

MinterEllison

11 April 2022

BY EMAIL ONLY exemptions@accc.gov.au

Exemptions Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 3000

Attention: David Hatfield

Copy to: david.hatfield@accc.gov.au / alex.cicchini@accc.gov.au / jaimie.martin@accc.gov.au

Dear Mr Hatfield

State of South Australia as represented by the Department of Health and Wellbeing for authorisation AA1000591 – Condition 1 report

1. On 8 December 2021, the Australian Competition and Consumer Commission (**ACCC**) granted interim authorisation to the State of South Australia as represented by the Department of Health and Wellbeing (together the **Department**), together with specified private healthcare providers and public hospitals and healthcare facilities operating in the State of South Australia (together, the **Applicants**) to discuss, enter into and give effect to contracts, arrangements or understandings (**Agreement(s)**) which have the broad purpose of maximising healthcare capacity and ensuring the State-wide coordination of healthcare services to facilitate the most efficient and effective allocation of healthcare during the period of the COVID-19 pandemic (the **Proposed Conduct**), (the **ACCC Interim Authorisation**).
2. On 23 March 2022, the ACCC issued its final determination, granting conditional authorisation to the Department until 24 June 2023, in respect of the Proposed Conduct (the **ACCC Final Determination**).
3. The ACCC Final Determination is subject to the following condition (being the same condition to which the ACCC Interim Authorisation was subject) (**Condition 1**):
 - (a) Subject to paragraph (b) below, the Department must provide updates to the ACCC on a quarterly basis (or as otherwise agreed with the ACCC), describing any conduct engaged in during that quarter in reliance upon the Authorisation; and
 - (b) If no conduct was engaged in during that quarter in reliance upon the Authorisation, or if there has been no change in conduct since the last update was provided, the Department is not required to provide an update.
4. The purpose of this letter is to provide the information necessary to comply with Condition 1, which is set out in the **Annexure** to this letter. Please let us know if the ACCC has any questions.

Yours faithfully

MinterEllison



Lisa Jarrett
Partner
Contact: Lisa Jarrett T. 

OUR REF: 1295182 | KMG | LNJ

Annexure – Condition 1 reporting

During the period from 8 December 2021 to 31 March 2022:

