Draft Determination and interim authorisation

Application for revocation of AA1000491 and the substitution of authorisation AA1000567 lodged by
the State of Victoria as represented by the Department of Health in respect of
co-ordination of healthcare services in response to the COVID-19 pandemic

Date 28 September 2021

Commissioners: Keogh
Rickard
Brakey
Ridgeway

Summary

The ACCC proposes to re-authorise the State of Victoria, as represented by the Department of Health (the Department), and relevant healthcare providers, in relation to arrangements for the purpose of maximising healthcare capacity and ensuring Victoria-wide coordination of healthcare services during the COVID-19 pandemic.

In broad terms, the arrangements involve the Department, participating private healthcare providers, and public hospitals in Victoria sharing information about capacity and resources and, under the oversight and direction of the Department, coordinating their activities in relation to the provision of certain medical services or the treatment of particular groups of patients at particular hospitals. The arrangements also allow the coordination of the procurement of medical equipment and supplies and the sharing of resources to meet demand.

The arrangements for which re-authorisation is sought are the same as those previously authorised by the ACCC on 13 August 2020. This existing authorisation will expire on 30 September 2021.

The Department seeks re-authorisation for a further 12 months. The ACCC notes there is inherent uncertainty as to the period of time the impact of the Pandemic will continue on the health system. Given the ACCC's consideration of the balance of public benefits and detriments and the potential benefits in having certainty of ongoing authorisation, the ACCC proposes to re-authorise the Conduct for 18 months.

The ACCC has also granted interim authorisation to allow the arrangements authorised in 2020 to continue while the ACCC completes its assessment of the application for re-authorisation.

Re-authorisation is proposed to be subject to a condition which requires reporting of conduct engaged in under the authorisation, similar to the requirements of the existing authorisation.

The ACCC invites submissions in relation to this draft determination by 21 October 2021 before making its final decision.

1. The application for authorisation

1.1. On 26 August 2021, the State of Victoria as represented by the Department of Health (the **Department**) lodged an application with the Australian Competition and Consumer Commission (the **ACCC**) to revoke authorisation AA1000491 and substitute authorisation AA1000567 for the one revoked (referred to as re-authorisation). The Department seeks re-authorisation on behalf of itself and the following parties who are engaged, or propose to become engaged, in the arrangements for a period of 12 months:

- specified private healthcare providers operating in Victoria as listed in **Attachment 1** (and their related bodies corporate), as well as any other private healthcare providers notified to the ACCC by the Department from time to time (the **Participating Providers**), and
- all public hospitals operating in Victoria, as listed in **Attachment 2**, 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**).

1.2. This application for revocation and substitution was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

1.3. The ACCC may grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the Act, for arrangements that may otherwise risk breaching those provisions in the Act but which are not harmful to competition and/or are likely to result in overall public benefits.

1.4. The Department seeks re-authorisation for the broad purpose of maximising healthcare capacity and ensuring the Victoria-wide coordination of healthcare services to facilitate the most efficient and effective allocation of healthcare services during the period of the COVID-19 pandemic (the **Pandemic**). To achieve this purpose, the Department has entered into separate but substantially similar agreements with the Participating Providers, and may enter into further agreements in the future (together, the **Agreements**) in order to achieve the Objectives defined at paragraph 1.7 below.

1.5. The Department also seeks re-authorisation for the formation of Cluster Planning Implementation and Operational Groups (**Cluster Groups**). These groups may include private healthcare providers who are notified to the ACCC but are not party to an Agreement with the Department, or cease to be a party to an Agreement with the Department. The Cluster Groups will plan for, and if necessary, coordinate responses to COVID-19 outbreaks in particular geographic regions of Victoria (**Clusters**).

1.6. The Department is seeking to replicate the arrangements that are currently in place under the existing authorisation AA1000491, which the ACCC granted on 13 August 2020. The existing authorisation is due to expire on 30 September 2021. As such, the Department also requests the ACCC grant interim authorisation to enable the parties to continue to engage in the Conduct while the ACCC is considering the substantive application for re-authorisation. The request for interim authorisation is discussed further in section 6.

The Conduct

1.7. The Department's objectives include 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) make available to the Department (and the Victorian public) the maximum amount of hospital facilities;

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

(e) ensure that the Department 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 Department; 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**).

