

# MinterEllison

3 December 2021

## **Urgent application for interim and final authorisation under section 88(1) of the *Competition and Consumer Act 2010* (Cth)**

**Lodged by:** The State of South Australia as represented by the Department for Health and Wellbeing

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## 1. Summary

### 1.1 Background

This application is made to the Australian Competition and Consumer Commission (**ACCC**) by the State of South Australia as represented by the Department for Health and Wellbeing (**Department**). The Proposed Conduct (as set out below) that is the subject of this request for authorisation is:

- (a) the same as the proposed conduct requested by the Department and authorised under Authorisation AA1000498-1 (**Previous Authorisation**), which expired on 30 September 2021; and
- (b) substantively similar to the coordinated healthcare arrangements being implemented in Victoria, Queensland and the Northern Territory, in respect of which the ACCC has already granted interim authorisation while it assesses applications for revocation of an existing authorisation and substitution with a new authorisation on the same terms.<sup>1</sup>

This application is made for the benefit of the following parties, which are engaged, or propose to become engaged, in the Proposed Conduct:

- (a) the State of South Australia as represented by the Department;
- (b) specified private hospital and healthcare operators in the State of South Australia as listed in Schedule 1 (and their related bodies corporate), as well as any other private healthcare providers operating in the State of South Australia which are notified to the ACCC from time to time by the Department (the **Participating Operators**); and
- (c) all public hospitals operating in the State of South Australia, as listed in Schedule 1, and the operator of any other healthcare facility ultimately owned or operated by the State of South Australia or an authority of the State of South Australia (the **SA Public Operators**),

(together, the **Participating Parties**).

As part of the national response to the COVID-19 pandemic (the **Pandemic**), in 2020 the Australian Government imposed temporary restrictions on the ability of private healthcare providers to perform certain categories of non-urgent surgeries, with the aim of increasing the capacity of Australian healthcare providers to provide care to patients suffering from COVID-19 related health issues. On 30 March 2020, the Australian Government also announced viability for capacity guarantee arrangements for the private hospital and healthcare sector to support private healthcare operators to retain capacity for responding to the Pandemic and to secure capacity and services from private healthcare operators to support the public hospital systems in each State and Territory (the **Private Hospital Viability Guarantee**). Subsequently, the Private Hospital Viability Guarantee was extended by the Australian Government through to 2022.

The Department agreed to provide an amount of funding to the Participating Operators (in part funded by the Federal Government pursuant to the Private Hospital Viability Guarantee) in consideration of those Participating Operators agreeing to provide certain services and give certain undertakings in relation to the operation of their healthcare facilities (including a degree of coordination). The ultimate objective of the arrangements was maximising hospital capacity and ensuring the State-wide coordination of hospital and healthcare services to facilitate the most efficient and effective allocation of these resources and services during the period of the Pandemic. The Department notes that these agreements are no longer on foot.

On 15 April 2020, the State of South Australia, as represented by the Department, lodged an application with the ACCC seeking to have conduct as part of the State's response to the Pandemic authorised under the Previous Authorisation (the **2020 Application**). The conduct the subject of the 2020 Application was essentially aimed at avoiding hospitals and healthcare

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<sup>1</sup> See [Victorian Private Healthcare COVID-19 arrangements - re-authorisation | ACCC](#) and [Northern Territory Private Healthcare COVID-19 arrangements - re-authorisation | ACCC](#).

services in South Australia from becoming overwhelmed as a result of potentially rapid increases in patients requiring treatment for COVID-19 related health issues, thereby generating unprecedented levels of demand for hospital care and (potentially) greater mortality rates in patients presenting with otherwise treatable conditions (as was being observed at that time in many overseas countries, and which continues to be a persistent challenge faced by international hospital and healthcare systems).

On 13 August 2020, the ACCC granted the Previous Authorisation (**Final Determination**). A copy of the Final Determination for the Previous Authorisation is provided as **Attachment 1**.

