



**Fair Work**  
OMBUDSMAN

### **ENFORCEABLE UNDERTAKING**

This undertaking is **given** by Calvary Administration Pty Ltd (ABN 32 110 281 760) 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 clauses 9, 10 and 11 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 Calvary Administration Pty Ltd (**Calvary**), Level 12, 135 King Street, Sydney NSW 2000.

### COMMENCEMENT

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

### BACKGROUND

#### Calvary Organisational background

3. Japara Healthcare Limited was a large provider of residential aged care and operated 50 aged care homes and retirement living facilities in Victoria, New South Wales, Queensland, South Australia and Tasmania, providing care for an estimated 4,000 residents and employing approximately 5,700 staff. Japara Administration Pty Ltd, ABN 32 110 281 760, (**Japara**) (formerly known as Aged Care Services Australia Group Pty Ltd until 1 March 2018) was the employer of labour for all staff working in Japara Healthcare Limited's facilities.
4. On 5 November 2021, Japara was purchased by Little Company of Mary Health Care Ltd, and its name was changed to Calvary Administration Pty Ltd on 9 November 2021. Calvary is a not-for-profit registered entity with the Australian Charities and Not-for-profits Commission. In this Undertaking, references to 'Calvary' are intended to include the company prior to 9 November 2021 under its prior names.

#### Background to admissions in this Undertaking

5. On 20 July 2020, Japara disclosed to the FWO that it had underpaid employees covered by the *Aged Care Services Australia Group Pty Ltd, ANMF and HWU (Victoria) Enterprise Agreement 2017* (the **Victorian Enterprise Agreement**) in relation to their penalty rate entitlements on Sundays. Japara stated that it had rectified each of the underpayments arising from this issue.

6. On 9 October 2020, Japara notified the FWO that:

- (a) the underpayment noted at clause 5 started from commencement of the Victorian Enterprise Agreement on 10 April 2018. Japara incorrectly paid employees a 150% shift penalty rate for ordinary hours worked on Sundays, instead of the correct 160% shift penalty rate for ordinary hours worked on Sundays. Japara stated this occurred due to an external payroll provider incorporating incorrect rates from the body of the Victorian Enterprise Agreement instead of the undertakings, and that it had rectified the issue in its payroll systems on 30 June 2020 (the **Sunday Penalty Rate Underpayment**);
- (b) it had calculated and paid to affected employees an interest amount, based on a 5% per annum interest rate, for the Sunday Penalty Rate Underpayments;
- (c) it had underpaid staff lump sum parental leave entitlements under the *Japara Administration Pty Ltd Tasmanian Nurses and Aged Care Employees Enterprise Agreement 2018* as well as equivalent agreements in NSW, Victoria and South Australia. Japara later confirmed on 23 November 2020 this underpayment affected its staff engaged under the following instruments (collectively the **Japara Enterprise Agreements**):
  - (i) *Japara Administration Pty Ltd Tasmanian Nurses and Aged Care Employees Enterprise Agreement 2018*;
  - (ii) the Victorian Enterprise Agreement;
  - (iii) *Aged Care Services Australia Group Pty Ltd South Australian Aged Care Employees Enterprise Agreement 2017*;
  - (iv) *Aged Care Services Australia Group Pty Ltd, NSWNMA & HSU Branch Enterprise Agreement 2014*; and
  - (v) *Japara Administration Pty Ltd New South Wales Employee Enterprise Agreement 2019*.
- (d) Japara confirmed the non-payment of this entitlement commenced from 1 January 2017 (the **Lump Sum Parental Leave Underpayment**); and
- (e) it had underpaid staff covered by the Victorian Enterprise Agreement their annual leave loading entitlement for taking leave on a Sunday (the **Annual Leave Loading**

