



## **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:

Ejaz Nominees Pty Ltd (ACN 005 989 800) (ATF Lucinda Unit Trust) (ABN 158 242 956 10)

RACS 4043

18 Adeline Street Greensborough VIC 3088

## 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).

**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.

**Ejaz Nominees** means Ejaz Nominees Pty Ltd (ACN 005 989 800) as trustee for the Lucinda Unit Trust (ABN 158 242 956 10), in its capacity as an Approved Provider with RACS ID 4043

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

**Personal care workers** are those workers included in the definition of Direct care staff members 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).

**Service** means the residential care service, described below, through which the Approved Provider provides residential care:

- Deloraine Private Nursing Home, 18 Adeline Street Greensborough VIC 3088

**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 Ejaz Nominees 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**

#### ***Deloraine Private Nursing Home***

- 3.1** Ejaz Nominees is a family-owned and operated business that has been providing aged care residential services at the Service for over forty-one (41) years.
- 3.2** The Service is a single-site service located at 18 Adeline Street, Greensborough, VIC 3088.
- 3.3** Ejaz Nominees has had approval to operate a residential care service since 6 June 1983 and has been accredited by the Commission until 6 February 2026.
- 3.4** The Service has 75 approved allocated places, and as at 13 December 2024 there are 47 Care recipients currently at the Service.
- 3.5** As at 13 December 2024 there are eight (8) Key Personnel at the Service which comprises of the following: Executive Director, Non-executive Directors, Company Secretary, Director of Care Services, Operations Managers and Finance Manager.
- 3.6** The Service currently has an overall star rating of 3 stars.
- 3.7** As at 13 December 2024, there are fifty-three (53) Direct care staff members at the Service.
- 3.8** As at 13 December 2024, there are approximately eight (8) staff members employed at the Service covering roles which are classified as not Direct care staff members. These include Operations Managers, Customer Service, Payroll and Administration, Laundry, Leisure and Lifestyle, and Finance. There are also approximately eleven (11) on-site contractors at the Service covering roles which are classified as not Direct care. These include physiotherapy, catering, maintenance and cleaning services.
- 3.9** Data provided by Ejaz Nominees to the Department of Health and Aged Care reported that the average amount of Direct care provided through the Service by Direct care staff members of Ejaz Nominees per care recipient per day (as calculated under s9(1)) for the following period(s) was as follows:

3.9.1 October 2023 to December 2023 - 162 minutes involving:

- 3.9.1.1 an average of 39 minutes by a Registered nurse staff member (a short-fall of 0.3 minutes against a care minutes responsibility of 39.3 minutes); and
- 3.9.1.2 a total average shortfall of 32.07 direct care minutes (against care minutes responsibility of 194.07 direct care minutes);

3.9.2 January 2024 to March 2024 - 155 minutes, involving:

- 3.9.2.1 an average of 40 minutes by a Registered nurse staff member (a short-fall of 0.84 minutes against a care minutes responsibility of 40.84 minutes); and
- 3.9.2.2 a total average shortfall of 46.05 direct care minutes (against a care minutes responsibility of 201.05 minutes);

3.9.3 April 2024 to June 2024 - 165 minutes, involving:

- 3.9.3.1 an average of 42 minutes by a Registered nurse staff member (in excess of a care minutes responsibility of 41.58 minutes); and
- 3.9.3.2 a total average shortfall of 39.48 minutes (against a care minutes responsibility of 204.48 direct care minutes);

3.9.4 July 2024 to September 2024 - 163 minutes, involving:

- 3.9.4.1 an average of 41 minutes by a Registered nurse staff member (a short-fall of 0.22 minutes against a care minutes responsibility of 41.22 minutes); and
- 3.9.4.2 a total shortfall of 39.72 direct care minutes (against a care minutes responsibility of 202.72 minutes).

#### **Part 4. History of non-compliance**

- 4.1** Ejaz Nominees' compliance with its Care minutes responsibilities, specifically in relation to section 10(2) of the Quality of Care Principles, based on the data reported by it and summarised in paragraphs 3.9.1 to 3.9.4 inclusive above, has been the subject of regulatory and administrative action since 3 June 2024.
- 4.2** A history of the regulatory and administrative action taken against Ejaz Nominees with respect to its compliance with the Care minutes responsibilities is as follows:
  - On 3 June 2024, the Commission emailed the Ejaz Nominees noting that it was below its care minute targets (that is, its Care minutes responsibilities) for the quarterly reporting period October 2023 to December 2023 in the following terms:

- “Registered nurse staff member Shortfall: Target met or less than 1 minute below target”
- “Total Shortfall: 30 minutes or more below target”
- On 30 October 2024, the Commission emailed Ejaz Nominees and issued a notice (**Notice**) pursuant to section 74GA(1) of the Commission Act. In its cover email, the Commission noted that it had been monitoring all providers’ compliance with care minute targets (that is, its Care minutes responsibilities) and that following an analysis of quarter four data (being April 2024 to June 2024), there were care minute gaps (against its Care minutes responsibilities) in that quarter and the two preceding quarters (being October 2023 to December 2023 and January 2024 to March 2024). The Notice required the Ejaz Nominees to give information and/or produce documents in relation to its Care minute responsibilities by 4 November 2024.
- On 30 October 2024, the Ejaz Nominees contacted the Commission by telephone and email seeking an extension from 4 November 2024 to 15 November 2024 to respond to the Notice.
- On 31 October 2024, the Commission emailed the Ejaz Nominees confirming that an extension to respond to the Notice had been granted to 12.00pm on 8 November 2024.
- On 8 November 2024, Ejaz Nominees provided the Commission a response to the Notice. In its response Ejaz Nominees noted the following:
  - A number of factors had coalesced that had contributed to the shortfall in meeting Care minute responsibilities. These factors included unsuccessful recruitment due to candidates not meeting the Service’s standards or requirements; leading to resources being diverted to focus on recruitment of new Direct care staff members; and resources being diverted to focus on implementing recent regulatory reform and delivering on new regulatory reporting requirements.
  - Since receipt of the Notice, Ejaz Nominees has taken immediate steps towards meeting overall care minute targets (that is, its Care minutes responsibilities), including implementing a revised roster which was intended to increase the overall amount of Direct care at the Service by approximately 26 minutes per care recipient per day to approximately 190 minutes per Care recipient per day (which is approximately 90% of the overall current direct care minute target). (Even though the revised roster was implemented, Ejaz Nominees still needed to recruit further Direct care staff members in order to meet its Care minutes responsibilities. Ejaz Nominees has, since the Notice, recruited 8 Direct care staff members, being 7 Personal care workers and 1 Enrolled nurse staff member).