On 30 September 2021, the Department allowed the Previous Authorisation to lapse, as South Australia had very low levels of community transmission of the COVID-19 virus, which were manageable by the resources and capabilities of the South Australian public hospital system. Accordingly, the arrangements which were the subject of the Previous Authorisation were considered to be no longer required.

In accordance with an announcement by the South Australian Government in late October 2021<sup>2</sup>, as at 12:01am on Tuesday 23 November 2021, the South Australian borders were re-opened to fully COVID-19 vaccinated travellers from all Australian States and Territories on the basis of relaxed entry quarantine restrictions, in accordance with South Australia's 'COVID-Ready' plan which is consistent with the Australian Government's post-COVID-19 recovery initiatives. The re-opening of the South Australian borders in this manner is a move away from a 'zero-COVID' policy to a policy of 'controlled-entry' of COVID into the South Australian community.

Controlled entry of COVID into a jurisdiction that, to date, has successfully contained the spread of COVID-19 will inevitably lead to increased community transmissions, and an increase in presentations of COVID-infected patients into the South Australian healthcare system. It may also, ultimately, lead to a surge in presentations in sufficient numbers to exceed the ability of the public health system to respond in an appropriate and timely manner. South Australia is conducting ongoing monitoring to track the possible community spread of the COVID-19 virus once (and now that) borders are re-opened as outlined above.

The Participating Parties now seek to engage (or potentially engage) in the same conduct as was authorised by the ACCC under the Previous Authorisation, as part of their engagement with the South Australian public health system under the South Australia's 'COVID-Ready' plan. The Department expects that the Proposed Conduct will be critical to be able to respond to potential pressure placed on the public hospital system as a result of the re-opening of South Australian borders on 23 November 2021.

On this basis, the Participating Parties request that the ACCC grant a new authorisation to permit them to engage in that authorised conduct.

The basis for the Participating Parties seeking authorisation is that they expect the arrangements in place which were the subject of the Previous Authorisation will be of significant utility as the South Australian strategy to responding to the Pandemic evolves with South Australia's 'COVID-Ready' plan, given that the policy of 'controlled-entry' of COVID will lead to an increase in community transmissions of COVID-19 in the South Australian community.

There will then be an increasing need for healthcare providers to respond quickly (and possibly with minimal or no notice) to cases being transmitted within the community and potential COVID-19 outbreaks that may occur. It will therefore be critical that the Participating Operators continue to be in a position to be able (as and when necessary) to coordinate their medical preparedness and resourcing to respond to and manage the impact of the Pandemic to alleviate any stresses placed on the public healthcare system. Similarly, as has been observed throughout Australia, particularly in 2021 (during which there have been a number of community 'hot-spot' outbreaks), there will likely be an ongoing need to implement and oversee the coordination of services to respond to clusters of COVID-19 cases which may emerge across localised areas in South

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<sup>2</sup> Announcement by South Australian Premier, The Hon. Steven Marshall, MP, on 26 October 2021.

Australia. As one of the Participating Parties, the South Australian Government is strongly supportive of this application for urgent authorisation.

## 1.2 Application for urgent interim and final authorisation

This application is made to the ACCC for urgent interim and final authorisation under section 88(1) of the *Competition and Consumer Act 2010 (Cth)* (**CCA**) by the Department.

The Department considers that, in light of the ongoing challenges to the healthcare and hospital systems that the Pandemic is likely to present, including:

- (a) the challenges presented following the re-opening of South Australian borders pursuant to South Australia's 'COVID-Ready' plan; and
- (b) the emergence of new variant strains of the COVID-19 virus,

the agreements for the provision of funding to the Participating Operators (including the Private Hospital Viability Guarantee) and any associated coordination of the Participating Parties' services should be authorised to re-commence immediately.

