

This MEMORANDUM OF UNDERSTANDING is made

this __ day of [month] 2023

BETWEEN

[Insert Company Name] ABN [XXX] (the Employer)

AND

[Insert Union] ABN [XXX] a registered employee organisation within the meaning of the *Fair Work Act 2009* (Cth) (the Union)

Background:

- A. The Parties acknowledge the unprecedented workforce shortages in the aged care sector and the paramount importance of providing quality care for our older Australians. The Parties agree that in the first instance, the workforce shortage should be addressed through offering current employees more hours and minimising barriers to attraction and retention by providing predictable rosters with set hours, decent wages and good working conditions.
- B. The Parties acknowledge that after maximising current workforce hours and undertaking additional measures to support local, permanent employment, a Labour Agreement may provide a temporary solution to workforce shortage.
- C. The Parties acknowledge the introduction of a Labour Agreement may create tension within the workforce in relation to potential loss of hours. The Parties agree that being transparent and sharing information with the workforce about the process and purpose of the Labour Agreement is important to alleviate concerns. The Parties agree to collaborate and undertake joint initiatives to foster equity and harmony amongst the workforce around the principle that no existing employee will lose hours but instead will be offered more hours before and during the life of the Labour Agreement.
- D. The Parties acknowledge their mutual respect, ethics and integrity. They agree to interact respectfully and constructively and to resolve matters of difference in a reasonable and amicable manner. All parties are committed to ensuring every employee understands their responsibilities and rights and the importance of this in order to deliver high quality care.

Paragraph 1 Legal Status of this MoU

- 1.1 The parties do not intend to create any legally binding relationship or obligations by entering this MoU.

Paragraph 2 Duration of this MoU

2.1 This MoU has effect on an ongoing basis from the date of its execution pursuant to paragraph 14.

Paragraph 3 Definitions

3.1 The following terms and their definitions will apply for the purpose of this MoU:
'Labour Agreement' means the Aged Care Industry Labour Agreement 2023.

Paragraph 4 Parties Representatives

4.1 Each of the Parties will from time to time nominate a representative to manage the relationship between [union] and the Employer. The details of the current Employer Representative and the Representative from [union] will be notified in writing prior to the commencement date of this MoU. Any change to these details must be advised in writing by the relevant party. Any notice given by either party under the MoU will be in writing and addressed to the Representative at the nominated address in Paragraph 10.

Paragraph 5 Cooperation

5.1 The Parties will actively maintain a cooperative relationship (including by sharing relevant information) in order to enhance the efficient and effective operation and administration of this MoU.

Paragraph 6

6.1 The Employer will demonstrate expanded labour market testing, including providing evidence which establishes that:

- (i) The employer has offered all current employees as many ordinary hours as they wish to work to a maximum of 76 hours per fortnight;
- (ii) The employer has established a predictable roster of work, following required consultation with its workforce.
- (iii) The employer has offered current employees set hours of work;
- (iv) The employer has taken active steps to make employment accessible to employees or potential employees with family responsibilities, study requirements and similar, by accommodating flexible working arrangements including the development of roster patterns that enable the planning or accommodation of childcare arrangements;
- (v) Committed to the use of agency staff only in exceptional circumstances.
- (vi) Continued demonstrated efforts to engage new cohorts of workers for employment through opportunities, such as:
 - a. developing more in-service training programmes;

- b. partnering with employment services (or similar) to find or provide work for older Australians, First Nations people and migrant communities.

6.2 The Employer will commit to a process of genuine consultation with employees and relevant union(s), which demonstrate that they have:

- (i) Adhered to the existing labour agreement guidelines and consultation processes, as required by the relevant Commonwealth Department and its officers;
- (ii) Provided no less than 30 minutes paid time meetings for all employees with relevant union(s) to discuss the proposed process;
- (iii) Taken active steps to improve rosters to ensure longer, ordinary hour shifts, with more predictable and reliable hours;
- (iv) Developed, in consultation with employees and their relevant union(s), a fair and reasonable process for all staff to express interest in increased hours of work, including an ongoing annual process to review whether existing local employees (non-Labour Agreement employees) wish to increase their hours;
- (v) Genuinely consulted with all relevant union(s) regarding all pre-conditions required to obtain a Labour Agreement (that being existing Labour Agreement conditions and those outlined in paragraphs 6.3 to 6.4).

6.3 The Union and the Employer have a role in ensuring employees understand the unwavering commitment to maintaining and improving quality of care.

- (i) As such the Employer will ensure that:
 - a. All new locally employed employees, on an ongoing basis and throughout the life of the Labour Agreement, are required to attend a paid induction meeting of no less than 30 minutes with the relevant Union(s), to ensure that employees understand their workplace rights and relevant workplace responsibilities at work. Such meetings:
 - Will occur at a time mutually agreed with the relevant Union, but where possible, should occur within the first 30 days of employment.
 - Will not be attended by management of the employer, unless by prior agreement of the relevant Union and to make a positive statement about the relationship with the union and the ongoing commitment to work together.
 - b. All new workers employed via a Labour Agreement will have a paid 2-hour induction meeting with the relevant Union(s), to ensure that they understand their rights and responsibilities at work, but also the reporting and quality and safety requirements of the industry. Such meetings:

- Will occur at a time mutually agreed with the relevant Union, but where possible, should occur either prior to commencement or within the first 7 days of employment.
 - Will not be attended by management of the employer, unless by agreement with the relevant Union and may be invited to make a positive statement about the relationship with the union and the ongoing commitment to work together.
- c. Union delegates will have access to 10 days of paid leave, per calendar year, per delegate to:
- attend trade union delegate training (however described);
 - attend training regarding Labour Agreement rights and responsibilities.
- (ii) The Parties agree that Union delegate(s) speak on behalf of workers in the workplace. They are entitled to have reasonable time within the workplace to be consulted on matters affecting workers, represent the interest of workers to the Employer, discuss Union and workplace matters with workers, disseminate Union information in the workplace, and resolve issues including by representing workers in negotiations and in relation to individual grievances. Union delegates are entitled to be treated fairly and to perform their role as Union delegate without any discrimination or victimisation.
- (iii) The Employer understands and supports freedom of association, specifically the right of employees to join and participate in their relevant union. The Employer agrees to facilitate that right including by, upon written authority by the employee, assisting in establishment of direct debit arrangements for the payment of the employee's union fees.
- 6.4 The Employer will foster equity and harmony in workplaces between employees by facilitating:
- (i) A paid time staff meeting, conducted by the relevant union, once the Labour Agreement has been entered into, to explain the process to existing employees. Such meeting will:
- Occur at a time mutually agreed with the relevant Union;
 - Only have management or supervisory staff in attendance if the union agrees and it is for the purpose of the Employer making a positive statement about its relationship with the union and the ongoing commitment to work together.
 - Not be less than 30 minutes in length.
- (ii) Two paid staff meetings, conducted by the relevant union, per calendar year. Such meetings:
- Will occur at a time mutually agreed with the relevant Union and

- Will only have management or supervisory staff in attendance if the Union agrees and it is for the purpose of the Employer making a positive statement about its relationship with the union and the ongoing commitment to work together.
- Not be less than 30 minutes in length.

Paragraph 7 Union Undertakings

- 7.1 [The union] undertakes to work collaboratively with the Employer to ensure the successful operation of the MoU.
- 7.2 [The union] undertakes that, where requested by the Commonwealth Government and the Employer, it will provide feedback on the operation of Labour Agreements and compliance with the matters described in paragraph 6.

Paragraph 8 Joint Undertakings

- 8.1 The Parties undertake to work together to further develop the scope of expanded labour market testing as referred to in paragraph 6.1.
- 8.2 The Parties undertake to work further to develop the improved process of genuine consultation as referred to in paragraph 6.2.
- 8.3 The Parties undertake to work further to develop a specified maximum percentage of agency staff and criteria to define exceptional circumstances, as referred to in paragraph 6.1(v).
- 8.4 The Parties undertake to work further to develop assessment criteria that demonstrates an employer's commitment to engaging new cohorts of workers, as specified in paragraph 6.1(vi).
- 8.5 The Parties undertake to work together to resolve any other operational issues that may arise from paragraphs 6 to 7 of this MoU.
- 8.6 The Parties will hold meetings of senior representatives as necessary to discuss matters of mutual interest.

Paragraph 9 Variation

- 9.1 This MoU may be varied by agreement of the Parties at any time and any such variation will be set out in writing and signed by both Parties.

Paragraph 10 Notices

- 10.1 Notices of communication by [union] to the Employer about this MoU shall, unless otherwise notified in writing by the Employer to [union], be addressed to the Employer as follows:

Email address

OR

Postal address

10.2 Notices of communication by the Employer to [union] about this MoU shall, unless otherwise notified in writing by [union] to the Employer, be addressed to [union] as follows:

Email address

OR

Postal address

Paragraph 11 Dispute Resolution

11.1 Where an issue or dispute arises in relation to the implementation of any matter contained in this MoU, the parties will adopt the following process to attempt to resolve the matter:

- (i) The Employer and the Union will seek to resolve the issue at a site level, where the issue or dispute relates to a site level matter.
- (ii) Where the issue or dispute cannot be resolved at a site level it will be referred to the relevant state manager of the Employer and the Union lead organiser (however described). The CEO of the Employer and the relevant Union Coordinator or Union Director (however described) will also be informed of the issue.
- (iii) If the matter remains unresolved at a state level, the parties will discuss it at a national level.
- (iv) Without limiting any powers available under the *Fair Work Act* (Cth) 2009 ('*FW Act*'), and where jurisdiction applies, the parties may take matters to the Fair Work Commission for resolution and the FWC may exercise the procedural powers in relation to conferences, hearings, evidence and submissions which are necessary to effectively settle the dispute.

11.2 The parties agree that in the event of a dispute, each party will bear their own legal costs.

Paragraph 12 Non-compliance with the MoU/ Contraventions

12.1 Where a party fails to comply with a part or term of this MoU, the parties will notify the Commonwealth Government and/or the Department of Home Affairs (as varied from time to time).

12.2 A party who has failed to comply with a term of this MoU agrees to take corrective steps are required by the Commonwealth Government.

12.3 A party may, at their discretion, also notify the relevant Minister of any non-compliance and/or contravention.

Paragraph 13 Counterparts

13.1 This MoU may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

Paragraph 14 Severability

14.1 If the whole or any of a provision of this MoU is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this MoU has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this MoU.

Paragraph 14 Date of this MoU

15.1 The date the Parties execute the MoU, or, if it is executed on different dates, the date of last execution.

TEMPLATE

Signing Page

Executed as a Memorandum

EXECUTED by the **[Full name of the union]**

Signed by

Witnessed by

Signature of Authorised Person

Signature of witness

Name of Authorised Person

Name of witness

Position of Authorised Person

EXECUTED for and on behalf of **[Full name of the employer]**

Signed by

Witnessed by

Signature of Authorised Person

Signature of witness

Name of Authorised Person

Name of witness

Position of Authorised Person

TEMPLATE