

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: Application to Tribunal for Review

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: 8/10/2021 12:29 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.

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