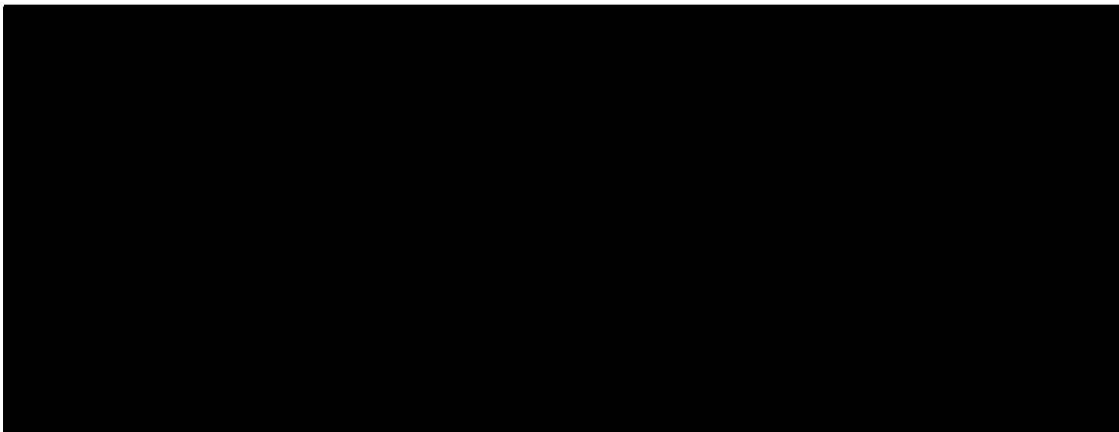
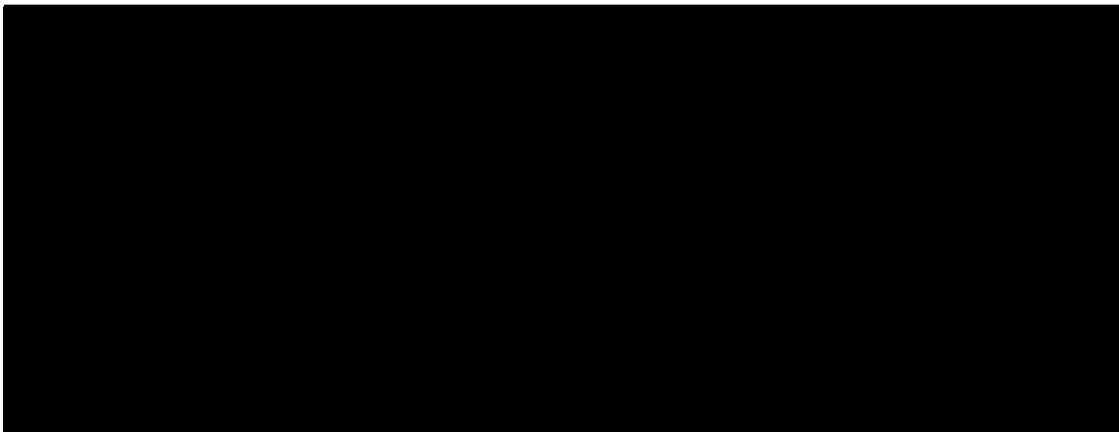
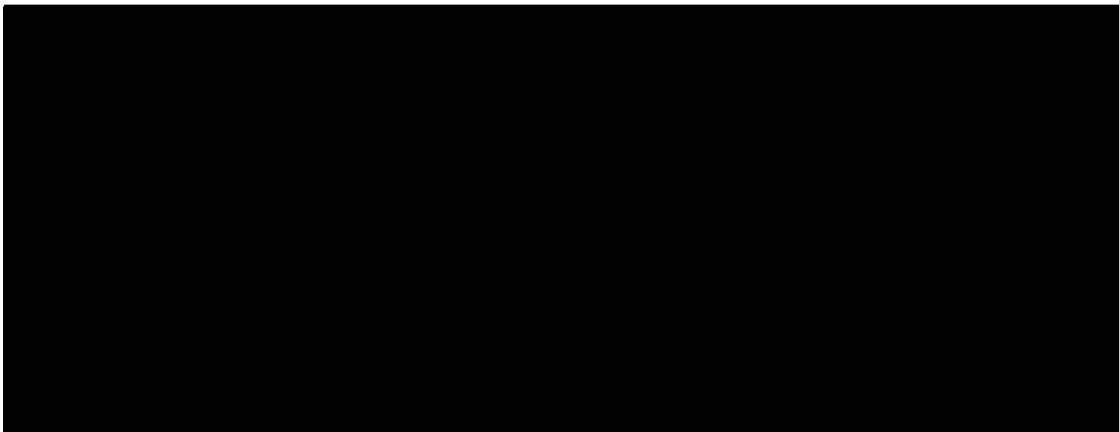
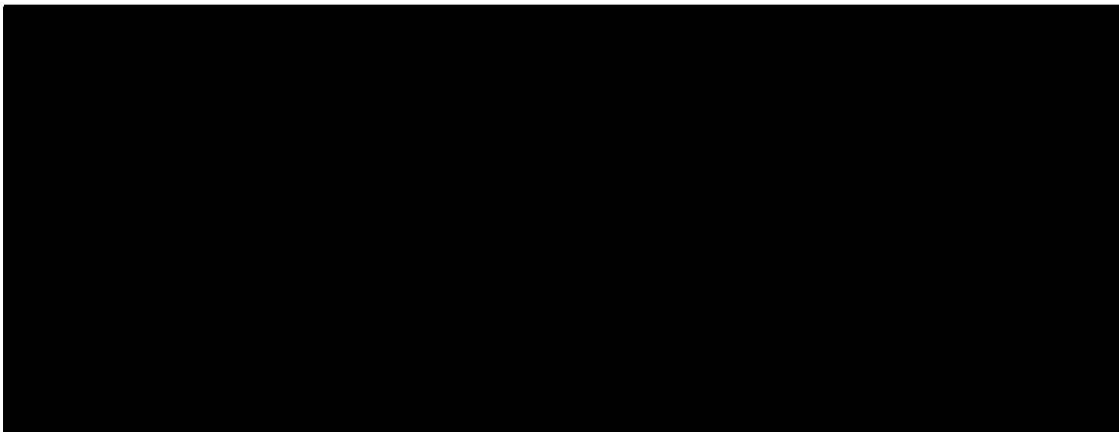
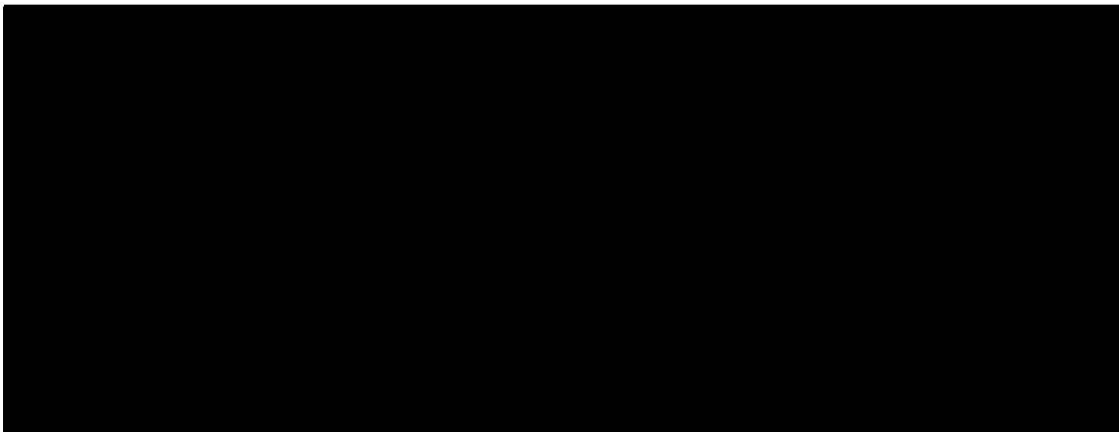
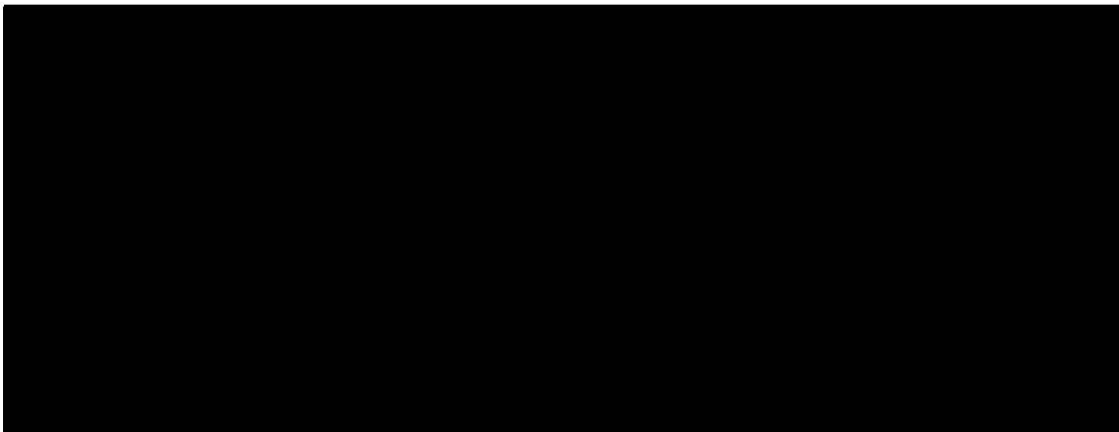
Summary of Agreements entered into under the ACCC Interim Authorisation

