

Comprehensive Summary Heads of Agreement

Feasibility Assessment Creation of a *University for the Future*

July 2023

Joint Project Management Office



University of
South Australia



THE UNIVERSITY
of ADELAIDE

SUMMARY
HEADS OF AGREEMENT
BETWEEN UNIVERSITY OF SOUTH AUSTRALIA AND THE UNIVERSITY OF ADELAIDE

1 Background

University of South Australia (**UniSA**) and The University of Adelaide (**UoA**) entered into a Heads of Agreement dated 2 July 2023 which records the terms and conditions on which UniSA and UoA will support the creation of 'Adelaide University', should Parliament so legislate (**Agreement**).

The Agreement provides for the activities to be undertaken and the governance structures which will exist during the following phases:

- 'Current State' – the period between the date of the Agreement and the 'Legislation Commencement Date', being the date on which Adelaide University is established under the *Adelaide University Act* (see Section 4 below).
- 'Transition Period' – the period between the Legislation Commencement Date and the date on which the 'End State' is achieved, being the date on which the *University of South Australia Act 1990 (UniSA Act)* is repealed and UniSA ceases as a legal entity and the *University of Adelaide Act 1971 (UoA Act)* is repealed and UoA ceases as a legal entity (see Section 5 below).

2 UniSA and UoA's commitment of support for the creation of Adelaide University

Subject to certain conditions being satisfied (see Section 3 below), if the South Australian Government proceeds with a decision to create Adelaide University by combining UniSA and UoA, then UniSA and UoA will work together in joint venture and acting in good faith:

- to support the South Australian Government to take the legal and legislative steps for the creation of Adelaide University by the combination of UniSA and UoA as contemplated by the Agreement, noting that the combination is aligned to the South Australian Government's intent on transformation of the South Australian higher education landscape and also noting that any decision to create Adelaide University as foreshadowed in the Agreement, and all decisions as to means and timing, are ultimately matters for Parliament;
- towards creating Australia's new for purpose university, which will strive to deliver an outstanding, accessible and contemporary teaching and learning experience, drive world-leading and impactful research and foster deep connections with local, national and global communities;
- to fulfil the agreed vision for Adelaide University, being:

Australia's new for purpose university is a leading contemporary comprehensive university of global standing. We are dedicated to ensuring the prosperity, well-being, and cohesion of society by addressing educational inequality, through our actions and through the success and impact of our students, staff and alumni. Partnered with the communities we serve; we conduct outstanding future-marking research of scale and focus;

- to use reasonable endeavours to ensure that staff of UniSA and UoA who transfer to Adelaide University are no worse off and that no staff member will be made compulsorily redundant or compulsorily retrenched as a consequence of the South Australian Government's decision in advance of the opening of Adelaide University on 1 January 2026 or during the first 18 months of operation.

3 Conditions to UniSA and UoA's commitment of support for creation of Adelaide University

UniSA and UoA's commitment of support as set out in Section 2 above is subject to the following conditions being satisfied within specified timeframes:

- **ACCC** – the combination of UniSA and UoA to create Adelaide University is either authorised by the Australian Competition and Consumer Commission (**ACCC**) (if required) or is not the subject of any ACCC regulatory or enforcement action.
- **Legislation** – both Houses of Parliament have passed the *Adelaide University Act*, which will establish Adelaide University, repeal both the UniSA Act and UoA Act (with effect from a later date) and otherwise effect the combination of UniSA and UoA as contemplated by the Agreement.
- **Funding arrangements** – UniSA and UoA have entered into legally binding arrangements (as contemplated by the Agreement) with the South Australian Government regarding the funding of Adelaide University.

UniSA and UoA must use all reasonable endeavours to procure that the conditions are satisfied as efficiently as possible after the date of the Agreement and must provide reasonable assistance to each other as is necessary for this purpose.

If one of the above conditions is not satisfied and UniSA and UoA are unable to agree on providing continued support, then either UniSA or UoA may terminate the Agreement.

