

MinterEllison

30 September 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 Faulls T: [REDACTED]

Partner: Geoff Carter T: [REDACTED]

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 June 2022 aside from a meeting of the PHCG that occurred on 7 September 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 June 2022	<p data-bbox="419 454 1485 539"><u>Discussion on Winter Payment</u> <i>Discussed matters associated with the release of the Winter Payment Plan for the private healthcare sector.</i></p> <div data-bbox="419 539 1485 1552" style="background-color: black; width: 100%; height: 452px;"></div> <p data-bbox="419 1581 1485 1666"><u>COVID situation report and update</u> <i>Discussed matters associated with staffing, including number of furloughed staff, matters associated with supply and services and status of three regional health services.</i></p> <div data-bbox="419 1666 1485 2063" style="background-color: black; width: 100%; height: 177px;"></div>

Meeting date	Summary of relevant matters discussed
	<p><u>Information Sharing</u> <i>Discussed matters associated with Winter Surge contracts.</i></p> <p>[REDACTED]</p> <p>Winter Response Plan <i>Discussed amendments to Winter Surge contracts, including matters relating to length and fees.</i></p> <p>[REDACTED]</p> <p>Governance meeting update <i>Discussed meetings of the governance group following implementation of the Winter Recovery Plan.</i></p> <p>[REDACTED]</p> <p>PHFA update <i>Discussed process for dealing with adjustments to PHFA payments/refunds.</i></p> <p>[REDACTED]</p>
6 July 2022	<p><u>COVID situation report</u> <i>Discussed matters associated with staffing, including number of furloughed staff.</i></p> <p>[REDACTED]</p> <p>Omicron subvariant BA.4/BA.5 update <i>Discussed current capacity of the public system in the context of COVID, Non-COVID, workforce capacity, and measures that may be taken to influence the trajectory of this wave, including facilitation of vaccinations and antiviral treatments.</i></p> <p>[REDACTED]</p> <p><u>Information Sharing</u> Winter Retention Staff Payments <i>Discussed availability of Winter Retention Staff Payments policy.</i></p> <p>[REDACTED]</p> <p>Winter Response Plan (WRP) (Papers 3 & 4)</p>

Meeting date	Summary of relevant matters discussed
	<p data-bbox="419 185 1007 219"><i>Noted cabinet approval of Winter Response Plan.</i></p> <p data-bbox="419 244 1294 277">Update on governance meetings of the Winter Response Committee</p> <p data-bbox="419 277 1422 369"><i>Discussed governance meetings, including timing of meetings, current workforce capacity, likelihood of a code brown, available levers for activation, status of elective surgery in public hospitals and impact of influenza.</i></p> <p data-bbox="419 808 839 842">Update on covid surge contracts</p> <p data-bbox="419 842 1422 934"><i>Discussed status of COVID surge contracts, including consideration of various items such as pricing, premiums, triggers, indemnity and risk, staffing and reasonable expectations.</i></p> <p data-bbox="419 1424 703 1458">VMIA insurance cover</p> <p data-bbox="419 1458 1433 1550"><i>Discussed matters associated with VMIA insurance, including work in Emergency Departments, discussions with other departments, potential emergency management models and surgery work not included in potential outcomes.</i></p> <p data-bbox="419 1771 962 1805">PHFA audit and reconciliation clarification</p> <p data-bbox="419 1805 1445 1861"><i>Discussed matters associated with the PHFA during the contract term, including costs, equipment and depreciation and scope of coverage.</i></p>

Meeting date	Summary of relevant matters discussed
	<p>[Redacted]</p> <p>PHFA: Commonwealth update <i>Discussed extension of national COVID partnership agreement and State engagement with privates under PHFA.</i></p> <p>[Redacted]</p> <p>Other business/questions from CEOs Privately insured patients in public facilities <i>Discussed proposal relating to private ED and privately insured patients.</i></p> <p>[Redacted]</p> <p>Streaming model <i>Noted the re-introduction of a COVID positive streaming model was raised for consideration.</i></p> <p>[Redacted]</p>
27 July 2022	<p><u>COVID situation report and update</u> <i>Discussed current COVID situation, including entering stage three of the Winter Response Plan, number of infections and associated risk management strategies, workplace capacity, performance of AV and interactions with ED.</i></p> <p>[Redacted]</p> <p><u>Information Sharing</u> Update on engagement with private sector on COVID surge contracts <i>Discussed timing of the ending of PHFA and the timing status of NPA, and potential local surge agreements with the private sector.</i></p> <p>[Redacted]</p>

