

NATIONAL HEALTH CALL CENTRE NETWORK

HEADS OF AGREEMENT

between

THE COMMONWEALTH OF AUSTRALIA

and

THE STATE OF NEW SOUTH WALES

and

THE STATE OF VICTORIA

and

THE STATE OF QUEENSLAND

and

THE STATE OF WESTERN AUSTRALIA

and

THE STATE OF SOUTH AUSTRALIA

and

THE STATE OF TASMANIA

and

THE AUSTRALIAN CAPITAL TERRITORY

and

THE NORTHERN TERRITORY OF AUSTRALIA

NATIONAL HEALTH CALL CENTRE NETWORK HEADS OF AGREEMENT

These **HEADS OF AGREEMENT** are entered into by the Commonwealth of Australia, the States of New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania and the Australian Capital Territory and the Northern Territory ("**Proposers**").

BACKGROUND:

- A. The Proposers are committed to the establishment of the National Health Call Centre Network ("**National HCC Network**"). It is proposed that the National HCC Network will be accessible 24 hours a day, seven days a week and enable the public to obtain health triage, advice and information, including where health and medical assistance might be obtained. The National HCC Network will be a co-operative arrangement that is jointly funded and badged by the Proposers.
- B. Currently Western Australia, the Northern Territory and the Australian Capital Territory are operating health call centres and other States may commence operations of health call centres prior to the establishment of the National HCC Network. It is intended that these centres will become part of the National HCC Network.
- C. Discussions have taken place among the Proposers in regard to the National HCC Network and how best to establish and operate that Network.
- D. These Heads of Agreement outline in brief how the Proposers intend to proceed to establish the National HCC Network.

1. INTERPRETATION AND DEFINITIONS

1.1 These Heads of Agreement do not, and are not intended to, create any legal obligations between the Proposers.

1.2 In these Heads of Agreement:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(c) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;

(d) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(e) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(f) a reference to a clause, schedule, exhibit, attachment or annexure is a reference to a clause, schedule, exhibit, attachment or annexure to or of these Heads of Agreement, and a reference to these Heads of Agreement includes any schedules, exhibits, attachments or annexures to it;

- (g) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (h) **"includes"** in any form is not a word of limitation; and
- (i) a reference to **"\$"** or **"dollar"** is to Australian currency.

1.3 Definitions

"Add-on Services" means additional services within the Objects of the Management Vehicle other than Core Services and Emergency Services, to be identified in contractual arrangements between the Management Vehicle and the Proposer(s) who request those services.

"Constitution" means the company constitution and other incorporation documents for the Management Vehicle.

"Contracted Service Provider" means a service provider engaged by the Management Vehicle to perform a service with respect to the National HCC Network.

"Core Services" means the services set out in Attachment 2.

"Emergency Services" means any services that need to involve the National HCC Network as part of a health emergency or disaster response and are notified to the Management Vehicle by a person authorised by a Proposer according to principles agreed by the Proposers.

"Existing HCC Operations" means the existing health call centres operating in Western Australia, the Northern Territory and the Australian Capital Territory and any others that may exist in any of the other States and which have been advised to the Proposers prior to the establishment of the National HCC Network.

"Funding/Service Delivery Contracts" means the agreement(s) between the Proposers and the Management Vehicle detailing funding obligations and services requirements with respect to the National HCC Network.

"Implementation Documents" has the meaning provided in clause 3.1.

"Management Vehicle" has the meaning provided in clause 2.1.

"Members" mean the Proposers who are issued with shares in the Management Vehicle.

"Objects" means the objects of the Management Vehicle to be included in the Management Vehicle's constitution.

"Proposers" means the Commonwealth of Australia, the States of New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory.

"Shareholders' Agreement" means the agreement to be entered into by the Proposers detailing each Proposer's rights, obligations and liabilities with respect to the National HCC Network and governing the exercise of each Proposer's rights, powers and obligations with respect to each Proposer's membership of the Management Vehicle.

2. OVERVIEW OF ESTABLISHING THE NATIONAL HEALTH CALL CENTRE NETWORK

- 2.1 The Proposers will establish a public company limited by shares to manage the National HCC Network ("**Management Vehicle**"), which will be governed by the terms of the Constitution.

