



Draft Determination and interim authorisation

**Application for authorisation AA1000671
lodged by
St. Luke's Medical and Hospital Benefits Association
in respect of
agreements to establish a network of partner dental practices
Authorisation number: AA1000671**

12 September 2024

Commissioners: Keogh
Carver
Williams
Ridgeway

Summary

The ACCC proposes to grant authorisation to enable St Luke's Medical and Hospital Benefits Association (St Lukes) and participating dentists to enter into and give effect to specified price capping provisions in agreements with dentists who participate in its dental partner provider network and who are in the same local catchment areas as St Lukes' own dental practices in Tasmania, and to issue metrics reports to dentists in its dental partner provider network regarding their services delivery and billing to St Lukes members.

St Lukes is a private health insurance provider that is seeking to establish a dental partner provider network and contract with dentists to provide no-gap and known-gap services to its members. St Lukes is planning to open and operate its own dental practices in Tasmania, some of which may be in the same local catchment areas as dentists in its dental partner provider network.

The ACCC considers that St Lukes and participating dentists entering into and giving effect to these pricing arrangements is likely to result in public benefits:

- in the form of increased access to price certainty for routine and preventative dental services
- attributable to increased competition between health insurance providers in Tasmania.

The ACCC considers the arrangements are unlikely to result in public detriment attributable to reduced competition or reduced standard of patient care and consumer autonomy, noting in particular the voluntary and non-exclusive nature of the arrangements and existing competitive market pressures. On balance, the ACCC is satisfied that the likely public benefit resulting from the conduct proposed to be authorised would outweigh any public detriment.

The ACCC proposes to grant authorisation for 5 years.

The ACCC has also granted interim authorisation to enable St Lukes and participating dentists to enter into, but not give effect to, the pricing arrangement provisions while the ACCC is considering the substantive application.

The ACCC invites submissions in relation to this draft determination before making its final decision.

1. The application for authorisation

- 1.1. On 8 May 2024, St. Luke's Medical and Hospital Benefits Association (**St Lukes**) lodged application for authorisation AA1000671 with the Australian Competition and Consumer Commission (the **ACCC**).
- 1.2. St Lukes seeks to establish a network of partner dental practices (**Participating Dental Partner Providers**) by entering into standard form agreements to allow its health fund

members in Tasmania to receive certain routine dental services on a 'no-gap' and 'known-gap' basis. St Lukes is seeking authorisation for 10 years.

- 1.3. This application for authorisation was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). If granted, an authorisation provides the relevant parties with protection from legal action under the specified provisions in Part IV of the Act in respect of the specified conduct. The ACCC has a discretion to grant authorisation, but must not do so unless it is satisfied in all the circumstances that the conduct would result, or be likely to result, in a benefit to the public and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the conduct (ss 90(7) and 90(8) of the Act (the **authorisation test**)).
- 1.4. St Lukes has also requested interim authorisation to enable it to commence entering into, but not give effect to, agreements with potential dental providers while the ACCC is considering the substantive application. The ACCC has decided to grant interim authorisation. The request for interim authorisation is discussed further in section 6.

St Lukes

- 1.5. St Lukes is a Tasmanian not-for-profit health insurer, offering private health insurance products across Australia. St Lukes has over 90,000 members nationally, with 79,000 of those members located in Tasmania. St Lukes is the second largest private health insurer in Tasmania with around 25% market share.
- 1.6. In addition to offering private health insurance, St Lukes plans to open its own dental practices between 2024 and 2026 (**St Lukes' Dental Practices**). St Lukes has so far committed to plans to open 2 St Lukes' Dental Practices in Tasmania – one located in Howrah and one in Launceston. St Lukes submits that, subject to the recruitment of personnel and establishment of the practices, both of these St Lukes' Dental Practices will likely be operational by the second half of 2024. St Lukes' intention is that each of its St Lukes' Dental Practices will be open to both its members and the general public.
- 1.7. St Lukes submits that, whilst it would hope to eventually open further St Lukes' Dental Practices, those plans are still in their infancy and no decisions have been made. St Lukes submits that whether it opens additional St Lukes' Dental Practices will depend on the success and viability of its practices in Launceston and Howrah and the assessment of the services able to be provided to meet members' needs. Accordingly, St Lukes submits that, as St Lukes' dental network develops and member needs evolve, it will consider the need for additional St Lukes' Dental Practices and take steps to establish any additional practices at that time.

St Lukes Dental Network

1.8. St Lukes is seeking authorisation to:

- enter into and give effect to certain pricing arrangement provisions in agreements with Participating Dental Partner Providers in Tasmania via a dental partner provider network; specifically clauses 5 and 6 of the network's terms and conditions (these clauses are replicated at **Annexure A (Relevant Provisions)**); and
- issue 'Dental Services Utilisation and Servicing Metrics' reports (**Metrics Reports**) to Participating Dental Partner Providers regarding their services delivery and billing to St Lukes members.

(collectively, the **St Lukes Dental Network**).

1.9. The Relevant Provisions include a requirement for Participating Dental Partner Providers to charge St Lukes members at or below the maximum fee (**Maximum Chargeable Fee**) for certain routine and preventative services (**No-Gap and Known-Gap Services**). 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. St Lukes submits this is intended to provide certainty for St Lukes members about whether any out-of-pocket expenses will be payable, including the amount of those expenses.

1.10. The No-Gap and Known-Gap Services which will initially form part of the St Lukes Dental Network are set out in **Annexure B**. The No-Gap and Known-Gap Services are a set of services listed under the item codes set by the Australian Dental Association Inc (**ADA**) in the Australian Schedule of Dental Services and Glossary. Of the over 300 items codes in the Australian Schedule of Dental Services and Glossary, 27 items will form part of the initial set of No-Gap and Known-Gap Services (where 8 of those services will be delivered gap-free). The arrangements include a provision to vary fees each year and to adjust the list of No-Gap and Known-Gap Services over time.

1.11. Rebates paid by St Lukes to its members for No-Gap and Known-Gap Services 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 St Lukes members. St Lukes submits that the only difference is that it can guarantee to its members what their out-of-pocket expenses, if any, will be for the performance of these dental services by a Participating Dental Partner Provider, but not for any other dental services provider.

1.12. The Relevant Provisions also include a requirement that, where a Participating Dental Partner Provider's normal business practice is to offer discounts or benefits to its patients, it must provide discounts or benefits or an equivalent amount of the discount or benefit to St Lukes members.

1.13. Participating Dental Partner Providers must also provide St Lukes, upon request, with a copy of their usual fee schedule for St Lukes members. In the event that Participating Dental Partner Providers vary their usual fee schedule, they must provide St Lukes with a copy of the revised usual fee schedule at least 60 days prior to the usual fee schedule taking effect. St Lukes submits it will treat this document as commercial in confidence and will not provide this document to any third party.

- 1.14. The proposed Metrics Reports will be informed by historical claims and billing data (such as fees, rebates paid and service codes utilised) which has already been captured through St Lukes' claims engine as part of the claiming and benefit payment process, including Health Industry Claims and Payment Service (**HICAPS**). St Lukes submits that the data used in the Metrics Reports will be aggregated and de-identified and may include a breakdown of services delivered to St Lukes' members by item number, billing behaviours and patterns and comparison to other providers, and member demographics data (for example, the typical age of members, or the most common suburb of residence for members serviced). St Lukes submits the intention of the Metrics Reports is to allow Participating Dental Partner Providers to understand their own patient cohort better and to make comparisons with their peers in terms of services and billing. St Lukes submits Metrics Reports will be offered on a by-request arrangement.
- 1.15. St Lukes submits that it has not set a minimum nor maximum number of Participating Dental Partner Providers it seeks for its network. Accordingly, St Lukes submits that if a suitable dental provider in geographic proximity to a St Lukes' Dental Practice seeks to join the network, St Lukes will permit them to join regardless of whether another dental provider in the same geographic area is already a member of the network. St Lukes submits this provides greater coverage and choice for St Lukes' members.
- 1.16. St Lukes is not seeking authorisation for the establishment of the St Lukes' Dental Practices.

