The primary catchment area for the hospital is the lower Hornsby and Ryde city areas. However its patients extend to Newcastle in the north and Liverpool in the south west and Katoomba in the west.

(h) Cape Hawke Community Private Hospital

Cape Hawke Community Private Hospital is operated by Community Private Health Care Pty Limited (ACN 003 199 951) under a long term, commercial leasehold from the Cape Hawke Community Hospital and Health Association, a

(Public Register)

registered not for profit organisation. The Hospital is located at Forster in the Great Lakes Shire on the mid north of New South Wales.

Cape Hawke has 42 licensed inpatient's beds and 8 day surgery beds with a further 21 inpatient beds approved in principle (currently under construction). The Hospital provides the following range of services:

- Day Surgery;
- Ear Nose & Throat;
- Emergency Department (restricted license - minor accidents only)
- Gastro-enterology;
- General Medicine;
- General Surgery;
- Gynaecology;
- High Dependency Unit (6 bed Level II Critical Care Unit under construction);
- Obstetrics (restricted license - elective caesarean sections and post natal care);
- Opthamology;
- Oral and Maxillofacial Surgery;
- Orthopaedic Surgery;
- Paediatric Medicine;
- Palliative Care;
- Pathology Laboratory (operated on-site by an external provider);
- Plastic Surgery;
- Radiology Department (operated on-site by an external provider);
- Respiratory Medicine;
- Urology; and
- Vascular Surgery.

During the financial year 1998/99, the total admissions to the hospital were 3058, of which 68.5% were surgical admissions and 31.5% were medical admissions (including post natal).

(Public Register)

The primary patient catchment area for the hospital is the Great Lakes Shire comprising Forster, Tuncurry, Bulahdelah, Hawks Nest, Nahiab, Pacific Palms, Smith's Lake, Stroud and Tea Gardens..

(i) Mayo Private Hospital

Mayo Private Hospital is located in Taree in the Manning Darling District in New South Wales.

Mayo Private Hospital has 39 beds providing medical and surgical services as follows:

- Day Surgery;
- Ear Nose & Throat;
- Endoscopy;
- General Medicine;
- General Surgery;
- Gynaecology;
- Obstetrics (post natal);
- Ophthalmology;
- Orthopaedic Surgery;
- Paediatrics;
- Palliative Care; and
- Urology.

During the financial year 1998/99, the total admissions to the hospital were 3339 of which 46% were surgical admissions and 54% were medical admissions.

The primary catchment area for the hospital is the from the Manning Darling District including Old Bar, Taree, Wingham, Harrington, Upper Lansdowne and Moorland.

(j) Calvary Hospital Wagga Wagga Inc

Calvary Hospital Wagga Wagga Inc is a private not for profit hospital owned by the Sisters of the Little Company of Mary and is located at Wagga Wagga.

Calvary Hospital has 90 surgical and general medicine beds providing the following services:

- Day Surgery;

(Public Register)

- Ear Nose & Throat;
- Endoscopy;
- Gastro-enterology;
- General Medicine;
- General Surgery;
- Gynaecology;
- Intensive Care;
- Neurology;
- Obstetrics;
- Opthamology;
- Oral and Maxillofacial Surgery;
- Orthopaedic Surgery;
- Paediatrics;
- Palliative Care;
- Plastic Surgery;
- Respiratory Medicine;
- Sleep Studies
- Urology; and
- Vascular Surgery.

During the financial year 1998/99, the total admissions to the hospital were 5742 of which 71.8% were surgical admissions and 28.2% were medical admissions.

The primary catchment area for the hospital is south western New South Wales bounded by Tumbarumba, Coleambally, Hay, Ivanhoe, Lake Cargelligo, West Wyalong, Young, Cootamundra, Tumut and Henty.

(k) Hunter Valley Private Hospital

Hunter Valley Private Hospital is a company limited by shares and owned by 14 local private members and is located in Newcastle.

It is a 40 bed hospital providing general medicine and surgery services as follows:

- Day Surgery;

(Public Register)

- Ear Nose & Throat;
- Endoscopy;
- Gastro-enterology;
- General Medicine;
- General Surgery;
- Gynaecology;
- Opthamology;
- Oral and Maxillofacial Surgery;
- Orthopaedic Surgery;
- Plastic Surgery;
- Rehabilitation; and
- Muscular-Skeletal Medicine.

