

MEMORANDUM OF UNDERSTANDING

This memorandum of understanding is made on _____ 2023 between:

Anglican Community Services [ABN 39 922 848 563] of Level 2, 62 Norwest Boulevard, Norwest NSW 2153 (Anglicare)

AND

HSU New South Wales Branch [ABN 93 728 534 595] of Level 2, 109 Pitt Street Sydney NSW 2000 (HSU)

BACKGROUND

- A. On or about 27 October 2022, the HSU filed a Application for the Commission to deal with a dispute in accordance with a dispute settlement procedure in the Fair Work Commission (**FWC**), alleging that, between 1 November 2021 and 14 April 2022 (inclusive), Anglicare directed employees engaged at its residential aged care facility known as Dorothy Boyt House to attend the workplace 15 minutes prior to the rostered start time of each shift to complete rapid antigen testing for the purpose of detecting COVID-19. The HSU further alleged that time spent completing rapid antigen testing should be considered paid work time and that any non-payment of such time amounted to an underpayment of employee entitlements (**Dispute**).
- B. Anglicare denies any such underpayment occurred and asserts that all staff were paid when they attended Dorothy Boyt House prior to the commencement of their shift to complete a rapid antigen test.
- C. Without any admission of liability whatsoever, Anglicare and the HSU have agreed to settle the Dispute on the terms specified in this Memorandum of Understanding (**MOU**).

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

In this MOU:

"Commencement Date" means the date on which this MOU is executed by the parties. If the MOU is not executed by the parties on the same date, the Commencement the Date shall be the date on which the last party executes this MOU.

"Day of Annual Leave" means 7.6 hours of annual leave.

"Statement" means the statement contained at Annexure A to this MOU.

1.2. INTERPRETATION

In this MOU, unless the context indicates to the contrary:

- (a) words importing the singular include the plural and vice versa;

- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this MOU have a corresponding meaning;
- (d) headings are for convenience only and do not affect the interpretation of this MOU;
- (e) an expression importing a natural person includes any union, partnership, joint venture, association, corporation or other body corporate and vice versa;
- (f) a reference to a thing (including, but not limited to, any right) includes a part of that thing; and
- (g) any reference to any legislation or regulations includes all amending and succeeding legislation and regulation.

2. OPERATION OF MOU

- 2.1. This MOU commences to operate on the Commencement Date.

3. ANGLICARE COVENANTS

- 3.1. In consideration for the HSU entering into this MOU, Anglicare hereby agrees to the following:
- (a) Provided the HSU returns a duly executed counterpart of this MOU to Anglicare at or before 5pm on Wednesday, 8 February 2023, Anglicare will credit to each employee employed to perform work at Dorothy Boyt House between 1 November 2021 and 14 April 2022 (inclusive) who is entitled to accrue annual leave, an additional Day of Annual Leave.
 - (b) The additional Day of Annual Leave will be credited to eligible employees' accrued but untaken annual leave balance on or before 10 February 2023.
 - (c) Anglicare will notify the HSU once the additional annual leave has been credited to eligible employees.
 - (d) Annual leave, when taken by eligible employees, will be paid at the employee's base rate of pay at the time the leave is taken, plus annual leave loading and superannuation in accordance with the *Anglican Community Services Enterprise Agreement 2017*; and
- 3.2 Anglicare acknowledges and agrees that the HSU may inform those members it represents in this matter of the agreed terms of settlement set out in this MOU.

4. HSU COVENANTS

- 4.1. In consideration for Anglicare entering into this MOU, the HSU hereby agrees that, upon receiving notice from Anglicare that the additional Day of Annual Leave has been credited to eligible employees, the HSU will within two business days, file a Notice of Discontinuance (however styled) discontinuing the Dispute in the FWC.

- 4.2. The HSU acknowledges and agrees that the additional Day of Annual Leave is granted in full and final settlement of Anglicare's obligations in connection with the Dispute without any admission of liability or wrongdoing.

