NOTICE OF LODGMENT

AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged:	Submissions
File Number:	ACT 4 of 2021
File Title:	APPLICATION FOR REVIEW OF AUTHORISATION AA1000542 DETERMINATION MADE ON 21 SEPTEMBER 2021
Registry:	VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL

REGISTRAR

Dated: 15/07/2022 11:13 AM

Important information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Royal Australian & New Zealand College of Psychiatrists

Your Health in Mind

15 July 2022

The Honourable Justice O'Bryan
Deputy President
Australian Competition Tribunal

By email to: associate.obryanj@fedcourt.gov.au

Dear Justice O'Bryan

Re: ACT 4 and 5 of 2021 - Application for review of authorisation of Honeysuckle Health Pty Ltd and nib Health Funds Ltd buying group

1. This letter is submitted to the Australian Competition Tribunal (the Tribunal) regarding the Tribunal's consideration of the two proceedings referenced above. The Royal Australian and New Zealand College of Psychiatrists (RANZCP) was granted leave to file and serve a written submission in relation to ACT 4 and ACT 5 of 2021 by the Tribunal on 25 May 2022.

Background

2. The RANZCP is a membership organisation that provides education and training to doctors to become psychiatrists, supports and enhances clinical practice, provides advocacy for patients, and advises governments on mental health care. The RANZCP is guided on policy matters by a range of experts including members of the Section of Private Practice Psychiatry (SPPP) Committee.

3. The Australian Medical Association (AMA), medical colleges, and societies have expressed concerns that the Honeysuckle Health (HH) and nib buying group poses a threat to Australia's healthcare system. Approval of the HH and nib buying group will allow HH, private health insurers (PHIs), and payers to promulgate managed care. This will significantly disadvantage patients.

4. The RANZCP's submission to the Australian Competition and Consumer Commission (ACCC) illustrates that the central concept of the HH and nib buying group includes elements that will reduce access to care and treatment, particularly:
   a. selective contracting, creating a differential of bargaining power between the buying group and the individual doctor
   b. cost cutting in the name of efficiency, with the interest of HH being towards its shareholders and profit making and not towards the best interest of patients

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c. unsupported models of financial incentives for improved performance, with incentives being found not to be associated with effectiveness of patient care[1]
d. caps on the choice or quantity of services provided, affecting the doctor-patient relationship.

5. On 21 September 2021, the ACCC issued a final Determination granting authorisation to HH and nib until 13 October 2026, with a condition that HH and nib must not supply their Broad Clinical Partners Program (BCPP) to major PHI's (i.e., Medibank, Bupa, Hospitals Contribution Fund of Australia and Hospital Benefit Fund in Western Australia (WA).

6. HH has expressed intent to re-open the determination by the ACCC that:
   a. the authorisation should be limited to five years; and
   b. HH should not be authorised to offer their BCPP program to major PHIs in WA.

7. The RANZCP opposes the HH buying group's request to extend the period of authorisation from 5 to 10 years; and removal of the condition preventing major PHIs (as defined in the Determination) from joining the HH and nib buying group (as defined in the Determination).

8. The RANZCP supports the applications for review made in ACT 4 and ACT 5 of 2021 on the basis that the ACCC did not adequately consider the public benefit, as per the arguments set out at paragraphs 9 to 16 of this submission.

Presenting problems in detail

9. Psychiatric inpatients typically require admission of a duration between one and four weeks. On average, the treating psychiatrist would perform four to sixteen episodes of care or intervention per admission. These consultations result in a high level of out-of-pocket fees for patients if psychiatrists do not utilise a no-gap arrangement (also known as a Medical Purchaser Provider Agreement; MPPA).

10. No-gap MPPAs are focused on financial arrangements between medical practitioners and PHIs. Under existing no-gap MPPA arrangements, PHIs do not influence clinical care which involve patient treatment and decisions on duration of inpatient admission. It is also understood that under existing arrangements, PHIs do not gather data on the patient or their treating clinicians.

