



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Draft Determination

Application for authorisation AA1000493
lodged by
the State of Queensland as represented by
Queensland Health
in respect of
co-ordination of healthcare services in response
to the COVID-19 pandemic
Authorisation number: AA1000493

9 July 2020

Commissioners: Rod Sims, Delia Rickard, Mick Keogh, Sarah Court, and Stephen Ridgeway

Summary

The State of Queensland, as represented by Queensland Health, is seeking authorisation of arrangements which have the broad purpose of maximising healthcare capacity and ensuring State-wide coordination of healthcare services during the COVID-19 pandemic.

In broad terms, Queensland Health and participating private and public hospitals in Queensland will share information about capacity and resources and coordinate their activities in relation to the provision of certain medical services or the treatment of particular groups of patients at particular hospitals. They also propose to coordinate the procurement of medical equipment and supplies and share resources to meet demand.

The ACCC is proposing to grant conditional authorisation until 30 September 2021.

The ACCC considers that the arrangements are likely to deliver significant public benefit through the enhanced coordination and improved responsiveness of the Queensland healthcare system to respond to the COVID-19 pandemic.

The conditional interim authorisation already granted by the ACCC on 7 April 2020 will continue while the ACCC is considering the substantive application.

The ACCC invites submissions in relation to this draft determination and will consider all such submissions before making its final decision in this matter.

Queensland Health and interested parties may also request the ACCC to hold a conference to allow oral submissions on the draft determination.

The application for authorisation

1. On 6 April 2020, the State of Queensland, as represented by Queensland Health, lodged application for authorisation AA1000493 with the Australian Competition and Consumer Commission (the **ACCC**). Queensland Health made the application on behalf of itself and the following parties who are engaged, or propose to become engaged, in the Proposed Conduct:
 - specified owners or operators of private health facilities in Queensland as listed in **Attachment 1** (and their related bodies corporate), as well as any other owner or operator of a private health facility in Queensland notified to the ACCC by Queensland Health from time to time (the **Private Hospital Operators**), and
 - each of Queensland's Hospital and Health Services as listed in **Attachment 2**.
2. Queensland Health seeks authorisation for the broad purpose of maximising healthcare capacity and ensuring the State-wide coordination of healthcare services to facilitate the most efficient and effective allocation of healthcare services during the period of the COVID-19 pandemic (the **Pandemic**). To achieve this purpose, Queensland Health will enter into separate but substantially similar agreements with the Private Hospital Operators (the **Agreements**). The Agreements are made in order to achieve the Objectives defined at paragraph 5 below.
3. Queensland Health seeks authorisation for 12 months from the date of the ACCC's final determination.

4. The ACCC may grant authorisation which provides businesses with legal protection for arrangements that may otherwise risk breaching competition law but are not harmful to competition and/or are likely to result in overall public benefits.

The Proposed Conduct

5. Queensland Health's objectives and guiding principles in entering into the Agreements include:

- (a) coordinating the response of public and private health facilities in Queensland to deliver safe, coordinated care during the response to the Pandemic and during subsequent recovery phases;
- (b) ensuring the ongoing sustainability and operation of facilities owned or operated by each Private Hospital Operator (**Facilities**) (including maintenance of beds, workforce and the operations at the Facilities and the health services business conducted at the private health facilities);
- (c) ensuring that the Private Hospital Operators make available their Facilities (including the beds, workforce and the operations of the health services business conducted at those private health facilities) to Queensland Health;
- (d) ensuring the equitable procurement, supply and distribution between hospitals of personal protective equipment, medical equipment, medical supplies and other relevant supplies;
- (e) ensuring that the Private Hospital Operators provide equitable access to hospital services for public patients at a fair and reasonable cost to the State of Queensland and on the basis that the Operator provides the services on a purely cost recovery and non-profit basis,

(the **Objectives**).

