

MinterEllison

11 April 2022

BY EMAIL ONLY

David Hatfield
Director | Adjudication
Merger & Authorisation Review Division
Australian Competition & Consumer Commission
david.hatfield@acc.gov.au

Copy to: hannah.ransom@acc.gov.au and alex.cicchini@acc.gov.au

Dear Mr Hatfield

State of Victoria as represented by the Department of Health for interim authorisation AA1000567 – ongoing reporting obligations

1. On 2 December 2021 the Australian Competition and Consumer Commission (ACCC) granted authorisation to the Department of Health (the **Department**), together with specified private healthcare providers and public hospitals and healthcare facilities operating in the State of Victoria (together, the **Applicants**) to:
 - (a) discuss, enter into and give effect to contracts, arrangements or understandings which have the broad purpose of 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 COVID-19 pandemic; and
 - (b) engage in other conduct that is related to the contracts, arrangements or understandings referred to above and is necessary or desirable to give effect to the Agreements and facilitate the objectives of the Agreements, at the request or direction of the Department or a Victorian public hospital or healthcare facility,

(the **Proposed Conduct**), (the **Authorisation**).
2. The Authorisation is subject to the following conditions:
 - (a) Subject to paragraph (b) below, the Department must provide updates to the ACCC on a quarterly basis (or as otherwise agreed with the ACCC), describing any conduct engaged in during that quarter in reliance upon this authorisation.
 - (b) If no conduct was engaged in during that quarter in reliance upon this authorisation, or if there has been no change in conduct since the last update was provided, the Department is not required to provide an update.
3. The purpose of this letter is to provide the information necessary to comply with the conditions, which is set out in the **Annexure** to this letter.
4. The Annexure to this letter contains information that is confidential to the Department. This confidential information has been highlighted in the Annexure in red highlighting. The Department requests that the ACCC treat the highlighted information as strictly confidential (subject to its usual confidentiality provisos) and that it be redacted from this document prior to publication on the ACCC's public register.

Please let us know if the ACCC has any questions.

Yours faithfully
MinterEllison

Contact: Tom Falls T:

Partner: Geoff Carter T:

Annexure – Reporting Requirements

1. Meeting of the Private Hospital Coordination Group (PHCG)

We have set out below a summary of relevant matters discussed at the meetings of the PHCG that have occurred since 15 December 2021 aside from a meeting of the PHCG that occurred on 30 March 2022. The minutes for that meeting are still being finalised. As such, a report on that meeting will be included in the next reporting letter.

Meeting date	Summary of relevant matters discussed
15 December 2021	<p data-bbox="456 478 678 508"><u>Information Sharing</u></p> <p data-bbox="456 516 781 546">Update on elective surgery</p> <p data-bbox="456 554 1450 638"><i>Discussed matters associated with elective surgery caps, including current levels across various regions, treatment of cosmetic surgery within the cap and timing for consideration / review of future settings.</i></p> <div data-bbox="456 642 1464 831" style="background-color: black; height: 90px; width: 100%;"></div> <p data-bbox="456 835 651 865">VMIA insurance</p> <p data-bbox="456 873 1417 924"><i>Noted further talks regarding the application of VMIA insurance and timing of expected further update.</i></p> <div data-bbox="456 928 1464 1054" style="background-color: black; height: 60px; width: 100%;"></div> <p data-bbox="456 1058 1442 1117">Request for support under Public Health Directions on behalf of South East Public Hospitals</p> <p data-bbox="456 1125 1417 1184"><i>Discussed matters including workloads in hospitals, operating capacity and options for further meetings between publics and privates to discuss key issues.</i></p> <div data-bbox="456 1188 1464 1663" style="background-color: black; height: 226px; width: 100%;"></div> <p data-bbox="456 1667 784 1696">Update on VSGR/Roadmap</p> <p data-bbox="456 1705 927 1734"><i>No update provided on VSGR / Roadmap.</i></p> <div data-bbox="456 1738 1464 1801" style="background-color: black; height: 30px; width: 100%;"></div> <p data-bbox="456 1806 631 1835"><u>Other business</u></p> <p data-bbox="456 1843 646 1873">PHFA reporting</p> <p data-bbox="456 1881 1373 1940"><i>Discussed PHFA reporting, including timing of report, new templates and reporting obligations in other areas of the Department.</i></p>

