MinterEllison

26 August 2021

Application for revocation of authorisation and substitution of a replacement under section 91C(1) of the *Competition and Consumer Act 2010* (Cth)

Lodged by: The State of Victoria as represented by the Department of Health

Level 20 Collins Arch 447 Collins Street Melbourne
GPO Box 769 Melbourne VIC 3001 Australia DX 204 Melbourne
T +61 3 8608 2000 F +61 3 8608 1000 minterellison.com

1. Summary

1.1 Background

This application is made to the Australian Competition and Consumer Commission (**ACCC**) by the State of Victoria as represented by the Department of Health (**DoH**) and seeks the revocation of the Authorisation AA1000491 (the **Existing Authorisation**) and substitution with a new authorisation on the same terms.

The Existing Authorisation is due to expire on 30 September 2021.

This application is made for the benefit of the following parties, who are engaged, or who propose to or may become engaged, in the Proposed Conduct (as set out below):

(a) the State of Victoria as represented by the DoH;

(b) specified private healthcare providers operating in the State of Victoria as listed in Schedule 1 (and their related bodies corporate), as well as any other private healthcare providers notified to the ACCC from time to time by DoH (the **Participating Providers**); and

(c) all public hospitals operating in the State of Victoria, as listed in Schedule 1, and any other healthcare facility owned or operated by the State of Victoria or an authority of the State of Victoria (the **Victorian Public Providers**),

(together, the **Participating Parties**).

As part of the national response to the COVID-19 Pandemic (the **Pandemic**), in 2020 the Federal Government imposed temporary restrictions on the ability of private healthcare providers to perform certain categories of non-urgent surgeries, with the aim of increasing the capacity of Australian healthcare providers to provide care to patients suffering from COVID-19 related health issues. On 30 March 2020, the Federal Government also announced viability for capacity guarantee arrangements for the private healthcare sector to support private healthcare providers retain capacity for responding to the Pandemic and to secure capacity and services from private sector operators to support the public healthcare systems in each State and Territory (the **Private Hospital Viability Guarantee**).

The DoH (on behalf of the State of Victoria) agreed to provide an amount of funding to the Participating Providers (in part funded by the Federal Government pursuant to the Private Hospital Viability Guarantee) in consideration of those parties agreeing to provide certain services and give certain undertakings in relation to the operation of their healthcare facilities (which would include a degree of coordination). The ultimate objective of the arrangements was 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.

The national restrictions on elective surgeries were eased in April 2020, with the Australian Health Protection Principal Committee (**AHPPC**) establishing principles to guide the reintroduction of hospital activity, including elective surgeries. Despite this, throughout 2020 and 2021, elective surgeries have been periodically suspended (or suspended to a degree) in Victoria in response to outbreaks of COVID-19 in Metropolitan Melbourne. Without intervention and assistance from the State Government (with funding assistance from the Federal Government) it is possible that many private Victorian healthcare providers would have had to cease, suspend or reduce operations and stand down staff and other resources.

On 3 April 2020, the State of Victoria, as represented by the DoH (then the Department of Health and Human Service (**DHHS**)) lodged an application with the ACCC to see to have conduct as part of the State's response to the Pandemic authorised (the **2020 Application**). The conduct the subject of the 2020 Application was essentially aimed at avoiding hospitals and healthcare services in Victoria from becoming overwhelmed as a result of potentially rapid increases in patients requiring treatment for COVID-19 related health issues, subsequently generating unprecedented levels of demand for hospital care and (potentially) greater mortality rates in

patients presenting with otherwise treatable conditions (as was being observed at the time in many overseas countries and continues to be a persistent challenge faced by international hospital systems).

The 2020 Application was subsequently varied on 10 June 2020 to allow for the formation of Cluster Planning Implementation and Operational Groups (**Cluster Groups**) to plan for, and if necessary, coordinate responses to COVID-19 outbreaks in Victoria.

On 7 April and 17 June 2020, the ACCC granted conditional interim authorisation (to the initial 2020 Application and the amended application respectively) and released its final determination on 13 August 2020 granting the Existing Authorisation.

A copy of the Final Determination for the Existing Authorisation is provided as **Attachment 1**.