1. The Department confirms that, in respect of the private hospitals listed below:
 - separate Agreements (on the same or substantially the same terms) were entered into with the following Participating Providers:
 1. Adelaide Community Healthcare Alliance Inc.
 - Ashford Community Hospital
 - Flinders Private Hospital
 - Memorial Hospital
 2. Burnside War Memorial Hospital
 3. Glenelg Community Hospital
 4. North Eastern Community Hospital
 5. Sportsmed Hospital
 6. St Andrew's Hospital
 7. Stirling District Hospital
 8. Western Hospital
 - the Department issued the Agreements to each of the above Participating Providers on 24 January 2022 and executed versions were delivered between 24 January 2022 and 1 February 2022;
 - each Agreement had an effective date of **1 January 2022**.
2. The Department confirms that, in respect of the day hospitals listed below:
 - separate Agreements (on the same or substantially the same terms) were entered into with the following Participating Providers:
 1. Adelaide Ambulatory Day Surgery
 2. Glenelg Day Surgery
 3. Parkview Day Surgery
 4. Seaford Day Surgery
 5. Southern Endoscopy Centre
 6. Tennyson Centre Day Hospital
 7. Vista Day Surgery
 - the Department issued the Agreements to each of the above Participating Providers on 24 January 2022 and executed versions were delivered between 24 January 2022 and 4 February 2022;
 - each Agreement had an effective date of **1 January 2022**.

3. The identity of the likely Participating Providers was notified to the ACCC on 13 January 2022 and the Participating Providers were confirmed in writing to the ACCC on 2 February 2022.

Key features of the Agreements

4. The Department confirms that the key features of the Agreements are the same as those reported in the Condition 1 report dated 15 May 2020 in connection with AA1000498, save for the following:

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Current status of Agreements

5. As a result of the resumption of elective surgery during the course of February 2022, each Agreement was terminated by agreement in writing of the Department and each Participating Provider, respectively, with such termination taking effect from:
 - for the private hospitals, **28 February 2022**; and
 - for the day hospitals, **14 February 2022**.
6. At the conclusion of this reporting period, being 31 March 2022, the Department does not have any Agreements in place. All Agreements were terminated by 28 February 2022.
7. At the conclusion of this reporting period, being 31 March 2022, the Department is **not** :
 - (a) engaging in coordinated group discussions regarding healthcare operations, capacity and other matters required or contemplated by the Agreements; or
 - (b) sharing any information required or contemplated by the Agreements or otherwise reasonably necessary to facilitate the Objectives, including but not limited to:
 - information about the capacity or expected capacity of a hospital to provide care to patients or patients with particular conditions; and
 - information about the availability of resources required to treat patients (including, but not limited to, hospital beds, staff, medicines and other equipment);
 - (c) coordinating any of the following activities:
 - allocation of the provision of certain services or certain patients to particular healthcare providers and / or between certain healthcare facilities (e.g. designating specific categories of patients to particular hospitals);
 - restriction of certain services that can be provided at particular healthcare facilities;
 - sharing of resources (including staff and medical supplies and equipment) to meet demand at particular healthcare facilities; or

- 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.

8.

