

COMMONWEALTH OF AUSTRALIA

*Competition and Consumer Act 2010 (Cth)*



**IN THE AUSTRALIAN COMPETITION TRIBUNAL**

File No: ACT 5 of 2021

Re: RMSANZ APPLICATION FOR REVIEW OF AUTHORISATION  
AA1000542 DETERMINATION MADE ON 21 SEPTEMBER  
2021

Applicant: REHABILITATION MEDICINE SOCIETY OF AUSTRALIA  
AND NEW ZEALAND LTD

**DIRECTIONS**

TRIBUNAL: Justice Middleton (President)

DATE OF ORDER: 31 January 2022

WHERE MADE: Melbourne

**THE TRIBUNAL DIRECTS THAT:**

1. Disclosure of the information listed in **Annexure A** to these directions be restricted to the Tribunal and to the ACCC (**Restricted Information**) and its external legal advisers and engaged experts (and their direct staff).
2. Disclosure of the information listed in **Annexure B** to these directions (**Confidential Information**) be restricted to:
  - (a) the Australian Competition and Consumer Commission (**ACCC**) and its external legal advisers and engaged experts (and their direct staff); and
  - (b) the Rehabilitation Medicine Society of Australia and New Zealand (**RMSANZ**) and its external legal advisers and engaged experts (and their direct staff).
3. Disclosure to the RMSANZ is conditional on an authorised representative signing the confidentiality undertaking substantially in the form of **Annexure C** to these directions.
4. Other than the disclosure permitted by paragraphs 1 and 2, the Confidential Information must not be disclosed to any other person or otherwise made public.

5. Without the leave of the Tribunal, the Confidential Information must not be used by any person to whom it has been disclosed other than for the purposes of this proceeding.
6. Any written submission made to the Tribunal, or other document provided to the Tribunal, that refers to or incorporates the Confidential Information must be marked to identify clearly the Confidential Information.
7. The Confidential Information must not be referred to orally during the hearing of this proceeding (whether in oral submissions made to the Tribunal or cross-examination) unless the Tribunal has directed that the hearing of the submissions or cross-examination is to take place in private pursuant to s 106(2) of the *Competition and Consumer Act 2010* (Cth).
8. Until further order of the Tribunal, the Confidential Information is not to appear in any transcript of the proceeding before the Tribunal other than in a confidential copy of the transcript, which shall only be made available to the persons referred to in paragraph 1 of these Directions.
9. Nothing in these Directions imposes an obligation on the ACCC in respect of a document or information which has been obtained by it otherwise than in the course of these Tribunal proceedings, or on RMSANZ in respect of a document or information which has been obtained by it otherwise than in the course of these Tribunal proceedings or the preceding application for authorisation before the ACCC.
10. The parties and any intervenors to the proceedings have liberty to apply to vary these Directions.

Date entered: 31 January 2022



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

REGISTRAR  
Australian Competition Tribunal

## **Annexure A – Restricted Information**

1. Annexures B and C of application for authorisation annexed to letters dated 8 April 2021, 21 April 2021 and 6 May 2021.
2. 'Maximum Fee' column in Schedule 2 of the Template MPPA dated 21 February 2021.
3. 'Clinical Partners Program' and 'Differential fee for Clinical Partners Program' columns in the table under paragraph 3.4 in the letter dated 27 August 2021.

## **Annexure B – Confidential Information**

1. Paragraph 2.1, 2.2 and 2.3 of the 8 April 2021 letter.
2. Annexure D of application for authorisation annexed to letters dated 8 April 2021, 21 April 2021 and 6 May 2021.
3. Entire Template MPPA dated 21 February 2021 save for:
  - a. clauses 9.2, 10, 11 and part of Schedule 2 (over which confidentiality is not claimed);
  - b. 'Maximum Fee' column in Schedule 2 (which constitutes Restricted Information).

**Annexure C**

**Proposed confidentiality undertaking**

COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No. ##

RE: APPLICATION ##

BY: ##

Applicant

**CONFIDENTIALITY UNDERTAKING**

I, \_\_\_\_\_ of \_\_\_\_\_ undertake  
that:

1. Subject to the terms of this Undertaking, I will keep confidential at all times the information listed in the Attachment to this Undertaking (“**Confidential Information**”) belonging to nib health funds Ltd and Honeysuckle Health Pty Ltd (**Authorisation Applicants**) that is in my possession, custody, power or control.
2. I acknowledge that:
  - (a) this Undertaking is given by me to each Authorisation Applicants in consideration for the Authorisation Applicants making the Confidential Information available to me solely for the Approved Purposes (as defined below);
  - (b) all intellectual property in or to any part of the Confidential Information is and will remain owned by the Authorisation Applicants; and
  - (c) by reason of this Undertaking, no licence or right is granted to me in relation to the Confidential Information except as expressly provided in this Undertaking.

