

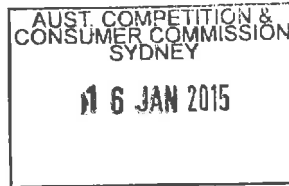
Our ref: PJA/EIS/ 02 3002 9797
Partner: Peter Armitage
Direct line: +61 2 9258 6119
Email: Peter.Armitage@ashurst.com
Contact: Elizabeth Sarofim, Senior Associate
Direct line: +61 2 9258 5924
Email: elizabeth.sarofim@ashurst.com

Ashurst Australia
Level 36, Grosvenor Place
225 George Street
Sydney NSW 2000
Australia

GPO Box 9938
Sydney NSW 2001
Australia

Tel +61 2 9258 6000
Fax +61 2 9258 6999
DX 388 Sydney
www.ashurst.com

15 January 2015



BY EMAIL and HAND

Richard Chadwick
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
Level 20
175 Pitt Street
Sydney NSW 2000



Dear Mr Chadwick

Form G – Notifications of exclusive dealing by Sydney Local Health District and Chris O'Brien Lifehouse

We **enclose** on behalf of:

- (a) Sydney Local Health District ABN 17 520 269 052; and
- (b) Lifehouse Australia trading as Chris O'Brien Lifehouse ABN 57 100 492 644,

Form G – Notifications of exclusive dealing, together with submissions in support of each application.

We also **enclose** two cheques for \$100 as payment of the applicable lodgement fees.

If you have any questions in relation to this notification, please contact Peter Armitage on +61 2 9258 6119 or Elizabeth Sarofim on +61 2 9258 5924.

Yours faithfully



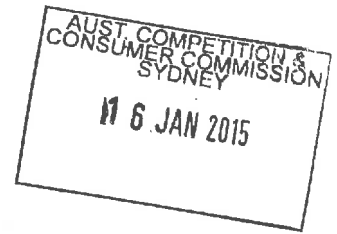
Peter Armitage
Partner

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AUSTRALIA BELGIUM CHINA FRANCE GERMANY HONG KONG SAR INDONESIA (ASSOCIATED OFFICE) ITALY JAPAN PAPUA NEW GUINEA
SAUDI ARABIA SINGAPORE SPAIN SWEDEN UNITED ARAB EMIRATES UNITED KINGDOM UNITED STATES OF AMERICA

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Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N98092 Sydney Local Health District (**SLHD**).

- (b) Short description of business carried on by that person:
(Refer to direction 3)

The Applicant is a local health district incorporated under section 17 of the *Health Services Act 1997* (NSW).

The Applicant is responsible for providing comprehensive, integrated health care to more than 580,000 people within the catchment of SLHD comprising the Local Government Areas of City of Sydney, Leichardt, Marrickville, Canterbury, Canada Bay, Ashfield, Burwood and Strathfield, and covering 126 square kilometres. It delivers quaternary, tertiary, acute, primary care and health improvement services, many of which are recognised internationally and nationally. The SLHD's hospitals have a long history of providing tertiary and quaternary healthcare services to patients from other parts of NSW, including the provision of telemedicine and outreach clinics to rural areas. The Applicant is one of the major research and teaching centres in the country in partnership with the University of Sydney and its Medical Research Institutes including being one of the largest centres for clinical trials.

The health services provided by the Applicant include Cancer Services, Cardiovascular, Critical Care, Gastro and Liver, Medical Imaging, Neurosciences, Bone and Joint, Plastics and Trauma Surgery and Women's Health, Neonatology, Paediatrics, Aboriginal Health, Allied, Drug, Oral, Community, Population and Mental Health, Aged Care. The Applicant provides these services through a number of hospitals and affiliated centres, including Royal Prince Alfred Hospital (**RPAH**), Concord Repatriation General Hospital, as well as Sydney Dental, Balmain and Canterbury Hospitals. In addition, the applicant provides State and National health

services such as Burns and Liver Transplantation through RPAH, Concord Repatriation General Hospital.

Relevantly, the Applicant proposes to transition some of the cancer services currently provided at RPAH to Lifehouse Australia (ABN 57 100 492 644, trading as Chris O'Brien Lifehouse) (**Lifehouse**), which is a public-private collaboration co-located at RPAH on land owned by SLHD, under a service delivery agreement. In its role as a major quaternary and tertiary hospital, RPAH will continue to provide complex cancer and related services for local and regional patients.

Please refer to the submission in support of this notification at Annexure A for further information.

- (c) Address in Australia for service of documents on that person:

Peter Armitage
Ashurst Australia
Level 41, 225 George Street
Sydney NSW 2000

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

This notification relates to the conferral of the benefit of appointment for anaesthetists.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to the submission in support of this notification at Annexure A.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

The proposed conduct relates to anaesthetists who wish to acquire the benefit of an appointment as a staff specialist or visiting medical officer at the RPAH or at Lifehouse.

- (b) Number of those persons:

- (i) At present time:

There are currently 100 anaesthetists appointed at RPAH.

- (ii) Estimated within the next year:
(Refer to direction 6)

It is not possible to estimate this number.

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable.

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the submission in support of this notification at Annexure A

- (b) Facts and evidence relied upon in support of these claims:

Please refer to the submission in support of this notification at Annexure A

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 8)

Please refer to the submission in support of this notification at Annexure A.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:
(Refer to direction 9)

Please refer to the submission in support of this notification at Annexure A.

- (b) Facts and evidence relevant to these detriments:

Please refer to the submission in support of this notification at Annexure A.

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Name: Peter Armitage, Partner

Postal Address: C/O Ashurst Australia

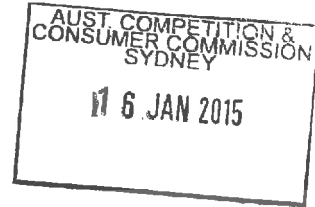
Grosvenor Place

L35, 225 George Street

Sydney NSW 2000

Telephone: +61 2 9258 6119

+61 418 973 700



Dated..... 16.1.15

Signed by/on behalf of the applicant

.....
(Signature)

Peter James Armitage.....
(Full Name)

Ashurst Australia.....
(Organisation)

Partner.....
(Position in Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

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. If the notice is given 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 notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

ANNEXURE A

NOTIFICATION OF EXCLUSIVE DEALING: SUBMISSION TO THE ACCC

This submission is made by Sydney Local Health District in support of its Notification of Exclusive Dealing dated 16 January 2015.

1. APPLICANT

The applicant is Sydney Local Health District (ABN 17 520 269 052) (**SLHD**) (the "**Applicant**").

2. BACKGROUND

2.1 The provision of cancer services by the Applicant

SLHD is a public provider of health services including, relevantly, inpatient and outpatient cancer and support services. SLHD provides these services through an integrated network of Cancer Centres in a number of hospitals, including, relevantly, Royal Prince Alfred Hospital (**RPAH**), through various oncology wards and the Sydney Cancer Centre. Cancer services at SLHD are provided in a multidisciplinary framework with tumour specific programs. For example, the Sydney Cancer Centre has historically been one of the most comprehensive ambulatory care centre of its type in Australia, combining diagnostic, consultative and follow-up cancer services.

