



# Draft Determination and interim authorisation

Application for revocation of A91564 and the substitution of authorisation AA1000559 lodged by Reserve Bank Health Society Limited in respect of certain special services under the contract with Peoplecare Health Limited

Authorisation number: AA1000559

Date: 16 August 2021

Commissioners: Keogh  
Rickard  
Brakey  
Ridgeway

## Summary

The ACCC proposes to re-authorise certain aspects of a Management Services Agreement between the Reserve Bank Health Society and Peoplecare Health Limited. Under the agreement Peoplecare will provide a range of administrative, operational and management services to Reserve Bank Health Society.

The ACCC granted authorisation to similar arrangements on 25 August 2011 for 10 years. This authorisation will expire on 15 September 2021.

The arrangements for which re-authorisation are sought are substantially the same as those authorised in 2011.

The ACCC considers that re-authorising this contract for services is likely to result in public benefits, including economies of scale and reduced transaction costs, lower premium increases and increased services and benefits for members. The ACCC considers that the arrangements are not likely to result in any significant public detriments.

The ACCC proposes to grant authorisation for a further 10 years.

The ACCC has also granted interim authorisation to allow the arrangements authorised in 2011 to continue while the ACCC completes its assessment of the application for re-authorisation.

The ACCC invites submissions in relation to this draft determination by 30 August 2021, before making its final decision.

## 1. The application for authorisation revocation and substitution

- 1.1. On 16 June 2021, Reserve Bank Health Society Limited (**RBHS**) lodged an application to revoke authorisation A91564 and substitute authorisation AA1000559 for the one revoked (referred to as **re-authorisation**) with the Australian Competition and Consumer Commission (the **ACCC**). The RBHS is seeking re-authorisation to enable Peoplecare Health Limited (**Peoplecare**) to continue to provide a range of administrative, operational and management services to RBHS for a further 10 year period. This application for re-authorisation AA1000559 was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.2. The ACCC may grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in the Act, but are not harmful to competition and/or are likely to result in overall public benefits. The RBHS considers there is a risk the conduct breaches the Act including the cartel provisions, due to the types of information flowing between the parties, who are both health insurers.
- 1.3. The RBHS also requested interim authorisation in the event that the ACCC does not complete its assessment of the application for re-authorisation before the existing authorisation expires on 15 September 2021. Granting interim authorisation prior to the expiry of the current authorisation will have the effect of suspending its operation and substituting it with the interim authorisation such that the ACCC can consider the application for revocation and substitution. The request for interim authorisation is discussed further in section 6.

## The Applicants

### Reserve Bank Health Society Limited

- 1.4. The Reserve Bank Health Society Limited (**RBHS**) is a small member-owned not-for-profit restricted health fund established in 1959 which provides private health insurance to current and former staff (including spouses, dependants and first generation adult children) of the Reserve Bank of Australia (**RBA**) and the RBA's wholly-owned subsidiary, Note Printing Australia. Services provided by the RBHS are regarded primarily as a staff benefit provided by these employers.
- 1.5. The majority of RBHS members are located in the Sydney region with membership of approximately 2,362 policies as at 30 June 2020 which represents 0.035% of health insurance policies held in Australia; it is one of the smallest health funds in Australia.
- 1.6. In 2011, the RBA ceased providing most of the administrative and management services required by the RBHS, including member services, claims processing, financial reporting, RBHS Board governance support, and the Chief Executive Officer. In 2011, the RBHS entered into a Management Services Agreement with Peoplecare as a specialist service provider to administer the operations of the RBHS.

### Peoplecare Health Limited

- 1.7. Peoplecare (previously known as Lysaght Peoplecare Limited) is an open, not-for-profit provider of private health insurance established in 1953, based in Wollongong, New South Wales.
- 1.8. The majority of Peoplecare's members are located in the Illawarra and Mornington Peninsula regions. Peoplecare had approximately 33,349 policies as at 30 June 2020 and this represents a share of 0.5% of health insurance policies in Australia.

## The Conduct

- 1.9. The RBHS seek re-authorisation for Peoplecare to continue to provide a range of administrative, operational and management services under its Management Services Agreement (**MSA**). In particular the MSA continues to provide for these services:
  - marketing services.
  - product development and implementation.
  - hospital contract management.
  - governance risk and compliance services - including assisting in the development of RBHS's strategic and business plans; preparing advice on industry issues, benefit structures, premiums and capital adequacy; conducting reviews on capital management, audits and actuarial assessments; provision of Company Secretarial functions; risk management activities associated with the Chief Risk Officer role and attendance at RBHS Board, Audit Committee, Risk Committee, and Nomination and Remuneration Committee Meetings
  - provision of a Chief Executive Officer for RBHS.

