

# Authorisation (Non-Merger) Application

Application for authorisation - s 88(1), *Competition and Consumer Act 2010* (Cth) (CCA)

Application for urgent interim authorisation - s 91(2)(d), CCA

## 1. Introduction and background

1.1 This application for authorisation relates to a proposed collaboration between The University of Adelaide, the University of South Australia and Flinders University (together, the **Applicants**), with the support of the South Australian and Federal Governments, to jointly establish and effect travel and quarantine accommodation arrangements so as to facilitate the safe return of international students to study at the respective on-site campus premises of the Applicants (the **Project**).

1.2 The purpose of the Project is to:

- (a) support Government and education-sector objectives related to the return of international students to South Australia (i.e. to achieve economic and cultural benefits that flow from international education);
- (b) inform and advise international students presently offshore, together with their families and other relevant stakeholders, about plans to ensure international students can return to on-site campus premises as soon as it is safe to do so;
- (c) facilitate a smooth transition for students back to their studies in South Australia by:
  - (i) assisting students to return to South Australia in a way which is compliant with the travel and quarantine arrangements required by Government directives, including that international student returns occur outside of and separately from existing international return caps; and
  - (ii) supplying students with a consistent suite of messages and materials to provide certainty and clarity about the processes involved in returning to Australia, including proposed timelines and information about what students will need to do in order to participate and at key relevant points in the return journey; and
- (d) maintain the strong reputation currently held by the South Australian university and broader education sector, in a way which supports the health and safety of South Australians.

1.3 The Commission has previously considered a similar application by UniProjects Pty Ltd on behalf of itself and 14 member universities in New South Wales and the Australian Capital Territory (authorisation no. AA1000554-1) (the **NSW Authorisation**).

1.4 The Commission granted interim authorisation in respect of the NSW Authorisation application on 17 June 2021, and on 5 August 2021 the Commission published a draft determination indicating that it intends to grant authorisation until 30 June 2022 (**Draft**

**Determination**).<sup>1</sup> On 7 October 2021, the Commission made its final decision in relation to the NSW Authorisation, determining that it would allow New South Wales and Australian Capital Territory universities to collaborate on travel arrangements for the return of international students for 15 months (**Final Determination**).<sup>2</sup>

- 1.5 There are a number of common features between the NSW Authorisation and the Project. One slight difference is that the NSW Authorisation related primarily to travel arrangements (as the quarantine arrangements were mandated by the government and did not require authorisation) whereas the Project extends beyond travel arrangements to also encompass some aspects of the quarantine arrangements. Whilst the South Australian Government determined the location of the quarantine site to be used, and also mandated the manner in which the quarantine site must operate from a clinical and compliance perspective, the commercial arrangements which must be organised in accordance with those requirements are to be arranged by the education sector directly. Given the extent to which the clinical and compliance obligations have been mandated, the majority of the costs are non-negotiable; however, some logistical and support services are to be negotiated by the sector directly with the private quarantine accommodation provider and independently of the South Australian Government. However, notwithstanding that minor difference in the form of an additional component to the conduct which is sought to be authorised in this case, the Applicants submit that the same considerations, for the Commission's purposes, as identified in the NSW Authorisation and Final Determination generally apply in relation to the Project.
- 1.6 It is evident that the COVID-19 pandemic has severely impacted Australia's international education sector, in that it has prevented international students from studying here, and impacted the ability of currently enrolled students to complete their courses. Although many courses have moved, in whole or in part, to online studies, there are a number of courses where that cannot practically occur, and there is a need for many international students to travel or return to Australia to undertake components of their studies which can only be completed in person. Further, it is the strong preference of most international students to undertake their courses in person or via 'face to face learning', and while they will accept online studies for a short defined period or for a small component of their course, offering only online studies for international students is not a viable long term alternative.
- 1.7 As noted at paragraph 2.2 of the Final Determination, the Australian Government has developed Protocols for international student arrivals to assist steps proposed or taken by State and Territory Governments and education institutions to re-open the tertiary sector to international students. The Protocols set out the steps for States, Territories and educational institutions to prepare for international student arrivals at scale, and requires them to work together to design a detailed 'International Student Arrivals Plan' that aligns with the Australia Government's preconditions for international student arrivals and is approved by the State/Territory Chief Health Officer.<sup>3</sup>
- 1.8 Consistent with the Protocols, the South Australian Government has been working with industry sector participants to develop a plan for the return of international students into

<sup>1</sup> <https://www.accg.gov.au/system/files/public-registers/documents/Draft%20Determination%20-%2005.08.21%20-%20PR%20-%20AA1000554%20UniProjects.pdf>

<sup>2</sup> <https://www.accg.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/uniprojects-ptv-limited-ors>

<sup>3</sup> Australian Government Protocols and preconditions for international student arrivals, 3 May 2021, <https://www.dese.gov.au/covid-19/resources/protocols-and-preconditions-international-student-arrivals>. See also discussion at part 1.3 of the NSW Authorisation application dated 26 May 2021.

South Australia, and has encouraged and supported the Universities to find and implement solutions to establish an international student 'corridor' for that purpose .

- 1.9 South Australia was the first state to have its international students arrival plan (**ISAP**) supported by the Federal Government, and the South Australian Government's plan to deliver a safe and secure pathway for the return of international students to South Australia has had input from, and has the support of, SA Health, South Australia Police, and various other stakeholders.<sup>4</sup>
- 1.10 Although the South Australian Government has not set a cap on the number of international student arrivals into South Australia , it has required that international students undertake 14 days quarantine including frequent COVID-19 testing<sup>5</sup> at an approved quarantine site (noting that at present, the South Australian Government has approved the Flight Training Adelaide (**FTA**) site at Parafield for use as the quarantine facility, with an approved quarantine capacity of [redacted pursuant to confidentiality claim] students).<sup>6</sup> Other key components of the approved plan include that it will be conducted outside the current international arrival caps, and the education institutions and students will bear the costs of flights and quarantine.<sup>7</sup>
- 1.11 The public benefits of facilitating international students to come to South Australia are manifest, and include (as discussed further below):
- (a) providing an efficient way of facilitating returns and allocating seats on flights for international students;
  - (b) returning international students to Australia, at an anticipated lower cost than if students were required to independently and individually source their own arrangements; and
  - (c) assisting the economic recovery of the international education sector and, more broadly, South Australia itself.
- 1.12 The Applicants intend to initially prioritise the return of continuing (that is, current/ already enrolled) international students to enable them to complete on-site or practical components of their studies in Australia, and the Applicants' application for interim authorisation is limited to arrangements which enable the return of continuing students. It is possible these arrangements may expand to encompass new or prospective students in due course, and final authorisation is sought by the Applicants on that broader basis.