The number of beds and operating theatres used in cancer related medical services at RPAH and other hospitals in SLHD is spread between Emergency Department, Intensive Care and various wards on a needs basis.

2.2 Proposed integration of cancer services at Lifehouse Australia

Lifehouse Australia ABN 57 100 492 644, trading as Chris O'Brien Lifehouse (and previously known as "Lifehouse at RPAH", "Sydney Cancer Centre Foundation", "Sydney Cancer Foundation", "Sydney Cancer Centre Foundation" and "Lifehouse at RPAH Trust") (**Lifehouse**) is an independent, not-for-profit public benevolent organisation and registered charity focused on the delivery of cancer care and research and the provision of integrated comprehensive all-purpose cancer and support services, clinical trials and complementary therapy in one location. Revenue and profit from the operations of Lifehouse are required to be retained for the benefit of cancer treatment, research, education, training and complimentary activities.

Funding for Lifehouse has been provided by a mix of Commonwealth and State government grants and private philanthropy. In particular, Lifehouse is a private-public partnership with SLHD's RPAH. The original business case proposed that Lifehouse would unlock private patient fees currently not collected at RPAH, thereby generating a surplus adequate for reinvestment in cancer care, and the other components of the funding were proposed through the relocation of services currently provided at RPAH where public funding will be provided in accordance with the ordinary activity based funding levels.

The Lifehouse facility was completed in June 2013 and is co-located at RPAH on land owned by SLHD.

Developments in cancer research and treatment suggest that the provision of cancer services is enhanced by more integrated, comprehensive and combined care.

A component of Lifehouse's private-not-for-profit service is funded through entering into a purchaser provider arrangement with the Applicant for the provision of integrated, comprehensive and combined cancer care to public patients. As part of the staged

implementation of Lifehouse, RPAH proposes to transfer some of its cancer care and related operations and patients to Lifehouse under an Annual Services Agreement.

Specifically, in February 2015, the Applicant, through RPAH, proposes to transition to Lifehouse by gradually transferring selected in-patient cancer activity and Lifehouse will provide some cancer services to public patients on behalf of SLHD. Specifically, the Applicant will transfer funding from RPAH equivalent to approximately 34 beds (based on National Weighted Activity Units (NWAUs)) to support the needs of public patients.

As a cancer hospital, Lifehouse will not provide all general medical services. Where these are required, appropriate RPAH clinicians will see Lifehouse patients, both ambulatory and inpatient, for assessment and treatment. Similarly, this partnership with RPAH will include the provision of speciality cancer services by Lifehouse clinicians to RPAH. Lifehouse and RPAH will also work together to provide training opportunities for staff, with RPAH junior medical staff rotating through terms at Lifehouse.

Further, even in respect of cancer services, Lifehouse will not have the capacity to provide for all patients with cancer and thus not all cancer types or beds will be transferred from RPAH to Lifehouse. RPAH will continue to provide cancer services and will care for patients requiring very complex cancer surgery and treatment. The total number of beds and operating theatres that will remain to be used in cancer related medical services at RPAH will continue to be spread between its Emergency Department, Intensive Care and various wards on a needs basis.

Lifehouse is licensed to accommodate 125 beds comprising 96 inpatient beds, 11 overnight beds, 18 intensive care unit beds and 10 operating theatres.

Lifehouse will operate the Lifehouse facility primarily to provide services to public patients (with cancer) from the SLHD catchment and to public patients (with cancer) from outside the SLHD catchment (who otherwise would have been treated at RPAH if the Lifehouse facility didn't exist). The Lifehouse facility exists on public land with services for public patients predominantly funded by Government. Lifehouse may treat private patients (with cancer) as well.

3. **NOTIFIED ARRANGEMENT**

3.1 **Description of the proposed conduct**

Lifehouse does not supply anaesthetic services.

As part of the transition from RPAH to Lifehouse, the Applicant and Lifehouse propose to enter into the arrangements in relation to the supply of anaesthetic services for cancer surgeries and related procedures. Pursuant to these arrangements, RPAH's Department of Anaesthesia (the **Department**) will provide a full range of anaesthetic services for in-patients and out-patients at Lifehouse, including anaesthesia for operating lists, acute and chronic pain management for surgical and medical patients, vascular access procedures, preadmission clinics, out-patient services and on-call cover for public and private patients.

3.1.1 Conjoint appointments

In order for the Department to provide this range of anaesthetic services for Lifehouse patients, conjoint appointments will be established.

The effect of this would be that each of RPAH and Lifehouse will confer reciprocal appointment and accreditation to anaesthetists for cancer related surgeries and procedures as part of a conjoint appointment process.

Accordingly, anaesthetic consultants at RPAH will hold a conjoint appointment at Lifehouse and anaesthetist Visiting Medical Officers (**VMOs**) appointed at Lifehouse will hold a conjoint appointment at RPAH.

Resignation from, or loss of appointment at, one facility would result in reciprocal loss of appointment at the other facility.

3.1.2 The responsibilities associated with conjoint appointment at RPAH and Lifehouse

The effect of anaesthetists' conjoint appointment at RPAH and Lifehouse would be that:

- (a) The allocation of anaesthetists to surgical lists for public patients at Lifehouse would be undertaken by the Department except that, if a particular surgeon wishes to work with a particular anaesthetist for procedures involving only private patients, effect will be given to the surgeon's preferences (provided that the anaesthetist holds a conjoint appointment with RPAH).
- (b) All anaesthetists appointed to RPAH and Lifehouse will have the same on-call burden, commensurate with their scope of practice. Given the likely increase in the total number of anaesthetists in the conjoint department, the burden of on-call will be even less than the indicative numbers outlined in section 3.2.2, paragraph (viii) of this submission.

The proposed conduct will ensure that Lifehouse can be provided with the necessary range of high quality anaesthetic services in order to meet the complex needs of its patients under the proposed arrangements between RPAH and Lifehouse, without compromising the standard of care at RPAH.

The anaesthetic arrangements strike a balance between ensuring that the continued provision of care at RPAH will not be compromised as a result of the arrangement while ensuring that surgeons and anaesthetists continue to enjoy freedom of trade for private patients at Lifehouse.

3.2 Giving effect to the proposed conduct

The Applicant will transition selected cancer services at RPAH to Lifehouse as part of a public/private purchase provider collaboration as described above pursuant to a Service Delivery Agreement (**SDA**) dated 3 October 2013.

As part of the staged implementation of Lifehouse, the Applicant and Lifehouse have negotiated various clinical service planning arrangements for the cancer care services to be provided at Lifehouse to give effect to and implement the terms of the SDA. These negotiations have resulted in an Anaesthetists Service Level Agreement (**ASLA**) dated 3 October 2013 and Models of Care dated August 2012 and September 2013 (**Models of Care**) for the provision of anaesthetic services by the Department to Lifehouse which give effect to the proposed conduct set out in section 3.1 of this submission. These instruments provide that:

- (a) Lifehouse will appoint the Applicant's Department to provide the anaesthetic services necessary to enable Lifehouse to provide cancer services in respect of all public patients and to any private patients, if and when requested to do so by Lifehouse or any of Lifehouse's credentialed personnel.
- (b) The Department will remain as one department (one service) with a single clinical governance structure and will provide services to both RPAH and Lifehouse.