The Participating Parties seek to engage in (or potentially engage in) the same conduct as was authorised by the ACCC under the Existing Authorisation. On this basis, the Participating Parties request the ACCC revoke the Existing Authorisation and substitute it with a new authorisation to permit them to engage in that authorised conduct beyond the expiration of the Existing Authorisation.

The basis for the Participating Parties seeking authorisation is that they expect that the arrangements in place which are the subject of the Existing Authorisation will continue to be of significant utility as the State (and Federal) strategy to responding to the Pandemic evolves with the possibility of living with greater levels of the COVID-19 virus being transmitted amongst the community. On this basis, it will be critical that the Participating Parties continue to be in a position to coordinate their medical response and resources to respond to any COVID-19 outbreaks and consequential stresses on the private and public hospital systems caused as a result.

As one of the Participating Parties, the Victorian Government is strongly supportive of this application for authorisation.

1.2 Application for revocation and substitution of a replacement authorisation

This application is made to the ACCC for authorisation and revocation of the Existing Authorisation and substitution of a new authorisation under sections 88(1) and 91C(1) of the Competition and Consumer Act 2010 (Cth) (**CCA**) respectively by the DoH.

The DoH considers that, in light of ongoing challenges to the healthcare and hospital systems that the Pandemic is likely to present (including the challenges presented by the emergence of variant strains of the COVID-19 virus) the agreements in place for the provision of funding to the Participating Providers and any associated coordination of the Participating Parties' services should be authorised to continue.

1.3 Request for interim authorisation

The DoH understands that the ACCC will not likely be in a position to issue a Final Determination in relation to this application prior to the expiration of the Existing Authorisation. Accordingly, the DoH seeks interim authorisation to ensure it has uninterrupted legal protection to engage in the proposed conduct (defined below in section 4 of this application) prior to the Final Determination being handed down by the ACCC. The DoH considers that interim authorisation is required to ensure Participating Parties are able to continue to discuss and collaborate as required after the expiry of the Existing Authorisation to enable the Participating Parties to respond expeditiously to evolving situations that may arise as a result of the ongoing Pandemic. In order to continue to provide this coordinated response, the Participating Parties request that the ACCC grant interim authorisation **prior to 30 September 2021**.

2. Parties to the proposed conduct

2.1 Applicant for authorisation

(a) State of Victoria as represented by the Department of Health (**DoH**)

Address (registered address)	Contact person	Description of business activities
50 Lonsdale Street Melbourne, Victoria, Australia 3000	Jodie Geissler Deputy Secretary, Commissioning & System Improvement Division, DoH	DoH is the Victorian Government department responsible for (among other things) overseeing public healthcare in Victoria, including all of Victoria's public hospitals and the registration of private hospitals in Victoria.

2.2 Email address for service of documents in Australia

Contact:	Geoff Carter, Partner, MinterEllison
Email address:	
Telephone:	

2.3 Details of other persons who are engaged, or propose to become engaged, in the Proposed Conduct

In addition to the DoH, the other persons who are engaged, or who propose to engage in the Proposed Conduct are:

(a) the Participating Providers, being specified private healthcare providers operating in the State of Victoria as set out in Schedule 1 (and their related bodies corporate), as well as any other private healthcare providers notified to the ACCC from time to time by the DoH; and

(b) the Victorian Public Providers, being all public hospitals operating in the State of Victoria, as set out in Schedule 1, and any other healthcare facility owned or operated by the State of Victoria or an authority of the State of Victoria.

The DoH anticipates that, as it did in the case of the Existing Authorisation and as the Pandemic continues to evolve, the State may find it necessary to enter into similar arrangements to those contemplated by this application with additional private healthcare providers. As it was required to under Condition 2 of the Existing Authorisation, the DoH will promptly notify the ACCC of any additional private healthcare providers that enter, or are expected to enter into, any such agreements and should therefore be added to Schedule 1 as parties who may also be engaged, or become engaged, in the Proposed Conduct.[1]

[1] Condition 2 of the Existing Authorisation required the DoH '*to the extent that [DoH] believes it necessary or desirable for any other private healthcare providers (other than the private healthcare providers listed in Attachment 1) to participate in the Proposed Conduct, the [DoH] must notify the ACCC of the identity of those parties*.'

3. Authorisation to be revoked

3.1 Details of the authorisation to be revoked

Revocation is sought in respect of the Existing Authorisation (Authorisation no AA1000491) granted on 13 August 2020.