### *Parties to the proposed conduct*

## **2. Applicants**

- 2.1 The Applicants are The University of Adelaide, the University of South Australia and Flinders University, each of whom will have an ability to participate in the Project. It is

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<sup>4</sup> Media release 18 June 2021, *International students arrival plan approved by the Commonwealth*, <https://www.premier.sa.gov.au/news/media-releases/news/international-students-arrival-plan-approved-by-the-commonwealth>

<sup>5</sup> [Redacted pursuant to confidentiality claim]

<sup>6</sup> [Redacted pursuant to confidentiality claim]

<sup>7</sup> [Redacted pursuant to confidentiality claim]

voluntary for each of the Applicants to do so, but at this stage it is anticipated that they all will do so.

- 2.2 In accordance with section 88(2) of the CCA, the Applicants also request that any authorisation granted by the Commission is expressed to apply to:
- (a) service providers appointed to give effect to the Project, including any travel management services provider and quarantine accommodation provider; and
  - (b) any other universities or education providers that have campuses in South Australia and who may in future choose to participate in the collaboration referred to in this application, and who could therefore potentially become party to, or engage in, the Proposed Conduct as described in section 3 of this Application. Though this could include, for example, pathway providers, private higher education providers, English Language Intensive Courses for Overseas Students (ELICOS) providers and Vocational Education and Training (VET) providers, in particular, the Applicants understand that the parties identified in Schedule 2 to this application may be interested in joining the Applicants and participating in the Project if authorisation is granted. As identified above, participation in the Project will remain voluntary.

*The proposed conduct*

**3. The conduct proposed to be authorised**

- 3.1 Given the nature of the Project and the constantly changing environment in which the Applicants are operating, the final structure of the Project has not yet been determined. As some elements are still being finalised, some of the arrangements described in this application are necessarily broad and general in nature.
- 3.2 With that acknowledgment, the Applicants seek authorisation to discuss, enter into and/or give effect to any contract, arrangement or understanding, and to engage in conduct, in each case to the extent necessary to implement the Project. It is anticipated that the proposed conduct will involve:
- (a) jointly appointing travel management service providers and any other service providers required to undertake the Project (including the quarantine accommodation provider);
  - (b) collaboration between the Applicants (including the establishment of a working group and/or steering committee) to identify, discuss and implement solutions for the establishment of an international travel corridor to bring international students into South Australia via commercial or charter flights, including making and managing aircraft, airline and seat bookings;
  - (c) implementing a seat allocation arrangement to address the requirements of the Restrictions, including a process for 'reallocation' of any unused seats so as to ensure that, as far as possible, all available seat bookings are used;
  - (d) collaborating to facilitate compliance with Government quarantine requirements for students, including transport to the quarantine location, accommodation for the duration of the quarantine period, and security and health services and

wellbeing initiatives and support during quarantine. This includes any agreement between the Applicants to absorb or bear some or all of the costs of these services and to accept the quarantine accommodation costs and commercial terms offered by the quarantine site provider;

- (e) exchanging information that is reasonably necessary for the purposes of paragraphs (a) to (d) above, including information required to implement the seat allocation arrangements, and discussing any impact of changes to Restrictions on the Project;
- (f) communicating independently and collectively, directly and via third party travel service providers, with students seeking to take up the opportunity to return to Australia through the mechanisms of the Project

(the **Proposed Conduct**).

- 3.3 The Applicants intend to negotiate a travel management services agreement with a potential travel management provider (**Travel Agreement**), under which it is intended that the appointed travel management provider would be responsible for:
- (a) procuring seats on commercial flights or arranging charter flights;
  - (b) managing student bookings via a custom-built online booking system; and
  - (c) ticketing, invoicing and accepting payment from students in relation to flights and also in respect of any student contributions to quarantine arrangements under the Travel Agreement.
- 3.4 While no final decision has been made or binding arrangements entered into, it is anticipated that **[redacted pursuant to confidentiality claim]** will be appointed as the travel management provider for the Project.
- 3.5 Similarly, it is also likely there will be a lead partner who will take primary responsibility for entering into the Travel Agreement with the travel management provider and any contractual agreements required to effect the quarantine arrangements (as discussed further at paragraph 3.18 below) on behalf of the Applicants, and whilst no final decision has been made or binding arrangements entered into, it is presently anticipated that **[redacted pursuant to confidentiality claim]** will take that role.
- 3.6 Interim authorisation is also sought, to allow the Applicants to engage in the Proposed Conduct to enable the first tranche of international students to return to Australia prior to the commencement of the first semester of 2022 (and in order to enable completion by certain students of any pre-requisite learning or study placements commencing from early January 2022), with other students returning as soon as practicable thereafter (subject to any applicable restrictions).
- 3.7 The present and continuing restrictions on international arrivals into South Australia as a result of the COVID-19 Pandemic (**Restrictions**) have also created a need for a mechanism by which it is proposed that available seats on applicable incoming international flights will be allocated between each participating Applicant.