3.2.1 Giving effect to the conjoint appointments

The ASLA and Models of Care give practical effect to the arrangements set out in section 3.1.1 of this submission as follows:

- (i) All anaesthetists providing services in Lifehouse must be appointed and credentialed at both Lifehouse and RPAH.
- (ii) Where a new anaesthetist is appointed by Lifehouse, the anaesthetist will then also be appointed to RPAH as part of a simultaneous but separate cross-appointment process.
- (iii) There are no costs associated with a Lifehouse-appointed anaesthetist being cross-appointed to RPAH.
- (iv) The cross-appointment process comprises presentation and recommendation to the Applicant's Medical and Dental Appointments Advisory Committee. The cross-appointment process does not require a separate application or interview process. The Applicant will not exercise controls over Lifehouse appointments other than that the relevant anaesthetists needs to be appropriately credentialed. Provided that an anaesthetists is appropriately credentialed, the Applicant does not expect that any anaesthetists would be denied appointment under this conjoint appointment process.
- (v) Where a new anaesthetist at Lifehouse satisfies the requirements of conjoint appointment and performs services at Lifehouse for public patients, Lifehouse will pay the new anaesthetist using the funds that have been provided to Lifehouse by the Applicant for the management of those patients.
- (vi) An anaesthetist from either RPAH or Lifehouse who satisfies the requirements of conjoint appointment and performs services at Lifehouse for private patients will retain the fees they charge the private patient. The Applicant will not be involved in any funding arrangements for private patients at Lifehouse.
- (vii) Anaesthetists appointed to Lifehouse will not have a fixed hours requirement imposed by either facility in order to allow the anaesthetists the maximum flexibility to balance their time at Lifehouse and RPAH with any other commitments they may have.
- (viii) Anaesthetic registrars employed by RPAH or by Lifehouse (if any) would be accredited to work at the other facility whilst continuing to be remunerated by their employing facility in accordance with their employment conditions.
- (ix) Surgeons bringing their private work to Lifehouse from another facility may use their current preferred anaesthetist. These anaesthetists must apply for an appointment with Lifehouse and RPAH.

3.2.2 Giving effect to the responsibilities associated with conjoint appointment at RPAH and Lifehouse

The ASLA and Models of Care give practical effect to the allocation of lists and on-call roster arrangements set out in section 3.1.2, paragraphs (a) and (b) of this submission as follows:

- (i) The Department will prepare and allocate anaesthetists to work on the public patient roster, the mixed public/private patient roster and the private patient roster within Lifehouse. Specifically, the Department will coordinate all rostering for surgical lists, acute pain service, pre-admission clinics and

outpatient services and the Director of the Department will coordinate and be responsible for the allocation of staff across both RPAH and Lifehouse.

- (ii) The Department will determine permanent session allocations in accordance with its standard competitive processes, namely that, an Expression of Interest is sent to all anaesthetists and is published publicly with a closing date of three to six weeks; Responses to this are considered by the Executive Committee and the sessions are allocated on merit and hospital needs.
- (iii) The Department will determine temporary session allocations to cover for leave or unexpected circumstances by issuing an email to all anaesthetists and appointing the first anaesthetist to respond with availability.
- (iv) Non-operating list services at Lifehouse will be managed as an extension of the existing Department allocation system, with allowance for Lifehouse specialists to refer their private patients to a particular anaesthetist should they wish to do so, provided that anaesthetist has concurrent appointment at RPAH and Lifehouse.
- (v) Operating list services comprising predominantly public patients will be allocated in accordance with the Department's competitive permanent session allocation system set out in 3.2.2 (ii) above.
- (vi) Operating lists comprising predominantly private patients will be subject to the preferences of the surgeon who may prefer to request a particular anaesthetist (provided they are concurrently appointed) or the surgeon may request that the Department allocate an anaesthetist to the list.
- (vii) The Department will be responsible for the management of equipment issues relating to operating theatres.
- (viii) The fulfilment of the on-call responsibilities of conjoint appointment at RPAH and Lifehouse with the existing RPAH anaesthetic staff numbers would be, on average, one weeknight every three weeks and four weekend days per calendar year. The average on-call responsibilities of anaesthetists would be approximately 17 nights and 4 Saturdays or Sundays per year. Given the probable increase in the Anaesthetic Department's staffing numbers as a consequence of the arrangements with Lifehouse, the likely on-call responsibilities for all department members would be less than that outlined above. Importantly, this arrangement ensures safe and optimal anaesthetic on-call cover for all patients in RPAH and Lifehouse.
- (ix) The on-call rosters have been developed to comply with the ACCC's published guidelines titled "Medical Rosters".
 - (A) The key purpose of the roster is to facilitate patient access to medical services and is essential to ensuring that public and private patients at both RPAH and Lifehouse have timely access to expert medical care and support at all hours of the day and night. Without participation of the Lifehouse anaesthetists in the Department on-call roster, RPAH will not be in a position to efficiently provide on-call roster cover for an estimated 60 private patients at Lifehouse and Lifehouse would need to duplicate this service.
 - (B) Additionally, anaesthetists on the roster can continue to practice even when not rostered and may be able to service any patients they choose. The on-call roster will not prevent an anaesthetist from being

called after hours about a deterioration or emergency if they wish that to occur, but alternatively, they have the option of being able to rely on the on-call anaesthetist if that is their preference.

3.3 Characterisation of the notified conduct

The proposed conduct could be characterised as:

- (a) The Applicant proposes to supply, or offer to supply, the benefit of appointment as an anaesthetist at RPAH on condition that (1) the anaesthetist also acquires the benefit of a conjoint appointment as an anaesthetist at Lifehouse for the entire duration of the anaesthetist's appointment at RPAH and (2) complies with the Department's requirements concerning allocation of anaesthesia lists and on-call rosters in accordance with the anaesthetist's conjoint appointment at RPAH and Lifehouse during this time.
- (b) The Applicant may refuse to supply, or offer to supply, the benefit of appointment as an anaesthetist at RPAH if (1) the anaesthetist has not also acquired, or has not agreed to acquire, the benefit of a conjoint appointment as an anaesthetist at Lifehouse for the entire duration of the anaesthetist's appointment at RPAH or (2) has not complied or agreed to comply with the Department's requirements concerning allocation of anaesthesia lists and on-call rosters in accordance with the anaesthetist's conjoint appointment at RPAH and Lifehouse during this time.
- (c) Lifehouse proposes to supply, or offer to supply, the benefit of appointment as an anaesthetist at Lifehouse on condition that (1) the anaesthetist also acquires the benefit of a conjoint appointment as an anaesthetist at RPAH for the entire duration of the anaesthetist's appointment at Lifehouse and (2) complies with the Department's requirements concerning allocation of anaesthesia lists and on-call rosters in accordance with the anaesthetist's conjoint appointment at RPAH and Lifehouse during this time.
- (d) Lifehouse may refuse to supply, or offer to supply, the benefit of appointment as an anaesthetist at Lifehouse if (1) the anaesthetist has not also acquired, or has not agreed to acquire, the benefit of a conjoint appointment as an anaesthetist at RPAH for the entire duration of the anaesthetist's appointment at Lifehouse or (2) has not complied or agreed to comply with the Department's requirements concerning allocation anaesthesia lists and on-call rosters in accordance with the anaesthetist's conjoint appointment at RPAH and Lifehouse during this time.