Meeting date	Summary of relevant matters discussed
	<p>[Redacted]</p> <p>New items raised in meeting <i>Discussed visitor restrictions, including clarification that settings will remain and easing of restrictions being dependent on cases decreasing / stabilising.</i></p> <p>[Redacted]</p>
22 December 2021	<p><u>COVID situation update</u> Omicron <i>Noted PHFA is being reviewed and discussed status of elective surgery restrictions.</i></p> <p>[Redacted]</p> <p><u>Information sharing</u> Update on system wide capacity and planning <i>No further update / comments since the last meeting provided.</i></p> <p>[Redacted]</p> <p>Update on elective surgery <i>Noted already discussed in Covid update, with elective surgery restrictions pending review.</i></p> <p>[Redacted]</p> <p>Update on surge allowance <i>Discussed application and scope of surge allowance in certain settings and consideration of other mechanisms under PHFA.</i></p> <p>[Redacted]</p> <p>Update on VSGR/Roadmap <i>Noted current status and that Roadmap is under review and will be distributed once finalised.</i></p> <p>[Redacted]</p> <p>Update on VMIA insurance <i>Discussed application of VMIA insurance and noted discussions underway.</i></p> <p>[Redacted]</p> <p><u>Other business</u> For noting</p>

Meeting date	Summary of relevant matters discussed
	<p><i>Discussed future pandemic planning, including discussion on potential new models and strategies, with further discussions to take place in the new year.</i></p>
4 January 2022	<p>COVID update</p> <p>Strategic response <i>Discussed approach to restrictions, including considering workforce planning, triage in public system, child vaccinations and boosters, state of emergency and management of capacity across the system.</i></p> <p>Covid testing <i>Discussed matters associated with COVID-19 testing system, including PCR testing and potentially moving to a RAT based system for appropriate cases.</i></p> <p>Workforce <i>Discussed utilisation of resources in the private sector.</i></p> <p>Elective surgery <i>Discussed matters associated with elective surgery caps, including considering future restrictions for urgent surgery, non-urgent surgery and pre-booked surgery.</i></p>

Meeting date	Summary of relevant matters discussed
12 January 2022	<p data-bbox="459 268 683 300">Information Sharing</p> <p data-bbox="459 304 659 336">Elective Surgery</p> <p data-bbox="459 340 1446 457"><i>Discussed matters associated with elective surgery, including current elective surgery caps, approaches to COVID-19 patients, consideration of new hospital models, utilisation of facilities and staff in hospitals, sharing medical equipment, setting up working groups, with further update on actions pending.</i></p> <p data-bbox="459 1297 1260 1329">VSGR/Roadmap, PCR and RAT guidance for surgery pre-op testing</p> <p data-bbox="459 1333 1442 1392"><i>Discussed changes to hospital visitor vaccination requirements and pre-operative testing requirements.</i></p> <p data-bbox="459 1556 873 1587">Update on COVID surge allowance</p> <p data-bbox="459 1591 1369 1650"><i>Discussed COVID-19 surge allowances, including noting nature of proposal under consideration, further clarification noted to be sought.</i></p> <p data-bbox="459 1875 781 1906">Update on VMIA insurance</p> <p data-bbox="459 1911 1162 1942"><i>Noted status of request regarding extension to VMIA insurance.</i></p>

Meeting date	Summary of relevant matters discussed
	<p>Other business PHFA update and movement of staff between private hospital operators <i>Noted topic already discussed in elective surgery update.</i></p> <p>Weekly reporting of public hospitals <i>Noted topic already discussed in elective surgery update.</i></p>
17 January 2022	<p>Information Sharing Code Brown <i>Discussed Code Brown status, including seeking feedback for implementation in private hospitals.</i></p> <p>Expansion of Streaming Sites Model <i>Discussed matters associated with expanding streaming sites model, including in metropolitan, regional and sub-regional hospitals, and considering approach to public and private hospitals.</i></p> <p>Update on COVID surge allowance <i>Discussed matters relating to surge allowance payments for private hospitals under the State Code Brown and expanded streaming model.</i></p> <p>Update on weekly reporting of public hospitals <i>Noted Department consultation with public health services and noted to seek equitable load sharing among private operators.</i></p>

Meeting date	Summary of relevant matters discussed
	<p>PHFA movement of staff between private hospital operators <i>Noted previous discussion of PHFA movement / sharing of staff between private hospitals and noted feedback to come.</i></p>
27 January 2022	<p>Information Sharing</p> <p>Update on COVID surge allowance <i>Discussed potential scope and extension of COVID-19 surge allowance.</i></p> <p>Update on Elective Surgery and next steps <i>Discussed matters associated with elective surgery, including new health service response centre, review of and feedback on elective surgery settings, effectiveness of elective surgery settings in different states and noted proposals regarding status and potential changes to elective surgery restrictions.</i></p> <p>Supply Chain <i>Discussed matters relating to RAT supply, including access to State supply and status of expired stock.</i></p> <p>Load sharing <i>Discussed matters related to equitable load sharing.</i></p> <p>Managing Public Hospital Maternity Demand Pressures <i>Discussed matters associated with maternity services, including the circulation of information and managing maternity services.</i></p>