2. Background

Rationale for the St Lukes Dental Network

- 2.1. St Lukes submits that, as a not-for-profit entity, its primary motivation is to provide beneficial health outcomes for its members.
- 2.2. St Lukes submits that it has identified that there is a need to encourage its members and prospective members to access regular preventative dental care. In particular, St Lukes has identified that poor oral health is a significant precursor to chronic diseases and is a key health challenge for Tasmania.
- 2.3. St Lukes submits that by establishing its own St Lukes' Dental Practices in Tasmania, available to both its members and non-members, it intends to positively impact the current lack of access to public dental services, benefitting the healthcare system in Tasmania and consequently the Tasmanian community.
- 2.4. St Lukes submits it is seeking authorisation to address what it describes as the potential risk that the Participating Dental Partner Providers could be considered to be in competition with St Lukes' Dental Practices at some relevant time.
- 2.5. St Lukes submits it is also seeking authorisation for the Metrics Reports on the basis that the reports have the potential to influence the behaviour and trading of those businesses who receive those reports. St Lukes submits its intention is to ensure that the Metrics Reports are generated in a manner that will not raise competition concerns, but it cannot control how the Metrics Reports will be utilised.

The dental services industry

- 2.6. There are over 400 total dental practitioners registered in Tasmania according to June 2023 data with 292 recorded as dentists.¹ Medicare does not cover most dental care, dental procedures or supplies. Some public dental services are provided by state and federal governments, generally only to concession card holders and children, or for emergency treatments. The majority of employed dentists in Tasmania work in private practices.²
- 2.7. St Lukes submits that many Australians rely on their private health insurance to cover some or all of the cost of dental. 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 approximately \$2.2 billion (20%).³ Data published by the Australian Government’s Australian Institute of Health and Welfare suggests that more than half of Australians aged 5 years and over have some level of private health insurance cover for dental expenses.⁴ In Tasmania, approximately 50% of the population holds private health insurance for general treatment (also known as ‘ancillary’ treatment and includes dental services).⁵
- 2.8. Most insured Australians hold combined policies that provide cover for both hospital and extras services.⁶
- 2.9. St Lukes submits that 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. St Lukes submits that oral health in Tasmania is in a dire situation, which is evidenced by the following:
- 14,000 Tasmanians are waiting for public services including dentures, extractions, and major dental work.⁷
 - Dental conditions represent the most common category of preventable hospitalisations (12.5%).⁸

¹ Dental Board of Australia, [Registrant data](#), Australian Health Practitioner Regulation Agency, 30 June 2023, accessed 2 August 2024.

² In 2020, 202 employed dentists worked in private practice, 31 worked in public clinics, 8 worked in hospitals and 4 worked in other community health care services. Source: Australian Institute of Health and Welfare, [Oral health and dental care in Australia – Data tables: Dental workforce](#), Commonwealth of Australia, 21 November 2023, accessed 2 August 2024.

³ Australian Institute of Health and Welfare, [Oral health and dental care in Australia – Costs](#), Australian Government, 21 November 2023, accessed 2 August 2024.

⁴ Australian Institute of Health and Welfare, [Oral health and dental care in Australia – Private health insurance](#), Commonwealth of Australia, 30 June 2023, accessed 2 August 2024.

⁵ Australian Prudential Regulation Authority, [Statistics: Private health insurance membership and coverage March 2024](#), 22 May 2024, accessed 2 August 2024..

⁶ Australian Prudential Regulation Authority, [Statistics: Private health insurance membership trends March 2024](#), 22 May 2024, accessed 2 August 2024.

⁷ The ACCC understands that this is referring to the Tasmanian Government’s online [Health System Dashboard](#).

⁸ Australian Dental Association Tasmanian Branch, [Submission to ‘The Our Healthcare Future – Immediate Actions and Consultation Paper’](#), February 2021, accessed 5 September 2024.

- The Tasmanian health report identified 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.⁹
- 2.10. St Lukes submits that cost is a known barrier for consumers in accessing dental services and that, even with private health insurance, consumers may still be required to make an out-of-pocket payment. St Lukes submits that studies into oral health in Australia report that:
- 39% of people aged over 15 years delayed visiting a dentist due to cost.
 - 23% of people aged over 15 years who visited a dentist reported cost prevented the recommended dental treatment being performed.¹⁰
 - 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.¹¹
 - 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.¹²

The private health insurance industry

- 2.11. In Australia, the 5 largest health insurers provide cover to over 80% of Australian consumers with private health insurance. Medibank Private Limited (**Medibank**) and Bupa HI Pty Ltd (**Bupa**) represent just over half of the Australian private health insurance market, with market shares of around 27% and 25% respectively. The next 3 largest insurers – The Hospitals Contribution Fund of Australia (**HCF**), NIB Health Funds Limited (**NIB**) and HBF Health Limited (**HBF**) – have a combined market share of around 30%.¹³
- 2.12. St Lukes is a relatively small health insurer nationally but is the second largest private health insurer in Tasmania (Table 1). St Lukes submits it is projected to be the largest health insurer by market share in Tasmania by 2025.

⁹ The ACCC understands that these statistics are sourced from the [‘Report on the Tasmanian Population Health Survey’](#). The ACCC has found these statistics inconsistent with the latest. The latest data indicates that that 20% of people aged 25-34 rated their oral health as fair to poor, 32% of Tasmanian adults brushed their teeth once a day or less than daily, and 51% of Tasmanian adults avoided dental care because of the costs involved.

¹⁰ Australian Research Centre for Population Oral Health, [Australia’s Oral Health: National Study of Oral Health 2017–18](#), The University of Adelaide, 2019, accessed 2 August 2024.

¹¹ Australian Institute of Health and Welfare, [Oral health and dental care in Australia – Private health insurance](#), Australian Government, 21 November 2023, accessed 2 August 2024.

¹² Australian Research Centre for Population Oral Health, [Australia’s Oral Health: National Study of Oral Health 2017–18](#), The University of Adelaide, 2019, accessed 2 August 2024.

¹³ Australian Prudential Regulation Authority, [Operations of Private Health Insurers Annual Report data](#), 5 February 2024, accessed 2 August 2024.

Table 1: Market shares for health insurance policies in Tasmania and nationally¹⁴

<i>Health insurer</i>	Tasmania	Australia
Bupa	28.8%	24.9%
St Lukes	25.3%	0.6%
Medibank	25.0%	27.1%
HCF	6.5%	12.5%
NIB	3.5%	9.6%
HBF	1.1%	7.7%

- 2.13. The ACCC's Report to the Australian Senate on the private health insurance industry for the period 2022–23 identified that there were 31 health funds currently operating in Australia, including for-profit and not-for-profit insurers.¹⁵ The ACCC's previous reports illustrate a decreasing trend in the number of health insurers operating in the market, where 37 health funds operated in Australia in 2019–20.¹⁶
- 2.14. It is not uncommon for health insurers to enter into contractual arrangements with selected healthcare service providers (preferred providers) like the St Lukes Dental Network, in part, to minimise the out-of-pocket expenses incurred by their members. A reason for a healthcare service provider to enter into such arrangements with a private health insurer is to increase patient numbers at their practice. Insurers negotiate set fees and other terms with preferred providers in exchange for the right to participate in their 'preferred provider' networks or 'no-gap' and 'known-gap' schemes.
- 2.15. Australia's 5 largest health insurance providers all have an extensive network of preferred dental providers. Other health insurance providers with preferred dental provider networks include Australian Unity, Geelong Medical and Hospital Benefits Association, Peoplecare Health Limited and Teachers Union Health Fund. The below table demonstrates the number of dental preferred providers in Australia for Bupa, Medibank, HBF, HCF and NIB.

¹⁴ Australian Prudential Regulation Authority, [Operations of Private Health Insurers Annual Report data](#), 5 February 2024, accessed 2 August 2024.

¹⁵ ACCC, [ACCC Private Health Insurance Report 2022–23](#), Commonwealth of Australia, 2023, p 9.

¹⁶ In the 2022–23 period, CUA Health merged into HBF, and Transport Health merged into HCF. In the 2021–22 period, Railway & Transport Health Fund Limited merged with HCF, and Nurses and Midwives Health Pty Ltd merged with Teachers Federation Health.

Table 2: Dental preferred provider arrangements Australia-wide¹⁷

Health insurer	Number of preferred dental providers
Bupa	>7,000
Medibank	>10,000
HBF	Approximately 450 in Western Australia
HCF	Approximately 8,000
NIB	Approximately 2,000

3. Consultation

- 3.1. The ACCC invited submissions from a range of potentially interested parties including competitors, dental practitioners, relevant industry associations or peak bodies, consumer groups and state and federal government.
- 3.2. The ACCC received 10 submissions from interested parties in relation to the application.
- 3.3. Australian Unity Health Limited, Members Health Fund Alliance and Private Healthcare Australia provided submissions in support of the application.¹⁸
- 3.4. The ADA provided a submission raising its long-standing concerns about the overall impact of arrangements between private health insurers and dental practices from the perspective of competition in dental services and consumer harms.¹⁹ The ADA submits the ACCC should take a cautious approach to these types of authorisations, in particular by:
 - granting authorisation for a short term only (no more than 5 years), so impacts can be monitored and tested more frequently
 - limiting the scope of authorisation, as appropriate, having regard to the scale and scope of the specific conduct for which authorisation would be granted.

