



Application for authorisation for proposed conduct

Guidance in completing your application to the ACCC

To lodge an application for authorisation for proposed conduct (other than mergers or acquisitions¹) (the application), you should include the information, data and documents outlined in this form. Where possible, each question should be answered fully and be substantiated with evidence. If a question is not relevant or where information is not available and cannot be reasonably estimated, please provide a brief explanation.

The ACCC must not grant authorisation unless it is satisfied that the statutory test is met.²

It is an offence to knowingly provide false or misleading information to the ACCC. Refer to section 137.1 of the Criminal Code (Cth).

Key points for lodging your application

- We encourage you to consult the ACCC's [Guidelines for Authorisation of Conduct \(non-merger\)](#) and contact the ACCC at adjudication@accc.gov.au before you lodge your application for a pre-lodgement discussion to clarify what information and evidence may be needed to assess your application.
- Failure to provide sufficient information may render the application invalid or otherwise impact the ACCC's ability to assess your application.
- You should provide all relevant information and evidence you intend to rely on.
- Less weight will likely be given to a statement or submission that is not supported with corroborating evidence.
- A valid application must contain:
 - a public version of your application for publication on the public register. You should provide a clearly marked confidential version if you wish to claim confidentiality for parts of your application. All confidentiality claims must be substantiated. The public version must contain sufficient information to enable public consultation on your application
 - a signed declaration by the applicant and
 - payment of the \$7500 lodgement fee, unless a full or partial fee waiver has been granted.

¹ See: [Application for authorisation of a proposed merger or acquisition](#).

² Section 90(7) and 90(8) of the Competition and Consumer Act 2010 (Cth) and the ACCC's [Guidelines for Authorisation of Conduct \(non-merger\)](#).

Information

Parties to the proposed conduct

1. Provide details of the applicants for authorisation, including:

1.1. name, address (registered office), telephone number and ACN

ClubsAustralia Incorporated
Level 8, 51 Druitt St, Sydney, NSW, 2000
ABN: 32 691 361 915

1.2. contact person's name, position, telephone number and email address

Joshua Landis
Executive Manager, Public Affairs
02 9268 3004
JLandis@clubsaustralia.com.au

1.3. a description of business activities

See attached submission, section 1 (Clubs Australia)

1.4. email address for service of documents in Australia.

JLandis@clubsaustralia.com.au

2. If applicable, provide details of the other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:

2.1. name, address (registered office), telephone number and CAN

2.2. contact person's name, telephone number and email address

2.3. a description of business activities.

See attached spreadsheet

The proposed conduct

3. Provide details of the proposed conduct, including:

- 3.1. a description of the proposed conduct and any documents that detail the terms of the proposed conduct**

See attached submission, sections 2 (Proposed Conduct) and 3 (Data-related Terms)

- 3.2. the relevant provisions of the Competition and Consumer Act 2010 (Cth) (the Act) which might apply to the proposed conduct, ie:**

Without authorisation, the proposed conduct may constitute:

- cartel conduct (Division 1 of Part IV)
- contracts, arrangements or understandings that restrict dealings or affect competition (s. 45)

- 3.3. the rationale for the proposed conduct**

See attached submission, sections 2.5 (Rationale), 2.6 (Triggers) and 3 (Data-related Terms).

- 3.4. the term of authorisation sought and reasons for seeking this period. By default, the ACCC will assume you are seeking authorisation for five years. If a different period is being sought, please specify and explain why.**

See attached submission, section 2.1 (Conduct and Period)

4. Provide documents submitted to the applicant's board or prepared by or for the applicant's senior management for purposes of assessing or making a decision in relation to the proposed conduct and any minutes or record of the decision made.

These have not been included because no descriptive illustrative internal documents are available. However, the attached submission sets out details on Clubs Australia's rationale and objectives of this application. This information appropriately sheds light on Clubs Australia's motivation to seek authorisation.

5. Provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted.

Clubs Australia considers that clubs and targets will be the only parties directly impacted by the authorisation. Details of clubs and targets are provided in response to questions 2 and 12, respectively.

Market information and concentration

6. Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

See submission, sections 2 (Clubs Australia) and 4.2 (The Supply of Services by Clubs to Consumers)

Regarding overlapping products and services, an overlap may result from:

- ✓ two or more clubs operating in close proximity; or
- ✓ two or more targets supplying similar products in the same or different industries.

Except in rare instances, clubs do not compete with any of the targets.

7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.

See submission, section 4.1 (The Acquisition of Goods and Services from Commercial Operators) and section 3 (Data-related terms), particularly section 3.6 (Applicable Providers)

8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

Section 4.1 of the submission (The Acquisition of Goods and Services from Commercial Operators):

- ✓ Describes overlap between two or more targets, by noting competition within the target industries; and
- ✓ identifies industries where clubs, in aggregate, represent a greater proportion of purchasers.

9. In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:

- 9.1. existing competitors
- 9.2. likely entry by new competitors
- 9.3. any countervailing power of customers and/or suppliers
- 9.4. any other relevant factors.

Section 4.1 of the submission (The Acquisition of Goods and Services from Commercial Operators) describes factors affecting competition and market power in the target industries.

Public benefit

10. Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

See submission, section 5 (Public Benefits)

Public detriment (including likely competitive effects)

11. Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.

See submission, section 6 (Public Detriment)

Contact details of relevant market participants

12. Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers, trade or industry associations and regulators.

See Attachment A.

Additional information

13. Provide any other information or documents you consider relevant to the ACCC's assessment of the application.

None provided

Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

EXECUTIVE MANAGER, CLUBS AUSTRALIA

Office held

Joshua Landis

This 27 day of MAY 2019

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

Clubs Australia Submission

Collective Bargaining Authorisation

Summary

On behalf of its current and future members, Clubs Australia seeks authorisation from the Australian Competition and Consumer Commission (ACCC) to collectively bargain with the specified targets (**Attachment A**) for a period of 10 years.

Clubs Australia also seeks interim authorisation to collectively bargain with the specified targets which were covered by its previous authorisation.

Clubs Australia represents most of the 6,440 licensed clubs in Australia. These clubs include RSL clubs, bowling clubs, golf clubs, sports clubs and community clubs.

The proposed conduct includes negotiating on price and terms of supply.

Given the risks and value pertaining to the personal information of club members, the proposed conduct includes negotiating on terms which affect access to, and use of, personal data.

The target suppliers span a range of industries including wagering services, gaming machines, food and beverage, and professional services.

Clubs do not represent a substantial purchaser group for most of the listed suppliers, and authorising the proposed conduct will therefore not provide clubs with excessive or unreasonable bargaining power.

For the few industries where clubs represent a major purchaser, suppliers have limited competition.