As noted above, the proposed conduct outlined above will address potential service gaps incidental to the transition of selected cancer services from RPAH to Lifehouse and give effect to the reciprocal and conjoint appointments of anaesthetists to each facility without unduly restricting the appointees' freedom to service private patients at Lifehouse, or other patients at other hospitals and health care facilities.

4. MARKET DEFINITION

The Applicant has not attempted to precisely identify the markets involved. However, the relevant market potentially affected by the proposed conduct includes the market for the supply and acquisition of anaesthetist appointments in Sydney.

Competition in this and related markets is vigorous.

Neither the Applicant nor Lifehouse will possess market power in the relevant market.

Relevantly:

- (i) the relevant market is characterised by many competitors. There are, and will remain, many competing suppliers of appointment and accreditation services to anaesthetists. That is, anaesthetists can acquire appointment and accreditation services from a number of other hospitals and health care facilities;
- (ii) there is no exclusivity obligation on anaesthetists seeking appointment at the Applicant or Lifehouse. That is, anaesthetists who are appointed conjointly to RPAH and Lifehouse may also seek and hold appointments at other hospitals and healthcare facilities; and
- (iii) there is no exclusivity obligation on the Applicant or Lifehouse – that is, neither will be restricted from appointing anaesthetists provided the anaesthetist also seeks joint appointment at the other. That is, the Applicant is not proposing to supply services to Lifehouse (or its patients) on condition that Lifehouse (or its patients) do not acquire services of competitor anaesthetic VMOs.

5. PUBLIC BENEFITS AND DETRIMENTS

The Applicant submits that the proposed conduct will lead to significant public benefits and will be unlikely to lead to any public detriment. In the event that any public detriment may flow from the proposed conduct, the Applicant submits that this would be far outweighed by the benefit to the public.

5.1 Benefits

The Applicant submits that the proposed conduct will lead to substantial public benefits, including:

- (a) The provision of anaesthetic services by RPAH to Lifehouse will ensure that patients have access to optimal anaesthetic care, and treating clinicians will have the opportunity to refer their patients to any anaesthetists holding concurrent appointments at RPAH and Lifehouse.
- (b) The provision of anaesthetic services by RPAH to Lifehouse will ensure that Lifehouse patients have access to the totality of RPAH's anaesthetic services which would not otherwise be available to them at Lifehouse. This includes, for example, access to anaesthetic equipment and infrastructure at the Department and the Department's Acute Pain Service for post-operative patients with treatments such as patient-controlled analgesia, epidural analgesia, neuraxial opioids, major regional nerve blocks and ketamine infusions.
- (c) Conjoint appointments to both Lifehouse and RPAH will offer many benefits for anaesthetists including:
 - (i) the appointment to two prestigious facilities;
 - (ii) many opportunities for networking and collaboration with peers in areas of mutual interest such as research;
 - (iii) the eligibility for Lifehouse consultant anaesthetists to apply for relieving work or any permanent sessions at RPAH that become available;
 - (iv) access to the Department's facilities and equipment, which has historically been limited to members of the Department;
 - (v) conjoint registrars can participate in a Department that is registered for training with ANZCA so they will be eligible to have their employment time

at Lifehouse accredited by ANZCA. Lifehouse registrars will also be able to access all of the educational facilities currently available to RPAH anaesthesia registrars and trainees; and

- (vi) the obligations for concurrent appointments will not be duplicated and will be streamlined. For example, anaesthetists will be able to participate in combined accreditation and quality assurance training and activities.
- (d) The fulfilment of the on-call and rostering requirements of the conjoint appointment at RPAH and Lifehouse will facilitate the implementation of the following key principles that have been developed to guide the transition of cancer services from RPAH to Lifehouse, namely:
 - (i) Public patients should not be disadvantaged. Public patients should receive the same access to and level of care that they would have received had the services been provided by RPAH, including waiting times for procedures/surgery;
 - (ii) The service model changes required as a result of the transition of inpatient services to Lifehouse should not cause a significant disruption to the current models of care at RPAH; and
 - (iii) Quality reasons, to retain expertise within RPAH and to maintain integrated models of care in both cancer and non-cancer treatment provision.
- (e) Lifehouse's participation in the Department's roster allocation and on-call roster will promote greater efficiency in the delivery of afterhours anaesthetic care and will remove the costs associated with the creation by Lifehouse of a separate on-call roster to manage the needs of their private patients.
- (f) The Department's on-call roster and scheduling requirements reflect Lifehouse's hybrid public/private function and recognise that conjoint appointment at RPAH necessarily imports the Applicant's core policies of equity, accountability, service and facility coherence, collaborative service development and clear role delineation in a capped financial environment.
- (g) As noted above, there is no undue exclusivity or restriction on the ability of VMOs at Lifehouse to develop clinical services in response to perceived market and consumer demand.
- (h) The proposed conduct will facilitate a strong, productive and open relationship between Lifehouse and RPAH which will ensure that the experience of patients with cancer remains seamless notwithstanding the public/private collaboration and that the re-organisation of cancer services adds significant value to the provision of cancer care.
- (i) Patients will benefit from the skills of a greater number of anaesthetists, greater efficiency and increased convenience more generally.

5.2 **Detriments**

The Applicant submits that the proposed conduct will not result in any public detriment, or if that there is any public detriment said to arise from the proposed conduct, this would be outweighed by the many public benefits of the proposed conduct.

Relevantly:

- (a) RPAH will retain selected cancer services with demand for Lifehouse being a mix of RPA-generated demand and demand from the market place. As noted above, the

proposed conduct does not impose any exclusivity on Lifehouse or restrictions on its anaesthetists to obtain appointments in competing facilities.

- (b) The fulfilment of the infrequent on-call responsibilities of conjoint appointment at RPAH and Lifehouse is not burdensome given the very small proportion it represents out of an anaesthetists service each year. The Applicant submits that is not burdensome or anti-competitive, being on average 17 weeknights and 4 Saturdays or Sundays each year, will not materially restrict an anaesthetist's freedom of trade.
- (c) The fulfilment of the infrequent on-call responsibilities of conjoint appointment at RPAH and Lifehouse is also only triggered by anaesthetists who have regular clinical sessions. Regular clinical sessions are often characterised by operating lists and other activities several times each week. Duty Anaesthetists or anaesthetists performing pre-admission duties or anaesthetists who do not have regular clinical sessions at Lifehouse will not be required to participate.
- (d) The Department's allocation of permanent and temporary sessions will continue to be based on merit and the Department's needs.

As noted above, no aspect of the proposed conduct is aimed at preventing any medical practitioner from gaining accreditation or practising in general. The objective of the proposed conduct, comprising concurrent appointment and participation in session allocations and on-call rosters where required, is to ensure that all patients are optimally cared for rather than to preclude any anaesthetists from pursuing other commitments.