The Existing Authorisation was granted to allow the Participating Parties to engage in particular conduct for the purpose of coordinating the public and private healthcare resources in response to the Pandemic.

3.2 Other persons / classes of persons who are party to the Existing Authorisation which is to be revoked

The persons who are party to the Existing Authorisation are the same as the Participating Parties of this application (see section 2.3).

3.3 Basis for seeking revocation of the Existing Authorisation

The basis for the DoH seeking revocation of the Existing Authorisation is that it is due to expire on **30 September 2021**. The Participating Parties wish to maintain the legal protection conferred by the Existing Authorisation by revoking it and substituting a new authorisation (**New Authorisation**).

4. The Proposed Conduct

4.1 Description of and rationale for the Proposed Conduct

Overview

As the Pandemic has continued to evolve since March 2020, the DoH expects that the State and National Cabinet will continue to implement and may revise responses to the Pandemic. As has been set out in statements released by the National Cabinet, the DoH anticipates that this will involve gradually adjusting to living in a 'COVID Normal' environment particularly as the number of people fully vaccinated increases. As the community adjusts to living in these new settings, there remains the possibility that, at different periods of time, there will be significantly increased demand for hospital care in Victoria due to transmission of the COVID-19 virus amongst the community. As has been observed over the course of 2020 and to date in 2021, the Pandemic is constantly evolving (for example, variant strains of the COVID-19 virus emerging) and, as has been occurring over the course of the Pandemic, there will likely continue to be periods during which COVID-19 may cause demand spikes for hospital treatment in certain regions in Victoria or at a State-wide level (eg as a result of COVID-19 outbreaks).

Regardless of how the spread of COVID-19 develops in Victoria, in 2021 (and looking forward to 2022) it remains critical to Victoria's response that the maximum resources are available and that all hospitals (both public and private) remain open and have the ability to coordinate their services to facilitate appropriate access to their facilities and the highest possible level of care for each individual patient.

Private Hospital Funding Agreements

In order to maximise the overall capacity of the Victorian healthcare system to respond to the Pandemic and future outbreaks, the agreements that the DoH entered into with each of the Participating Providers (the **Agreements**) are proposed to remain on foot for at least the period during which the Commonwealth's Private Hospital Viability Guarantee arrangements are in place (ie. until 30 June 2022).

Of the Agreements, three individual Private Hospital Funding Agreements (**PHFA**) are currently active, being PHFAs between the DoH (on behalf of the State) and:

(a) Healthescope Operations Pty Ltd (in respect of La Trobe Private Hospital Pty Ltd only) until 30 September 2021;

(b) Healthe Care Epping Pty Ltd (trading as Epping Private Hospital) with no current proposed end date; and

(c) Mildura District Hospital Fund Ltd until 30 September 2021.

The remaining Agreements are currently 'suspended' – ie. these have not been terminated but, in the current COVID-19 environment, there is no immediate need for the DoH to provide funding to these private hospitals under the Agreements. The Agreements remain suspended unless and until such time as the situation requires that the State provide funding to private hospitals to assist these Participating Providers respond to COVID-19 outbreaks (then the Agreements will 're-start'). The rationale for this suspension / re-start arrangement was for administrative efficiency in light of the uncertainty of the Pandemic and to avoid having to terminate and then re-enter funding agreements for unknown periods of time or without sufficient notice in response to COVID-19 outbreaks.

Under the Agreements, the DoH will have a mechanism to provide funding to the Participating Providers and those parties will have a framework in which to provide resources and services to the overall response to the Pandemic in Victoria being coordinated by the DoH as and when required.

Objectives and key features of the Private Hospital Funding Agreements

The objectives of the Participating Parties under the Agreements are and will continue to include to be to:

(a) work cooperatively to ensure that the public and private healthcare sectors respond successfully to the Pandemic;

(b) ensure the ongoing sustainability and operation of hospital facilities across Victoria;

(c) to make available to the DoH (and Victorian public) the maximum amount of hospital facilities;

(d) to ensure that hospital services are provided equitably, consistently and in accordance with clear standards (having regard, where applicable, to the circumstances presented by the Pandemic) in order to optimise health outcomes;

(e) to ensure that the DoH obtains access to additional hospital services required as a result of the Pandemic at a reasonable cost and in a manner that achieves a cost-efficient solution for the DoH; and

(f) work together through a culture of mutual respect and cooperation and in an environment that fosters cost-efficiency, transparency and open, honest and timely communication,

(the **Objectives**).

