

From: [REDACTED]
To: [Rebecca Ryan](#)
Cc: [Naomi Menon](#); [Cassandra Ang](#); [REDACTED]
Subject: AA1000639 - HCF application for re-authorisation of MFT arrangements [ASH-AUS.FID30792100]
Date: Wednesday, 9 August 2023 1:44:49 PM
Attachments: [image001.png](#)
[HCF's response to the ACCC's further requests for information regarding HCF's application for reauthorisation of its More For Teeth progr~1.pdf](#)

Dear Rebecca,

We refer to the further request for information received from the ACCC on 16 June 2023, as supplemented by further oral requests in July and August.

We **attach** HCF's Response to the ACCC's request, including Annexure A, dated 9 August 2023.

HCF consents to a copy of this email and its attachments being placed on the ACCC's public register.

We would be grateful if you could please confirm receipt of this email and its attachments.

Please let us know if you would like to discuss.

Kind regards,

Peter and Isabella

Peter Armitage

Partner

D: + [REDACTED] | M: + [REDACTED]

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Lawyer

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HCF'S MORE FOR TEETH PROGRAM

HCF'S RESPONSE TO THE ACCC'S FURTHER REQUESTS FOR INFORMATION REGARDING HCF'S APPLICATION FOR REAUTHORISATION OF ITS MORE FOR TEETH PROGRAM DATED 9 AUGUST 2023

9 AUGUST 2023

HCF'S MORE FOR TEETH PROGRAM

**RESPONSE TO THE ACCC'S FURTHER REQUEST
FOR INFORMATION REGARDING HCF'S
APPLICATION FOR REAUTHORISATION
AA1000639**

9 AUGUST 2023

Introduction

1. The Hospitals Contribution Fund of Australia Limited ACN 000 026 746 (**HCF**) lodged its application for revocation of existing ACCC authorisation AA1000402 granted on 11 May 2018 (**Initial Authorisation**) and substitution of a new authorisation on 23 March 2023 (**Reauthorisation Application**) ([AA1000639](#)).
2. The ACCC granted Interim Authorisation on 26 May 2023.
3. This submission by HCF responds to a further request for information received from the ACCC on 16 June 2023 as supplemented by further oral requests in July and August (**ACCC RFI**).
4. Unless indicated, defined terms in this submission have the same meaning as those in the Reauthorisation Application.

HCF's response to the ACCC RFI

5. The ACCC RFI requests further information on four subjects.

1. Proposed conduct insufficiently clear

We consider that the proposed conduct as defined in paragraph 15 of the application is insufficiently clear, including for the purposes of consulting with interested parties.

The description of the proposed conduct should specify all of the provisions for which authorisation is sought, and either a full copy of the agreement or a full and informative extract of relevant provisions including any relevant definitions should be provided, to ensure the clauses can be understood. In respect of the definition of "DCN Centre", the description also should clarify whether it refers only to current, or also to future, centres and their location(s).

We request that you provide a revised description of the proposed conduct taking into account the above comments for the ACCC's consideration.

6. The Proposed Conduct, as defined in paragraph 15 of the Reauthorisation Application and as further explained in the email of 11 May 2023, is to be understood in light of paragraphs 6 to 13 inclusive of the Reauthorisation Application.

