

Restriction of Publication of Part Claimed.

- 2.13.b.i
- Schedule 1
- Schedule 2 (\$ only)
- Schedule 3 (\$ only)

Tuesday 28 May 2024

Commissioner's Summary

St Lukes (**Applicant**) is a Tasmania-based, not-for-profit, private health insurer which for over 70 years has focussed on its predominately Tasmanian membership. St Lukes has a vision to make Tasmania the healthiest island on the planet.

Oral health in Tasmania is in a dire situation. This is evidenced by:

- 14000 Tasmanians waiting for public services including dentures, extractions, and major dental work.
- Dental conditions representing the most common category of preventable hospitalisations (12.5%)¹
- The Tasmanian health report identifying that:
 - 25% of people aged 25–34 years rated their oral health as fair to poor;
 - 38% brushed their teeth only once a day or not at all; and
 - 62% avoided dental care because of the costs involved.

Despite, and contributing to, the poor oral health scenario in Tasmania, Tasmanians experience the among the highest fees for service in Australia². In contrast, Tasmania has Australia's lowest median personal and household incomes. As noted above, cost is a known barrier to accessing timely oral health care.

St Lukes seeks to positively impact accessibility and affordability of oral health care in Tasmania. It seeks Authorisation to establish **St Lukes Gap Free Network**; a network of dental participants with whom it enters into standard form agreement to deliver specific services at a Maximum Chargeable Fee.

In developing its Network, St Lukes seeks to deliver clarity and reduction of out-of-pocket expenses for its members, hereby encouraging routine preventative care. It will ensure the clinical autonomy of **Participating Dental Partner Providers** is maintained, while promoting their participation to Members. Finally, through increased preventative care, it seeks to reduce the long-term poor health outcomes associated with poor oral health, for both the Tasmanian population and health care system.

¹ Australian Dental Association Tasmanian Branch [[ohf.1.5 adatb ohf sub 20210217 0.pdf](#) ([health.tas.gov.au](#))] – Accessed 11/04/24.

² Dental Fees Survey Private Practice Members [[Dental Fees Survey \(ada.org.au\)](#)] – Accessed 11/04/24

Authorisation (Non-Merger) Application

Application for authorisation section 88(1), Competition and Consumer Act 2010 (Cth) (CCA)

1. Parties to the proposed conduct

1A Applicant

- 1.1 The applicant is St. Luke's Medical and Hospital Benefits Association ACN 009 479 618 (**Applicant**).
- 1.2 The Applicant's details are set out in Schedule 1 of this Authorisation (Non Merger) Application (**Application**).
- 1.3 The Applicant is a Tasmanian not-for-profit health insurer, offering private health insurance products across Australia, by which it pays benefits towards hospital, medical and general treatment services of its Members. The Applicant offers private health insurance products to persons eligible to hold health insurance across Australia. Individuals holding such cover will be members of the health insurance fund (**Members**). Customers of the Applicant make up approximately 26.7% of the Tasmanian privately insured population across both the Hospital and Extras market.
- 1.4 The Applicant is structured as an Australian public company operating as a not-for-profit health insurer. Under this structure, the Applicant is operated solely for the benefit of its Members.
- 1.5 In addition to providing private health insurance products across Australia, the Applicant intends to open dental practices between 2024 and 2026, commencing with practices in Cimitiere Street Launceston, Tasmania 7250 and Shoreline Drive Howrah, Tasmania 7018. The Applicant's intention is that its dental practices will be open to both Members and the general public at large, with no requirement that a dental patient hold private health insurance with the Applicant, or at all (these proposed dental practices are referred to hereafter as **Applicant Dental Practices**). There are no Applicant Dental Practices open as at the date of this Application.
- 1.6 The dental services to be offered by the Applicant at the Applicant Dental Practices are intended to be provided by General Dentists, Dental Hygienists and Oral Health Therapists and will include preventative, diagnostic and restorative services.
- 1.7 In addition to the Applicant Dental Practices, the Applicant proposes to establish a dental partner program with participating third party dental providers (described as dental partners), in Tasmania who have agreed to the St Lukes Terms and Conditions (**Conditions**) for that program (referred to hereafter as the **St Lukes Gap Free Network**) – including:
 - a. meeting and continuing to meet the recognition requirements in the Conditions in order to be registered;
 - b. maintaining registration in the St Lukes Gap Free Network; and

- c. only charging St Lukes members at or below a Maximum Chargeable Fee for the performance of each dental service as prescribed by the applicable item number for that service (**Item Number**) in the attached Schedule of Fees with the heading Schedule 3 Fees as varied by the Australian Dental Association,
- 1.8 The fees in Schedule 3 are the maximum fee chargeable by a Participating Dental Partner Provider for the particular type of dental service which the referable Item Number covers, including any lab fees, booking fees, prosthetic hardware and any other fees including any GST payable. The purpose of establishing these fixed fees is so that the Applicant may then inform its Member what the Member's out of pocket expenses, if any, will be for the performance of any particular service by the Participating Dental Partner Provider, prior to the performance of the service. This is intended to provide certainty for Members about whether any out of pocket expenses will be payable, including the amount of those expenses.
- 1.9 A Participating Dental Partner Provider agrees to charge St Lukes members at or below the Maximum Fee for each of the dental services in Schedule 3 Fees of this Application (as per St Lukes Gap Free Network Terms and Conditions; Clause 5 'Charging and Claiming', see Annexure A). The **Maximum Chargeable Fee** being the full fee for services provided, including any laboratory fees, booking fees, prosthetic hardware or any other fees and includes any GST payable. The Applicant has the right to audit Participating Dental Partner Providers as per the St Lukes General Treatment Service Provider Terms and Conditions.
- 1.10 The intention of the Applicant in establishing the St Lukes Gap Free Network is to:
 - a. improve the oral health of Members by facilitating timely access to affordable, quality dental services and encouraging uptake of preventative dental services;
 - b. improve Members' experience, by maintaining the value of membership for Members and dental patients, reducing out of pocket expenses for Members on dental services by use of the applicable Item Number and Maximum Fee in the Schedule 3 of Fees for that dental service and securing price certainty; and
 - c. the Applicant attracting new Members by highlighting the value of the known gap fee for preventative dental services across a participating dental partner provider network prior to the performance of that dental service, as is already known to the Australian public in other health services for which insurance is common, such as optometry.
- 1.11 The implementation of the St Lukes Gap Free Network is intended to improve dental patients' experience, in particular by providing greater certainty on the patient's maximum out of pocket costs for the applicable dental item.
- 1.12 The proposed St Lukes Gap Free Network was developed in response to research carried out by the Applicant into the current state of oral health in Tasmania, including speaking with industry experts and consultants with many years of relevant experience providing services to other private health insurers.
- 1.13 The dental services covered by the St Lukes Gap Free Network are the services with an Item Number included in Schedule 3 which is to be updated annually on 1 April each year (as per St Lukes Gap Free Network Terms and Conditions; Clause 6 'Updating the