Authorising the proposed conduct will produce benefits including privacy protection, greater input into contracts, transaction cost savings, and enhanced services provided by clubs.

Public detriment is limited by the currently low level of negotiation between clubs and suppliers. Public detriment is also limited by voluntary club participation in any arrangement flowing from collective bargaining.

Contents

1	Licensed Clubs	1
1.1	Club industry.....	1
1.2	Clubs Australia.....	1
2	Proposed Conduct	2
2.1	Conduct and Period	2
2.2	Difference from Previous Authorisation	2
2.3	Interim Authorisation	3
2.4	Operation of Negotiations	3
2.5	Rationale	4
2.6	Triggers	4
3	Data-related Terms	5
3.1	Obligation to keep Patron Details.....	6
3.2	Membership Discounts and Loyalty Schemes.....	6
3.3	Contract Terms Enabling Data Use.....	7
3.4	Commercial Value.....	8
3.5	Adverse Consequences.....	9
3.6	Applicable Providers	10
3.7	Proposed Data-related Terms.....	10
4	Market Information	11
4.1	The Acquisition of Goods and Services from Commercial Operators	11
4.2	The Supply of Services by Clubs to Consumers	15
5	Public benefits	16
5.1	Greater Input into Contracts.....	16
5.2	Privacy Protection.....	17
5.3	Transaction Cost Savings	17
5.4	Enhancement in the Supply of Goods and Services by Clubs to Consumers.....	17
5.5	Previous Authorisation	18

6	Public Detriment.....	19
6.1	Reduced Economic Efficiencies	19
6.2	Current Level of Negotiation between Member Clubs and Suppliers.....	20
6.3	Voluntary Participation in the Collective Bargaining Arrangements	20
6.4	Composition of Bargaining Group	20
6.5	Boycott Activity	20
6.6	Increased Potential for Collective Activity beyond that Authorised	21
6.7	Effect on Businesses outside the Arrangements	21

1 Licensed Clubs

1.1 Club industry

Clubs serve as social hubs for 13.2 million club memberships and employ approximately 130,000 people.¹

Physical location of clubs:

- NT - 55
- WA - 979
- SA - 1,317
- NSW - 1,347
- ACT - 49
- VIC - 1,641
- TAS - 197
- QLD – 855
- Total – 6,440

Most of Australia's 6,440 licensed clubs are small. For instance, pursuant to the small business threshold in s 23 of *The Australian Consumer Law*, being a business which employs fewer than 20 persons (excl. casual employees not employed on a regular systematic basis), 76% of NSW clubs would be small businesses. Pursuant to the threshold of \$1 million per year in gaming revenue, applied by the NSW government agency, the Independent Pricing and Regulatory Tribunal (IPART),² 86% of Australian clubs are small.³ Under the large club threshold of \$10 million per year in gaming revenue, only 2.1% of Australian clubs are large.⁴

1.2 Clubs Australia

As the industry's peak body, Clubs Australia Incorporated (ABN 32 691 361 915) provides a wide range of services for its member clubs, including workplace relations, government relations, member enquiry, and Responsible Gambling Services through the Club Safe program.

Licensed clubs are not-for-profit, member-based entities which offer the public a range of hospitality, entertainment and social services. The services provided by licensed clubs include on-premises liquor consumption, restaurant facilities, electronic gaming machines and wagering. The revenue generated from these activities enables clubs to provide financial and non-financial support to their communities, as well as to specific objects embodied by the club.

¹ KPMG, 2015 National Clubs Census, August 2016, p. 5.

² IPART, *Review of the Registered Clubs Industry in NSW*, June 2008, p. 149.

³ KPMG, 2015 National Clubs Census, August 2016, p. 13; Table 1 illustrates that, in 2015, a total of 5,517 of 6,413 clubs (or 86%) had EGM revenue in the \$0, \$0–\$200k and \$200k–\$1m categories.

⁴ Ibid, p. 13; Table 1 illustrates that, in 2015, 134 of 6,413 clubs had EGM revenue exceeding \$10 million.

For example, RSL clubs aim to improve the quality of life for veterans, their spouses and war widows/widowers. Sporting clubs, including leagues, football, bowls and golf clubs, aim to promote and encourage their respective sports.

2 Proposed Conduct

2.1 Conduct and Period

Clubs Australia proposes to collectively negotiate in relation to:

- Price of product
- Terms of supply
- Settlement discounts
- Product development
- Joint advertising and marketing
- Distribution
- Data-related terms

As described under sections 2.5 (Rationale) and 2.6 (Triggers) of this submission, Clubs Australia is seeking this authorisation, in large part, to prevent future conduct by targets or existing conduct which is yet to be identified. Many of the triggers are defensive in nature, and they will therefore not be confined to time proximity.

Accordingly, Clubs Australia proposes that this collective bargaining authorisation be in force for a period of 10 years.

2.2 Difference from Previous Authorisation

This conduct set out in this application, if authorised, would differ from the previous collective bargaining authorisation, which ran for five years and lapsed on 28 March 2019 (authorisation number: A91381) as follows:

- this application for authorisation includes additional targets, including new industry categories. New targets are evident from the list of targets at **Attachment A**,⁵
- this authorisation expands the type of conduct on which Clubs Australia can collectively bargain, to include data-related terms;
- this authorisation is for a period of 10 years.

⁵ This is because existing targets are indicated in **Attachment A**, since this application seeks interim authorisation against those targets. Accordingly, the new targets are those for which Clubs Australia *is not* currently seeking interim authorisation.

2.3 Interim Authorisation

Clubs Australia is seeking interim authorisation for targets who were covered by the previous authorisation.

For these targets, Clubs Australia is only seeking interim authorisation for the conduct covered by the previous authorisation. Accordingly, Clubs Australia is not seeking interim authorisation to collectively negotiate with previously-covered targets on data-related terms.

Clubs Australia believes the ACCC should grant interim authorisation for these targets as they were previously examined by ACCC for the previous authorisation. Enabling interim authorisation against these targets will enable Clubs Australia to collectively negotiate, if the need arises, at an earlier time.

2.4 Operation of Negotiations

On behalf of its member clubs, Clubs Australia proposes to negotiate improved terms⁶ with targets, as described under sections 2.5 (Rationale) and 2.6 (Triggers) of this submission. The mechanism by which Clubs Australia would use collective bargaining to achieve these terms is as follows:

- Clubs Australia would engage with the necessary target/s to request they:
 - add, remove or amend specific terms in the contract which the target offers clubs; or
 - offer clubs a different contract or pricing model;
- if the target/s accept/s Clubs Australia's requests, the target would then offer the amended or new contract and/or pricing model to all interested club. The target's commitment to Clubs Australia, to offer clubs the amended or new contract, would likely constitute an understanding or arrangement;
- the clubs would each decide whether to enter into the contract with the target (including any negotiated price), negotiated by Clubs Australia. Accordingly, Clubs Australia would have no direct involvement in the individual contractual relationships between clubs and suppliers.