It is anticipated that if there is a 'surge' of community transmissions after the borders are re-opened, there would consequently be a significantly increased demand for hospital care in South Australia, in addition to non-COVID-19-related patient presentations to the health system at the time.

To ensure that an appropriate and timely response to any such incidents could occur as quickly as possible, the Department requests that the ACCC grant interim authorisation to the proposed conduct (defined below in section 3 of this application) as soon as possible.

## 2. **Parties to the proposed conduct**

### 2.1 Applicant for authorisation

State of South Australia as represented by the Department for Health and Wellbeing (**Department**):

Address (registered address)	Contact person	Description of business activities
11 Hindmarsh Square, Adelaide, 5000, South Australia	Helen Chalmers Executive Director, Health Services Programs Department for Health and Wellbeing Mobile: [REDACTED] Email: [REDACTED]	The State of South Australia, as represented by the Department for Health and Wellbeing, is responsible for (amongst other things) the administration of hospital and other health services in South Australia under the <i>Health Care Act 2008 (SA)</i> , including all of South Australia's public hospitals and the licensing of private hospitals in South Australia.

### 2.2 Email address for service of documents in Australia

Contact: Lisa Jarrett, Partner, MinterEllison

Email address: [REDACTED]

Telephone: [REDACTED]

## 2.3 Details of other persons who are engaged, or propose to become engaged, in the Proposed Conduct

In addition to the Department, the other persons who are engaged, or who propose to engage in the Proposed Conduct are:

- (a) the Participating Operators, being specified private hospital and healthcare operators operating in the State of South Australia as set out in Schedule 1 (and their related bodies corporate), as well as any other private healthcare operators notified to the ACCC from time to time by the Department; and
- (b) the SA Public Operators, being the operators of all public hospitals in the State of South Australia, as set out in Schedule 1, and any other healthcare facility ultimately owned or operated by the State of South Australia or an authority of the State of South Australia.

As it did in the case of the Previous Authorisation, the Department anticipates that (as the Pandemic evolves) the State may find it necessary to enter into similar arrangements to those contemplated by this application with additional private healthcare operators. As it was required to do under Condition 2 of the Previous Authorisation, the Department will promptly notify the ACCC of any additional private operators that enter, or are expected to enter, into any such agreements and should therefore be added to Schedule 1 as parties which may also be engaged, or become engaged, in the Proposed Conduct.<sup>3</sup>

## 3. **The Proposed Conduct**

### 3.1 Description of and rationale for the Proposed Conduct

As the Pandemic has continued to evolve, the Department expects that the State and National Cabinet will continue to implement - and may revise - responses to the Pandemic. As has been set out in statements released by the National Cabinet, the Department anticipates that this will involve gradually adjusting to living in a 'COVID normal' environment, particularly as the number of people fully vaccinated increases. As the South Australian community adjusts to living in these new settings, there remains the possibility that, at different periods of time, there may be significantly increased demand for hospital care in South Australia due to community transmission of the COVID-19 virus, in particular – and most immediately - as a result of the re-opening of South Australian borders to fully vaccinated travellers from all other States and Territories on Tuesday 23 November 2021.

Regardless of how the spread of COVID-19 develops in South Australia, for the remainder of 2021 (and looking forward to 2022), it is critical to South Australia's response that the maximum healthcare resources are available and that all hospitals (both public and private) remain open and have the ability to coordinate their services to facilitate appropriate access to their facilities and the highest possible level of care for each individual patient (as well as remain financially viable).

