

## ENFORCEABLE UNDERTAKING

This undertaking is **given** by BaptistCare NSW & ACT (ABN 90 000 049 525) and **accepted** by the Fair Work Ombudsman pursuant to s 715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clause 7 of this undertaking.

## ENFORCEABLE UNDERTAKING

### PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by BaptistCare NSW & ACT (ABN 90 000 049 525), Level 2, 22 Brookhollow Ave, Baulkham Hills NSW 2153 (**BaptistCare**).

### COMMENCEMENT

2. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by BaptistCare; and
  - (b) the FWO accepts the Undertaking so executed (**Commencement Date**).

### BACKGROUND

3. BaptistCare is an Australian public company that is also registered as a charity with the Australian Charities and Not for Profits Commission. It runs 17 residential aged care facilities as well as other related services. BaptistCare employs approximately 3600 employees and has an annual revenue of \$295 million.
4. On 7 November 2019, and through subsequent correspondence and meetings, BaptistCare notified the FWO that:
  - (a) in July 2018, it had identified underpayments to employees (**affected employees**) who were employed under the terms of either or both of the *Baptist Community Services Age Care Enterprise Agreement 2011* (**2011 EA**) and the *BaptistCare NSW & ACT Aged Care Enterprise Agreement 2014* (**2014 EA**) and who were defined as 'shift workers' for the purposes of the National Employment Standards in the FW Act;
  - (b) the affected employees were entitled to the more generous of:
    - (i) Sunday & Public Holiday Leave under clause 21.6(a) of the 2011 EA and clause 22.6(a) of the 2014 EA (**SHP Leave**) which did not attract leave loadings; or

- (ii) an additional week of annual leave in accordance with clause 21.2(b) of the 2011 EA, and clause 22.2(b) of the 2014 EA (**Additional Annual Leave**), including an annual leave loading of 17.5% or applicable shift penalties (whichever was greater) under clauses 21.7 of the 2011 EA or clause 22.7 of the 2014 EA (**Relevant Loadings**);
  - (c) the affected employees who should have received Additional Annual Leave (being the more generous entitlement for their shift pattern) had instead received SHP Leave, resulting in the employees not receiving the Relevant Loadings;
- 5. Prior to the execution of this Undertaking, BaptistCare notified the FWO that:
  - (a) it had undertaken a review of additional annual leave for shiftworkers and associated leave loadings paid for the period of 1 December 2011 to 19 August 2019;
  - (b) it had identified that each employee listed in Column A of Schedule A (Parts 1 and 2), to this Undertaking (**Schedule Employees**) had been underpaid in respect of the Relevant Loadings;
  - (c) it had engaged KPMG to validate and verify the interpretation and methodology used by BaptistCare in its review and prepare an audit report (**KPMG Report**);
  - (d) for each of the Schedule Employees listed in Part 1 of Schedule A (being affected employees who remain employed by BaptistCare), it had rectified the underpayments by:
    - (i) calculating the amount of the underpayment using the employee's current rate of pay (as at 30 November 2019) be the amount listed in Column B of Schedule A, and paying that amount to the employee;
    - (ii) calculating the amount of superannuation required by law in respect of the underpayment to be the amount listed in Column C of Schedule A, and paying that amount to the employee's nominated superannuation fund;
  - (e) for each of the Schedule Employees listed in Part 2 of Schedule A (being affected employees who are no longer employed by BaptistCare), it had:
    - (i) calculated the amount of the underpayment using the employee's pay rate

as at the cessation of their employment to be the amount listed in Column B of Schedule A;

- (ii) calculated the amount of superannuation required by law in respect of the underpayment to be the amount listed in Column C of Schedule A;
  - (iii) for those employees marked with a 'yes' in Column D of Schedule A — paid the amount in Column B to the employee and the amount in Column C to their nominated superannuation fund;
- (f) it had established a dedicated contact service for affected employees through a dedicated email address;
  - (g) it had issued a written apology to the affected employees; and
  - (h) it had communicated with relevant unions who are parties to the *BaptistCare NSW & ACT Aged Care Enterprise Agreement 2017 (2017 EA)* to advise them of the underpayments.
6. BaptistCare has informed the FWO it will ensure all impacted employees (both current and former) are reimbursed for any underpayment of workplace entitlements.

