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22 May 2020  
Matter 82700322  
By Email

Dear Ms Philp

## Application for authorisation AA1000507 - Request for further information

I refer to your letter dated 13 May 2020 requesting further information and updates from the State of New South Wales as represented by the Ministry of Health (the **Ministry**) regarding the interim authorisation granted to the Ministry on 1 May 2020 (**Interim Authorisation**).<sup>1</sup>

The ACCC has requested that the Ministry provides further information concerning:

- (a) the circumstances in which the Ministry would restrict the services provided by a Private Operator, or its capacity to provide services; and
- (b) any principles agreed between the Ministry and Private Operators in implementing this aspect of the Proposed Conduct.

This information is provided below, with reference to the management of restrictions that are currently in place on Private Operators and the potential for restrictions to be applied in the future.

### 1 Current restrictions on Private Operators

Following the outbreak of COVID-19, a number of restrictions were placed on the ability of Private Operators to provide certain procedures.

On 21 April 2020, the National Cabinet announced that these restrictions would start to be eased, and that category 2 and some important category 3 procedures could recommence across the public and private hospital sector from 27 April 2020.

On 15 May 2020, National Cabinet agreed that each state and territory of Australia would determine the level of normal surgical activity that could be safely restored within different geographic areas of that state or territory, including at private facilities. It was agreed that this would occur in accordance with certain principles and guidance, an updated version of which was published on 22 May 2020 and is set out at:

<https://www.health.gov.au/news/australian-health-protection-principal-committee-ahppc-statement-on-restoration-of-elective-surgery-and-hospital-activity> (the **Principles**).

On 19 May 2020, the Ministry announced that it will work towards the resumption of 75% of normal elective surgery capacity by 30 June 2020 in accordance with the Principles. The Ministry has indicated to Private Operators that Private Operators are able to similarly increase their activity up to 75% of normal elective surgery capacity in accordance with the Principles.

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<sup>1</sup> Unless otherwise indicated, defined terms in this letter are the same as those set out in the Interim Authorisation.



## **2 Possible restrictions on Private Operators in the future**

The NSW Government continues to monitor the NSW health system demand constraints related to COVID-19. In particular the NSW Government is continuing to monitor capacity in the NSW health system and availability of personal protective equipment (**PPE**) and pharmaceutical products.

If the NSW Government anticipates an increase in demand for health services related to COVID-19, it may reintroduce restrictions on the ability of Private Operators to perform certain procedures. This would be to ensure there is sufficient hospital capacity and available PPE and pharmaceuticals to manage any surge in demand.

These restrictions would be put in place in accordance with the Principles and pursuant to the Agreements between the Ministry and the Private Operators. Pursuant to these Agreements, Private Operators may also be required to make capacity and/or PPE available to the Ministry to assist the Ministry in its response to any increase in demand for health services related to COVID-19.

Please contact us if you wish to discuss any of the matters in this letter.

Yours sincerely



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