6. Queensland Health is seeking authorisation to:

- (a) negotiate and enter into the Agreements;
- (b) engage in conduct consistent with the Objectives to give effect to the Agreements, including (without limitation) by:
 - (i) engaging in coordinated group discussions regarding healthcare operations, capacity and other matters required or contemplated by the Agreements and sharing any information required or contemplated by the Agreements or otherwise reasonably necessary to facilitate the Objectives, including but not limited to:
 - (A) information about the capacity or expected capacity of a hospital to provide care to patients or patients with particular conditions; and
 - (B) information about the availability of resources required to treat patients (including, but not limited to, hospital beds, staff, medicines and other equipment);
 - (ii) coordinating the following activities:
 - (A) allocation of the provision of certain services or certain patients to particular healthcare providers and / or between certain healthcare facilities (e.g. designating specific categories of patients to particular hospitals);
 - (B) restriction of certain services that can be provided at particular healthcare facilities;

- (C) sharing of resources (including staff and medical supplies and equipment) to meet demand at particular healthcare facilities; and
- (D) procurement and supply of medical equipment and supplies in order to minimise supply chain disruption and ensure these resources are available to healthcare facilities on an as-needs basis; and
- (iii) engaging in any other conduct that is necessary or desirable to give effect to the Agreements and facilitate the Objectives at the request or direction of Queensland Health or one or more of the Hospital and Health Services.

(the **Proposed Conduct**).

7. The key features of the Agreements are:

- (a) Queensland Health will provide funding to the Private Hospital Operators on condition that they provide certain services to public patients, including:
 - (i) any services which the Private Hospital Operator performs or is authorised to perform immediately prior to the commencement of the Agreement
 - (ii) each Private Hospital Operator making available to Queensland Health its specified healthcare facilities (including beds, healthcare and other services required to support the operation of each of its healthcare facilities), and
 - (iii) any other healthcare services reasonably necessary to respond to a patient who has been (or is suspected to have been) infected with the COVID-19 virus
- (b) each Private Hospital Operator will continue to hold operational control and operate their respective healthcare facilities
- (c) each Private Hospital Operator will be permitted to continue to provide healthcare services to private patients but only to the extent permitted by the Agreement or by Queensland Health, and only where this will not diminish the Private Hospital Operator's ability to perform the services under the Agreement
- (d) Queensland Health will oversee and direct a 'Private Health Facility Coordination Group' which is a group which will have a representative from some or all of the Private Hospital Operators and which will be the forum for coordinating resources between the Private Hospital Operators and one or more of the Hospital and Health Services
- (e) each Private Hospital Operator will continue to maintain all categories of employees in the ordinary course of business with the provision of secondment of staff to public healthcare facilities in certain circumstances
- (f) each Private Hospital Operator will provide services under the Agreement in return for specified payments from Queensland Health, which will not include an allowance for profit
- (g) public patients treated by a Private Hospital Operator will not be required to pay any out of pocket expenses except to the extent those expenses would be charged to the patient in the public system, and
- (h) the Private Hospital Operators will cooperate in respect of the procurement and supply of medical equipment and supplies.

Interim authorisation

8. On 7 April 2020, the ACCC granted conditional interim authorisation under subsection 91(2) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). The conditional interim authorisation allows Queensland Health and the participating private and public facilities to commence the Proposed Conduct, including entering into Agreements, while the ACCC is considering the substantive application.¹
9. The interim authorisation is subject to conditions that require reporting by Queensland Health, and the notification of additional parties participating in the Proposed Conduct.
10. The interim authorisation granted on 7 April 2020 will remain in place until it is revoked or until the date the ACCC's final determination comes into effect.

Background

11. The ACCC recognises the significant challenges occurring as a result of the Pandemic. The Pandemic has caused a major disruption to society and the economy, with social distancing measures and travel bans affecting various sectors across the economy. In that context, the ACCC has received a large number of applications for authorisation, including interim authorisation, aimed at providing financial relief to businesses and individuals, facilitating the supply of goods and services (including medical products and services) and managing the financial impact of a significant economic shock. In the early stages of the Pandemic, there was a significant risk of Australia's health services being put under significant stress, including the availability of sufficient hospital capacity. The identification of this risk gave rise to applications for authorisation such as the one from Queensland Health.