- 3.8 That seat allocation will be determined by way of assigning available seats proportionally between participating education providers based on enrolled continuing students currently located outside of Australia.<sup>8</sup>This approach is designed to ensure a transparent, fair and equitable distribution of available seats across the sector, and an outcome which proportionally reflects current enrolment patterns for students currently located outside of Australia and which cannot be manipulated by any participant in the arrangements.
- 3.9 Once seats are allocated in accordance with the model, each Applicant or participating provider will be able to decide which of its students will be prioritised within their respective allocation, and may do so taking account of various eligibility factors including course requirements, student location, and the availability and readiness of students to return to their studies in Australia.
- 3.10 If there are any unwanted seats after this first stage allocation, these will be proportionally reallocated between the participating providers. To minimise the number of unused seats, if a participating education provider is not able to fill its allocation of seats, those seats will be made available to other participating providers for a limited time, up to their proportional allocation limit. Specifically, a participating provider may advise through the operations group for the Project that it does not wish to use all or part of its allocated seats on a given flight (e.g. based on its own requirements and demand and readiness of students). The unallocated seats will be offered back and redistributed among the participating education providers as per the proportional allocation process.
- 3.11 After committing to the program and their allocated seats or adjusted allocation of seats following any reallocations, participating education providers may also choose to relinquish and re-allocate seats on flights up to a yet-to-be-finally-determined set time before the relevant flight. In particular:
- (a) relinquishing seats early: Each provider can also choose to relinquish in advance some or all of its allocation and the receiving provider will take on responsibility for filling the re-allocated seats.
  - (b) relinquishing seats late: Each participating provider will also be able to choose to relinquish some or all of its allocation, and the process can be repeated as long as there is interest in an additional allocation by at least one participating provider. However, any unallocated seats will remain the responsibility of the participating provider to which the seats were originally allocated.
- 3.12 It is intended that the Proposed Conduct will initially focus on continuing (current) students, for which the Applicants and/or any participating providers have already competed. This includes students who have been studying online but have on-site or practical components of their course/s which must be completed to progress their studies, noting that the Applicants have contractual and ethical obligations to facilitate completion of those degrees.
- 3.13 The Protocol stipulates that student arrival plans must include students from a diverse range of source countries. The logistics of the arrangements are yet to be finally

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<sup>8</sup> Though the allocation model is still to be confirmed, at the time of lodgement of this application, it is anticipated that [redacted pursuant to confidentiality claim].

determined, but it is presently intended to use a mix of commercial and charter flights from regions determined to meet the public health requirements of SA Health.<sup>9</sup>  
[redacted pursuant to confidentiality claim].

- 3.14 The Applicants presently anticipate that there will be approximately 5 flights to accommodate an initial 'tranche' of returning students. [Redacted pursuant to confidentiality claim]. In future, and as Restrictions change, other regions could be added to the planning.
- 3.15 Returning students will be required to pay a "Student Contribution" which will encompass the cost of their flight(s) (at the price able to be secured by the travel management provider), the travel management provider's booking fees, and a contribution towards the costs associated with the quarantine arrangements. The final details of the Student Contribution have not yet been determined but can be provided to the Commission on a confidential basis once that occurs.
- 3.16 Students who have obtained a travel exemption directly from the Department of Home Affairs will only be eligible to participate in the Project if included by participating providers in a second application for a travel exemption under the Project (meaning that if students independently obtain a direct exemption they are not prevented from applying to participate in the Project in lieu of their directly obtained travel exemption). There is also nothing contemplated by the Project which would prevent any students who are eligible for a travel exemption from independently obtaining one and making their own arrangements to return to Australia via that process, and are free to attempt to obtain airline seats through any other available channel and to undertake medi-hotel quarantine as required for all individuals returning to Australia in accordance with those exemptions).
- 3.17 It is anticipated that the travel services provider will be responsible under the Travel Agreement to procure seats on commercial and charter flights, and manage student bookings including ticketing, invoicing and accepting payment from students. Returning students will be responsible for making and paying for their Student Contribution to the travel management provider (once seats are made available to them as allocated).
- 3.18 In relation to quarantine arrangements, the Applicants note that the South Australian Government has approved a dedicated quarantine site for the Project (and further note that at present, the FTA site at Parafield has been approved as the relevant quarantine site), and will require that international students complete mandatory supervised quarantine at that site for 14 full days and nights and be subject to SA Health quarantine requirements including regular testing during that period. The Project will only be able to take place at a site which has been approved by the South Australian Government. The requirements of SA Health in relation to all aspects of the quarantine arrangements, including who will be responsible for which components of those arrangements, are set out in [redacted pursuant to confidentiality claim]<sup>10</sup> and, as detailed in that document, it is expected<sup>11</sup> that the full costs associated with operating the quarantine site, including nursing, logistics, hospitality and security, will be the responsibility of the Applicants, other participating providers and the students.

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<sup>9</sup> [Redacted pursuant to confidentiality claim]

<sup>10</sup> [Redacted pursuant to confidentiality claim]

<sup>11</sup> [Redacted pursuant to confidentiality claim]

3.19 The Applicants and participating providers will bear the remaining portion of the costs of those quarantine services after deducting the Student Contribution (i.e. the full cost will not be passed to students), but as final costs are still under review the extent to or process by which that will occur has not yet been finalised.<sup>12</sup>

**4. CCA provisions relevant to the conduct proposed to be authorised**

4.1 If authorisation is not obtained, the Proposed Conduct risks giving rise to contraventions of Part IV, Division I and/or section 45 of the CCA. In particular, noting that the Applicants and participating providers may compete for students (both local and international) to undertake their various and respective courses, there is some risk that, without authorisation, the Proposed Conduct may contravene sections 45, 45AF, 45AG, 45AJ, 45AK, and/or 47 of the CCA.

4.2 However, the Applicants also submit that the risk is very low, noting in particular that the level of competition between the Applicants and participating providers in relation to the Proposed Conduct is minimal to non-existent, and that, therefore, impact on competition is also negligible, having regard to:

- (a) the intention to initially prioritise continuing students, in respect of whom the Applicants and participating providers have, to the extent applicable, already competed (with each other and other education providers nationally and globally);
- (b) the fact that students are free to change education providers once they return to Australia if they wish, and there are no restrictions or flow-on requirements for students arising from the travel arrangements facilitated by the Applicants;
- (c) various elements of the arrangements relevant to the Project are being mandated, required or arranged by the State and/or Federal Government and the Applicants and participating providers therefore have no capacity to compete in relation to those elements; and
- (d) other than as proposed in relation to the Project, the Applicants do not ordinarily organise travel arrangements for international students and would not typically compete with each other, or any other market participant, in relation to the supply or acquisition of services relevant to the Project or the Proposed Conduct.

**5. Rationale for the conduct proposed to be authorised**

5.1 The Applicants submit that the Proposed Conduct will:

- (a) minimise the ongoing impact of the COVID-19 pandemic and Australian Government restrictions on overseas arrivals on international students and the education sector (and by extension the businesses which rely on international student trade) in South Australia by maximising and fairly allocating the number of international students who can come to the Universities;

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<sup>12</sup> Once known, these details can be provided to the Commission on a confidential basis.



