

**From:** [REDACTED]  
**To:** [Bethany White](#)  
**Cc:** [REDACTED]; [Naomi Menon](#); [Cassandra Ang](#); [Rebecca Ryan](#)  
**Subject:** RE: Health Partners application for authorisation - AA1000636 - Clarification regarding counterfactual [SEC=OFFICIAL] [HWLE-MATTER.C090649.1146532]  
**Date:** Monday, 3 July 2023 3:23:29 PM  
**Attachments:** [image003.jpg](#)  
[image001.png](#)  
**Importance:** High

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Dear Bethany

Thank you for your email.

The Applicant notes the ACCC's queries, but is unable to provide a complete response in the short period provided. However, given the time which has elapsed since the application was lodged, the Applicant is very eager to see it progress as quickly as it can, and so provides the brief response below.

The ACCC has raised the counterfactual noted in the Application, whereby the Applicant could avoid being in competition with other dental practices by restructuring its business, and divesting ownership and control of its existing Applicant Practices. This is not the Applicant's preference for a number of reasons.

Plainly, such a step would be a significant undertaking, and involve a large amount of cost. It would also leave the Applicant Practices under a very different structure than the balance of the Applicant's business, including its optical practices (which themselves are often co-located with the dental Applicant Practices). The Applicant is yet to give consideration as to how such a divestment would be effectively achieved in the context of its not-for-profit model, which may leave less scope to consider commercial models adopted by other insurance providers. In addition, complicating this corporate structure could only introduce greater costs, which, in the context of a not-for-profit, will be at the expense of benefits provided to Members.

Because the Applicant Practices are entirely within the control of the Applicant, the Applicant is able to ensure consistent standards of practice and communication. While the ACCC notes that there are standards which apply to all dental practitioners, those represent only minimum standards of conduct required. The Applicant's control of the Applicant Practices allows it to closely monitor conduct to ensure that those minimum standards are not only met but exceeded. While the proposed conduct would provide some level of oversight over the conduct of Partner Practices, it would not be to the same degree as in the Applicant's own Applicant Practices.

Beyond the standards associated with dental work itself, the Applicant takes great care to ensure that the broader conduct of the Applicant Practice businesses, and how those businesses interact with the Applicant's Members and the public at large, is to a high standard befitting the Applicant's brand and reputation. Were it to divest the Applicant Practices, it would lose this control and oversight.

Ultimately, the divestment of the Applicant Practices would be an artificial step to technically avoid operation of the relevant provisions of the *Competition and Consumer Act*, putting the Applicant to greater cost, without resulting in any better outcomes for the Applicant's Members.

In addition to the counterfactual raised by the ACCC, a further counterfactual would involve the

Applicant declining to establish a dental partner network whatsoever. This would plainly result in less ideal outcomes for the Applicant's members located outside of suburban Adelaide, given the benefits of the capped pricing scheme described in the Application and subsequent correspondence. It would also leave the Applicant less able to compete with other health insurance providers who do operate similar networks.

The Applicant has made the Application out of an abundance of caution, notwithstanding that the degree of competition between its Applicant Practices and the Partner Practices may only be modest. The Applicant submits that it should not be placed at a disadvantage in the determination of the Application merely because it has taken a conservative approach in this respect, and considers that the steps it has taken to engage with the ACCC are preferable to trying to formulate an artificial scheme which tests the boundaries of permissible conduct.

We trust this response addresses your queries. Please let us know if further information or clarification is required.

Our client does not oppose this email being placed on the public register.

Regards

Peter

**Peter Campbell**  
Partner

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