The National Partnership on COVID-19 Response

12. On 13 March 2020, in response to the Pandemic, the Commonwealth of Australia and each of the States and Territories, signed the National Partnership on COVID-19 Response² (the **NPA**). The NPA is a commitment between the Commonwealth and the States and Territories to respond to the Pandemic.
13. The NPA provides that as system managers of public hospitals, each State will enter into agreements with existing private hospitals (including day hospitals) within their jurisdiction, through a consistent agreement, to ensure:
 - a. increased capacity for the Commonwealth and States to rapidly respond to the COVID-19; and
 - b. the viability of private hospitals is maintained during the Pandemic and they are able to resume operations once the Pandemic response ends.

Restrictions on elective surgery and funding for private healthcare facilities

14. On 25 March 2020³, the National Cabinet announced the temporary suspension of all non-urgent elective surgery. The intent of this decision was to preserve resources, including protective equipment, and to prepare public and private healthcare services for their role in responding to the Pandemic. The ACCC understands that, in the absence of other funding measures, the temporary suspension of all non-urgent

¹ A list of Private Hospital Operators who are parties to an Agreement with Queensland Health under interim authorisation is included on the ACCC's public register in this matter.

² See <https://www.coag.gov.au/sites/default/files/communique/covid19-mpa.pdf>

³ See <https://www.pm.gov.au/media/elective-surgery>.

See also <https://www.health.gov.au/news/australian-health-protection-principal-committee-ahppc-statement-on-restoration-of-elective-surgery>.

elective surgery would have had a significant detrimental impact on the ongoing viability of private healthcare facilities.

15. On 30 March 2020, the Australian Government announced measures to introduce the viability for capacity guarantee⁴. The viability for capacity guarantee provides funding to allow private hospitals to stay open and to provide services as required to help manage the response to the Pandemic and also continue to deal with other urgent medical needs. State and Territory Governments have also provided funding to private healthcare providers as part of their participation in the response to the Pandemic.
16. The application for authorisation forms part of the implementation of the NPA and funding commitments that have been made by the Australian Government and State and Territory Governments.
17. The restrictions on elective surgery were eased in April 2020, allowing for the phased reintroduction of certain elective surgeries to commence. The Australian Health Protection Principal Committee (**AHPPC**) has established principles to guide the reintroduction of hospital activity, these include:
 - a. equity of access for all patients determined by clinical decision making and safety.
 - b. preservation and appropriate use of personal protective equipment (**PPE**).
 - c. restoration of elective surgery to be consistently applied in both public and private settings.
 - d. decisions on elective surgery are subject to local hospital capacity, jurisdiction capacity, transport availability and any other relevant quarantine arrangements in place.
 - e. restrictions on non-urgent elective surgery may be reintroduced depending on whole of system demand constraints related to COVID-19, including at a hospital or regional level in the event of an outbreak.
18. The AHPPC's principles provided that the restoration of elective surgery activity will be guided by avoiding harm and mitigating risk of deferral of procedure or services in line with clinical guidelines, and appropriate use and supply of PPE.

Consultation

19. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.
20. The ACCC invited submissions from potentially interested parties including relevant industry associations.⁵
21. The ACCC received one submission from Day Hospitals Australia which stated that it had no comments or issues to raise in respect of the Proposed Conduct.
22. Public submissions by Queensland Health and interested parties are on the Public Register for this matter.

⁴ See <https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/australian-government-partnership-with-private-health-sector-secures-30000-hospital-beds-and-105000-nurses-and-staff-to-help-fight-covid-19-pandemic>