**Underpayment)** from the commencement of the Victorian Enterprise Agreement on 10 April 2018.

7. On 18 July 2022 and 14 September 2022, Calvary informed the FWO that:
  - (a) the underpayment amount for the Sunday Penalty Rate Underpayment was \$1,539,504.62 in penalty rates, \$146,252.94 in superannuation and \$86,662.88 in interest, for a total of \$1,772,420.44, with 2,675 affected employees;
  - (b) the underpayment amount for the Lump Sum Parental Leave Underpayment was \$139,717.00 in unpaid lump sum payments, and \$11,765.58 in interest for a total of \$151,482.58 with 124 affected employees; and
  - (c) the underpayment amount for the Annual Leave Loading Underpayment was \$151,909.37 in underpaid leave loading, \$14,431.39 in superannuation and \$13,374.02 in interest, for a total of \$179,714.78 with 1,589 affected employees.
  
8. Prior to the execution of this Undertaking, Calvary notified the FWO that it had:
  - (a) in relation to the Sunday Penalty Rate Underpayment:
    - (i) rectified the underpayments by paying each of the employees referred to in column A of Schedule A to this Undertaking (**Schedule A Employees**) the amounts referred to in column B of Schedule A;
    - (ii) rectified any associated superannuation underpayments as required by law to each of the Schedule A Employees, by paying each employee the sum referred to in column C of Schedule A; and
    - (iii) paid interest to each of the Schedule A Employees on the amount referred to in column B of Schedule A, in the sum referred to in column D of Schedule A, calculated using an interest rate of 5% per annum for each relevant financial year.
  - (b) In relation to the Lump Sum Parental Leave Underpayment:
    - (i) rectified the underpayments by paying each of the employees referred to in column A of Schedule B to this Undertaking (**Schedule B Employees**) the amounts referred to in column B of Schedule B; and

- (ii) paid interest to each of the Schedule B Employees on the amount referred to in column B of Schedule B, in the sum referred to in column C of Schedule B, calculated using an interest rate of 5% per annum.
- (c) in relation to the Annual Leave Loading Underpayment:
- (i) rectified the underpayments by paying each of the employees referred to in column A of Schedule C to this Undertaking (**Schedule C Employees**) the amounts referred to in column B of Schedule C;
  - (ii) rectified any associated superannuation underpayments as required by law to each of the Schedule C Employees, by paying each employee the sum referred to in column C of Schedule C; and
  - (iii) paid interest to each of the Schedule C Employees on the amount referred to in column B of Schedule C, in the sum referred to in column D of Schedule C, calculated using an interest rate of 5% per annum.

## **ADMISSIONS**

9. The FWO has a reasonable belief, and Calvary admits, that Calvary contravened, within the period of 10 April 2018 to 30 June 2020, section 50 of the FW Act by failing to pay each of the Schedule A Employees the amount or amounts to which that employee was entitled under clause 39 the Victorian Enterprise Agreement, as amended by the undertaking accepted by the Fair Work Commission under s 190(3) of the FW Act in approving the Victorian Enterprise Agreement, Sunday penalty rates at the rate of 160%.
10. The FWO also has a reasonable belief, and Calvary also admits, that Calvary contravened, within the period of 1 January 2017 to 23 June 2020, section 50 of the FW Act by failing to pay the Schedule B Employees a lump sum parental leave payment to which that employee was entitled under the following clauses of the relevant Japara Enterprise Agreement:
- (a) clause 34(7) of the *Japara Administration Pty Ltd Tasmanian Nurses and Aged Care Employees Enterprise Agreement 2018*;
  - (b) clause 48.2(b)(i) of the Victorian Enterprise Agreement;
  - (c) clause 7.5.2(b) of the *Aged Care Services Australia Group Pty Ltd South Australian Aged Care Employees Enterprise Agreement 2017*;

(d) clause 39.3 of the *Aged Care Services Australia Group Pty Ltd, NSWNMA & HSU NSW Branch Enterprise Agreement 2014*; and

(e) clause 40.3 of the *Japara Administration Pty Ltd New South Wales Employee Enterprise Agreement 2019*.