- On 8 November 2024, Ejaz Nominees received a letter from the Commission giving it the opportunity to offer an enforceable undertaking in relation to meeting its care minute responsibilities and setting out what actions Ejaz Nominees undertake to take to meet its Care minutes responsibilities in relation to the Service.

## **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 Ejaz Nominees compliance with its Care minutes responsibilities (specifically the Care minutes responsibilities set out in section 10(2) of the Quality of Care Principles).

## **Part 6. Admissions**

- 6.1** Ejaz Nominees 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, Ejaz Nominees has offered, and the Commissioner has accepted, the undertakings set out in paragraphs 7.1.1 to 7.1.4 (inclusive) below:

**7.1.1** Between 1 January 2025 and 31 March 2025 (**Applicable Period**), Ejaz Nominees will take steps to identify and recruit additional Direct care staff members (being either Personal care workers or Enrolled nurse staff members) so that there is a net increase of 2 Direct care staff members at the Service from 53 to 55.

**7.1.2** Between 1 January 2025 and 31 March 2025, Ejaz Nominees will progressively increase the minutes of Direct care provided by Direct care staff members at the Service from 190.17 minutes\* to 208.02 minutes per Care recipient per day (an increase of 17.85 minutes) so that by 31 March 2025 Ejaz Nominees will be providing 208.02 minutes of Direct care per Care recipient per day to bring it into compliance with its Care minutes responsibilities. Should the Care minutes responsibilities at the Service change the increases discussed in Part 7.1.2 may be amended in discussion with the Commission.

\*190.17 minutes is the average Direct Care provided by Direct care staff members per day that the Service was providing in the fortnight ended 1 December 2024. The increase of 17.85 minutes equates to approximately 14 hours per day of additional rostered Direct care (from 150 hours to 164 hours per day) over and above the 150 hours per day on average that the Service was providing in the fortnight ended 1 December 2024 for 47 Care recipients.

7.1.3 For the period covering 1 January 2025 until 31 March 2025, Ejaz Nominees will provide the Commission with an update (**Commission Update**) including:

- The number of Care recipients at the Service;
- The net increase or decrease in Direct care staff members at the Service;
- The minutes of Direct care per Care Recipient achieved at the Service (in respect of the preceding four (4) week period); and
- The minutes of Direct care per Care Recipient achieved at the Service against its Care minutes responsibilities (in respect of the preceding four (4) week period).

7.1.4 The Commission Update shall be provided every four (4) weeks (to coincide with rostering periods at the Service), starting on and from 3 February 2025, and the purpose of these updates is to enable the Commission to assess Ejaz Nominee's compliance with paragraphs 7.1.1, 7.1.2 and 7.1.3 above.

## **7.2 Commitment**

Ejaz Nominees 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.

Ejaz Nominees is responsible for demonstrating compliance with the Undertakings. Ejaz Nominees commits to providing evidence of its compliance with the Undertakings to the Commission in accordance with clause 7.1.4 above.

## **7.3 Costs of Compliance**

Ejaz Nominees undertakes that it will pay all costs it incurs in complying with this Undertaking.



## **Part 8. Acknowledgments and statements**

### **8.1** Ejaz Nominees acknowledges that the Commissioner:

Will publish this Undertaking on the Commission's website.

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** Ejaz Nominees acknowledges that:

This Undertaking has no operative force until accepted by the Commissioner.

The date of the Undertaking is the date on which it is accepted by the Commissioner.

The Undertaking is given voluntarily by Ejaz Nominees, who has obtained legal advice in relation to its obligations under, and the effect of, this Undertaking.

The Commissioner's acceptance of this Undertaking does not affect any rights, remedies and powers available to the Commission, or the Commonwealth.

The Commission may undertake compliance monitoring activities to verify the evidence submitted as required by Part 7 and Ejaz Nominees compliance with the Undertaking.

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.

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.

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**

Ejaz Nominees 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 Ejaz Nominees Pty Ltd  
(ACN 005 989 800) ATF the Lucinda  
Unit Trust in accordance with s127 of  
the Corporations Act 2001 (Cth)

*Richard Jenkins*

Signature of Director

Richard Jenkins

Name of Director  
*(please print)*

*Elizabeth Jenkins*

Signature of Company Secretary

Elizabeth Jenkins

Name of Company Secretary  
*(please print)*

Date accepted by the Commissioner: 20/12/2024 | 16:43 AEDT

**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

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*Peter Edwards*  
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Peter Edwards a/g Deputy Commissioer

Aged Care Quality and Safety  
Commissioner or Delegate

DocuSigned by:  
*Scott Rumbold*  
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Witness

Scott Rumbold

Witness full name *(please print)*