

The Hon Justice Middleton
Australian Competition Tribunal



31 January 2022

Dear Justice Middleton,

Re: Application for review of authorisation AA1000542 lodged by nib Health Funds Ltd and Honeysuckle Health Pty Ltd (nib and HH) and the determination made by ACCC on 21 September 2021.

The Council of Procedural Specialists has participated fully in the ACCC process to date. It opposed the nib/Honeysuckle application on the grounds that the public detriments as outlined in our two submissions and through our participation at the Pre-Decisions Conference outweigh any potential benefits.

Our council and directors are constrained to act within our financial resources, and hence we are not financially able to intervene at this time. Our member associations (of which there are 8) each subscribe \$15K per annum towards our national operating budget. We have no other sources of income. This income is for a range of important operational uses not including litigation.

We note that the specifics of the case brought by the parties remains opaque. It is hoped that the pro bono representation afforded to the applicants and requirement to file a Statement of Facts, Issues and Contentions will bring some clarity to the basis of their application. This lack of clarity is a deterrent to COPS seeking to intervene at this time because COPS is unable at this time to make any assessment as to if and how it may be adversely impacted by the applications for review.

Our absence in seeking to intervene at this time should not be considered by any of the parties to indicate any lessening of our concerns as to the detriments the authorisation will deliver to Australian healthcare.

While we recognise it is a matter for the Tribunal to determine the scope of the case it hears, we do not believe that it would be appropriate for nib/Honeysuckle Health to use the Tribunal process to seek to expand the scope of the current authorisation in circumstances where the ACCC, after considering the numerous and very detailed submissions made to it by a coalition of opponents to authorisation, materially narrowed the scope and term of the authorisation from the draft determination.

In brief, it is not in the public interest for nib/Honeysuckle to be permitted by the Tribunal to improve its position vis-à-vis any person other than (i) the National Association of Practising Psychiatrists, and (ii) the Rehabilitation Society (together, the parties) which have applied for review in the Tribunal.

COPS' position is that the Tribunal should ensure that it hears the narrowest case possible to avoid prejudice to others unable to participate in the Tribunal process for reasons including cost.

To the extent that it may be relevant to the Tribunal's consideration of the matters before it, COPS specifically asks the Tribunal to consider COPS' submissions to the ACCC (attached for the Tribunal's convenience). These submissions as attached outline our grave concerns as to the public detriments

should the Tribunal empower nib/Honeysuckle to contract private medical practitioners and in particular private medical specialists.

COPS thanks the Tribunal and the Hon. Justice Middleton for consideration of this letter. COPS consents to this letter being placed on the Tribunal's public register.

Yours faithfully



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