11. The FWO also has a reasonable belief, and Calvary also admits, that Calvary contravened, within the period of 10 April 2018 to 30 June 2020, section 50 of the FW Act by failing to pay each of the Schedule C Employees the correct annual leave loading entitlement to which that employee was entitled under clause 45.6 of the Victorian Enterprise Agreement.

12. The contraventions identified in clauses 9 to 11 of this Undertaking do not include:

(a) any contraventions which relate to or arise as a consequence of Calvary failing to correctly apply any of the Japara Enterprise Agreements to any employee not listed in Schedule A, B or C to this Undertaking (**Non-schedule Employees**). For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees who were underpaid as a result of Calvary failing to correctly apply the Japara Enterprise Agreements 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 contraventions which relate to or arise as a consequence of Calvary failing to correctly apply any provisions of the Japara Enterprise Agreements or any Award to any of the employees listed in Schedule A, B and C (**Schedule A, B and C Employees**) other than as identified in clauses 9, 10, and 11 of this Undertaking; or

(c) any contraventions which have not yet occurred at the date that this Undertaking is offered by Calvary. For the avoidance of doubt this Undertaking is not given in respect of any contravention which has not occurred on the date which it is offered by Calvary and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

## **UNDERTAKINGS**

13. Calvary will take the actions set out at clauses 14 to 61 below.

## **Review and rectification of underpayments**

14. Within 120 days of the Commencement Date, Calvary will provide the FWO with evidence of all payments made to current and former employees to rectify the Sunday Penalty Rate Underpayment, the Lump Sum Parental Leave Underpayment and the Annual Leave Loading Underpayment (collectively, **Underpayments**). In particular, Calvary will provide evidence that it has paid the Schedule A, B and C Employees:
  - (a) the underpayment amount owing to them;
  - (b) any superannuation payments which may be required by law, by making payment to their chosen superannuation fund; and
  - (c) interest on the amount referred to in clause 14(a), calculated using an interest rate of 5% per annum.
15. If any of the former employees to whom Underpayments are owed cannot be located within 120 days of the Commencement Date, Calvary will, within 150 days of the Commencement Date, pay the underpayment amounts referred to in clause 14(a) owing to those employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. Calvary will complete the required documents supplied by the FWO for this purpose.
16. In the event that the FWO is able to locate and contact any former Calvary employees to whom Underpayments are owed, the FWO will (in addition to its obligations under s 559 of the FW Act) notify Calvary in writing of the name and contact details of the former employee. Within 28 days of receiving any such notice Calvary will:
  - (a) pay to the former employee interest on the amount already paid by Calvary to the Commonwealth of Australia in respect of that employee, calculated at a rate of 5% per annum; and
  - (b) pay to the former employee's nominated superannuation fund an amount equal to the amount that would have been required by law, had Calvary paid the amount under clause 14(a) directly to the former employee.

## **Letter of Assurance**

17. Within 150 days of the Commencement Date, Calvary will provide to the FWO a Letter of Assurance signed by its Chief Financial Officer in the terms as set out at **Attachment A**.

## **Provision of Information – Systems and Processes**

### **Information about new systems and processes**

18. Within 150 days of the Commencement Date, Calvary will provide to the FWO detailed information about the new systems and processes that it has put in place since the Commencement Date to ensure compliance with its obligations under the FW Act with respect to employees employed by Calvary under the Japara Enterprise Agreements and/or any successor enterprise agreements (**Relevant Employees**). In particular, Calvary will provide a written report (**Systems and Processes Report**) which will include the following:
- (a) details about the updating of the payroll system and the implementation of the Kronos roster and timesheet system, and how it links to the payroll system to make both systems more accessible and conducive for conducting audits;
  - (b) unredacted copies of all audit reports prepared by any external consultant in relation to the Underpayments and/or the accuracy of the payroll system, and details of any internal review control adopted to periodically validate sample payments against entitlements;
  - (c) details of proactive sample checking of payroll; and
  - (d) details of all amendments to the parental leave policy as it relates to lump sum parental leave entitlements for the Relevant Employees.
19. The FWO may, within 30 days of receiving the Systems and Processes Report under clause 18, seek reasonable further information regarding the systems and processes listed at subclauses 18(a) to (d) from Calvary by issuing a written notice to Calvary specifying the additional information required. Calvary must provide the information specified in such a notice within 28 days of receipt. For the avoidance of doubt, nothing in clauses 18 and 19 require Calvary to provide documents or information that are subject to a valid claim of legal professional privilege.

