

## **Enforceable Undertaking**

*Aged Care Quality and Safety Commission Act 2018*

Section 74EC

*Regulatory Powers (Standard Provisions) Act 2014*

Section 114

The commitments in this undertaking are offered to the Aged Care  
Quality and Safety Commissioner by:

**Aged Care Group Pty Ltd**

**ABN 74 358 903 943**

**RACS**

**Boronia Residential Aged Care (RACS ID 4250)**

**Carrum Downs Aged Care (RACS ID 4525)**

**Casey Manor (RACS ID 3633)**

**Northern Gardens Aged Care (RACS ID 3746)**

## **Part 1. Definitions**

In addition to terms defined elsewhere in this Undertaking and in the associated legislation, the following definitions are used:

**Acceptance Date** means the date of acceptance by the Commissioner of this Undertaking.

**Aged Care Act** means the *Aged Care Act 1997* (Cth).

**Aged Care Group** means Aged Care Group Pty Ltd (ACN 006 605 410), in its capacity as an approved provider.

**Approved provider** means a person approved by the Commissioner under section 63D of the Commission Act as a provider of aged care.

**Care minutes responsibilities** means the aged care responsibilities under section 10 of the Quality of Care Principles that relate to the required amounts of direct care (noting section 54-1(1)(h) of the Aged Care Act provides that it is a responsibility of an approved provider, in relation to the quality of the aged care that the approved provider provides, to comply with such other responsibilities as are specified in the Quality of Care Principles).

**Care recipients** means individuals receiving care and services from the approved provider through a service who are 'counted care recipients' (as is defined in section 10(4) of the Quality of Care Principles) for the purpose of the care minutes responsibilities

**Commission Act** means the *Aged Care Quality and Safety Commission Act 2018* (Cth).

**Commission Rules** means the *Aged Care Quality and Safety Commission Rules 2018* (Cth).

**Commission** means the Aged Care Quality and Safety Commission established by section 11 of the Commission Act.

**Commissioner** means the Commissioner of the Commission, or a person delegated under section 76 of the Commission Act to perform the Commissioner's functions or exercise the Commissioner's powers.

**Direct care** has the same meaning as the definition included in section 4 of the Quality of Care Principles.

**Direct care staff member** has the same meaning as the definition included in section 4 of the Quality of Care Principles.

**Enrolled nurse staff member** has the same meaning as the definition included in section 4 of the Quality of Care Principles

**Quality of Care Principles** means the *Quality of Care Principles 2014* (Cth).

**Registered nurse staff member** has the same meaning as the definition included in section 4 of the Quality of Care Principles

**Regulatory Powers Act** means the *Regulatory Powers (Standard Provisions) Act 2014* (Cth).

**Residential care service(s)** has the same meaning as in the Aged Care Act.

**Service(s)** means the residential care service(s), described below, through which the provider provides residential care:

- Boronia Residential Aged Care (RACS ID 4250), situated at 7 Coogee Street, Boronia VIC 3155;
- Carrum Downs Aged Care (RACS ID 4525), situated at 80 William Road, Carrum Downs VIC 3201;
- Casey Manor (RACS ID 3633), situated at 445 Ormond Road, Narre Warren South VIC 3085; and
- Northern Gardens Aged Care (RACS ID 3746), situated at 867 Sydney Road, Coburg North VIC 3058.

**Undertaking** means this Enforceable Undertaking.

## **Part 2. General Information**

### **2.1 The Commissioner's role**

The Commissioner may accept an Undertaking in accordance with section 114 of the Regulatory Powers Act.

### **2.2 Purpose**

The purpose of this Undertaking is to state the undertakings offered to the Commissioner under section 74EC of the Commission Act and section 114 of the Regulatory Powers Act in relation to the non-compliance described in Part 4 of this Undertaking.