7. The provisions set out in **Annexure A** to this submission and future provisions in the MFT Agreements, if the provisions in Annexure A are varied by HCF from time to time, which have the same or a substantially similar price-capping effect to those set out in Annexure A are the **Relevant Provisions**.
8. The Proposed Conduct:
 - a. takes place in the same catchment areas in which HCF operates, at any time during the 10 year period of reauthorisation, its DCN centres (including any future DCN centres that HCF may decide to open); and
 - b. comprises HCF's entering into and giving effect to the Relevant Provisions that have the purpose and/or likely effect of controlling (in the sense of capping) the fees to be charged by Participating MFT Providers to HCF Members for MFT Services.
9. HCF currently operates 16 DCN centres:
 - a. 13 in metropolitan and greater Sydney, NSW;
 - b. one in Belconnen, ACT;
 - c. one in Melbourne CBD, Victoria; and
 - d. one in Chermside, Queensland.
10. HCF has no MFT Agreements with dentists in metropolitan and greater Sydney.
11. In the 'catchment areas' from which patients are drawn for the Belconnen, Melbourne CBD and Chermside DCN centres, HCF has entered into and given effect to and will continue to enter into and give effect to MFT Agreements, containing the Relevant Provisions, with Participating MFT Providers who supply MFT Services to patients in those catchment areas.
12. HCF has no current plans to establish additional DCN centres in other locations. If, however, it establishes, during the period of reauthorisation, any additional DCN centres outside metropolitan and greater Sydney, it will notify the ACCC.
13. A Participating MFT Provider is a dentist who enters into an MFT Agreement with HCF.
14. The MFT Services are listed in Table 5 in paragraph 61 of the Reauthorisation Application.

2. Usual Charge

In the revised description of the proposed conduct, please confirm the following in relation to the 'usual charge' provision of the MFT Agreement:

- a) *Whether the 'usual charge' provision (in addition to the 'maximum charge') is a requirement under the MFT program, and if it applies when any special or discounted fees are offered to any patients (including by other health insurers).*
- b) *Whether, if a participating MFT provider offers any discounts or promotions (including those which may be offered by other health insurers), that participating MFT provider will lose the benefits of the MFT program.*

- 15. Clauses 3.1(b) and 3.2 in Annexure A set out the position concerning the 'Usual Charge' and Promotions.
- 16. The intention of the 'Usual Charge' provision in the MFT Agreement is to prevent a Participating MFT Provider from charging HCF members (and indirectly HCF) more than it charges non-HCF members for the same service.

3. Likely future without the conduct

We note paragraph 97 of the application under the heading "Consequences if reauthorisation is not granted" is marked as confidential. In these circumstances, we consider HCF has not provided a sufficiently detailed public submission on the likely future without the conduct (counterfactual) to enable public consultation. We request a non-confidential description of HCF's asserted counterfactual which is sufficiently detailed so that interested parties can meaningfully comment on this aspect of the application.

- 17. If reauthorisation is not granted by the ACCC, HCF would take action to remove the geographic overlaps between Participating MFT Providers and DCN centres. HCF has made no decision as to how it would remove the overlaps but there is a real chance that it would, following analysis on a case by case basis, either divest ownership and/or control of (or close) the overlapping HCF DCN Centres, or, alternatively, there is also a real chance that it would terminate the MFT Agreements with Participating MFT Providers in the areas of overlap.

4. Rebate policy

In relation to non-MFT services, please confirm whether HCF members will receive the same rebate no matter which dental practice they visit.

- 18. An HCF member would receive the same rebate in relation to non-MFT services at any dental practice they choose to visit. This includes any rebates which would be provided by HCF in relation to all non-MFT dental services provided at:

- a. dental practices which include Participating MFT Providers;
 - b. dental practices which are in no way affiliated to HCF (ie contain no Participating MFT Providers); and
 - c. HCF's DCN centres.
19. Any rebate provided by HCF to an HCF member, is member-specific and subject to that specific member's entitlements and level of cover under their Policy.