### **No limitation on use of information**

20. When providing the Systems and Processes Report and any further information under clauses 18 and 19, Calvary will state in writing that it does so without qualification and without seeking to place any limitation on how the FWO may use the information in the lawful performance of



its statutory functions and powers. Calvary will not assert, or seek to assert, any limitation on how the FWO may use or rely on the information in the lawful performance of its statutory functions and powers.

### **Training**

21. By 28 February 2024, Calvary will ensure that all current employees of Calvary with responsibility for management of employees, human resources, recruitment and payroll of Relevant Employees, have completed training which satisfies clause 22 below.
22. The training must:
  - (a) be provided by a qualified internal or external workplace relations or employment law expert, approved by the FWO prior to the training being provided; and
  - (b) cover, at a minimum:
    - (i) how to correctly determine classification of the Relevant Employees;
    - (ii) how to correctly apply conditions under the Japara Enterprise Agreements including, without limitation: overtime and penalty rates, leave and leave loading entitlements; and
    - (iii) other FW Act entitlements and obligations, including the National Employment Standards.
23. By 30 April 2024, Calvary will provide to the FWO evidence of its compliance with clause 22, including:
  - (a) a copy of the training materials used in relation to the training referred to in clause 22; and
  - (b) a schedule or list of the employees who received the training in clause 22 and the date on which they attended the training programs.

### **Dispute resolution mechanism**

24. Calvary will include in the Notification Letter (as defined in clause 51) and the Workplace Notice (as defined in clause 53) that are provided to affected employees that they may utilise the Calvary 'Payroll Service Desk' system to make enquiries in relation to their entitlements or raise underpayment or related employment concerns (**Dispute Notification**).

25. Calvary will ensure that the 'Payroll Service Desk' system remains operational for a period of 12 months from the Commencement Date.
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26. Calvary will, for each Dispute Notification received within the period referred to in clause 25:
- (a) exercise all reasonable endeavours to reach an agreed resolution regarding any Dispute Notification within 45 days of receipt of the Dispute Notification and notify the FWO of any issues that are not resolved within 60 days; and
  - (b) at the end of each 3-month period within the period referred to in clause 25, provide to the FWO a de-identified report containing:
    - (i) each Dispute Notification received in that period;
    - (ii) each agreed outcome reached in that period; and
    - (iii) the status of any unresolved Dispute Notifications.
27. For avoidance of doubt, nothing in these clauses 24 – 26 prevents or affects:
- (a) the FWO's capacity to investigate an issue or allegation raised by a Dispute Notification, or
  - (b) an employee's capacity to directly approach the FWO about an issue which could be raised under these clauses.

#### **Independent Audits**

28. Calvary 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 Calvary's compliance with the FW Act and *Fair Work Regulations 2009 (FW Regulations)* in relation to the Relevant Employees (**Audits**).
29. Calvary will notify the FWO of its proposed Independent Auditor by no later than 1 November 2023. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require Calvary 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 Calvary, and such approval will be provided no later than 15 November 2023.
30. Calvary must ensure that each of the Audits conducted by the Independent Auditor includes:

- (a) an assessment of 10% of all Relevant Employees, across a range of classifications, locations and employment types (full time, part time and casual employment), during the relevant audit period (**Sample Employees**) in respect of their employment by Calvary;
- (b) an assessment of whether the pay and conditions of the Sample Employees during the relevant audit period is in compliance with the FW Act, FW Regulations, and the applicable enterprise agreement;
- (c) 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; and
- (d) that each of the written reports referred to in (c) 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;
  - (ii) notwithstanding that the Independent Auditor is retained by Calvary, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from Calvary 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.