As demonstrated above, the clubs would each have discretion to negotiate different terms or prices with the supplier, other than those Clubs Australia negotiated with the target. Since individual clubs would not be bound by any standard contract negotiated by Clubs Australia, clubs' participation in the collective bargaining would best be described as voluntary.

⁶ For the avoidance of doubt, 'terms' includes price terms.

2.5 Rationale

The underlying rationale of the proposed authorisation is to improve terms for licensed clubs. Various commercial practices may result in clubs entering into unfavourable or inefficient contracts with their suppliers. For instance, many clubs do not possess the bargaining power, or cannot endure the transaction costs, to negotiate complete or balanced terms, respectively.⁷ The prevalence of unfavourable or inefficient outcomes may be augmented by opportunistic conduct, or the exercise of market power, by club providers. For instance, clubs are supplied by many industries which feature exclusive licensees or rightsholders. These include wagering and subscription broadcast providers (further detailed in section 4.1 of this submission).

Where an industry supplier proposes terms which are unfavourable to clubs, such as prices likely to exceed market rates, or terms which may place clubs at a disadvantage, clubs face significant costs and other difficulties to identify and rectify these terms. For example, the club industry may incur substantial transaction costs to negotiate more favourable terms.

The rationale for Clubs Australia to negotiate improved data-related terms is described in section 3 (Data-related Terms).

2.6 Triggers

Clubs Australia intends to negotiate with applicable providers on data-related terms shortly after receiving authorisation from the ACCC. This is described in section 3 of this submission (Data-related Terms).

Clubs Australia also intends to negotiate terms with providers of anti-money laundering and counter-terrorism financing (AML/CTF) compliance services. This is described in section 4.1 of this submission (The Acquisition of Goods and Services from Commercial Operators).

Apart from these negotiations, Clubs Australia does not have specific plans to negotiate with any targets.

Regarding price or payment terms, Clubs Australia proposes to exercise its collective bargaining immunity as it becomes aware that targets are charging prices which Clubs Australia considers to be excessive or otherwise unreasonable given market or commercial factors.

⁷ See sections 5.1 (Greater Input into Contracts) and 5.3 (Transaction Cost Savings) of this submission for a more detailed description of how these practices disadvantage clubs.

Regarding non-price terms, Clubs Australia proposes to exercise its collective bargaining immunity to request that providers remove, replace or amend contract terms which are one-sided against clubs. These include, but are not limited to, terms which:

- enable the target, but not clubs, to terminate the service or arrangement;
- enable the target, but not clubs, to vary the price or terms during the period of the contract;
- require the club to indemnify the target for a greater scope of contingencies than the target indemnifies the club.

Clubs Australia also proposes to remove, replace or amend non-price terms which may operate to disadvantage clubs under the agreement, or unreasonably risk legal action from the counterparty or a third-party. These include, but are not limited to, terms which:

- require the club to broadly indemnify the target, including for losses which are not under the clubs' control;
- limit the liability of the target for losses to the club arising out of, or in connection with, the target's negligence or wrongdoing (such as the target infringing the intellectual property of a third party);
- provide for automatic rollovers:
 - for unreasonably long time periods; or
 - if the club does not notify the target of non-renewal for an unreasonably long time period before the expiry of the contract.

Non-price terms cannot be negotiated in isolation, because a target could simply agree to amend non-price terms and compensate by raising the price or fee. Therefore, where Clubs Australia seeks to remove, replace or amend non-price terms, it is important that Clubs Australia also have the ability to negotiate price terms.

3 Data-related Terms

This authorisation broadens the scope of conduct in Clubs Australia's previous authorisation (A91381; the previous authorisation) to include terms governing club suppliers' access to, and use of, personal information.

The expansion to data-related terms reflects Clubs Australia's intention to seek improved terms for how certain targets collect, store and manage membership and other patron information. Clubs Australia also proposes to ensure that its member clubs are promptly notified of data breaches and that member data is only used to fulfil the provider's obligations under the agreement.

3.1 Obligation to keep Patron Details

In most Australian jurisdictions, clubs must maintain registers recording personal details of their members and patrons. For example, clubs in NSW must keep details of all patrons over the age of 18 years for at least three years. The personal patron details clubs must keep include full name, occupation and address.⁸ To comply with these legislative requirements, clubs establish systems for obtaining and keeping patron data. In practice, since persons pay a subscription for membership, many clubs also store financial information such as credit card details. Clubs also commonly ask membership applicants for contact information such as their telephone number and email address.

If a club operates fitness activities, such as a gymnasium or swimming pool, the club may also collect and store health information.

Clubs commonly establish terms and conditions governing the club's collection, storage and use of patrons' information. These terms may include a right for the club use the details for club promotions, marketing or publicity. The terms may also prohibit the club from disclosing personal information to third party suppliers or other club counterparties.

In the course of their work, various providers have the potential to gain access to the register of club patrons. details. These include:

- database management providers, whose services clubs may contract to maintain the patron register in accordance with legislation;⁹ and
- software or information technology providers, which may incidentally gain access to the digital register of patrons in the course of their work.¹⁰

3.2 Membership Discounts and Loyalty Schemes

To attract members and encourage club participation, many clubs will offer membership discounts on food, beverages and other services. For instance, a club may offer members a certain beer at a discounted price of \$6, relative to a non-member price of \$8.

Member discounts are typically administered through members swiping their cards at payment terminals, which activates the discounted price on the point of sales (POS) system.

Many clubs operate member loyalty schemes which are more sophisticated than standard member discounts.

⁸ Section 31, *Registered Clubs Act 1976* (NSW). Similar requirements in other jurisdictions include, s 10(4)(b), *Liquor Control Reform Act 1998* (Vic) and s 79(1), *Liquor Act 1992* (Qld).

⁹ Database management services are commonly provided by gaming machine entities.

¹⁰ For instance, a cloud service or cyber-security provider may gain direct access to the patron register.

For instance, a club using a member loyalty scheme may enable members to:

- accumulate points by purchasing products from the club or entering the club; and
- redeem their points on products, such as food and beverages, or services, such as entering a prize draw.

Member loyalty schemes are commonly operated by gaming machine providers. Gaming systems,¹¹ as they are known, integrate sales or service usage information to assign points to members. Gaming machine systems have the capability of interfacing with the POS system through an application programming interface (API).

For both member discount and loyalty schemes, members are incentivised to use their membership card for all purchases or service usage. Accordingly, gaming system and POS providers may gain access to personal member information and their associated spending habits.