- (b) ensure these students can return to Australia in a timely fashion and a more cost-effective manner than if the students were responsible for the entirety of their travel arrangements; and
  - (c) help ensure that competitive airfares remain available to continuing students as all ticket purchases will be facilitated and managed by the travel management provider engaged by the participating universities, and this combined purchasing power is likely to lead to lower airfares for returning students.
- 5.2 The Applicants submit that the anticipated appointment by them of **[redacted pursuant to confidentiality claim]** will not only address the Federal Government's stated preference that the provider appointed have appropriate prior experience in the relevant arrangements, but can also (and as a result) be expected to help ensure, from a logistical perspective, that students are able to transition smoothly through the various government agencies that handle international arrivals.
- 5.3 The Applicants also submit that without collaboration between participating education providers in relation to the Proposed Conduct, the Project is unachievable, as:
  - (a) the State and Federal Governments have clearly expressed an expectation that the sector work together to facilitate these arrangements;
  - (b) the State Government requirements that the Project be conducted in accordance with SA Health's quarantine requirements and outside of the current international arrival caps mean that there is no prospect of any competitive tender in relation to those arrangements; and
  - (c) students from all participating education providers must travel to South Australia on a single final plane arranged exclusively for their use which necessitates a single contractual arrangement across those providers;
  - (d) there will, without the Proposed Conduct, be very limited certainty about the availability of seats for continuing students and that this will have a significant impact on the ability for each education provider to communicate clearly with students and to facilitate their return to Australia, and to plan the delivery of its courses and provide resources for continuing students.
- 5.4 The Applicants further submit that the public benefits associated with authorising the Proposed Conduct outweigh the minimal potential public detriment which may arise, as discussed further below.
- 5.5 The Commission undertook a public consultation process in relation to the NSW Authorisation, and invited submissions from a range of potentially interested parties including major state and federal government departments, universities with campuses in NSW or the ACT, industry associations, education agents, airlines and student organisations and advocacy groups. It is notable that all five of the submissions received in relation to the NSW Authorisation indicated support for the grant of authorisation. The Applicants anticipate there will be similar support for the grant of authorisation in respect of the Project and the Proposed Conduct.

5.6 The Final Determination, at paragraph 4.5, indicates that the Commission considers that the relevant area of competition is likely to be the supply of education services to international students by universities within Australia.

**6. Terms of authorisation**

6.1 The Applicants are seeking authorisation for the Proposed Conduct until the end of December 2022.

6.2 This term reflects, and accounts for, the present uncertainty with respect to the ongoing impacts of the pandemic (including resultant effects on Restrictions) and the current planning cycle utilised by the Applicants' teaching staff.

6.3 The Applicants only intend to engage in the Proposed Conduct for as long as is necessary to respond to the challenges created by the Restrictions (i.e. until such time as Australia's borders reopen to all international travellers). Once restrictions are lifted and there is no longer a cap on international arrivals, international students will be free of travel restrictions and able to travel to Australia under their own arrangements, and the need for the Proposed Conduct will abate.

**7. Urgent Interim Authorisation**

7.1 The Applicants seek an urgent interim authorisation, as there is a need to take immediate action to as soon as possible mitigate the current and ongoing adverse impacts of the Restrictions on international students, the international education sector in South Australia, and the other industry and economic impacts which flow as a result.

7.2 In particular there is a need to act promptly to progress planning for the implementation of the Project, engage travel management service providers to undertake the Travel Agreement and confirm the arrangements with respect to providers of services associated with the quarantine arrangements. Interim authorisation would enable the first tranche of international students to return to South Australia prior to the commencement of the first semester of 2022 (and in order to enable completion by certain students of any pre-requisite learning or study placements required which will commence prior to commencement of the first semester of 2022). This will involve students arriving from December 2021 (to enable them to complete their quarantine requirements before the pre-requisite learning or study placements commence) with other students to follow as soon as practicable thereafter.

7.3 In support of their application for interim authorisation, the Applicants submit that, as was the case in relation to the NSW Authorisation:

- (a) the Proposed Conduct inherently benefits continuing international students, and will help to re-enliven the higher education sector (which continues to be intensely competitive notwithstanding the impacts of the pandemic, with universities and other education providers continuing to actively compete for new enrolments);
- (b) the Applicants need to finalise commercial agreements setting out how they will work together to arrange flights and manage bookings for students as soon as possible;

- (c) without interim authorisation, there will be ongoing uncertainty and financial harm, given delays in the ability for the Applicants and participating providers to plan and arrange flights and allocation of available seats among their students, and
- (d) interim authorisation will not give rise to permanent changes which would prevent the market returning to its pre-authorisation state if final authorisation is not granted, particularly in circumstances where the sector remains in a state of disruption.

7.4 Although precise commencement dates vary between the Applicants and participating providers, first semester for 2022 generally starts in around February 2022. However, some students will need to complete pre-requisite learning or study placements required prior to commencement of the first semester, and will need to be back on campus by early January 2022 to enable that to occur. Urgent interim authorisation will enable the Parties to implement the Project so the first tranche of continuing international students can return to Australia, and complete their quarantine, in time for the start of the semester and in time to address any pre-requisite learning requirements.

7.5 It is to be noted that interim authorisation was sought, and granted, in relation to the NSW Authorisation, on the basis of the same or similar factors to those identified above at paragraph 7.3, with the Commission acknowledging that:<sup>13</sup>

- (a) there was some urgency about the request for interim authorisation made in connection with the NSW Authorisation; and
- (b) the universities needed to finalise commercial agreements setting out how they will work together to arrange flights and manage bookings for students as soon as possible;
- (c) without interim authorisation, there will be ongoing uncertainty and financial harm, given delays in the ability for the Applicants to plan the chartering of flights and allocation of available seats among their students; and
- (d) interim authorisation will not materially alter the competitive dynamics in any market, and markets will be able to return to substantially their preauthorisation state in the event that final authorisation is not granted, particularly in circumstances where the sector remains in a state of disruption, and there are very limited numbers of international arrivals; and
- (e) the proposed conduct is unlikely to materially change the universities' incentives to compete for international students either during or after the period of interim authorisation, will not restrict international students switching or transferring between universities once they have returned to Australia, and is not likely to impact how the participating universities compete for international students once travel restrictions ease.

