

Dr Lachlan Henderson
Group Chief Executive



Your ref: AA1000536
Contact Officer: Michael Pappa

Epworth HealthCare
Corporate Offices

5 February 2021

Darrell Channing
Director
Competition Exemptions Branch
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Dear Darrell

**HONEYSUCKLE HEALTH LTD AND NIB HEALTH FUNDS LIMITED
SUBMISSION IN RESPONSE TO APPLICATION FOR AUTHORISATION AA1000542**

Thank you for your letter of 12 January 2021 and the opportunity for Epworth Foundation trading as Epworth HealthCare (**Epworth**) to comment on the authorisation application by nib health funds limited (**nib**) and Honeysuckle Health Ltd (**Authorisation Application**).

Epworth is a charitable private hospital group operating healthcare services and hospitals in Melbourne and Geelong, Victoria with over 7,000 employees and eleven facilities. In 2019-2020, there were over 191,000 patient admissions to and over 116,000 procedures performed at Epworth facilities. By volume in 2019-2020 our primary specialities were medical oncology, general surgery, gynaecology, general medicine, gastroenterology, orthopaedic surgery and urology, with the primary patient cohort being privately insured patients. Epworth is a Provider for the purposes of the Authorisation Application and has contracting arrangements in place with all private health insurers (directly or as part of a buying group) referred to in the Authorisation Application, including nib.

Further information about Epworth is available on our website www.epworth.org.au.

Terms used in this letter that are not defined are terms defined in the Authorisation Application.

Position on the Authorisation Application

Epworth does not support the Authorisation Application. Epworth considers the Proposed Conduct to be anti-competitive and detrimental to the public, specifically Customers.

Comments on the Authorisation Application

1. The rationale for the Proposed Conduct (at paragraph 2.38 of the Authorisation Application) is to streamline contract negotiation, procurement and management procedures, improving efficiencies and resulting in better health outcomes and reduced premiums for Customers.

The purported beneficial results of the Proposed Conduct for Customers assume Participants would pass on any transactional cost savings to Customers in the form of reduced premiums. Alternatively, it could result in retained savings and increased profit margins for Participants, in which case, the potential public detriments acknowledged but not detailed (at paragraph 5.2 of the Authorisation Application) would significantly outweigh any benefit for Customers.

Epworth also questions whether the purported benefits are realisable, given the most likely short-term Participants are healthcare payers that are already part of a buying group. The Proposed Conduct is expected to involve contracting with funds on similar terms to the current buying group arrangements.

2. The intention to have all Participants contract with Providers on a nib form of contract (at paragraph 2.8 of the Authorisation Application) fails to acknowledge that the existing contracts between nib and Providers are based on the customer demographic and claims profile of nib which differs significantly from the average Customer demographic of all other private health funds accordingly this is not an appropriate or fair basis for Providers to contract with other private health funds. The different member profile for nib is evidenced by APRA data which showed for the 2019 financial year, NIB contributed \$196.6 million into the risk equalisation pool, more than double that contributed by any other fund.
3. The Authorisation Application acknowledges that Victoria would be one of the most impacted State-based markets if all of AHSA's members joined the HH Buying Group (at paragraph 5.7). Epworth operates solely in Victoria. Epworth does not agree that, as a Provider, it will benefit from the Proposed Conduct (as outlined in paragraph 4.9(a)) and considers that it may cause hospital contract negotiations to be protracted and costly for Providers over time, given the potential impact of concentrated pricing and services negotiation on behalf of healthcare payers that may come to collectively control the market.
4. The Authorisation Application refers to the likelihood that large private health insurers would be unlikely to participate in the buying group proposed by the Proposed Conduct (at paragraph 1.5), noting their internal contracting functions. Epworth challenges this likelihood as being a reasonable basis for any authorising of the Proposed Conduct, given the potential for all healthcare payers to participate in the HH Buying Group in some capacity and concentrate market share in HH Buying Group for hospital contracting. A "take it or leave it" approach on behalf of the HH Buying Group to hospital contracting would have potentially disastrous effects for Providers and Customers left without any healthcare payers willing to fund services due to a homogenous insurance offering, in order to fit a collective negotiating model and rigid standardised contract terms.

Furthermore, the Proposed Conduct would allow any healthcare payer to become a Participant to collect data and test the market, whilst effectively maintaining the right to contract independently. The Proposed Conduct does not address the potential lessening of competition and potential cartel conduct should large healthcare payers become Participants to gain the commercial advantages of participating in the HH Buying Group, including access to information and insight into collective pricing negotiations, but then elect to finalise contracts with Providers independent of the HH Buying Group having the benefit of knowing the terms and conditions presented by the HH Buying Group.

The Authorisation Application fails to establish convincingly that the Proposed Conduct will result in a public benefit that would outweigh any potential public detriment. Epworth submits to the ACCC that it should decline to authorise the Proposed Conduct and reject the Authorisation Application.

However, should the ACCC be minded to grant the authorisation, the ten-year period of authorisation sought (at paragraph 2.40 of the Authorisation Application) is excessive. Epworth submits that a seven-year period (i.e. two typical contract cycles) would be a sufficient period of time in which to demonstrate the transaction cost savings and reduced premiums for Customers, should the rationale for the Proposed Conduct be realised.

If further information in relation to this submission is required, please contact Andrew Cook, Director Health Contracts & Revenue on [REDACTED] or at [REDACTED]

Yours sincerely

A handwritten signature in black ink, appearing to read 'L Henderson', with a horizontal line extending to the right.

Dr Lachlan Henderson
Group Chief Executive