### **2.3 Commencement**

This Undertaking commences on the acceptance date. Upon the Undertaking taking effect, the Undertaking may be enforced in accordance with section 115 of the Regulatory Powers Act.

### **2.4 Term of the Undertaking**

This Undertaking continues, as may be varied from time to time with the Commissioner's consent, from the acceptance date until it is withdrawn by Aged Care Group with the Commissioner's consent under section 114 of the Regulatory Powers Act or cancelled by the Commissioner under section 114 of the Regulatory Powers Act, whichever is earlier.

### **Part 3. Background**

- 3.1** Aged Care Group is responsible for 9 residential care services across Victoria, including the Services. Background information relating to each of the Services is set out below.

#### ***Boronia Residential Aged Care***

- 3.2** Boronia Residential Aged Care is situated at 7 Coogee Street, Boronia VIC 3155. Following a site audit which took place between 3 and 5 January 2023, this Service was reaccredited on 23 February 2023 until 23 February 2026.
- 3.3** As at the date of the Undertaking, this Service has 60 approved allocated places, there are 52 Care Recipients residing at the Service, and this Service's overall star rating (under the Aged Care Act) is three stars.
- 3.4** There are currently 66 direct care staff members who provide direct care to Care Recipients, and 16 further staff members who do not provide direct care.
- 3.5** The average amount of direct care provided through the service by direct care staff members of Aged Care Group per Care Recipient per day (as calculated under section 9 of the Quality of Care Principles) for the following period(s):
- October 2023 to December 2023 – 160 minutes
  - January 2024 to March 2024 – 158 minutes
  - April 2024 to June 2024 – 166 minutes
  - July 2024 to September 2024 – 175 minutes
- 3.6** The target direct care minutes for the following period(s)
- October 2023 to December 2023 – 204 minutes
  - January 2024 to March 2024 – 202 minutes
  - April 2024 to June 2024 – 203 minutes
  - July 2024 to September 2024 – 206 minutes

#### ***Carrum Downs Residential Aged Care***

- 3.7** Carrum Down Residential Aged Care is situated at 80 William Road, Carrum Downs VIC 3201. Following a site audit which took place between 14 and 16 March 2023, this Service was reaccredited on 3 May 2023 until 3 May 2026.
- 3.8** As at the date of the Undertaking, this Service has 50 approved allocated places, there are 48 care recipients residing at the Service.
- 3.9** There are currently 58 direct care workers who provide direct care to Care Recipients, and 11 further staff members who do not provide direct care.

**3.10** The average amount of direct care provided through the service by direct care staff members of Aged Care Group per Care Recipient per day (as calculated under section 9 of the Quality of Care Principles) for the following period(s):

- October 2023 to December 2023 – 169 minutes
- January 2024 to March 2024 – 171 minutes
- April 2024 to June 2024 – 177 minutes
- July 2024 to September 2024 – 182 minutes

**3.11** The target direct care minutes for the following period(s)

- October 2023 to December 2023 – 209 minutes
- January 2024 to March 2024 – 210 minutes
- April 2024 to June 2024 – 212 minutes
- July 2024 to September 2024 – 214 minutes

### ***Casey Manor***

**3.12** Casey Manor is situated at 445 Ormond Road, Narre Warren South VIC 3085. Following a site audit which took place between 2 and 4 November 2022, this Service was reaccredited on 16 January 2023 until 4 March 2026.

**3.13** As at the date of the Undertaking, this Service has 45 approved allocated places, there are 44 care recipients residing at the Service, and this Service's overall star rating (under the Aged Care Act) is three stars.

**3.14** There are currently 56 direct care workers who provide direct care to Care Recipients, and 16 further staff members who do not provide direct care.