- 2.2 Before the Management Vehicle is incorporated the Proposers will enter into a Shareholders' Agreement to set out in detail their respective rights and obligations relating to the Management Vehicle.
- 2.3 The Management Vehicle will be responsible for procuring the operator/s contracted to provide the National Health Call Centre Core Services, Add-on Services and Emergency Services ("**Contracted Service Provider/s**"), for negotiating the resultant contract/s, and then for managing the service contract arrangements. The services provided by the Contracted Service Provider/s must be performed in Australia.
- 2.4 Funding/Service Delivery Contract(s) will be required between either each or all of the Proposers and the Management Vehicle.
- 2.5 The Contracted Service Provider/s and the Management Vehicle must operate within an appropriate agreed accountability regime.

3. **IMPLEMENTATION DOCUMENTS**

- 3.1 The Proposers will negotiate in good faith to finalise the Constitution, Shareholders' Agreement and Funding/Service Delivery Contract(s) ("**Implementation Documents**") required for the implementation of the National HCC Network.
- 3.2 Attachment 1 to these Heads of Agreement sets out the schedule for the negotiation and finalisation of these documents, along with other key implementation dates.
- 3.3 As a condition subsequent, these Heads of Agreement will terminate, and will be treated as being void, upon the signature of the Shareholders' Agreement and incorporation of the Management Vehicle.

4. **SHAREHOLDERS' AGREEMENT**

- 4.1 The Shareholders' Agreement will provide that each of the Proposers will join together to incorporate the Management Vehicle. This agreement will set out in as much detail as practically required the rights, obligations and liabilities of the Proposers regarding the National HCC Network and the Management Vehicle.
- 4.2 The financial contributions by each of the Proposers to the costs of:
- (a) establishing;
 - (b) governing; and
 - (c) operating
- the Management Vehicle in its provision of Core Services (but not of any Add-on Services) will be agreed among the Proposers within 14 days after the day this Heads of Agreement has been signed by all parties (or such other date as agreed by the Proposers).
- 4.3 The Proposers will each ensure that all approvals required in their jurisdictions to make a legally-firm commitment to the financial contributions in clause 4.2 will be completed within the timeframe indicated in clause 4.2.
- 4.4 The Shareholders' Agreement will set out the audit and accountability arrangements necessary to satisfy the financial accountability requirements of all of the Proposers and will specify how these requirements will be satisfied (for example, under the Funding/Service Delivery Contract).

- 4.5 The Shareholders' Agreement will also cover the following business issues:
- (a) responsibilities for costs in setting up and operating the Management Vehicle where these have not been adequately covered in these Heads of Agreement;
 - (b) agreement on which services are to be exclusively provided by the Management Vehicle and which (if any) are to be retained by a Member or Members;
 - (c) timing of financial contributions;
 - (d) mechanisms for the costing, consideration and contracting of any Add-on and Emergency Services;
 - (e) resourcing of the Management Vehicle in such areas as premises, information/knowledge management, assets, operating contracts, insurances, transition-in, the Chief Executive Officer, employees;
 - (f) a business plan for the Management Vehicle to be implemented and monitored under the Funding/Service Delivery Contract;
 - (g) advertising and marketing (including co-badging, naming and logo arrangements) for the National HCC Network to be implemented and monitored under the Funding/Service Delivery Contract; and
 - (h) a framework for the management of privacy obligations and patient records, including any additional health regulatory requirements that may be relevant.

4.6 The Shareholders' Agreement will cover the following governance issues (noting the potential overlap with the Constitution):

- (a) ownership/membership of Management Vehicle (including provision for incoming and outgoing members);
- (b) appointment and removal of directors of Management Vehicle;
- (c) management/executive of Management Vehicle (including appointment of Chief Executive Officer);
- (d) achievement of best practice in corporate governance;
- (e) formation and operation of the Joint Policy Review Committee;
- (f) dispute resolution and deadlock provisions - particularly where cross-jurisdictional issues are involved; and
- (g) winding up/dissolution of the Management Vehicle.

5. **FUNDING/SERVICE DELIVERY CONTRACT BETWEEN THE PROPOSERS AND THE MANAGEMENT VEHICLE**

5.1 Funding/Service Delivery Contract(s) will be made between either each or all of the Proposers and the Management Vehicle which will provide for the amount and timing of funding to be given by either each or all of the Proposers to the Management Vehicle for it to carry out the National HCC Network.