6. **SUMMARY**

The Applicant submits that the ACCC should conclude that the likely public benefits flowing from the proposed conduct will far outweigh any public detriment. The Applicant submits that the Notification should be permitted to stand.

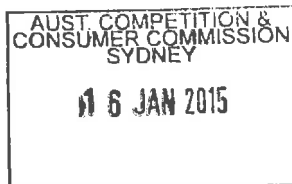
Our ref: PJA/EIS/ 02 3002 9797
Partner: Peter Armitage
Direct line: +61 2 9258 6119
Email: Peter.Armitage@ashurst.com
Contact: Elizabeth Sarofim, Senior Associate
Direct line: +61 2 9258 5924
Email: elizabeth.sarofim@ashurst.com

Ashurst Australia
Level 36, Grosvenor Place
225 George Street
Sydney NSW 2000
Australia

GPO Box 9938
Sydney NSW 2001
Australia

Tel +61 2 9258 6000
Fax +61 2 9258 6999
DX 388 Sydney
www.ashurst.com

15 January 2015



BY EMAIL and HAND

Richard Chadwick
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
Level 20
175 Pitt Street
Sydney NSW 2000

The logo for Ashurst, consisting of the word "ashurst" in a lowercase, bold, sans-serif font.

Dear Mr Chadwick

Form G – Notifications of exclusive dealing by Sydney Local Health District and Chris O'Brien Lifehouse

We **enclose** on behalf of:

- (a) Sydney Local Health District ABN 17 520 269 052; and
- (b) Lifehouse Australia trading as Chris O'Brien Lifehouse ABN 57 100 492 644,

Form G – Notifications of exclusive dealing, together with submissions in support of each application.

We also **enclose** two cheques for \$100 as payment of the applicable lodgement fees.

If you have any questions in relation to this notification, please contact Peter Armitage on +61 2 9258 6119 or Elizabeth Sarofim on +61 2 9258 5924.

Yours faithfully

A handwritten signature in black ink, appearing to read "Peter Armitage".

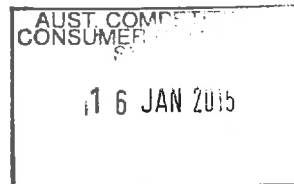
Peter Armitage
Partner

Enc

AUSTRALIA BELGIUM CHINA FRANCE GERMANY HONG KONG SAR INDONESIA (ASSOCIATED OFFICE) ITALY JAPAN PAPUA NEW GUINEA
SAUDI ARABIA SINGAPORE SPAIN SWEDEN UNITED ARAB EMIRATES UNITED KINGDOM UNITED STATES OF AMERICA

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Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N98093 Lifehouse Australia ABN 57 100 492 644, trading as Chris O'Brien Lifehouse (and previously known as "Lifehouse at RPAH", "Sydney Cancer Centre Foundation", "Sydney Cancer Foundation", "Sydney Cancer Centre Foundation" and "Lifehouse at RPAH Trust") (**Lifehouse**).

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Lifehouse is an independent, not-for-profit public benevolent organisation and registered charity focused on the delivery of cancer care and research and the provision of integrated comprehensive all-purpose cancer and support services, clinical trials and complementary therapy in one location. Revenue and profit from the operations of Lifehouse are required to be retained for the benefit of cancer treatment, research, education, training and complimentary activities.

The Lifehouse facility was completed in June 2013 and is co-located at RPAH.

Funding for Lifehouse has been provided by a mix of Commonwealth and State government grants and private philanthropy. In particular, Lifehouse is a private-public partnership with the Sydney Local Health District (**SLHD**) through its hospital, Royal Prince Alfred Hospital (**RPAH**). More specifically, the SLHD proposes to transition some of the cancer services currently provided at RPAH to Lifehouse which is a public-private collaboration co-located at RPAH on land owned by SLHD under a service delivery agreement. In its role as a major quaternary and tertiary hospital, RPAH will continue to provide complex cancer and related services for local and regional patients.

Please refer to the submission in support of this notification at Annexure A for further information.

- (c) Address in Australia for service of documents on that person:

Peter Armitage
Ashurst Australia
Level 41, 225 George Street
Sydney NSW 2000

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

This notification relates to the conferral of the benefit of appointment for anaesthetists.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to the submission in support of this notification at Annexure A.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

The proposed conduct relates to anaesthetists who wish to acquire the benefit of an appointment as a staff specialist or visiting medical officer at RPAH or at Lifehouse.

- (b) Number of those persons:

- (i) At present time:

There are currently 100 anaesthetists appointed at RPAH.

- (ii) Estimated within the next year:
(Refer to direction 6)

It is not possible to estimate this number.

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable.

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the submission in support of this notification at Annexure A.

- (b) Facts and evidence relied upon in support of these claims:

Please refer to the submission in support of this notification at Annexure A.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 8)

Please refer to the submission in support of this notification at Annexure A.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:
(Refer to direction 9)

Please refer to the submission in support of this notification at Annexure A.

- (b) Facts and evidence relevant to these detriments:

Please refer to the submission in support of this notification at Annexure A.

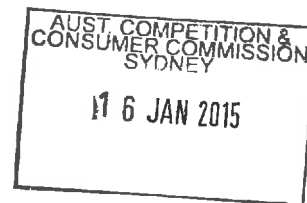
7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Name: Peter Armitage, Partner

Postal Address: C/O Ashurst Australia
Grosvenor Place
L35, 225 George Street
Sydney NSW 2000

Telephone: +61 2 9258 6119
+61 418 973 700



Dated.....*16.1.15*.....

Signed by/on behalf of the applicant
Peter Armitage
.....

(Signature)

Peter James Armitage.....
(Full Name)

Ashurst Australia.....
(Organisation)

Partner.....
(Position in Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

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. If the notice is given 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 notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

ANNEXURE A

NOTIFICATION OF EXCLUSIVE DEALING: SUBMISSION TO THE ACCC

This submission is made by Lifehouse Australia trading as Chris O'Brien Lifehouse, in support of its Notification of Exclusive Dealing dated 16 January 2015.

1. APPLICANT

The applicant is Lifehouse Australia (ABN 57 100 492 644), trading as Chris O'Brien Lifehouse (**Lifehouse**) (the "**Applicant**").

2. BACKGROUND

2.1 The provision of cancer services by the Sydney Local Health District

The Sydney Local Health District (ABN 17 520 269 052) (**SLHD**) is a public provider of health services including, relevantly, inpatient and outpatient cancer and support services. SLHD provides these services through an integrated network of Cancer Centres in a number of hospitals, including, relevantly, Royal Prince Alfred Hospital (**RPAH**), through various oncology wards and the Sydney Cancer Centre. Cancer services at SLHD are provided in a multidisciplinary framework with tumour specific programs. For example, the Sydney Cancer Centre has historically been one of the most comprehensive ambulatory care centre of its type in Australia, combining diagnostic, consultative and follow-up cancer services.

The number of beds and operating theatres used in cancer related medical services at RPAH and other hospitals in SLHD is spread between Emergency Department, Intensive Care and various wards on a needs basis.