#### **No limitation on use of information**

31. Calvary will state in writing that it does so without qualification and without seeking to place any limitation on how the FWO may use the information contained in the Audit Reports referred to in clauses 35 and 36, 40 and 41, in the lawful performance of its statutory functions and powers. Calvary will not assert, or seek to assert, any limitation on how the FWO may use or rely on the information in the lawful performance of its statutory functions and powers.

#### **The First Audit**

32. Calvary must ensure the Independent Auditor commences the first of the Audits by no later than 15 January 2024 (**First Audit**).

33. The relevant audit period for the First Audit must be at least two full consecutive pay periods falling within the period 1 September 2023 to 1 November 2023.
34. By 1 December 2023, Calvary will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
35. Calvary will instruct and use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 15 April 2024, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. Calvary will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to Calvary without the FWO's approval.
36. Calvary will instruct and 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 the FWO providing any comments on the draft report to the Independent Auditor. Calvary will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to Calvary prior to the First Audit Report being provided to the FWO, without the FWO's approval.

#### The Second Audit

37. Calvary must ensure the Independent Auditor commences the second of the Audits by no later than 1 November 2024 (**Second Audit**).
38. The relevant audit period for the Second Audit must be at least two full consecutive pay periods falling within the period 1 September 2024 to 1 November 2024.
39. By 1 October 2024, Calvary will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
40. Calvary will instruct and use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 15 February 2025, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. Calvary will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to Calvary without the FWO's approval.
41. Calvary will instruct and 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. Calvary will ensure the Independent Auditor does not provide the written report, or a copy of the same, to Calvary prior to the Second Audit Report being provided to the FWO.

42. If the First or Second Audit Report provided to the FWO under clause 35 and 40 above does not include the information required by the FWO in clause 30 above, Calvary will, upon written request by the FWO, provide, or cause the Independent Auditor to provide any specific additional information set out at clauses 30(a) to 30(d) as requested. Calvary will provide this information to the FWO within a period of 21 days from the written request.

#### **Outcome of Audits**

43. If any of the Audits identify underpayments to any Sample Employees:
- (a) within 21 days of being provided with a copy of the relevant First or Second Audit Report, the FWO will provide in writing to the Independent Auditor and Calvary a list of any concerns, issues or questions that the FWO may have in relation to the content and findings of the First or Second Audit Report (**FWO Concerns Letter**);
  - (b) within 21 days of being provided with a copy of the FWO Concerns Letter, Calvary will provide in writing to the Independent Auditor and the FWO a list of any concerns, issues or questions that Calvary may have in relation to the content and findings of the First or Second Audit Report (**Calvary Concerns Letter**) and engage, in good faith, with the Independent Auditor and the FWO, to resolve the matters set out in both the FWO Concerns Letter and the Calvary Concerns Letter;
  - (c) within 28 days of the resolution of the matters set out in both the FWO Concerns Letter and the Calvary Concerns Letter, or within 70 days of receipt of the relevant First or Second Audit Report (if the FWO does not issue a FWO Concerns Letter and Calvary does not issue a Calvary Concerns Letter), Calvary will rectify any underpayments identified in the relevant audit period; and
  - (d) within 60 days of the resolution of the matters set out in both the FWO Concerns Letter and the Calvary Concerns Letter, or within 100 days of receipt of the relevant First or Second Audit Report (if the FWO does not issue a FWO Concerns Letter and Calvary does not issue a Calvary Concerns Letter), Calvary will conduct a reconciliation of the amounts

paid and owed to those employees in the 12-month period immediately prior to the relevant audit period and rectify any underpayments that are identified.