⁵ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

ACCC assessment

23. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
24. Queensland Health has sought authorisation for conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of sections 45, 46 and 47 of the Act. Consistent with subsection 90(7) and 90(8) of the Act, the ACCC must not grant authorisation in relation to Queensland Health's application unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would result or be likely to result from the conduct (**authorisation test**).
25. Authorisation is prospective, the ACCC may grant authorisation allowing parties to make and give effect to arrangements entered into from the date its determination takes effect and to give effect to arrangements entered into under the terms of any interim authorisation that has been granted.
26. The ACCC's assessment of AA1000493 is made in the context of the Pandemic. The Pandemic is impacting Australian consumers and businesses, with many businesses facing severe disruption. Maintaining competition in the long term will be critical to benefit both consumers and the economy. When considering applications for authorisation responding to the Pandemic, the ACCC is seeking to ensure that changes to the competitive landscape are, wherever possible, temporary.
27. In making its assessment of the Proposed Conduct, the ACCC has considered:
 - The application and other relevant information available to the ACCC; this has included information provided by Queensland Health on a confidential basis and information published by the Australian Government and State and Territory Governments about the management of the healthcare system during the Pandemic.
 - The relevant areas of competition likely to be affected by the Proposed Conduct. These areas of competition include the supply of overnight and day hospital healthcare services to persons in Queensland, in both the private and public healthcare systems. The supply of surgical and other related healthcare services to persons in Queensland is also likely to be relevant. These areas of competition encompass a diverse range of healthcare services.
 - The likely future with the Proposed Conduct that is the subject of the authorisation compared to the likely future in which the Proposed Conduct does not occur. In the future without the Proposed Conduct the ACCC considers that the Queensland Government would be likely to enter into contracts with Private Hospital Operators on a bilateral basis. These contracts may be on broadly similar terms and would seek still to meet the NPA and other requirements implemented as part of the response to the Pandemic. However, the contracts would not establish the cooperation and coordination mechanisms between Private Hospital Operators provided for by the Proposed Conduct.

Public benefits

28. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*⁶

29. Queensland Health submits that the Proposed Conduct will result in significant public benefits, including:
- enabling the parties participating in the Proposed Conduct to work together to coordinate the medical response to the Pandemic in Queensland as effectively, efficiently and economically as possible;
 - reducing the likelihood that Private Hospital Operators operating in Queensland will have to partially or fully suspend or cease operations as a result of funding issues caused by the Commonwealth Government restrictions on their ability to provide certain surgeries;
 - providing Queensland Health with service capacity oversight to allow distribution of service delivery to meet periods of peak demand and minimise patient transfers between healthcare facilities which will allow patients to receive the best possible care available at the time;
 - allowing the Private Hospital Operators to be responsive to the needs of the overall healthcare system and coordinate with the relevant local Hospital and Health Services based on clinical priorities, recognising the need for continuity and quality patient care;
 - allowing the Private Hospital Operators to work in synchronisation with the public healthcare system and each other and prioritise capacity for COVID-19 patients, urgent care and other healthcare services;
 - ensuring medical equipment (including ventilators), PPE, medical supplies and other relevant supplies are, to the extent possible, available where needed to respond to the Pandemic;
 - ensuring provision of additional intensive care facilities in response to the Pandemic;
 - ensuring the Private Hospital Operators can remain operational, and retain staff under existing industrial arrangements during the Pandemic; and
 - ensuring the viability of Private Hospital Operators which will help ensure that following the Pandemic consumers will continue to have a choice of private or public care.
30. The ACCC considers that, without the Proposed Conduct, the Queensland Government would be likely to enter into contracts with Private Hospital Operators to facilitate access to the private healthcare system's resources; and that such agreements would be on broadly similar terms and would seek to meet the NPA and other requirements implemented as part of the response to the Pandemic. In these circumstances it is likely that the public benefits arising from the ongoing viability of the private healthcare system could be achieved without the Proposed Conduct.
31. The ACCC considers that the Proposed Conduct will allow the participating parties to coordinate the medical response to the Pandemic in Queensland as efficiently and effectively as possible, including by facilitating the swift response to any outbreaks that may emerge in Queensland. The ACCC considers that this is likely to contribute to public confidence during the Pandemic. The ACCC considers that the Proposed Conduct is likely to result in significant benefits to the public by supporting the timely deployment of critical resources.

⁶ *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

32. In addition, the ACCC considers that there are likely to be some contracting efficiencies resulting from the Proposed Conduct, and these may be more difficult to achieve without authorisation.

Conclusion on public benefits

33. The ACCC considers that the Proposed Conduct is likely to deliver significant public benefit through the enhanced coordination and improved responsiveness of the Queensland healthcare system to the Pandemic.

