

Please provide the further information requested below by 4 June 2024:

2. We understand the proposed conduct for which authorisation is sought to be described in paragraph 2.1 of the application, which states that St Lukes seeks authorisation specifically for 'Clause 5 of the St Lukes Gap Free Network Terms & Conditions [...] replicated at Annexure A'. Please clarify whether St Lukes is also seeking authorisation for any other conduct, including for:

- a. clause 6 of the St Lukes Gap Free Network Terms & Conditions (replicated at Annexure B of the application); and/or
- b. the 'Dental Services Utilisation and Servicing Metrics' reports St Lukes will provide to Participating Dental Partner Providers regarding their services delivery and billing to St Lukes members to enable the Participating Dental Partner Provider to make comparison with their peers in terms of services and billing (referred to at paragraph 8.13(b) of the application).

We confirm that St Luke's intends to also seek authorisation for:

- 1) the conduct described in clause 6 of the St Lukes Gap Free Network Terms & Conditions (**Conditions**), being the ability to vary the maximum fees contained in Schedule 1 and the ability to vary the service items listed in Schedule 1; and
- 2) The ability to issue "Dental Services Utilisation and Servicing Metrics' reports (**Metric Reports**) to Participating Dental Partner Providers regarding their services delivery and billing to St Lukes members

We wish to include that conduct in the authorisation out of an abundance of caution and to ensure the Network can be fully established and operate as designed. We don't anticipate that the conduct will actually give rise to competition concerns.

To be clear, we confirm that, if authorisation is granted,

- 1) any variations made to the maximum fees or service items listed in Schedule 1 of the Conditions are unlikely to be substantial or result in a wholesale replacement or revision of Schedule 1. Rather, we anticipate that any variations made to Schedule 1 will occur as part of the organic evolution of the Network and the changes in the nature and delivery of dental services. Ultimately, St Luke's requires some flexibility to allow us to adjust Schedule 1 from time to time to deliver the best outcome for our members; and
- 2) the Metrics Reports issued to *Participating Dental Partner Providers* will only contain historical, aggregated and anonymised information. In particular, the Metrics Reports will contain data regarding each *Participating Dental Partner Providers'* service delivery and billing of St Lukes members and how their practices compare to a de-identified data set of their peers (i.e. other Tasmanian dentists). The Metrics Reports will not contain any competitively sensitive information (such as pricing forecasts) that might influence the behaviour of the recipient or cause a recipient to act in a certain way. Ultimately, the Metrics Report are designed as a value-add for *Participating Dental Partner Providers* that supports their business decisions and encourage them to prioritise St Lukes' members, and to incentivise other dental providers to join the Network in the first instance.

3. Paragraph 2.2. of the application states that St Lukes proposes to enter into agreements with *Participating Dental Partner Providers* that are located geographically in Tasmania.

- a. Please confirm whether St Lukes plans to enter into these agreements with *Participating Dental Partner Providers* across all of Tasmania, or only in specified locations.

We confirm that St Lukes intends to enter into agreements with any suitable provider in Tasmania seeking to participate in the Network. We want to ensure our members have access to *Participating Dental Partner Providers* wherever dental services are needed throughout Tasmania.

- b. Please provide further information regarding St Lukes' plans to enter into agreements with *Participating Dental Partner Providers*, including the number of agreements it plans to enter into and how St Lukes is planning to identify and/or decide which providers to partner with.

St Lukes has not set a minimum nor maximum number of providers it seeks for its network and does not intend to set any limits. As set out above, Network participation will be open to every suitable dental provider in Tasmania who wishes to become a *Participating Dental Partner Provider*.

Similarly, 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 comprise a specified number of *Participating Dental Partner Providers* within one particular area. If necessary, St Lukes will allow dental providers to join the Network even if they are in close proximity to another *Participating Dental Partner Provider*. This will ensure that dental providers can make an unfettered choice whether to join the Network and the same competitive pressures are maintained.

If authorisation is granted in respect of all of Tasmania, we consider that geographic proximity between *Participating Dental Partner Providers* would have no bearing on authorisation in circumstances where:

- 1) St Lukes does not have any existing share of the Tasmanian dental services market;
- 2) membership of the Network will be voluntary and non-exclusive such that *Participating Dental Partner Providers*:
 - a. will not be required to enter into exclusive agreements with St Lukes, and they remain free to enter into agreements with other health insurers and to continue to provide services to non-members; and
 - b. will not be locked into the Network. If a *Participating Dental Partner Provider* no longer wishes to participate in the Network, they will be able to terminate the agreement at any time without cause by providing notice.