5.2 The Funding/Service Delivery Contract will also specify in detail the Core Services that the Proposers require from the Management Vehicle in exchange for the funding and the method and timing of delivery of those services. Service levels will also be required from the Management Vehicle and minimum operational commitments from the Proposers, including commitments to provide adequate notice to the Management Vehicle prior to significant

marketing or publicity events relating to the National HCC Network that are likely to increase call volumes.

5.3 The Funding/Service Delivery Contract will contain all the necessary commercial provisions for this undertaking (including intellectual property rights, information and communications technology and information management issues) and will prescribe the appropriate provisions to ensure transparency, value for money and accountability, such as the audit and inspection requirements of the Proposers.

5.4 Privacy obligations and patient record confidentiality are of critical importance and these will be covered at length in the Funding/Service Delivery Contract such that all statutory and policy requirements of all of the Proposers will be satisfied.

6. **ADD-ON SERVICES**

6.1 Add-on Services are to be dealt with in accordance with provisions to be included in the Shareholders' Agreement.

6.2 Clause 4.5(d) above provides that the Shareholders' Agreement will cover mechanisms for the costing, consideration and contracting of any Add-on Services. The general principles to apply are as follows:

- (a) subject to the following subparagraphs, one or more jurisdiction(s) may, at any time, request Add-on Services from the Management Vehicle ("**Proposing Jurisdiction(s)**") on terms and conditions, and in separate contractual arrangements, agreed between the Management Vehicle and the Proposing Jurisdiction(s) ("**Proposed Contractual Arrangements**");
- (b) the Add-on Services must be fully funded in the Proposed Contractual Arrangements. The Proposed Contractual Arrangements may therefore need to provide a contribution to general overheads and administrative functions of the Management Vehicle especially where the Add-on Services are unable to be provided at marginal cost because they need an expansion of overhead and fixed capacity in order to provide the Add-on Services;
- (c) the Proposed Contractual Arrangements must be notified to all (except the Proposing Jurisdiction(s)) prior to execution by the Proposing Jurisdiction(s) and the Management Vehicle; and
- (d) If the Management Vehicle determines that the Add-on Services are:
 - (i) fully funded as described in subparagraph (b) above; and
 - (ii) will not have a material adverse affect on the performance of the Core Services (and previously agreed Add-on Services) and the capacity to provide Emergency Services by the Management Vehicle,the Management Vehicle will perform the Add-on Services.
- (e) If the Management Vehicle determines that the Add-on Services are:
 - (i) not fully funded as described in subparagraph (b) above; or
 - (ii) may have a material adverse affect on the performance of the Core Services (and previously agreed Add-on Services) and the capacity to provide Emergency Services by the Management Vehicle (including, with regard to the terms and conditions on which the Add-on Services are to be provided),

the Proposing Jurisdiction(s) may seek the approval of the other Members to have the Management Vehicle perform the relevant Add-on Services.

- (f) Subject to the above, the Proposing Jurisdiction(s) and the Management Vehicle will then execute the Proposed Contractual Arrangements.

7. **EMERGENCY SERVICES**

Notwithstanding the agreed procedure for Core and Add-on Services, the Management Vehicle will be able to engage or retain Contracted Service Provider(s) to provide Emergency Services.

8. **ISSUES INVOLVED IN THE ESTABLISHMENT OF THE MANAGEMENT VEHICLE**

8.1 Within 21 days of execution of these Heads of Agreement, each Proposer shall provide to each other Proposer a summary of the principles that will determine whether or not government-owned corporations legislation in the Proposer's jurisdiction will apply to the Management Vehicle.

8.2 As part of the Management Vehicle's Constitution, the Proposers will negotiate in good faith to agree:

- (a) the Objects of the Management Vehicle and any operating restrictions;
- (b) the operating and governance regimes for the Management Vehicle;
- (c) the Core Services to be provided and framework for Emergency Services and Add-on Services to be negotiated by Management Vehicle;
- (d) a framework for the Management Vehicles' Procurement plan;
- (e) a framework for management of the transition-in of Existing HCC Operations;
- (f) guidelines for establishing Board Standing Committees including a Finance and Audit Committee, and the Clinical Governance Advisory Group;
- (g) a framework for the management of privacy obligations and patient records, including any additional health regulatory requirements that may be relevant;
- (h) financial and accountability requirements;
- (i) dealings with property, dividends and profits; and
- (j) taxation status and registration.