3. I will:
  - (a) only use the Confidential Information for:
    - (i) the sole purpose of preparing for the hearing by the Tribunal regarding its review of the decision of the ACCC to which this application relates (including any appeals from a decision of the Tribunal in the proceeding); or
    - (ii) any other purpose approved by the Authorisation Applicants in writing, (“the **Approved Purposes**”);
  - (b) comply with any reasonable request or direction from an Authorisation Applicants in writing regarding the Confidential Information of that Authorisation Applicants.
4. Subject to paragraphs 5, 6 and 7 below, I will not disclose any of the Confidential Information to any other person without the prior written consent of the Authorisation Applicants to whom the Confidential Information relates.
5. I acknowledge that I may only disclose the Confidential Information to:
  - (a) the ACCC, its staff, contractors, solicitors and their agents, external counsel, independent experts and independent consultants, and any other person assisting the ACCC or the Tribunal for the Approved Purposes;
  - (b) the staff or representatives of [**Party**], as well external solicitors and their agents or external counsel retained by [**Party**] for the Approved Purposes, provided that:
    - (i) the person has signed a confidentiality undertaking in the form of this Undertaking; and
    - (ii) the signed undertaking of the person has been served on the person who provided the Confidential Information to me (**Producing Party**);
  - (c) any independent experts and independent consultants of [**Party**], for the Approved Purposes provided that:
    - (i) the person has signed a confidentiality undertaking in the form of this Undertaking; and

- (ii) a signed undertaking of the person has been served on the Producing Party;
  - (d) any other person, for the Approved Purposes provided that:
    - (i) the person has signed a confidentiality undertaking in the form of this Undertaking;
    - (ii) a signed undertaking of the person has been served on the Producing Party; and
    - (iii) any of the parties or the AER or the Tribunal considers the person is required to have access to that information or document or part thereof for the Approved Purposes;
  - (e) the Authorisation Applicants;
  - (f) any member of the Tribunal, Tribunal staff and any other person assisting the Tribunal;
  - (g) if required to do so by law including without limitation by any order or direction of the Tribunal; and
  - (h) to any secretarial, administrative and support staff, who perform purely administrative tasks, and who assist me or any person referred to in paragraph 5 for the Approved Purpose.
6. I will establish and maintain security measures to safeguard the Confidential Information that is in my possession from unauthorised access, use, copying, reproduction or disclosure and use the same degree of care as a prudent person in my position would use to protect that person's confidential information.
7. Except as required by law (including without limitation any order or direction of the Tribunal) and subject to paragraph 12 below, within six weeks after whichever of the following first occurs:
- (a) a decision is made by the Tribunal in the proceeding and if there any appeals from a decision of the Tribunal in the proceeding, a decision is made in those appeals;
  - (b) my ceasing to be employed or retained by [**Party**] (provided that I continue to have access to the Confidential Information at that time); or

(c) my ceasing to be working for or assisting [**Party**] in respect of the Approved Purposes (other than as a result of ceasing to be employed by [**Party**]),

I will destroy or deliver to the Producing Party the Confidential Information and any documents or things (or parts of documents or things), constituting, recording or containing any of the Confidential Information in my possession, custody, power or control, and where I destroy such information, I will notify the Producing Party in writing of that fact.

8. Nothing in this Undertaking shall impose an obligation upon me in respect of information:

(a) which is in the public domain; or

(b) which has been obtained by me otherwise than in relation to the proceeding;

provided that the information is in the public domain and/or has been obtained by me by reason of, or in circumstances which do not involve any breach of a confidentiality undertaking or a breach of any other obligation of confidence in favour of the Authorisation Applicants or by any other unlawful means, of which I am aware.

9. I acknowledge that damages may not be a sufficient remedy for any breach of this Undertaking and that the Authorisation Applicants may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of this Undertaking, in addition to any other remedies available to the Authorisation Applicants at law or in equity.

10. The obligations of confidentiality imposed by this Undertaking survive the destruction or delivery to the Producing Party of the Confidential Information pursuant to paragraph 7 above.

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

Print name: \_\_\_\_\_