

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: Statement

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



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a 'U'.

REGISTRAR

Dated: 16/05/2022 1:08 PM

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.



STATEMENT

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 4 of 2021

RE:

**APPLICATION FOR REVIEW OF
AUTHORISATION DETERMINATION
MADE ON 21 SEPTEMBER 2021**

APPLICANT:

**NATIONAL ASSOCIATION OF
PRACTISING PSYCHIATRISTS**

Statement of	Prof Philip Leo Patrick Morris AM
Address	Unit 201, Level 2, 50 Marine Parade, Southport QLD 4215
Occupation	Psychiatrist
Date	10 May 2022

I, Philip Leo Patrick Morris, say as follows:

1. I am a psychiatrist and President of the National Association of Practising Psychiatrists (NAPP) and am authorised to make this statement on NAPP's behalf.
2. Except where otherwise stated, I make this statement from my own knowledge.
3. I am a psychiatrist with 37 years of experience in public psychiatry, academic psychiatry and private practice. I have trained and practiced in psychiatry in Australia and in the USA. I have been responsible for patient care throughout my career and established the Australian National Centre for War-related Post Traumatic Stress Disorder. Prior to entering private practice, I created a national program of psychiatric rehabilitation for veterans and ex-defence force personnel.
4. From this experience, I am very aware that patients with psychiatric conditions are individually unique and varied in their clinical presentation and their requirements for effective care. This diversity in clinical presentation and clinical treatment requirements makes attempts to

homogenise and standardise clinical care for individual patients an endeavour that is not in the best interests of patients.

5. In my opinion, and in the context of psychiatric treatment, the proposal by the Honeysuckle Health group to introduce value-based contracts with the use of a standardised health outcome measurement that has not been established as useful in psychiatric treatment settings is a flawed concept. I do not consider that it will bring any benefits to patient care; on the contrary, I consider that it will bring significant detriments to patients and psychiatrists.
6. This issue was addressed by NAPP in the course of the ACCC's consideration of the authorisation application.¹ The issue was also considered by the Council of Procedural Specialists (COPS) in its submission to the ACCC.²
7. These two assessments concluded that there are no benefits and considerable potential harms from forcing the introduction of value-based contracts and standardised health outcome measures in the field of psychiatric treatment. I share and endorse those views.

Date: 10 May 2022

Philip Morris

Prof Philip Leo Patrick Morris AM

¹ Letter from National Association of Practising Psychiatrists dated 9th August 2021

² Letter from the Council of Procedural Specialists to ACCC in response to Draft Determination, dated 21 May 2022

08.10.2021 National Association of Practising Psychiatrists

Application to the Australian Competition Tribunal:

- **For review of the ACCC's final determination re Honeysuckle Health and nib health funds ltd application for authorisation AA1000542**

1. The National Association of Practising Psychiatrists (NAPP) hereby apply to the Australian Competition Tribunal pursuant to section 101 of the *Competition and Consumer Act 2010* for review of the determination of the Australian Competition and Consumer Commission dated the

21st day of September 2021 (Commission file no. AA1000542).

2. (b) NAPP's interest in the determination is as follows:

The National Association of Practising Psychiatrists (NAPP) represents psychiatric members and their patients who will be adversely affected by the ACCC determination to allow the Honeysuckle Health (HH) application for authorisation AA100545. We have demonstrated our legitimate interest in this determination in our initial submission to the ACCC (reference 1) and in our subsequent submission to the ACCC (reference 2) in response to the MinterEllison 'Response to submissions following the pre-decision conference' on behalf of nib health funds limited (nib) and Honeysuckle Health Pty Ltd, dated 9th August 2021". Our members and their patients will be adversely affected by the managed-care processes of flawed value-based contracting and inappropriate health outcomes measurement proposed by HH that will pose a net detriment to the Australian health care system and reduce insured patients with psychiatric illnesses choice of doctor, choice of hospital, and choice of appropriate medical treatments (reference 3).

2. NAPP is dissatisfied with the determination of the Commission in the following respects:

NAPP asserts that the ACCC's determination finding of net benefits is flawed. NAPP asserts that the net outcome flowing from the approval of the HH application is one of net detriments for the Australian health care system and Australian people.

NAPP asserts that the ACCC regulatory body does not have the capacities to adequately assess the detrimental effects on the broader medical and health care system that would flow from approval of the HH application. It is notable that health care professionals across multiple specialities united to speak against the HH application and in voicing overwhelmingly the detrimental impact of the intended actions on the health care system and for the Australian public.