1.8. The Department is seeking authorisation 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:

a. 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:

i. information about the capacity or expected capacity of a hospital to provide care to patients or patients with particular conditions; and

ii. information about the availability of resources required to treat patients (including, but not limited to, hospital beds, staff, medicines and other equipment);

b. coordinating the following activities:

i. allocation of the provision of certain services or certain patients to particular healthcare providers and / or between certain healthcare facilities (e.g. designating specific categories of patients to particular hospitals);

ii. restriction of certain services that can be provided at particular healthcare facilities;

iii. sharing of resources (including staff and medical supplies and equipment) to meet demand at particular healthcare facilities;

iv. 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

c. 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 Department or one or more of the Victorian Public Providers; and

(c) 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 Department or one or more of the Victorian Public Providers.

(the **Conduct**).

1.9. The key features of the Agreements entered into with the Participating Providers are:

(a) the Department 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 Department 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 Department in accordance with principles to be agreed;

d) the Department 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 parties participating in the Proposed Conduct will cooperate in respect of the procurement and supply of medical equipment.

1.10. 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 Department or one or more of the Victorian Public Providers.

1.11. The responsibilities and functions of the Cluster Groups are to:

(a) develop a Pandemic Cluster Response Plan in accordance with the requirements set out by the Department, drawing on existing healthcare service preparedness plans and regional planning already underway;

(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 delivery of 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 healthcare services within the Cluster in accordance with system design principles;

(f) use best endeavours to maintain delivery of critical COVID-19 and nonCOVID-19 healthcare 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 (e.g. Aboriginal, immuno-suppressed, aged care, etc.); and

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

1.12. The 'system design principles' referred to above are:

(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 services 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.

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

(e) 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.

1.13. A copy of the application for authorisation is available on the ACCC's Authorisations public register.

2. Background

2.1. The ACCC recognises the significant challenges that continue to exist as a result of the ongoing Pandemic. There is risk that Australia's health services may continue to be put under pressure in responding to the ongoing Pandemic, and that there is ongoing uncertainty around the effects of the vaccination roll out and increasing COVID-19 case numbers on the public and private health system.

The National Partnership on COVID-19 Response

2.2. On 13 March 2020, the Commonwealth of Australia and each of the states and territories, signed the National Partnership on COVID-19 Response[1] (the **NPA**). The NPA is a commitment between the Commonwealth and the states and territories to respond to the Pandemic.

2.3. The NPA provides that as system managers of public hospitals, each state will enter into agreements with existing private hospitals (including day hospitals) within their jurisdiction, through a consistent agreement, to ensure:

(a) increased capacity for the Commonwealth and states to rapidly respond to the COVID-19; and

(b) the viability of private hospitals is maintained during the Pandemic and they are able to resume operations once the Pandemic response ends.

[1] See https://www.coag.gov.au/sites/default/files/communique/covid19-npa.pdf

2.4. The Department advises that the application for re-authorisation forms part of the implementation of the NPA and funding commitments that have been made by the Australian Government and State and Territory Governments.

3. Consultation

3.1. Given the limited time between lodgement of the application for re-authorisation and the expiration of the current authorisation, and the uncontentious nature of the existing authorisation for the same conduct, the ACCC has not sought the views of interested parties prior to the release of this draft determination and interim authorisation.

3.2. The ACCC will now seek the views of interested parties on the application for re-authorisation, this draft determination and the interim authorisation. The ACCC will consider any views prior to preparation of its final determination.

3.3. Public submissions by the Department and interested parties will be placed on the Public Register for this matter.

4. ACCC assessment

4.1. The ACCC's assessment of the Conduct is carried out in accordance with the relevant authorisation test contained in the Act.

4.2. The Department has sought re-authorisation for the Conduct in relation to Division 1 of Part IV of the Act, and sections 45, 46 and 47 of the Act. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the Conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would result or be likely to result from the Conduct (the **authorisation test**).

4.3. The ACCC's assessment of AA1000567 is made in the context of the ongoing Pandemic. Consistent with the purpose of the Act which is to enhance the welfare of Australians by promoting fair trading and competition, when considering applications for authorisation in response to the Pandemic, the ACCC is seeking to ensure that any changes to the competitive landscape are, wherever possible, temporary.