During the financial year 1998/99, the total admissions to the hospital were 3565 of which 55% were surgical admissions, 15% were medical admissions and 30% were rehabilitation. The hospital's primary catchment area is Newcastle, Maitland and the Port Stephens area.

(I) St David's Private Hospital

St David's Private Hospital is located at Eastwood in Sydney. It is owned by St David's Hospitals Pty Ltd (ACN 000 651 945).

Its objectives are to provide excellent healthcare, to provide customers with the best available facilities and to continuously improve quality of service using the continuous quality improvement processes.

St David's has 41 surgical and medical beds and provides the following range of services:

- Day Surgery;
- Ear, Nose and Throat;
- Endoscopy;
- Gastro-enterology;
- General Medicine;
- General Surgery;

(Public Register)

- Ophthalmology;
- Oral & Maxillofacial Surgery;
- Orthopaedic Surgery;
- Paediatrics;
- Plastic Surgery;
- Radiology (on request of surgeon);
- Urology; and
- Vascular Surgery.

Its primary catchment area is the North Shore (postcodes 2068-2082) and North West Sydney (postcodes 2110-2125 and 2153-2159). It receives a small number of patients from the Central Coast and Mid North Coast to the north and from Wollongong and the Southern Highlands to the south.

3. Markets and market shares

The Applicants partly rely upon the ACCC's Determinations of the Authorisations No. A50019 and A90679 and the Productivity Commission Reports into Private Hospitals in Australia (1999) and into Health Insurance (1997).

Product Market

The Applicants submit that the product markets relevant to this Application are as follows:

- (a) The provision of private hospital services to health insurers ("**HPPAs**")

Private hospitals enter into contracts with health funds under which private hospitals provide guaranteed prices for services offered to members of the health funds. Under these agreements, patients who are members of the health funds can attend the private hospitals without the need to make 'gap' payments for the hospital services if the patient has 100% hospital cover with the health fund (refer to the Background section above to explain 'gap payments').

The Applicants concur with the ACCC's Determination in Authorisation No. A50019 that public hospitals are not a part of this market as they are usually limited to default benefit table payments (rather than the HPPAs). Further, access to public hospitals by private patients cannot be guaranteed.

Accordingly, on the supply side, public hospitals have only limited substitution. Similarly, on the demand side, access by patients to private and public hospitals as private patients covered by health insurers is not substitutable as access to public hospitals is on the basis of clinical need rather than insurance status.

- (b) The provision of hospital services to patients.

(Public Register)

Hospitals offer a variety of services to patients, namely surgical and medical services, accommodation, nursing and ancillary services.

The Applicants concur with the ACCC's Determination of Authorisation No. A50019 that a patient may consume hospital services in three main ways:

- (i) As a public patient under Medicare;
- (ii) As a self insured person opting to use either public or private hospitals depending on clinical need and availability at the time;
- (iii) As a patient insured through a health fund.

The Applicants concur with the ACCC's Determination of Authorisation No. A50019 that on both the supply and the demand side, public and private hospitals are substitutable in this market. On the supply side, basic facilities and services offered by public and private hospitals are similar and are directed at achieving the same outcomes. On the demand side, patients indicate that private and public hospitals are substitutable by the fact that:

- (i) in recent years an increasing number of patients have chosen to attend public hospitals as public patients rather than maintain their membership with private health insurance and going to a private hospital;
- (ii) some privately insured patients choose to use public hospitals services as private patients; and
- (iii) NSW Health promotes the use of its hospitals by private patients and sets revenue targets for each Area Health Service which is then devolved to the individual hospitals.

Geographic boundaries of the market

- (a) The provision of private hospital services to health insurers

The market to the provision of private hospital services to health insurers is likely to be a wide geographic market as the major health insurers operate at least on a state if not national basis. The manner in which MBF is proceeding with its current tender process (referred to in more detail below) suggests that there may be particularities in each state that require changes to the tender process on a state by state basis to take account of these differences. It also indicative that health funds may have to contract with hospitals at least on a city by city / town by town basis to ensure coverage for its members. In its 1997 Report into Health Insurance the Productivity Commission stated that "the most workable concept of the market is on a State basis" (page 144).