For example, suppose that on a Friday at 5.45 pm, John Citizen, who is 55 years of age, plays a gaming machine for 15 minutes, spending \$50 and breaking-even.

Mr Citizen earns 200 points from using the gaming machine. Mr Citizen uses the 200 points to purchase a steak and chips at the bistro at 6.30 pm. The 200 points gives Mr Citizen a discount from \$20 to \$15.

In this scenario, the gaming system provider could access:

- the identity of the member, including their name, date of birth and contact details;
- the member's gaming machine usage including time of day, type of machine, type of game and length of use; and
- the member's meal purchasing information including time of day and type of food.

The POS provider may also obtain access to the same information indirectly, through its connection with the gaming system. The POS system may also directly capture information on transactions, such as the identity of the member and details of the purchase.

3.3 Contract Terms Enabling Data Use

Suppliers may capitalise on their access to patron data by proposing contracts under which the supplier can use the data. Such a contract term may include a licence, given by the club to the supplier, to use, copy or otherwise commercially exploit patrons' details (a *data licence*). Alternatively, the contract may include a term which specifies that the club assigns the data to the supplier.

¹¹ The most common gaming system providers are Aristocrat, IGT and E-bet (controlled by Tabcorp).

Data licences and assignment terms are rarely detected by clubs.

First, the terms are seldom the primary feature of the transaction. Club contracts typically involve a supplier providing a good or service to the club in exchange for payment. Most clubs do not contemplate that, in addition to this primary transaction, the contract also features a secondary transaction. Rather than the club receiving goods and services from the supplier, this secondary transaction operates in the opposite direction; with the club licensing or assigning valuable property to the supplier.

Second, the terms are frequently written in brief and undescriptive language. The clauses are regularly buried in the boilerplate clause of the contract, separated from other clauses which pertain to the value being exchanged.

Due to these factors, clubs rarely actively search for, or detect, these terms. Suppliers can obscure these terms through:

- widespread unawareness of the prevalence and importance of data-related terms; and
- concealing the clauses by burying them in the boilerplate clauses, and failing to describe the value and risks.

If a supplier successfully obscures a data term in a contract, the club is unlikely to be aware of the supplier's subsequent dealings with the information, such as third parties gaining access. The club may also not be aware of a data compromise unless it amounts to a notifiable data breach under the *Privacy Act 1988* (Cth).

3.4 Commercial Value

Suppliers are able to derive significant commercial benefits from their ability to obscure these terms. They obtain access to lucrative information for which they do not need to compensate clubs.

A provider may derive value from patron information through a number of means.

First, a provider could license (or sub-license) or assign the information to a third party. For example, in the scenario above, the gaming system or POS providers may be able to sell a member's meal purchasing habits to an online food delivery business. The food delivery business could email the person, inviting them to subscribe to the service with the benefit of a half-price steak and chips.

It must be noted that patron information is also valuable without their purchasing information. For example, a simple list of member names and contact numbers could be sold to a telemarketing company.

Second, a provider could itself make use of the information. For example, the gaming system provider may entice members to use the same provider's online game services. The provider could tailor an email invitation to Mr Citizen, based on the type of game he played on Friday at 5.45 pm.

Third, a provider may aggregate sales information to produce market insights. The process of analysing, and producing insights from, the data could also be outsourced to a third party which specialises in data analysis. For example, the gaming system or POS provider may determine from its data that women in the 35-45 age range are increasingly purchasing a certain wine. The provider could then sell these insights to a beverage company, which could make use of the insights in its marketing strategy.

3.5 Adverse Consequences

Due to the value associated with personal and purchasing information, providers have a commercial incentive to use and exploit the information to which they gain access. The resulting demand for personal data poses a number of adverse consequences to clubs and their patrons.

First, the privacy of patrons may be compromised by the provider and other third-party dealings with their information. As noted in section 3.4 of this submission (above), a third-party may use members' personal information to email them invitations or other offers. Many members would consider this to be a compromise or misuse of their personal privacy. Moreover, third-parties may not employ sufficient data security measures to protect the information they hold on club patrons.

Second, if the club unknowingly licenses or assigns information on their patrons, the club may breach the terms and conditions governing the collection of information. These terms and conditions may contain various terms mandating data security standards or restricting the club from disclosing the information to third-parties. For example, a term may specify that information will only be used in a manner directly relating the purpose for which it was collected. The terms and conditions may also specify that the club:

- will not disclose personal information to third parties without the patron's consent; or
- may give access to third parties providing services to the club under a contract, on the condition that the third party keeps the information secure.

If a provider accesses and commercially exploits patron information (whether or not the provider gives access to another third-party), the club may breach their contractual obligations to patrons, and subsequently be liable to legal action.

Third, under the contingencies noted above, a club may suffer substantial reputational damage if patron information is exploited or if there is a security breach.

Many small clubs do not appreciate the value or risks connected to their legal requirements to maintain details of their members. The significance and risks attached to personal data have only recently become evident.

Clubs Australia is aware of instances where data clauses in contracts resulted in these risks eventuating for clubs.

3.6 Applicable Providers

As noted in section 3.2 of this submission (above), gaming and POS system providers both gain access to the personal information and purchasing details of club patrons. There are also additional providers which could gain access to sensitive personal information.

Many clubs use computers to electronically sign-in club patrons¹² and store their information.¹³ Some providers integrate ID-scanning functionality into the sign-in computer, which has the added benefit of verifying the patron's photo identification. Therefore, providers of sign-in and ID-scanning systems have the capability to access and exploit personal information of club patrons.

Some targets only provide ID-scanning equipment, and are therefore less prominent among clubs. However, these providers may become more attractive to clubs due to forthcoming jurisdictional changes which will permit digital drivers licences as a valid form of identification.

Clubs may also use various information technology services to manage the club's computers, networks and server. These services may include backing-up the personal information of patrons in the database. By providing these services, information technology providers may also gain incidental access to sensitive information such as sales data and email communications.

Some clubs also use digital communication or marketing providers to manage communications to patrons. These providers would likely gain access to patron information.

3.7 Proposed Data-related Terms

Clubs Australia will seek to remove contract terms which give counterparties unrestricted access to patron information, or which otherwise risk the compromise or misuse of patron information. Accordingly, the key principle underlying Clubs Australia's desired terms is protecting club patrons from the risk of breaches or misuse of their personal information.

¹² A club may only require non-members to sign-in, or alternatively the club may require all patrons to sign-in.

¹³ As discussed in section 3.1 of this submission (Obligation to keep Patron Details), clubs have a legislative obligation to obtain and keep personal information of all patrons entering the licensed club premises, including non-members.