schedule of fees', see Annexure B). That schedule listing the Maximum Fee chargeable by a Participating Dental Partner Provider for the applicable Item Number at the time of performing that service. A copy of the proposed Schedule of Fees is attached to this Application described as Schedule 3 Fees.

- 1.14 All dental services not listed in the Schedule 3 Fees, at the time of performance cannot be guaranteed as gap free by the Applicant. The Applicant will pay benefit towards this service in line with the benefit schedule of the Member's Extras product.
- 1.15 Benefits paid by the Applicant to a Member for dental services listed in the Schedule 3 Fees do not differentiate between services performed by a Participating Dental Partner Provider and any other qualified dental provider providing the same types of dental services to a Member. The only difference is that the Applicant can guarantee to a Member what their out of pocket expenses, if any, will be for the performance of the dental services by a Participating Dental Partner Provider, but not for any other dental services provider.
- 1.16 The Applicant's expectation is that there will be a reduction in out of pocket costs for some dental patients who receive Gap-Free Preventative Dental Services on select Applicant Extras products for that type of dental service performed by a Participating Dental Partner Provider including on restorative services, if prior to implementation of the Applicant's Participating Dental Partner network, that particular Participating Dental Partner Provider would have charged a gap fee on those preventative dental services.

1B. Other parties

- 1.17 The Applicant also makes this application on behalf of qualified individual dental practitioners who are registered by the Australian Health Practitioner Authority (AHPRA) as a dental practitioner, with no conditions or registration requirements on their AHPRA registration (**Qualifying Dental Practitioner**), and who, if Authorisation is granted for this Application, will enter into an individual agreement with the Applicant to form part of the St Lukes Gap Free Network (each a **Participating Dental Partner Provider**)³.
- 1.18 It is the Applicant's intention that it will build a greater working relationship with a participating network of dental partner providers to achieve the shared goal of improving the oral health outcomes for more Members through timely access to affordable, quality dental services with known estimated out of pocket expenses.
- 1.19 As set out above, the Applicant proposes to enter into agreements with Participating Dental Partner Providers each of whom is a Qualifying Dental Practitioner, which agreements have provisions that make their operation subject to receiving authorisation for the proposed conduct. At the date of submitting this application, the Applicant has not entered into any Participating Dental Partner Provider agreements.
- 1.20 A list of Participating Dental Partner Providers in the St Lukes Gap Free Network will be prepared and revised as dental providers agree to become part of the Applicant Participating Dental Partner Providers Network.

³ 'Participating Dental Partner Provider' means a participating provider in the St Lukes Gap Free Network, who has entered into an individual agreement with St Lukes as per the Terms and Conditions of the St Lukes Gap Free Network.

2. The conduct proposed to be authorised

- 2.1 The Applicant is seeking authorisation to enter into and give effect to certain pricing arrangement provisions in agreements with Participating Dental Partner Providers via the St Lukes Gap Free Network; specifically Clause 5 of the St Lukes Gap Free Network Terms & Conditions (**the Proposed Conduct**). These clauses are replicated at Annexure A.
- 2.2 By the St Lukes Gap Free Network, the Applicant proposes to enter into standard form agreements with participating dental partner providers to establish a network of dental participants which:
- a. have been issued with a provider ID from the Department of Health and Aged Care (**DOHAC**);
 - b. uphold minimum standards of dental practice to meet the requirements of the Dental Board of Australia;
 - c. are located geographically in Tasmania;
 - d. are promoted to Members; and
 - e. bear signage with the Applicant's branding promoting the St Lukes Gap Free Network (but each Participating Dental Partner Provider remains trading under its own brand).
- 2.3 Those agreements will also contain provisions which make the operation of those agreements contingent upon the ACCC's authorisation, and are of no effect unless and until that authorisation is granted. Those provisions would require the participating dental partner providers to comply with the Conditions at the relevant time and include:
- a. adhering to Maximum Chargeable fees for the services covered, which are only those services listed in the Schedule 3 Fees at the time of performance of the relevant dental service, using the applicable Item Number (as per St Lukes Gap Free Network Terms and Conditions; Clause 5 'Charging and Claiming'); and
 - b. the benefits paid by the Applicant to the relevant Member for performed dental services listed in Schedule 3 and which are the same whether performed by a Participating Dental Partner Provider or other dental practitioner.
- 2.4 The operation of the St Lukes Gap Free Network will allow Members to receive:
- a. No-gap or known-gap experience for Services included in Schedule 3. By delivering certainty on the Maximum Chargeable Fee payable for Services in the Schedule 3 Fees, which is the maximum fee for each of the services provided, including any lab fees, booking fees, prosthetic hardware and any other fees and including any GST payable, the Applicant can inform its Member of any gap fee payable prior to treatment.
 - b. the Gap Free Preventative Dental Services guarantee on select Applicant Extra products in the St Lukes Gap Free Network for select Applicant products at the relevant time. The Gap Free Preventative Dental Services (at the date of this

Application) are set out in the annexed Schedule 2 Gap Free Preventative Dental Services; and