7.6 The Applicants submit that the same considerations apply in relation to their request for interim authorisation for the Project, and request that the Commission grants urgent

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<sup>13</sup> Interim Authorisation Decision dated 17 June 2021 in relation to the NSW Authorisation, paragraphs 29, 38 and 39; <https://www.accc.gov.au/system/files/public-registers/documents/Interim%20Authorisation%20Decision%20-%2017.06.21%20-%20PR%20-%20AA1000554%20UniProjects.pdf>

interim and final authorisation under section 88(1) of the CCA in respect of the Proposed Conduct described in section 3 of this application.

- 7.7 The Applicants also note that if, during the interim authorisation period, the Commission identifies concerns about the Proposed Conduct, it may review and revoke that authorisation at any time.

## 8. Final Authorisation

- 8.1 The initial stages of the Project will focus exclusively on the return of continuing students to South Australia.
- 8.2 Should the Restrictions continue, the Applicants may seek to bring new students to South Australia at a later stage of the Project,
- 8.3 In that event, the Applicants will compete for those students in the ordinary way. The Applicants will operate entirely independently for the purposes of promoting their course offerings to prospective students and securing enrolments. They will communicate separately with those students. The only joint activity will be the organisation of travel and quarantine arrangements (as outlined in this application) and the communication of those arrangements to students coming to South Australia through the Project.
- 8.4 The Applicants seek that the final authorisation allow the Proposed Conduct in respect of both continuing and new students.

## 9. Persons directly affected by the proposed conduct

- 9.1 The persons affected by the Proposed Conduct are the persons with whom the Applicants will seek to bargain on a collective basis, ie:
- (a) the travel management provider (as noted above, presently anticipated to be **[redacted pursuant to confidentiality claim]**);<sup>14</sup> and
  - (b) the supplier(s) of quarantine accommodation and associated services<sup>15</sup> at the approved quarantine site (being at present, the FTA site at Parafield); and
  - (c) if appointed, any lead entity responsible for entering into the Travel Agreement and any associated service agreements on behalf of the Applicants.

## 10. Market information

- 10.1 The South Australian higher education sector's contribution to South Australia's economy is valued at approximately **[redacted pursuant to confidentiality claim]** per annum. If the sector can achieve the Project's anticipated full capacity of returning over **[redacted pursuant to confidentiality claim]** students to South Australia, in any **[redacted pursuant to confidentiality claim]** period these students could create almost **[redacted pursuant to confidentiality claim]** jobs in South Australia and

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<sup>14</sup> Contact details identified (on a confidential basis) at Part 13 below.

<sup>15</sup> Presently anticipated to be **[redacted pursuant to confidentiality claim]** - contact details identified (on a confidential basis) at Part 13 below.

deliver an economic value of up to [redacted pursuant to confidentiality claim] spent in the community.<sup>16</sup>

- 10.2 Moreover, many of the students targeted to return in the first 3 months are those required to complete placements in the fields of health, allied health, education, engineering and studying disciplines such as information technology. The placements offered by professional accreditation bodies are designed to fill skill and labour shortages in industries essential to the South Australian economy. The return of these international students contributes to South Australia's population growth, and over 50% of international students in South Australia intend to live and work in South Australia after completing their studies.<sup>17</sup>
- 10.3 The Project, which reflects the international education sector and the State Government's drive to return students to South Australia, provides a unique window of opportunity for the South Australian international education sector, working together with the State Government, to rebuild confidence in Adelaide as a leading destination in Australia for international students, and puts South Australia in a strong position to build a pipeline for future economic recovery.
- 10.4 As noted above:
- (a) the Applicants and participating providers have already, to the extent applicable, competed (with each other and other universities/education providers nationally and globally) in relation to the students who will be the subject of the initial tranche of the Project;
  - (b) the students are free to change education providers once they return to Australia if they wish, and there are no restrictions or flow-on requirements for students arising from the travel arrangements facilitated by the Applicants;
  - (c) various elements of the arrangements relevant to the Project are being mandated, required or arranged by the State and/or Federal Government and the Applicants therefore have no capacity to compete in relation to those elements;
  - (d) the Applicants and participating providers do not ordinarily organise travel arrangements for international students and would not typically compete with each other, or any other market participant, in relation to the supply or acquisition of services relevant to the Project or the Proposed Conduct;
  - (e) interim authorisation will not materially alter the competitive dynamics in any market, and markets will be able to return to substantially their preauthorisation state in the event that final authorisation is not granted, particularly in circumstances where the sector remains in a state of disruption, and there are very limited numbers of international arrivals; and
  - (f) the proposed conduct is unlikely to materially change the Applicants' incentives to compete for international students either during or after the period of interim authorisation, will not restrict international students switching or transferring between education providers once they have returned to Australia, and is not

<sup>16</sup> Excluding fees paid to education providers.

<sup>17</sup> [Redacted pursuant to confidentiality claim]

likely to impact how the participating education providers compete for international students once travel restrictions ease.

- 10.5 As reflected in 8.3, should the Restrictions continue and, at a later stage of the Project, the Applicants seek to bring new students to South Australia, the Applicants will compete for those students in the ordinary way. The Applicants will operate entirely independently for the purposes of promoting their course offerings to prospective students and securing enrolments. They will communicate separately with those students. The only joint activity will be the organisation of travel and quarantine arrangements (as outlined in this application) and the communication of those arrangements to students coming to South Australia through the Project.
- 10.6 There is no relevant ability for the Applicants or participating providers to raise prices or reduce quality, choice or innovation. They will continue to compete vigorously outside the limited collaboration for the purposes of the Project. There is significant countervailing power in the hands of the students (in terms of selection of higher education provider), the travel management provider (in terms of the travel arrangements) and the supplier of quarantine accommodation services.