4 Current State

During the Current State, UniSA and UoA will continue to work together towards the establishment of Adelaide University, including by engaging relevant government regulators in relation to higher education registrations, contributing to the development of the *Adelaide University Bill* (see Section 4.4 below), attending to employment and industrial relations matters in relation to the transfer of staff to Adelaide University and developing a proposed brand for Adelaide University.

The parties will, as soon as possible and by no later than 31 December 2023, agree on a Project Plan for the transition to Adelaide University which must be consistent with the Transition Plan attached to the Agreement (**Project Plan**) and a Strategic Plan which must be consistent with the Business Case attached to the Agreement (**Strategic Plan**). The parties will also agree a Transition Implementation Budget.

If UniSA or UoA becomes aware of a matter that may have a material adverse impact on its financial status or goodwill and reputation or on the combination of UniSA and UoA to create Adelaide University then, before taking unilateral action in relation to the matter, it must notify the other party and work with the other party to determine how to address the matter.

4.1 Conduct of business by UoA and UniSA during Current State

UniSA and UoA must conduct their respective businesses in the ordinary course, consistent with past practice and take reasonable steps to preserve their respective goodwill and reputation and have regard to the likely needs of Adelaide University, including with respect to course rationalisation and the activities, commitments and investments relating to Adelaide University.

Subject to limited exceptions, UniSA and UoA must not undertake certain activities unless expressly provided for in the Agreement or with the other party's written consent. Broadly, these activities include acquisitions or disposals of material assets, undertaking substantial capital projects, entry into, variation or termination of material contracts, additional borrowing of material amounts, certain changes to teaching offerings, certain actions with respect to UniSA or UoA's enterprise agreements, failing to maintain insurances or failing to discharge material liabilities as they fall due.

4.2 Governance

Councils, Chancellors and Vice-Chancellors

The respective Councils of UniSA and UoA will continue to govern their respective universities and the respective Chancellors and Vice-Chancellors of each of UniSA and UoA will continue in their roles, each in accordance with the UniSA Act and UoA Act (as applicable).

Joint Committee

A special purpose Joint Committee will be created with equal representation from UniSA and UoA and comprising the number of members agreed by the Vice-Chancellors of UniSA and UoA. The Joint Committee's role includes:

- planning and preparation for the establishment of Adelaide University in accordance with the Agreement, drawing resources from each of UniSA and UoA as required;
- developing processes and protocols for staff, student and stakeholder communication and consultation;
- ongoing engagement with South Australian and Commonwealth Governments and their agencies regarding the design and implementation of legislation;
- governing and overseeing transition and integration planning; and
- resolving issues escalated to it and further escalating to the respective Chancellors and Councils of UniSA and UoA any issues which the Joint Committee is unable to resolve.

The Joint Committee will report to the UniSA and UoA Councils via the Vice-Chancellors of UniSA and UoA. The Joint Committee may retain independent experts with UniSA and UoA's prior approval.

The Joint Committee will cease to operate at the end of the Current State.

4.3 Transition Plan and Project Plan

UniSA and UoA will perform their obligations to give effect to the Project Plan once agreed (and prior to agreement of the Project Plan, to give effect to the intention of the Transition Plan) and will work together to agree any required updates to the Project Plan. UniSA and UoA must promptly notify each other if they become aware of a matter which may have a material adverse impact on the performance of the Transition Plan or the Project Plan (as applicable) during the Current State.

4.4 Adelaide University Bill

UniSA and UoA's assistance to the South Australian Government regarding the development of the *Adelaide University Bill* will have regard to various matters including that the UniSA Act (with appropriate modifications) will be the base model for the *Adelaide University Bill* and that Adelaide University must be 'Fully Operational' before the UniSA Act or UoA Act are repealed.

Consideration will also be given to the *Adelaide University Act* including:

- key elements of the respective identities of UniSA and UoA together with a clear ambition for Adelaide University to undertake quality research of positive societal impact; and
- sufficiently flexible transition provisions for the staged transfer of UniSA and UoA's staff, students, assets and liabilities to Adelaide University.