- c. an improved relationship between the Applicant and dental providers working together to improve oral health outcomes for its Members.
- 2.5 Item Numbers included in Schedule 2, delivered by a Participating Dental Partner Provider to a Member will be delivered Gap Free. Of the over three hundred (300) Item Numbers in the Australian Schedule of Dental Services and Glossary, eight (8) Items are included in Schedule 2 and were selected to enhance the promotion of preventative dental care by the Applicant to its Members.
 - 2.6 The Gap Free Preventative Dental Services are a small subset of all dental services offered by dental practitioners. All dental services with Item Numbers not listed in Schedule 2, are not part of the St Lukes Gap Free Network.
 - 2.7 The Applicant may vary the categories of Gap Free Preventative Dental Services on select St Lukes products and dental services in the Item Number list in the Schedule 2 of Maximum Fees to which this condition 2 applies, on no less than sixty days written notice to Participating Dental Partner Providers prior to 1 April in each calendar year. This will allow Members to receive the Gap Free Preventative Dental Services across its membership on a known cost basis at the relevant time, and will also allow the Participating Dental Partner Provider time to continue or withdraw their involvement in the Dental Partner Program.
 - 2.8 The Applicant seeks to be able to make adjustments to the Gap Free Preventative Dental Services over time to include additional, or substitute, routine dental service items as the St Lukes Gap Free Network evolves, or in order to reflect any relevant changes made to the Australian Dental Association Items Glossary or clinical practice. The Applicant proposes that the relevant contractual arrangements would allow the Gap Free Preventative Dental Services and applicable fees to be revised from 1 April each year, but no more frequently.
 - 2.9 A key goal of the Applicant in providing its Gap Free Preventative Dental Services is improving access for its Members to dental services, especially in regional areas. The Applicant is eager to ensure that Gap Free Preventative Dental Services are provided in a manner which is sustainable for its Participating Dental Partner Providers. Pricing for Gap Free Preventative Dental Services are not to exceed the Maximum Fee for the particular Service Number at the relevant time.
 - 2.10 Participating Dental Partner Providers will at all times retain clinical autonomy and may at any time agree with their patients, who have provided their prior informed financial and medical consent, to perform additional dental services which are not included in the St Lukes Gap Free Network. Those dental services are any of the services which do not have an Item Number in either Schedule 2 or Schedule 3 of this Application. If the Participating Dental Partner Provider is unable to meet any of the requirements of the St Lukes Gap Free Network, the Applicant will consider the removal of that Dentist from the St Lukes Gap Free Network.
 - 2.11 The Applicant will use its own internal mechanisms to comprehensively monitor and report on the utilisation of dental services by its Members and the billing practices of Participating Dental Partner Providers. This will include where a Participating Dental

Partner Provider has exceeded the amount set for a Gap Free Service or agreed in the Participating Dental Partner Provider's Usual Fee Schedule.

- 2.12 Should a Participating Dental Partner Provider seek to charge a Member above the Gap Free Service amount for a Gap Free Service, the Applicant has the contractual ability to require that Participating Dental Partner Provider to provide relevant information to support each exception. The Applicant intends to exercise this right, and will then review provided information to ensure that the higher cost charged to the Member was an unexpected cost. The Applicant can terminate its agreement with a Participating Dental Partner Provider where that Participating Dental Partner Provider has not acted in accordance with these requirements.
- 2.13 The Applicant's current model provides:
- a. under each health insurance policy offered by the Applicant, that each item number has a set maximum amount that the Applicant will pay towards that service. This is based on the cost that the Applicant has determined is the maximum payable while ensuring the sustainability of the St Lukes health insurance fund. It is currently common for a provider to charge above the amount it receives from the Applicant, in which case the patient is charged the surplus amount as a 'gap';
 - b. for the Applicant's own intended dental practices to be opened between 2024 and 2026, commencing with practices in Cimitiere St Launceston, Tasmania 7250 and Shoreline Dr Howrah, Tasmania 7018 (**Applicant Practice**)⁴, enabling the Applicant to commence providing dental services from those practices.
 - i. Applicant Practices will be of a scale to reduce access challenges to dental care in Tasmania without causing disruption to existing dental practices in the Tasmanian market. [REDACTED] For comparison, in 2020 there was 45.8 dentists and 11.8 oral health practitioners per 100,000 population in Tasmania⁵. [REDACTED]
 - ii. Howrah will be the location of the Applicant's Hobart-region Applicant Practice. Howrah and the 'Eastern Shore' has lower density of dental practices than the Hobart CBD and surrounds. This location has been strategically selected to promote greater access to services, and limit excessive disruption to existing providers.
 - c. that Members with extras cover are able to access, and make associated claims against their policy's annual entitlements with respect to dental services from

⁴ Content pertaining to Applicant Practices is included in this Application for the purpose of identifying that services delivered by providers in Applicant Practices are treated equally to Participating Dental Partner Providers for the purpose of benefits paid, maximum allowable fees charged and adherence to Terms and Conditions. The Applicant does not seek authorisation for the establishment of its Applicant Practices.

⁵ Australian Institute of Health and Wellbeing [<https://www.aihw.gov.au/reports/dental-oral-health/oral-health-and-dental-care-in-australia/data>] Accessed – 26/04/2024

accredited private dental practices, an Applicant Practice, or from the Participating Dental Partner Provider's Practice;

- d. that if a Member receives services from the Applicant Practice or a Participating Dental Partner Provider's Practice, depending on the services provided and the Member's level of cover and annual limits in their extras policy, the Gap Free Preventative Dental Services set out in Schedule 2 will be provided on a fixed price (and therefore on a 'no-gap' or 'known-gap') basis.
- e. that non-members with a health insurance policy with another health insurance provider are not guaranteed to receive the same dental services on that same 'no-gap' or 'known-gap' basis. However, non-members (including non-members who do not hold any health insurance policy) can still access dental services at the Applicant Practice or by a Participating Dental Partner Provider's dental practice;
- f. that where a Member is attending a private dental practice, the Member may be required to make a payment to cover the gap between what the dentist has charged for the dental services and what the Applicant's extras policy has covered, meaning the member is required to pay out of pocket costs for the dental services.