## 11. Public Benefits

- 11.1 The Applicants submit that the Proposed Conduct will help to reduce the significant ongoing detrimental financial, social and economic impacts of the Restrictions and the COVID-19 pandemic on students, universities, and the tertiary sector.
- 11.2 Without the Proposed Conduct:
- (a) international students needing to complete on-site, practical components of their courses will be hindered or delayed in completing their studies and graduating, creating a significant backlog and making it difficult for the Applicants and participating providers to comply with their contractual and ethical obligations to facilitate completion of the relevant courses by the students;
  - (b) having regard to the national and global markets for students in which the Applicants and participating providers operate, the Applicants and participating providers will continue to lose prospective and continuing student enrolments (including to education providers overseas such as in the United Kingdom, United States and Canada, where restrictions have been loosened), with the resultant effects of lost revenue from fees having significant impacts including reducing the ability of the Applicants and participating providers to recruit and pay teaching staff;
  - (c) noting that education is a key export for Australia and currently South Australia's second highest export, there is likely to be significant financial and reputational damage to the international education sector in Australia as students remain restricted in their ability to complete their degrees; and
  - (d) the many and varied businesses which rely on international student numbers (e.g. local cafes, shops, rental accommodation providers and businesses in and around university campuses or student living areas) will continue to be adversely impacted by reduced student numbers and business sales. By extension, this will continue to impact the broader economy.

- 11.3 If the Applicants and participating providers are not able to collaborate to undertake the Project, it will be significantly more difficult, if not impossible, for students to make arrangements to return to South Australia in the short to medium term, and there will be very limited certainty about the availability of seats for continuing students. This will have a very significant impact on the Applicants' and participating providers' ability to communicate clearly with students about their return to South Australia, not to mention a significant adverse impact on the planning of course delivery and resource provision for continuing students. These factors give rise to a real risk of potential reputational harm for the Applicants, participating providers and the broader Australian international education sector in relation to the care and services that Australian universities and education providers can offer to students.
- 11.4 The anticipated appointment of **[redacted pursuant to confidentiality claim]** is expected to help to ensure, from a logistical perspective, that students can transition smoothly through the various government agencies that handle international arrivals (e.g. DFAT, DHA, SA Police and SA Health). These agencies have limited resources and significant capacity constraints, so it can be expected that the appointment of a suitably experienced travel management provider will significantly assist in reducing the burden on those agencies, by streamlining their dealings compared to a situation where they are required to deal with each student individually.
- 11.5 The Restrictions also have an unequal impact and affect some students to a greater degree than others, noting for example that some Higher Degree Research students have not been able to complete aspects of their courses which require that they must return to Australia to access laboratories and / or clinical placements. Without the Proposed Conduct, it will be impossible for those students to complete their courses online or offshore, and they will be prevented from graduating unless or until the Restrictions are eased (which is not anticipated to occur for some time). This has flow-on effects including as to the students' ability to gain graduate employment.
- 11.6 The Proposed Conduct will enable more international students to complete their courses, and help to stem the flow of declining international student numbers and the resultant economic impacts. In this respect the Applicants note that:
- (a) nationally, the international education sector reached a high point of economic value in 2019 calendar year when the export value of the sector was \$40.3 billion,<sup>18</sup> but as at June 2021, the national value of the sector has fallen by 34% to \$26.7 billion;<sup>19</sup>
  - (b) the value of State level sectors is reported differently to national data by the Australian Bureau of Statistics, but in the 2019 calendar year the sector in South Australia was valued at \$2.168 billion. The latest State level data is for the 2020 calendar year and showed the SA sector had contracted 14.7% and is now valued at \$1.85 billion;<sup>20</sup>
  - (c) the South Australian Government has reported, via the International Education 2030 Strategy and Annual Report, that in 2019 the sector supported 19,900

<sup>18</sup> <https://www.abs.gov.au/statistics/economy/international-trade/international-trade-goods-and-services-australia/aug-2021>.

<sup>19</sup> <https://www.abs.gov.au/statistics/economy/international-trade/international-trade-goods-and-services-australia/aug-2021>.

<sup>20</sup> <https://www.abs.gov.au/statistics/economy/international-trade/international-trade-supplementary-information-calendar-year/2020>.

jobs, and that on average, for every 100 enrolments, there was a return of approx. \$4.3 million and support for 43 jobs;<sup>21</sup>

- (d) with respect to the impacts of the pandemic and the Restrictions on the sector, the latest enrolment data as at July 2021 already shows a 10% decline on 2020 numbers – noting that a percentage of these students are now enrolled offshore.<sup>22</sup> In general terms, reports indicate that declines in the sector will take a number of years to flow through, and without significant growth there will be compounding declines in the near term; and
  - (e) whilst the South Australian sector is not at this stage being impacted as significantly as some other State level sectors, it is expected that the South Australian sector will nonetheless continue to decline in line with the current national trend.
- 11.7 Without the Proposed Conduct enabling the Project to be undertaken, the ongoing impact of the Restrictions will continue to be significant for students, the Applicants and participating providers, the international education sector and the South Australian economy more broadly.
- 11.8 In the Final Determination, the Commission considered that the following public benefits arise in the context of the NSW Authorisation, and the Universities submit they apply equally in relation to the Project:
- (a) providing a fair and efficient way of allocating seats and facilitating and managing the return of international students who have been allocated a seat;
  - (b) lower costs for returning international students; and
  - (c) assisting the education sector to recover from the economic impacts caused by the lack of international students travelling to Australia.
- 11.9 In particular, the Commission has indicated, in the Final Determination, that it considers that:
- (a) the allocation method proposed in the NSW Authorisation<sup>23</sup> will provide an efficient and fair way of allocating (and in circumstances where a university does not use its full allocation, reallocating) seats available to participating universities;<sup>24</sup>
  - (b) the collaboration between the universities<sup>25</sup> will result in a fair and efficient way of facilitating and managing the return of international students who have been allocated a seat, and given the complexities involved in managing the entry of international travellers into Australia at present, there are likely to be efficiencies

<sup>21</sup> International Education 2030, Annual Report 2019-2020, <https://www.growthstate.sa.gov.au/sectors/Attachment-3.3.i-International-Education-Annual-Report-2019-2020.pdf> [Redacted pursuant to confidentiality claim]

<sup>22</sup> <https://www.austrade.gov.au/australian/education/education-data/current-data/summaries-and-news>

<sup>23</sup> While a different methodology is proposed for the Project, it also results in fair and efficient allocation.