(the **Conduct**)

- 1.10. The purpose of the Conduct is the outsourcing of services to Peoplecare, as RBHS does not have the expertise in managing a health fund and it is not cost effective for it to do so.
- 1.11. RBHS advises that the Conduct is substantively the same as that authorised by the ACCC in 2011. However there have been changes in the Private Health Insurance (PHI) industry over the last 10 years, and these changes are reflected in the MSA.<sup>1</sup>
- 1.12. Changes to the Conduct include wording clarifications to better reflect industry developments and current best practice (for Hospital and Provider Contract Management, Annual Premium Review and Submissions), the addition of an RBHS Chief Financial Officer, the addition of a Company Secretary and Chief Risk Officer provided to RBHS by Peoplecare.

## 2. Background

### Management Services Agreement

- 2.1. The Board of the RBHS is its key decision-making body and manages the health fund in accordance with its Constitution and relevant legislation. The Board's key responsibilities include setting the strategic direction of the Fund, determining benefits and premiums, risk management and ensuring financial soundness.
- 2.2. Under the MSA, Peoplecare provides a range of governance services required by the RBHS Board, including the provision of the Chief Executive Officer for the RBHS. Key staff provided by Peoplecare, including the CEO, Chief Risk Officer and Company Secretary, also assist the Board of the RBHS in preparing the RBHS's strategic plan, developing its business plans, and preparing advice on industry issues, benefit structures, premiums and capital adequacy. All services are provided under the review and continual oversight of the RBHS Board.
- 2.3. The RBHS Board is independent of Peoplecare and will continue to be elected by members of the RBHS. The Board's responsibilities noted earlier will not be affected by the conduct.
- 2.4. RBHS and Peoplecare will also continue to negotiate separately with two key outsourced service suppliers, namely the Hospital and Medical Benefits Systems (HAMBS), which provides membership and claims processing systems and the Australian Health Services Alliance (AHTSA), which represents a number of private health funds across Australia and is responsible for facilitating arrangements between hospitals, doctors and health service providers on behalf of these funds. RBHS submits that it and Peoplecare will continue to purchase services from HAMBS and AHTSA separately from the MSA.

### Private Health Insurance Industry

- 2.5. Currently there are 37 registered providers of PHI in Australia (26 open funds and 11 restricted funds).<sup>2</sup> Under the portability provisions of the *National Health Act 1953* consumers are able to move freely between funds. Current or potential members of the RBHS and Peoplecare may purchase health cover from 26 open-access private

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<sup>1</sup> RBHS advises the changes are to: Hospital and Provider Contracts Management: Item 2(b)(i) and 2(b)(ii); Management Reporting – Financial: Item 4(b); Governance – Annual Premium Review and Submission: Items 13(d)(ii), 13(d)(iii) and 13(d)(iv); and Governance – Other Board Services: Items 13(l)(ii) and 13(l)(v) (at Schedule 1 of RBHS' application for re-authorisation).

<sup>2</sup> The list of Australian Private Health Insurers are available here: <https://www.privatehealth.gov.au/dynamic/insurer>

health insurers, all except one of which offer their products in New South Wales where most of the RBHS's members are located. Of these 37 funds there were a total of 6,705,661 health fund policies in Australia as at 30 June 2020.<sup>3</sup>

- 2.6. Registered PHI providers are subject to certain ongoing requirements under the PHI Act and the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007 (PHI Rules)*. Under subsection 66(10) of the PHI Act, changes to PHI premiums can only be made on an annual basis and are subject to approval by the Federal Minister for Health and Ageing (**the Minister**). Premium increases will be approved unless the Minister deems that they are not in the public interest. Premium increases are considered to be in the public interest where they are the minimum necessary, taking into consideration insurer solvency requirements, forecast benefit payments and prudential requirements, while also ensuring the affordability and value of PHI as a product. Consideration is also given to a PHI provider's management expenses ratio (**MER**<sup>4</sup>); which measures the relationship between the operating expenses incurred in the course of an insurer's normal operations and its contribution income.
- 2.7. The Australian Prudential Regulation Authority (**APRA**) is the independent statutory authority responsible for regulating the PHI industry; PHI policy is administered by the Federal Government Department of Health and Ageing (**DOHA**); and the Private Health Insurance Ombudsman (**PHIO**) is responsible for dealing with consumer complaints regarding PHI.

