



Australian Government Solicitor

MEMORANDUM OF UNDERSTANDING FOR APS SECONDMENT

Commonwealth of Australia represented by the Department of the Prime Minister and Cabinet
ABN 18 108 001 191

Bupa Australia Health Pty Ltd
ABN 50 003 098 655

Senate F&PA Committee

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Witness Name

Organisation: *PM & C*

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MEMORANDUM OF UNDERSTANDING FOR APS SECONDMENT

Date

This Memorandum of Understanding (MOU) is made on 14 November 2016.

Parties

This MOU is made between the following parties:

1. **Commonwealth of Australia represented by the Department of the Prime Minister and Cabinet (the Agency)**
Bupa Australia Health Pty Ltd (the Company)

Context

This MOU is made in the following context:

- A. Ms Rebecca Cross is the Secondee. The Secondee is currently employed by the Agency as an SES Band 3.
- B. The Agency and the Company have agreed that the Secondee will work at the premises of, and under the management and direction of, the Company for the duration of the Secondment Period as set out in this MOU (Secondment).

1. MOU Commencement and Operation

1.1. Commencement

- 1.1.1. This MOU commences on the date it is signed by the last party to do so.

1.2. Non-binding nature of MOU

- 1.2.1. With the exception of clause 9, this MOU is not intended to be legally binding on the parties. Notwithstanding this, the parties take their respective roles and responsibilities under this MOU seriously and agree to perform them as if they were legally bound to do so.
- 1.2.2. The clauses of this MOU should be interpreted in accordance with the laws of the Australian Capital Territory.

2. Secondment objectives and evaluation

2.1. Secondment objective

- 2.1.1. The objective of the Secondment is to provide professional development to a senior public servant that will enhance their performance within the public sector.
- 2.1.2. Secondment-specific objectives are set out in Item 1.4 of Schedule 1.

2.2. Evaluation of secondment

- 2.2.1. The parties agree to participate in an evaluation of the secondment.

3. Secondment details

3.1. Position and term

- 3.1.1. The Secondee will occupy the Position (see Item 1.1 of Schedule 1) within the Company for the Secondment Period (see Item 3 of Schedule 1).
- 3.1.2. The Secondee's manager for the duration of the Secondment is the Company employee specified at Item 1.2 of Schedule 1.
- 3.1.3. The Secondee's roles and responsibilities during the Secondment are specified or referred to in Item 1.3 of Schedule 1.
- 3.2. **Location and travel**
 - 3.2.1. The Secondee will be primarily based at the Secondment Address (see Item 2 of Schedule 1).
 - 3.2.2. The Company may request the Secondee travel to other Company offices or locations as reasonably required for the performance of the Secondment. The Company will be responsible for travel and accommodation costs of up to \$60,000 per annum.
- 3.3. **Hours of work**
 - 3.3.1. The Secondee will work for the Company during the standard work hours specified in Item 1.5 of Schedule 1. The Secondee will work such additional hours as are reasonable and necessary for the proper performance of the Secondment.
- 3.4. **Equipment**
 - 3.4.1. The Company will provide the Secondee with such equipment (such as a computer or mobile telephone) as is necessary for the Secondee to carry out the Secondment. This includes, but is not limited to, the equipment detailed at Item 4.1 of Schedule 1.
 - 3.4.2. Any equipment that the Agency will provide for the Secondment is set out at Item 4.2 of Schedule 1.
- 3.5. **Secondee's employment status and remuneration**
 - 3.5.1. The Secondee will remain an employee of the Agency, and the Agency will remain fully responsible for the payment of the Secondee's salary, superannuation and other employment entitlements, during the Secondment Period.
 - 3.5.2. The Company will reimburse the Agency for salary and Executive Vehicle Allowance as agreed, including through an up-front payment in 2016 (in recognition of the greater costs borne to date by the Agency under the original MOU) and quarterly invoices in 2017.
 - 3.5.3. The parties acknowledge that during the Secondment the Secondee will remain bound by the APS Code of Conduct in section 13 of the *Public Service Act 1999* (Cth) (the APS Code of Conduct).
- 3.6. **Secondee leave entitlements**