44. Calvary will provide to the FWO evidence of such reconciliation within 28 days of the conclusion of the reconciliation undertaken pursuant to clause 43(d) above.
45. If any former Sample Employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the reconciliation referred to in clause 43(d) above being provided to the FWO, Calvary will pay those amounts to the Commonwealth of Australia in accordance with section 559 of the FW Act. Calvary will complete the required documents supplied by the FWO for this purpose.
46. If any of the Audits identify underpayments to one or more Sample Employees, and the FWO reasonably believes that employees not included in the Audits are also likely to have been underpaid (**Non-Sample Employees**), Calvary will engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all (or a particular cohort of) the Relevant Employees, as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by Calvary.
47. If requested by the FWO, Calvary will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 14 days of such a request.
48. If any Additional Audit identifies underpayments to Non-Sample Employees, Calvary will rectify any underpayment identified in the Additional Audit.
49. Calvary will provide to the FWO evidence of such rectification within 28 days of the conclusion of any Additional Audit.
50. If any former Non-Sample Employees identified in the Additional Audit as having underpayments owing to them cannot be located within 60 days of the conclusion of the Additional Audit, Calvary will pay those amounts to the Commonwealth of Australia in accordance with section 559 of the FW Act. Calvary will complete the required documents supplied by the FWO for this purpose.

#### Notification to Employees

51. Calvary will send a letter of notification of the execution the Undertaking (**Notification Letter**) to all Schedule A, B and C Employees within 28 days of the Commencement Date. The Notification Letter will be in the form of **Attachment B** to this Undertaking.
52. Calvary will provide evidence to the FWO that the Notification Letter has been sent to all affected employees within 14 days of the Notification Letter in clause 51 being sent.

#### Workplace Notice

53. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, Calvary will cause to be displayed within each of its Australian worksites where the current Schedule A, B and C Employees work, a notice in the form of **Attachment C** to this Undertaking (**Workplace Notice**).
54. Calvary 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.
55. Within 7 days of the last relevant worksite first displaying the Workplace Notice, Calvary will provide photographic evidence to the FWO of the display and location of the Workplace Notice in each of its worksites.
56. At the end of the last relevant worksite complying with the 28-day period referred to in clause 54(c) above, Calvary will provide confirmation to the FWO that the Workplace Notice has been continuously displayed at each location for the required period.

#### **Contribution Payment**

57. Within 60 days of the Commencement Date, Calvary will make a contribution payment to the Consolidated Revenue Fund of \$120,000 for the underpayments to the Schedule A, B and C Employees.
58. Calvary will provide evidence to the FWO of any contribution payment within 14 days of making payment to the Consolidated Revenue Fund.

### **Extension of times for completion**

59. Calvary may request of the FWO an extension on a time specified for completion of an obligation under this Undertaking. Calvary will provide information setting out the basis for such a request and make the request for extension of time at least 10 days prior to the time that Calvary is required to complete the action as set out in this Undertaking, or such shorter period agreed in writing between Calvary and the FWO. The FWO will not unreasonably withhold agreement on a request for an extension of time.
60. Where a time specified for undertaking an obligation under this Undertaking is contingent on or follows from the time specified for the completion of another obligation under this Undertaking, and that time for completion has been extended by the FWO, the time specified for completion of the later obligation is correspondingly extended by the same period.

### **No Inconsistent Statements**

61. Calvary 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**

62. Calvary 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 Calvary set out in clauses 9, 10 and 11 above in respect of decisions taken regarding enforcement action in the event that

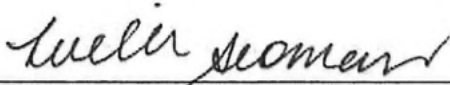


Calvary is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by Calvary to comply with its obligations under this Undertaking;

- (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, Calvary may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if Calvary 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 Calvary in clauses 9, 10 and 11 above, and also in respect of the question of costs.