#### **ADMISSIONS**

7. The FWO has a reasonable belief, and BaptistCare admits, that BaptistCare contravened section 50 of the FW Act between 1 February 2012 to 12 July 2018 (**Relevant Period**) by failing to pay each of the Schedule Employees the amount or amounts to which that employee was entitled under the 2011 EA and the 2014 EA in respect of:
- (a) for the 2011 EA — clauses 21.2(b) (Additional week of annual leave for shiftworkers) and 21.7 (Annual leave loading);
  - (b) for the 2014 EA — clauses 22.2(b) (Additional week of annual leave for shiftworkers) and 22.7 (Annual leave loading).
8. The contraventions identified in clause 7 of this Undertaking do not include:
- (a) any contraventions which relate to or arise as a consequence of BaptistCare failing to correctly apply the 2011 EA or 2014 EA to any employee not listed in Schedule A to this undertaking (**Non-schedule Employees**); or

- (b) any contraventions which have not yet occurred at the date that this Undertaking is offered by BaptistCare (whether or not those contraventions are identified in the Independent Audits described at clause 22 below).

9. For the avoidance of doubt this Undertaking is not given in respect of:

- (a) any Non-schedule Employees who were underpaid as a result of BaptistCare failing to correctly apply the 2011 EA or 2014 EA and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any contravention because of any such underpayment; or
- (b) any contravention which has not occurred on the date which it is offered by BaptistCare and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

## **UNDERTAKINGS**

10. BaptistCare will take the actions set out at clauses 11 to 64 below.

### **Review and rectification of underpayments**

11. Within 90 days of the Commencement Date, BaptistCare will:

- (a) verify the calculation of the underpayment amounts referred to in clauses 5(d)(i) and 5(e)(i);
- (b) verify the calculation of the superannuation amounts referred to in clauses 5(d)(ii) and 5(e)(ii); and
- (c) pay any outstanding underpayment amounts to each Schedule Employee and any outstanding superannuation amounts to the relevant Schedule Employee's nominated superannuation fund.

12. If any of the current or former employees to whom Underpayments are owed cannot be located within 180 days of the Commencement Date, BaptistCare will pay the underpayment amounts owing to those employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. BaptistCare will complete the required documents supplied by the FWO for this purpose.

13. In the event that the FWO is able to locate and contact any current or former BaptistCare employees to whom Underpayments are owed, the FWO will (in addition

to its obligations under s 559 of the FW Act) notify BaptistCare in writing of the name and contact details of the current or former employee. Within 14 days of receiving any such notice BaptistCare will pay the current or former employee an additional payment calculated to be the value of the superannuation payment which would have been required by law, had BaptistCare paid to the employee as ordinary salary the amount it paid to the Commonwealth under clause 11.

#### **No deductions**

14. BaptistCare will not take any steps to recover any overpayment of the Relevant Loadings to its employees within the Relevant Period.

#### **Full and unqualified provision of the KPMG Report**

15. Within 30 days of the Commencement Date, BaptistCare will provide to the FWO a full and unredacted copy of the KPMG Report including all supporting documentation.
16. When providing the KPMG Report to the FWO, BaptistCare will state in writing that it does so without qualification and without seeking to place any limitation on how the FWO may use that KPMG Report in the lawful performance of its statutory functions and powers. BaptistCare will not assert, or seek to assert, any limitation on how the FWO may use or rely on the KPMG Report in the lawful performance of its statutory functions and powers.

#### **Assurance of rectification**

17. BaptistCare will ensure that, within 120 days of the Commencement Date, the FWO is provided with a statutory declaration, made by the Chief Executive Officer or Chief Financial Officer of BaptistCare (**Officer**), stating that:
  - (a) BaptistCare has made the calculations referred to in clauses 5(d) and (e), and verified these calculations as required by clauses 11(a) and (b) and in doing so has exercised due care, skill and diligence;
  - (b) BaptistCare has made the payments referred in clauses 5(d) and (e)(iii) and required by clauses 11 and 12;
  - (c) BaptistCare has comprehensively reviewed its payroll records and payroll and related systems and confirmed that BaptistCare:
    - (i) has identified and addressed all instances of non-compliance with the 2011

EA and the 2014 EA within the Relevant Period; and

(ii) is in full compliance with the 2017 EA (or replacement) and the FW Act.