**3.15** The average amount of direct care provided through the service by direct care staff members of Aged Care Group per counted care recipient per day (as calculated under section 9 of the Quality of Care Principles) for the following period(s):

- October 2023 to December 2023 – 188 minutes
- January 2024 to March 2024 – 172 minutes
- April 2024 to June 2024 – 186 minutes
- July 2024 to September 2024 – 183 minutes

**3.16** The target direct care minutes for the following period(s)

- October 2023 to December 2023 – 205 minutes
- January 2024 to March 2024 – 213 minutes
- April 2024 to June 2024 – 217 minutes

- July 2024 to September 2024 – 216 minutes

### ***Northern Gardens Aged Care***

- 3.17** Northern Gardens Aged Care is situated at 867 Sydney Road, Coburg North VIC 3058. Following a site audit which took place between 24 and 26 July 2023, this Service was reaccredited on 1 September 2023 until 25 March 2027.
- 3.18** As at the date of the Undertaking, this Service has 60 approved allocated places, there are 56 care recipients residing at the Service, and this Service's overall star rating (under the Aged Care Act) is three stars.
- 3.19** There are currently 78 direct care workers who provide direct care to care recipients, and 16 further staff members who do not provide direct care.
- 3.20** The average amount of direct care provided through the service by direct care staff members of Aged Care Group per counted care recipient per day (as calculated under section 9 of the Quality of Care Principles) for the following period(s):
- October 2023 to December 2023 – 178 minutes
  - January 2024 to March 2024 – 177 minutes
  - April 2024 to June 2024 – 187 minutes
  - July 2024 to September 2024 – 194 minutes
- 3.21** The target direct care minutes for the service for the following period(s):
- October 2023 to December 2023 – 225 minutes
  - January 2024 to March 2024 – 231 minutes
  - April 2024 to June 2024 – 232 minutes
  - July 2024 to September 2024 – 236 minutes

## Part 4. History of non-compliance

- 4.1** Aged Care Group compliance with its care minutes responsibilities, specifically section 9 of the Quality of Care Principles, has been the subject of regulatory and administrative action since at least May 2024. A history of the regulatory and administrative action taken against Aged Care Group with respect to its compliance with the care minutes responsibilities is as follows:
- 4.2** On 23 May 2024, the Aged Care Group met with the Commission to discuss its deficit in relation to care minute responsibility compliance, as well as challenges to meeting its responsibility and strategies undertaken.
- 4.3** On 25 June 2024, an assessment contact was carried out in relation to Carrum Downs Aged Care, specifically focusing on rostering, care minute targets, recruitment and staff education. The Service was found compliant with all assessed Quality Standards (within the meaning of the Quality of Care Principles) (**Aged Care Quality Standards**), however a deficit related to the Care minute responsibilities remained.
- 4.4** On 29 June 2024, an assessment contact was carried out at in relation to Casey Manor Aged Care, specifically focusing on rostering, care minute targets, recruitment and staff education. The Service was found compliant with all assessed Quality Standards (within the meaning of the Quality of Care Principles) (**Aged Care Quality Standards**), however a deficit related to the Care minute responsibilities remained.
- 4.5** On 30 October 2024, the Aged Care Group received a Notice to Give Information or Produce Documents under section 74GA of the Commission Act (**Notice**). The Notice required that Aged Care Group provide the Commission with certain information and documents regarding its compliance with its care minutes responsibilities. Aged Care Group complied with the Notice by providing the Commission with the information and documents sought:
- Rosters for the Registered Nurse staff members for the 4 weeks leading up to 30 October 2024;
  - Payroll Reports for the 4 weeks leading up to 30 October 2024;
  - Internal Roster Variance Reports that document the number of direct care minutes achieved at each service, reported on by the service Managers to the General Manager, People & Culture Manager and CEO on a fortnightly basis.
- 4.6** On 8 November 2024, the Aged Care Group received a letter from the Commission which stated that an analysis of the Services highlighted that the Services maintained large deficit in meeting compliance with Care minutes responsibilities across three quarters, and gave Aged Care Group the opportunity to offer the Commission an Enforceable Undertaking that set out reasons for failing to meet responsibility and the actions it will take to meet its care minutes responsibilities in a reasonable timeframe.
- 4.7** On 25 November 2024, confirmed that the Aged Care Group would offer the Commission an Enforceable Undertaking.
- 4.8** The following factors have impacted the Aged Care Group's compliance with its care minutes responsibilities:

**4.8.1** High turnover of service Managers at Casey Manor Aged Care, Carrum Downs Aged Care and Boronia Aged Care due to the incumbents not being the right cultural fit for Aged Care Group and consequent workforce issues; and

**4.8.2** Negotiations with the Australian Nursing and Midwifery Federation regarding clinical restructures across multiple Homes whereby Enrolled Nurses were replaced with Registered Nurses.

**4.9** Since September 2023, the Aged Care Group has improved its compliance with its Care minutes responsibilities by recruiting additional Direct care staff members to fill additional shifts in the rosters for each of the Services.

**4.10** In response to the non-compliance identified at Northern Gardens Aged Care Service;

- Direct Care was increased by Registered Nurse staff members at the Service by 77.5 hours, resulting in the Service being compliant with its Care minute responsibilities since 6 December 2024;
- 1 Registered Nurse was employed;
- Aged Care Group will continue to monitor this Service to ensure it remains compliant.

**4.11** In response to the non-compliance identified at Casey Manor Aged Care;

- Direct Care was increased by Registered Nurse staff members at the Service by 74 hours, resulting in the Service being compliant with its Care minute responsibilities since 18 November 2024;
- 1 Registered Nurse was employed;
- Aged Care Group will continue to monitor this Service to ensure it remains compliant.



## **Part 5. Acknowledgement of Commissioner's concerns**

- 5.1** As a result of the matters referred to in Part 4 above, the Commissioner has, and continues to have, concerns with respect to the provider's compliance with its care minutes responsibilities, specifically subsection 9(1) of the Quality of Care Principles in respect of the Services for the relevant quarter, under section 10(2) of the Quality of Care Principles.

## **Part 6. Admissions**

- 6.1** Aged Care Group admits the non-compliance identified in Part 4 and accepts the Commissioner's concerns identified in Part 5.

## **Part 7. Undertakings**

- 7.1** In accordance with the operation of section 114 of the Regulatory Powers Act and section 74EC of the Commission Act, the provider has offered, and the Commissioner has accepted, the following undertakings:
- 7.1.1** to establish a new role of 'Group Clinical Educator' with responsibilities including training of direct care workers and to recruit, employ and train an individual for the role of 'Group Clinical Educator' by 24 February 2025;
  - 7.1.2** at Northern Gardens Aged Care, monitoring will continue to ensure sustained compliance with care minutes responsibilities.
  - 7.1.3** at Casey Manor Aged Care, monitoring will continue to ensure sustained compliance with care minutes responsibilities.
  - 7.1.4** at the Boronia Residential Aged Care Service:
    - 7.1.4.1** to increase Registered Nurse staff members hours in the fortnightly roster for the Service by 77.5 hours by 24 February 2025 from current hours of 285.5 hours;
    - 7.1.4.2** to appoint two additional Registered Nurse staff members by 24 February 2025, to bring net Registered nurse staff members to 8.
  - 7.1.5** at the Carrum Downs Aged Care Service:
    - 7.1.5.1** to increase Registered Nurse staff members hours in the fortnightly roster for the Service by 332 hours by 24 February 2024, from current hours of 74 hours;
    - 7.1.5.2** to appoint three additional Registered Nurse staff members by 24 February 2025, resulting in a net 7 Registered nurse staff members at the service.
  - 7.1.6** Provide a report detailing the below within one week of the calendar month beginning on 1 February 2025: demonstrating with clear evidence:
    - 7.1.6.1** what steps Aged Care Group has taken to give effect to each undertaking;

- 7.1.6.2 the impact of those steps on achieving compliance with its care minutes responsibilities; and
- 7.1.6.3 a statement explaining how compliance will be sustained.
- 7.1.6.4 Attached evidence:
  - Recruitment data;
  - Internal Roster Variance Reports which document the total direct care minutes achieved at each Service on a fortnightly basis based on shifts filled in the roster.

