



Australian Government

Department of the Prime Minister and Cabinet

**MEMORANDUM OF UNDERSTANDING
BCA SECONDMENT PROGRAM**

Commonwealth of Australia represented by the Department of the
Prime Minister and Cabinet (PM&C)
ABN 18 108 001 191

Bupa Australia Health Pty Ltd
ABN 50 003 098 655

Senate F&PA Committee

Tabled Document

Inquiry: *Senate Estimates 2017/18*

Date/Time: *23/5/2017*

Witness Name

Organisation: ... *PM&C*



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SCHEDULE 1 - SECONDMENT DETAILS

SCHEDULE 2 - FORM OF DEED OF CONFIDENTIALITY AND ACKNOWLEDGEMENT

Signatures



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MEMORANDUM OF UNDERSTANDING FOR BCA SECONDMENT PROGRAM

Date

This Memorandum of Understanding (MOU) is made on 19 February 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)**
2. **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 Head of Domestic Policy (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.

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 clauses 4, 5, 7, 9, 13 and 14, 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 Program and Objectives

2.1. Secondment Program

- 2.1.1. The Secondment forms part of a trial secondment program (the Program). The Program is overseen by the Business Council of Australia (BCA) and the Australian Public Service Commission (APSC) with evaluation assistance from the Australia and New Zealand School of Government (ANZSOG).



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2.2. Secondment Objectives

- 2.2.1. The parties agree that the objectives of the Program and the Secondment are to:
- a. foster a greater understanding within government of the global forces impacting on Australia's businesses and how public policy and regulations interact with these;
 - b. increase understanding within business of how the public sector and public servants operate and the public policy-making environment;
 - c. provide professional development opportunities to senior public servants that will enhance their performance within the public sector; and
 - d. develop a network of senior business and public service leaders with better mutual understanding.
- 2.2.2. In addition to the general objectives in clause 2.2.1, Secondment-specific objectives are set out in Item 1.4 of Schedule 1.

2.3. Evaluation of secondment and program

- 2.3.1. The parties agree to participate in the ANZSOG's evaluation of the Secondment and the Program.

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 and the Company will be responsible for those travel and accommodation costs.

3.3. Hours of work

- 3.3.1. The Secondee will work for the Company during the standard work hours
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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. Accommodation and fares

3.5.1. The Company will fund the reasonable accommodation costs of the Secondee for the duration of the secondment (by way of example this may be either a serviced apartment or rented and furnished apartment within close proximity to the Secondment Address). The company will fund 26 return flights to Canberra and associated taxi fares. It is estimated the total cost of accommodation and fares will be around \$60,000. The Secondee will provide the Company with appropriate evidence in support of all travel and accommodation expenses, and all such expenses must be pre-approved by the Company.

3.6. Secondee's employment status and remuneration

3.6.1. 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.

3.6.2. 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).

3.7. Secondee leave entitlements

3.7.1. The Company agrees to the Secondee taking the annual and other leave specified in Item 6 of Schedule 1.

3.7.2. 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.

3.7.3. In the event the Secondee needs to take unplanned leave from the Secondment (eg 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.



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3.7.4. The Agency will administer any leave taken by the Secondee in accordance with the Secondee's accrued leave entitlements.

3.8. Company to manage Secondee

3.8.1. Notwithstanding clause 3.6.1, 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.

3.8.2. The Company will endeavour to ensure that the Secondment meets the objectives referred to in clause 2 of this MOU as fully as possible.

3.9. Performance management and assessment

3.9.1. The Company will, in consultation with the Secondee, carry out its normal performance review process with the Secondee.

3.9.2. 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).

4.1.4. The parties agree that the Secondee must also use all reasonable endeavours to ensure her own health and safety, as well as the health and safety of others in the Company's workplace, during the Secondment Period.

5. Confidentiality

5.1.1. It is a precondition to the commencement of the Secondment that the Secondee



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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 Seconded has accessed prior to the Secondment or in circumstances that are not connected with the Secondment.
- 5.1.3. The Company acknowledges that the Seconded may be in possession of Official Information that the Seconded cannot disclose to the Company including because of the Seconded's obligations under the APS Code of Conduct, the *Public Service Act 1999* and *Public Service Regulations 1999*.
- 5.1.4. The Agency acknowledges that the Seconded may not disclose confidential Company information to the Commonwealth unless the Seconded 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 Seconded's obligation under the *Public Service Act 1999* to act ethically and lawfully, nothing in this MOU prevents the Seconded disclosing to the relevant authorities any unlawful activity the Seconded has evidence of.
- 6. Conflicts of interest**
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- 6.1.1. The parties acknowledge that the Seconded 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 Seconded's employment with the Agency.
- 6.1.2. If the Company, acting reasonably, considers that the Seconded's participation in a Company discussion, meeting, event or activity may create a conflict of interest for the Seconded in relation to the Seconded's employment with the Agency, the Company will exclude the Seconded from that Company discussion, meeting, event or activity.
- 6.1.3. If the Agency, acting reasonably and having regard to Company information that the Seconded has, or may have, gained in the course of the Secondment, considers that the Seconded's participation in an Agency discussion, meeting, event or activity may create a conflict of interest for the Seconded, 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