2.14 The Applicant's proposed model for the St Lukes Gap Free Network, if authorised:

- a. will allow Members who cannot access an Applicant Practice to benefit from being able to access gap-free preventative dental services on select Applicant Extra Products from Participating Dental Partner Providers in the Applicant's Gap Free Network
- b. will allow the Applicant to ensure that Members who are not within a reasonable distance of an Applicant Practice can access the range of preventative dental services included in the St Lukes Gap Free Network without paying a gap;
- c. would give Members confidence that the Applicant has oversight over the standards applied in the Participating Dental Partner Provider's Practice through contractual arrangements;
- d. will see Participating Dental Partner Providers charge the Members at or below the maximum fees for each of the Gap Free Preventative Dental Services, on Applicant Extra Products set by the Applicant;
- e. is intended to provide certainty for Members regarding the amount of any out of pocket expenses they will need to pay, if any, for restorative services. The St Lukes Gap Free Network does not propose to otherwise set the fees for other dental services; instead the aim of the St Lukes Gap Free Network is to provide certainty on the amount of out-of-pocket costs for Members. In some cases out-of-pockets will reduce for Members, but in other cases they may already be being charged fees consistent with the Schedule 3 of Maximum fees, meaning they will not receive any additional reduction in costs;
- f. has as a key purpose the objective of which is to ensure that Members have local access to affordable dental services, with the location of Participating

Dental Partner Providers being of considerable importance to the Applicant. Participating Dental Partner Providers will accordingly be appointed on a site by site basis. The Applicant will not require all dental practices owned by one group to be part of the St Lukes Dental Partners Program. Individual dentists operating across multiple dental practices may elect to only participate in the St Lukes Gap Free Network at one or a limited number of their relevant locations; and

- g. will provide that if a Participating Dental Partner Provider no longer wants to participate in the St Lukes Gap Free Network, the Participating Dental Partner Provider may terminate its agreement with St. Lukes in relation to the St Lukes Gap Free Network without cause by providing at least 60 days' notice. This allows withdrawal from the St Lukes Dental Partners Program if the terms are not considered appropriate for the Participating Dental Partner Provider's practice.

3. The risk of contravention, and rationale for conduct proposed to be authorised

- 3.1 The Applicant has identified that there may be a potential risk that the Participating Dental Partner Providers' practices could be considered to be in competition with existing Applicant Dental Practice(s) at some relevant time.
- 3.2 The conduct proposed by the Applicant implementing the St Lukes Gap Free Network could therefore constitute an agreement between (arguable) competitors, and in that way possibly constitute a contravention of Part IV Division 1 of the CCA.
- 3.3 There may also be a limited risk that the conduct, if not authorised, would be capable of contravening section 45 of the CCA, if it can be considered to constitute an arrangement that has the effect of substantially lessening competition.
- 3.4 There are several motivations for the Applicant to instigate the St Lukes Gap Free Network which, it is submitted, counteract these arguable statutory transgressions.
- 3.5 The Applicant is a not-for-profit entity. Its primary motivation in all activities is to provide beneficial health outcomes for its Members and also providing dental services for Members and non-members in Applicant Dental Practices. The Applicant believes that the St Lukes Gap Free Network incorporating the Gap Free Preventative Dental Services is likely to provide several benefits to Members, including:
 - a. encouraging Members to proactively seek out preventative dental services, which should hopefully lead to positive health outcomes and minimise the need for reactive dental services to address more serious issues in the future;
 - b. providing Members with more certainty about the amounts they will pay for routine dental services in a greater range of geographic locations in accordance with Schedule 3;
 - c. ensuring that quality dental services are available to Members at affordable rates in a greater range of geographic locations;
 - d. providing Members with greater value from their health insurance policies.

- 3.6 The Applicant also intends, by establishing its own Applicant Dental Practices in Tasmania, to positively impact the current lack of access to public dental services, with benefits to the healthcare system in Tasmania and consequently the Tasmanian community.
- 3.7 The Applicant also seeks to instigate the St Lukes Gap Free Network to bring pricing confidence to Members by the certainty of the Maximum Chargeable Fee for the Services in Schedule 3, which provide a competitive offering in the Tasmanian health insurance market, in line with similar programs which are offered by other funds.

4. Authorisation Term

- 4.1 Authorisation is sought for a period of ten years from the date of the ACCC's final determination.
- 4.2 The Applicant requests ten years so as to allow the applicant to build the Participating Dental Partner Providers Network over time. This will allow the Applicant to ensure that it is engaging with appropriate dental providers and building a thoughtful and effective dental partner network.
- 4.3 The Applicant acknowledges that section 91B of the CCA permits the ACCC to revoke any authorisation in the event of a material change in circumstances and will advise the ACCC if such a circumstance arises.

5. Interim authorisation

- 5.1 The Applicant seeks an interim authorisation within six weeks of lodgement to allow it to commence entering into agreements⁶ with potential dental providers. Interim approval would allow the Applicant to commence engaging with potential Participating Dental Partner Providers, ensuring it can commence offering Gap Free service guarantees to its Members immediately upon final authorisation being granted.
- 5.2 The Applicant has identified that there is a need to encourage Members and prospective Members to access regular preventative dental care. In particular, the Applicant has identified that poor oral health is a significant precursor to chronic diseases and is a key health challenge for Tasmania.
- 5.3 Cost is a known barrier to accessing dental services. The Applicant contends that it is important to allow Participating Dental Partner Providers to guarantee Gap Free Preventative Dental Services to improve price certainty and promote essential dental services across the Tasmanian community.
- 5.4 The Applicant also considers that there is limited risk in granting interim authorisation, as the Applicant's model;
- a. will not be in effect until final authorisation is granted, therefore no impact to competition in the Tasmanian market.
 - b. has already been adopted by other health insurance providers. In particular, the health insurance funds Health Partners and HCF have received authorisation for

⁶ Agreements would not give effect until final authorisation is granted.

similar conduct. Bupa (28.75%) Tasmanian private health market share – See Annexure D) and Medibank (24.95%) presently operate preferred dental provider schemes and have similar market share in Tasmania to St Lukes (25.28%).

- c. delivers like benefits for Participating Dental Partner Providers and providers who choose not to participate in the Network.
- 5.5 The Applicant submits that the same considerations set out in this Application in support of final authorisation apply in relation to its request for interim authorisation, and requests that the ACCC grant interim and final authorisation under section 88(1) of the CCA in respect of the proposed conduct described in this Application.
- 5.6 The Applicant also notes that if, during the interim authorisation period, the ACCC identifies concerns about the proposed conduct, it may review and revoke its interim authorisation at any time.
- 5.7 Further, interim authorisation will not give rise to permanent changes which would prevent the market returning to its pre-authorisation state if final authorisation is ultimately not granted.