## 7.2 Commitment

- 7.2.1 Aged Care Group commits to giving the Commission information and/or documents in response to any request the Commission may make for information and/or documents to monitor progress and compliance with the terms of the undertaking throughout the duration of the Undertaking.
- 7.2.2 Aged Care Group is responsible for demonstrating compliance with the Undertaking and evidence of compliance will be submitted to the Commission in accordance with clauses section 114 of the Regulatory Powers Act and section 74EC of the Commission Act Costs of Compliance.
- 7.2.3 Aged Care Group undertakes that it will pay all costs associated with its compliance with this Undertaking.

## Part 8. Acknowledgments and statements

- 8.1 Aged Care Group acknowledges that the Commissioner:
  - 8.1.1 Will publish this Undertaking on the Commission's website.
  - 8.1.2 May make public reference, including by way of media release and/or Commission publications, to the acceptance of this Undertaking, referring to its terms and to the concerns of the Commissioner which led to its acceptance. However, the terms of any media release must be consistent with this Undertaking.
- 8.2 Aged Care Group acknowledges that:
  - 8.2.1 This Undertaking has no operative force until accepted by the Commissioner.
  - 8.2.2 The date of the Undertaking is the date on which it is accepted by the Commissioner.
  - 8.2.3 The Undertaking is given voluntarily by Aged Care Group, who has had the opportunity to obtain legal advice in relation to its obligations under, and the effect of, this Undertaking.
  - 8.2.4 The Commissioner's acceptance of this Undertaking does not affect any rights, remedies and powers available to the Commission, or the Commonwealth.

- 8.2.5 The Commission may undertake compliance monitoring activities to verify the evidence submitted as required by Part 7 and Aged Care Group's compliance with the Undertaking.
- 8.2.6 The Commissioner has the power to enforce the Undertaking under section 115 of the Regulatory Powers Act and may exercise this power if any requirement or condition of the Undertaking is breached.
- 8.2.7 If any part of this Undertaking is held invalid, that part shall be severed from this Undertaking and the remainder of this Undertaking will continue to be valid and enforceable.
- 8.2.8 The references to provisions of Commonwealth Acts of Parliament and Legislative Instruments in this Undertaking shall include references to those provisions as amended from time to time and in the event of a repeal of any of them, any equivalent provision from time to time.

### **8.3 Statement of ability to comply**

- 8.3.1 Aged Care Group confirms it has the operational and financial capacity to comply with the Undertaking.

**Part 9. Provision of Documents**

9.1 The address for providing the Commission with any notice or document which this Undertaking requires to be provided is:

Via email to [compliance@agedcarequality.gov.au](mailto:compliance@agedcarequality.gov.au) attention Scott Rumbold, Senior Director Compliance.

If you are unable to provide the document by way of email, please send to:

**Aged Care Quality and Safety Commission**

GPO Box 9819

CANBERRA ACT 2601

**Executed by Aged Care Group Pty Ltd**

**ACN 006 605 410** in accordance with its constitution



Signature of president



Signature of secretary

CAMERON MCPHERSON

Name of president  
*(please print)*

LAUREN MUIR

Name of secretary  
*(please print)*

Date accepted by the Commissioner: 19 December 2024

**ACCEPTED** by the **AGED CARE QUALITY AND SAFETY COMMISSIONER** or **DELEGATE** under section 74EC of the Commission Act and Section 114 of the Regulatory Powers Act



Peter Edwards a/g Deputy Commissioner

Aged Care Quality and Safety Commissioner or Delegate



Witness

Scott Rumbold

Witness full name *(please print)*