Meeting date	Summary of relevant matters discussed
	<p data-bbox="459 268 1008 296">Update on staff movement between Operators</p> <p data-bbox="459 304 1433 363"><i>Discussed matters relating to staff movement, including circulating guidelines for private operators to consider and noting update to PHFA to be presented to support movement.</i></p> <p data-bbox="459 556 646 583">VMO rate cards</p> <p data-bbox="459 592 1382 651"><i>Discussed matters relating to VMO rate cards, including feedback on changing and sharing cards.</i></p>
31 January 2022	<p data-bbox="459 785 797 812">Elective surgery resumption</p> <p data-bbox="459 821 1393 879"><i>Discussed matters associated with elective surgery, including resumption of elective surgery, future changes, proposed resumption plan and models to manage capacity.</i></p> <p data-bbox="459 1614 646 1642">Other business</p> <p data-bbox="459 1650 889 1680"><i>No update provided on other business.</i></p>
9 February 2022	<p data-bbox="459 1841 678 1869"><u>Information sharing</u></p> <p data-bbox="459 1877 760 1904">Elective surgery settings</p>

Meeting date	Summary of relevant matters discussed
	<p data-bbox="459 174 1456 258"><i>Discussed matters associated with elective surgery caps, including current levels across various regions, future application of Code Brown, treatment of cosmetic surgery within the cap and timing for consideration / review of future settings.</i></p> <div data-bbox="459 258 1464 594" style="background-color: black; height: 160px;"></div> <p data-bbox="459 594 1456 653">Alternative models to managing capacity and demand to support the Victorian COVID response</p> <p data-bbox="459 653 1456 747"><i>Discussed matters associated with alternative models to support COVID-19 response, including potential new models, local level negotiation, private hospital rates and PHFA movement on lifting restrictions.</i></p> <div data-bbox="459 747 1464 1115" style="background-color: black; height: 175px;"></div> <p data-bbox="459 1115 1456 1146">Private staff streaming allowance</p> <p data-bbox="459 1146 1456 1209"><i>Discussed matters relating to streaming parameters, including maximum boundaries and badging allowance.</i></p> <div data-bbox="459 1209 1464 1339" style="background-color: black; height: 62px;"></div> <p data-bbox="459 1339 1456 1371">COVID vaccination for staff</p> <p data-bbox="459 1371 1456 1434"><i>Discussed vaccination requirements for staff, including vaccination advice and formal guidance.</i></p> <div data-bbox="459 1434 1464 1623" style="background-color: black; height: 90px;"></div> <p data-bbox="459 1623 1456 1654">Streaming</p> <p data-bbox="459 1654 1456 1686"><i>Discussed status of expanded streaming model.</i></p> <div data-bbox="459 1686 1464 1738" style="background-color: black; height: 25px;"></div>
16 February 2022	<p data-bbox="459 1749 1456 1780">COVID situation report and update</p> <p data-bbox="459 1780 1456 1812"><i>Discussed COVID-19 update, including Code Brown status ending.</i></p> <div data-bbox="459 1812 1464 1885" style="background-color: black; height: 35px;"></div> <p data-bbox="459 1885 1456 1917">Information sharing</p> <p data-bbox="459 1917 1456 1948">Elective surgery settings</p>

Meeting date	Summary of relevant matters discussed
	<p data-bbox="459 174 1438 258"><i>Discussed matters associated with elective surgery caps, including current levels across various regions, transition arrangements for PHFA, referrals from public to private hospitals, managing load sharing and streaming.</i></p> <div data-bbox="459 258 1461 741" style="background-color: black; height: 230px;"></div> <p data-bbox="459 741 831 772">New models (added to agenda)</p> <p data-bbox="459 779 1455 837"><i>Discussed future pandemic planning, including relating to core principles, three phases of planning and hospital demand.</i></p> <div data-bbox="459 837 1461 1171" style="background-color: black; height: 159px;"></div> <p data-bbox="459 1178 662 1205">VIME Portal Data</p> <p data-bbox="459 1211 951 1241"><i>Noted feedback sought on VIME portal data.</i></p> <div data-bbox="459 1241 1461 1339" style="background-color: black; height: 47px;"></div> <p data-bbox="459 1346 1002 1373">New healthcare worker vaccination mandates</p> <p data-bbox="459 1379 1430 1438"><i>Discussed vaccination of workers, including legislation relating to vaccination for certain staff, mandatory nature of requirements and absence of penalties for non-compliance.</i></p> <div data-bbox="459 1438 1461 1629" style="background-color: black; height: 91px;"></div> <p data-bbox="459 1635 654 1663">Update on VMIA</p> <p data-bbox="459 1669 1451 1728"><i>Discussed matters relating to the application of VMIA insurance, with an update expected in the next week.</i></p> <div data-bbox="459 1728 1461 1883" style="background-color: black; height: 74px;"></div> <p data-bbox="459 1890 899 1919">PHFA update reporting requirements</p>