5 Transition Period

The parties envisage that during the Transition Period, UniSA, UoA and Adelaide University will co-exist as separate legal entities (under their respective Acts), each with its own separate governance structure and brand.

UniSA and UoA's obligations noted above under the heading 'Conduct of Business during Current State' continue during the Transition Period (as applicable) unless the Adelaide University Act requires otherwise or UniSA and UoA agree otherwise, including in the Tripartite Agreement (see Section 5.1 below).

5.1 Tripartite Agreement between Adelaide University, UniSA and UoA

UniSA and UoA will use reasonable endeavours to enter into a tripartite agreement with Adelaide University to cover the transition during the Transition Period (**Tripartite Agreement**). Subject to the requirements of the *Adelaide University Act*, the Tripartite Agreement will (among other things):

- attach and commit Adelaide University to the terms of the Project Plan, Strategic Plan and Transition Implementation Budget;
- include commitments by UniSA and UoA to provide working capital funding to Adelaide University in accordance with the Transition Implementation Budget;
- facilitate UniSA, UoA and Adelaide University's reasonable access to each other's relevant information and personnel;
- provide for ongoing engagement with relevant government regulators regarding the higher education registrations of each of UniSA, UoA and Adelaide University;
- include arrangements for the transfer of contracts, assets, liabilities, employees and students from UniSA and UoA to Adelaide University (as effected by transitional provisions in the *Adelaide University Act*);
- include provisions with respect to the Transition Council and the Adelaide University Vice Chancellor and leadership (see Section 5.2 below);
- acknowledge that, subject to the Adelaide University Act, the Transition Council will:
 - be the governing body of Adelaide University (and the Joint Committee ceases to operate at the end of the Current State); and
 - appoint two co-Vice Chancellors of Adelaide University (one from UniSA and one from UoA) who will together implement the Project Plan so that Adelaide University is Fully Operational by 1 January 2026 (see Section 5.2 below).

5.2 Governance

Transition Council

A Transition Council will become the governing council of Adelaide University (replacing the Joint Committee which ceases to operate at the end of the Current State). The Transition Council will be appointed for a term commencing at the start of the Transition Period and ending one year after Adelaide University is Fully Operational.

The Transition Council will have up to 15 members, comprising the Chancellor of the Transition Council and up to 7 members nominated by each of UniSA and UoA. Decisions of the Transition Council will be made by 60% majority vote of members present and entitled to vote.

UniSA will nominate and appoint the Chancellor of the Transition Council (in consultation with UoA), with such appointment being for a term ending on the appointment of a new Chancellor of Adelaide University or one year after Adelaide University is Fully Operational (whichever is earlier). The Transition Council will determine the process and timeframe for appointing a new Chancellor of Adelaide University (whose term should commence within a year after Adelaide University is Fully Operational).

UniSA and UoA will each be entitled to nominate, in consultation with each other, one of two Deputy Chancellors of the Transition Council from one of their nominee members (and their term of appointment will end on the appointment of the new Chancellor of Adelaide University).

Vice Chancellor

Two co-Vice Chancellors will be appointed by the Transition Council (one drawn from UniSA and one from UoA), with such appointments to continue until the commencement of the new Vice Chancellor for Adelaide University. The Transition Council will oversee an open and competitive global recruitment process for the new Vice Chancellor for Adelaide University during the Transition Period. The appointment of the new Vice Chancellor will commence at a time determined by the Transition Council.

5.3 Transition activities during Transition Period

UniSA and UoA will perform their obligations to give effect to the Project Plan, will take the necessary steps to support the implementation of Adelaide University by the Transition Council (including by providing resources, personnel and information) and will work together to agree any required updates to the Project Plan. UniSA and UoA must promptly notify each other if they become aware of a matter which may have a material adverse impact on the performance of the Project Plan during the Transition Period.

The above obligations apply unless the Adelaide University Act requires otherwise or the parties agree otherwise (including in the Tripartite Agreement).