

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: 17 February 2022

WHERE MADE: Melbourne

THE TRIBUNAL DIRECTS THAT:

1. Disclosure of the information listed in **Schedule 1** to these directions be restricted to:
 - (a) the Australian Competition and Consumer Commission (**ACCC**) and its external legal advisers (and their secretarial, administrative and support staff, who perform purely administrative tasks); and
 - (b) legal advisers (including external counsel) of the parties to this proceeding.
2. Disclosure of the information listed in **Schedule 2** to these directions be restricted to:
 - (a) the Australian Competition and Consumer Commission (**ACCC**) and its external legal advisers (and their secretarial, administrative and support staff, who perform purely administrative tasks); and
 - (b) legal advisers (including external counsel) of the parties to this proceeding; and
 - (c) four representatives of Rehabilitation Medicine Society of Australia and New Zealand (**RMSANZ**),

3. RMSANZ is to notify the Tribunal, the ACCC and the parties to this proceeding of the identity of the representatives referred to in paragraph 2(c) within 1 business day after the date of these directions.
4. Disclosure of the information listed in **Schedule 1** and **Schedule 2** to a person as described in paragraphs 1(b) and 2(b) is conditional upon that person signing the confidentiality undertaking included as **Annexure A** to these directions.
5. Disclosure of the information listed in **Schedule 2** to a person as described in paragraph 2(c) is conditional upon that person signing the confidentiality undertaking included as **Annexure B** to these directions.
6. Other than the disclosure permitted by paragraphs 1 - 5, the information listed in **Schedule 1** and **Schedule 2** (the **Confidential Information**) must not be disclosed to any other person or otherwise made public.
7. Without the leave of the Tribunal, the Confidential Information must not be used by the parties to this proceeding and their external legal advisers (and their direct staff) and the representatives of RMSANZ referred to in paragraph 2(c) to whom it has been disclosed pursuant to these directions other than for the purposes of this proceeding.
8. 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.
9. 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).
10. 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.
11. 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

this proceeding, or by a party to this proceeding in respect of a document or information which has been obtained by it otherwise than in the course of this proceeding or the preceding application for authorisation before the ACCC.

12. The parties and any intervenors to the proceedings have liberty to apply to vary these Directions.

Date entered: 18 February 2022



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

DEPUTY REGISTRAR
Australian Competition Tribunal

Schedule 1

1. 51 submissions (in unredacted form) made to the ACCC as part of the assessment of the application for of authorisation AA1000542 lodged by nib Health Funds Ltd and Honeysuckle Health Pty Ltd, as described in the letter from Norton Rose Fulbright Australia dated 4 February 2022.

Schedule 2

1. 51 submissions made to the ACCC as part of the assessment of the application for of authorisation AA1000542 lodged by nib Health Funds Ltd and Honeysuckle Health Pty Ltd, as described in the letter from Norton Rose Fulbright Australia dated 4 February 2022, with the following information in each submission redacted: names, addresses, contact details of the author of the submission, and other information which might otherwise identify the author of the submission.

Annexure 'A'

Commonwealth of Australia *Competition and Consumer Act 2010 (Cth)*

In the Australian Competition Tribunal

File Numbers: ACT 4 of 2021 and ACT 5 of 2021

File Titles: APPLICATIONS FOR REVIEW OF AUTHORISATION
AA1000542 DETERMINATION MADE ON 21 SEPTEMBER
2021

Applicants: National Association of Practising Psychiatrists and Rehabilitation
Medicine Society of Australia and New Zealand

ANNEXURE A CONFIDENTIALITY UNDERTAKING

I, [name of person giving undertaking] of [address of person giving undertaking], undertake that:

- 1 Subject to the terms of this Undertaking, I will keep confidential at all times the documents described in the Schedule to this Undertaking (**Documents**) and all information contained in those Documents (including names, contact details, addresses, and any details which may otherwise identify a person) (**Information**).
- 2 I will not use the Documents or the Information or any part of them for any purpose other than the conduct of the Australian Competition Tribunal proceedings ACT 4 of 2021 and ACT 5 of 2021 (**Proceedings**).
- 3 Subject to paragraphs 1, 4 and 5, I will not disclose the Documents, the Information or any part of them directly or indirectly to any person, including the parties to these Proceedings, their employees and agents, other than my administrative staff unless:
 - (a) I have obtained the prior written consent of Norton Rose Fulbright Australia;
 - (b) the disclosure is expressly authorised by the Tribunal (including disclosure authorised by the Tribunal that is the subject of any confidentiality regime or conditions with respect to the Documents or Information); or
 - (c) that part of the Documents or Information has already been

disclosed otherwise than in contravention of a confidentiality undertaking (including as part of any directions made by the Tribunal in these Proceedings requiring the provision of the Documents by the Australian Competition and Consumer Commission (ACCC) to the Tribunal and the parties to these Proceedings).

4 I acknowledge that I may only disclose the Documents and the Information described in paragraph 1 of the Schedule 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;
- (b) to legal advisers (including external counsel) of the parties to these Proceedings who has signed an undertaking in the same form as this confidentiality undertaking;
- (c) to a court or tribunal;
- (d) any secretarial, administrative and support staff, who perform purely administrative tasks, and who assist me or any person referred to in subparagraphs 4(a) and 4(b) above, provided that I have first advised said staff to keep the Documents and the Information confidential and use them only for the purposes of the Proceedings; and
- (e) if required to under any process of law.