Meeting date	Summary of relevant matters discussed
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>PHFA update <i>Discussed matters associated with payments under the PHFA, including reporting, payment timings, payments outside of clean-up period and backdating.</i></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Mandatory vaccination of healthcare workers 2022 <i>Discussed mandatory influenza vaccination, including vaccination data, uptake and issues.</i></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p><u>Other business/questions from CEOs</u> COVID payments for ED & ICU (who look after COVID+ patients) and covid ward staff <i>Discussed potential payment for staff looking after COVID patients.</i></p> <p>[REDACTED]</p> <p>Furlough staff data to be extended to include private establishments <i>Noted including furlough data for private operators.</i></p> <p>[REDACTED]</p>
10 August 2022	<p><u>COVID situation report and update</u> Winter Response Plan <i>Discussed review of Winter Response Plan.</i></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Other matters <i>Discussed upcoming CEO broadcast regarding supply chain and waste disposal.</i></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p><u>Information Sharing</u> Update on PHFA engagement</p>

Meeting date	Summary of relevant matters discussed
	<p>[REDACTED]</p> <p><u>COVID situation report and update</u> Yesterday's COVID related data <i>Discussed COVID situation report and update, including furloughed staff numbers and COVID outbreaks in other sectors. Discussed review of the WRP tool, planned de-escalation of the WRP and risk management.</i></p> <p>[REDACTED]</p> <p><u>Information Sharing</u> PHFA update <i>Discussed activity levels under PHFA, including activities, types of admissions and procedures.</i></p> <p>[REDACTED]</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 14 June 2022 aside from a meeting of the DPC that occurred 13 September 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
14 June 2022	<p data-bbox="419 365 903 394"><u>Update from the Deputy State Controller</u></p> <p data-bbox="419 394 1485 517"><i>Discussed ICU capacity, workforce and wellbeing. Discussed matters associated with winter retention payment, workforce capacity, status of regional facilities and Winter Response Plan. Discussed supply of consumables, alternative procurement systems and waste management strategies.</i></p> <p data-bbox="469 517 1485 1256">[REDACTED]</p> <p data-bbox="419 1290 1169 1321"><u>Update on alternative models to manage capacity and demand</u></p> <p data-bbox="419 1321 1425 1384"><i>Discussed matters associated with alternative models, including finalisation of plans, elective surgery recovery and Day Procedure Centre participation.</i></p> <p data-bbox="469 1384 1485 1693">[REDACTED]</p> <p data-bbox="419 1693 592 1724">PHFA update</p> <p data-bbox="419 1724 1458 1787"><i>Discussed matters associated with PHFA, including length and facility remaining in the PHFA.</i></p> <p data-bbox="469 1787 1414 1910">[REDACTED]</p> <p data-bbox="419 1910 791 1942">Ongoing purpose of meeting</p> <p data-bbox="419 1942 1048 1973"><i>Discussed ongoing focus and frequency of meetings.</i></p> <p data-bbox="469 1973 1445 2029">[REDACTED]</p>

Meeting date	Summary of relevant matters discussed
	<p>[REDACTED]</p>
12 July 2022	<p><u>Update from the Deputy State Controller</u> <i>Discussed matters associated with workforce, including public furloughed staff numbers and other factors affecting the workforce. Discussed management of current COVID outbreaks, including visitor restrictions and risk management.</i></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Winter Response Plan (Paper 3 & 4) <i>Discussed matters associated with the Winter Response Plan, including current stage, potential changes under stage three and assistance from the Health System Response Centre.</i></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p><u>Information sharing</u> PHFA update <i>Noted the PHFA extension by the Commonwealth.</i></p> <p>[REDACTED]</p> <p>Elective surgery Local Agreements <i>Discussed status of discussions with Day Procedure Centres to assist in the elective surgery backlog.</i></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
9 August 2022	<p><u>Update from the Deputy State Controller</u> <i>Discussed system demands and matters associated with supply.</i></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Winter Response Plan <i>Discussed current stage of the Winter Response Plan and major levers being used, including workforce and private system report.</i></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

Meeting date	Summary of relevant matters discussed
	<p data-bbox="421 219 655 248"><u>Information sharing</u></p> <p data-bbox="421 248 592 277">PHFA update</p> <p data-bbox="421 277 1449 338"><i>Discussed matters associated with the ending of the PHFA, including public surge and elective surgery agreements.</i></p> <p data-bbox="469 338 1485 555">[Redacted]</p> <p data-bbox="421 562 1394 591">Update on Day Procedure Centre's participation in elective surgery catch up</p> <p data-bbox="421 591 1150 620"><i>Discussed status of discussions with Day Procedure Centres.</i></p> <p data-bbox="469 620 1485 864">[Redacted]</p>