The key features of the Agreements remain the same and include that:

(a) the DoH will provide funding to the Participating Providers on condition they provide certain services to public patients, being:

(i) any services which the Participating Provider performs or is authorised to perform immediately prior to the commencement of the Agreement;

(ii) each Participating Provider making available to the DoH 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 Participating Provider will continue to hold operational control and operate their respective healthcare facilities;

(c) each Participating Provider will be permitted to continue to provide healthcare services to private patients but only to the extent permitted by the Agreement or by the DoH in accordance with principles to be agreed;

(d) the DoH will oversee and direct a 'Private Hospital Coordination Group' which is a group that will have a representative from some or all of the Participating Providers and which will be the forum for coordinating resources between the Participating Providers, each of their facilities and the Victorian Public Providers;

(e) each Participating Provider 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 Participating Provider will provide services under the Agreement on a purely cost recovery and non-profit basis;

(g) public patients will not be required to pay any amount arising from or in connection with healthcare treatment by a Participating Provider; and

(h) the Participating Parties will cooperate in respect of the procurement and supply of medical equipment.

The Agreements are not intended to, and do not extend to, coordination or any agreement between Participating Providers other than as necessary or desirable to give effect to the Agreements and facilitate the Objectives at the request or direction of the DoH or one or more of the Victorian Public Providers (nor, the DoH submits, have the operation of any activities conducted to give effect to the Agreements during the time the Agreements have been on foot had this effect). Similarly, to the extent that Participating Providers retain the capacity to do so when the Agreements are activated, nothing in the Agreements is intended to affect the normal competitive process vis a vis the provision of healthcare services to private patients. The DoH will continue to review the Agreements, in light of the circumstances of the Pandemic, and as circumstances require seek to only activate the Agreements as necessary, and ultimately terminate the Agreements, which would enable each of the Participating Providers to provide business as usual services to private sector patients unless the public health response to the Pandemic would necessitate otherwise.

Cluster Groups

Further, as the Victorian Government in 2020 commenced the relaxation of some restrictions imposed in response to the Pandemic, with economic and social activity resuming, it was deemed critical that Victoria be able to effectively respond to 'clusters' of COVID-19 cases (being a group of infections that are linked to one another, and are often tied to a specific workplace, event or location that appeared from time to time in specific geographical areas). In the event of outbreaks, authorities must be able to respond aggressively to identify all cases and potential cases so that people linked to the cluster can isolate themselves and avoid passing the infection to others within the broader community.

To this extent, the DoH convened Cluster Planning Implementation and Operational Groups (**Cluster Groups**) for Victoria, to plan for, and as necessary, coordinate responses to, COVID-19 clusters in particular geographic regions of Victoria. In order to effectively plan for, and respond to

clusters of COVID-19 cases, members of the Cluster Group may be required to share information and coordinate resources and the treatment of patients in particular regions.

Specifically, it was proposed that the Cluster Groups would, and it is proposed that they will continue to:

(a) develop COVID-19 pandemic cluster response plans in accordance with the requirements set out by the DoH, drawing on existing health service preparedness plans and regional planning already underway or otherwise in place;

(b) oversee the coordination of services in the cluster in accordance with the cluster response plan;

(c) assess local system capacity and capability and ensure optimum utilisation of services, facilities and workforce of all hospital sites within the cluster in delivering the COVID-19 response;

(d) implement clear and transparent bed coordination, management and (de-)escalation protocols, including equipment and workforce allocation;

(e) coordinate and prioritise the delivery of health services within the cluster in accordance with system design principles;

(f) use best endeavours to maintain delivery of critical COVID and non-COVID health care within their cluster through optimal utilisation of all available resources, whether public or private

(g) oversee the implementation of care pathways, particularly for those vulnerable cohorts (eg Aboriginal, immuno-suppressed, aged care, etc.); and

(h) notify DoH as soon as practicable regarding emerging risks and barriers to the delivery of critical services within the cluster.

The system design principles referred to above and which guide the Cluster Groups are set out as follows.

(a) Health services will be assigned to clusters that will form under a hub and spoke model incorporating public and private hospitals.