4. We note the application states that St Lukes 'does not seek authorisation for the establishment of its Applicant Practices' (footnote 4 of the application). However, we note that the risk of contravention section identifies the 'potential risk that the *Participating Dental Partner Providers* practices could be considered to be in competition with existing Applicant Dental Practice(s) at some relevant time' (paragraph 3.1 of the application).

- a. *Please clarify whether St Lukes is seeking authorisation for all geographic areas where it enters into and gives effect to certain pricing arrangement provisions in agreements with Participating Dental Partner Providers via the St Lukes Gap Free Network, or only the areas in which they overlap with Applicant Dental Practices.*

As set above in response to Question 3, our intention is to allow any suitable dental provider in Tasmania to join the Network. Accordingly, the authorisation sought is not limited to those geographic areas which overlap with the Applicant Dental Practices.

St Lukes is seeking authorisation for all geographic areas where it enters into and gives effect to certain pricing arrangement provisions in agreements with *Participating Dental Partner Providers* via the Network. As it is intended to establish a State-wide network, authorisation is sought for the whole of Tasmania.

- b. *With regard to your response to question 4(a) above, if St Lukes is seeking authorisation for all areas where it enters into and gives effect to certain pricing arrangement provisions in agreements with Participating Dental Partner Providers via the St Lukes Gap Free Network, please explain how Part IV of the Competition and Consumer Act 2010 (Cth) would or might apply to the areas that do not overlap with Applicant Dental Practices.*

We acknowledge that there is minimal risk of St Lukes contravening the provisions in Part IV of the *Competition and Consumer Act 2010 (Cth)* in circumstances where there is no overlap between a *Participating Dental Partner Provider* and an Applicant Dental Practice. However, we consider that it is still appropriate for St Lukes to obtain authorisation for the entirety of Tasmania in circumstances where:

1. St Lukes's goal is to establish a Tasmania-wide network. There is no maximum number of *Participating Dental Partner Providers*. Accordingly, the scope of the authorisation sought needs to be sufficient to support a network of that size;
 2. All Participating Dental Partner Providers throughout Tasmania will be subject to the terms and conditions of the Network, including clause 5 (set out in Annexure A to the Application) regarding 'Charging and Claiming' and the Maximum Chargeable fee for the stipulated services;
 3. St Lukes will open two Applicant Dental Practices by the end of 2024 (located in Launceston and Howrah). As set out in response to Question 4(c) below, whilst St Lukes intends to open additional Applicant Dental Practices in the future, its ability and commitment to do so will be dependent on the success of the two original Applicant Dental Practices. Accordingly, St Lukes has not made any determinations regarding the final locations of any additional Applicant Dental Practices and the relevant planning process is still in its infancy. It follows that obtaining State-wide authorisation will give St Lukes a degree of flexibility in its planning process. Further, if the Applicant Dental Practices are a success and support the roll-out of additional Applicant Dental Practices with greater frequency, State-wide authorisation will be the most efficient path forward (for both St Lukes and the ACCC).
- c. *Please provide further information on St Lukes' plans to establish the Applicant Dental Practices including:*
- i. *the number of Applicant Dental Practices that St Lukes plans to open;*

As at the date of this response, St Lukes has committed to plans to open two Applicant Practices in 2024; one located in Howrah and one Launceston. Subject to the recruitment of personnel and establishment, both Applicant Practices will likely be operational by the second half of 2024.

ii. locations for the planned Applicant Dental Practices (including whether any specific sites have been identified or secured);

As at the date of this response, St Lukes has not identified or secured any specific locations for additional Applicant Dental Practices. Whilst it would hope to eventually open further Applicant Dental Practices, those plans are still in their infancy and no decisions have been made. Naturally, whether St Lukes opens additional Applicant Dental Practices will depend on the success and viability of the Applicant Practices in Launceston and Howrah and the assessment of the services able to be provided to meet members' needs. Accordingly, as the Network develops, and member needs evolve, St Lukes will consider the need for additional Applicant Dental Practices and take steps to establish any additional practice at that time.

iii. more precise timelines for the establishment of each planned Applicant Dental Practice;

As above, the Applicant Dental Practices located in Howrah and Launceston will likely be operational by the end of 2024. St Lukes cannot give an exact timeline at this stage.

iv. how many agreements with Participating Dental Partner Providers St Lukes intends to enter into in geographic proximity to each Applicant Dental Practice.