ANNEXURE A – RELEVANT PROVISIONS OF THE MFT AGREEMENT FOR WHICH AUTHORISATION IS SOUGHT

In the provisions of the MFT Agreement in this Annexure:

- **"Benefit"** has the same meaning given to that term in the Fund Rules.
- **"Fund Rules"** means the 'HCF Fund Rules' as varied by HCF from time to time.
- **"Gap"** means the amount charged by You less a Benefit.
- **"Member"** has the same meaning given to that term in the Fund Rules.
- **"Policy"** has the same meaning given to that term in the Fund Rules.
- **"Private Practice"** has the same meaning given to that term in the Fund Rules.
- **"Program Benefit"** means the amount of Benefits payable to You for the services specified in Schedule A when you are participating in the Program.
- **"Terms and Conditions"** means the 'Terms and Conditions for HCF Recognised Providers of Extras Services' as varied by HCF from time to time. These Terms and Conditions are published on HCF's website (https://www.hcf.com.au/pdf/general/Terms_and_Conditions_for_Recognised_Providers_of_General_Treatment.pdf).
- **"You"** and **"Your"** mean the dentist who signs the Program Application Form and is recognised by HCF.
- **"Usual Charge"** means the amount received for a service provided to a non-Member in benefits from other health insurers plus any gap payments paid by the non-Members.

Provisions:

3. SERVICES AND CHARGES

3.1 In relation to the services specified in Schedule A, You agree to:

- (a) charge no more than the amounts described in the 'Maximum Charge' column of the table in Schedule A for those specific services when provided to Members; and
- (b) charge Members a fee for a service that is equal to or less than:
 - (i) Your Usual Charge; and
 - (ii) the Usual Charge that other dentists that are not participating in the Program within the same Private Practice receive for that service, including when any special or discounted fees are offered to patients (whether Members or not) at the Private Practice.

3.2 During any period that You offer patients (whether Members or not) a 'no-gap' promotion for any of Your services specified in Schedule A (**Promotion**), Your rights to receive the Program Benefits will be suspended for those services and you must reduce the fees you charge to Members for those services to the amount of Benefits payable under the Terms and Conditions or Your Usual Charge, whichever is the lesser amount. You must not charge Members a Gap for the services included in the Promotion.

3.3 You must notify HCF at least 7 days prior to the commencement of a Promotion and prior to the termination of a Promotion.

3.4 The charges that You raise must be accurately reflected on Your invoice or receipt, which must be provided in accordance with the Terms and Conditions and clause 5.

3.5 Subject to compliance with this clause 3, You are free to charge as per Your existing practices for services not described in the 'Service description' column of the table in Schedule A.

4. BENEFITS

4.1 Subject to the Member's entitlement to a Benefit under their Policy, the Fund Rules and all applicable laws, HCF will provide a Program Benefit up to or equivalent to the maximum amounts listed in Schedule A, subject to Indexation and clause 4.2 for the duration of the Program.

4.2 The maximum Program Benefits available to Members in respect of services as at the date of this Agreement are as specified in the table in Schedule A. HCF may add, delete or vary Program Benefits in its sole discretion at any time subject to providing notice under clause 11.6. HCF may change cover under its Policies for services You provide in its sole discretion at any time.

4.3 HCF may index the Program Benefits, for the items in Schedule A that it deems appropriate, on 1 January each year, up to any proportionate change in the following formula (**Indexation**):

- The Consumer Price Index (All groups, Index numbers, Sydney*, ABS Catalogue no. 6401.0) x 50% plus the Average Weekly Earnings (NSW* Original, ABS Catalogue no. 6302.0) for persons, full-time adult ordinary time earnings (AWOTE) x 50%.
- For the avoidance of doubt, the Consumer Price Index and the Average Weekly Earnings are measured for the 12 month period ending 30 June of the year prior to the indexation date.
- *For states and Territories other than NSW, Program Benefit rates are set using relevant ABS Catalogue statistics for that State or Territory and its capital city.

4.4 You must not charge Members any additional or ancillary amounts, charges or penalties (for example, an administration fee) in connection with the services covered under this Agreement.

4.5 Services provided by You to a Member that are not described in the table in Schedule A will continue to be the subject of Benefits that HCF determines a Member is entitled to under a Policy with HCF, the Fund Rules, the Terms and Conditions and all applicable laws.

4.6 HCF does not warrant or represent that a Member will be entitled to Benefits in respect of any services provided by You to the Member.