- 3.6.1. The Company agrees to the Secondee taking the annual and other leave specified in Item 6 of Schedule 1.
- 3.6.2. Any additional recreation leave that the Secondee requests during the Secondment will need to be pre-approved by the Company and the Agency before it is taken by the Secondee.
- 3.6.3. In the event the Secondee needs to take unplanned leave from the Secondment (e.g. due to illness or bereavement), the Secondee will advise the Company and the Agency as soon as practicable of the reason for, and expected duration of, the Secondee's absence from the Secondment.
- 3.6.4. The Agency will administer any leave taken by the Secondee in accordance with the Secondee's accrued leave entitlements.

3.7. Company to manage Secondee

- 3.7.1. Notwithstanding clause 3.5.1, the Company will be responsible for managing the Secondee during the Secondment Period. This includes, but is not limited to, the Company issuing directions, and providing mentoring, supervision and guidance, to the Secondee as required for the proper performance of the Secondment in accordance with the Company's policies, standards and procedures.
- 3.7.2. The Company will endeavour to ensure that the Secondment meets the objectives referred to in clause 2 of this MOU as fully as possible.

3.8. Performance management and assessment

- 3.8.1. The Company will, in consultation with the Secondee and the Agency, establish a performance plan for the Secondment and regularly assess, and provide feedback to the Secondee regarding, the Secondee's performance against that plan.
- 3.8.2. The Agency will use the Company's performance assessment of the Secondee, and may seek additional comment from the Company about the Secondee's performance of the Secondment, for the purpose of the Agency's annual performance assessment of the Secondee.

4. Workplace Health and Safety

- 4.1.1. The Company will provide the Secondee with a healthy and safe work environment and appropriate furniture and other equipment to meet the Company's obligations under all applicable WH&S legislation.
- 4.1.2. Subject to clause 4.1.1, the parties will consult as to how they will each discharge their respective duties to the Secondee under the applicable WH&S legislation.
- 4.1.3. The Agency will continue to have worker's compensation liability for any compensable illness or injury sustained by the Secondee during the Secondment. If the Secondee's illness or injury is due in any way to the fault of the Company or its personnel, the Commonwealth or Secondee may seek contribution from the Company for the costs associated with the Secondee's

illness or injury in accordance with the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

5. Confidentiality

- 5.1.1. It is a precondition to the commencement of the Secondment that the Secondee has executed a Deed of Confidentiality and Acknowledgement in favour of the Company, which is substantially in the form at Schedule 2.
- 5.1.2. In this clause 5 "Official Information" means information that is:
- a. confidential in nature; and
 - b. has been developed, received or collected by the Commonwealth, and which the Secondee has accessed prior to the Secondment or in circumstances that are not connected with the Secondment.
- 5.1.3. The Company acknowledges that the Secondee may be in possession of Official Information that the Secondee cannot disclose to the Company including because of the Secondee's obligations under the APS Code of Conduct, the *Public Service Act 1999* and *Public Service Regulations 1999*. comply.
- 5.1.4. The Agency acknowledges that the Secondee may not disclose confidential Company information to the Commonwealth unless the Secondee is required or permitted by law to do so.
- 5.1.5. If confidential Company information is disclosed to the Commonwealth under clause 5.1.4, the Commonwealth agrees not to disclose that information to a third party unless it is required or permitted by law to do so.
- 5.1.6. In accordance with the Secondee's obligation under the *Public Service Act 1999* to act ethically and lawfully, nothing in this MOU prevents the Secondee disclosing to the relevant authorities any unlawful activity the Secondee has evidence of.