5 I acknowledge that I may only disclose the Documents and the Information described in the paragraph 2 of the Schedule to:

- (a) the same persons as outlined in paragraph 4; and
- (b) to the representatives of the National Association of Practising Psychiatrists and Rehabilitation Medicine Society of Australia and New Zealand who have signed an undertaking in the same form as the confidentiality undertaking at Annexure B to the Directions made by the Tribunal on [date].

6 I will:

- (a) keep the Documents and the Information under my control; and
- (b) immediately notify Norton Rose Fulbright Australia if I become aware of any suspected or actual unauthorised use, copying or disclosure of the Documents or Information that were under my control.

- 7 At the conclusion of this proceeding I will ensure that all copies of the Documents under my control are destroyed or returned to Norton Rose Fulbright Australia.
- 8 I acknowledge that this undertaking will continue despite any judgment in, or discontinuance of, this proceeding.

Dated

.....
[Name of person giving undertaking]

Schedule

1. 51 submissions (in unredacted form) made to the ACCC as part of the assessment of the application for of authorisation AA1000542 lodged by nib Health Funds Ltd and Honeysuckle Health Pty Ltd, as described in the letter from Norton Rose Fulbright Australia dated 4 February 2022.
2. 51 submissions made to the ACCC as part of the assessment of the application for of authorisation AA1000542 lodged by nib Health Funds Ltd and Honeysuckle Health Pty Ltd, as described in the letter from Norton Rose Fulbright Australia dated 4 February 2022, with the following information in each submission redacted: names, addresses, contact details of the author of the submission, and other information which might otherwise identify the author of the submission.

Annexure 'A'

Commonwealth of Australia

Competition and Consumer Act 2010 (Cth)

In the Australian Competition Tribunal

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AA1000542 DETERMINATION MADE ON 21 SEPTEMBER
2021

Applicants: National Association of Practising Psychiatrists and Rehabilitation
Medicine Society of Australia and New Zealand

ANNEXURE B CONFIDENTIALITY UNDERTAKING

I, [name of person giving undertaking] of [address of person giving undertaking], undertake that:

- 1 Subject to the terms of this Undertaking, I will keep confidential at all times the documents described in the Schedule to this Undertaking (**Documents**) and all information contained in those Documents (including names, contact details, addresses, and any details which may otherwise identify a person) (**Information**).
- 2 I will not use the Documents or the Information or any part of them for any purpose other than the conduct of the Australian Competition Tribunal proceedings ACT 4 of 2021 and ACT 5 of 2021 (**Proceedings**).
- 3 Subject to paragraphs 1 and 4, I will not disclose the Documents, the Information or any part of them directly or indirectly to any person, including the parties to these Proceedings, their employees and agents, other than my administrative staff unless:
 - (a) I have obtained the prior written consent of Norton Rose Fulbright Australia;
 - (b) the disclosure is expressly authorised by the Tribunal (including disclosure authorised by the Tribunal that is the subject of any confidentiality regime or conditions with respect to the Documents or Information); or

- (c) that part of the Documents or Information has already been disclosed otherwise than in contravention of a confidentiality undertaking (including as part of any directions made by the Tribunal in these Proceedings requiring the provision of the Documents by the Australian Competition and Consumer Commission (ACCC) to the Tribunal and the parties to these Proceedings).

4 I acknowledge that I may only disclose the Documents and the 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;
- (b) to legal advisers (including external counsel) of the parties to these Proceedings who has signed an undertaking in the same form as the confidentiality undertaking at Annexure A to the Directions made by the Tribunal on [date];
- (c) to the representatives of the National Association of Practicing Psychiatrists and Rehabilitation Medicine Society of Australia and New Zealand who have signed an undertaking in the same form as this confidentiality undertaking;
- (d) to a court or tribunal;
- (e) any secretarial, administrative and support staff, who perform purely administrative tasks, and who assist me or any person referred to in subparagraphs 4(a) and 4(b) above, provided that I have first advised said staff to keep the Documents and the Information confidential and use them only for the purposes of the Proceedings; and
- (f) if required to under any process of law.

5 I will:

- (a) keep the Documents and the Information under my control; and
- (b) immediately notify Norton Rose Fulbright Australia if I become aware of any suspected or actual unauthorised use, copying or disclosure of the Documents or Information that were under my control.

- 6 At the conclusion of this proceeding I will ensure that all copies of the Documents under my control are destroyed or returned to Norton Rose Fulbright Australia.
- 7 I acknowledge that this undertaking will continue despite any judgment in, or discontinuance of, this proceeding.

Dated

.....
[Name of person giving undertaking]

Schedule

1. 51 submissions made to the ACCC as part of the assessment of the application for of authorisation AA1000542 lodged by nib Health Funds Ltd and Honeysuckle Health Pty Ltd, as described in the letter from Norton Rose Fulbright Australia dated 4 February 2022, with the following information in each submission redacted: names, addresses, contact details of the author of the submission, and other information which might otherwise identify the author of the submission.