¹⁷ CHOICE, [How much does the dentist cost?](#), CHOICE website, last updated 9 March 2023, accessed 15 July 2024; The Hospitals Contribution Fund of Australia Ltd, [Application for reauthorisation – HCF’s More For Teeth Program](#), 23 March 2023.

¹⁸ [Australian Unity Health Limited submission](#), 19 June 2024; [Members Health Fund Alliance submission](#), 20 June 2024; [Private Healthcare Australia submission](#), 27 June 2024.

¹⁹ [Australian Dental Association Inc submission](#), 27 June 2024.

- 3.5. Five dental practices, who have requested to remain anonymous, provided submissions raising concerns and opposing the application.²⁰ Bayfield Dental and Bayfield Dental City (**Bayfield Dental**) also provided a submission raising similar concerns.²¹ In summary, the concerns raised by dental practitioners related to:
- loss of consumer and dental practitioners' autonomy and impact on patient care
 - impact on competition in dental services
 - substantiation of the public benefits
 - the proposed Metrics Reports
 - the initially proposed 'St Lukes Gap Free Network' naming of the network.
- 3.6. St Lukes responded to the issues raised in interested parties' submissions on 9 August 2024.²² St Lukes also provided further information on 13 June, 18 June and 9 August 2024 in response to questions raised by the ACCC.²³
- 3.7. As noted above, St Lukes initially proposed to name the network the 'St Lukes Gap Free Network'. In response to concerns raised by dental practitioners regarding the 'Gap Free' naming of the network, St Lukes remains of the view that the name 'St Lukes Gap Free Network' is appropriate and the explanatory material which will be published regarding the network would mean consumers would not be confused or misled. However, St Lukes submits that it intends to change the title of its network, most likely to 'St Luke's Dental Network', and omit the words 'Gap Free' from the title to allay any concerns which might arise.
- 3.8. Public submissions by St Lukes and interested parties are on the [public register](#) for this matter, and are discussed further in the ACCC assessment section below.

4. ACCC assessment

- 4.1. St Lukes has sought authorisation for the St Lukes Dental Network in relation to Division 1 of Part IV of the Act (cartel conduct) and section 45 of the Act (contracts, arrangements or understandings that restrict dealings or affect competition). Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not make a determination granting authorisation unless it is satisfied, in all the circumstances, that the conduct would result, or be likely to result, in a benefit to the public and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the conduct.
- 4.2. The ACCC is empowered to authorise conduct to which one or more provisions of Part IV of the Act would or might apply.²⁴ Based on the information presently before it, the ACCC considers that Part IV of the Act would or might apply to the proposed

²⁰ [A Dental Practice submission](#), 21 June 2024; [A Dental Practice submission](#), 25 June 2024; [A Dental Practice submission](#), 25 June 2024; [A Dental Practice submission](#), 27 June 2024; [A Dental Practice submission](#), 16 July 2024.

²¹ [Bayfield Dental and Bayfield Dental City submission](#), 28 June 2024.

²² [St Lukes' response to interested party submissions](#), 9 August 2024.

²³ [St Lukes' response to ACCC request for information](#), 13 June 2024; [St Lukes' response to ACCC request for information](#), 18 June 2024; [St Lukes's response to ACCC request for information](#), 9 August 2024.

²⁴ *Competition and Consumer Act 2010* (Cth), s88(1).

conduct of St Lukes and Participating Dental Partner Providers entering into and giving effect to the Relevant Provisions in the context of the geographic overlaps that may exist in the future between St Lukes' Dental Practices and Participating Dental Partner Providers, i.e. if a St Lukes' Dental Practice is located in the same local catchment area as one or more Participating Dental Partner Providers. The ACCC also considers that Part IV of the Act would or might apply to the proposed conduct of St Lukes issuing Metrics Reports to Participating Dental Partner Providers.

4.3. Accordingly, the ACCC has considered whether to grant authorisation for:

- St Lukes and Participating Dental Partner Providers to enter into and give effect to the Relevant Provisions at Annexure A in agreements between St Lukes and a Participating Dental Partner Provider where the Participating Dental Partner Provider is in the same local catchment areas as a St Lukes' Dental Practice in Tasmania (including any future St Lukes' Dental Practices in Tasmania); and
- St Lukes to issue Metrics Reports to Participating Dental Partner Providers regarding their services delivery and billing to St Lukes members,

(collectively, the **Proposed Authorised Conduct**).

Relevant areas of competition

4.4. To assess the likely effect of the Proposed Authorised Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.

4.5. St Lukes submits the relevant area of competition is the health insurance provider market and the dental services market.

4.6. The ACCC is of the view that it is not necessary to precisely define the relevant markets for the purpose of assessing this application for authorisation. The ACCC considers that the relevant areas of competition are likely to be:

- the supply of private health insurance services and extras health insurance services to consumers in Tasmania
- the supply of dental services in localised geographic areas in Tasmania
- the acquisition of dental services by patients in localised geographic areas in Tasmania.

Future with and without the Proposed Authorised Conduct

4.7. In applying the authorisation test, the ACCC compares the likely future with the Proposed Authorised Conduct that is the subject of the authorisation to the likely future in which the Proposed Authorised Conduct does not occur.

4.8. St Lukes submits it does not have fixed plans if authorisation is not granted by the ACCC. St Lukes submits that it could potentially adopt alternative models to achieve similar benefits resulting from the St Lukes Dental Network, which includes opening St

Lukes' Dental Practices without seeking to collaborate with the existing dental community and seeking to attract its members exclusively to the St Lukes' Dental Practices. St Lukes submits that this approach would allow it to increase access while ensuring out-of-pocket control for members. However, St Lukes deems this approach to be against its ethos of working with and for the Tasmanian community and acting with integrity as a corporate citizen. St Lukes considers that this approach would not be capable of delivering the same short-term level of improvement of access to gap-free dental care in Tasmania and would be unlikely to have the same geographic reach as the St Lukes Dental Network.

- 4.9. The ACCC considers that, in a future without the Proposed Authorised Conduct, St Lukes will likely continue to pursue opening St Lukes' Dental Practices in Tasmania. However, the ACCC considers it is a commercially realistic possibility that St Lukes will establish a dental partner provider network in Tasmania without authorisation, in geographic areas where it considers the risk of potential breaches to Division 1 of Part IV and section 45 of the Act do not arise (e.g. where Participating Dental Partner Providers would not be considered to be in competition with St Lukes' Dental Practices). The ACCC therefore considers that, in a future without the Proposed Authorised Conduct, St Lukes members would likely be able to access No-Gap and Known-Gap Services from St Lukes' Dental Practices (once opened) as well as any Participating Dental Partner Providers that St Lukes enters into agreements with.
- 4.10. The ACCC considers, that in the future with the Proposed Authorised Conduct, St Lukes members would similarly be able to access No-Gap and Known-Gap Services from St Lukes' Dental Practices (once opened) as well as Participating Dental Partner Providers. However, the ACCC considers that, in a future with the Proposed Authorised Conduct, St Lukes members would likely be able to access No-Gap and Known-Gap Services at more locations (such as in geographic areas that overlap with St Lukes' Dental Practices) than would be the case in the future without the Proposed Authorised Conduct.
- 4.11. In relation to the Metrics Reports, the ACCC considers that it is likely St Lukes will issue Metrics Reports to Participating Dental Partner Providers who request them in a future with the Proposed Authorised Conduct. The ACCC notes that St Lukes submits its concerns that they may have the potential to influence the behaviour and trading of those businesses who receive the reports. The ACCC therefore considers that, in a future without the Proposed Authorised Conduct, St Lukes is unlikely to issue the Metrics Reports to Participating Dental Partner Providers.

Public benefits

4.12. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.²⁵

4.13. St Lukes submits that the public benefits which will or are likely to arise from the St Lukes Dental Network include:

- increased choice for St Lukes members
- supporting dental clinical best practice
- health-related benefits
- increased business for dental practices
- increased competition between health insurance providers.