#### *Private Hospital Funding Agreement*

In order to maximise the overall capacity of the South Australian healthcare system to respond to the Pandemic and future outbreaks, it is intended that the Department will separately enter into one or more substantially similar agreements with each of the Participating Operators (the **2021 Agreements**). The 2021 Agreements are similar to those entered into with specified private healthcare providers in 2020 (as detailed in the Previous Authorisation), which are no longer on foot as they were not required in light of the very low levels of community transmission of the COVID-19 virus in South Australia at that point in time (the **2020 Agreements**). Similar to the 2020 Agreements, under the 2021 Agreements, the Department will provide services-based funding to the Participating Operators and those parties will provide the necessary resources and

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<sup>3</sup> Condition 2 of the Existing Authorisation required the Department 'to the extent that the Department believes it necessary or desirable for any other private healthcare providers (other than the private healthcare providers listed in Attachment 1) to participate in the Proposed Conduct, the Department must notify the ACCC of the identity of those parties.'

services to the overall response to the Pandemic in South Australia being coordinated by the Department.

*Objectives and key features of the Private Hospital Funding Agreement*

The objectives of the Participating Parties under the 2021 Agreements include:

- (a) to work cooperatively to ensure that the public and private hospital and healthcare sectors respond successfully to the Pandemic;
- (b) to ensure the ongoing sustainability and operation of the private hospitals across South Australia during the Pandemic and that the hospitals are able to resume operations once the Pandemic response ends;
- (c) to make available to the Department (and South Australian public) the maximum amount of hospital facilities;
- (d) to ensure that hospital services are provided equitably, consistently and in accordance with clear standards (having regard, where applicable, to the circumstances presented by the Pandemic) in order to optimise health outcomes;
- (e) to ensure that the Department obtains access to additional hospital and health services required as a result of the Pandemic at a reasonable cost and in a manner that achieves a cost-efficient solution for the Department; and
- (f) work together through a culture of mutual respect and cooperation, and in an environment that fosters cost efficiency, transparency and open, honest and timely communication,

(the **Objectives**).

The Department intends the key features of the 2021 Agreements to remain similar to the 2020 Agreements, including that:

- (a) the Department will provide funding to the Participating Operators on the condition that they provide certain services to public patients, including:
  - (i) any services which the Participating Operator performs or is authorised to perform as at the activation date or restart date of the 2021 Agreement; and
  - (ii) each Participating Operator making available to the Department its specified healthcare facilities (including beds, healthcare and other services required to support the operation of each of its healthcare facilities); and
  - (iii) any other healthcare services reasonably necessary to respond to a patient who has been (or is suspected to have been) infected with the COVID-19 virus;
- (b) each Participating Operator will continue to hold operational control and operate their respective healthcare facilities;
- (c) each Participating Operator will be permitted to continue to provide healthcare services to private patients but only to the extent permitted by the 2021 Agreement or by the Department in accordance with principles to be agreed;
- (d) each Participating Operator will continue to maintain all categories of employees in the ordinary course of business with the provision of secondment of staff to public healthcare facilities in certain circumstances;
- (e) each Participating Operator will provide services under the 2021 Agreement on a purely cost recovery and non-profit basis;
- (f) public patients will not be required to pay any amount arising from or in connection with healthcare treatment by a Participating Operator; and

- (g) the Participating Parties will cooperate in respect of the procurement and supply of medical equipment.

In contrast to the 2020 Agreements, under the 2021 Agreements the Department will have a mechanism to 'suspend' and 're-activate' the Agreements where, given the COVID-19 environment at a point in time, there is no immediate requirement by the Department for a Private Operator's facilities or resourcing, and therefore no need for the Department to provide funding to those private hospitals under the Agreement. That is, the 2021 Agreements will not be terminated at times of low or no demand for Private Operators' participation in South Australia's COVID-19 response.

Suspension of a 2021 Agreement would occur either on a case-by-case basis or a wider basis, depending on the Department's level of requirements for facilities, services and resourcing from the Participating Operators from time to time. In periods of low or no demand, the 2021 Agreements would remain suspended unless and until such time as a situation requires the provision of a Participating Operator's facilities, services and resourcing, and for the State to provide funding to assist those Participating Operators' response to COVID-19 outbreaks. In that case, the 2021 Agreements would be 're-activated' by the Department as necessary after a period of suspension. Suspensions and re-activations can occur on multiple occasions under each of the 2021 Agreements.

