

Application for Authorisation (AA1000671) from St. Lukes Medical and Hospital Benefits Association

St Lukes response to the submission made to the ACCC by the Australian Dental Association (ADA) on 25 September 2024 (ADA Submission)

St Lukes provides the following response to the ADA Submission.

No limitations on the network

The ADA has suggested that the ACCC consider imposing a condition on St Lukes which, in effect, ensures that St Lukes will not place any limitations on a dental provider's ability to join the Network. For the avoidance of doubt, and as set out in its previous responses to the ACCC's requests for further information, St Lukes confirms that the model of the Network which has been proposed as part of the authorisation is voluntary and non-exclusive in that dental providers:

1. will not be required to enter into exclusive agreements with St Lukes. They will remain free to enter into agreements with other health insurers and to continue to provide services to non-members; and
2. will not be locked into the Network and will be free to terminate the agreement with St Lukes at any time without cause by providing notice.

It is the intention that the Network will remain voluntary and non-exclusive for the duration of the term of the authorisation. St Lukes has no plans to impose any restrictions/limitations on the Network in the future. Accordingly, a condition of the type suggested by the ADA is unnecessary.

Differential rebates

One of the primary purposes of the Network is to introduce a greater level of financial certainty for St Lukes members. There is, therefore, no need for any condition of the nature proposed in the ADA Submission.

MFN clause

The ADA has suggested that the ACCC consider imposing a condition on St Lukes that links the operation of clause 5.3 of the Network's Terms & Conditions (referred to by the ADA as the 'MFN clause') to St Lukes market share (and which prevents that clause from operating if St Lukes market share increases beyond a particular level).

St Lukes considers that imposing a condition of the type suggested by the ADA is unnecessary.

In the HCF authorisation determination, St Lukes understands that the ACCC's primary concerns about the MFN clause in that instance were that:

1. it could limit dentists' incentives to offer lower prices to non-HCF members;
2. it could establish an artificial price floor in the market resulting in higher charges than without the 'most favoured nation' clause; and

Hobart72 Elizabeth Street,
Hobart 7000**Rosny Park**2/7 Bayfield Street,
Rosny Park 7018**Kingston**Shop 28a, Channel
Court, Kingston
7050**Devonport**26 Rooke Street,
Devonport 7310**Burnie**27 Cattley Street,
Burnie 7320**Smithton**18 King Street,
Smithton 7330

3. it could potentially limit mobility for dentists, as participating dental providers might be required to offer less or the same charges than other dentists in the same practice.

St Lukes submits that the same concerns should not arise here on the basis that:

1. to the extent it was considered the Network pricing might establish some form of artificial price floor (which St Lukes considers is unlikely), that could only occur in relation to the specific known-gap preventative service items listed in Schedule 1 of the Network's T&Cs. These items represent a very small subset of all service items that are offered by dental providers such that the impact of those charges would be so minimal/insignificant that it should not be given weight by the ACCC in this instance;
2. the mobility of dentists is unlikely to be affected because the particular terms of the HCF More for Teeth program are not replicated in the same form in the Network T&Cs. Clause 5.3 simply provides that, where the normal business practice of a 'Participating Dental Partner Provider' is to offer discounts or benefits to its patients, the 'Participating Dental Partner Provider' will also provide such discounts or benefits or an equivalent amount of the discount or benefit to St Lukes members. The voluntary and non-exclusive nature of the Network facilitates mobility; and
3. ultimately, clause 5.3 is designed to deliver benefits by:
 - a. mitigating against the risk that dental providers who sign-up to the Network will shift the cost of the known-gap preventative service items that form part of the Network onto service items that do not form part of the Network; and
 - b. helping St Lukes secure the best deal for its members by requesting that, if the dental provider in question customarily offers better terms to their patients than would be the case under the Network's T&Cs, St Lukes members will not be prevented from enjoying those better terms.

Whilst St Lukes acknowledges that it will likely have a bigger market share in its relevant markets than HCF had for the purposes of its authorisation, it submits that there will be very limited public detriment arising from the use of clause 5.3 (for the reasons set out above) and that the public benefit of the network plainly outweighs any detriment.

There is, therefore, no reason for any condition of the nature suggested in the ADA Submission to be imposed.

In any event, given the ACCC is only proposing to grant authorisation for an initial period of 5 years, the ACCC will be in a position to assess the position during and at the conclusion of that period. If there are any concerns that reflect those of the ADA (or otherwise), there will be opportunities to address those issues.

Hobart72 Elizabeth Street,
Hobart 7000**Rosny Park**2/7 Bayfield Street,
Rosny Park 7018**Kingston**Shop 28a, Channel
Court, Kingston
7050**Devonport**26 Rooke Street,
Devonport 7310**Burnie**27 Cattley Street,
Burnie 7320**Smithton**18 King Street,
Smithton 7330