Under the proposed collective bargaining authorisation, Clubs Australia may negotiate with providers to request:

- a high standard of data security;
- sufficient confidentiality, subject to exceptions which would enable the provider to directly carry out its services;
- removing terms under which the provider limits their liability for all club losses arising out of, or in connection with, the performance of the provider's services;
- removing terms under which the club assigns, or otherwise conveys ownership of, patron information to the provider;
- removing terms under which the club licenses personal information to the provider, and the provider can use or otherwise deal with the information, in a manner that is not directly connected to the provider carrying out its services;
- removing terms under which the club licenses personal information to the provider, and the provider can sublicense any information to third-parties:
 - without a requirement that the sub-licensee maintains confidentiality and a high standard data security; and/or
 - other than for purposes directly connected to the provider, or sub-licensee, carrying out its services.

Clubs Australia may request that providers remove, amend or replace data-related terms in a manner that effectively prevents the exploitation or misuse of patron information, consistent with the principles and concerns described in this application.

It may also be necessary for Clubs Australia to negotiate payment terms with these providers. If the authorisation narrowly enables Clubs Australia to seek improved data-related terms, providers may accept the requested terms while increasing the price or fee.

4 Market Information

Clubs Australia believes the relevant areas of competition are the acquisition of goods and services from commercial operators, and the supply of services by clubs to consumers.

4.1 The Acquisition of Goods and Services from Commercial Operators

Clubs Australia is proposing to collectively negotiate the terms and conditions, including price, governing the acquisition of a variety of inputs by member clubs. Clubs Australia proposes to negotiate with the following targets:

Providers of wagering services

- Tabcorp and its wholly-owned subsidiaries have exclusive retail wagering licences in every Australian jurisdiction except Western Australia. Tabcorp's exclusive retail wagering licences are conferred by respective state and territory governments. Many clubs seek Tabcorp's services to offer wagering terminals on their premises.
- Wagering services are supplemented by subscription broadcasting services (also specified in this application), which enable club patrons to view the live sports on which wagering is offered.
- Clubs Australia has included other wagering providers in the authorisation. This is because, over the proposed period of authorisation, regulatory changes, or new wagering licensing agreements with various Australian governments, may result in wagering providers other than Tabcorp wishing to deal with clubs.

Providers of electronic gaming machines and related services

- Clubs are lawfully permitted to operate electronic gaming machines (EGMs) in every jurisdiction except Western Australia.
- In aggregate, clubs comprise a major purchaser of EGMs. However, clubs are unlikely to comprise a majority of purchasers. EGM providers also supply their products to hotels, casinos and overseas markets.
- Some providers, such as Tabcorp (and its subsidiaries) offer related services. For example, Tabcorp's services include managing EGM procurement and asset management for clubs. This service is offered by subsidiaries of Tabcorp across Australian jurisdictions, named Tabcorp Gaming Solutions; these include Tabcorp Gaming Solutions (NSW) Pty Ltd and Tabcorp Gaming Solutions (QLD) Ltd.
- The specified EGM providers compete with each other. Competition may be restricted by regulatory approvals necessary to deal in EGMs.

Providers of music rights and related products

- In order to play music at their premises, clubs must seek copyright licences from copyright collecting societies.
- There is limited competition between rightsholders because their collecting rights are granted by the ACCC.
- Music rights providers typically operate on a national basis.

Providers of subscription broadcast services

- Many clubs offer sports vision to their patrons.
- While some of this vision is available on free-to-air television, other vision is subject to exclusive rights granted to subscription broadcast providers by various sports governing bodies.
- Competition between subscription broadcast services is limited by the nature of exclusive rights.
- The providers in this category operate nationally.

Providers of energy services

- Clubs are supplied with electricity and gas by energy service providers.
- Certain providers act as brokers for energy providers, or offer environmentally friendly energy services including solar panels.
- Some energy service providers, such as Make It Cheaper, act as consultants to reduce energy prices.
- Competition between energy service providers is likely to be limited given barriers to entry posed by significant fixed costs.
- Given most energy providers are large entities, they typically operate nationally.

Providers of automatic teller machines and cash-handling products

- It is necessary for clubs to offer on-premises automatic teller machines (ATMs) to cater to patrons who wish to use cash on club services including the bar and restaurant.
- Non-cash payments are unlawful for EGMs, which augments the necessity for clubs to offer ATMs on-premises.
- ATM providers have previously acted opportunistically in their dealings with clubs, such as by using contracts later suspected of containing unfair contract terms.¹⁴ The ability to act opportunistically may be reduced, but not eliminated, due to some competition.
- Under the previous authorisation, Clubs Australia established a standard ATM contract which mitigates against opportunistic conduct from ATM providers.
- As clubs deal with a large quantity of cash, they frequently procure ancillary cash-handling services, including:
 - bill validation devices, which are commonly built onto EGMS;
 - cash redemption terminals, which enable patrons to exchange cash; and
 - cash-counting machines.
- Most of the providers in this category operate nationally.

Providers of insurance and insurance-related products and services

- Like most commercial entities, clubs purchase a range of insurance products.
- There is likely to be some competition between insurance providers.
- Given most insurance providers are large entities, they typically operate nationally.

¹⁴ ACCC, Cardtronics to amend unfair ATM contracts, March 2018, available at <https://www.accc.gov.au/media-release/cardtronics-to-amend-unfair-atm-contracts>.

Providers of compliance services

- Operating EGMs subjects clubs to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).¹⁵ Some providers offer clubs services which enable their compliance with this legislation.
- To ensure that clubs are not exposed to the risk of regulatory action for noncompliance, Clubs Australia may review the services and contract terms offered by AML/CTF compliance providers to ensure the services sufficiently facilitate clubs' compliance with the AML/CTF regime.
- There does not appear to be any significant restrictions on competition between providers of compliance services.
- Given the AML/CTF regime is Commonwealth law, most compliance providers operate nationally.

Providers of food, beverages and related products

- In most Australian jurisdictions, a club licence is a form of liquor licence. Accordingly, most clubs are hospitality venues which derive a significant proportion of revenue from food and beverages.
- In recent decades, the beer, wine and spirits industries have consolidated such that a few major providers own most of the brands or breweries. Due to the limited competition, opportunistic conduct remains a possibility.
- Some providers also offer related products including fridges, vending machines, dispensing equipment, cool room facilities and coffee machines.
- Given most providers in this category are large entities, they typically operate nationally.

For certain providers, Clubs Australia is also proposing to collectively negotiate improved data-related terms, in addition to negotiating other terms:

Providers of gaming systems

Providers of point of sale systems

Providers of electronic sign-in or ID-scanning services

Providers of database management, information technology and digital communications

These categories of providers are described in section 3.6 of this submission (Applicable Providers).