**Executed as an undertaking**

EXECUTED by Calvary Administration Pty Ltd (ABN 32 110 281 760) in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

Lucille Scomazzon

(Name of director)

19 October 2023

(Date)

in the presence of:



(Signature of witness)

Madhumitha Chandrasekar

(Name of witness)



(Signature of director/company secretary)

Jessica Roberts

(company secretary)

19 October 2023

(Date)

in the presence of:




(Signature of witness)

Madhumitha Chandrasekar

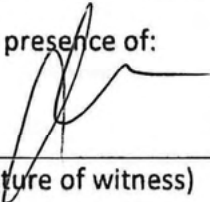
(Name of witness)

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



Mark Scully, Deputy Fair Work Ombudsman  
– Compliance and Enforcement

in the presence of:



(Signature of witness)

20 October 2023

(Date)

Diana Hopkins-Farrow

(Name of Witness)

## Attachment A – Letter of Assurance

Anna Booth  
The Fair Work Ombudsman  
Fair Work Ombudsman  
GPO Box 9887  
SYDNEY NSW 2001

Dear Ms Booth

I am writing on behalf of Calvary Administration Pty Ltd (**Calvary**) in my capacity as the Chief Financial Officer. This letter follows a process where Calvary self-reported that:

- it had underpaid employees covered by the *Aged Care Services Australia Group Pty Ltd, ANMF and HWU (Victoria) Enterprise Agreement 2017* in relation to their penalty rate entitlements on Sundays, and associated annual leave loading entitlements; and
- it had underpaid employees their Lump Sum Parental Leave entitlements under the following instruments:
  - *Japara Administration Pty Ltd Tasmanian Nurses and Aged Care Employees Enterprise Agreement 2018;*
  - *Aged Care Services Australia Group Pty Ltd, ANMF and HWU (Victoria) Enterprise Agreement 2017;*
  - *Aged Care Services Australia Group Pty Ltd South Australian Aged Care Employees Enterprise Agreement 2017;*
  - *Aged Care Services Australia Group Pty Ltd, NSWNMA & HSU Branch Enterprise Agreement 2014;* and
  - *Japara Administration Pty Ltd New South Wales Employee Enterprise Agreement 1019.*

I write to provide the FWO with my assurance that I am satisfied:

- a. the process by which Calvary calculated the underpayments to its current and former employees was correctly undertaken; and
- b. that Calvary is compliant with the *Fair Work Act 2009* as it relates to the all the aforementioned Enterprise Agreements; and
- c. as of [insert date] all former and current employees impacted by the underpayments, apart from those who have not been able to be located by Calvary, have been paid their entitlements (plus interest) under all the aforementioned Enterprise Agreements by Calvary.

Calvary has remediated all issues as a matter of priority and is committed to minimising the risk of future non-compliance.

Sincerely

<CFO name>

## Attachment B – Notification Letter to employees

Dear <insert name >

As you may be aware, Calvary Administration Pty Ltd (**Calvary**) has admitted to the Fair Work Ombudsman (**FWO**) that it contravened the *Fair Work Act 2009* (Cth) by:

- underpaying employees covered by the *Aged Care Services Australia Group Pty Ltd, ANMF and HWU (Victoria) Enterprise Agreement 2017* in relation to their penalty rate entitlements on Sundays, and associated annual leave loading entitlements between 10 April 2018 and 30 June 2020; and
- underpaying employees their lump sum parental leave entitlements between 1 January 2017 and 23 June 2020 under the following instruments:
  - *Japara Administration Pty Ltd Tasmanian Nurses and Aged Care Employees Enterprise Agreement 2018*;
  - *Aged Care Services Australia Group Pty Ltd, ANMF and HWU (Victoria) Enterprise Agreement 2017*;
  - *Aged Care Services Australia Group Pty Ltd South Australian Aged Care Employees Enterprise Agreement 2017*;
  - *Aged Care Services Australia Group Pty Ltd, NSWNMA & HSU Branch Enterprise Agreement 2014*; and
  - *Japara Administration Pty Ltd New South Wales Employee Enterprise Agreement 2019*.