2.2 Proposed integration of cancer services at Lifehouse Australia

The Applicant, (previously known as "Lifehouse at RPAH", "Sydney Cancer Centre Foundation", "Sydney Cancer Foundation", "Sydney Cancer Centre Foundation" and "Lifehouse at RPAH Trust") is an independent, not-for-profit public benevolent organisation and registered charity focused on the delivery of cancer care and research and the provision of integrated comprehensive all-purpose cancer and support services, clinical trials and complementary therapy in one location. Revenue and profit from the Applicant's operations are required to be retained for the benefit of cancer treatment, research, education, training and complimentary activities.

Funding for the Applicant has been provided by a mix of Commonwealth and State government grants and private philanthropy. In particular, the Applicant is a private-public partnership with SLHD's RPAH. The original business case proposed that the Applicant would unlock private patient fees currently not collected at RPAH, thereby generating a surplus adequate for reinvestment in cancer care, and the other components of the funding were proposed through the relocation of services currently provided at RPAH where public funding will be provided in accordance with the ordinary activity based funding levels.

The Applicant's facility was completed in June 2013 and is co-located at RPAH on land owned by SLHD.

Developments in cancer research and treatment suggest that the provision of cancer services is enhanced by more integrated, comprehensive and combined care.

A component of the Applicant's private-not-for-profit service is funded through entering into a purchaser provider arrangement with the SLHD for the provision of integrated, comprehensive and combined cancer care to public patients. As part of the staged

implementation of Lifehouse, RPAH proposes to transfer some of its cancer care and related operations and patients to the Applicant under an Annual Services Agreement.

Specifically, in February 2015, the SLHD, through RPAH, proposes to transition to the Applicant by gradually transferring selected in-patient cancer activity and the Applicant will provide some cancer services to public patients on behalf of SLHD. Specifically, the SLHD will transfer funding from RPAH equivalent to approximately 34 beds (based on National Weighted Activity Units (NWAUs)) to support the needs of public patients.

As a cancer hospital, the Applicant will not provide all general medical services. Where these are required, appropriate RPAH clinicians will see Lifehouse patients, both ambulatory and inpatient, for assessment and treatment. Similarly, this partnership with RPAH will include the provision of speciality cancer services by Lifehouse clinicians to RPAH. The Applicant and RPAH will also work together to provide training opportunities for staff, with RPAH junior medical staff rotating through terms at the Applicant.

Further, even in respect of cancer services, the Applicant will not have the capacity to provide for all patients with cancer and thus not all cancer types or beds will be transferred from RPAH to the Applicant. RPAH will continue to provide cancer services and will care for patients requiring very complex cancer surgery and treatment. The total number of beds and operating theatres that will remain to be used in cancer related medical services at RPAH will continue to be spread between its Emergency Department, Intensive Care and various wards on a needs basis.

The Applicant is licensed to accommodate 125 beds comprising 96 inpatient beds, 11 overnight beds, 18 intensive care unit beds and 10 operating theatres.

The Applicant will operate the Lifehouse facility primarily to provide services to public patients (with cancer) from the SLHD catchment and to public patients (with cancer) from outside the SLHD catchment (who otherwise would have been treated at RPAH if the Lifehouse facility didn't exist). The Lifehouse facility exists on public land with services for public patients predominantly funded by Government. The Applicant may treat private patients (with cancer) as well.

3. **NOTIFIED ARRANGEMENT**

3.1 **Description of the proposed conduct**

The Applicant does not supply anaesthetic services.

As part of the transition from RPAH to the Applicant, the SLHD and the Applicant propose to enter into the arrangements in relation to the supply of anaesthetic services for cancer surgeries and related procedures. Pursuant to these arrangements, RPAH's Department of Anaesthesia (the **Department**) will provide a full range of anaesthetic services for in-patients and out-patients at the Applicant, including anaesthesia for operating lists, acute and chronic pain management for surgical and medical patients, vascular access procedures, preadmission clinics, out-patient services and on-call cover for public and private patients.

3.1.1 Conjoint appointments

In order for the Department to provide this range of anaesthetic services for the Applicant's patients, conjoint appointments will be established.

The effect of this would be that each of RPAH and the Applicant will confer reciprocal appointment and accreditation to anaesthetists for cancer related surgeries and procedures as part of a conjoint appointment process.

Accordingly, anaesthetic consultants at RPAH will hold a conjoint appointment at the Applicant and anaesthetist Visiting Medical Officers (**VMOs**) appointed at the Applicant will hold a conjoint appointment at RPAH.

Resignation from, or loss of appointment at, one facility would result in reciprocal loss of appointment at the other facility.

3.1.2 The responsibilities associated with conjoint appointment at RPAH and Lifehouse

The effect of anaesthetists' conjoint appointment at RPAH and the Applicant would be that:

- (a) The allocation of anaesthetists to surgical lists for public patients at the Applicant's facility would be undertaken by the Department except that, if a particular surgeon wishes to work with a particular anaesthetist for procedures involving only private patients, effect will be given to the surgeon's preferences (provided that the anaesthetist holds a conjoint appointment with RPAH).
- (b) All anaesthetists appointed to RPAH and the Applicant will have the same on-call burden, commensurate with their scope of practice. Given the likely increase in the total number of anaesthetists in the conjoint department, the burden of on-call will be even less than the indicative numbers outlined in section 3.2.2, paragraph (viii) of this submission.

The proposed conduct will ensure that the Applicant can be provided with the necessary range of high quality anaesthetic services in order to meet the complex needs of its patients under the proposed arrangements between RPAH and the Applicant, without compromising the standard of care at RPAH.

The anaesthetic arrangements strike a balance between ensuring that the continued provision of care at RPAH will not be compromised as a result of the arrangement while ensuring that surgeons and anaesthetists continue to enjoy freedom of trade for private patients at the Applicant.

3.2 Giving effect to the proposed conduct

The SLHD will transition selected cancer services at RPAH to the Applicant as part of a public/private purchase provider collaboration as described above pursuant to a Service Delivery Agreement (**SDA**) dated 3 October 2013.

As part of the staged implementation of Lifehouse, the SLHD and the Applicant have negotiated various clinical service planning arrangements for the cancer care services to be provided at the Applicant to give effect to and implement the terms of the SDA. These negotiations have resulted in an Anaesthetists Service Level Agreement (**ASLA**) dated 3 October 2013 and Models of Care dated August 2012 and September 2013 (**Models of Care**) for the provision of anaesthetic services by the Department to the Applicant which give effect to the proposed conduct set out in section 3.1 of this submission. These instruments provide that:

- (a) The Applicant will appoint the SLHD's Department to provide the anaesthetic services necessary to enable the Applicant to provide cancer services in respect of all public patients and to any private patients, if and when requested to do so by the Applicant or any of the Applicant's credentialed personnel.
- (b) The Department will remain as one department (one service) with a single clinical governance structure and will provide services to both RPAH and the Applicant.