For the purposes of this Application, the Applicants submit that the relevant geographic boundary is the whole of NSW.

- (b) The provision of hospital services to patients

The ACCC in its Determination of Authorisation No. A50019 came to the view that the market for the provision of hospital services to patients is, particularly

(Public Register)

from the demand side, likely to be localised as patients prefer to enter a hospital close to their home and their support networks and in the event that follow-up care is needed. The ACCC's view in Authorisation No. A90679 is that the relevant geographic market was "at most the Sydney metropolitan area".

It is only where highly specialised services are required that patients are likely to travel longer distances to hospitals that provide the specialised medical care.

On the supply side, hospitals are prepared to admit patients from as large a catchment area as is possible. However, in general it is the demand side that determines the geographic boundaries in this particular market.

The Productivity Commission concurred with the ACCC's views about market in its 1999 Report into Private Hospitals in Australia.

Relevant markets

Accordingly, the relevant markets are:

- (a) the market for the provision of hospital services to health funds in the State of NSW;
- (b) the market for the supply of hospital services to patients in Sydney;
- (c) the market for the supply of hospital services to patients in Newcastle, Maitland and Port Stephens region;
- (d) the market for the supply of hospital services to patients in the Manning Valley District;
- (e) the market for the supply of hospital services to patients in the Great Lakes Shire; and
- (f) the market for the supply of hospital services to patients in the Wagga and South Western NSW region.

In addition, as the Applicants are seeking to jointly negotiate with health funds and jointly purchase goods and services from suppliers of a variety of goods and services (such as medical consumables, linen service, catering, gardening and possibly diagnostic services) there may be a number of other markets that are relevant to this conduct. Rather than seek to identify each possible market the Applicants will refer below to the general nature of the purchasing of goods and services by hospitals.

(Public Register)

Other Acute Private Hospitals (Beds) in Metropolitan Sydney

Name (Group)	Suburb	Licensed Beds
Bankstown Private Hospital	Bankstown	66
Castlecrag Private (HCOA)	Castlecrag	46
Charles Wentworth Private	Wentworthville	68
Dalcross Private	Killara	59
Delmar Private	Dee Why	50
Eastern Suburbs Private Hospital	Randwick	44
Hawkesbury Private	Windsor	127
Hills Private (HCOA)	Baulkham Hills	172
Hirondelle Private	Chatswood	42
Holroyd Private Hospital	Guildford	40
Hunters Hill Private (Alpha)	Hunters Hill	66
Hurstville Community Private	Hurstville	72
Jamieson Private Hospital (HCOA)	Penrith	76
Kareena Private (HCOA)	Caringbah	99
Lady Davidson	Turrumurra	112
Macarthur Private Hospital (HCOA)	Campbelltown	52
Mandalay Private Hospital	Manly	32
Manly Waters Private (Macquarie)	Manly	52
Mater Misericordiae	North Sydney	185
Minchinbury Community Hospital (Macquarie)	Mt Druitt	44
Mosman Private (HCOA)	Mosman	62
Mt Wilga Private (Alpha)	Hornsby	77
North Shore Private (Ramsay)	St Leonards	164
NSW Private Hospital	Ashfield	116

(Public Register)

Petersham Private Hospital (Sun)	Petersham	44
President Private Hospital (Macquarie)	Kirrawee	50
Prince of Wales Private Hospital	Randwick	168
Roma Private Hospital	Randwick	34
South West Sydney Private (Sun)	Liverpool	81
St George Private (HCOA)	Kogarah	202
St Lukes Hospital	Potts Point	99
St John of God	Richmond	98
St Vincents Private Hospital	Darlinghurst	30
Strathfield Private Hospital (HCOA)	Strathfield	99
Sydney Adventist Hospital	Wahroonga	329
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Total for Metropolitan Sydney		3,357
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Total for Private Acute		3,665

Source: Private Hospitals & Day Procedures Centres Currently Licensed by the Private Health Care Branch, 15/8/98, NSW Health