(b) Each cluster will have a lead health service that will have a significant role in coordination of all public and private hospitals within the cluster, and in particular overseeing patient flows. Services will be designated as major COVID, COVID, or non-COVID centres.

(c) The lead health service will also be the major COVID centre for the cluster providing critical care at scale (~100 beds) to support workforce efficiency and safety.

(d) COVID and non-COVID activity will be separated and delivered at different campuses within each cluster wherever possible.

(e) COVID focussed hospitals will be designed to enable step up/down care in place with critical care capable beds.

(f) Non-COVID streams will focus on ongoing management of chronic health conditions, medical management of emergency conditions, and streams such as maternity, renal dialysis, cancer treatments, trauma, cardiac and neurology.

The Proposed Conduct

The DoH seeks ACCC authorisation for it and the other persons who propose to engage in the Proposed Conduct to:

(a) negotiate and enter into new 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 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 (eg 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;

    (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 the DoH or one or more of the Victorian Public Providers; and

  (iv) engage in any other conduct that is related to the Agreements and necessary or desirable to meet the Objectives, including participating in and agreeing to co-ordinate COVID-19 responses in Cluster Groups or similar coordination groups led by the DoH or one or more of the Victorian Public Providers,

(the **Proposed Conduct**).

The Proposed Conduct is and is expected to continue to be a critical component of Victoria's response to the Pandemic for the remainder of 2021 and into 2022. During periods of unprecedented demand, maximising capacity and the State-wide coordination of healthcare services will facilitate the most efficient and effective allocation of healthcare, which is clearly in the interests of the Victorian public (and the Australian public more generally). As at the date of this application, outbreaks related to the Pandemic are ongoing across Australia and accordingly the extent of the demand for hospital services as a result of the Pandemic, in terms of volume and duration, is uncertain.

4.2 Changes to the conduct between the Existing Authorisation and the New Authorisation

The DoH considers there are no changes to the conduct sought to be authorised.

4.3 Provisions of the Competition and Consumer Act which may apply to the Proposed Conduct

The relevant provisions of the *Competition and Consumer Act 2010* (Cth) (**CCA**) which may apply to the Proposed Conduct include:

(a) making and or giving effect to a contract, arrangement or understanding that may include a cartel provision (Division 1 of Part IV);

(b) making and or giving effect to a contract, arrangement or understanding that has the purpose or would have the effect, or likely effect, of substantially lessening competition (section 45(1)(a) and (b));

(c) engaging with one or more persons in a concerted practice that has the purpose, or has or is likely to have the effect, of substantially lessening competition (section 45(1)(c));

(d) a corporation that has a substantial degree of power in a market engaging in conduct that has the purpose, or has or is likely to have the effect, of substantially lessening competition (section 46(1)); and / or

(e) engaging in the practice of exclusive dealing (section 47(1)).

4.4 Term of authorisation sought and reasons for seeking this period of time

The DoH requests interim authorisation for the period from the date of this application until the ACCC grants its final determination. It is not clear how long the Pandemic will last, however authorisation for the Proposed Conduct is sought for a further period of 12 months from the date of a final determination by the ACCC.

The basis for the further term of authorisation is two-fold:

(a) *firstly*, as the State and Federal governments pursue and implement 're-opening' strategies in accordance with projected vaccination rates, there is a significant uncertainty as to how the consequences of these strategies will manifest throughout the Victorian (as well as the national) community. It will therefore remain critical, in light of this uncertainty, that the Participating Parties are able to coordinate their response to COVID-19 outbreaks that may arise as we adjust to living with a certain level of transmission of the COVID-19 virus within the community; and

(b) *secondly*, extending the authorisation for a further 12 months would also align the Participating Parties' conduct and the DoH's ability to provide funding to private hospitals thereof under the Agreements with the extension of the Commonwealth's Private Hospital Viability Guarantee through to 30 June 2022.[2] As such, this will ensure that the DoH continues to be supported by the Federal Government in the funding of its response to the Pandemic and provides sufficient time to unwind the Agreements as required.

It is possible that if the Pandemic lasts for a longer period of time, this period may need to be extended. The DoH notes that the ACCC could also revoke authorisation under section 91B of the CCA should there be a material change in the circumstances (eg the effects of the Pandemic subside).