The rationale for this suspension/re-activation arrangement is for administrative efficiency in light of the ongoing uncertainty regarding requirements for private healthcare facilities, services and resourcing due to the uncertain nature of the Pandemic, and to avoid having to terminate and then re-enter agreements with private operators for unknown periods of time or without sufficient notice in response to COVID-19 outbreaks.

The 2021 Agreements are not intended to, and do not extend to, coordination or any agreement between the Participating Operators other than as necessary or desirable to give effect to the 2021 Agreements and to facilitate the Objectives at the request or direction of the Department or one or more of the SA Public Operators (nor have the operation of the 2020 Agreement, or any activities conducted to give effect to the 2020 Agreements during the time the 2020 Agreements were on foot, had this effect).

Similarly, to the extent that the Participating Operators retain the capacity to do so, nothing in the Agreements is intended to affect the normal competitive process vis-a-vis the provision of healthcare services to private patients. The Department will continue to review the 2021 Agreements, in light of the circumstances of the Pandemic, and as circumstances require seek to only activate and ultimately terminate the 2021 Agreements as necessary, which would enable each of the Participating Providers to provide business as usual services to private sector patients unless the public health response to the Pandemic would necessitate otherwise.

#### *Proposed Conduct*

The Department seeks ACCC authorisation for the same scope of proposed conduct as previously authorised under the Previous Authorisation. This is consistent with the approach taken by Victoria and the Northern Territory (through revocation and substitution) and will retain maximum flexibility for the State.

Accordingly, the Department seeks ACCC Authorisation for it and the other persons who propose to engage in the Proposed Conduct to:

- (a) negotiate and enter into the 2021 Agreements;
- (b) engage in conduct consistent with the Objectives to give effect to the 2021 Agreements, including (without limitation) by:
  - (i) engaging in coordinated group discussions regarding healthcare operations, capacity and other matters required or contemplated by the 2021 Agreements and sharing any information required or contemplated by the 2021 Agreements or

otherwise reasonably necessary to facilitate the Objectives, including but not limited to:

- (A) information about the capacity or expected capacity of a hospital to provide care to patients or patients with particular conditions; and
  - (B) information about the availability of resources required to treat patients (including, but not limited to, hospital beds, staff, medicines and equipment);
- (ii) coordinating the following activities:
- (A) allocation of the provision of certain services or certain patients to particular healthcare providers and / or between certain healthcare facilities (eg designating specific categories of patients to particular hospitals);
  - (B) restriction of certain services that can be provided at particular healthcare facilities;
  - (C) sharing of resources (including staff and medical supplies and equipment) to meet demand at particular healthcare facilities; and
  - (D) procurement and supply of medical equipment and supplies in order to minimise supply chain disruption and ensure these resources are available to healthcare facilities on an as-needs basis; and
- (iii) engaging in any other conduct that is necessary or desirable to give effect to the 2021 Agreements and facilitate the Objectives at the request or direction of the Department or one or more of the SA Public Operators,

**(the Proposed Conduct).**

The Proposed Conduct is and is expected to continue to be a critical component of South Australia's response to the Pandemic for the remainder of 2021 and into 2022.

During periods of unprecedented demand, maximising capacity and the State-wide coordination of healthcare services will facilitate the most efficient and effective allocation of these resources and services, which is clearly in the interests of the South Australian public (and the Australian public more generally). As at the date of this application, 'hot-spot' outbreaks related to the Pandemic are ongoing across Australia and accordingly the extent of the demand for hospital services as a result of the Pandemic, in terms of volume and duration, remains uncertain.

The Department appreciates that the nature of this application, and the urgency with which it is made means that the ACCC may wish to understand or receive further information about the implementation of the Proposed Conduct from time to time. The Department does not consider it appropriate that authorisation be granted conditional upon a formal notification arrangement in circumstances where the Department will be involved in, and / or have oversight and direction of the Proposed Conduct.