4.14. The ACCC has not considered the claimed public benefit of 'supporting dental clinical best practice' in this section, as it directly relates to public detriment concerns raised by interested parties (and is therefore considered in the public detriments section below). The ACCC has considered the remaining claimed public benefits under the following headings:

- increased access to price certainty for routine and preventative dental services for St Lukes members
- increased competition between health insurance providers in Tasmania
- increased competition between dental providers in the same area.

Increased access to price certainty for routine and preventative dental services for St Lukes members

St Lukes submissions

4.15. St Lukes submits that the St Lukes Dental Network will provide price certainty for consumers, so that its members know that their routine dental visit will have no out-of-pocket expenses, or will have predictably certain, out-of-pocket costs. St Lukes submits it also expects that there will be a reduction in out-of-pocket costs for some dental patients who receive No-Gap Services performed by a Participating Dental Partner Provider, if prior to implementation of the St Lukes Dental Network, that

²⁵ *Re Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores Pty Limited* (1994) ATPR 41-357 at 42,677.

particular Participating Dental Partner Provider would have charged a gap fee on those preventative dental services.

- 4.16. St Lukes submits that, 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 the later need for more costly reactive dental services. St Lukes submits that routine dental visits are important for its members as they assist in both preventing dental conditions in the future and identifying any existing dental conditions early. Over the longer term, St Lukes submits that it expects the St Lukes Dental Network 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 earlier with adequate dental care.
- 4.17. St Luke submits that, through previous initiatives, St Lukes has seen a direct correlation between delivering price clarity and reduction in costs, and the uptake of preventative oral health care. St Lukes submits that its initial campaign to drive access to preventative dental services, which was launched over 5 years ago, identified a sharp increase in preventative services uptake coinciding with a substantial decrease in major dental services. St Lukes submits that this outcome confirms the importance of encouraging its members to return to routine dental care. St Lukes introduced gap-free preventative services in 2012 (where participation was effectively at the dental providers' discretion) and submits it resulted in an increase in preventative services per Single Equivalent Unit (**SEU**) and a corresponding decrease in other dental services (including major) per SEU the following year.
- 4.18. St Lukes also submits that the St Lukes Dental Network provides consumers with greater choice of dental service providers, as consumers may be more inclined to visit a new dental practice where they are able to receive price certainty on certain services.

Interested party submissions

- 4.19. Australian Unity Health Limited submits that it agrees with St Lukes' premise that the establishment of the St Lukes Dental Network will positively impact accessibility and affordability of oral health care in Tasmania.²⁶
- 4.20. Private Healthcare Australia submits that providing consumers with price certainty for dental care is enormously beneficial for consumers, particularly during a cost-of-living crisis that is causing an increasing number of Australians to reconsider or forego healthcare due to concerns about cost. Private Healthcare Australia submits that, if authorisation is granted, St Lukes members are guaranteed price control on certain services through participating dental providers.²⁷
- 4.21. The Members Health Fund Alliance submits that St Lukes, as a not-for-profit and member-owned health insurer, is acting in good faith to ensure its members have access to programs similar to those already approved and in market in Tasmania. The Members Health Fund Alliance submits the program is in the public interest and it

²⁶ [Australian Unity Health Limited submission](#), 19 June 2024.

²⁷ [Private Healthcare Australia submission](#), 27 June 2024.

believes it will be beneficial for St Lukes members, resulting in higher participation in oral health care and delivering improved health outcomes.²⁸

- 4.22. Bayfield Dental submits that the corporatisation of dentistry as proposed by St Lukes will do little in addressing the cost barriers to oral health care in Tasmania.²⁹ Another dental practice refers to the data and statistics included in the application regarding waitlists in the public dental system and submits that St Lukes does not make it clear how it proposes to assist anyone who seeks public dental care in Tasmania.³⁰

ACCC view

- 4.23. The ACCC acknowledges that price is a factor influencing consumers' ability and willingness to access dental services, as illustrated by the Tasmanian Population Health Survey and Australian Institute of Health and Welfare's reports. The ACCC acknowledges that these findings are likely influenced by a number of factors, including consumers' income and whether they have private health insurance.
- 4.24. The ACCC considers that price certainty benefits St Lukes members by allowing them to better anticipate dental health expenditures, which may minimise the avoidance or delay of dental care due to price uncertainty. This is likely to reduce the need for members to later face more serious dental intervention caused by lack of routine dental care.
- 4.25. Before the end of 2024, St Lukes' members in Tasmania are expected to have access to 2 St Lukes' Dental Practices in Howrah and Launceston who will likely offer No-Gap and Known-Gap Services to those members. The ACCC considers that, in the future without the Proposed Authorised Conduct, St Lukes members will likely also be able to access No-Gap and Known-Gap Services from dentists that St Lukes enters into agreements within geographic areas where it considers it does not require authorisation. The ACCC considers that the Proposed Authorised Conduct will provide St Lukes members across Tasmania access to No-Gap and Known-Gap Services in more locations.
- 4.26. The ACCC acknowledges that the direct benefit of price certainty and improved access will be limited to those consumers who are St Lukes' members in Tasmania and who access a Participating Dental Partner Provider in areas that overlap with St Lukes' Dental Practices. The ACCC also acknowledges the extent of this public benefit will depend on the number of dental providers that become Participating Dental Partner Providers, noting St Lukes' submissions that the network would be open to every suitable dental provider in Tasmania who wishes to join.
- 4.27. Whilst the overall number of dental providers that a St Lukes member may choose from remains unchanged under the Proposed Authorised Conduct, the ACCC recognises that St Lukes members may be more inclined to visit a dental practice where they will be able to receive price certainty on services.
- 4.28. The ACCC considers that the Proposed Authorised Conduct is likely to result in a public benefit by providing St Lukes members with increased access to price certainty through the provision of more locations offering No-Gap and Known-Gap Services and

²⁸ [Members Health Fund Alliance submission](#), 20 June 2024.

²⁹ [Bayfield Dental and Bayfield Dental City submission](#), 28 June 2024.

³⁰ [A Dental Practice submission](#), 27 June 2024.

routine and preventative dental services. This should, in turn, both encourage consumers who do not currently hold private health insurance to take up insurance with St Lukes and also encourage St Lukes members to seek and utilise more routine and preventative dental care than they would otherwise. To the extent this occurs, it should help avoid those members subsequently requiring major dental treatment. The ACCC notes that the public benefit in these circumstances is likely to flow only to St Lukes members who access a Participating Dental Partner Provider in an area which overlaps with St Lukes' Dental Practices (compared to the likely future without the Proposed Authorised Conduct) and has weighted this benefit accordingly.

Increased competition between health insurance providers in Tasmania

St Lukes submissions

- 4.29. St Lukes submits the St Lukes Dental Network assists it to remain competitive in the private health insurance market, and that it will be in a stronger position and better able to compete more vigorously in the market. St Lukes submits that, given that other health insurance providers (such as Bupa and Medibank) already offer similar benefits in Tasmania, the St Lukes Dental Network permits St Lukes to remain competitive within the broader national private health insurance industry.
- 4.30. St Lukes submits that this competition then encourages consumers to take up private health insurance, as they can see how the insurance will benefit them and is likely to result in cost savings and more advantageous terms for consumers of dental services in Tasmania. Ultimately, St Lukes submits this also provides a public benefit to healthcare systems by encouraging the utilisation of private medical services (including outside of dental services).

ACCC view

- 4.31. The ACCC notes that St Lukes supplies approximately 25% of private health insurance in Tasmania, and less than 1% across Australia. The ACCC considers that there is a reasonable prospect the Proposed Authorised Conduct would allow St Lukes to provide an enhanced offering to St Lukes members as other providers of private health insurance in Tasmania offer similar preferred dental provider arrangements for members (such as Bupa and Medibank). The ACCC considers that No-Gap and Known-Gap Services are of value to consumers and that private health insurers who offer or increase their offerings of these services and/or who reduce the levels of their known gaps are in a better position to compete with other private health insurers. Relatedly, the ACCC considers that the commencement of Proposed Authorised Conduct may lead to a competitive response from other private health insurers to improve the attractiveness of their no-gap and known-gap programs.
- 4.32. The ACCC considers that, to the extent the enhanced offerings made available to St Lukes members due to the Proposed Authorised Conduct encourage consumers who do not currently hold private health insurance to take up insurance with St Lukes, encourage St Lukes members to seek and utilise more routine and preventative dental care than they would otherwise, or induce other private health insurers to improve their policy offerings to similar effect, this may result in a public benefit that is attributable to the stronger competition in the supply of private health insurance in Tasmania that the Proposed Authorised Conduct both reflects and stimulates. The increased use of

private routine and preventative dental and other health services may also ease pressure on the public healthcare system. However, the ACCC notes that, in a future without the Proposed Authorised Conduct, St Lukes would likely focus on delivering no-gap and known-gap experiences through the St Lukes' Dental Practices as well as potentially with partner dental practices in geographic areas where it considers it does not require authorisation.