6. Persons directly affected by the proposed conduct

- 6.1 The Applicant, Participating Dental Partner Providers and Members will be directly affected by the proposed conduct.
- 6.2 Other dental providers and other health insurance providers may be indirectly affected insofar as the outcome of the proposed conduct, if authorised, may affect how individuals select their health insurance provider and/or dental practice.
- 6.3 Although the impact of the proposed conduct will potentially affect the broader market and consumers generally, any such effect would be minimal and the proposed conduct the subject of this Application will not materially change the markets in which the Applicant operates and will be further mitigated by the Applicant's proposed conduct ensuring there is no difference in benefits paid by the Applicant to the Dental Provider whether the Dental Provider is a Participating Dental Partner Provider or not.

7. Market information

- 7.1 In respect of this Authorisation, the Applicant operates in two distinct markets, being:
- a. the private health insurance market; and
 - b. the dental services market⁷.
- 7.2 As well as operating distinctly in both markets, the Applicant has an existing role which effectively straddles both markets, as a source of payment to dental service providers

⁷ In this context, and as set out above, dental services means dental services offered by dentists and does not extend to orthodontic or surgical procedures which are undertaken outside of a general dental practice.

for services rendered to the Members, either directly or by way of a subsidy paid to a Member.

- 7.3 Geographically, the Applicant has a significant role in the health insurance market in Tasmania, but not other Australian states, with over 85% of its Members located within that State.
- 7.4 The Applicant's role in the dental services market is currently not significant. The Applicant is developing dental practices with plans to open dental practices in several locations in Tasmania during the period 2024 through to 31 December 2026. The Applicant's intention is that each dental practice will be open to both Applicant members and the general public.
- 7.5 The Applicant is accordingly:
- a. in competition with other health insurers; and
 - b. both:
 - i. a source of revenue for dental practices across Australia, with those dental practices predominantly based in Tasmania; and
 - ii. in competition with private dental practices which operate in Tasmanian suburbs that are in close proximity to the Applicant Dental Practices (once established).
- 7.6 An overview of the Applicant's position in the health insurance market is set out in Annexure B and relevant information including details of its market share in Tasmania is set out in Annexure C.
- 7.7 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 are discussed below:
- a. Existing competitors:
 - i. The Applicant already competes with other health insurance providers in Tasmania. In this respect, the St Lukes Gap Free Network providing Gap Free Preventative Dental Services will form a key part of ensuring that the Applicant remains highly competitive with those other providers, and potentially spur additional competition in this market.
 - ii. Agreements with Participating Dental Partner Providers are not proposed to be exclusive, so the Applicant does not consider that the St Lukes Gap Free Network would limit the ability of other health insurers to offer competitive arrangements potentially even with the very same dental practices.
 - iii. The Applicant Dental Practices will compete with other dental practices in Tasmania. The Applicant Dental Practice in Launceston is at the Applicant's premises at Cimitiere Street and the planned dental practices to be opened by the Applicant during the 2024 – 2026 period will be opened in several locations in Tasmania. The Applicant's intention is these dental practices will be open to Members and the general public.

- iv. To the extent that Tasmanian dentists can be considered to be competitors of the Applicant Practice, the Applicant does not believe that the Gap Free Preventative Dental Services offered as part of the St Lukes Gap Free Network is likely to have a significant detrimental impact on competition as between Tasmanian dentists.
- b. Likely entry by new competitors:
 - i. While they are significantly different markets to each other, the Australian markets for both health insurance providers and dental practices are already highly competitive, with numerous participants in each.
 - ii. The two markets (type of competitors) identified in 7.7a and 7.7b of this Application are both markets which have certain inherent barriers to entry:
 - A. in order to operate effectively as a health insurer, there are a range of regulatory requirements, as well as a degree of scale needed in order to be viable, and systems and processes to integrate with hospitals and other health service providers;
 - B. in order to operate a dental practice, a provider must have completed specific tertiary education, and hold appropriate accreditations.
 - C. the dynamics of those two markets demonstrate that those requirements have not prevented and do not prevent new entrants. In any event, the St Lukes Gap Free Network will not have an impact on the entry of new competitors into either market.
 - D. in the dental market, a new operator choosing to participate in the St Lukes Gap Free Network may be in a position to more quickly establish itself as a viable business, as an attractive proposition to the Members.
- c. Any countervailing power of customers and/or suppliers:
 - i. While there is a disparity of size as between the Applicant and individual dental practices, the Applicant seeks to ensure that this is not manifested as an imbalance of power in respect of the St Lukes Gap Free Network by:
 - A. making participation in the St Lukes Gap Free Network entirely optional;
 - B. having agreements with each individual Participating Dental Partner Provider; and
 - C. allowing Participating Dental Partner Providers to terminate without cause by providing sixty days written notice to the Applicant.
 - d. The proposed arrangements will assist the Applicant to remain competitive in the Tasmanian health insurance market.

8. Public Benefits

- 8.1 The proposed conduct is likely to result in public benefit by providing Members with greater access to 'Gap Free' preventative dental services, and hence at lower cost to those consumers. By providing consumers with more certainty around the price of preventative dental services, the consumer is more likely to make more frequent visits to

the dentist, and address issues sooner, hopefully avoiding later need for more costly reactive dental services.