8.3 Consideration will need to be given to resourcing of the Management Vehicle (including premises, information/knowledge management, assets, operating contracts, insurances, transition-in, Chief Executive Officer and employees). The Proposers need to determine which resourcing issues will be left to the Management Vehicle to determine.

8.4 Intellectual property rights, information and communications technology and information management issues relevant to both Existing HCC Operations and the operation of the National HCC Network will need to be considered.

8.5 Transition in and transition out of Contracted Service Providers is to be determined by the Management Vehicle with reference to the following objectives:

- (a) ensuring the efficient and effective use of resources;

- (b) ensuring a smooth and seamless transition with minimal disruption to both the Management Vehicle in the performance of its Objects and contractual operations and the Proposers and other stakeholders of the Management Vehicle; and
- (c) ensuring that the process meets standards of accountability and probity appropriate for a government-owned company.

9. **GOVERNANCE OF MANAGEMENT VEHICLE**

9.1 The Management Vehicle will be a public company limited by shares incorporated under the Corporations Act. The Proposers will be the legal and beneficial Members.

9.2 With respect to membership, the Proposers agree that:

- (a) the issue and transfer of shares will be subject to pre-emptive rights to be contained in the Shareholders' Agreement;
- (b) a Member will be required to transfer its shares to the other Members if it fails to contribute to the Management Vehicle as required in the Shareholders' Agreement;
- (c) Members' meetings will be held once per year (unless a majority of members call an extraordinary meeting);
- (d) each Member will have an equal number of shares and each share will carry the same voting right;
- (e) procedures for meetings will be contained in the Constitution; and
- (f) decisions will be made by majority vote except in certain types of decisions to be specified in the Shareholders' Agreement which will require a 75 per cent vote or a unanimous vote (for example, decisions which impose additional costs or new liabilities on a Member).

9.3 With respect to directors, the Proposers agree that:

- (a) the Members will, by majority vote, appoint the directors on the basis of skills (including clinical expertise), qualifications and experience in the areas of business, industry (including the service delivery, call centre, health and information and communications technology and information management relevant to these industries), government, finance and accounting and legal as to ensure that the Board collectively has the requisite skills and experience to efficiently and effectively manage the Management Vehicle in accordance with best principles of corporate governance;
- (b) directors will serve a term of two years unless removed earlier by the Members;
- (c) the Members may, by 75 per cent vote, remove any director (including the Board Chair) at any time; and
- (d) no Member will have a nominee director.

9.4 The management/executive of the Management Vehicle will be appointed by the directors, subject to all appointments/removals into/out-of the position of CEO being subject to consultation with the Members.

9.5 The Management Vehicle will be expected to be governed in accordance with best-practice corporate governance principles and will be required to have a Finance and Audit sub-committee and a Clinical Governance Advisory Group.

9.6 The Members will establish a Joint Policy Review Committee under the Shareholders' Agreement to make health policy decisions and to notify the directors in writing of general or specific policies of the Joint Policy Review Committee that are to apply to the Management Vehicle. The Joint Policy Review Committee must consult the directors to understand the possible impact on service delivery before notifying them of a policy. The directors must ensure that the policies are carried out in relation to the Management Vehicle.

9.7 The Members, acting unanimously, will have a general and specific power of direction over the Board, exercisable by notice in writing to the Board signed by each Member.

10. **EXISTING HCC OPERATIONS**

10.1 A review of the Existing HCC Operations (including, but not limited to, with respect to the operations, intellectual property rights, marketing materials, information and communications technology, information management, knowledge management, finances, contractual arrangements, commercial and legal arrangements) will be required (subject to reasonable and appropriate confidentiality and privacy safeguards).

10.2 Consideration will need to be given to the extent to which the Existing HCC Operations can be utilised (including in terms of experiences, contracts, procurement systems, operating systems, processes and intellectual property rights) to:

- (a) reduce the costs of establishing the National HCC Network;
- (b) enhance the quality and effectiveness of the National HCC Network; and
- (c) to reduce and manage the risks and uncertainties inherent in establishing the National HCC Network,

taking into account the current contractual and legal arrangements surrounding the Existing HCC Operations.