As set out above, St Lukes does not intend to impose any quotas or limits in respect of the number dental providers who can join the Network. Accordingly, if a suitable dental provider in geographic proximity to an Applicant 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. This provides greater coverage and choice for St Lukes' members.

5. Section 5 of the application outlines St Lukes' request for interim authorisation, where St Lukes 'seeks an interim authorisation within six weeks of lodgement to allow it to commence entering into agreements with potential dental providers.' With regard to your response to questions 4(a), (b) and (c) above, please clarify why St Lukes is seeking interim authorisation for it to commence entering into agreements with potential dental providers.

St Lukes' ability to start entering into agreements with potential 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.

For clarity, if interim authorisation is granted:

- 1) St Lukes would present the Conditions to potential dental partner providers and, if they agree to participate in the Network, would require them to sign the Conditions;
- 2) the potential dental partner providers would not be bound by the Conditions until the date on which final authorisation is granted (or another agreed date);

- 3) allowing St Lukes to approach potential dental partner providers before final authorisation is granted would not have any practical consequences on the dental services market because, during the interim authorisation period, potential dental partner providers would remain free to conduct their ordinary business operations in an unencumbered way, would not be required to change their business practices, and would not otherwise be required to take any action whatsoever in connection with the Network. If those providers wish to take preparatory action in anticipation of the Conditions coming into force, that will be an independent decision for the provider but St Lukes has no intention to direct that preparatory actions be taken;
- 4) Ultimately, the only consequence of signing potential 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 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's commercial reputation amongst dental providers may be adversely affected.

6. The application refers to the name of the program as the 'St Lukes Gap Free Network'. The application also notes that '[t]he operation of the St Lukes Gap Free Network will allow members to receive: [...] No-gap or known-gap experience[s]' for services included in Schedule 3 (paragraph 2.4 of the application). Please confirm whether St Lukes intends to proceed with naming the program the 'St Lukes Gap Free Network', and if so, whether it intends to use this name in instances where the program provides known-gap experiences (rather than gap-free or no-gap experiences). 1 We note that the ACCC is empowered to grant authorisation for conduct to which one or more of the competition provisions of the Competition and Consumer Act 2010 (Cth) would or might apply.

We confirm that St Lukes preference is to use the name 'St Lukes Gap Free Network'.

The use of the phrase "gap free" in the proposed name simply refers to the fact that, by creating the network, St Lukes can ensure that a number of common preventative dental services are delivered to members on a gap free basis.

The nature and extent of the gap free services will be made clear in all promotional material used to promote the Network, as well as in membership documentation, so there is no prospect of misconceptions arising.

Further, the provision of gap free services is a common benefit amongst other private health funds and the fact that the term 'gap free' only refers to a specific list of services, rather than all dental services, is well understood by consumers. Accordingly, the risk of the name misleading consumers is very low.

Of course, we are prepared to discuss that issue with the ACCC if the name creates any concerns.

7. Clause 5.3 of Annexure A specifies that: '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'. Please clarify the meaning of 'normal business practice' in this clause.

The phrase "normal business practice" is intended to have its ordinary meaning (i.e. the *Participating Dental Partner Provider's* business's processes and practices that are extraneous to/unconnected from their rights and obligations pursuant to the agreement to the Participating Network. For example, if a provider's typical fee is lower than the maximum chargeable fee (as per Schedule 3), we would expect this fee be charged to St Lukes members.

Could this question please be reviewed for any potential additional meaning, and response assessed.

8. Section 4 of the application outlines the authorisation term sought by St Lukes, being 10 years. Please provide further information and specify the reasons why St Lukes is seeking authorisation for 10 years.

As per Section 8 of the Application, oral health in Tasmania is a known population health issue. Good oral health is fundamental to overall health and wellbeing, while poor oral health is the highest contributor of preventable hospitalisations and is linked with diabetes, heart disease and stroke. Meanwhile, cost is a known barrier to preventative oral health care and Tasmania experiences among the highest costs in Australia.

The proposed conduct seeks to address the cost barriers to oral health care in Tasmania. The ten-year term is requested based on the extent of the existing challenges (14,000 people of public service waitlists for dental care, 62% of Tasmanians identifying they avoid dental care due to costs). If the proposed conduct 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.

If the ACCC is not prepared to grant authorisation for a period of ten years, we submit that a five year authorisation term should be the minimum period.