4.5 Names of persons or classes of persons who may be impacted by the Proposed Conduct and details of how / why they might be impacted

The following classes of persons may be impacted by the Proposed Conduct:

[2] https://www.pm.gov.au/media/national-cabinet-statement-6.

(a) persons in Victoria who require medical care during the Pandemic;

(b) healthcare workers, who may be seconded / allocated or contracted to different hospitals from where they normally work, depending on demand at particular hospitals from time to time; and

(c) suppliers and potential suppliers of medical equipment, medical supplies and / or medical services to the Participating Parties.

4.6 Conduct under the Existing Authorisation

In support of this application, the DoH submits that for the term of the Existing Authorisation, it and the Participating Parties have engaged in conduct authorised under the Existing Authorisation, including:

(a) *entering into and giving effect to the Agreements:* over the course of 2020 and 2021, the DoH, on behalf of the State, entered into Agreements, as notified to the ACCC, for the purpose of providing funds to the Participating Providers on the condition that they provide certain services to public patients;

(b) *establishing the Private Hospital Coordination Group (**PHCG**)*: the PHCG is comprised of senior members of the DoH and the Chief Executive Officers of certain Participating Providers. During 2020 and 2021, the PHCG have met periodically to discuss matters relating to the Pandemic and the operational impact of the Pandemic and the State Government restrictions on private and public health providers and the management and delivery of healthcare services in response. In accordance with Condition 1 of the Existing Authorisation,[3] the DoH has periodically reported to the ACCC on the matters discussed by the PHCG during their regular meetings; and

(c) *formation and deployment of Cluster Groups*: the Cluster Groups have been led by local public hospitals (which are designated lead health service provider in designated geographic areas in Victoria) in partnership with the DoH public health team and other public, private and community health providers to ensure tailored and timely localised responses to all COVID-19 contract tracing and outbreak management.

The DoH expects that the Proposed Conduct will be critical to be able to continue to respond to potential pressure placed on the hospital system as the State Government re-focuses its suppression / elimination strategy in accordance with the National Cabinet re-opening strategy and projected vaccination rates. It is possible that there will then an increasing need for healthcare providers to respond quickly (and possibly without notice) to cases being transmitted within the community and potential COVID-19 outbreaks that may occur. Given this, the DoH considers there is significant utility in maintaining the current coordinating regime between it and the Participating Providers (through the PHCG) to respond to and manage the impact of the Pandemic to alleviate any stresses placed on the healthcare system. Similarly, as has been observed particularly in 2021 (ie a number of community COVID-19 outbreaks), there will likely be an ongoing need to implement and oversee the coordination of services to respond to clusters of COVID-19 cases which may emerge across localised areas in Victoria.

5. Public benefit

ACCC authorisation permitting the Participating Parties to engage in the Proposed Conduct will continue to facilitate a coordinated response to the Pandemic.

The DoH considers that the Proposed Conduct, including the specific examples of conduct engaged in by the DoH discussed at section 4.6 above, will continue to result in significant public benefits, including, in particular, to:

[3] Condition 1 – Reporting Requirements required DoH to *'provide regular updates to the ACCC at a frequency agreed between the [DoH] and the ACCC, and provide any additional information reasonably requested by the ACCC'*. See section 62 of the Existing Authorisation.

(a) enable the Participating Parties to work together to coordinate the medical response to the Pandemic in Victoria as effectively, efficiently and economically as possible, including to swiftly respond to any outbreaks of the COVID-19 virus that emerge in Victoria;

(b) reduce the likelihood that private healthcare providers operating in the State of Victoria will have to partially or fully suspend or cease operations as a result of funding issues caused by State and / or Commonwealth Government's restrictions on their ability to provide certain surgeries;

(c) provide the DoH 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;

(d) allow the Participating Providers to be responsive to the needs of the overall health system and coordinate with the Victorian Public Providers based on clinical priorities, recognising the need for continuity and quality patient care;

(e) allow the Participating Providers to work in synchronisation with the public health system and each other and prioritise capacity for COVID-19 patients, urgent care and other health services;

(f) ensure medical equipment (including ventilators), personal protective equipment, medical supplies and other relevant supplies are, to the extent possible, available where needed to respond to the Pandemic;

(g) ensuring provision of additional intensive care facilities in response to the Pandemic;

(h) ensure Participating Providers can remain operational, and retain staff under existing industrial arrangements during the Pandemic; and

(i) ensure the viability of Participating Providers which will help ensure that following the Pandemic consumers will continue to have a choice of private or public care.