- 8.2 In Australia, the majority of dental services are delivered privately. Public dental care is only available to a limited segment of the Australian population. Adults must generally have a healthcare card or Centrelink pensioner concession card to be eligible.
- 8.3 Many Australians rely on their private health insurance to cover some or all of the cost of dental services. In 2020-21 \$11.1 billion was spent on dental services in Australia, with consumers contributing around \$6.5 billion (59%) of that cost, and private health insurers contributing approx. \$2.2 billion (20%)⁸.
- 8.4 The National Study of Adult Oral Health 2017-18 reports:
- a. thirty nine percent (39%) of people aged over 15 years delay visiting a dentist due to cost, and 23% of people aged over 15 years who visited a dentist reported cost prevented the recommended dental treatment being performed; and thirty nine percent (39%) (39%) of people aged over 15 years delay visiting a dentist due to cost, and 23% of people aged over 15 years who visited a dentist reported cost prevented the recommended dental treatment being performed; and
 - b. thirty six percent (36%) of dental consultations for persons aged over 5 years were in response to a dental problem (as opposed to a scheduled check-up). This rate rises to 47% for uninsured people compared to privately insured people, and 41% for people living outside major cities compared to their metropolitan counterparts.
- 8.5 Even with private health insurance, consumers may still be required to make an out-of-pocket payment. The same AIHW publication notes that in 2017-18, around 76% of adults aged 18 years and over reported that their dental expenses were partially covered by insurance, and partially paid directly by the patient.
- 8.6 The Gap Free Preventative Dental Services will provide price certainty for consumers, so that Members know that their routine dental visit will have no out of pocket expenses, or predictably certain, out of pocket costs. By providing this certainty, it is likely that Members will be encouraged to increase the frequency of routine dental visits.
- 8.7 Routine dental visits are important for Members as they assist in both preventing dental conditions in the future and identifying any existing dental conditions early. These measures will then reduce the frequency and severity of major dental issues in the future.
- 8.8 The importance of routine dental care was heightened during the COVID-19 global pandemic. Access to health services, such as dental, was significantly limited during the COVID-19 pandemic due to public health safety measures put in place and concerns about 'social distancing'. It is therefore important to continue to encourage Members to return to receiving routine dental care. The Applicant only recently identified the

⁸ Australian Institute of Health and Wellbeing (2024) [[Oral health and dental care in Australia, Costs - Australian Institute of Health and Welfare \(aihw.gov.au\)](#)] Accessed 01/05/2024

volume of dental services performed in Tasmania was returning to pre-COVID volumes in Tasmania.

- 8.9 The Applicant's initial campaign to drive access to preventative dental services, which was launched over five years ago, identified a sharp increase in preventative dental services uptake coinciding with a substantial decrease in major dental services. This outcome confirms the importance of encouraging Members to return to having routine dental care.
- 8.10 Over the longer term, the Applicant expects that its measures will result in a reduction in the need for surgical and major restorative dental procedures. This ultimately benefits consumers by reducing their out of pocket costs for dental procedures which could have been avoided with adequate earlier dental care.
- 8.11 Given that other health insurance providers already offer similar benefits, the St Lukes Gap Free Network also permits the Applicant to remain competitive within the broader national private health insurance industry. This competition then encourages the consumers to take up private health insurance, as they can see how the insurance will benefit them. Ultimately, this provides a public benefit to healthcare systems by encouraging the utilisation of private medical services (including outside of dental services).
- 8.12 The competitive dynamics of the relevant markets (being the health insurance provider market and the dental services market) will not significantly change as a result of whether St Lukes Gap Free Network's Gap Free Preventative Dental Services are introduced and whether authorisation (interim or otherwise) is granted.
- 8.13 The public benefits which will or are likely to arise from the proposed conduct include:
- a. Increased choice for Members
 - i. The proposed conduct provides consumers with greater choice of dental service providers. In particular, consumers may be more inclined to visit a new dental practice where they are able to receive price certainty on certain services.
 - ii. Members remain free to choose whether to obtain known-gap dental services from a Participating Dental Partner Provider, Applicant Dental Practice or to continue to claim their health insurance benefits with any other dental provider.
 - b. Supporting dental clinical best practice
 - i. The Applicant could potentially adopt a different model to achieve similar benefits resulting from the proposed conduct. However, the operational model which has been proposed is preferred by the Applicant as it gives the Applicant the greatest opportunity to promote positive outcomes for Members and the Participating Dental Partner Provider Practices.
 - ii. The Applicant will only have control over the services provided in an Applicant Dental Practice. This control will allow the Applicant to monitor and regulate dental services at an Applicant Dental Practice, and to provide better support and services to staff and members.

- iii. The Applicant will provide reports to Participating Dental Partner Providers regarding their services delivery and billing to St Lukes Members to enable the Participating Dental Partner Provider to make comparison with their peers in terms of services and billing (**Dental Services Utilisation and Servicing Metrics Report**).

- c. Health related benefits

Good oral health is fundamental to overall health and wellbeing. Poor oral health compromises a person's general quality of life and the ability to eat, speak and socialise, and is linked to diabetes, heart disease, and stroke.

- d. Increased business for dental practices

- i. The proposed conduct will assist Participating Dental Provider Practices to attract or retain patients by advertising that they have lower out of pocket costs on the basis of the known gap arrangement with the Applicant. The Applicant's expectation is that this will assist with the viability of dental practices in all regions of Tasmania, which are the focus of the St Lukes Gap Free Network.
- ii. Further, competition is encouraged between dental providers in the same area. Competition between dental providers may lead to non-monetary improvements, such as improving the consumer's experience.
- iii. Dentists however remain free to choose whether or not to participate in the St Lukes Gap Free Network.
- iv. Dentists employed at a Participating Dental Partner Provider's Practice remain free to also work at other practices, and they are not obligated to participate in the St Lukes Gap Free Network when working in these practices.

- e. Increased competition between health insurance providers

The proposed conduct assists the Applicant to remain competitive in the private health insurance market. Competitive dental providers have their own arrangements with dentists which reduce or cap fees. The Applicant will be in a stronger position and better able to compete more vigorously under the proposed conduct. This is likely to result in cost savings and more advantageous terms for consumers of dental services in Tasmania.

9. Public Detriment

9.1 The Applicant submits that the Proposed Conduct is not likely to result in public detriment. The Applicant will continue to face the following competitive market pressures.

- a. Pressure from other Health Insurance providers

- i. As set out at section 7, Market Information competitive health insurance providers already have similar initiatives which either cap certain dental services or otherwise limit the amount payable by dental customers. This includes engaging with various dental practices.