**(Declaration)**

18. The Declaration must include:
  - (a) details of the steps BaptistCare has taken in relation to the requirements of clause 17(c); and
  - (b) details of the steps the Officer has taken to personally assure themselves of the matters described in the Declaration.
19. BaptistCare acknowledges that the FWO may make the Declaration publically available in the same manner as this Undertaking.

**Information on systems improvements**

20. Within 180 days of the Commencement Date, BaptistCare will provide the FWO with a report of the upgrades or improvements it has made to its payroll and related systems to ensure compliance with the 2017 EA (or replacement) and the FW Act.
21. BaptistCare will respond in a timely manner to any reasonable requests from the FWO for further information or clarification of the report referred to in clause 20.

**Independent Audits**

22. BaptistCare must, at its cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct two audits of BaptistCare's compliance with the FW Act and FW Regulations, in relation to the 2017 EA, and any future agreements that replace the 2017 EA (**Audits**).
23. BaptistCare will notify the FWO of its proposed Independent Auditor by no later than 1 September 2020. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require BaptistCare to propose other Independent Auditors until the FWO has approved in writing an Independent Auditor. The Independent Auditor must be approved by the FWO in writing prior to being engaged by BaptistCare.
24. BaptistCare must ensure that each of the Audits conducted by the Independent Auditor includes:

- (a) an assessment of 10% of all employees covered by the 2017 EA (or replacement), across a range of classifications, locations and employment types (full time, part time and casual employment), during the relevant pre-audit period (**Sampled Employees**) in respect of their employment by BaptistCare;
- (b) an assessment of whether the Sampled Employees to whom 2017 EA (or replacement instruments) applies have been correctly classified by BaptistCare;
- (c) an assessment of whether the pay and conditions of the Sampled Employees to whom 2017 EA (or replacement instruments) applies during the relevant audit period is in compliance with the FW Act and 2017 EA (or replacement instruments);
- (d) direct contact with Sample Employees to whom 2017 EA (or replacement instruments) applies by way of site visits to at least five different sites, to ensure accuracy of hours worked;
- (e) the production of a written report on each of the Audits setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO;
- (f) that each of the written reports referred to in (e) above contains the following declarations from the Independent Auditor:
  - (i) the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO; and
  - (ii) notwithstanding that the Independent Auditor is retained by BaptistCare, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from BaptistCare in preparing the report;
  - (iii) the report is provided in accordance with applicable professional standards (which will be listed in the report); and
  - (iv) the report is provided to the FWO for its benefit and the FWO can rely on the report.



### The First Audit

25. BaptistCare must ensure the Independent Auditor commences the first of the Audits by no later than 15 October 2020 (**First Audit**).
26. For the First Audit, the relevant pre-audit period to assess Sampled Employees is 31 July 2019 to 31 August 2020.
27. The relevant audit period for the First Audit must be at least two full pay periods falling within the period 1 September 2020 to 30 September 2020.
28. By 1 October 2020 BaptistCare will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
29. BaptistCare will use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 5 December 2020, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. BaptistCare will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to BaptistCare without the FWO's approval.
30. BaptistCare will use its best endeavours to ensure the Independent Auditor finalises the First Audit and provides a written report of the First Audit (**First Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. BaptistCare will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to BaptistCare without the FWO's approval.

### The Second Audit

31. BaptistCare must ensure the Independent Auditor commences the second of the Audits by no later than 15 October 2021 (**Second Audit**).
32. For the Second Audit, the relevant pre-audit period to assess Sampled Employees is 31 July 2020 to 31 August 2021.
33. The relevant audit period for the Second Audit must be at least two full pay periods falling within the period 1 September 2021 to 30 September 2021.
34. By 1 October 2021, BaptistCare will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.

35. BaptistCare will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 5 December 2021, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. BaptistCare will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to BaptistCare without the FWO's approval.
36. BaptistCare will use its best endeavours to ensure the Independent Auditor finalises the Second Audit and provides a written report of the Second Audit (**Second Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. BaptistCare will ensure the Independent Auditor does not provide the written report, or a copy of the same, to BaptistCare without the FWO's approval.