6. Public detriment

The DoH is not aware of any public detriments that resulted from the Participating Parties engaging in the conduct permitted under the Existing Authorisation.

The DoH submits that authorising the Proposed Conduct will result in a significant net public benefit because:

(a) the Proposed Conduct will enable the Participating Parties to coordinate public and private healthcare resources to respond to and manage COVID-19 outbreaks, thereby facilitating the State and Federal Government's 're-opening strategies' and allow the Victorian community to adjust to living with certain levels of COVID-19 transmission;

(b) without the Proposed Conduct, there is a higher chance that the Victorian healthcare system may have insufficient capacity to provide services during periods of increased demand for hospital services as a result of the Pandemic (including in response to outbreaks in the community);

(c) the Proposed Conduct will ensure that medical services required to treat COVID-19 and non-COVID-19 related cases are co-ordinated in an efficient and equitable manner and will assist to achieve the Objectives; and

(d) the Proposed Conduct is temporary and will not continue beyond the period of the Pandemic, meaning authorisation is unlikely to materially alter the competitive dynamics in any market, and markets will be able to substantially return to their current state once the Pandemic subsides to the extent that the Victorian Public Providers can manage demand.

7. Contact details of relevant market participants

Please see section 2 above.

8. Declaration by applicant

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware the giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).

_____
Signature of authorised person

Partner, MinterEllison, solicitor for the DoH
_____

Geoffrey Robert Carter
_____

This 26th day of August 2021

Schedule 1

Participating Providers

1. Specified private healthcare providers

- Cabrini Health Ltd
- Epworth Foundation t/a Epworth Health Care
- Healthe Care Specialty Holdings Pty Ltd
- Healthe Care Epping Pty Ltd (trading as Epping Private Hospital)
- Healthe Care Surgical Holdings Pty Ltd
- Healthscope Operations Pty Ltd
- Ramsay Health Care Investments Pty Ltd
- St John of God Health Care Inc
- St Vincent Private Hospital Ltd
- Ballan & District Soldiers' Memorial Bush Nursing Hospital and Hostel Inc
- Maryvale Private Hospital Proprietary Limited
- Euroa Health Inc.
- The Bays Healthcare Group Inc
- Kitaya Holdings Pty. Ltd. trading as Jessie McPherson Private Hospital
- Nagambie HealthCare Inc
- Neerim District Soldiers Memorial Hospital trading as Neerim District Health Service
- Stanlake Private Hospital Pty. Ltd. trading as Western Private Hospital
- Mildura District Hospital Fund Ltd
- Heyfield Hospital Incorporated
- IPHoA Management (Mt District) Pty Ltd
- Kitaya Holdings Pty. Ltd.
- Nexus Day Hospitals Pty Ltd
- GIH Access Endoscopy Pty Ltd as trustee for GIH Access Endoscopy Unit Trust
- Chelsea Heights Day Surgery and Endoscopy Pty Ltd as trustee for Chelsea Heights Day Surgery And Endoscopy Unit Trust
- Marie Stopes International
- Idameneo (No 123) Pty Ltd as trustee for Artlu Unit Trust trading as Greensborough Day Surgery
- North West Day Hospital Pty Ltd as trustee for North West Unit Trust
- Nunyara Centre Pty Ltd
- J & T Quach Holdings Pty. Ltd. as trustee for J & T Quach Family Trust & NNLE Pty Ltd as trustee for the A Le Trust No. 1 & Pascrear Nominees (Vic) Pty Ltd as trustee for Western General Specialist Medical Services Trust trading as Western Gastroenterology Services
- The Glen Endoscopy Centre Pty Ltd
- Bendigo Day Surgery Pty Ltd as trustee for Bendigo Day Surgery Unit Trust
- Berwick Eye Centre Pty. Ltd. as trustee for the Hauptman Family Trust
- Dr Natalie Krapivensky and Dr Andrey Brodsky trading as Melbourne MediBrain
- Monash House Private Hospital Pty Ltd as The Trustee for Monash House Private Hospital Unit Trust
- Open Endoscopy Pty Ltd
- Sunshine Private Day Surgery Pty Ltd
- Waverley Endoscopy Pty Ltd
- Wyndham Clinic Pty Ltd as trustee for Wyndham Clinic Unit Trust

2. Any other private healthcare operator in Victoria who seeks to engage in conduct the subject of this application providing the ACCC is notified by the DHHS.