<sup>24</sup> Final Determination, paragraph 4.14.

<sup>25</sup> Again, noting the similarities between the Proposed Conduct, and the conduct sought to be authorised via the NSW Authorisation.



and transaction cost savings as a result of this collaboration between universities;<sup>26</sup>

- (c) the appointment of a common travel provider for universities and students, and for the Government agencies responsible for handling quarantine arrangements and international arrivals, is also likely to create efficiencies and transaction cost savings, as well as facilitate more timely outcomes;<sup>27</sup>
- (d) the role of the travel management provider(s) in sourcing flights and its ability to purchase blocks of seats in a single transaction, including potentially through charter flights, is likely to result in lower cost airfares than if each student purchased their airfare individually;<sup>28</sup>
- (e) the cost to international students would be higher if students were to individually purchase tickets and make their own arrangements to return, and to the extent the collaboration between the universities would result in lower cost flights for returning students, this is a public benefit;<sup>29</sup> and
- (f) to the extent the collaboration between the universities, in enabling the more timely return of international students to Australia to continue their studies, assists the tertiary sector to recover from the impact of the COVID-19 pandemic, this is a public benefit.<sup>30</sup>

## 12. Public Detriment

12.1 The Applicants submit that there will be no material public detriment arising from the Proposed Conduct, noting that the Proposed Conduct:

- (a) would not be required if not for the international arrival restrictions imposed by the Federal and South Australian Governments, and will not be required once the Restrictions are lifted fully and international students can travel freely to South Australia;
- (b) will initially be directed to international students already enrolled with the Applicants, in respect of which the Applicants have, to the extent applicable, already engaged in the relevant competition, and will not be directed towards prospective international students during the interim authorisation period;
- (c) in the event that, at a later stage of the Project, new students are brought to South Australia through the Project, there will be no impact on competition between the Applicants in the market as there will be vigorous and independent competition for those students in the ordinary way;
- (d) does not include any restrictions on students moving between education providers or courses at any stage;

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<sup>26</sup> Final Determination, paragraph 4.15.

<sup>27</sup> Final Determination, paragraph 4.15.

<sup>28</sup> Final Determination, paragraph 4.18.

<sup>29</sup> Final Determination, paragraph 4.20.

<sup>30</sup> Final Determination, paragraph 4.22.

- (e) does not involve collective bargaining or decisions relating to the price or acquisition or supply of goods or services delivered by the Applicants (such as course fees);
- (f) will not extend to the sharing of any competitively sensitive information, other than to the extent required for the purposes of the Project (which is expected to be minimal, given the majority of the matters which would be dealt with in the Project are publicly known or do not otherwise comprise competitively sensitive information, and there will be no requirement to share information about, for example, marketing strategies for international students);
- (g) other than the joint appointment of service providers required to carry out the Project, will not involve collective decisions about the Applicants' arrangements with any of their suppliers or in respect of arrangements between the Applicants and their enrolled students;
- (h) is for a short and defined period as a temporary response to the current Restrictions; and
- (i) is entirely voluntary with any participant able to opt out of any proposed collaboration at any stage, and also open to other international education providers in South Australia to join should they wish to do so.

12.2 With respect to public detriments, the Commission has also indicated, in the Final Determination, that it considers that:

- (a) whilst students who choose to return to Australia via the program proposed in the NSW Authorisation will be required to use the online booking system developed by the travel management provider to book seats on the flights arranged by – and at the prices secured by – the travel management provider, and they may be more limited in their choice of flights as a result (compared to if they were to source their flights independently), the risk that this will result in a public detriment in this form, or in any meaningful reduction in competition between the participating universities in providing tertiary services to international students, is low;<sup>31</sup>
- (b) it is open to international students to seek a travel exemption from the Department of Home Affairs and make their own travel arrangements if they do not wish to use the travel management provider appointed in relation to the NSW Authorisation;<sup>32</sup>
- (c) the proposed conduct is unlikely to materially change the universities' incentives to compete for international students either during or after the period of authorisation, especially as the program proposed in the NSW Authorisation seeks to prioritise those continuing students who have already chosen, and commenced studies at, an Australian university;<sup>33</sup>
- (d) the proposed conduct does not restrict the ability of any students to transfer between universities once they have returned to Australia, and is not likely to

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<sup>31</sup> Final Determination, paragraph 4.24 and 4.25

<sup>32</sup> Final Determination, paragraph 4.26.

<sup>33</sup> Final Determination, paragraph 4.26.

impact how the participating universities compete for international students once travel restrictions ease;<sup>34</sup>

- (e) the proposed conduct will not involve collective decisions relating to factors relevant to the competition between the universities including:
  - (i) the price at which the universities acquire or supply goods or services, such as university course fees (except in relation to agreements to absorb the costs of quarantine services to students);
  - (ii) the arrangements between the Applicants and their suppliers (except for the joint appointment of a travel management services provider and potentially of other suppliers necessary to facilitate quarantine arrangements such as transport, medical or security service providers); or
  - (iii) the arrangements between the universities and their respective students/customers in relation to courses;<sup>35</sup>
- (f) other relevant factors include that:<sup>36</sup>
  - (i) any university can elect not to participate in the arrangements and any university not currently participating in the arrangements can elect to join;
  - (ii) the proposed arrangements are temporary measures, with authorisation sought only until June 2022; and
  - (iii) the intention of the universities was only to engage in the proposed conduct for as long as is necessary to respond to the challenges created by the applicable travel restrictions (that is, until Australia's borders reopen to all international travellers).

12.3 On balance, the Final Determination suggests that the Commission considers that the proposed conduct to which the NSW Authorisation relates is:

- (a) likely to result in public benefit by providing an efficient and fair way of allocating seats and facilitating returns for currently enrolled international university students in NSW and the ACT, who can return to Australia at a lower cost than if they were to book flights independently, and is also likely to assist the economic recovery of the tertiary sector;<sup>37</sup> and
- (b) unlikely to result in significant public detriment in the form of a reduction in competition between the participating universities for international students, such that the Commission is satisfied that the proposed conduct's public benefit would outweigh any likely detriment to the public.<sup>38</sup>

<sup>34</sup> Final Determination, paragraph 4.26.