11. The RANZCP is of the view that HH and nib's BCPP MPPA's would infringe upon the clinical autonomy of medical practitioners. These conditional MPPAs include contractual terms that outline expectations of how clinicians treat their patients, rules on length of inpatient admissions, and stipulations on collection of patient health data. Under HH and nib's BCPP MPPAs, clinicians may be required to meet generic clinical outcome targets and conditions to be eligible for funding.

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[1] Looi JC, Allison S, Pring W, Kisely SR, Bastiampillai T. Cui bono? Is Australia taking a step to managed healthcare as in the United States? Australian & New Zealand Journal of Psychiatry. 2022;56(3):211-213. Available from: https://journals.sagepub.com/doi/full/10.1177/00048674211038851

12. The use of generic guidelines and indicators neglects the clinical complexities of individual patient presentations. Compared with outpatient presentations, treatment within inpatient environments tends to be more complex. This is due to inpatient presentations typically involving greater symptom severity and treatment complexity, including liaising with multidisciplinary teams.

13. The RANZCP notes that clinical care should be tailored to the patients' individual needs, taking into consideration their diagnosis, previous response to treatments, individual preference, and sociocultural circumstances. Patients attain better health outcomes when their treatment plan and the doctor-patient relationship is not infringed upon by PHIs. The patient's treating medical practitioner is best positioned to work with them to develop a treatment plan that suits their immediate and long-term health requirements. As highlighted by Lived Experience Australia, individualised care and choice are important components to a consumer's journey to recovery.

14. In psychiatric practice, the doctor-patient relationship is of particular importance to psychotherapeutic treatment. Development and maintenance of this therapeutic relationship is conducive to positive treatment outcomes in psychiatry. Psychiatry involves listening carefully and sensitively to people's personal thoughts and feelings, understanding their mental state, and working with them to implement appropriate treatments including psychotherapy, psychotropic pharmacotherapy, and other interventions.

15. Patients with experience of abuse typically experience difficulties with trusting others. Disruption of the doctor-patient relationship by PHIs may lead patients to perceive that their interests are not being prioritised by their doctor. This will likely lead to the therapeutic relationship being compromised, which would result in disengagement by the patient and treatment attrition. Patients may then relapse and require further care and support.

16. The RANZCP is of the view that HH and nib's BCPP MPPA's will disrupt the doctor-patient relationship as it places restrictions on clinical care and length of inpatient admissions. Resultantly, psychiatrists may be limited in their ability to provide patient-specific care, which will lead to negative outcomes for patients. The introduction of BCPP MPPA's risks replacing person-centred care with homogenised care where patient treatment is guided by PHI metrics and guidelines (e.g., targeted percentages for inpatient admissions and treatment outcomes).

Conclusion

17. As noted in the RANZCP's submission to the ACCC, the RANZCP has opposed the authorisation of the HH and nib buying group and the exemption for the buying group to purchase on behalf of up to 60% of PHIs and other payers.

18. The RANZCP opposes the HH buying group's request to extend the period of authorisation from 5 to 10 years; and removal of the condition preventing major PHIs (as defined in the Determination) from joining the HH and nib buying group (as defined in the Determination). Consistent with the AMA's recommendations, HH and nib must:

a. Not be allowed to provide services to major PHIs.
b. Not be allowed to include targets in any agreements covered by the authorisation.
c. Acknowledge clinical autonomy of medical practitioners in any agreements covered by the authorisation.
d. Continue to offer a no gap (or known gap scheme) that does not include financial or non-financial incentives or involve collection of patient data as a condition of offering BCPP MPPAs to competitors.

I can be contacted via Nicola Wright, Senior Manager, Policy and Practice via nicola.wright@ranzcp.org or on (03) 9236 9103.

Yours sincerely

Associate Professor Vinay Lakra
President

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