The Department would not object to conditions being imposed of the same kind that the ACCC imposed in respect of the Previous Authorisation, namely:

- (a) Condition 1 – The Department to provide regular updates to the ACCC at a frequency agreed between the Department and the ACCC (namely, monthly), and provide any additional information reasonably requested by the ACCC; and
- (b) Condition 2 - To the extent that Department believes it necessary or desirable for any other private healthcare operators (other than the private healthcare operators listed in Attachment 1) to participate in the Proposed Conduct, the Department must notify the ACCC of the identity of those parties.



### 3.2 Provisions of the CCA which may apply to the Proposed Conduct

The relevant provisions of the CCA which may apply to the Proposed Conduct include:

- (a) making and or giving effect to a contract, arrangement or understanding that may include a cartel provision (Division 1 of Part IV);
- (b) making and or giving effect to a contract, arrangement or understanding that has the purpose or would have the effect, or likely effect, of substantially lessening competition (section 45(1)(a) and (b));
- (c) engaging with one or more persons in a concerted practice that has the purpose, or has or is likely to have the effect, of substantially lessening competition (section 45(1)(c));
- (d) a corporation that has a substantial degree of power in a market engaging in conduct that has the purpose, or has or is likely to have the effect, of substantially lessening competition (section 46(1)); and / or
- (e) engaging in the practice of exclusive dealing (section 47(1)).

### 3.3 Term of authorisation sought and reasons for seeking this period of time

The Department requests interim authorisation for the period from the date of this application until the ACCC grants its final determination. It is not clear how long the Pandemic will last, however authorisation for the Proposed Conduct is sought for a further period of 12 months from the date of a final determination by the ACCC.

The basis for the further term of authorisation is two-fold:

- (a) **first** - as the State and Federal Governments pursue and implement 're-opening' strategies in accordance with projected community vaccination rates, there is significant uncertainty as to how the consequences of these strategies will manifest throughout the South Australian (as well as the national) community. It will therefore remain critical, in light of this uncertainty, that the Participating Parties are able to coordinate their response to COVID-19 outbreaks that may arise as South Australians adjust to living with initially-increased and then ongoing levels of community transmission of the COVID-19 virus as a result of relaxed trans-border travel controls and the increased freedom of movement of fully vaccinated travellers across the South Australian border (who may still be able to transmit the COVID-19 virus despite their vaccinated status); and
- (b) **secondly** - extending the authorisation for a further 12 months would broadly align the Participating Parties' conduct and the Department's ability to provide funding to private hospitals under the 2021 Agreements with the extension of the Commonwealth's Private Hospital Viability Guarantee through to 30 June 2022.<sup>4</sup> As such, this will ensure that the Department continues to be supported by the Federal Government in funding its response to the Pandemic, and provides sufficient time to unwind the 2021 Agreements as required.

It is possible that if the Pandemic lasts for a longer period of time, this period may need to be extended.

The Department notes that the ACCC has the power to revoke the authorisation under section 91B of the CCA should there be a material change in circumstances prior to that time (eg the effects of the Pandemic subside).

### 3.4 Names of persons or classes of persons who may be impacted by the Proposed Conduct and details of how / why they might be impacted

The following classes of persons may be impacted by the Proposed Conduct:

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<sup>4</sup> <https://www.pm.gov.au/media/national-cabinet-statement-6>.

- (a) persons in South Australia who require medical care during the Pandemic;
- (b) healthcare workers, who may be seconded / allocated or contracted to different hospitals from where they normally work, depending on demand at particular hospitals from time to time; and
- (c) suppliers and potential suppliers of medical equipment, medical supplies and / or medical services to the Participating Parties.

#### **4. Public benefit**

ACCC authorisation permitting the Participating Parties to engage in the Proposed Conduct will facilitate a coordinated response to the Pandemic.