<sup>35</sup> Final Determination, paragraph 4.26.

<sup>36</sup> Final Determination, paragraph 4.26.

<sup>37</sup> Final Determination, paragraph 4.27.

<sup>38</sup> Final Determination, paragraph 4.28.

- 12.4 The Applicants submit that the same position, and factors, discussed in paragraphs 12.1 and 12.3 above also apply in relation to the Project and the Proposed Conduct in this case.
- 12.5 It is also noted in this respect that whilst quarantine costs were proposed to be absorbed by the applicants in the NSW Authorisation, in the Final Determination,<sup>39</sup> the Commission has indicated that decisions about whether to subsidise students' costs are decisions for Government and/or the universities to make and those decisions would not affect the balance of the Commission's assessment of likely public benefits and detriments from the proposed conduct considered in the NSW Authorisation. The Applicants submit that the same approach should be taken in relation to the Proposed Conduct here.

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

Taliessin Reaburn, Director, International Education, Department of Trade and Investment, South Australian Government,

**[Redacted pursuant to confidentiality claim]**

Karyn Kent, Chief Executive, Study Adelaide,

**[Redacted pursuant to confidentiality claim]**

Matt Stanton, College Director and Principal, SAIBT and CELUSA,

**[Redacted pursuant to confidentiality claim]**

Mark Falvo, Senior Vice President, International, Torrens University Australia,

**[Redacted pursuant to confidentiality claim]**

Geoffrey Denison, President, Student Accommodation Association,

**[Redacted pursuant to confidentiality claim]**

Dr Emily Kirkpatrick - Deputy Chief Public Health Officer, Deputy Chief Medical Officer, Quarantine Executive Lead – CQSA, Chair of the International Student Governance Group, SA Health,

**[Redacted pursuant to confidentiality claim]**

**[Redacted pursuant to confidentiality claim]**

**[Redacted pursuant to confidentiality claim]**

**[Redacted pursuant to confidentiality claim]**

**[Redacted pursuant to confidentiality claim]**

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<sup>39</sup> Final Determination, paragraph 4.19.

14. **Confidentiality**

Confidentiality has been claimed only in relation to personal details of relevant market participants (at Part 13 and Schedule 2), Government documents which have been provided to the Applicants on a confidential basis (Confidential Annexures 1 and 2, and references to those documents and information from them which appear at paragraphs 1.10, 3.13, 3.14 and 3.18 and footnotes 5, 6, 7, 9, 10 and 11), and information which is commercially sensitive and not yet publicly available (at paragraphs 3.4, 3.5, 5.2, 9.1(a), 10.1 and 11.4 and footnotes 8, 15, 17 and 21).

Those details, including copies of the Confidential Annexures, have been redacted in the public version of this application but provided to the Commission on a confidential basis.

Schedule 1 - Applicant details

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<b>Item 1</b>	<b>Name</b>	The University of Adelaide Flinders University The University of South Australia (together, <b>the Universities</b> )
<b>Item 2</b>	<b>Registered Office</b>	University of Adelaide, Floor/room G, 250 North Terrace, Adelaide SA 5005 Flinders University, Sturt Road, Bedford Park SA 5042 University of South Australia, Hawke Building, level 4, 55 North Terrace, Adelaide SA 5000
<b>Item 3</b>	<b>Representative Contact Details</b>	Peter Campbell, HWL Ebsworth Lawyers Level 21, 91 King William Street, Adelaide SA 5000 [REDACTED] [REDACTED] [REDACTED]
<b>Item 4</b>	<b>Description of business activities</b>	The Australian international education sector includes public and private universities, Australian branches of overseas universities, private higher education providers, pathway providers, VET providers and ELICOS providers.
<b>Item 5</b>	<b>Email address for service</b>	[REDACTED]

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Schedule 2 - Potential Project Participants

No	Sector Member	Potential Project Participant	Contact details
1.	The University of Adelaide	Yes	[redacted pursuant to confidentiality claim]
2.	University of South Australia	Yes	[redacted pursuant to confidentiality claim]
3.	Flinders University	Yes	[redacted pursuant to confidentiality claim]
4.	[redacted pursuant to confidentiality claim]	TBC	[redacted pursuant to confidentiality claim]
5.	[redacted pursuant to confidentiality claim]	TBC	[redacted pursuant to confidentiality claim]
6.	[redacted pursuant to confidentiality claim]	TBC	[redacted pursuant to confidentiality claim]
7.	[redacted pursuant to confidentiality claim]	TBC	[redacted pursuant to confidentiality claim]
8.	[redacted pursuant to confidentiality claim]	TBC	[redacted pursuant to confidentiality claim]
9.	[redacted pursuant to confidentiality claim]	TBC	[redacted pursuant to confidentiality claim]
10.	[redacted pursuant to confidentiality claim]	TBC	[redacted pursuant to confidentiality claim]
11.	[redacted pursuant to confidentiality claim]	TBC	[redacted pursuant to confidentiality claim]
12.	[redacted pursuant to confidentiality claim]	TBC	[redacted pursuant to confidentiality claim]
13.	[redacted pursuant to confidentiality claim]	TBC	[redacted pursuant to confidentiality claim]
14.	[redacted pursuant to confidentiality claim]	TBC	[redacted pursuant to confidentiality claim]
15.	[redacted pursuant to confidentiality claim]	TBC	[redacted pursuant to confidentiality claim]

**CONFIDENTIAL ANNEXURE 1**

**[Redacted pursuant to confidentiality claim]**



**CONFIDENTIAL ANNEXURE 2**

**[Redacted pursuant to confidentiality claim]**

## Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

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

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

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



Signature of authorised person

CHIEF OPERATING OFFICER, UNIVERSITY OF ADELAIDE

Office held

BRUCE LINES

(Print) Name of authorised person

This [insert day] day of [insert month] [insert year] 14 October 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.*

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Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

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Signature of authorised person

Vice President - Corporate  
Office held

(Print) Name of authorised person

MARK A GREGORY

This [insert day] day of [insert month] [insert year]

14<sup>th</sup> October 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.*


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Signature of authorised person

Chief Operating Officer

Office held

Paul Beard

(Print) Name of authorised person

14<sup>th</sup> October 2021

This [insert day] day of [insert month] [insert year]

*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.*