4.4. In making its assessment of the Conduct, the ACCC has considered:

- the relevant areas of competition likely to be affected by the Conduct. These areas of competition include the supply of overnight and day hospital healthcare services to persons in the state of Victoria, in both the private and public healthcare system. The supply of surgical and other related healthcare services to persons in the state of Victoria is also likely to be relevant. These areas of competition encompass a diverse range of healthcare services.

- the likely future with the Conduct that is the subject of the authorisation compared to the likely future in which the Conduct does not occur. In the future without the Conduct the ACCC considers that the Victorian Government would be likely to enter into contracts with private healthcare providers on a bilateral basis. These contracts may be on broadly similar terms and would still seek to meet the NPA and other requirements implemented as part of the response to the Pandemic. However, the contracts would not establish the cooperation and coordination mechanisms between private healthcare providers provided for by the Conduct.

Public benefits

4.5. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with guidance from the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

> *…anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements … the achievement of the economic goals of efficiency and progress.* [2]

4.6. The Department submits that the Conduct will continue to result in the following public benefits:

- enabling the Participating Providers and the Victorian Public Providers to work together under the oversight and direction of the Department, to coordinate the medical response to the Pandemic as effectively, efficiently and economically as possible;
- reducing 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 any Commonwealth Government restrictions on their ability to provide certain surgeries;
- providing the Department 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;
- allowing the Participating Providers to be responsive to the needs of the overall healthcare system and coordinate with the Victorian Public Providers based on clinical priorities, recognising the need for continuity and quality patient care;
- allowing the Participating Providers to work in synchronisation with the public healthcare system and each other and prioritise capacity for COVID-19 patients, urgent care and other healthcare services;
- ensuring medical equipment (including ventilators), PPE, medical supplies and other relevant supplies are, to the extent possible, available where needed to respond to the Pandemic;
- ensuring provision of additional intensive care facilities in response to the Pandemic;
- ensuring the Participating Providers can remain operational, and retain staff under existing industrial arrangements during the Pandemic; and
- ensuring the viability of Participating Providers during and following the Pandemic which will help ensure that following the Pandemic consumers will continue to have a choice of private or public care.

4.7. The Department advises that, under the existing authorisation, the authorised parties have entered into and given effect to the Agreements; established a Private Hospital Coordination Group; and formed and deployed Cluster Groups. In the future, the Department expects the Conduct will be critical to enable the continued response to

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2 Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

potential pressure placed on the hospital system as the Victorian Government re-focuses its suppression/elimination strategy in accordance with the re-opening strategy in the National Cabinet's plan to transition Australia's National COVID-19 Response.

4.8. As noted in paragraph 4.4, the ACCC considers that, without the Conduct, the Victorian Government would be likely to enter into contracts with private healthcare providers to facilitate access to the private healthcare system's resources; and that such agreements would be on broadly similar terms and would seek to meet the NPA and other requirements implemented as part of the response to the Pandemic. In these circumstances it is likely that the some of the public benefits arising from the ongoing viability of the private healthcare system could be achieved without the Conduct.

4.9. However, the ACCC considers that the Conduct will allow the authorised parties to coordinate the medical response to the Pandemic in Victoria as efficiently and effectively as possible, including by facilitating the swift response to outbreaks in Victoria. The ACCC considers that this is likely to contribute to public confidence during the Pandemic. The ACCC considers that the Conduct is likely to result in significant benefits to the public by supporting the timely deployment of critical resources.

4.10. In addition, the ACCC considers that there are likely to be some contracting efficiencies resulting from the Conduct, and these may be more difficult to achieve in the future without the Conduct.

Conclusion on public benefits

4.11. The ACCC considers that the Conduct is likely to deliver significant public benefit through the enhanced coordination and improved responsiveness of the Victorian healthcare system to the Pandemic.