6. Conflicts of interest

- 6.1.1. The parties acknowledge that the Secondee is required under the APS Code of Conduct to disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with the Secondee's employment with the Agency.
- 6.1.2. If the Company, acting reasonably, considers that the Secondee's participation in a Company discussion, meeting, event or activity may create a conflict of interest for the Secondee in relation to the Secondee's employment with the Agency, the Company will exclude the Secondee from that Company discussion, meeting, event or activity.
- 6.1.3. If the Agency, acting reasonably and having regard to Company information that the Secondee has, or may have, gained in the course of the Secondment, considers that the Secondee's participation in an Agency discussion, meeting, event or activity may create a conflict of interest for the Secondee, the Agency

will exclude the Seconded from that Agency discussion, meeting, event or activity.

- 6.1.4. Any discussion, meeting, event or activity that has been identified by the parties for the purpose of clause 6.1.1. is specified in Item 5 of Schedule 1.
- 6.1.5. The parties agree that any action taken by them under this clause 6 will not affect the Seconded's ability to properly perform the Secondment with the Company or the Seconded's ongoing employment with the Agency.

7. Codes of conduct and policies

- 7.1.1. Prior to the commencement of the Secondment, the Agency will provide information and training to the Seconded on the Seconded's obligations under the APS Code of Conduct and the Public Service Act and Regulations.
- 7.1.2. The Company agrees to provide the Seconded with copies of all of the Company's policies, standards and procedures relevant to the Position either before or at the start of the Secondment.
- 7.1.3. In this clause 7, "misconduct" refers to:
 - a. behaviour of the Seconded that is not permitted under the APS Code of Conduct, the Public Service Act and Regulations or a Company policy specified in clause 7.1.2 of which the Seconded is aware; and/or
 - b. behaviour of Company personnel that is not permitted under a Company policy.
- 7.1.4. The Company will advise the Agency of any alleged misconduct by or affecting the Seconded during the Secondment Term.
- 7.1.5. If the Company, acting reasonably, considers that alleged Seconded misconduct has occurred and constitutes a serious breach of the Company's policies, standards and procedures, the Company may terminate the Secondment provided that the Company has first:
 - a. provided the Seconded with an opportunity to be heard, and considered the Seconded's submissions, in relation to the misconduct; and
 - b. consulted with the Agency in relation to the misconduct.
- 7.1.6. The Agency is responsible for determining and managing any disciplinary process regarding Seconded misconduct.

8. Company not to engage Seconded

- 8.1.1. Consistent with the Program and Secondment objectives referred to in clause 2, the Company agrees not to employ the Seconded in any capacity for 12 months after the end of the Secondment Period, unless otherwise agreed in writing by the Agency.

9. Intellectual property

- 9.1.1. Subject to clause 9.1.2, the parties agree that all work produced by the Seconded

in the course of the Secondment, and the copyright and any other intellectual property rights in that work, shall belong to the Company.

- 9.1.2. Clause 9.1.1 does not affect the ownership of copyright or any other intellectual property rights in material used by the Agency to assess or evaluate the performance of the Secondee or the Secondment.
- 9.1.3. The Agency will procure the Secondee to do all things necessary to vest copyright of work produced by the Secondee in the course of the Secondment in the Company.
- 9.1.4. This clause 9 survives the expiration or termination of this MOU.

10. Cooperation and consultation

- 10.1.1. The parties agree to perform this MOU in a spirit of mutual cooperation and to liaise with one another as required to ensure the effective and efficient operation of this MOU.
- 10.1.2. The parties will hold regular meetings (at least monthly) to discuss the Secondee's performance of the Secondment and other matters relevant to the Secondment and this MOU.
- 10.1.3. If a party wishes to make a public announcement (outside of its organisation) regarding the Secondment, it must consult with the other party about the form and content of the proposed announcement before making it.
- 10.1.4. If a dispute arises between the parties in relation to this MOU, the parties agree to resolve the dispute by good faith negotiations between their respective representatives referred to in clause 11.

11. Representatives

- 11.1.1. Any communications between the parties in relation to the Secondee, the Secondment or this MOU will occur through the party's representatives who are either:
 - a. identified at Item 8 of Schedule 1; or
 - b. otherwise notified in writing by the relevant party to the other party for the purpose of this clause 11.