10.3 Consideration will need to be given to recognising and valuing the non-financial contributions of the Existing HCC Operations to establishment costs where the other Proposers will financially benefit from those contributions.

11. **COSTS AND TAXES**

11.1 Each Proposer will pay its own legal and other costs and expenses in negotiating and implementing the Implementation Documents.

11.2 All Commonwealth and State taxes and fees applicable to the execution and implementation of the Constitution, Shareholders' Agreement and Funding/Service Delivery Contract(s) shall be paid by the Proposers in accordance with the respective financial contributions of the Proposers to be agreed under clause 4.2. This clause is not intended to and does not affect any arrangements that the Proposers have previously made relating to the State Taxation Equivalent regime and those arrangements take precedence over this clause if there is any conflict.

12. **CONFIDENTIALITY AND PUBLIC ANNOUNCEMENTS**

12.1 The Proposers agree that terms of these Heads of Agreement and all other documents and correspondence related to the National HCC Network are and will remain confidential.

12.2 No relevant public announcements, media releases or similar communications will be made by any of the Proposers without the prior unanimous consent of all of the other Proposers.

12.3 Notwithstanding Clauses 12.1 and 12.2, the Proposers may disclose the information described in Clause 12.1 or 12.2 if required by any law, judicial or parliamentary body or governmental

agency including, without limitation, disclosure and response to parliamentary questions, Ministerial inquiries conducted by or on behalf of the Auditor-General of the Commonwealth or a State or Territory.

SIGNED FOR AND ON BEHALF OF EACH OF THE PARTIES BY:

The Honourable John Winston Howard MP)
Prime Minister of the Commonwealth of Australia)

The Honourable Morris Iemma MP)
Premier of New South Wales)

The Honourable Stephen Phillip Bracks MP)
Premier of Victoria)

The Honourable Peter Beattie MP)
Premier of Queensland)

The Honourable Alan Carpenter MLA)
Premier of Western Australia)

The Honourable Michael Rann MP)
Premier of South Australia)

The Honourable Paul Lennon MHA)
Premier of Tasmania)

Jonathan Donald Stanhope MLA)
Chief Minister of the Australian Capital Territory)

The Honourable Clare Martin MLA)
Chief Minister of the Northern Territory)

ATTACHMENT 1 - IMPLEMENTATION SCHEDULE

Phase	Activity	Responsibility	Timeframe
1. Before the NHCCN is established	Sign Heads of Agreement	Australian Government States and Territories	End February 2006
	Negotiate, agree and execute Shareholders' Agreement		
	Negotiate and agree Company Constitution		
	Funding mechanisms agreed		
	Establish Company		
	Agreement and execution of Funding/Service delivery contracts (to the extent necessary to enable the provision of initial funds)		
2. Establishment of the NHCCN Corporation	Board of Directors and CEO appointed	Members of Management Vehicle	Mid-March 2006
	Company Board meets	Company	End March 2006
	Core Company employees engaged	Company	June 2006
	Committee structures in place	Company	August 2006
3. Procurement	Development and Board approval of procurement process	Company	End March 2006
	Tender released	Company	July 2006
	Service Providers contracted	Company	December 2006
4. Prepare for Service	Develop communication plan for stakeholders as well as users	Members Company	June 2006
	Develop transition schedules and strategies	Members Company	August 2006
	Additional funds provided under the Funding/Service delivery contracts	Members Company	August 2006
	Customise triage protocols	Company	February 2007
	Project manage preparation of service provider	Company	December 2006 – end June 2007
5. Commence Operations	Commence planning with first jurisdiction	Members Company	April 2007
	Roll out of triage services to first jurisdiction	Member Company	July 2007
	Roll out of triage services to final jurisdiction	Member Company	no later than July 2011

ATTACHMENT 2 - CORE SERVICES

The Core functions of the National HCC Network will be:

- nurse-based telephone triage, supported by a single national set of electronic decision support software and algorithms;
- health advice and information including support for the needs of rural and isolated communities; and
- referral to health services, supported by service directories that are developed and maintained to be responsive to local needs.