Public detriments

4.12. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with guidance from the Tribunal which has defined it as:

> *…any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*[3]

4.13. The Department submits that it is not aware of any public detriments that have or may result from the Conduct.

4.14. The Conduct includes a number of measures to support the Victorian healthcare system's response to the Pandemic, for example:

(a) discussion of healthcare operations, facility capacity, and resourcing;

(b) allocation of services, including between healthcare facilities;

(c) restriction of services, including determining services that can be provided at particular healthcare facilities;

(d) sharing of resources, including staff and medical supplies and equipment, to meet demand at particular healthcare facilities; and

3 Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

(e) the formation of Cluster Groups, to be led by the Department or one or more of the Victorian Public Providers, to plan for, and if necessary, coordinate responses to COVID-19 outbreaks in particular geographic regions of Victoria.

4.15. While providing a mechanism for the healthcare system to coordinate its response to the Pandemic, these measures may restrict competition. For example, private patients with non-COVID-19 conditions may experience fewer options or longer wait times for healthcare services during these interventions, including because COVID-19 patients are prioritised over other patients. To a large extent, however, many of these detriments would be likely to arise due to increased demand on healthcare resources as a result of the Pandemic, and by public policy decisions in response to it. In that sense, many of these detriments would occur with and without the Conduct.

4.16. The Conduct also allows for increased cooperation and coordination between competitors. Agreements between competitors can give rise to competition concerns if the horizontal agreement makes coordination (rather than competition) between firms beyond the terms of the authorised agreement more likely and also across the market more generally. In general, coordination between competitors can cause significant detriment to the public.

4.17. However, the ACCC considers that, in the current circumstances, the likely public detriment from the Conduct is limited by a number of factors:

(a) to the extent that Participating Providers retain the capacity to do so, nothing in the Agreements is intended to affect the normal competitive process vis-à-vis the provision of healthcare services to private patients;

(b) the Conduct does not extend to any price agreements between private hospitals for non-COVID-19 services;

(c) the Conduct does not extend to any coordination or agreement between Participating Providers or between Participating Providers and the Victorian Public Providers other than as necessary or desirable to give effect to the Agreements and facilitate the Objectives. Coordination between the participating parties can only occur at the request or direction of the Department or one or more of the Victorian Public Providers;

(d) there will be continued transparency around the Conduct as the Department is required under the Conduct to notify the ACCC of additional Participating Providers, and the ACCC's proposed condition requires the Department to provide regular updates to the ACCC;

(e) any information shared under the Conduct is likely to lose relevance following the cessation of the Conduct; and

(f) the Conduct provides a temporary response to the Pandemic, the measures are not designed or intended to provide a permanent restriction on competition.

Conclusion on public detriments

4.18. The ACCC considers that the Conduct is likely to result in some public detriment in the short term because it will reduce competition, including in the supply of overnight and day hospital healthcare services to particular patients in Victoria. However, there are a number of factors that mean the ACCC considers it unlikely that the Conduct will significantly impact competition in the long term, including oversight by the Department and as a result of the transparency provided by the proposed condition.

Balance of public benefit and detriment

4.19. The ACCC considers that the Conduct is likely to result in significant public benefits through the enhanced coordination and improved responsiveness of the Victorian healthcare system to the Pandemic.

4.20. The ACCC also considers that the Conduct is likely to result in some public detriment over the short term because it is likely to reduce competition in the supply of hospital healthcare services to certain patients in Victoria. In the circumstances, the ACCC considers that the reduction in competition is limited (see paragraph 4.17 above) and is not likely to continue in the long term.

4.21. Overall, the ACCC considers that the Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Conduct.

Length of authorisation

4.22. The Act allows the ACCC to grant authorisation for a limited period of time.[4] This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

4.23. In this instance, the Department seeks re-authorisation for a further 12 months from the date of a final determination by the ACCC.

4.24. The ACCC notes that there is inherent uncertainty as to the period of time the impact of the Pandemic will continue on the health system, and that this impact is likely to differ from that on other sectors of the economy. Given the ACCC's consideration of the balance of public benefits and detriments and the potential benefits in having certainty of ongoing authorisation, the ACCC proposes to re-authorise the Conduct for 18 months.

5. Draft determination

The application

5.1. On 26 August 2021, the Department lodged an application to revoke authorisation AA1000491 and substitute authorisation AA1000567 for the one revoked (referred to as re-authorisation). This application for re-authorisation was made under subsection 91C(1) of the Act.