Public detriments

34. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.⁷

35. Queensland Health submits that it is not aware of any public detriments that may result from authorisation of the Proposed Conduct.
36. The Proposed Conduct introduces a number of measures to support the Queensland healthcare system's response to the Pandemic, for example:
- a. discussion of healthcare operations, facility capacity, and resourcing;
 - b. allocation of services, including between healthcare facilities;
 - c. restriction of services, including determining services that can be provided at particular healthcare facilities; and
 - d. sharing of resources, including staff and medical supplies and equipment, to meet demand at particular healthcare facilities.
37. While providing a mechanism for the healthcare system to respond to the Pandemic, these measures may restrict competition. For example, private patients with non-COVID-19 conditions may experience fewer options or longer wait times for healthcare services during these interventions, including because COVID-19 patients are prioritised over other patients. To a large extent, however, many of these detriments would be likely to arise due to increased demand on healthcare resources as a result of the Pandemic, and by public policy decisions in response to it. In that sense, many of these detriments would occur with and without the Proposed Conduct.
38. The Proposed Conduct also allows for increased cooperation and coordination between competitors. Agreements between competitors can give rise to competition concerns if the horizontal agreement makes coordination (rather than competition) between firms beyond the terms of the authorised agreement more likely and also across the market more generally.
39. The ACCC considers that in the absence of the extraordinary circumstances created by the Pandemic, the detriment to the public from the Proposed Conduct could be significant.
40. However, the ACCC considers that, in the current circumstances, the likely public detriment from the Proposed Conduct is limited by a number of factors:
- a. the direction of capacity in the public and private healthcare system is in accordance with the AHPPC's principles on the reintroduction of hospital

⁷ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

activity. These in part provide that restoration of elective surgery will be consistently applied in both public and private settings;

- b. to the extent that Private Hospital Operators retain the capacity to do so, nothing in the Agreements is intended to affect the normal competitive process vis-à-vis the provision of healthcare services to private patients;
- c. the Proposed Conduct does not extend to any price agreements between private hospitals for non-COVID-19 services;
- d. the Proposed Conduct does not extend to any coordination or agreement between Private Hospital Operators or between Private Hospital Operators and Queensland's Hospital and Health Services other than as necessary or desirable to give effect to the Agreements and facilitate the Objectives. Coordination between the participating parties can only occur at the request or direction of Queensland Health or one or more of the Hospital and Health Services;
- e. any information shared under the Proposed Conduct is likely to lose relevance following the cessation of the Proposed Conduct;
- f. the Proposed Conduct provides a temporary response to the Pandemic, the measures are not designed or intended to provide a permanent restriction on competition. The Proposed Conduct can be discontinued during the period of authorisation in the event that the effects of the Pandemic subside.

Conclusion on public detriments

- 41. The ACCC considers that the Proposed Conduct is likely to result in some public detriment in the short term because it will reduce competition, including in the supply of overnight and day hospital healthcare services to particular patients in Queensland. However, there are a number of factors that mean the ACCC considers it unlikely that the Proposed Conduct will significantly impact competition in the long term.

Balance of public benefit and detriment

- 42. The ACCC considers that the Proposed Conduct is likely to result in significant public benefits through the enhanced coordination and improved responsiveness of the Queensland healthcare system to the Pandemic.
- 43. The ACCC also considers that the Proposed Conduct is likely to result in some public detriment over the short term because it is likely to reduce competition in the supply of hospital or healthcare services to certain patients in Queensland. In the circumstances it considers that the reduction in competition is limited by a number of factors and is not likely to continue in the long term. In the absence of the extraordinary circumstances created by the Pandemic, the detriment to the public from the Proposed Conduct could be significant.
- 44. As discussed below, the ACCC is proposing to specify conditions in the proposed authorisation. By providing for transparency, the conditions provide confidence that any conduct falling outside of the conduct that is authorised would be unlikely.
- 45. Overall, and subject to the proposed conditions, the ACCC considers that the Proposed Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

Proposed conditions of authorisation

46. The ACCC may specify conditions in an authorisation.⁸ The legal protection provided by the authorisation does not apply if any of the conditions are not complied with.⁹
47. In its April 2020 interim authorisation, the ACCC imposed conditions requiring Queensland Health to provide reports to the ACCC and to notify the ACCC of additional participating parties. These conditions provide important transparency in relation to the Proposed Conduct and the parties protected by the interim authorisation.
48. As noted above, in the absence of the extraordinary circumstances of the Pandemic, the Proposed Conduct could lead to significant public detriment. The ACCC considers that the transparency gained through the conditions provides confidence that any conduct falling outside of the conduct that is authorised would be unlikely. The ACCC considers that the conditions imposed under the interim authorisation have been effective. Therefore, the ACCC proposes to continue these conditions as part of the substantive authorisation (see paragraphs 58 – 61).