### 3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including competitors, suppliers, customers, relevant industry associations or peak bodies, consumer groups, state and federal government and relevant regulatory bodies.<sup>5</sup>
- 3.3. The ACCC received one public submission, supporting the application, from the Australian Health Service Alliance.
- 3.4. Public submissions by the RBHS and interested parties are on the [Public Register](#) for this matter.

### 4. ACCC assessment

- 4.1. The ACCC's assessment of the Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. The RBHS 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 section 45 of the Act. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances that the conduct would result or be likely to result

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<sup>3</sup> APRA Operations of Private Health Insurers Annual Report available here: <https://www.apra.gov.au/operations-of-private-health-insurers-annual-report>

<sup>4</sup> The Management Expenses Ratio (MER) is a common efficiency measure in the PHI. It represents the costs associated with owning a mutual fund. It indicates how much a fund pays in management fees and operating expenses (including taxes) on an annual basis. MERs are expressed as percentage of daily average net assets during the year.

<sup>5</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (authorisation test).

## Relevant areas of Competition

- 4.3. To assess the likely effect of the Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.4. The ACCC considers that it is not necessary to precisely define the relevant areas of competition in order to assess the effects of the Conduct, but considers the relevant areas of competition are likely to include competition for the supply of PHI on a national basis, and between providers of special management services to PHI providers on a national basis.

## Future with and without the Conduct

- 4.5. In applying the authorisation test, the ACCC compares the likely future with the Conduct that is the subject of the authorisation to the likely future in which the Conduct does not occur.
- 4.6. The ACCC considers that without the conduct, RBHS may move the services in-house, or may contract with a provider outside of the PHI industry for these services.

## Public benefits

- 4.7. 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.<sup>6</sup>*

- 4.8. RBHS submits the Conduct will continue to result in public benefits through enabling lower overall administrative costs (resulting in smaller premium increases and higher benefits for members), which will in turn allow eligible RBHS members to have access to better and more affordable health cover.
- 4.9. RBHS submits the ability to use a specialist industry entity such as Peoplecare for RBHS administration will continue to minimise the RBHS's MER. The RBHS's MER is somewhat higher than the industry average because, as one of the smallest private health insurers in Australia, it has virtually no scope for economies of scale and many other costs (outside of the MSA) are largely fixed in nature (e.g. actuarial advice).
- 4.10. Since the 2011 Authorisation, RBHS submits this public benefit has been realised and enabled RBHS to maintain its sustainability. The MER was 16.3% at the commencement of the agreement and ten years later it is at 12.8%.<sup>7</sup> While this is still higher than the industry average, there are examples of other funds who have a higher MER despite the benefits of their larger scale. The reduced MER enables lower premium increases and helps to enable the sustainability of the RBHS.

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<sup>6</sup> 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.

<sup>7</sup> RBHS ACCC submission: Table 4 – RBHS to Industry comparison (Premiums and MER)

- 4.11. Over the 10 years of the agreement, the overall increases to RBHS premiums have been less than the combined industry average.
- 4.12. RBHS submits the new contract is expected to facilitate ongoing improvements to RBHS members in terms of better services. Examples include:
- The online claims management system is able to be leveraged from Peoplecare's dedicated systems and technical expertise, including an advanced electronic work flow management system.
  - The provisions for re-authorisation allow the RBHS to share Peoplecare's management expertise and experience to sharpen its business focus and provide new services and health products.
  - The RBHS is able to adopt broader health care programs aimed at providing members with hospital care in the home, substitutes for hospital treatment and chronic disease management programs. An implemented example is the introduction of telehealth services in response to COVID-19. This is consistent with Government policy initiatives to encourage private health funds to provide such products.
- 4.13. The RBHS submits it does not have the resources to implement such systems by itself as its membership is small and the necessary technical expertise cannot be retained in such a small fund.
- 4.14. The ACCC considers that the Conduct is likely to result in some public benefit through capturing efficiencies through economies of scale by having Peoplecare undertake these roles for a larger number of people. These efficiencies may be passed onto consumers in the form of lower premiums and higher levels of benefit, and may result in an increased range of services being available to RHBS members.
- 4.15. Moreover, the efficiency gains have, and are likely to continue to allow members access to increased services; in home hospital care, other substitutes for hospital treatment and chronic disease management programs. These gains may not otherwise occur if the administration was performed in-house or by an alternate provider outside of the private health insurance industry.

## Public detriments

- 4.16. 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.<sup>8</sup>*
- 4.17. The RBHS submits that the Conduct will not result in any public detriment and notes that the arrangements are substantially similar to those for which authorisation has previously been granted.
- 4.18. Generally speaking, the ACCC recognises that arrangements between competitors have potential to result in public detriments including by creating or enhancing the potential for coordinated conduct beyond the scope of the authorisation.