12. Other arrangements

- 12.1.1. The Agency and the Company have agreed to the additional Secondment arrangements that are detailed at Item 7 of Schedule 1.

13. Insurance

- 13.1.1. The Company agrees:
 - a. to effect and maintain the insurance specified at Item 9 of Schedule 1; and
 - b. on request, to provide proof of this insurance to the Agency.

14. Termination

14.1.1. This MOU may be terminated by the mutual consent of the parties. Alternatively, either party may terminate this MOU by giving the other party at least two (2) weeks written notice. Termination of this MOU terminates the Secondment.

15. Relationship of parties

15.1.1. The Company is not by virtue of this MOU an officer, employee, partner or agent of the Agency, nor does the Company have any power or authority to bind or represent the Agency.

SCHEDULE 1 - SECONDMENT DETAILS

1. Role, responsibilities and location

1.1. Position

1.1.1. Head of Government, Policy and Regulatory Affairs

1.2. Supervisor/Manager

1.2.1. Dieter Lehmann

1.3. Role description

1.3.1. As per position description and as directed by the Company from time to time.

Position Description: The Head of Government, Policy and Regulatory Affairs role builds and maintains relationships and partnerships across all relevant levels of government and industry stakeholders. It develops Bupa's policy positions and delivers advice on the impact of policy and regulatory change on the business. It also leads the company's regulatory and policy submission processes.

The Head of Government, Policy and Regulatory Affairs is also a member of the Bupa Health Insurance Leadership Team and Executive Steering Group, which oversee and make operational decisions on the Health Insurance business and transformation program, including:

- Cultural transformation, product and service redesign and system transformation to drive enhanced customer experience and increased value proposition
- Consumer channels (retail, call centre and on-line)
- Health and benefits (including relationships with private hospitals and Bupa 'member first' providers)
- International and corporate programs (including overseas visitor health insurance and wellness programs)

1.4. Secondment-specific objectives

1.4.1. Undertake projects as assigned.

1.5. Standard work hours

1.5.1. 37.5 hours per week

2. Secondment address

2.1.1. 33 Exhibition Street, Melbourne, VIC 3000

3. Secondment Period

3.1.1. Subject to clause 5.1.1, the Secondment Period commences on 27 February 2017 and ends on 23 February 2018.

4. Equipment

4.1. Equipment provided by the Company

4.1.1. Laptop and mobile phone to be provided by the Company.

4.2. Equipment provided by the Agency

4.2.1. The secondee will keep her Agency Remote Access Token, iPad and iPhone for the duration of the secondment.

5. Conflict of interest

5.1.1. Nil.

6. Pre-approved leave

6.1.1. Nil.

7. Other arrangements

7.1.1. Nil.

7.1.2. Nil.

8. Representatives

8.1.1. The representative for the Agency is:

Name: Emma Greenwood

Position: Chief People Officer

Telephone: 6271 5963

Email: Emma.Greenwood@pmc.gov.au

8.1.2. The representative for the Company is:

Name: Dieter Lehmann

Position: Director, Corporate Affairs, Bupa Australia and New Zealand

Telephone: 03 9937 4837

Email: Dieter.Lehmann@bupa.com.au

9. Insurance

The Company is required to hold the following insurance:

- a. workers' compensation as required by law;
- b. public liability insurance to a value of \$20 million for each claim; and
- c. professional indemnity insurance to a value of \$10 million for each claim.

SCHEDULE 2 FORM OF DEED OF CONFIDENTIALITY AND ACKNOWLEDGEMENT

The Deed of Confidentiality and Acknowledgement that applied to the MOU made on 19 February 2016 will also apply to this MOU.

Signatures

SIGNED for and on behalf
of Commonwealth of
Australia represented by
[Agency] by:

Elizabeth Kelly

^Name of signatory^

Signature

In the presence of:

EMMA GREENWOOD

^Name of witness^

Signature of witness

SIGNED for and on behalf
of [Company] by:

DIETER LEHMAN

^Name of signatory^

Signature

In the presence of:

LYNDA CONTE

^Name of witness^

Signature of witness