The underpayments occurred in the period 1 January 2017 to 30 June 2020.

Calvary has now entered into a formal Enforceable Undertaking (**EU**) with the FWO regarding these contraventions of the *Fair Work Act 2009*. Calvary will, as a result of the EU, commit to undertake a number of activities to ensure its ongoing compliance such as conducting two independent audits, implementing new payroll systems and processes, and workplace relations training for managers and human resources personnel.

Calvary understands that you may have questions and concerns relating to this and other employment issues. If you have a general enquiry about this or other employment issues, you can contact Calvary's Payroll Service Desk on 1800 741 741.

Under the EU, employees may also contact the Payroll Service Desk mailbox ([PayrollServiceDesk@calvarycare.org.au](mailto:PayrollServiceDesk@calvarycare.org.au)) with any concerns about:

- whether it has correctly calculated the amount it underpaid you; or
- other issues regarding your employment entitlements.

If you write to this mailbox, we are required under the EU to exercise all reasonable endeavours to reach an agreed resolution to your concern within 45 days of your email. If we are unable to reach an agreement with you within 60 days of your email, we will inform the FWO of the unresolved dispute.

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

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

Yours sincerely

<Employer name>

## Attachment C – Form of Workplace Notice

Calvary recently undertook a review of its payroll systems and processes and determined that it contravened the *Fair Work Act 2009* (Cth)) by:

- underpaying employees covered by the *Aged Care Services Australia Group Pty Ltd, ANMF and HWU (Victoria) Enterprise Agreement 2017* in relation to their penalty rate entitlements on Sundays, and associated annual leave loading entitlements between 10 April 2018 and 30 June 2020; and
- underpaying employees their lump sum parental leave entitlements between 1 January 2017 and 30 June 2020 under the following instruments:
  - *Japara Administration Pty Ltd Tasmanian Nurses and Aged Care Employees Enterprise Agreement 2018*;
  - *Aged Care Services Australia Group Pty Ltd, ANMF and HWU (Victoria) Enterprise Agreement 2017*;
  - *Aged Care Services Australia Group Pty Ltd South Australian Aged Care Employees Enterprise Agreement 2017*;
  - *Aged Care Services Australia Group Pty Ltd, NSWNMA & HSU Branch Enterprise Agreement 2014*; and
  - *Japara Administration Pty Ltd New South Wales Employee Enterprise Agreement 2019*.

Calvary has formally admitted to the Fair Work Ombudsman (FWO) that contraventions of the above Agreements had occurred in relation to Sunday penalty rates, annual leave loading and parental leave bonus payments and consequently a number of employees had been underpaid.

The underpayments occurred in the period 1 January 2017 to 30 June 2020.

Calvary has now entered into an Enforceable Undertaking (EU) with the FWO to ensure its ongoing compliance with Commonwealth workplace laws.

Calvary will, as a result of the EU, commit to undertake a number of activities to ensure its ongoing compliance such as conducting two independent audits and implementing a number of new payroll systems and processes.

Calvary expresses its sincerest regrets and apologises for these contraventions.

Calvary understands that you may have questions and concerns relating to this and other employment issues. If you have a general enquiry about this or other employment issues, you can contact Calvary's Payroll Service Desk on 1800 741 741.

Under the EU, employees may also contact the Payroll Service Desk mailbox (PayrollServiceDesk@calvarycare.org.au) with any concerns about:

- whether it has correctly calculated the amount it underpaid you; or

- other issues regarding your employment entitlements.

If you write to this mailbox, we are required under the EU to exercise all reasonable endeavours to reach an agreed resolution to your concern within 45 days of your email. If we are unable to reach an agreement with you within 60 days of your email, we will inform the FWO of the unresolved dispute.

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