- 4.33. Therefore, the ACCC is satisfied the Proposed Authorised Conduct is likely to result in some public benefits attributable to increased competition between health insurance providers in Tasmania. However, the ACCC acknowledges this may also occur to some extent (albeit likely to a more limited extent) in a future without the Proposed Authorised Conduct, and the ACCC has weighted this benefit accordingly.

Increased competition between dental providers in the same area

St Lukes submissions

- 4.34. St Lukes submits the St Lukes Dental Network will assist Participating Dental Provider Practices attract or retain patients by advertising that they have lower out-of-pocket costs. St Lukes submits this will assist with the viability of dental practices in all regions of Tasmania, which are the focus of the St Lukes Dental Network. St Lukes also submits that a new dental practice choosing to participate in the St Lukes Dental Network may be in a position to more quickly establish itself as a viable business, as an attractive proposition to St Lukes' members.
- 4.35. St Lukes submits that the St Lukes Dental Network will encourage competition between dental providers in the same area and therefore may lead to non-monetary improvements, such as improving the consumer's experience. St Lukes contends that, in the absence of price as a differentiating factor, dental providers will seek to deliver other value propositions to both St Lukes members, and the Tasmanian population more broadly. Such initiatives may include, but are not limited to:
- innovative service delivery models including workforce dynamics
 - introduction of a wider variety of services
 - implementation of new technologies
 - alternative hours of operations including after hours.

ACCC view

- 4.36. The ACCC considers any increased ability for Participating Dental Provider Practices to attract or retain patients under the Proposed Authorised Conduct is likely a private benefit, but acknowledges that a public benefit may flow from lower barriers to entry for new dental practices and any increased competitive pressures on other (non-participating) dental practices to the extent they currently benefit from a degree of local market power. However, the ACCC also notes that the Proposed Authorised Conduct relates to a subset of all services provided to patients and dental practitioners (whether a Participating Dental Provider Practice or not) will continue to compete on price for other services, as well as other factors such as location and quality of care, as in the future without the Proposed Authorised Conduct.

4.37. Further, the ACCC notes that a number of submissions raised broad concerns in relation to the potential for the Proposed Authorised Conduct to result in reduced competition in the dental services industry. The ACCC has considered these submissions and issues from the perspective of how the Proposed Authorised Conduct affects competition for the acquisition of dental services in Tasmania in the public detriments section below.

ACCC conclusion on public benefit

4.38. The ACCC considers that the Proposed Authorised Conduct is likely to result in public benefits by providing St Lukes members with increased access to price certainty and increased competition between health insurance providers in Tasmania through the provision of more locations offering No-Gap and Known-Gap Services.

4.39. The ACCC does not accept that the Proposed Authorised Conduct is likely to result in public benefits in the form of increased competition between dental providers in the same area, and has instead considered the potential for reduced competition in the acquisition of dental services in the public detriments section below.

Public detriments

4.40. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

...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.³¹

4.41. The ACCC has considered the following public detriments:

- potential for reduced competition in the acquisition of dental services in local markets in Tasmania
- reduced standard of patient care and consumer autonomy.

Potential for reduced competition in the acquisition of dental services in local markets in Tasmania

Interested party submissions

4.42. The ADA submits it has longstanding concerns about the overall impact of these types of arrangements (under both voluntary and involuntary terms and conditions). A number of dental practices also raised concerns regarding the St Lukes Dental Network's potential impact on the dental services market. In particular:

- St Lukes has an unfair and powerful marketing capacity where the average family-owned dental practice does not have the capital to compete or keep up

³¹ *Re 7-Eleven Stores Pty Limited (1994) ATPR 41-357 at 42,683.*

with a large corporation like St Lukes in advertising, promotions and lower fee schedules.³²

- Rebates to consumers offered by insurers should be the same regardless of which dentist the consumer chooses to visit, and the insurer should not be allowed to create financial disincentives for members who choose to use a dental practice that is not owned by or aligned with their insurer (i.e. differential rebates).³³
- If St Lukes focuses on supporting its investment and driving members to their own clinics, this would be extremely negative to other dental practices due to St Lukes' members constituting such a large percentage of the patient base.³⁴ This could result in a real possibility that small private practices may close and increase unemployment in the industry, freeze wages, reduce hours or retrench staff in order to survive.³⁵
- Many preferred provider schemes do not increase their fees to match consumer price index which leaves practitioners with less and less income while having to deal with ever increasing wages and running costs.³⁶

4.43. Dental practices also submit that, by being both a health fund and a dental provider, St Lukes will have access to non-participating providers' confidential data relating to service delivery and billings (fees) via HICAPS, giving them a significant advantage over the 'local independent dentist'. Bayfield Dental also raised concerns that the data obtained whilst compiling the Metrics Reports will give St Lukes an insight into how a dentist practices, item number usage and fees charged, which are valuable indicators of how a dental practice is operating and how successful it is (as well as how many patients and how often they attend).

St Lukes submissions

4.44. St Lukes submits that the St Lukes Dental Network will not reduce competition in the acquisition of dental services in Tasmania. St Lukes submits it will continue to face competitive market pressures from other health insurance providers and dental practices due to the voluntary and non-exclusive nature of the arrangements:

- Rebates paid by St Lukes to its members for No-Gap and Known-Gap Services 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 St Lukes members.
- Dentists are not required to enter into the agreements with St Lukes and remain free to enter into agreements with other health insurers, as well as continue to provide services to non-members.
- St Lukes does not intend to offer any Participating Dental Partner Providers exclusivity in a geographic area, or to prescribe that the network can only

³² [A Dental Practice submission](#), 25 June 2024; [A Dental Practice submission](#), 25 June 2024; [Bayfield Dental and Bayfield Dental City submission](#), 28 June 2024.

³³ [A Dental Practice submission](#), 21 June 2024; [A Dental Practice submission](#), 16 July 2024.

³⁴ [A Dental Practice submission](#), 25 June 2024.

³⁵ [A Dental Practice submission](#), 25 June 2024.

³⁶ [A Dental Practice submission](#), 25 June 2024.

comprise a specified number of Participating Dental Partner Providers within one particular area.

- Participating Dental Partner Providers are free to terminate agreements with St Lukes without cause on 60 days' notice.
- 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 Dental Network when working in these practices.
- St Lukes' members would remain free to choose whether to obtain guaranteed gap-free preventative dental services from St Lukes' Dental Practices or Participating Dental Partner Providers, or receive services from another provider, where gap-free preventative care may be available, but cannot be guaranteed by St Lukes.

4.45. St Lukes also submits that it already competes with other health insurance providers in Tasmania where other health insurance providers already have similar initiatives which either cap certain dental services or otherwise limit the amount payable by dental customers. St Lukes submits it also intends to establish St Lukes' Dental Practices that are of a scale that will supplement the existing market and ease access pressures without causing significant disruption to existing providers.

4.46. St Lukes submits that these interested party submissions imply that imposing the Maximum Chargeable Fee creates a risk that providers would lose patients, because providers would be limited in making a profit. St Lukes consider that these concerns are misplaced in circumstances where:

- Under the terms and conditions of their agreement with St Lukes, Participating Dental Partner Providers would be permitted to provide additional services which attract an out-of-pocket expense should it be deemed clinically appropriate, provided they have the informed financial consent of the patient.
- Rather than resulting in a loss of patients, the network 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 St Lukes.

4.47. St Lukes seeks to revise the No-Gap and Known-Gap Services and applicable fees from 1 April each year, but no more frequently. St Lukes submits this will allow its members to receive the services across its membership on a known-cost basis at the relevant time, and will also allow the Participating Dental Partner Providers time to continue their involvement in the network, or withdraw if the terms are not considered appropriate for their practice.