3.2.1 Giving effect to the conjoint appointments

The ASLA and Models of Care give practical effect to the arrangements set out in section 3.1.1 of this submission as follows:

- (i) All anaesthetists providing services in Lifehouse must be appointed and credentialed at both Lifehouse and RPAH.
- (ii) Where a new anaesthetist is appointed by Lifehouse, the anaesthetist will then also be appointed to RPAH as part of a simultaneous but separate cross-appointment process.
- (iii) There are no costs associated with a Lifehouse-appointed anaesthetist being cross-appointed to RPAH.
- (iv) The cross-appointment process comprises presentation and recommendation to the SLHD's Medical and Dental Appointments Advisory Committee. The cross-appointment process does not require a separate application or interview process. The SLHD will not exercise controls over Lifehouse appointments other than that the relevant anaesthetists needs to be appropriately credentialed. Provided that an anaesthetists is appropriately credentialed, the SLHD does not expect that any anaesthetists would be denied appointment under this conjoint appointment process.
- (v) Where a new anaesthetist at Lifehouse satisfies the requirements of conjoint appointment and performs services at Lifehouse for public patients, Lifehouse will pay the new anaesthetist using the funds that have been provided to Lifehouse by the SLHD for the management of those patients.
- (vi) An anaesthetist from either RPAH or Lifehouse who satisfies the requirements of conjoint appointment and performs services at Lifehouse for private patients will retain the fees they charge the private patient. The SLHD will not be involved in any funding arrangements for private patients at Lifehouse.
- (vii) Anaesthetists appointed to Lifehouse will not have a fixed hours requirement imposed by either facility in order to allow the anaesthetists the maximum flexibility to balance their time at Lifehouse and RPAH with any other commitments they may have.
- (viii) Anaesthetic registrars employed by RPAH or by Lifehouse (if any) would be accredited to work at the other facility whilst continuing to be remunerated by their employing facility in accordance with their employment conditions.
- (ix) Surgeons bringing their private work to Lifehouse from another facility may use their current preferred anaesthetist. These anaesthetists must apply for an appointment with Lifehouse and RPAH.

3.2.2 Giving effect to the responsibilities associated with conjoint appointment at RPAH and Lifehouse

The ASLA and Models of Care give practical effect to the allocation of lists and on-call roster arrangements set out in section 3.1.2, paragraphs (a) and (b) of this submission as follows:

- (i) The Department will prepare and allocate anaesthetists to work on the public patient roster, the mixed public/private patient roster and the private patient roster within Lifehouse. Specifically, the Department will coordinate all rostering for surgical lists, acute pain service, pre-admission clinics and outpatient services and the Director of the Department will coordinate and be responsible for the allocation of staff across both RPAH and Lifehouse.

- (ii) The Department will determine permanent session allocations in accordance with its standard competitive processes, namely that, an Expression of Interest is sent to all anaesthetists and is published publicly with a closing date of three to six weeks; Responses to this are considered by the Executive Committee and the sessions are allocated on merit and hospital needs.
- (iii) The Department will determine temporary session allocations to cover for leave or unexpected circumstances by issuing an email to all anaesthetists and appointing the first anaesthetist to respond with availability.
- (iv) Non-operating list services at Lifehouse will be managed as an extension of the existing Department allocation system, with allowance for Lifehouse specialists to refer their private patients to a particular anaesthetists should they wish to do so, provided that anaesthetist has concurrent appointment at RPAH and Lifehouse.
- (v) Operating list services comprising predominantly public patients will be allocated in accordance with the Department's competitive permanent session allocation system set out in 3.2.2 (ii) above.
- (vi) Operating lists comprising predominantly private patients will be subject to the preferences of the surgeon who may prefer to request a particular anaesthetist (provided they are concurrently appointed) or the surgeon may request that the Department allocate an anaesthetist to the list.
- (vii) The Department will be responsible for the management of equipment issues relating to operating theatres.
- (viii) The fulfilment of the on-call responsibilities of conjoint appointment at RPAH and Lifehouse with the existing RPAH anaesthetic staff numbers would be, on average, one weeknight every three weeks and four weekend days per calendar year. The average on-call responsibilities of anaesthetists would be approximately 17 nights and 4 Saturdays or Sundays per year. Given the probable increase in the Anaesthetic Department's staffing numbers as a consequence of the arrangements with Lifehouse, the likely on-call responsibilities for all department members would be less than that outlined above. Importantly, this arrangement ensures safe and optimal anaesthetic on-call cover for all patients in RPAH and Lifehouse.
- (ix) The on-call rosters have been developed to comply with the ACCC's published guidelines titled "Medical Rosters".
 - (A) The key purpose of the roster is to facilitate patient access to medical services and is essential to ensuring that public and private patients at both RPAH and Lifehouse have timely access to expert medical care and support at all hours of the day and night. Without participation of the Lifehouse anaesthetists in the Department on-call roster, RPAH will not be in a position to efficiently provide on-call roster cover for an estimated 60 private patients at Lifehouse and Lifehouse would need to duplicate this service.
 - (B) Additionally, anaesthetists on the roster can continue to practice even when not rostered and may be able to service any patients they choose. The on-call roster will not prevent an anaesthetist from being called after hours about a deterioration or emergency if they wish that to occur, but alternatively, they have the option of being able to rely on the on-call anaesthetist if that is their preference.

3.3 Characterisation of the notified conduct

The proposed conduct could be characterised as:

- (a) The SLHD proposes to supply, or offer to supply, the benefit of appointment as an anaesthetist at RPAH on condition that (1) the anaesthetist also acquires the benefit of a conjoint appointment as an anaesthetist at Lifehouse for the entire duration of the anaesthetist's appointment at RPAH and (2) complies with the Department's requirements concerning allocation of anaesthesia lists and on-call rosters in accordance with the anaesthetist's conjoint appointment at RPAH and Lifehouse during this time.
- (b) The SLHD may refuse to supply, or offer to supply, the benefit of appointment as an anaesthetist at RPAH if (1) the anaesthetist has not also acquired, or has not agreed to acquire, the benefit of a conjoint appointment as an anaesthetist at Lifehouse for the entire duration of the anaesthetist's appointment at RPAH or (2) has not complied or agreed to comply with the Department's requirements concerning allocation of anaesthesia lists and on-call rosters in accordance with the anaesthetist's conjoint appointment at RPAH and Lifehouse during this time.
- (c) Lifehouse proposes to supply, or offer to supply, the benefit of appointment as an anaesthetist at Lifehouse on condition that (1) the anaesthetist also acquires the benefit of a conjoint appointment as an anaesthetist at RPAH for the entire duration of the anaesthetist's appointment at Lifehouse and (2) complies with the Department's requirements concerning allocation of anaesthesia lists and on-call rosters in accordance with the anaesthetist's conjoint appointment at RPAH and Lifehouse during this time.
- (d) Lifehouse may refuse to supply, or offer to supply, the benefit of appointment as an anaesthetist at Lifehouse if (1) the anaesthetist has not also acquired, or has not agreed to acquire, the benefit of a conjoint appointment as an anaesthetist at RPAH for the entire duration of the anaesthetist's appointment at Lifehouse or (2) has not complied or agreed to comply with the Department's requirements concerning allocation anaesthesia lists and on-call rosters in accordance with the anaesthetist's conjoint appointment at RPAH and Lifehouse during this time.

