CLUBS AUSTRALIA
RESPONSE TO SUBMISSIONS – AA1000444-1

Clubs Australia welcomes the opportunity to respond to submissions on its application for collective bargaining authorisation. This response addresses assertions raised in the submissions.

Triggers for collective bargaining

At the outset, Clubs Australia emphasises that it does not have specific plans to negotiate pricing terms with EGM or gaming system providers. This position is reflected in paragraph 2.6 of the submission accompanying Clubs Australia's application. Paragraph 2.6 further notes:

> 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.

Clubs Australia does not have information to indicate these conditions are currently present in relation to the pricing of EGMs and gaming systems.

Size of bargaining group

The submission accompanying Clubs Australia's application states that clubs, in aggregate would not comprise a majority of EGM purchasers. Scientific Games Australia's (SGA) submission challenges the accuracy of Clubs Australia's claim.

Clubs Australia's claim is based on figures reported by the Productivity Commission, showing that clubs comprise 2,320 of the 5,696 (or 41%) Australian venues which contain EGMs.[1]

SGA's submission also posits that the size of the bargaining group would be so large as to lessen competition.

In considering the size of club EGM purchasers in aggregate, it must be noted that the majority of Australian clubs do not operate EGMs. Across Australia, **69.4% of clubs do not operate EGMs**.[2]

[1] Inquiry into Gambling, Productivity Commission, 2010, Table 2.6.
[2] KPMG, 2015 National Clubs Census, August 2016, p. 13.

Clubs Australia considers the competition implications of collective bargaining is best assessed by the ACCC's position;[3] that the anti-competitive effects of collective bargaining will likely be limited where four features are present:

- the current level of negotiations between individual members of the group and the proposed counterparties 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.

The submission accompanying Clubs Australia's application contends that each of these four features would be present in Clubs Australia's authorisation.[4]

SGA states that, given the cross-jurisdictional distribution of the clubs, it would be impractical to negotiate Australia-wide products and services. Clubs Australia submits that a single national approach to collective bargaining would be unlikely.

This is because there is significant diversity of clubs, both within and across Australian jurisdictions. Accordingly, in the event that a trigger was present, it would be in the best interests of clubs to form smaller bargaining groups to achieve maximum efficiency.[5] This view was expressed by the ACCC in its determination of Clubs Australia's previous authorisation.[6] The nature of clubs' diversity is multi-faceted, based on:

- **Type** – Club types include RSL, bowls, leagues, football, sports and workers.
- **Size** – Paragraph 1.1 of Clubs Australia's submission notes that, using the measurements established by the NSW government agency, the Independent Pricing and Regulatory Tribunal (IPART),[7] 86% of Australian clubs are small, 11.9% are medium and 2.1% are large.
- **Location** – Paragraph 1.1 of Clubs Australia's submission specifies the distribution of licensed clubs across Australian states and territories. Clubs are also distributed across regional and metropolitan areas.

As noted by SGA, club diversity in the EGM market is also characterised by different regulatory and technical requirements applying at a state and territory level. Given these differences, clubs across different jurisdictions will share limited commonality of significant issues.[8]

[3] Determination for Clubs Australia collective bargaining authorisation, ACCC, March 2014, para 68.
[4] Application for collective bargaining authorisation, Clubs Australia, June 2019, paras 6.2–6.5.
[5] Clubs Australia's application does not propose to form "bargaining groups", however the principles relating to the size of bargaining groups are still applicable.
[6] Determination for Clubs Australia collective bargaining authorisation, ACCC, March 2014, para 88.
[7] IPART, Review of the Registered Clubs Industry in NSW, June 2008, p. 149.
[8] The ACCC has also expressed that sharing a commonality of significant issues is a likely condition for joining a bargaining group.

There may be a degree of commonality shared by clubs regarding preventing the misuse of their patron information, or preventing other conduct which results in patron information being compromised or sent to third parties for purposes which do not benefit the club. However, Clubs Australia does not consider there are any anti-competitive detriments resulting from this conduct. Conversely, Clubs Australia considers there are serious privacy detriments arising out of this conduct.

Data-related terms

SGA claims its gaming system does not, and cannot, access the personal information of EGM players. Clubs Australia has no reason to dispute or question SGA's claims regarding its product.

Clubs Australia's ambition to negotiate improved data-related terms with gaming system providers is based on the fact that gaming system technology has the capacity to access the personal information of club patrons. Clubs Australia considers that this concern is reasonable, because gaming systems are designed to enable and manage membership loyalty schemes.

Moreover, we refer to paragraph 3.5 of the submission accompanying Clubs Australia's application, which states that we are aware of instances where data clauses in contracts resulted in privacy risks eventuating for clubs.

Where a gaming system provider already adheres to the data terms proposed by Clubs Australia, we note that the provider should have no reason to object to the terms. Conversely, such a provider may benefit from the same reasonable terms applying to their competitors.

Public benefits of previous authorisation

Paragraph 5.5 and 6.3 of the submission accompanying Clubs Australia's application describe successful negotiations undertaken during the previous authorisation.

In addition to these examples, Clubs Australia also notes the successful negotiations cited by APRA AMCOS in its submission to the ACCC.

Clubs Australia submits that the OneMusic Australia licence scheme for Australian clubs was negotiated by Clubs Australia under the previous authorisation. These negotiations commenced following the release of OneMusic Australia's consultation paper on music licensing in October 2017.

Clubs Australia considers that the negotiated pricing model properly accounts for the diversity of club circumstances. The licensing agreement illustrates the practical public benefits achieved under the previous authorisation, of which APRA and PPCA were targets. The benefits demonstrated by the negotiated licence agreement include:

- **Greater input into contracts**, since the pricing model enables clubs and APRA AMCOS to achieve complete contracts;
- **Transaction cost savings**, since Clubs Australia's representation eliminated multiple negotiation processes.

There is no information to suggest any public detriments arose from Clubs Australia's ability to negotiate with APRA AMCOS.

The ACCC has previously granted 10-year terms where previous authorisations have operated well, and concerns were not raised about the previous authorisation.[9]

Accordingly, the examples demonstrating the previous authorisation produced public benefits support Clubs Australia's request for a 10-year term.

[9] The ACCC has set out this view in Determination for Rural Doctors Association of Australia collective bargaining authorisation, ACCC, December 2018, para 4.40.