4.48. In relation to the concerns raised regarding St Lukes' collection and use of data under the St Lukes Dental Network, St Lukes submits it will not refer to or use in any way copies of any usual fee schedules that are collected from Participating Dental Partner Providers other than for the purpose of ensuring claims integrity by detecting any improper price distortion or price inconsistencies on the part of Participating Dental Partner Providers. Accordingly, St Lukes submits this purpose is entirely consumer-focused and separate/unconnected from decisions about the operation of the St Lukes' Dental Practices.

- 4.49. St Lukes submits that it intends to set the prices at its St Lukes' Dental Practices completely independently from the St Lukes Dental Network and this involves benchmarking in the ordinary way against its competitors and by reference to publicly available information and customer feedback. To ensure that any usual fee schedules obtained by St Lukes are used for the intended purpose, and are not used to set prices at its St Lukes' Dental Practices (or to gain any form of unfair competitive advantage), St Lukes submits the usual fee schedules will be appropriately quarantined and secured within St Lukes' systems.
- 4.50. St Lukes also submits that no new data will be collected from the Participating Dental Partner Providers for the preparation of the Metrics Reports, as the reports will be informed by historical claims and billing data (such as fees, benefits paid and service codes utilised) which has already been captured through St Lukes' claims engine as part of the claiming and benefit payment process, including HICAPS. As the data is historical, St Lukes submits it is already quarantined and stored securely on St Lukes' internal systems in accordance with its privacy policy and the Australian Prudential Regulation Authority information security standard CPS234 (as treated in the same way St Lukes treats all other commercially sensitive information, such as member, provider or claiming data). St Lukes submits that the data presented in the Metrics Reports will be aggregated and de-identified and will therefore not include confidential information that can be linked to a specific provider (with the exception that each individual participant's metrics would be confined to that provider). At this time, St Lukes submits it is proposed that reports will be generated through its analytics reporting software and will be shared in person with providers, followed by sharing by email if requested.

ACCC view

- 4.51. The ACCC interprets the concerns of the ADA and other interested parties as being that the Proposed Authorised Conduct will effectively increase the pressure on dentists to agree to capped charges when servicing St Lukes' members for a range of services in exchange for St Lukes' 'funnelling' members towards them. The ACCC considers that to the extent such capped charges do not allow dentists to earn a sufficient income – either from the outset or over time if they are not raised in line with dental practices' costs – this increased pressure could lead to: (i) some dental practices who submit to such capped terms finding it unviable to continue operating, (ii) some practices who submit to such terms reducing their available appointments, hours of operation or quality of services, and (iii) practices who refuse to become Participating Dental Partner Providers losing customers to dental practices that have become Participating Dental Partner Providers, and themselves becoming unviable.
- 4.52. In light of these concerns, the ACCC has considered the extent to which the Proposed Authorised Conduct could reflect an exercise of 'buyer power'³⁷ by St Lukes on behalf of its members in relation to the acquisition of routine and preventative dental services from dental practices, and indirectly, the overall buyer power of dental care customers in local areas in Tasmania. Even if it does, there is a question as to whether an increase in buyer power would reduce the quality or quantity of dental services (for the reasons outlined above), or whether such an increase would promote the quality and quantity of dental services. In the absence of the Proposed Authorised Conduct and

³⁷ 'Buyer power' is an umbrella term that incorporates both 'monopsony power' (buy-side market power) and 'buyer bargaining power'. The enhancement and exercise of monopsony power typically reduces output and overall economic welfare in the relevant market; the enhancement and exercise of buyer bargaining power can have more ambiguous effects, depending on the bargaining power of the relevant counterparty(ies).

similar programs offered by other private health insurers, dental services customers would deal with dental practices as individuals and would have little if any ability to negotiate charges. In such an environment, dental practices may enjoy a degree of local market power to the extent that customers had few alternatives within a reasonable geographic area. This could enable dental practices to keep their charges above competitive levels, which would in turn limit the use of dental services below competitive levels. In this context, the effect of the Proposed Authorised Conduct and similar programs could be to limit dental practices' ability to exercise local market power, and to encourage their members to make greater use of routine and preventative dental services. To the extent this occurs, such outcomes could constitute public benefits.

- 4.53. Therefore, a key question for the ACCC is whether the Proposed Authorised Conduct could have perverse harmful effects on the quantity and quality of dental services by compelling dental practices to either accept capped charges that not only defeat any local market power they may have, but that do not allow them to remain viable or that force them to reduce the quantity or quality of their services. In evaluating this question, the ACCC notes that in Tasmania, St Lukes is similar in size as large, nation-wide health insurers Bupa and Medibank, noting that around half of Tasmanians hold some level of private health insurance cover for general treatment. The ACCC considers this limits the extent to which the Proposed Authorised Conduct may involve a harmful exercise of buyer power by St Lukes on behalf of its members in the dental services market.
- 4.54. The ACCC also notes that St Lukes' members would remain free to choose whether to obtain No-Gap and Known-Gap Services from a Participating Dental Partner Provider or a St Lukes' Dental Practice, or receive the same rebate for each service if they attend another provider. The ACCC therefore considers this would be unlikely to result in St Lukes 'funneling' members away from non-participating practices to an extent that would reduce the overall quality and quantity of dental services provided in Tasmania.
- 4.55. The ACCC also notes that the Proposed Authorised Conduct affects a relatively small proportion of all dental services offered, as it relates only to routine and preventative dental services (i.e. the 27 No-Gap and Known-Gap Services).
- 4.56. The ACCC has considered interested party concerns regarding St Lukes' access to service delivery and billing data via HICAPS and the usual fee schedules of Participating Dental Partner Providers (pursuant to clause 5.8 of the Relevant Provisions), and considers that this could at least mitigate any potential increased competition in the supply of dental services (as a public benefit claimed by St Lukes, discussed in paragraphs 4.34 to 4.37 above). In particular, the ACCC considers there could be a risk that if dentists are aware that this data will be available to St Lukes, which will operate its own practices and can set Maximum Chargeable Fees for all Participating Dental Partner Providers, those dental practices may be deterred from setting lower prices. This is because those practices may be concerned that the information could be used by St Lukes either to set lower Maximum Chargeable Fees, or to undercut their prices at St Lukes' Dental Practices. The ACCC considers however that it is unlikely this risk would arise to an extent that it could materially reduce competition in the dental services market.
- 4.57. Further, the ACCC considers the voluntary and non-exclusive nature of the arrangements limits the impact on competition, as dentists are not required to enter into agreements with St Lukes and remain free to enter into agreements with other

health insurers as well as continue to provide services to non-members. The ACCC notes that there are numerous dentists across Australia and in Tasmania that have opted to be preferred providers for more than one health insurer in existing programs, or that have opted not to be preferred providers for any health insurer.³⁸ The ACCC also notes that St Lukes will not require all dental practices owned by one group to join its network and individual dentists working in Participating Dental Partner Providers remain free to also work at other practices, and they are not obligated to participate in the Proposed Authorised Conduct when working in these practices.

- 4.58. The ACCC notes that Participating Dental Partner Providers are free to terminate agreements without cause by providing at least 60 days' notice, where St Lukes will provide a minimum of 60 days' notice of varied fees prior to the 1st of April each year.
- 4.59. The ACCC also considers that stabilisation of price or de facto locational rules for dental services under the Proposed Authorised Conduct, including through the proposed issuing of the Metrics Reports, are unlikely due to the competitive pressures outlined above. The ACCC also notes that the Metrics Reports will be informed by historical and de-identified data and, in this respect, there is currently public information reporting on aggregated and de-identified data regarding dental fees and services provided.³⁹
- 4.60. Therefore, the ACCC considers that the Proposed Authorised Conduct is unlikely to result in public detriment attributable to reduced competition in the acquisition of dental services in local areas in Tasmania.

Reduced standard of patient care and consumer autonomy

Interested party submissions

- 4.61. The ADA submits that, incrementally and insidiously, financial service providers have reached into the healthcare relationship in a way that risks influencing both treatment decisions and the basis which patients choose a dentist. The ADA and a dental practice also submit that consumers should be able to choose their dentists, and their insurer, based on competition on the merits in each activity and that rebates to consumers offered by insurers should be the same regardless of which dentist the consumer chooses to visit, as this is a healthcare decision by the patient. A dental practice submits that, if an insurer wants to offer its members a financial incentive to choose its own or partner dental practices, it should do this via the price of the dental services at its own or partner practices.⁴⁰
- 4.62. Dental practices submit that consumers should be able to have confidence that their choice to use private health insurance will never result in their insurer being able to

³⁸ Various dentists across Tasmania have explained their choice not to become a preferred provider, such as [Ian Gurner Dental Care](#), [Dental Pod](#), [Kefford Dental](#) and [The Dental Surgery](#).