The Department considers that the Proposed Conduct will result in significant public benefits, including, in particular, to:

- (a) enable the Participating Parties to work together to coordinate the medical response to the Pandemic in South Australia as effectively, efficiently and economically as possible, including to swiftly respond to any outbreaks of the COVID-19 virus that emerge in South Australia;
- (b) reduce the likelihood that private hospitals operating in the State of South Australia will have to partially or fully suspend or cease ordinary 'business-as-usual' operations as a result of funding issues caused by the Australian Government's restrictions on their ability to provide certain surgeries;
- (c) provide the Department with service capacity oversight to allow distribution of service delivery to meet periods of peak demand and minimise patient transfers between healthcare facilities which will allow patients to receive the best possible care available at the time;
- (d) allow the Participating Operators to be responsive to the needs of the overall health system and coordinate with the SA Public Operators based on clinical priorities, recognising the need for continuity and quality patient care;
- (e) allow the Participating Operators to work in synchronisation with the public health system and each other and prioritise capacity for COVID-19 patients, urgent care and other health services;
- (f) ensure medical equipment (including ventilators), personal protective equipment, medical supplies and other relevant supplies are, to the extent possible, available where needed to respond to the Pandemic;
- (g) ensuring provision of additional intensive care facilities to public patients in response to the Pandemic;
- (h) ensure the Participating Operators can remain operational, and retain staff under existing industrial arrangements during the Pandemic; and
- (i) ensure the viability of Participating Operators which will help ensure that following the Pandemic consumers will continue to have a choice of private or public care.

#### **5. Public detriment**

The Department is not aware of any public detriments that resulted from the Participating Parties engaging in the conduct permitted under the Previous Authorisation.

The Department submits that authorising the Proposed Conduct will result in a significant net public benefit because:

- (a) the Proposed Conduct will enable the Participating Parties to coordinate public and private healthcare resources to respond to and manage COVID-19 outbreaks, thereby facilitating the State and Federal Government's 're-opening strategies' and allow the South Australian community to adjust to living with certain levels of COVID-19 transmission;
- (b) without the Proposed Conduct, there is a higher chance that the South Australian healthcare system may have insufficient capacity to provide services during periods of increased demand for hospital services as a result of the Pandemic (including in response to outbreaks in the community);
- (c) the Proposed Conduct will ensure that medical services required to treat COVID-19 and non-COVID-19 related cases are co-ordinated in an efficient and equitable manner and will assist to achieve the Objectives; and
- (d) the Proposed Conduct is temporary and will not continue beyond the period of the Pandemic, meaning authorisation is unlikely to materially alter the competitive dynamics in any market, and markets will be able to substantially return to their current state once the Pandemic subsides to the extent that the SA Public Operators can manage demand.

**6. Contact details of relevant market participants**

Please see section 2 above.

**7. Declaration by applicant**

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



\_\_\_\_\_  
Signature of authorised person

**Partner, MinterEllison, solicitor for the Department**

\_\_\_\_\_  
Office held

**Lisa Nicole Jarrett**

\_\_\_\_\_  
(Print) Name of authorised person

This 3rd day of December 2021

*Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.*

## Schedule 1

### Participating Operators

#### 1. Specified private hospital and healthcare operators

- ACHA – Ashford Community Hospital
- ACHA – Flinders Private Hospital
- ACHA – Memorial Hospital
- Burnside War Memorial Hospital
- Calvary Adelaide Hospital
- Calvary Central Districts Hospital
- Calvary North Adelaide Hospital
- North Eastern Community Hospital
- Ramsey Health Care – Adelaide Clinic
- St Andrew's Hospital
- Western Hospital

#### 2. Any other private healthcare operator in South Australia who seeks to engage in conduct the subject of this application providing the ACCC is notified by the Department

### The SA Public Operators

#### 3. The SA Public Operators, being those operators listed below and the operator of any other hospital facility ultimately owned or operated by the State of South Australia or an authority of the State of South Australia