The targets in the point of sale system and information technology categories (in **Attachment A**) were identified by a survey circulated to clubs in September 2017.

Targets in other categories were identified through Clubs Australia's comprehensive knowledge of industry suppliers.

¹⁵ Paragraph 52.4, *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007* (No. 1) provides that entities which operate more than 15 electronic gaming machines are subject to AML/CTF reporting requirements.

In most areas of competition categorised above, member clubs compete with a range of other businesses for the acquisition of the relevant goods and services and are likely to represent only a small proportion of purchasers. The impact on the targets of any collective bargaining negotiation by Clubs Australia is therefore minimised.

For certain products or services, clubs may represent a greater proportion of purchasers. These target categories are electronic gaming machines, gaming systems, wagering services and electronic sign-in providers. To a lesser extent, clubs may represent a greater proportion of purchasers for beverages-related providers and subscription broadcast services.

In relation to wagering and subscription broadcast providers, Clubs Australia notes the ACCC's comments in its determination of the recent authorisation (A91381); that these industries tend to be supplied by suppliers with market power or by large global companies.¹⁶ Clubs Australia considers that the ACCC's assessment extends to beverage and gaming machine (and gaming system) providers.

In some areas of competition such as totaliser wagering services and gaming machines, legislative regimes limit competition.

Regarding electronic sign-in providers, Clubs Australia notes that these providers are not as large as gaming, wagering, subscription broadcasting and beverage-related providers. However, noting the privacy and data concerns discussed at section 3.5 of this submission, it is appropriate for Clubs Australia to collectively negotiate with electronic sign-in providers.

4.2 The Supply of Services by Clubs to Consumers

Member clubs supply alcohol for on-site consumption to members and their guests. Allied products such as soft drinks and tobacco products are also offered. Many members also offer electronic gaming machines, wagering and entertainment services including live music.

Member clubs compete with other market participants such as hotels and licensed restaurants in the provision of these hospitality services to consumers. Clubs, however, offer a differentiated product as they are not for profit entities which are member-based and community-oriented.

Some level of competition does exist between clubs that are in close proximity to each other. This is evidenced by strong levels of promotion, continuing efforts by clubs to differentiate and improve their services and facilities.

The lack of variation in terms and conditions of contracts between clubs indicates that the level of competition between clubs in the acquisition of services from the service providers or the supply of service to service providers is low.

¹⁶ Paragraph 31, Determination for Clubs Australia collective bargaining authorisation, ACCC, March 2014.

Clubs Australia does not anticipate any additional restriction in the supply or acquisition of the relevant goods or services to consumers as a result of collective bargaining.

5 Public benefits

As public benefit is not defined in the CCA, Clubs Australia has followed the definition adopted by the Australian Competition Tribunal (ACT) and the ACCC as being:

" ... anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress."¹⁷

Clubs Australia believes this authorisation will produce the following public benefits.

5.1 Greater Input into Contracts

Collective bargaining enables small clubs to redress imbalances in bargaining power. Collective bargaining will produce more efficient commercial outcomes by providing clubs greater input into the terms and conditions of contracts.

Allowing Clubs Australia to bargain collectively on behalf of clubs will also reduce the likelihood of manifestly unfair contractual terms and conditions which often arise when individual clubs engage directly with large-scale or monopoly suppliers.

In many cases, suppliers will offer clubs standard form contracts with minimal opportunity for input. Manifestations of this include unilateral imposition of terms and conditions in contracts; refusal by service providers to negotiate; refusal to take into account the differing circumstances between members (e.g. different sizes, locations); past use of inappropriate basis for charging and the differing terms and conditions between states reflecting different market power considerations rather than different commercial circumstances.

Allowing Clubs Australia to participate in direct negotiations with suppliers such as these will allow member clubs to have increased input into contracts. Any cost savings or gains in efficiency as a result of the negotiations would give rise to a public benefit. This is especially the case for data-related terms. Despite these terms posing significant risks of data compromise or misuse, most clubs do not currently consider, or actively search for, these terms.

The public benefits flowing from more efficient contracts would likely be augmented by the high proportion of clubs which are small. This is because small clubs would be more likely to lack the capability to achieve complete contracts without effective representation.

¹⁷ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

As noted in section 1.1 of this submission, a significant majority of Australia's clubs are estimated to be "small".

Larger member clubs may continue to negotiate directly with suppliers and these arrangements will not be affected by any collective bargaining by Clubs Australia on behalf of smaller clubs.

5.2 Privacy Protection

Where Clubs Australia negotiates improved data-related terms, club patrons will ultimately benefit from enhanced privacy protections. For instance, suppose Clubs Australia negotiates terms which restrict POS providers from transferring patron information to third-parties with inadequate security. In this scenario, club patrons will not be exposed to the security and confidentiality consequences.

5.3 Transaction Cost Savings

It is the view of Clubs Australia that transactional costs are lower where a single negotiating process is in place, as opposed to multiple negotiation processes. To the extent transactional cost savings do arise they are likely to constitute a public benefit. This view was expressed by the ACCC in its determination of Clubs Australia's existing authorisation (A91381, paragraph 50).

Transaction cost savings will be achieved as member clubs acquire better information and negotiating skills, pool their resources or outsource some of the functions that generate transaction costs. Clubs will also benefit from reduced time-related costs.

5.4 Enhancement in the Supply of Goods and Services by Clubs to Consumers

Clubs operate as not-for-profit community hubs and therefore any benefit resulting from improved trading terms will be passed on to consumers or club patrons in the form of enhanced service standards and facilities.

Clubs Australia concurs with the view espoused by the ACCC in Authorisation A91257 in paragraph 5.39 that collective bargaining arrangements are likely to result in beneficiaries moving to a decreased cost structure for some standard inputs. Member clubs would continue to compete in relation to quality and variety of goods and services offered.

To the extent member clubs achieve cost savings which can be reinvested in other aspects of their business, there is potential for such investment to encourage rivalry amongst clubs in the form of improved services and activities (Authorisation A91257 at 5.39). Clubs Australia is supportive of the ACCC's conclusion that such improvements to service standards and facilities result in a benefit to the public.

5.5 Previous Authorisation

Clubs Australia's claims on public benefits are supported by the operation of the previous authorisation, which ran for five years and lapsed on 28 March 2019.

For example, the previous authorisation benefitted member clubs in their negotiations with ATM providers. Prior to the commencement of the previous authorisation, contracts with ATM providers contained an automatic rollover clause of several years. One provider had an automatic rollover of six years. If the club failed to comply with this requirement, such as notifying the provider the club would not be renewing the contract, the contract specified a significant termination fee payable by the club. Under most of the contracts, the providers could remove an ATM from a club within seven days.