Alternatively, there are also dentists who opt to be preferred providers for multiple private health insurers, such as [Dr Daniel Tan](#), [Brisbane St Dental](#), [Riverside No Gap Dental](#), [Crotty Dental](#), [Dental on Gregory](#), [City Dental Tasmania](#), [Dr Tai Dental Clinic](#) and [Campbell Street Dental Centre](#)

Examples taken from websites as at 16 August 2024. These examples are based on desktop research undertaken by the ACCC, which assessed dental practices' websites that operate in Hobart City and Launceston; however we note that the ACCC has not conducted a comprehensive analysis of dentists participating in preferred provider programs across Tasmania.

³⁹ For example, the Australian Dental Association's [Dental Fees Survey 2022](#).

⁴⁰ [Australian Dental Association Inc submission](#), 27 June 2024; [A Dental Practice submission](#), 21 June 2024.

undermine the clinical confidentiality or treatment decisions agreed by them with their chosen dentist. The dental practices submit that patients' treatment needs are paramount, to be determined by the patient and dental provider outside the influence of a health fund, where preferred provider agreements and health fund-owned dental clinics have the potential to influence treatment for patients and take autonomy away from dentists.⁴¹

- 4.63. A dental practice submits that it seems like St Lukes is recommending practitioners resort to overservicing to counteract the lower fees under the St Lukes Dental Network.⁴² Dental practices also submit the Metrics Reports run the risk of steering dental practitioners towards meeting targets rather than providing the appropriate care for their patients. Dental practices submit that, historically, health funds use metrics reports as a coercive tool to cause a recipient to act in a certain way (i.e. to influence the treatment the dentist is providing for their patient). Dental practices submit that the Metrics Reports will not help with business decisions, but instead act to de-incentivise other dentists from joining the network.⁴³
- 4.64. Bayfield Dental submits that price is a key factor of competition, and the maximum fees will be based solely on item numbers, however it is often cheaper for the patient (often for longer appointments) to be billed according to an hourly rate. Bayfield Dental submits this will not be possible with St Lukes' proposed pricing agreement with dental practitioners, and the patient will ultimately be disadvantaged.

St Lukes submissions

- 4.65. St Lukes submits that it does not consider the St Lukes Dental Network will reduce the standards of care. St Lukes submits that other dental practices already face pressures to provide low-cost services and 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. St Lukes submits that fixed fee pricing is applicable across routine services with predictable cost inputs, and the maximum fees are intended to be reflective of the broader market.
- 4.66. St Lukes submits that 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. St Lukes submits that Participating Dental Partner Providers also remain subject to their usual professional and legislative requirements, and the clinical decision making and dental treatment plans for patients remain the sole responsibility of dental practitioners. St Lukes submits that it has no authority or involvement in the clinical decision making of any dental practitioners, including Participating Dental Partner Providers for any of their patients and St Lukes' members.
- 4.67. St Lukes submits that the interested parties' concerns regarding the loss of patient autonomy is based on the incorrect assumption that St Lukes will pay higher rebates to providers who participate in the St Lukes Dental Network, or to its own St Lukes' Dental Practices, than those who choose not to. St Lukes submits it is not seeking authorisation for tiered rebates and is instead proposing to have a single schedule of

⁴¹ [A Dental Practice submission](#), 21 June 2024; [A Dental Practice submission](#), 25 June 2024.

⁴² [A Dental Practice submission](#), 25 June 2024.

⁴³ [A Dental Practice submission](#), 25 June 2024; [Bayfield Dental and Bayfield Dental City submission](#), 28 June 2024.

rebates, which will be paid identically to all providers regardless of where a member chooses to access services. Specifically, the same rebates will be paid to those providers who participate in St Lukes' Dental Network, those providers who do not participate in the network and its own St Lukes Dental Practices.

- 4.68. In response to interested parties' concerns regarding the St Lukes Dental Network potentially resulting in a loss of dental practitioners' autonomy, St Lukes submits that Participating Dental Partner Providers will retain a significant degree of autonomy and can be part of other dental networks and can also continue to provide services to other patients of the practice on their own terms (including price). St Lukes submits that, should a Participating Dental Partner Provider determine additional services which are not included in the No-Gap and Known-Gap Services are clinically appropriate, and attract a gap, they can be delivered with the member's informed financial consent and billed accordingly.
- 4.69. In response to interested parties' concerns in relation to the proposed Metrics Reports influencing patient treatment, St Lukes relevantly submits that:
- it does not, in any way, require Participating Dental Partner Providers to agree to satisfy certain targets or thresholds for the commercial benefit of St Lukes.
 - The intent of the Metrics Reports is to allow providers and business owners to understand their own patient cohort better.
 - Metrics Reports will be offered on a by-request arrangement and St Lukes intends for this to create mutually beneficial relationships which support its members.

ACCC view

- 4.70. The ACCC considers there is limited scope for the Proposed Authorised Conduct to reduce the standard of patient care and consumer autonomy.
- 4.71. The ACCC considers that dental practitioners currently already face competitive pressures to offer lower cost-services due to a number of dental providers in their area, promotional offers offered by dental practices to attract or retain patients and similar initiatives offered by other health insurance providers. The ACCC also acknowledges that dentists compete on factors other than price, such as quality of care and location, where patients may choose which practice to attend based on their preferences. Customers are also free to choose whether to acquire private health insurance and to include coverage for dental services if that also suits their preferences.
- 4.72. The ACCC notes that St Lukes members will receive the same rebate for each service regardless of where the members choose to access services (whether a Participating Dental Partner Providers or not), and will therefore not be relying on differential rebates for decisions on where to visit a dental practice.
- 4.73. In relation to concerns raised regarding the Metrics Reports steering dental practitioners towards meeting targets at the expense of patient care, the ACCC notes the reports will only be provided on a by-request basis and will likely focus only on de-identified breakdowns of services delivered to St Lukes' members by item number, billing behaviours and patterns and comparison to other providers. The ACCC notes that it is in St Lukes' interest to design Metrics Reports that are suitable for

Participating Dental Partner Providers' needs, given the voluntary nature of the Proposed Authorised Conduct.

- 4.74. The ACCC also notes more generally the voluntary nature of the proposed arrangements for dentists, who may exit from the Proposed Authorised Conduct if it no longer suits their business needs. The ACCC also notes that the Relevant Provisions do not provide St Lukes authority or involvement in the clinical decision making of participating dental practitioners. Further, Participating Dental Partner Providers are free to provide additional services which are not included in the No-Gap and Known-Gap Services schedule, and attract a gap, given those services are delivered with the member's informed financial consent and billed accordingly.
- 4.75. The ACCC also notes that dentists are subject to standards of practice imposed by regulatory bodies (such as the National Safety and Quality Health Service Standards – as administered by the Australian Commission on Safety and Quality) and the Dental Board of Australia's registration standard. Dentists must meet these standards with or without the Proposed Authorised Conduct.
- 4.76. Accordingly, the ACCC does not consider that the Proposed Authorised Conduct is likely to result in public detriment in the form of reduced standard of patient care and consumer autonomy.

ACCC conclusion on public detriment

- 4.77. The ACCC considers that the Proposed Authorised Conduct is unlikely to result in public detriments in the form of potential for reduced competition in the acquisition of dental services in Tasmania and reduced standard of patient care and consumer autonomy, largely due to the voluntary and non-exclusive nature of the arrangements and existing competitive market pressures.

Balance of public benefit and detriment

- 4.78. The ACCC considers that the Proposed Authorised Conduct is likely to result in a public benefit in the form of increased access to price certainty for routine and preventative dental services, which largely would flow to St Lukes members in areas which overlap with St Lukes' Dental Practices. The ACCC acknowledges this represents a limited number of members in the community and has weighted this benefit accordingly.
- 4.79. The ACCC also considers the Proposed Authorised Conduct is likely to result in some public benefit attributable to increased competition between health insurance providers in Tasmania, to the extent it initiates a competitive response from other private health insurers to improve their offerings of no-gap or known-gap experiences for their members. However, the ACCC acknowledges this may also occur to some extent in a future without the Proposed Authorised Conduct, and the ACCC has weighted this benefit accordingly.
- 4.80. The ACCC considers that the Proposed Authorised Conduct is unlikely to result in public detriment attributable to reduced competition in the acquisition of dental services in Tasmania and reduced standard of patient care and consumer autonomy.