Length of authorisation

49. The Act allows the ACCC to grant authorisation for a limited period of time.¹⁰ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
50. In this instance, Queensland Health seeks authorisation for 12 months from the date of the final determination.
51. The ACCC proposes to grant authorisation until 30 September 2021.

Draft determination

The application

52. On 6 April 2020, Queensland Health lodged application AA1000493 with the ACCC, seeking authorisation under subsection 88(1) of the Act.
53. Queensland Health seeks authorisation, on behalf of itself and Private Hospital Operators and each of Queensland's Hospital and Health Services, for the broad purpose of maximising healthcare capacity and ensuring the State-wide coordination of healthcare services to facilitate the most efficient and effective allocation of healthcare during the period of the Pandemic. As part of these arrangements, Queensland Health will enter into Agreements with Private Hospital Operators.
54. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

55. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation in relation to Queensland Health's application unless it is satisfied in all the circumstances that the Proposed Conduct would result or be likely to result in a benefit

⁸ Section 88(3) of the Act.

⁹ Section 88(3) of the Act.

¹⁰ Subsection 91(1) of the Act.

to the public, and the benefit would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct.

56. For the reasons outlined in this draft determination, and subject to the proposed conditions, the ACCC considers that, in all the circumstances, the Proposed Conduct would result in a benefit to the public, and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct.
57. Accordingly, the ACCC proposes to grant authorisation.

Proposed conditions of authorisation

58. The ACCC may specify conditions in an authorisation.¹¹ The legal protection provided by the authorisation does not apply if any of the conditions are not complied with.¹²
59. The ACCC may specify conditions in circumstances where, although the relevant public benefit test is met, without the conditions the ACCC would not be prepared to exercise its discretion in favour of the authorisation.¹³
60. In this instance, the ACCC proposes to grant authorisation subject to the following conditions:

Condition 1 – Reporting Requirements

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

Condition 2 – Notification of future parties

To the extent that Queensland Health believes it necessary or desirable for any other private healthcare operators (other than the private hospital operators listed in Attachment 1) to participate in the Proposed Conduct, Queensland Health must notify the ACCC of the identity of those parties.

61. These proposed conditions are the same as those that currently apply under the Interim Authorisation granted on 7 April 2020.

Conduct which the ACCC proposes to authorise

62. Subject to the proposed conditions, the ACCC proposes to grant authorisation AA1000493 to enable Queensland Health and Private Hospital Operators as listed at Attachment 1 and each of Queensland's Hospital and Health Services as listed in Attachment 2 to coordinate healthcare services to facilitate the most efficient and effective allocation of healthcare during the period of the COVID-19 pandemic as described in paragraph 6 and defined as the Proposed Conduct.
63. The Proposed Conduct may involve:
- a cartel provision within the meaning of Division 1 of Part IV of the Act, or
 - a substantial lessening of competition within the meaning of section 45 of the Act, including by engaging with one or more persons in a concert practice, or
 - a corporation that has a substantial degree of market power in a market engaging in conduct that has the purpose, or has or is likely to have the effect

¹¹ Section 88(3) of the Act.

¹² Section 88(3) of the Act.

¹³ Application by Medicines Australia Inc (2007) ATPR 42-164 at [133].

of substantially lessening competition within the meaning of section 46 of the Act, or

d. may constitute exclusive dealing within the meaning of section 47 of the Act.

64. The ACCC proposes to grant authorisation to the Proposed Conduct only in so far as it is for the sole purpose of dealing with the effects of the Pandemic in Queensland.
65. The ACCC proposes to grant conditional authorisation AA1000493 until 30 September 2021.
66. This draft determination is made on 9 July 2020.