- The following hospital facilities of the Barossa Hills Fleurieu Local Health Network
  - Angaston District Hospital (previously Barossa Area Health Services)
  - Eudunda Hospital
  - Gawler Health Service
  - Gumeracha District Soldiers' Memorial Hospital
  - Kangaroo Island Health Service
  - Kapunda Hospital
  - Mt Barker District Soldiers' Memorial Hospital
  - Mt Pleasant District Hospital
  - Southern Fleurieu Health Service
  - Strathalbyn & District Health Service
  - Tanunda War Memorial Hospital (previously Barossa Area Health Service)
- The following hospital facilities of the Central Adelaide Local Health Network
  - Royal Adelaide Hospital
  - The Queen Elizabeth Hospital
- The following hospital facilities of the Eyre and Far North Local Health Network

- Ceduna District Health Services
- Cleve District Hospital and Aged Care
- Coober Pedy Hospital and Health Services
- Cowell District Hospital and Aged Care
- Cummins and District Memorial Hospital
- Elliston Hospital (also known as Mid-West Health, Elliston)
- Kimba District Hospital and Aged Care
- Oodnadatta Health Service
- Port Lincoln Hospital and Health Service
- Streaky Bay Hospital
- Tumby Bay Hospital and Health Services
- Wudinna Hospital (also known as Mid-West Health, Wudinna)
- The following hospital facilities of the Flinders and Upper North Local Health Network
  - Hawker Memorial Hospital
  - Leigh Creek Health Service
  - Port Augusta Hospital and Regional Health Service
  - Quorn Health Service
  - Roxby Downs Health Service
  - Whyalla Hospital and Health Service
- The following hospital facilities of the Limestone Coast Local Health Network
  - Bordertown Memorial Hospital
  - Kingston Soldiers Memorial Hospital
  - Millicent and Districts Hospital and Health Services
  - Mt Gambier and Districts Health Service
  - Naracoorte Health Service
  - Penola War Memorial Hospital
- The following hospital facilities of the Northern Adelaide Local Health Network
  - Lyell McEwin Health Service
  - Modbury Hospital
- The following hospital facilities of the Riverland Mallee Coorong Local Health Network
  - Barmera Health Service
  - Karoonda and District Soldiers' Memorial Hospital
  - Lameroo District Health Services
  - Loxton Hospital Complex
  - Mannum District Hospital
  - Meningie and Districts Memorial Hospital and Health Services
  - Murray Bridge Soldiers' Memorial Hospital
  - Pinnaroo Soldiers' Memorial Hospital

- Renmark Paringa District Hospital
- Riverland General Hospital
- Tailem Bend District Hospital
- Waikerie Health Service
- The following hospital facilities of the Southern Adelaide Local Health Network
  - Flinders Medical Centre
  - Repat Health Precinct
  - Noarlunga Health Service
- The following hospital facilities of the Women's and Children's Health Network
  - Women's and Children's Hospital
- The following hospital services facilities of the Yorke and Northern Local Health Network
  - Balaklava Soldiers' Memorial District Hospital
  - Booleroo Centre District Hospital and Health Services
  - Burra Hospital
  - Maitland Hospital and Health Services (previously Central Yorke Peninsula Hospital)
  - Clare Hospital and Health Services
  - Crystal Brook and District Hospital
  - Jamestown Hospital and Health Service
  - Laura and District Hospital
  - Wallaroo Hospital and Health Service (previously Northern Yorke Peninsula Health Service)
  - Orroroo and District Health Service
  - Peterborough Soldiers' Memorial Hospital and Health Service
  - Port Broughton and District Hospital and Health Service
  - Port Pirie Regional Health Service
  - Riverton District Soldiers' Memorial Hospital
  - Snowtown Hospital and Health Services
  - Yorketown Health Service (previously Southern Yorke Peninsula Health Service)