#### **Outcome of Audits**

37. If any of the Audits identify underpayments to any current or former employees, BaptistCare will conduct a reconciliation of the amounts paid to those employees since 12 July 2018 and rectify any underpayments that are identified. The reconciliation period for each identified employee will be from 12 July 2018 to the end of the relevant audit period.
38. BaptistCare will provide to the FWO evidence of such rectification within 60 days of being informed by the FWO of the requirement to undertake the reconciliation.
39. If any employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the conclusion of the Second Audit, BaptistCare will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. BaptistCare will complete the required documents supplied by the FWO for this purpose.
40. If any of the Audits identify an underpayment of minimum entitlements to one or more employees, and the FWO reasonably believes that employees not included in the Audits are also likely to have been underpaid, BaptistCare will engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all its employees to whom 2017 EA (or replacement instrument) applies (or a

particular cohort of employees within this group), as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by BaptistCare.

41. If requested by the FWO, BaptistCare will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 7 days of such a request.

#### **Employee Hotline**

42. Within 30 days of the Commencement Date, at its own expense, BaptistCare will engage an independent organisation to operate a dedicated telephone number and email address for all current and former employees to whom the 2011 EA, 2014 EA or 2017 EA applies, or had applied, to make enquiries in relation to their entitlements, underpayments or related employment concerns (**Employee Hotline**). Employees will have the option of making enquiries on a confidential basis.
43. The independent organisation must be approved by the FWO prior to being engaged by BaptistCare to operate the Employee Hotline.
44. BaptistCare will:
  - (a) ensure the Employee Hotline remains operational for a period of four months;
  - (b) ensure that the telephone number and email address are included on the public notice (see clauses 49-51) and the social media notice (see clauses 59-61);
  - (c) subject to clause 45, communicate the existence and purpose of the Employee Hotline by way of letter (**Confirmation Letter**) to the last known address of all current and former employees to whom the 2011 EA, 2014 EA or 2017 EA applies, or had applied, known as at the Commencement Date, and dating back to 1 December 2011;
  - (d) ensure the Confirmation Letter is in the form of Attachment A to this Undertaking;
  - (e) provide confirmation to the FWO that the Confirmation Letter has been mailed to all required current and former employees within 30 days of the Commencement Date;
  - (f) take steps to respond to each telephone and email enquiry and seek to resolve any issues within 30 days and notify the FWO of any issues that are not resolved

within 60 days; and

- (g) provide a de-identified list of enquiries received by the Employee Hotline to the FWO every two months from the establishment of the Employee Hotline.

- 45. BaptistCare is not required to send a Confirmation Letter in accordance with clause 44(c), to any employee it sends an Apology Letter to in accordance with clause 46.

#### **Notices – Internal and External**

##### Apology to Employees

- 46. Within 120 days of the Commencement Date, BaptistCare will send a letter of apology (**Apology Letter**) to each of the Schedule Employees. The Apology Letter will be in the form of Attachment B to this Undertaking.
- 47. BaptistCare will provide confirmation to the FWO that the Apology Letter has been sent to each of the Schedule Employees within 125 days of the Commencement Date.

##### Media Release

- 48. Upon acceptance of the Undertaking, the FWO will publish a media release on its website in respect of this Undertaking (**Media Release**).

##### Public Notice

- 49. Within 28 days of, but not prior to, the FWO publishing the Media Release, BaptistCare will place a notice in a weekend edition of the *Sydney Morning Herald* and the *Canberra Times* (**Public Notice**).
- 50. The Public Notice must:
  - (a) bear the name and logo of BaptistCare;
  - (b) appear within the first 5 pages of the weekend editions of the *Sydney Morning Herald* and the *Canberra Times*;
  - (c) be at least 10 cm x 8 cm; and
  - (d) contain wording in the form of Attachment C.
- 51. BaptistCare will inform the FWO when the Public Notice will be published and provide a copy to the FWO within seven days of its publication.

#### Workplace Notice

52. Within 28 days of, but not prior to, the FWO publishing Media Release, BaptistCare will cause to be displayed within each of its worksites where the current Schedule Employees work a notice in the form of Attachment C to this Undertaking (**Workplace Notice**).
53. BaptistCare must ensure the Workplace Notice is:
- (a) at least A3 size;
  - (b) clearly displayed in a location to which all employees have access (for example, by placement on a staff noticeboard); and
  - (c) displayed for a period of 28 continuous days.
54. Within 7 days of first displaying the Workplace Notice, BaptistCare will provide photographic evidence to the FWO of the display and location of the Workplace Notice in each of its worksites.
55. At the end of the 28 day period referred to in paragraph 53 above, BaptistCare will provide confirmation to the FWO that the Workplace Notice has been continuously displayed at each location for the required period.