- ii. The Applicant will not require that Participating Dental Partner Provider's are limited to only participating in the Applicant's St Lukes Gap Free Network. Participating Dentists will be able to engage with other health insurance providers to also participate in other similar programs.
- iii. Further, the proposed conduct will also ensure that the Applicant is able to remain competitive against other health insurance providers offering similar programs.

b. Competition from other dental practices

The Applicant's health insurance market share for both Hospital and Extras market in Tasmania is currently approximately 27% but the Applicant is projected to be the largest health insurer by market share in Tasmania by 2025. The combination of Participating Dental Partners Provider's dentists being able to enter into agreements with other health insurance providers and other dentists in the market will ensure there are still competitive pressures.

c. Standards of care

- i. Other dental practices already face pressures to provide low cost services. This may be from a combination of increased choice of dental providers in their area, similar initiatives offered by competitive health insurance providers and promotional offers offered by competitive dental practices to attract or retain patients.

The Applicant accordingly does not consider that the Maximum Fee for certain dental pricing guarantee to only charge at or below the Maximum Fee on the dental services in Schedule 3 will reduce standards of care. Instead, the Applicant believes that members' knowledge of the fee for those Gap Free Dental Services and Schedule 3 Fees that will be charged and any out of pocket expenses that may be payable prior to performance of those dental services will increase the uptake of preventative services and standards of care overall. In addition, and as explained above, fixed fee pricing is applicable across routine services with predictable cost inputs, and the Applicant's fees are intended to be reflective of the broader market. Participating Dental Partner Providers also remain subject to their usual professional and legislative requirements.

- ii. Agreements with Participating Dental Partner Providers also include specific terms around the quality of care which must be provided, helping to ensure relevant standards continue to be met.
- iii. In addition, the clinical decision making and dental treatment plans for patients remain the sole responsibility of dental practitioners. The Applicant having no authority or involvement in the clinical decision making of any dental practitioners including Participating Dental Partner Providers for any of their patients including any Members.

9.2 The potential public detriment is also mitigated by:

- a. the proposed conduct being voluntary (noting that if authorisation is granted, no dental practice will be compelled to engage in the conduct); and
- b. the limited scope of the authorisation.

10. Contact details of relevant market participants

10.1 Other health insurers

- a. The following private health insurers have market shares in Tasmania that are comparable to or larger than the Applicant:
 - i. Bupa HI Pty Ltd
9/51 Murray Street
HOBART TAS 7000
 - ii. Medibank Private Limited
115 Collins Street
HOBART TAS 7000
- b. Private Healthcare Australia Limited is also a representative body for Australian health insurers, representing health funds (including the Applicant) which collectively represent 97% of people covered by private health insurance. The relevant contact in this respect would be:

Dr Rachel David
Chief Executive Officer
Private Healthcare Australia Limited

or

10.2 Dental practitioners

- a. While dental practitioners are plainly relevant market participants, it is likely to be impracticable for the ACCC to deal with practices individually.
- b. The Australian Dental Association is a not-for-profit professional membership organisation representing a large number of dental practitioners. Its Tasmanian branch is The Australian Dental Association. The relevant contact in this respect is:

Dr Fiona Tan
President (Tasmania Branch)
Australian Dental Association
- c. To the extent that the ACCC may wish to attempt to engage with individual dental practices, the Australian Dental Association website has a directory of its members at <https://www.ada.org.au/Find-a-Dentist>.

11. Confidentiality

- 11.1 The Applicant does not object to this Application or any of the annexures to it being made publicly available excepting those listed as "Restriction of Publication of Part Claimed" on page 1 of this document.
- 11.2 The Applicant has separately supplied the ACCC with a copy of the proposed Terms and Conditions for Participating Dental Partner Providers, and is requesting that these Terms and Conditions are kept confidential by the ACCC and are therefore not publicly

released. The Applicant is seeking the Terms and Conditions to remain confidential for the following reasons:

- a. The Terms and Conditions have been provided to assist the ACCC in understanding how the St Lukes Gap Free Network will practically work, and reflects the terms proposed to be entered into with Participating Dental Partner Provider.
- b. The details of the contractual mechanisms which are relevant to this Application have been described in the body of this Application. The detailed terms, as are set out in the St Lukes Gap Free Network, including the Item Number maximum chargeable fee for each of the Item Numbers, are commercial in confidence and would be highly prejudicial to the commercial interests of both the Applicant and Participating Dental Partner Providers if made publicly available.

12. Additional information

Schedule 1

Applicant Details

Name: St. Luke’s Medical and Hospital Benefits Association (“**St Lukes**”)

Registration: ACN 009 479 618
ABN: 81 479 618

Registered address: 17 The Quadrant Mall
LAUNCESTON TAS 7250

Contact person: [REDACTED] [REDACTED]
Postal address [REDACTED]
Telephone number [REDACTED]
E-mail address [REDACTED]

Schedule 2**Gap Free Preventative Dental Services**

Item Number	Description	Maximum Fee
D-011	Comprehensive oral exam	
D-012	Periodic oral exam	
D-022	Intraoral radiograph per exposure	
D-111	Removal of plaque and/or stain	
D-114	Removal of calculus - first visit	
D-115	Removal of calculus - subsequent visit	
D-121	Topical appln of remin one tmt	
D-161	Fissure sealing - per tooth	

Schedule 3 Maximum Chargeable Fees (No gap and known gap services)

Item Number	Description	Maximum Fee
D-011*	Comprehensive oral exam	
D-012*	Periodic oral exam	
D-022*	Intraoral radiograph per exposure	
D-072	Photographic records intraoral per app	
D-111*	Removal of plaque and/or stain	
D-114*	Removal of calculus - first visit	
D-115*	Removal of calculus - subsequent visit	
D-121*	Topical appln of remin one tmt	
D-151	Provision of a mouthguard - indirect	
D-161*	Fissure sealing - per tooth	
D-311	Removal of tooth or part thereof	
D-314	Sectional removal of a tooth	
D-511	Metallic restoration 1 surface direct	
D-512	Metallic restoration -2 surface direct	
D-513	Metallic restoration 3 surfaces direct	
D-514	Metallic restoration -4 surfaces direct	
D-515	Metallic restoration 5 surfaces direct	
D-521	Adhesive restoration 1 surface anterior	
D-522	Adhesive restoration 2 surf anterior	
D-523	Adhesive restoration 3 surf anterior	
D-524	Adhesive restoration 4 surfaces anterior	
D-525	Adhesive restoration 5 surfaces anterior	
D-531	Adhesive restoration 1 surface posterior	
D-532	Adhesive restoration 2 surfaces posterior	
D-533	Adhesive restoration 3 surfaces posterior	
D-534	Adhesive restoration 4 surfaces posterior	
D-535	Adhesive restoration 5 surfaces posterior	

* Denotes Item Number which is also included in Schedule 2 "Gap Free Preventative Services"

All other services in Schedule 3 attract a Maximum Chargeable Fee which is not equal to the maximum benefit for service, delivering a known-gap experience for members.