Meeting date	Summary of relevant matters discussed
	<p><i>Noted update to be provided clarifying reporting requirement for business-as-usual and PHFA.</i></p> <p>Visitor restrictions <i>Noted visitor restrictions are still under consideration and no changes anticipated in upcoming amendments.</i></p>
23 February 2022	<p>Information sharing</p> <p>Elective surgery <i>Discussed matters associated with elective surgery caps, including timing for consideration and rationale under pandemic orders, private hospital experiences in communicating requirements and intentions, and fast-tracking negotiations for new funding model for material facilities.</i></p> <p>PHFA exit <i>Discussed matters relating to potential PHFA withdrawals, public support funding and flagged potential further discussions regarding cost recovery.</i></p> <p>Update on alternative models to manage capacity and demand <i>Discussed matters associated with elective surgery, including restrictions in the long term, new funding model and briefings with stakeholders.</i></p> <p>Update on Roadmap <i>No update provided on Roadmap.</i></p>

Meeting date	Summary of relevant matters discussed
2 March 2022	<p data-bbox="456 180 678 212"><u>Information sharing</u></p> <p data-bbox="456 216 743 247">ED surge arrangements</p> <p data-bbox="456 252 1437 338"><i>Discussed ED surge arrangements, including potential return to legislated models, staff levels and elective surgery work, effect where operators exit the PHFA, with discussions ongoing.</i></p> <div data-bbox="456 342 1461 701" style="background-color: black; height: 171px;"></div> <p data-bbox="456 705 1203 737">Update on alternative models to manage capacity and demand</p> <p data-bbox="456 741 1409 827"><i>Discussed management of capacity and demand, including obtaining feedback from private and public sectors to inform planning sessions, progress with timing of phases and updating agreements / contracts.</i></p> <div data-bbox="456 831 1461 1102" style="background-color: black; height: 129px;"></div> <p data-bbox="456 1106 721 1138">Overseas recruitment</p> <p data-bbox="456 1142 1442 1228"><i>Discussed matters associated with overseas recruitment for healthcare workers, such as a visa program, priority processing for certain groups, and approach by overseas recruitment firms.</i></p> <div data-bbox="456 1232 1461 1446" style="background-color: black; height: 102px;"></div> <p data-bbox="456 1451 631 1482"><u>Other business</u></p> <p data-bbox="456 1486 927 1518">NWAU national rate vs Victorian NWAU</p> <p data-bbox="456 1522 1398 1566"><i>Discussed approach to applying NWAU rate, including querying whether national set price or state elected price is used.</i></p> <div data-bbox="456 1570 1461 1736" style="background-color: black; height: 79px;"></div> <p data-bbox="456 1740 1409 1797">Clarification on screening and testing guidelines (Front door checking, N95 risk stratification, RAT)</p> <p data-bbox="456 1801 1425 1858"><i>Discussed screening and testing requirements, including definitions within public health orders and restrictions on visitation at hospitals.</i></p> <div data-bbox="456 1862 1461 1900" style="background-color: black; height: 18px;"></div>

Meeting date	Summary of relevant matters discussed
	<p>Questions regarding <i>Pandemic (Additional Industry Obligations) Order 2022 (No.8), Sch1 – Restrictions on Elective Surgery</i> <i>Noted health orders and thresholds are being reviewed.</i></p> <p>New items raised Reconciliation payments <i>Discussed status of reconciliation payments, including certain payments requiring approval, progress on batches of payments and update on payment processing to be provided.</i></p> <p>Technical definition of depreciation <i>Noted clarification being sought on definition of depreciation.</i></p> <p>Principle framework for Covid capacity over winter <i>Discussed capacity framework over winter period and considered options for approving proposals.</i></p>
16 March 2022	<p><u>Information Sharing</u> Update on <i>Pandemic (Additional Industry Obligations) Order 2022 (No.8), Sch1 – Restrictions on Elective Surgery</i> <i>Noted pandemic orders updated and awaiting approval, to be distributed as soon as practicable.</i></p> <p>Update on elective surgery and alternative models to manage capacity and demand. <i>Noted further meetings with individual organisations in progress and discussed workshops regarding planning, pricing, commercial arrangements and elective surgery.</i></p> <p>PHFA update <i>Noted status of ongoing consideration of future PHFA participation.</i></p> <p><u>Other business/questions from CEOs</u> <u>New items raised in meeting:</u> Time frame and expectations of longer-term arrangements <i>Discussed timing expectations and framework for elective surgery, including returning to full capacity in public system with support of private system.</i></p> <p>Staff shortage and expectations <i>Discussed staff shortages and effect on elective surgery.</i></p>