5. AGREED STATEMENT REGARDING RESOLUTION

- 5.1. In addition to the covenants set out in clauses 3 and 4 of this MOU, the Parties agree that Anglicare will issue a statement in the form annexed to this MOU and marked "Annexure A" to employees at Dorothy Boyt House (**Statement**).
- 5.2. The HSU undertakes and agrees that any statement or publication, whether oral or in writing, issued by or on behalf of the HSU in respect of, or in connection with, or in any way arising from, the Dispute must be in terms that are consistent with the Statement.

6. COMPLIANCE WITH THIS MOU

- 6.1. A party alleging that a dispute or disagreement has arisen under this MOU must give notice of the dispute or disagreement to the other party. Such notice must be in writing and specify the nature of the dispute or disagreement.
- 6.2. Within 10 business days of the receipt of the notice in clause 6.1, the Parties must use their best endeavours to resolve the dispute or disagreement in good faith.
- 6.3. If the parties are unable to resolve the dispute or disagreement, either party may seek to have the matter relisted before the FWC.

7. GENERAL

- 7.1. No addition or variation to this MOU shall be of any force or effect unless and until agreed to by all parties in writing.
- 7.2. The covenants contained in this MOU are made for the benefit of, and so as to bind, the parties to this MOU and their respective heirs, executors, administrators, successors and assignors.
- 7.3. The construction, validity and performance of this MOU shall be governed by the laws of New South Wales, Australia.
- 7.4. Each party shall bear its own costs of and associated with the MOU.
- 7.5. This MOU contains the entire agreement between the parties with respect to its subject matter.
- 7.6. Part or all of any clause of this MOU that is illegal or unenforceable will be severed from this MOU and the remaining provisions continue in force.
- 7.7. This MOU may be executed in any number of counterparts.

EXECUTED as a Memorandum of Understanding

Anglicare

Executed by Anglican
Community Services
t/as Anglicare [ABN
39 922 848 563] by its
authorised
representative



Signature

Yvette McDonald


Full Name

Chief People & Customer Officer

Position

8 February 2023

Date



Witness Signature

Susan Miller

Witness Full Name

General Manager People & Culture

Position

8 February 2023

Date

HSU

Executed by HSU New
South Wales Branch
[ABN 93 728 534 595]
by its authorised
representative



Signature

Gerard Hyges

Full Name

State Secretary

Position

7/2/23

Date



Witness Signature

AYSHE LEWIS

Witness Full Name

Director Employee + Industrial

Position

7/2/23

Date

ANNEXURE A - STATEMENT

Following a dispute raised by the Health Services Union (HSU), Anglicare became aware that some staff members at Dorothy Boyt House were concerned about payments they had or had not received for time spent completing rapid antigen testing prior to the commencement of their rostered shifts from November 2021 to April 2022.

In response, Anglicare has reviewed its records during the period from November 2021 to April 2022, and maintains that our employees at Dorothy Boyt House:

- 1. were provided with rapid antigen tests to be completed at home prior to attending work; or*
- 2. attended for work before the commencement of their rostered shift for the purpose of undertaking rapid antigen testing, signed in when completing the test and manual adjustments were then made to the staff members' recorded timesheet in KRONOS by management at Dorothy Boyt House, meaning staff were paid for any additional time at work; or*
- 3. attended for work at the commencement of their rostered shift and subsequently completed rapid antigen testing during rostered work time (and were paid for all time worked).*

Based on the above, Anglicare believes that all staff were paid when they attended Dorothy Boyt House prior to the commencement of their shift to complete a rapid antigen test. This is not the position of the HSU.

*Despite this, in good faith and in recognition of the tireless dedication, hard work and commitment of all staff at Dorothy Boyt House during the COVID-19 pandemic, Anglicare has agreed with the HSU that it will provide **one extra day of annual leave** to all current employees at Dorothy Boyt House who are entitled to accrue annual leave.*

Anglicare believes that this is a very favourable outcome for staff, considering those staff members who have already received payment for the time spent completing rapid antigen testing and the HSU has agreed to resolve the dispute on this basis.

The extra day of annual leave will be credited to eligible employees' annual leave balances by 10 February 2023. If you have any questions about the extra day of leave, please do not hesitate to contact Angela Higginson, Human Resources Manager – Residential, or the HSU.

We thank the HSU for bringing this issue to our attention and we are pleased to have reached agreement with the Union to resolve the dispute.