- NAPP submits as supporting evidence the article Looi et al (2021), 'Cui Bono? Is Australia taking a step to managed healthcare as in the United States?', Australian & New Zealand Journal of Psychiatry 1-3, DOI:10.1177/00048674211038851

- The document highlights (net) detriments relating to:
 - Reduced competition (if more than 40% approved / capacity to dominate the PHI market)
 - Selective contracting of healthcare providers resulting in “an enormous differential of bargaining power between the buying-group and an individual psychiatrist”
 - “Schemes that reward doctors for performance have a lower chance of improving care than those that do not” and “incentives as a proportion of revenue were not associated with effectiveness of patient care”
 - “buying-group intercession into individual patient care decision-making” involves / results in “gatekeeping of access to private psychiatry, requirements for prior authorisation (especially pre-approval of psychiatric hospital care), review of care use concurrently and retrospectively, formation of PHI-buyer-designed disease-management-plans and care-networks - all greatly increasing the administrative burdens and reducing patient access to treatment”
 - “restriction of choice of psychiatrist, as well as allied health providers, through selective contracting may reduce access to psychiatric inpatient care and add to the difficulties already faced by those with mental health problems in obtaining treatment under their insurance cover”.
 - “Public perceptions of selective contracting and financial incentives or controls may also adversely affect the doctor-patient relationship”. NAPP notes that the doctor-patient therapeutic relationship is of the utmost important in psychiatric care and that damage to this relationship can have multiple adverse effects for the patient, including potential increased risk of suicide.
 - Selective contracting arrangements by PHIs and buying groups, including Cigna in the US, can include “non-disclosure arrangements between healthcare providers and managed-care companies about referral and financial arrangements”. NAPP notes that HH intends to introduce commercial-in-confidence contracts for clinicians - examples of which have not been provided to concerned parties during the ACCC application process - the details of which will not be transparent for patients. This has significant potential to disrupt the therapeutic doctor-patient relationship.
 - In concluding that the type of managed-care processes that HH intends to utilise pose net detriment for the Australian health care system and public, NAPP quotes Looi et al (2021) “Managed care has been ineffective clinically and in controlling healthcare costs in the United States, but highly effective in adding to PHI profits”. NAPP notes that there is no assurance nor legal requirement that any profits emerging from the proposed actions will flow to the Australian consumer.

3. The determination that I am seeking from the Tribunal is as follows:

NAPP seeks for the Australian Competition Tribunal to **set aside** the final determination of the ACCC. NAPP calls for the Honeysuckle Health and nib funds ltd application for authorisation AA1000542 to be **rejected**.

If the Australian Competition Tribunal will not reject the application in its entirety, NAPP calls for the Australian Competition Tribunal to **vary** the original decision and **place an exclusion on the buying-group entering the mental/psychiatric health care service system**. While the doctor-patient relationship holds significance across all specialities of the medical system, it could be considered that the therapeutic relationship within the psychiatric and mental health field is a psychodynamically-active

component that directly informs the success or failure of treatment(s); as such interference, undermining and damage(s) to the transparency of this relationship - relevant given the high percentage of psychiatric patients who present with histories of abuse and failures of care-giver system - fundamentally undermines and detrimentally impacts clinical practise, patients and their clinical outcomes, and the mental health care system more broadly.

4. Particulars of the facts and contentions upon which I intend to rely in support of the application for review, and a statement of the issues as I see them, are attached.

(subregulation 20(1))

6. My address for service for the purpose of regulation 21 of the Competition and Consumer Regulations 2010 is Unit 1, Level 2, 3 Short Street, Southport, Queensland 4214.

Dated this 8th day of October 2021.

20 . Signed by *Philip Morris*

Professor Philip Morris, President NAPP

History

Form I amended by SR No 330 of 1995, reg 10.1 and 10.2, effective 6 November 1995; SR No 20 of 1996, reg 10.2, effective 31 January 1996; SR No 280 of 2010, Sch 1, effective 1 January 2011 (as amended by SR No 337 of 2010).

Supporting Documents:

1. National Association of Practising Psychiatrists submission to ACCC dated 23 July 2021, Re: Honeysuckle Health and nib application for Authorisation AA1000542
2. NAPP Response to MinterEllison, dated 6th September 2021, titled “ ‘Response to submissions following the pre-decision conference’ on behalf of nib health funds limited (nib) and Honeysuckle Health Pty Ltd, dated 9th August 2021”
3. Looi et al (2021), ‘Cui Bono? Is Australia taking a step to managed healthcare as in the United States?’, Australian & New Zealand Journal of Psychiatry 1-3, DOI:10.1177/00048674211038851

06.09.2021

National Association of Practising Psychiatrists

Re: Honeysuckle Health and nib application for Authorisation AA1000542

Response to MinterEllison ‘Response to submissions following the pre-decision conference’ on behalf of nib health funds limited (nib) and Honeysuckle Health Pty Ltd, dated 9th August 2021

“3.6 Consumers will often not become aware of a medical specialist's gap until the first consultation, as their GP will generally not have information about gaps on hand when recommending a specialist to their patients... After the first consultation, consumers are then reluctant to switch specialists even if the gap payments will be large. The Applicants submit that there is greater potential for economic coercion of consumers in the current state.”

