

20 April 2011

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC)

AND

THE PRIVATE HEALTH INSURANCE ADMINISTRATION COUNCIL (PHIAC)

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Version 3.0 Document cleared by PHIAC and ACCC Legal Sections 20 April 2011

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1. Objective

- 1.1 This memorandum of understanding (MoU) sets out a framework for cooperation and liaison between the ACCC and PHIAC (the agencies) to assist them to effectively and efficiently discharge their respective administrative and regulatory functions.
- 1.2 The agencies agree to provide each other with mutual assistance in relation to the exchange of information, and referral of matters where appropriate, under their relevant legislative frameworks.
- 1.3 This MoU is not intended to create binding legal obligations on either agency. Variations to the MoU will be facilitated through a consultative process between the two agencies from time to time.

2. Responsibilities

- 2.1 The ACCC is responsible for the promotion of competition and fair trading and the provision of consumer protection. The role of the ACCC is to: facilitate and encourage compliance with the laws for which it has administrative responsibility; to take appropriate action in respect to contraventions of those laws; to adjudicate on competition and access issues; and to educate the community in relation to such matters. The ACCC is responsible for the administration and enforcement of the *Competition and Consumer Act 2010* (CCA) and other relevant legislation.
- 2.2 PHIAC is an independent statutory authority which regulates the private health insurance industry. Under section 264-5 of the *Private Health Insurance Act 2007* (PHI Act), the Council is required to take all reasonable steps to perform its functions and exercise its powers with a view to achieving an appropriate balance between: fostering an efficient and competitive health insurance industry; protecting the interests of consumers; and ensuring the prudential safety of individual private health insurers.

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3. Mutual Assistance

- 3.1 The agencies recognise that it is important that they cooperate to assist them to effectively and efficiently discharge their respective administrative and regulatory functions.
- 3.2 The agencies agree to cooperate and provide each other with mutual assistance in relation to the exchange of information in accordance with this MoU and their relevant legislative frameworks

4. Information Sharing

- 4.1 Timely and appropriate exchange of information is a crucial element in co-ordination between the agencies.
- 4.2 The agencies agree that information available to one agency which is relevant to the operations of the other may be shared as follows. Each agency will seek to provide relevant information to the other, with due regard to any urgency of doing so. This will be subject to any relevant legal or operational considerations for the agency, such as maintaining confidential processes, and any conditions which the provider of the information might place upon the use or disclosure of the information, such as claims of legal professional privilege.
- 4.3 When exchanging confidential information, the agencies acknowledge the confidentiality and secrecy requirements of the legislation under which each agency operates and of the legal framework within which they both operate. The agency providing information may specify the level of confidentiality attached to the information it provides to the other.
- 4.4 Each agency will seek not to disclose any confidential information obtained pursuant to this MoU to a third party unless it has obtained the prior consent of the agency which has provided the confidential information. If it is not practicable to seek such consent, the agency subject to a disclosure request or demand will seek to notify the other agency promptly, to enable it to take such action as it thinks appropriate. Both agencies acknowledge that disclosure of confidential information may be required, authorised or permitted by law.

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5. Unsolicited Assistance

- 5.1 Each agency recognises that in the course of carrying out its functions and exercising its powers, it may come into possession of information which would, if provided to the other agency, be likely to assist the other agency in administering or enforcing the particular laws for which it is responsible.
- 5.2 Each agency, subject to legal restrictions, will seek to notify the other agency of the existence of any information of a kind referred to above, and, with due regard to any urgency of doing so, may provide such information to the other agency where appropriate. This may include instances where an agency has not received a specific request from the other agency for such information.
- 5.3 When either agency receives notification of the existence of confidential information pursuant to clause 5.2 and determines that it wishes to seek to access that information, it may make a request in accordance with this MoU and any other relevant requirements. The request will be considered by the other agency having regard to any legal restrictions or other confidentiality arrangements.

6. Mutual Assistance on Other Matters

- 6.1 The agencies agree to pursue issues of cooperation in staff training, staff exchange, joint publications or education initiatives, where appropriate.

7. Referral of Matters

- 7.1 The agencies recognise that once a complaint is received or an initial investigation has been conducted by an agency, it may become apparent that the matter more appropriately falls within the jurisdiction of the other agency.
- 7.2 Both agencies therefore agree that the objectives of each agency will be enhanced if after consultation, the matter is formally referred to and continued by the other agency. The referrals should be made as soon as practicable after the alleged principal contravention has been identified.

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8. Mergers and Acquisition of Health Benefits Funds

8.1 As part of on-going coordination, the agencies will seek to keep each other informed in relation to the fact of any acquisition or merger of private health insurers insofar as this is appropriate in the particular circumstances.

9. Cost of Provision of Information and Support Services

9.1 In general, the agency which receives a request for information shall bear the cost incurred by it in locating and providing the information to the agency which has requested the information.

10 Review of this MoU

10.1 This MoU will be formally reviewed 24 months after having come into force.

10.2 Each agency will keep the operation of this MoU under continuous review and will consult with the other from time to time, with the view to improving its operations and resolving any matters that may have arisen. The agencies agree that the MoU may be amended at any time by written agreement.

11 Disputes

11.1 Any dispute about the interpretation or application of this MoU will be resolved through consultation between the agencies and will not be referred to any tribunal or third party for settlement.

12. Termination

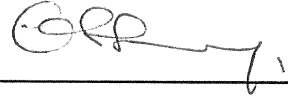
12.1 An agency will give written notice to the other of its intention to terminate this MoU. Accordingly this MoU will terminate 7 days after the date upon which the notice was received.

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20 April 2011

SIGNED on behalf of



**THE AUSTRALIAN COMPETITION AND
CONSUMER COMISSION** by GRAEME SAMUEL Chairman

In the presence of



Dated 20th June 2011

Name and title of Witness

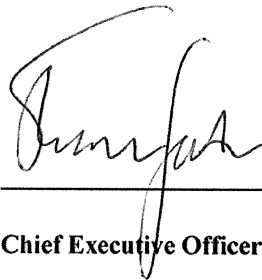
EDWARD WILLET
COMMISSIONER
AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION

SIGNED on behalf of

THE PRIVATE HEALTH INSURANCE

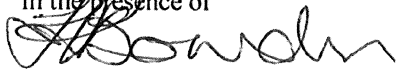
ADMINISTRATION COUNCIL by

Shawn Gath,
Chief Execut



Chief Executive Officer

In the presence of



FIONA BOWDEN,

Name and title of witness

LEGAL OFFICER -

Dated 19 July 2011.

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