The Victorian Public Providers

3. The Victorian Public Providers, being those providers listed below and any other healthcare facility owned or operated by the State of Victoria or an authority of the State of Victoria.

Metropolitan

- Alfred Health
- Angliss Hospital
- Austin and Repatriation Hospitals
- Austin Health
- Austin Health - Austin Hospital
- Austin Health - Heidelberg Repatriation Hospital
- Box Hill Hospital
- Broadmeadows Health Service
- Bundoora Extended Care Centre
- Calvary Health Care Bethlehem Ltd.
- Caritas Christi Hospice Ltd
- Casey Hospital
- Caulfield Hospital
- Craigieburn Health Service
- Cranbourne Integrated Care Centre
- Dandenong Hospital
- Dental Health Services Victoria
- Eastern Health
- Frankston Hospital
- Healesville and District Hospital
- Kingston Centre
- Maroondah Hospital
- Melbourne Health
- Mercy Health - O'Connell Family Centre
- Mercy Hospital for Women
- Mercy Public Hospitals Inc.
- Monash Health
- Monash Medical Centre, Clayton Campus
- Monash Medical Centre, Moorabbin Campus
- Mount Eliza Rehabilitation, Aged and Palliative Care
- Northern Health
- PANCH Health Service
- Peninsula Health
- Peter James Centre
- Peter MacCallum Cancer Centre
- Queen Elizabeth Centre
- Rosebud Hospital
- Royal Melbourne Hospital - City Campus
- Royal Melbourne Hospital - Royal Park Campus
- Royal Talbot Rehabilitation Centre
- Sandringham Hospital
- St George's Health Service
- St Vincent's Health
- St Vincent's Hospital (Melbourne) Ltd
- Sunshine Hospital
- The Alfred
- The Northern Hospital
- The Royal Children's Hospital
- The Royal Victorian Eye and Ear Hospital
- The Royal Women's Hospital
- Tweddle Child and Family Health Service
- Wantirna Health
- Werribee Mercy Hospital
- Western Health

- Western Hospital
- Williamstown Hospital
- Yarra Ranges Health

Rural

- Albury Wodonga Health
- Alexandra District Hospital
- Alpine Health
- Bairnsdale Regional Health Service
- Ballarat Health Services
- Barwon Health
- Bass Coast Health
- Beaufort and Skipton Health Service
- Beechworth Health Service
- Benalla Health
- Bendigo Health Care Group
- Boort District Health
- Casterton Memorial Hospital
- Castlemaine Health
- Central Gippsland Health Service
- Cobram District Health
- Cohuna District Hospital
- Colac Area Health
- Djerriwarrh Health Services
- Dunmunkle Health Services
- East Grampians Health Service
- East Wimmera Health Service
- Echuca Regional Health
- Edenhope and District Hospital
- Gippsland Southern Health Service
- Goulburn Valley Health
- Heathcote Health
- Hepburn Health Service
- Hesse Rural Health Service
- Heywood Rural Health
- Inglewood and District Health Service
- Kerang District Health
- Kilmore and District Hospital
- Kooweerup Regional Health Service
- Kyabram and District Health Service
- Kyneton District Health Service
- Latrobe Regional Hospital
- Lorne Community Hospital
- Maldon Hospital
- Maryborough District Health Service
- Melton Health
- Mildura Base Hospital
- Moyne Health Services
- Nathalia District Hospital
- Northeast Health Wangaratta
- Numurkah District Health Service
- Omeo District Health
- Orbost Regional Health
- Otway Health and Community Services
- Portland District Health

- Robinvale District Health Services
- Rochester and Elmore District Health Service
- Rural Northwest Health
- Seymour Health
- South Gippsland Hospital
- South West Healthcare
- Stawell Regional Health
- Swan Hill District Health
- Tallangatta Health Service
- Terang and Mortlake Health Service
- Timboon and District Healthcare Service
- Upper Murray Health and Community Services
- West Gippsland Healthcare Group
- West Wimmera Health Service
- Western District Health Service
- Wimmera Health Care Group
- Yarram and District Health Service
- Yarrawonga Health
- Yea and District Memorial Hospital