Psychiatric and other medical specialists and / or their administrative staff routinely provide patients with information re fees and rebates, usually at the time of booking the first appointment(s). This is part of financial informed consent. The unreferenced statement by MinterEllison misrepresents medical practitioners and is used to advance their own interests.

“9. Appropriateness of value-based contracting for mental health

9.1 Several submissions raise concerns that value-based contracting is not sufficiently developed to link payments to short term outcomes within mental health, due to the episodic nature and ongoing treatment of mental health problems.¹⁶ They note that many patients require ongoing treatment over a period of years and that linking contractual terms to outcomes may further create a financial disincentive for psychiatrists to see complex patients with treatment-resistant conditions.¹⁷ Further, even where a diagnosis is achievable, Dr Gary Galambos’ submission notes that this is not a good predictor of the need or duration of an admission.¹⁸

9.2 The Applicants appreciate the complexity of introducing value-based contracting for mental health hospitalisations compared to say, joint replacements. HH does intend to develop value-based contracts in mental health. The contracts will be developed in consultation with hospitals and psychiatrists. They will be based on clinical best practice, respect the primacy of the specialist/patient relationship and look to address the existing gaps in care that are created by existing funding models.”

NAPP communicates its deep concern that despite the applicants acknowledging that they “appreciate the complexity of introducing value-based contracting for mental health hospitalisations”, they go on to state “HH does intend to develop value-based contracts in mental health”. This demonstrates that the applicants have disregarded the advice of the specialist health professional bodies that represent the experts in diagnosis, research, advocacy and treatment of mental disorders. The maintained intention to progress the development of value-based contracts in mental health, despite experts in the field strongly communicating against this line of action indicates already that collaborative consultative processes will not be possible.

Given the current mental health system is at the beginning of longer-term processes of increasing psychiatrist numbers to meet clinical need, the system cannot afford the reductions in effectiveness, efficiencies and quality of mental health care that such contracting and its requirements will deliver. NAPP asserts that the impacts will be significantly detrimental at the level of the individual patient-clinician therapeutic relationship and more broadly at the level of the mental health care system. NAPP maintains that the value of such contracting is maintained at the level of financial return for the applicants.

NAPP notes further that nib and HH have not identified any existing gaps in care that are created by existing funding models as part of their application processes. An implication is that HH only intends to force value-based contracts on mental health care for its own purposes.

“10. ICHOM standards

10.1 The National Association of Practising Psychiatrists has raised concerns over the use of the International Consortium for Health Outcomes Measurement (ICHOM) to determine the value of care under the Broad CPP.¹⁹ Specifically, they suggest that ICHOM is not internationally recognised by the broad scientific community as a standard set of values and therefore question the appropriateness of its use in the Broad CPP. Further, they raise concerns that the concepts of ICHOM are inconsistent with the realities of psychiatric practice.

10.5 ... the Applicants are open to working with each medical specialty college to determine if better measurement systems exist for their specific craft group if ICHOM is deemed as not appropriate.”

NAPP maintains that the ICHOM standard set is not recognised internationally, is not in general use within psychiatric practice, and is not consistent with the realities of psychiatric practice. NAPP is concerned that the use of such standard sets, if implemented via ACCC approval of the HH application, will be detrimental to Australian patients and the Australian healthcare system. NAPP maintains that the complexity of psychiatric practice, bringing together biopsychosociocultural dimensions developmentally, and across conscious and unconscious domains, can only be limited and / or impacted detrimentally by such standard sets.

Further, NAPP asserts that the movement to standard sets introduces unnecessary bureaucratic processes into the therapeutic relationship and as such, function to change the very nature of the therapeutic relationship, which is itself an important component of mental health care and healing. NAPP notes that major healthcare insurers in the USA have misused similar standard sets or algorithms for reporting treatment utilization with detrimental effects on the quality and duration of outpatient psychotherapy and the denial of benefits to insurance beneficiaries. There is no reason the use of similar standard sets by HH may not incur the same problems.

NAPP also respectfully indicates that psychiatrists in Australia have multiple representative organisations, including RANZCP, the National Association of Practising Psychiatrists, the Australian Medical Association section of psychiatry, and the Australian Doctors Federation that should be consulted regarding any and all developments that will affect psychiatric practice.

NAPP submits its deep concerns regarding the net detriments and risks that will flow from ACCC approval of the HH application. NAPP asks the ACCC to reverse its draft decision on the HH application and reject the application in its entirety.

Dr Philip Morris AM
President NAPP

Dr Vivienne Elton
Vice President, NAPP

Dr Melinda Hill
Secretary, NAPP