4.81. Therefore, for the reasons outlined in this draft determination, the ACCC is satisfied that the Proposed Authorised Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Authorised Conduct.

Length of authorisation

- 4.82. The Act allows the ACCC to grant authorisation for a limited period of time.⁴⁴ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 4.83. In this instance, St Lukes seeks authorisation for 10 years. St Lukes submits that, if the ACCC is not prepared to grant authorisation for a period of 10 years, a 5-year authorisation term should be the minimum period. St Lukes submits that it requests 10 years to allow it to build its dental network. St Lukes submits that this will allow it to ensure that it is engaging with appropriate dental providers and building a thoughtful and effective dental partner network.
- 4.84. Further, St Lukes submits that by establishing a dental network it seeks to address the cost barriers to oral health care in Tasmania and the 10-year authorisation term is requested based on the extent of the existing challenges for dental care in Tasmania (such as a significant proportion of Tasmanians identifying they avoid dental care due to costs). St Lukes submits that, if its dental network is to have its desired outcome of improving oral health at a population level, reducing barriers to oral health care for generations will be required.
- 4.85. While the duration of an authorisation is determined case by case, the ACCC more frequently grants longer authorisations (beyond 5 years) where it is being asked to authorise previously authorised conduct, there is evidence that anticipated benefits have been delivered, relevant parties continue to support the arrangements and market conditions are stable.
- 4.86. The ACCC notes that this is the first time that authorisation has been sought for this conduct by St Lukes. The ACCC notes the evolving nature of the private health insurance industry and St Lukes' submission that it expects to be the largest health insurer by market share in Tasmania by 2025, and uncertainty regarding the number of St Lukes' Dental Practices it plans to open.
- 4.87. The ACCC notes St Lukes' submissions that it has not set a minimum nor maximum number of Participating Dental Partner Providers it seeks for its network. The ACCC also notes that the Proposed Authorised Conduct provides for the possibility that St Lukes may make changes to the No-Gap and Known-Gap Services to include additional or substitute routine dental service items, and for St Lukes to vary the Maximum Chargeable Fees each year. Given future changes are unlikely to be frequent, and the net public benefit of the Proposed Authorised Conduct, the ACCC will consider any adjustments made to the No-Gap and Known-Gap Services at the end of the authorisation period (if further authorisation is sought).

⁴⁴ Subsection 91(1)

4.88. In light of these factors, the ACCC considers that it is appropriate to grant authorisation for 5 years. This provides the ACCC with an opportunity to assess the benefits and detriments arising from the conduct in light of industry changes and implementation of the Proposed Authorised Conduct.

4.89. Accordingly, the ACCC proposes to grant authorisation for 5 years.

5. Draft determination

The application

5.1. On 8 May 2024, the St Lukes lodged application AA1000671 with the ACCC, seeking authorisation under subsection 88(1) of the Act.

5.2. St Lukes seeks authorisation to:

- enter into and give effect to certain pricing arrangement provisions in agreements with Participating Dental Partner Providers in Tasmania via a dental partner provider network; specifically the Relevant Provisions at Annexure A; and
- issue Metrics Reports to Participating Dental Partner Providers regarding their services delivery and billing to St Lukes members.

5.3. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

5.4. Under subsections 90(7) and 90(8) of the Act, the ACCC must not make a determination granting an authorisation unless it is satisfied in all the circumstances that the conduct would result, or be likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would result, or be likely to result, from the conduct.

5.5. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Proposed Authorised Conduct described below would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Authorised Conduct, including any lessening of competition.

5.6. Accordingly, the ACCC proposes to grant authorisation.

Conduct which the ACCC proposes to authorise

5.7. The ACCC proposes to grant authorisation AA1000671 for:

- St Lukes and Participating Dental Partner Providers to enter into and give effect to the Relevant Provisions at Annexure A in agreements between St Lukes and a Participating Dental Partner Provider where the Participating Dental Partner

Provider is in the same local catchment areas as a St Lukes' Dental Practice in Tasmania (including any future St Lukes' Dental Practices in Tasmania); and

- St Lukes to issue Metrics Reports to Participating Dental Partner Providers regarding their services delivery and billing to St Lukes members.

(collectively, the **Proposed Authorised Conduct**).

5.8. The ACCC proposes to grant authorisation in relation to Division 1 of Part IV of the Act, and section 45 of the Act.

5.9. The ACCC proposes to grant authorisation AA1000671 for 5 years.

5.10. The proposed authorisation is in respect of the wording of the Relevant Provisions as specified in Annexure A. Any amendments to the terms of these clauses, and any other clauses in the relevant agreements, are not covered by the authorisation.

5.11. This draft determination is made on 12 September 2024.

6. Interim authorisation

6.1. At the time of lodging the application, St Lukes requested interim authorisation to allow it to commence entering into agreements with potential dental providers, without giving effect to the agreements until final authorisation is granted. In its request for interim authorisation, St Lukes submits that:

- Its ability to start entering into agreements with potential Participating Dental Partner Providers prior to final authorisation is critical to its ability to establish a foundation so that, when it goes to market, it has a network of Participating Dental Partner Providers to support the network and provide the offering advertised to consumers.
- There is a need to encourage its members and prospective members to access regular preventative dental care, where cost is a known barrier, and the St Lukes Dental Network is aimed at improving price certainty across Tasmania. St Lukes' model delivers like benefits to all Participating Dental Partner Providers and similar models have already been adopted by other health insurance providers.
- There is limited risk in granting interim authorisation as its model will not be in effect until final authorisation is granted, and there will be no impact to competition in the Tasmanian market. During the interim authorisation period, potential Participating Dental Partner Providers would remain free to conduct their ordinary business operations in an unencumbered way and would not be required to change their business practices. Ultimately, the only consequence of signing potential Participating Dental Partner Providers up to the conditions in advance is that those providers have a legal agreement that is ready to come into effect if and when final authorisation is granted.
- In the event interim authorisation is granted, but final authorisation is not granted subsequently, the potential Participating Dental Partner Providers will not suffer from any detriment as the conditions signed by those providers will simply fall

away. The only risk associated with granting the interim authorisation now is the risk that St Lukes' commercial reputation amongst dental providers may be adversely affected.

- 6.2. St Lukes confirmed it is proposing to share the Maximum Chargeable Fee schedules with Participating Dental Partner Providers under interim authorisation. St Lukes submits, given the intent of interim authorisation is to commence engaging with potential participants as soon as possible, sharing information in respect of proposed fee structures would permit a greater degree of transparency by allowing it to give potential Participating Dental Partner Providers an understanding of what their participation in its dental network might look like.⁴⁵
- 6.3. The ACCC considers that, in light of its preliminary analysis on the public benefits and detriments that are likely to arise from the Proposed Authorised Conduct, it is appropriate for interim authorisation to be granted to the extent that it would allow St Lukes to commence commercial planning, discussions and other steps in preparation for the marketing and provision of No-Gap and Known-Gap Services to its members. The ACCC considers that, because the interim conduct was requested on the basis that no contracts will be given effect to until the final ACCC determination is made, that interim authorisation is unlikely to permanently alter the competitive dynamics of the market. Therefore, the ACCC considers that the market will be able to return to substantially its current state if final authorisation is later denied.
- 6.4. The ACCC has therefore decided to grant interim authorisation for St Lukes and Participating Dental Partner Providers to enter into, but not give effect to, the Relevant Provisions in Annexure A in agreements between St Lukes and a Participating Dental Partner Provider where the Participating Dental Partner Provider is in the same local catchment area as a St Lukes' Dental Practices in Tasmania.
- 6.5. Interim authorisation is granted in respect of Division 1 of Part IV and section 45 of the Act.
- 6.6. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect or when the application for authorisation is withdrawn.
- 6.7. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.

7. Next steps

- 7.1. The ACCC now invites submissions in response to this draft determination. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.

⁴⁵ [St Lukes's response to ACCC request for information](#), 9 August 2024.

Annexure A – Relevant Provisions

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 [Annexure B] 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 [Annexure B] 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 [Annexure B], 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.

6. Updating the schedule of fees

- 6.1 Updating of [Annexure B], schedule of fees will be undertaken annually. St Lukes may also vary the services to which [Annexure B] 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 B – No-Gap and Known-Gap Services

Item Number	Description
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 included as 'gap free preventative services'. All other services in attract a Maximum Chargeable Fee which is not equal to the maximum benefit for service, delivering a known-gap experience for members.