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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 Secondee's ability to properly perform the Secondment with the Company or the Secondee'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 Secondee on the Secondee's obligations under the APS Code of Conduct and the Public Service Act and Regulations.
- 7.1.2. The Company agrees to provide the Secondee with access to 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 Secondee 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 Secondee 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 Secondee during the Secondment Period.
- 7.1.5. If the Company, acting reasonably, considers that alleged Secondee 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 Secondee with an opportunity to be heard, and considered the Secondee'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 Secondee misconduct.

8. Company not to engage Secondee

- 8.1.1. Consistent with the Program and Secondment objectives referred to in clause 2, the Company agrees not to employ the Secondee 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 Secondee in the course of the Secondment, and the copyright and any other



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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 BCA, ANZSOG, APSC or the Agency to assess or evaluate the performance of the Secondee, the Secondment or the Program.
- 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 meetings, as required by either party, 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. Indemnity and Insurance

- 13.1.1. The Company agrees to indemnify and release the Agency in respect of all liability for loss or damage which may be suffered by the Agency arising from
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any claim made (in the form of amounts finally awarded by a court of competent jurisdiction) where such claim arose from any negligent or unlawful act or omission or wilful misconduct of the Company or any personnel employed or engaged by the Company, save that the Company's liability will:

- a. be reduced to the extent that the loss or damage was caused, incurred or contributed to by the negligent or unlawful act or omission of the Agency or the Secondee; and
- b. not extend to matters contemplated by 4.

13.1.2. 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 (or payment or forfeiture in lieu of 2 weeks' 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.



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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

1.2.1. Dieter Lehmann

1.3. Role description

As per Position Description below 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.

Under this placement, Rebecca will improve her understanding of how public policy and regulation formation interacts with business (in this case the health and care sector) and Bupa will in turn learn more about how the public sector and public servants operate in this environment.

1.4. Secondment-specific objectives

1.4.1. Undertake projects as assigned.

1.5. Standard work hours

1.5.1. 37.5

2. Secondment address

2.1.1. 33 Exhibition Street, Melbourne, VIC 3000

3. Secondment Period

3.1.1. 29 February 2016 to 24 February 2017

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



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4.2.1. The Seconded 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. 24 June 2016 – 19 July 2016.

7. Other arrangements

7.1.1. Nil.

7.1.2. Nil.

8. Representatives

8.1.1. The representative for the Agency is:

Name: Ben Neal

Position: First Assistant Secretary, Corporate Services Division

Telephone: 02 6271 5705

Email: ben.neal@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.
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SCHEDULE 2 - CONFIDENTIALITY UNDERTAKING

CONFIDENTIALITY UNDERTAKING

Name: Ms Rebecca Cross

Title: Head of Domestic Policy, Department of the Prime Minister and Cabinet

I, Rebecca Cross, understand and acknowledge that in the course of my secondment to Bupa from around 29 February 2016 to 24 February 2017 ("Secondment"), I will become aware of Confidential Information of Bupa and will have access to documentation containing Confidential Information. In signing this Confidentiality Undertaking, I undertake that I will:

- not disclose any Information (including Confidential Information) revealed or discussed during the Secondment to any person who is not authorised to receive such Information (unless such disclosure by me is required by law, or otherwise authorised in writing by an authorised officer of Bupa); and
take all reasonable and necessary precautions to maintain the secrecy and prevent disclosure of Information.

This Undertaking continues for an indefinite period after the completion of the Secondment.

In signing this Undertaking, I acknowledge that any breach of this Undertaking may expose me to legal action in respect of that breach (including an application for interlocutory relief and action to recover Bupa's legal costs).

Signed: [Signature] Date: 17/2/16

Witness signature: [Signature]

Witness name (please print): HELEN MARRIOTT

Definitions:

In this Undertaking, the following terms have the following meanings:

- (a) 'Bupa' means Bupa Australia Health Pty Ltd and its related bodies corporate.
(b) 'Information' means any information about Bupa (including, but not limited to, any idea, concept, process or know-how), its customers, residents and business which:
comes to my notice in the course of the Secondment; or
is provided to me in light of my participation in the Secondment.
(c) 'Confidential Information' means any Information which is:
confidential; and
not in the public domain (or in the public domain only because of a breach of confidentiality).



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Signatures

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

Ben Neal

Signature

In the presence of:

HELEN MARRIOTT

Signature of witness

SIGNED for and on behalf
of the Company by:

DIETER LEHMANN

Signature

In the presence of:

LYNDA CONTE

Signature of witness