



**CONSUMERS'  
FEDERATION  
OF AUSTRALIA**

Developing and promoting  
the consumer interest

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## Private Healthcare Australia Limited - AA1000487

### Consumers' Federation of Australia Submission to ACCC

#### Overview

1. This submission is made by the Consumer' Federation of Australia (CFA), the peak body for consumer organisations in Australia. It is in response to the ACCC's invitation to interested parties to make a submission about the application by Private Healthcare Australia Limited (PHA) and member health insurers which was made on 1 April 2020. This led to the ACCC's interim authorisation made on 8 April (the interim authorisation).
2. We are generally supportive of PHA's application and the interim authorisation.
3. We think that some of the categories of Proposed Conduct in paragraph 6 of the interim authorisation have a clear public benefit purpose. In our submission, there should, however, be some tightening of the paragraph 6 to minimise the risk of public detriment, as set out below.
4. The ACCC's three conditions in paragraph 15 of the interim authorisation are all important. In addition, our submission proposes an additional condition, as set out below.

#### Proposed Conduct

5. Paragraph 6 of the interim authorisation defines "Proposed Conduct" as "to discuss and implement a coordinated response regarding the COVID-19 pandemic to provide to people covered by a health insurance policy". The paragraph continues by particularising five categories of conduct.
6. The result of this drafting is that conduct that falls within the broad introductory words will be Proposed Conduct even if not within the five categories of conduct. We think that the broad introductory words open the gate too widely. There is no requirement of public benefit. Accordingly, it would be possible for a coordinated response to be contrary to the interests of health insurance policy holders. We submit that the introductory words should be omitted.

7. Of the five categories of conduct that are particularised in the dot points in paragraph 6 of the interim authorisation, the first four are written in a way that builds in a public benefit. Accordingly we support these.
8. However, the last category of conduct (final dot point in paragraph 6 of the interim authorisation) could allow health insurers to cooperate on almost anything related to the current COVID-19 environment. For example, they could agree amongst themselves to reduce the number of approved health services providers which could mean that a policyholder has to travel further from home to utilise an approved provider. Whilst there is an obligation to notify the ACCC if the Participating Parties formulate a measure under this category of Proposed Conduct, we submit that an after the fact notification is not satisfactory. Rather, if PHA wanted to cooperate in a way not permitted by the first four categories of Proposed Conduct, we think that PHA should be required to seek a variation of the authorisation. Accordingly we submit that the interim authorisation (and ultimately the final authorisation) should omit the final dot point in paragraph 6.

### **Conditions**

9. Paragraph 15(1) requires PHA to notify the ACCC of an agreed measure formulated by the Participating Parties as part of the Proposed Conduct. We support this – and the publication by the ACCC of the notification on the ACCC’s Public Register. It is, however, important that the confidential information carve-out is not used in a way that undermines public transparency. We urge the ACCC to be rigorous in testing any redaction of a notification.
10. The pricing condition in paragraph 15(2) and the termination of contracts condition in paragraph 15(3) of the interim authorisation are both important. We think these should be replicated in a final authorisation if the ACCC is minded to grant this.
11. The ACCC’s explanation of reasons (paragraph 23) states that the Applicants have said that the Proposed Conduct will not involve requiring or encouraging Members to change products or upgrade their cover. This is vital. In our submission, the authorisation should be amended to entrench this requirement.