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

4.19. However, the ACCC considers that any detriments from the Conduct are likely to be minimal and mitigated by:

- The very small proportion of policy holders for RBHS and Peoplecare (discussed at paragraphs 1.5 and 1.8 above), and the large number of alternative PHI providers available to consumers
- The minimal prospect of significant competition between RBHS and Peoplecare in the absence of the agreement (including due to their focus on different geographic regions, as well as the eligibility requirements for RBHS)
- Regulatory processes (discussed as paragraph 2.6 above) which are likely to provide a further constraint on price increases.
- Structural provisions and mechanisms in the MSA which preserve the independence of the two funds.

4.20. As such, the ACCC considers the Conduct is unlikely to result in public detriments.

## Balance of public benefit and detriment

4.21. For the reasons outlined in this draft determination, the ACCC is satisfied that the Conduct is likely to result in public benefits in the form of efficiencies due to economies of scale, and that this public benefit would outweigh the likely detriment to the public from the Conduct.

## Length of authorisation

4.22. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>9</sup> 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.

4.23. In this instance, RBHS seeks re-authorisation for 10 years as this aligns to the maximum term of the new contract with Peoplecare (i.e. the term of the Contract is 5 years with the option to extend for a second term of 5 years). This will provide ongoing stability and certainty for RBHS and Peoplecare staff and members.

4.24. Noting that the arrangements have been in place for 10 years, the public benefits that have resulted and are likely to continue, and the low risk of public detriment, the ACCC proposes to grant re-authorisation for a further 10 years.

## 5. Draft determination

### The application

5.1. On 16 June 2021 the RBHS lodged an application to revoke authorisation A91564 and substitute authorisation AA1000559 for the one revoked (referred to as **re-authorisation**). The application for re-authorisation AA1000559 was made under subsection 91C(1) of the Act.

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<sup>9</sup> Subsection 91(1)



- 5.2. The RBHS seeks authorisation for certain aspects of a Management Services Agreement it has entered into with Peoplecare.
- 5.3. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

### The authorisation test

- 5.4. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Conduct.
- 5.5. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Conduct would be likely to 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 Conduct, including any lessening of competition.
- 5.6. Accordingly, the ACCC proposes to grant re-authorisation.

### Conduct which the ACCC proposes to authorise

- 5.7. The ACCC proposes to revoke authorisation A91564 and grant authorisation AA1000559 in substitution. The re-authorisation will enable the RBHS to re-enter into the Management Services Agreement (**MSA**) with Peoplecare.
- 5.8. The RBHS seek re-authorisation for Peoplecare to continue to provide a range of administrative, operational and management services under its MSA. In particular the MSA continues to provide for these services:
  - marketing services.
  - product development and implementation.
  - hospital contract management.
  - governance risk and compliance services - including assisting in the development of RBHS's strategic and business plans; preparing advice on industry issues, benefit structures, premiums and capital adequacy; conducting reviews on capital management, audits and actuarial assessments; provision of Company Secretarial functions; risk management activities associated with the Chief Risk Officer role and attendance at RBHS Board, Audit Committee, Risk Committee, and Nomination and Remuneration Committee Meetings
  - provision of a Chief Executive Officer for RBHS.

(the **Conduct**)

- 5.9. The Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
- 5.10. The ACCC proposes to grant authorisation AA1000559 for 10 years.
- 5.11. This draft determination is made on 16 August 2021.

## 6. Interim authorisation

- 6.1. The authorisation A91564 is due to expire on 15 September 2021. In order to enable due consideration to be given to the application for re-authorisation, the ACCC has decided to suspend the operation of authorisation A91564 and grant interim authorisation in substitution.<sup>10</sup> The ACCC has decided to grant interim authorisation for the following reasons:
- interim authorisation will maintain the status quo, allowing the RBHS to ensure that the services provided under the MSA continue to be provided by Peoplecare, while also minimising uncertainty and disruption that will be experienced if interim authorisation is not granted, and
  - for the reasons set out in this draft determination, the ACCC considers the Conduct is likely to result in public benefits, which would outweigh the likely minimal public detriment.
- 6.2. The ACCC grants interim authorisation on the same terms and conduct as authorisation A91522.
- 6.3. Interim authorisation comes into effect immediately and will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

## 7. Next steps

- 7.1. The ACCC now invites submissions in response to this draft determination by **30 August 2021**. 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.

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<sup>10</sup> This decision is made under s 91(2)(f) of the CCA.