Annexure A

5. Charging and Claiming

- 5.1 A 'Participating Dental Partner Provider' agrees to ensure that Members are provided with appropriate information about the benefits, risks and costs of any proposed treatment service to enable the Member (or an appropriate person acting on behalf of the Member) to provide informed consent to undertake that service.
- 5.2 A 'Participating Dental Partner Provider' agrees to charge 'Members' at or below the maximum fee for each of the services contained within Schedule 1 of this document. The Maximum Chargeable Fee will be accepted as the full fee of services provided, including any lab fees, booking fees, prosthetic hardware or any other fees and includes any GST payable. Where higher costs are applicable to all instances of a service provided by an operator, those costs should be factored into the usual fee schedule and must not be used as the basis to charge increased amounts identified in 5.2. St Lukes will audit all instances of charging outside this agreement for item numbers listed in Schedule 1 of this document.
- 5.3 Where a 'Participating Dental Partner Provider' normal business practice 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.
- 5.4 St Lukes members will be responsible for any gaps between the maximum fee for service and any benefits that St Lukes pays in accordance with our members level of cover. 'Participating Dental Partner Provider' must have processes in place to ensure members can be provided with an estimate of their out-of-pocket payments (gap) prior to commencement of a procedure.
- 5.5 If a St Lukes member is charged above the maximum fee for service contained within Schedule 1, the 'Participating Dental Partner Provider' must arrange for a refund to the member within 5 working days of being informed.
- 5.6 'Participating Dental Partner Provider' must only charge members for services that have been provided to them and only charge for treatment after the completion of that treatment.
- 5.7 'Participating Dental Partner Provider' will endeavour to ensure that all transactions are completed by electronic means. We understand that from time to time that this is not possible, and 'Participating Dental Partner Provider' must ensure that services appear on a fully itemised account in accordance with St Lukes General Treatment Service Provider Terms and Conditions.
- 5.8 'Participating Dental Partner Provider' are required to provide, upon request, a copy of their usual fee schedule for St Lukes members. St Lukes will treat this document as commercial in confidence and will not provide this document to any third party. In the event that the 'Participating Dental Partner Provider' varies their usual fee schedule, the 'Participating Dental Partner Provider' must provide St Lukes with a copy of the revised usual fee schedule at least 60 days prior to the usual fee schedule taking affect.

Annexure B**6. Updating the schedule of fees**

6.1 Updating of Schedule 1, schedule of fees will be undertaken annually. St Lukes may also vary the services to which Schedule 1 contains during this update process. St Lukes will provide a minimum of 60 days' notice of varied fees prior to the 1st of April each year with the change to take effect on 01 April in line with the PHI rate review schedule.

Annexure C

Since 1952 St Lukes has been committed to private health insurance that offers genuine care for Tasmanians. That means being locally owned and not-for-profit, ensuring we answer to our members - not shareholders. And it means investing our efforts and our profits back into the community.

Over the years we've grown, merging with other like-minded health funds. In that time we've also become more hands-on, deepening our commitment to quality health care and helping members negotiate their life-long health journey.

We've invested in new processes, new products and new people. We're focusing on the things that will make a difference locally, and working with partners to create change through initiatives such as the St Lukes Gap Free Network.

With this desire to do more, we know one thing will never change – our commitment to our members. Seeing the person, not the policy number. Knowing that when we talk to them, it's often on the best and worst days of their lives. And always representing their best interests, ready to step in and help.

We're more than a health insurer. We're proudly Tasmanian, proud to have been founded in our island state, and proud to treat our members like they're our friends and family.

Annexure D

Private Health Market Share in Tasmania - at June 2023*

Health Fund	TAS Market Share - PHI Persons
BUPA	28.75%
St Lukes	25.28%
Medibank	24.95%
HCF	6.51%
NIB	3.46%

**Per APRA Statistics – 'Operations of private health insurers annual report data 2022-23'*

St Lukes is a not for profit health insurer supporting over 90,000 members nationally. With over 79,000 of these members being based in Tasmania, St Lukes is the second largest private health insurer in Tasmania with 25.28% market share as at 30 June 2023.

In the Tasmanian Private Health Insurance market, BUPA (28.75%) and Medibank (24.95%) account for over 50% of the total insured persons within the state.

- BUPA maintain the 'Members First' provider network, offering no gap regular check-ups at Members First Platinum dentists.
- Medibank maintain the 'Members' Choice' and 'Members' Choice Advantage' providers network, with a selection of capped and/or gap-free dental services at selected providers.



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 exemptions@acc.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
 - 1.2 contact person's name, position, telephone number and email address
 - 1.3 a description of business activities
 - 1.4 email address for service of documents in Australia.
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 ACN
 - 2.2 contact person's name, telephone number and email address
 - 2.3 a description of business activities.

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
 - 3.2 the relevant provisions of the *Competition and Consumer Act 2010* (Cth) (the Act) which might apply to the proposed conduct, ie:
 - cartel conduct (Division 1 of Part IV)
 - contracts, arrangements or understandings that restrict dealings or affect competition (s. 45)
 - concerted practices (s. 45)
 - secondary boycotts (sections 45D, 45DA, 45DB, 45E, 45EA)
 - misuse of market power (s. 46)
 - exclusive dealing (s. 47)
 - resale price maintenance (s. 48) and/or
 - a dual listed company arrangement (s. 49)
 - 3.3 the rationale for the proposed conduct
 - 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.

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.³
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.

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

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.

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.

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.

Additional information

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

³ Applicants are encouraged to consult with the ACCC prior to lodgement to discuss the scope and range of documents needed in the context of the proposed conduct for which authorisation is sought.

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



Office held



(Print) Name of authorised person

This 8th day of May, 2024

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.