5.2. The Department seeks re-authorisation for the Conduct described at paragraph 1.8, on behalf of itself, Participating Providers and Victorian Public Providers, for the broad purpose of maximising healthcare capacity and ensuring the Victoria-wide coordination of healthcare services to facilitate the most efficient and effective allocation of healthcare during the period of the Pandemic. As part of these arrangements, the Department will enter into Agreements with Participating Providers and form Cluster Groups to plan for and, if necessary, respond to outbreaks of COVID-19 in particular geographic regions in Victoria.

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[4] Subsection 91(1)

5.3. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

5.4. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Conduct would or is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would result or be likely to result from the Conduct.

5.5. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Conduct.

5.6. Accordingly, the ACCC proposes to revoke authorisation AA1000491 and substitute authorisation AA1000567 for the one revoked.

Proposed conditions of authorisation

5.7. The ACCC may specify conditions in an authorisation.[5] The legal protection provided by the authorisation does not apply if any of the conditions are not complied with.[6]

5.8. The ACCC may specify conditions in circumstances where, although the relevant public benefit test is met, without the conditions the ACCC would not be prepared to exercise its discretion in favour of the authorisation.[7]

5.9. In this instance, the ACCC proposes to grant authorisation with the following condition:

Reporting Requirements

(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.

5.10. Under the condition, the ACCC may authorise a Committee or Division of the ACCC, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under the conditions of this authorisation on its behalf.

Conduct which the ACCC proposes to authorise

5.11. Subject to the proposed condition, the ACCC proposes to revoke authorisation AA1000491 and substitute authorisation AA1000567 to enable the Department and Participating Providers and Victorian Public Providers to coordinate healthcare services to facilitate the most efficient and effective allocation of healthcare during the period of the COVID-19 pandemic as described in paragraph 1.8 and defined as the Conduct. The ACCC proposes to grant authorisation to the Conduct only in so far as it is for the sole purpose of dealing with the effects of the Pandemic in Victoria.

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[5] Section 88(3) of the Act.

[6] Section 88(3) of the Act.

[7] Application by Medicines Australia Inc (2007) ATPR 42-164 at [133].

5.12. Authorisation is proposed to be granted in relation to Division 1 of Part IV of the Act, and sections 45, 46 and 47 of the Act.

5.13. The ACCC proposes to grant conditional authorisation AA1000567 for a further 18 months.

5.14. This draft determination is made on 28 September 2021.

6. Interim authorisation

6.1. Authorisation AA1000491 is due to expire on 30 September 2021. In order to enable due consideration to be given to the application for re-authorisation, the ACCC has decided to suspend the operation of authorisation A1000491 and grant interim authorisation in substitution for that suspended authorisation.[8] The ACCC has decided to grant interim authorisation for the following reasons:

A. The need for interim authorisation is due to the impending expiry of AA1000491. The possibility of harm to the Department and other interested parties if interim authorisation is not granted may be substantial, because it may reduce the effectiveness and/or efficiency of the Victorian health system's response to the ongoing Pandemic.

B. Interim authorisation will continue to allow the Department and Participating Providers and Victorian Public Providers to coordinate healthcare services to facilitate the most efficient and effective allocation of healthcare during the ongoing COVID-19 pandemic, while also minimising uncertainty and disruption that will be experienced if interim authorisation is not granted

C. for the reasons set out in this draft determination, the ACCC considers the conduct specified in relation to authorisation AA1000491 is likely to result in public benefits, and that these public benefits outweigh the likely limited public detriment as a result of this conduct.

6.2. The ACCC grants interim authorisation in relation to the same conduct and parties, and with the same conditions, as specified in authorisation AA1000491.

6.3. Interim authorisation commences immediately and remains in place until it is revoked, the date the ACCC's final determination comes into effect, or when the application for re-authorisation is withdrawn.

7. Next steps

7.1. The ACCC now invites submissions in response to this draft determination **by 21 October 2021**. In addition, consistent with section 90A of the Act, the Department or an interested party may request that the ACCC hold a conference to discuss the draft determination.

[8] This decision is made under s 91(2)(f) of the CCA.

Attachment 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 Department.**

Attachment 2 - The Victorian Public Providers

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.

<u>Metropolitan</u>

- 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