#### Website Notice

56. Within 28 days of, but not prior to, the FWO publishing the Media Release, BaptistCare will place a notice on its website, accessible through a hyperlink on the front page of <https://BaptistCare.org.au> (**Website Notice**).
57. The Website Notice must:
- (a) be in the form of the Website Notice set out at Attachment C;
  - (b) be displayed in at least size 10 font; and
  - (c) remain on the website for a period of 1 month.
58. Within 7 days of placing the Website Notice on its website, BaptistCare will provide to the FWO evidence of its placement.

#### Social Media Notice

59. Within 28 days of, but not prior to, the FWO publishing the Media Release, BaptistCare will place a post on its Facebook page (**Social Media Notice**).
60. The Social Media Notice must:
- (a) be posted to BaptistCare's timeline, pinned to the top of the Facebook page in public view;
  - (b) remain on the Facebook page for a continuous period of at least one month; and
  - (c) be in the form of the Social Media Notice set out at Attachment C.
61. Within 7 days of posting the Social Media Notice to its Facebook page, BaptistCare will provide to the FWO evidence of the post.

#### **Contrition payment**

62. Within 28 Days of the Commencement Date, BaptistCare will make a contrition payment of \$40,000 into the Consolidated Revenue Fund.
63. Within 14 days of making the contrition payment, BaptistCare will provide evidence to the FWO of the payment.

#### **No Inconsistent Statements**

64. BaptistCare must not, and must use its best endeavours to ensure that its officers, employees or agents do not, make any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

#### **ACKNOWLEDGEMENTS**

65. BaptistCare acknowledges that:
- (a) the FWO may;
    - (i) make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at [www.fairwork.gov.au](http://www.fairwork.gov.au);
    - (ii) release a copy of this Undertaking (and any of the Attachments hereto)

pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);

- (iii) issue a media release in relation to this Undertaking;
  - (iv) from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
  - (v) rely upon the admissions made by BaptistCare set out in clause 7 above in respect of decisions taken regarding enforcement action in the event that BaptistCare is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by BaptistCare to comply with its obligations under this Undertaking;
- (b) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out herein;
- (c) consistent with section 715(3) of the FW Act, BaptistCare may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if BaptistCare contravenes any of the terms of this Undertaking:
- (i) the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act; and
  - (ii) this Undertaking may be provided to the Court as evidence of the admissions made by BaptistCare in clause 7 above, and also in respect of the question of costs.

**Executed as an undertaking**


EXECUTED by BaptistCare in accordance with section 127(1) of the Corporations Act 2001:

  
(Signature of director)

ROBERT DUNN  
(Name of director)

7/08/2020  
(Date)

in the presence of:

  
(Signature of witness)

Kim Lange  
(Name of witness)

  
(Signature of director/company secretary)

MEIGHAN HEARD  
(Name of director/company secretary)


31/7/2020  
(Date)

in the presence of:

  
(Signature of witness)

Kim Lange  
(Name of witness)


ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the Fair Work Act 2009 on:

  
JEREMY O'SULLIVAN, CHIEF COUNSEL  
[Insert name and role of Delegate]

13 AUGUST 2020  
(Date)

Delegate for the FAIR WORK  
OMBUDSMAN

in the presence of:

  
(Signature of witness)

LYNETTE KHOO  
(Name of Witness)



## **SCHEDULE A — Part 1 (Current Employees)**

**See attached spreadsheet**

## **SCHEDULE A — Part 2 (Former Employees)**

**See attached spreadsheet**

**Attachment A – Letter to employees (“Confirmation Letter”)**

**<Date>**

**<Employee Name>**

**<Employee Address>**

Dear **<Employee Name >**

As you may be aware, BaptistCare has admitted to the Fair Work Ombudsman (**FWO**) that it contravened the *Fair Work Act 2009* (Cth) by incorrectly applying clauses of the *Baptist Community Services Age Care Enterprise Agreement 2011* and the *BaptistCare NSW & ACT Aged Care Enterprise Agreement 2014* relating to annual leave loading for shiftworkers. This resulted in an underpayment of annual leave loading to some shiftworkers between 1 December 2011 and 12 July 2018.