After receiving authorisation to collectively bargain with ATM suppliers, Clubs Australia initially proposed to bargain with the provider which included the most exploitative terms. This provider refused to negotiate with Clubs Australia. However, the authorisation enabled Clubs Australia to achieve more balanced conditions with other ATM providers. Therefore, clubs which opposed the exploitative terms were given the choice of choosing other ATM providers.

Accordingly, collective bargaining enabled member clubs to benefit from much fairer contracts which, in turn, illustrates the public benefits noted in this section.

First, greater contract input was achieved through Clubs Australia incorporating information in the contract which better accounted for clubs' circumstances. This is because, the automatic rollover clauses were not conducive to clubs' need to periodically assess the cost of their ATMs, and therefore enabling clubs to shop around for the best price and terms.

Second, the ATM negotiations also illustrates transaction cost savings, as clubs were not all required to individually conduct due diligence on their contract, and employ a negotiating strategy.

Third, by enabling clubs to benefit from competition among ATM providers, clubs likely achieved lower prices than they would otherwise achieve with the automatic rollover clauses. By reducing clubs' costs, the supply of goods and services to end-consumers, such as club members, would likely be enhanced.

Clubs Australia believes that, by enabling clubs to collectively bargain on behalf of members, clubs will continue to benefit from improved conditions, which will, in turn, produce public benefits.

6 Public Detriment

As public benefit is also not defined in the CCA, Clubs Australia has again followed the definition used by the ACT and ACCC:

" ... any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency."¹⁸

Clubs Australia does not believe the proposed collective bargaining arrangements will result in any public detriment. In considering the potential detriment of the proposed conduct, we will review the following three possible anticompetitive effects outlined in Authorisation A91257.

6.1 Reduced Economic Efficiencies

Where proposed collective bargaining arrangements involve only a small proportion of participants in relevant markets, there is likely to be little risk of anti-competitive detriment (A91381, paragraph 83).

Under the proposed arrangements, Clubs Australia members will continue to compete with other businesses for the acquisition of the relevant goods or services thereby limiting the risk of anti-competitive detriment.

In some of the affected areas of competition, participation on the supply-side is restricted such as totaliser wagering services. The aggregation of the buying power of member clubs relative to that of the supplier is unlikely to result in significant anti-competitive detriment.

In A91381 at paragraph 68, the ACCC considered the anti-competitive effects of collective bargaining arrangements were likely to be limited when the following four features are present:

- the current level of negotiations between individual members of the group and the proposed targets on the matters to be negotiated is low
- participation in the collective bargaining arrangement is voluntary
- there are restrictions on the coverage and composition of the bargaining group
- there is no boycott activity.

These features will all be present should the Clubs Australia application be successful.

¹⁸ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683

6.2 Current Level of Negotiation between Member Clubs and Suppliers

Member clubs are generally offered standard form contracts. The level of negotiation between individual member clubs and the proposed targets in the absence of this authorisation is likely to be low.

6.3 Voluntary Participation in the Collective Bargaining Arrangements

The proposed collective bargaining arrangements between member clubs and potential targets will be voluntary. As discussed in section 2.4 of this submission (Operation of Negotiations), Clubs Australia will not implement a specific opt-in process for clubs to join or be bound by the collective bargaining. If Clubs Australia negotiates what it believes to be improved terms, every member club will have the opportunity to accept, reject or negotiate different terms with the supplier. There would also be nothing to prevent certain member clubs or suppliers from negotiating individually with each other while Clubs Australia collectively negotiates.

Such an arrangement effectively establishes an arrangement which is entirely voluntary for member clubs, which limits any public detriments.

For instance, in 2017 Clubs Australia used its collective bargaining authorisation to negotiate improved terms with Tabcorp. This arrangement ultimately resulted in clubs receiving higher digital commissions and cheaper equipment prices from Tabcorp. During these negotiations, Victoria-based clubs decided not to be bound by any potential agreement between Clubs Australia and Tabcorp, demonstrating the voluntary nature of the negotiations.

6.4 Composition of Bargaining Group

In A91257 at 5.59, the ACCC held that where the size of bargaining groups is restricted, any anticompetitive effect is likely to be smaller having regard to the smaller area of trade directly affected and having regard to the competition provided by those suppliers outside the group.

Any collective bargaining activity will be undertaken by a select group of Clubs Australia staff on behalf of current and future member clubs. Member clubs and legal personnel will be consulted as appropriate and all will be informed as to their responsibilities under the CCA.

6.5 Boycott Activity

Clubs Australia has not sought to engage in collective boycott activity in this application.

6.6 Increased Potential for Collective Activity beyond that Authorised

In A91381 at paragraph 92, the ACCC acknowledged that to some degree, information sharing is an inherent aspect of collective bargaining. This is because in order to collectively negotiate terms and conditions with a supplier or customer, the members of a collective bargaining group must discuss with suppliers their existing terms and conditions, the desired outcomes from negotiations, and how these can best be achieved.

At paragraph 94, the ACCC noted that the likelihood of collusive activity beyond that authorised is reduced where participants are made aware of their obligations under the CCA and where the arrangements are not industry wide.

Where appropriate, member clubs will be reminded of their obligations under the CCA each time collective negotiations are commenced on their behalf.

6.7 Effect on Businesses outside the Arrangements

Clubs Australia is supportive of the view that the buying choices made by clubs will be driven by consumer demand and it is likely that clubs will continue to purchase goods and services for which there is consumer demand. In this regard, as outlined at 5.70 of Authorisation A91257, voluntary collective bargaining arrangements will not prevent negotiations between individual clubs and suppliers to meet demand.

Attachment A

* Interim authorisation is being sought. Interim authorisation is only being sought for targets covered by Clubs Australia's previous authorisation (A91381).