Next steps

67. The ACCC now invites submissions in response to this draft determination. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.

Attachment 1 – Private Hospital Operators

- Healthscope Operations Pty Ltd
- Ramsay Health Care Investments Pty Ltd
- St Vincent Private Hospital Ltd
- Mater Misericordiae Ltd
- UnitingCare Queensland
- UnitingCare Health
- Health Care Specialty Holdings Pty Ltd
- Cura Day Hospitals (Operations) Pty Ltd
- A Chetty Pty Ltd
- Australian Hospital Care (Pindara) Pty. Ltd
- Bhaskar Chakravarty Pty Ltd
- BPDH OPERATING CO. PTY LTD
- Brisbane Endoscopy Services Pty. Ltd.
- Brisbane Medical Pty Ltd
- Bundaberg Friendly Society Medical Institute Limited
- Clifton Co-Op Hospital Ltd
- Eastern Endoscopy Centre Pty Ltd
- Far North Day Hospitals Pty Ltd
- Fresenius Medical care Australia Pty Ltd
- Fresenius Medical care Australia Pty Ltd
- Hervey Bay Surgical Centre Pty Ltd
- Hospital Corporation Australia Pty Ltd
- Integrated Clinical Oncology Network Pty Ltd
- Ipswich Hospice Care Ltd
- Lee Lenton Medical Pty Ltd
- Logan Endoscopy Services Pty Ltd
- Mackay Specialist Day Hospital Pty Limited
- Marie Stopes International AL
- MB Healthcare Pty Ltd
- MB Healthcare Pty Ltd (Montserrat)
- Miami Private Hospital Pty Ltd
- Moreton Eye Group (Renew Vision Pty Ltd)
- N.A. Kratzmann & Sons Pty Ltd
- Nambour Day Surgery Pty Ltd
- Northside Endoscopy Services Pty Ltd
- Pindara Day Procedure Centre Pty Ltd
- Queensland Eye Institute Foundation
- Rehabilitation Medicine Australia Pty Ltd
- Robina Day Surgery Pty Ltd
- Roderick Street Day Hospital Pty Ltd
- South Bank Medical Group Ltd
- South East Queensland Hyperbaric Pty Ltd
- Tasman Health Care Pty Ltd
- The Corporation of the Order of the Canossian Sisters
- The Trustee for Cairns Haematology and Oncology Group Unit Trust
- The Trustee for Southport Day Hospital Unit Trust
- The Trustee for SWC Unit Trust
- Toowoomba Hospice Association Inc. 8
- Townsville Day Surgery Pty Ltd
- Vei Services Pty Limited
- Vision Centre Day Surgery Pty Ltd
- Wesley Mission Queensland

- Windermere House Pty Ltd
- Buderim Gasto Pty Ltd
- Cairns Haematology and Oncology Services Pty Ltd
- Dermatology & Cosmetic Surgery Services Pty Ltd
- Far North Day Hospital Pty Ltd
- John Francis Lancaster
- LPBCH Pty Ltd
- Logan Day Surgery Pty Ltd
- Macquarie Cosmetic Institute Pty Ltd
- Marie Stopes International
- Pacific Day Surgery Pty Ltd
- Snippy Snape Service Pty Ltd
- South Bank Day Hospital Pty Ltd
- St Andrew's Toowoomba Hospital
- Virtus Health Limited

Attachment 2 – Queensland’s Hospital and Health Services

- Cairns and Hinterland Hospital and Health Service
- Central Queensland Hospital and Health Service
- Central West Hospital and Health Service
- Children’s Health Queensland Hospital and Health Service
- Darling Downs Hospital and Health Service
- Gold Coast Hospital and Health Service
- Mackay Hospital and Health Service
- Metro North Hospital and Health Service
- Metro South Hospital and Health Service
- North West Hospital and Health Service
- South West Hospital and Health Service
- Sunshine Coast Hospital and Health Service
- Torres and Cape Hospital and Health Service
- Townsville Hospital and Health Service
- West Moreton Hospital and Health Service
- Wide Bay Hospital and Health Service