As noted above, the proposed conduct outlined above will address potential service gaps incidental to the transition of selected cancer services from RPAH to the Applicant and give effect to the reciprocal and conjoint appointments of anaesthetists to each facility without unduly restricting the appointees' freedom to service private patients at the Applicant's facility, or other patients at other hospitals and health care facilities.

4. MARKET DEFINITION

The Applicant has not attempted to precisely identify the markets involved. However, the relevant market potentially affected by the proposed conduct includes the market for the supply and acquisition of anaesthetist appointments in Sydney.

Competition in this and related markets is vigorous.

Neither the Applicant nor the SLHD will possess market power in the relevant market.

Relevantly:

- (i) the relevant market is characterised by many competitors. There are, and will remain, many competing suppliers of appointment and accreditation services to anaesthetists. That is, anaesthetists can acquire appointment and accreditation services from a number of other hospitals and health care facilities;

- (ii) there is no exclusivity obligation on anaesthetists seeking appointment at the SLHD or Lifehouse. That is, anaesthetists who are appointed conjointly to RPAH and Lifehouse may also seek and hold appointments at other hospitals and healthcare facilities; and
- (iii) there is no exclusivity obligation on the SLHD or Lifehouse – that is, neither will be restricted from appointing anaesthetists provided the anaesthetist also seeks joint appointment at the other. That is, the SLHD is not proposing to supply services to Lifehouse (or its patients) on condition that Lifehouse (or its patients) do not acquire services of competitor anaesthetic VMOs.

5. PUBLIC BENEFITS AND DETRIMENTS

The Applicant submits that the proposed conduct will lead to significant public benefits and will be unlikely to lead to any public detriment. In the event that any public detriment may flow from the proposed conduct, the Applicant submits that this would be far outweighed by the benefit to the public.

5.1 Benefits

The Applicant submits that the proposed conduct will lead to substantial public benefits, including:

- (a) The provision of anaesthetic services by RPAH to Lifehouse will ensure that patients have access to optimal anaesthetic care, and treating clinicians will have the opportunity to refer their patients to any anaesthetists holding concurrent appointments at RPAH and Lifehouse.
- (b) The provision of anaesthetic services by RPAH to Lifehouse will ensure that Lifehouse patients have access to the totality of RPAH's anaesthetic services which would not otherwise be available to them at Lifehouse. This includes, for example, access to anaesthetic equipment and infrastructure at the Department and the Department's Acute Pain Service for post-operative patients with treatments such as patient-controlled analgesia, epidural analgesia, neuraxial opioids, major regional nerve blocks and ketamine infusions.
- (c) Conjoint appointments to both Lifehouse and RPAH will offer many benefits for anaesthetists including:
 - (i) the appointment to two prestigious facilities;
 - (ii) many opportunities for networking and collaboration with peers in areas of mutual interest such as research;
 - (iii) the eligibility for Lifehouse consultant anaesthetists to apply for relieving work or any permanent sessions at RPAH that become available;
 - (iv) access to the Department's facilities and equipment, which has historically been limited to members of the Department;
 - (v) conjoint registrars can participate in a Department that is registered for training with ANZCA so they will be eligible to have their employment time at Lifehouse accredited by ANZCA. Lifehouse registrars will also be able to access all of the educational facilities currently available to RPAH anaesthesia registrars and trainees; and

- (vi) the obligations for concurrent appointments will not be duplicated and will be streamlined. For example, anaesthetists will be able to participate in combined accreditation and quality assurance training and activities.
- (d) The fulfilment of the on-call and rostering requirements of the conjoint appointment at RPAH and Lifehouse will facilitate the implementation of the following key principles that have been developed to guide the transition of cancer services from RPAH to Lifehouse, namely:
 - (i) Public patients should not be disadvantaged. Public patients should receive the same access to and level of care that they would have received had the services been provided by RPAH, including waiting times for procedures/surgery;
 - (ii) The service-model changes required as a result of the transition of inpatient services to Lifehouse should not cause a significant disruption to the current models of care at RPAH; and
 - (iii) Quality reasons, to retain expertise within RPAH and to maintain integrated models of care in both cancer and non-cancer treatment provision.
- (e) Lifehouse's participation in the Department's roster allocation and on-call roster will promote greater efficiency in the delivery of afterhours anaesthetic care and will remove the costs associated with the creation by Lifehouse of a separate on-call roster to manage the needs of their private patients.
- (f) The Department's on-call roster and scheduling requirements reflect Lifehouse's hybrid public/private function and recognise that conjoint appointment at RPAH necessarily imports the SLHD's core policies of equity, accountability, service and facility coherence, collaborative service development and clear role delineation in a capped financial environment.
- (g) As noted above, there is no undue exclusivity or restriction on the ability of VMOs at Lifehouse to develop clinical services in response to perceived market and consumer demand.
- (h) The proposed conduct will facilitate a strong, productive and open relationship between Lifehouse and RPAH which will ensure that the experience of patients with cancer remains seamless notwithstanding the public/private collaboration and that the re-organisation of cancer services adds significant value to the provision of cancer care.
- (i) Patients will benefit from the skills of a greater number of anaesthetists, greater efficiency and increased convenience more generally.

5.2 Detriments

The Applicant submits that the proposed conduct will not result in any public detriment, or if that there is any public detriment said to arise from the proposed conduct, this would be outweighed by the many public benefits of the proposed conduct.

Relevantly:

- (a) RPAH will retain selected cancer services with demand for Lifehouse being a mix of RPA-generated demand and demand from the market place. As noted above, the proposed conduct does not impose any exclusivity on Lifehouse or restrictions on its anaesthetists to obtain appointments in competing facilities.

- (b) The fulfilment of the infrequent on-call responsibilities of conjoint appointment at RPAH and Lifehouse is not burdensome given the very small proportion it represents out of an anaesthetists service each year. The Applicant submits that is not burdensome or anti-competitive, being on average 17 weeknights and 4 Saturdays or Sundays each year, will not materially restrict an anaesthetist's freedom of trade.
- (c) The fulfilment of the infrequent on-call responsibilities of conjoint appointment at RPAH and Lifehouse is also only triggered by anaesthetists who have regular clinical sessions. Regular clinical sessions are often characterised by operating lists and other activities several times each week. Duty Anaesthetists or anaesthetists performing pre-admission duties or anaesthetists who do not have regular clinical sessions at Lifehouse will not be required to participate.
- (d) The Department's allocation of permanent and temporary sessions will continue to be based on merit and the Department's needs.

As noted above, no aspect of the proposed conduct is aimed at preventing any medical practitioner from gaining accreditation or practising in general. The objective of the proposed conduct, comprising concurrent appointment and participation in session allocations and on-call rosters where required, is to ensure that all patients are optimally cared for rather than to preclude any anaesthetists from pursuing other commitments.

6. **SUMMARY**

The Applicant submits that the ACCC should conclude that the likely public benefits flowing from the proposed conduct will far outweigh any public detriment. The Applicant submits that the Notification should be permitted to stand.