Providers of wagering services

- Tabcorp Holdings Limited and its subsidiaries (also included under the category *Providers of electronic gaming machines and services*)*
- GVC Australia Pty Ltd t/a Ladbrokes Au
- Beteasy Pty Ltd
- Sportsbet Pty Ltd
- Hillside (Australia New Media) Pty Limited t/a Bet 365

Providers of electronic gaming machines and related services

- Aristocrat Leisure Limited
- Ainsworth Game Technology Limited
- International Game Technology
- Scientific Games Australia Pty Ltd
- Konami Gaming Australia Pty Limited
- Aruze Gaming Australia Pty Ltd
- Atlas Gaming Holdings Pty. Ltd.
- Interblock Asia Pacific Pty Limited
- Tabcorp Holdings Limited and its subsidiaries (also included under the category *Providers of wagering services*)*
- Independent Gaming Pty Ltd
- Paltronics Australasia Pty. Limited
- The Trustee for Wymac Gaming Solutions Unit Trust

Providers of music rights and related products

- SBA Music Pty Ltd
- Phonographic Performance Co of Australia Ltd*
- Rock Video World Pty Limited t/a Visual Sounds*
- Australasian Performing Right Association Ltd*
- Nightlife Music Pty Ltd

Providers of subscription broadcast services

- Sky Channel Pty Ltd*
- Foxtel Management Pty Limited and its subsidiaries*
- Singtel Optus Pty Limited

Providers of energy services

- E P & T Pty. Ltd.*
- Energy Brokers.COM.AU Pty. Ltd. t/a Energy Brokers*
- Ilum-a-Lite Pty. Limited*
- Forum Enviro Pty Ltd (formerly PowerPerfector Australia Pty Ltd)*
- Simons Green Energy Pty Ltd*
- Green Connection Group Pty Ltd*
- NUS Consulting Group Pty Limited*
- Skycool Pty Ltd*
- Aussie NRG Pty Ltd
- Make It Cheaper Pty Limited
- The Trustee for Practical Sustainability Trust t/a Practical Sustainability

Providers of automatic teller machines and cash-handling products

- Cardtronics Australasia Pty Ltd (formerly DC Payments Australasia Pty Ltd)*
- First Data Network Australia Limited t/a Cashcard Australia Limited*
- The Banktech Group Pty Ltd*
- JCM American Corporation
- Ecash Holdings Pty Limited

Providers of insurance and insurance-related products and services

- Cartwright Insurance Brokers Pty Ltd*
- Warren Saunders Insurance Brokers*
- The Procure Group Pty Ltd

Providers of compliance services

- Initialism Pty. Ltd. – AML/CTF compliance
- PKF Australia Limited – AML/CTF compliance
- Allied Risk Solutions Pty Ltd –AML/CTF compliance
- Barrington Group Australia Pty Limited – AML/CTF compliance
- CHD Partners Pty Limited
- Trojan Corporate Pty Ltd
- Martin Safety Pty Ltd t/a Lighthouse Safety and Compliance

Providers of food, beverages and related products

- Lion-Beer Spirits & Wine Pty Ltd
- CUB Pty Ltd t/a Carlton and United Beverages Limited
- Robert Oatley Vineyards Pty. Ltd.
- Asahi Holdings (Australia) Pty Ltd
- Coca-Cola Amatil Limited
- Treasury Wine Estates Limited

- Fonterra Brands (Australia) Pty Ltd t/a Anchor Food Professionals
- The trustee for Berman Retail Trust t/a Good Nuts
- Mrs Mac's Pty Ltd
- Club Cafe Systems Pty Ltd
- Andale Beverage Systems
- Bevcon Beer and Beverage Systems Pty Ltd (including related entity, Esass Pty. Ltd.)

Providers of gaming systems[^]

- Aristocrat Leisure Limited
- International Game Technology
- Tabcorp Holdings Limited, conducted through its subsidiary, Ebet Gaming Systems Pty Limited (ABN 50 086 218 831)
- Scientific Games Australia
- Independent Gaming Pty Ltd
- Utopia Gaming Systems Pty Ltd

[^] All gaming system providers are also included under the category *Providers of electronic gaming machines and services*

Providers of point of sale systems

- Sharp Electronics Newcastle Unit Trust t/a Senpos
- Business Electronics Holdings Pty Ltd t/a Bepoz Retail Solutions
- Sanyo Office Machines Pty. Limited
- MSL Solutions Limited and subsidiary, Infogenesis Pty Limited
- Swiftpos Pty Ltd
- Jensen Data Systems Pty Ltd
- Idealpos Solutions Pty Ltd
- Cashpoint Payment solutions Pty Ltd, also t/a Mypos*
- Starrtec Pty Ltd
- Task Retail Technology Pty Ltd
- Innquest Australia Pty Ltd

Providers of electronic sign-in or ID-scanning services

- Circle Solutions Pty Ltd – Provider of sign-in and ID scanning services
- Clubnet International Pty. Ltd. t/a Clubnet
- Infosign Pty. Ltd.
- Scannet Pty Ltd
- Group Security Solutions Pty Ltd t/a PatronScan
- Scantek Solutions Pty Ltd
- Qikid Pty Ltd

Providers of database management, information technology and digital communications

- King Street Computers Pty Ltd – Database management and information technology
- Postpact Pty. Limited t/a Computer Magic – Database management and information technology
- Prodocom Pty Ltd – Digital communication and information technology
- JEM Computer Systems Pty Ltd – Database management and information technology
- The Trustee for Conekt Unit Trust t/a Conekt Australia – Database management and information technology
- Brennan VDI Pty Limited and related companies, including Brennan IT Pty Limited, Brennan Voice and Data Pty Limited and Brennan Telephony Pty Limited
- Tecala Group Pty Limited
- Secom Technology Pty Limited



23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601
tel: (02) 6243 1111

Contact officer: Jaime Martin
Contact phone: 03 9290 1477

20/05/2019

adjudication@accc.gov.au
www.accc.gov.au

Simon Sawday
Senior Policy Officer
ClubsNSW

By email: ssawday@clubsnsw.com.au

Dear Mr Sawday

Fee waiver request

I refer to your email of 14 May 2019 to the Australian Competition and Consumer Commission (ACCC) in respect of a proposed application for authorisation. In your email you have requested that the ACCC grant a fee waiver in respect of the proposed arrangements.

In particular, you have requested that the fee to be paid in relation to an application for authorisation to be lodged by Clubs Australia be wholly waived.

In support of your request, among other things, you submitted that:

- (a) Clubs Australia's membership are not-for-profit and member-owned
- (b) Clubs Australia is also not-for-profit
- (c) 41% of clubs are in distress or serious distress (based on a 2015 census of clubs conducted by KPMG).

Having regard to the above, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I have decided not to wholly waive that the application fee to be paid by Clubs Australia. However, I have decided to waive the application fee in part. An application fee of \$2500 will apply with respect to the application for authorisation to be lodged by Clubs Australia.

This decision will remain in force for a period of three months. The three month period will expire on 20 August 2019.

A copy of this letter should accompany the application for authorisation to be lodged by Clubs Australia. The cover letter to the application should mention that a letter from the ACCC regarding a fee waiver is enclosed with the application. The application together with this letter will be placed on the public register at that time.

If the application for authorisation is lodged by Clubs Australia after 20 August 2019, a full application fee of \$7500 will apply, unless you make, and the ACCC approves, another fee waiver.

Should you have any queries in relation to this matter, please do not hesitate to contact Jaime Martin on 03 9290 1477.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D Jones', with a stylized flourish extending from the end.

David Jones
General Manager
Adjudication