Meeting date	Summary of relevant matters discussed
	<p data-bbox="459 233 643 260">Nursing Ratios</p> <p data-bbox="459 260 1273 287"><i>Noted timing expectations for returning nursing ratios to pre-covid figures.</i></p> <p data-bbox="459 321 786 348">Visitor guidance document</p> <p data-bbox="459 348 1422 405"><i>Discussed distributing a guidance document that balances discretion, risk analysis and implementation.</i></p> <p data-bbox="459 497 708 525">December payments</p> <p data-bbox="459 525 1162 552"><i>Noted finance advice that all December PHFA payments made.</i></p>

2. Meeting of the Day Procedure Centre CEO (DPC)

We have set out below a summary of relevant matters discussed at the meetings of the DPC that have occurred since December 2021 aside from a meeting of the DPC that occurred in March. The minutes for that meeting are still being finalised. As such, a report on that meeting will be included in the next reporting letter.

Meeting date	Summary of relevant matters discussed
11 January 2022	<p><u>Information Sharing</u></p> <p>Roadmap <i>Discussed COVID-19 roadmap, including testing criteria and stocktake of RATs, considering pre-operative testing criteria and furlough policy, and ED performance levels.</i></p> <p>[REDACTED]</p> <p>Elective Surgery <i>Discussed matters associated with elective surgery restrictions, including monitoring numbers, consideration of models from other states models and sharing resources within public and private hospitals.</i></p> <p>[REDACTED]</p> <p><u>Other business</u></p> <p>PHFA review and staff deployment <i>Discussed reviewing processes, including considering approaches in other states and discussed alternative workforce models, including considering deployment arrangements.</i></p> <p>[REDACTED]</p>
8 February 2022	<p><u>Information Sharing</u></p> <p>Elective Surgery update <i>Discussed matters associated with elective surgery caps, including current levels across various regions, considerations relating to workforce and timing for consideration / review of future restrictions.</i></p> <p>[REDACTED]</p>

Meeting date	Summary of relevant matters discussed
	<p>[Redacted]</p> <p>Roadmap update <i>Discussed update to Roadmap, including influence of Code Brown, RATs, furlough guidance, settings for de-escalation and pandemic responses, and considered need to mitigate exposure risks.</i></p> <p>[Redacted]</p> <p>Mandatory flu vaccination under Health Services Amendment (Mandatory Vaccination of Healthcare Workers) Bill 2020 <i>Discussed mandatory influenza vaccination for healthcare workers, including approval of simultaneous vaccination for COVID-19 and influenza, and discussed immunisation history requirements for employers and status of further guidance notes.</i></p> <p>[Redacted]</p> <p>PHFA update <i>Discussed review of various scenarios in the PHFA, and noted seeking feedback for draft circulated, to be progressed at a later date.</i></p> <p>[Redacted]</p> <p>Round table Q & A</p> <p>Surveillance testing for workers, part-time of casual staff <i>Discussed surveillance testing and vaccination requirements for staff, including considering RAT system and noted focus on vaccinations and current boosters.</i></p> <p>[Redacted]</p> <p>PPE & RAT concerns with sourcing and price gouging <i>Discussed update to PPE and RAT supplies, including processes for day procedure centres, and noted encouraging private hospitals to source supplies with focus on staff caring for public patients and managing demand.</i></p> <p>[Redacted]</p>

Meeting date	Summary of relevant matters discussed
	<p data-bbox="459 268 1333 296">PCR surveillance testing not covered under Medicare – seeking guidance</p> <p data-bbox="459 304 1377 359"><i>Discussed and considered feedback for matters associated with testing policies for hospitals.</i></p> <p data-bbox="459 495 1446 550">Workforce shortages effecting the ability to service private waiting list backlog and the ability to support the public sector</p> <p data-bbox="459 558 1349 613"><i>Noted shortages in workforce and seeking feedback on survey results to discuss workforce deployment at a later date.</i></p>