BaptistCare understands that you may have questions and concerns relating to this and other employment issues. To address these concerns a hotline has been established for all current or former employees to access. The hotline is being operated by <insert entity name>, an independent party that can assist you with your enquiries. <Insert name > can be contacted on <insert contact number> or at <insert email address> and, if required, on a confidential basis.

Should you wish to discuss your concerns directly with BaptistCare you can contact our enquiry line on <insert telephone number/ email address>. We will make every attempt to resolve your enquiry within 30 days of receiving it and commit to maintaining open communication with you about the progress of your enquiry. You can contact BaptistCare’s enquiry line via <insert email address or telephone call>.

Alternatively, anyone can contact the FWO via [www.fairwork.gov.au](http://www.fairwork.gov.au) or on 13 13 94.

BaptistCare expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Yours sincerely

**[name of BaptistCare representative]**

## Attachment B – Letter of Apology

### FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of BaptistCare for non-compliance with Commonwealth workplace relations laws.

BaptistCare has formally admitted to the Fair Work Ombudsman (**FWO**) that it contravened the *Fair Work Act 2009* (Cth) by incorrectly applying clauses of the *Baptist Community Services Age Care Enterprise Agreement 2011* and the *BaptistCare NSW & ACT Aged Care Enterprise Agreement 2014* relating to annual leave loading for shiftworkers. This resulted in an underpayment of annual leave loading to some shiftworkers between 1 December 2011 and 12 July 2018.

BaptistCare has entered into an Enforceable Undertaking with the FWO, a copy of which will be available at [www.fairwork.gov.au](http://www.fairwork.gov.au).

Regrettably, it has been determined that you were affected by these contraventions.

BaptistCare is taking steps to remedy the contraventions. Specifically, BaptistCare has made a payment to you in respect of the annual leave loading and superannuation to which you were entitled or contacted you in relation to the steps you need to take to have this payment made to you. These amounts were calculated based on the review that BaptistCare conducted.

As part of the Enforceable Undertaking, we also have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

BaptistCare expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions or concerns about this or any other employment matter there are two options available to you to assist you with the matter:

- (a) a hotline has been established and is being operated by <insert entity name>, an independent party that can assist you with your enquiries, on a confidential basis if required. <insert entity name> can be contacted on <insert contact number> or at <insert email address>; or
- (b) BaptistCare will maintain a non-confidential enquiry line that you can contact at any

time with any enquiries you have. We will make every attempt to resolve your enquiry within 30 days of receiving it and commit to maintaining open communication with you about the progress of your enquiry. You can contact this enquiry line via <insert email address or telephone call>.

Alternatively, anyone can contact the FWO via [www.fairwork.gov.au](http://www.fairwork.gov.au) or on 13 13 94.

Yours sincerely

<Employer name>

## **Attachment C – Form of Public, Website, Social Media and Workplace Notice**

BaptistCare recently undertook a review of its payroll systems and processes and determined that it contravened the *Fair Work Act 2009* (Cth) by incorrectly applying clauses of the *Baptist Community Services Aged Care Enterprise Agreement 2011* and the *BaptistCare NSW & ACT Aged Care Enterprise Agreement 2014* relating to annual leave loading for its shiftworker employees. This resulted in an underpayment of annual leave loading to 940 current and 1,200 former employees between 1 December 2011 and 12 July 2018.

On 7 November 2019, BaptistCare formally admitted to the Fair Work Ombudsman (FWO) that contraventions of Agreements had occurred and consequently a number of employees had been underpaid.

BaptistCare has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with Commonwealth workplace laws.

BaptistCare will, as a result of the Enforceable Undertaking, commit to undertake a number of activities to ensure its ongoing compliance such as, conducting two independent audits and formally apologising to individual employees.

BaptistCare expresses its sincerest regrets and apologises for these contraventions.

If you worked for BaptistCare during the period of 1 December 2011 to 12 July 2018 and have queries or questions relating to your employment, please contact either:

- the hotline being operated by independent third party <insert entity name> on <contact number>. This hotline can be contacted on a confidential basis or at <insert email address>; or
- BaptistCare directly through their non-confidential enquiry line on <insert contact number or email address>.

Alternatively, anyone can contact the FWO via <http://www.fairwork.gov.au> or on 13 13 94.