

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 voluntarily offered to the Aged Care Quality and Safety
Commissioner by:

Estia Investments Pty Ltd

ABN 87 164 350 387

Provider ID 5951

Level 9, 227 Elizabeth Street

Sydney, NSW, 2000

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 has the same meaning as the definition included in section 7 of the Commission Act.

Care Minute Responsibilities means the aged care responsibilities under section 10 of the Quality of Care Principles that relate to the required amounts of direct care as calculated under section 9 of the Quality of Care Principles (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 Estia Health 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 Minute 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.

Completion Date means the date by which Estia Health achieves the undertaking under clause 6.1(a).

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

Estia Health means Estia Investments Pty Ltd, in its capacity as an Approved Provider.

Home/s means the residential care services, described below, through which Estia Health provides residential care:

1. Name: **Estia Health Valley View**
Address: 66 Nelson Road, VALLEY VIEW SA 5093
RACS ID: 4296

2. Name: Estia Health Golden Grove

Address: The Viceroy, 27 Captain Robertson Avenue, GOLDEN GROVE SA 5125
RACS ID: 4375

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

Quality Standards means the Aged Care Quality Standards contained in Schedule 2 of 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).

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 voluntarily by Estia Health to the Commissioner under section 74EC of the *Commission Act* and section 114 of the *Regulatory Powers Act* in relation to non-compliance with 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 the Completion Date, or the date it is withdrawn by Estia Health with the Commissioner's consent under section 114(3) of the *Regulatory Powers Act* or the date it is cancelled by the Commissioner under section 114(5) of the *Regulatory Powers Act*, whichever is earlier.

Part 3 Background

3.1 Background

Estia Health is the Approved Provider for all 78 residential aged care services operated by Estia Health across QLD, NSW, VIC and SA.

The requirement for each residential aged care service to provide the required amounts of Direct care was introduced on 1 October 2023. On 1 October 2024, the sector average target was increased from 200 direct care minutes to 215 direct care minutes.

Estia Health's compliance with the Care Minute Responsibilities at the Homes has been hampered by a number of significant challenges including workforce supply which have been experienced across the sector.

3.2 **Estia Health's commitment**

Estia Health acknowledges that the Care Minutes Responsibilities have not been met at the Homes and is committed to ensuring that it meets the Care Minute Responsibilities at its Homes.

Estia Health is implementing a range of measures to achieve compliance with the Care Minutes Responsibilities at the Homes, including those detailed in clause 6.1 below. Estia Health takes its responsibilities and the commitments given under this Undertaking seriously and will continue to closely monitor performance and progress towards meeting its responsibilities.

3.3 **Background in relation to Estia Health Valley View**

(a) Estia Health Valley View has the following characteristics:

- (i) Estia Health Valley View was accredited for a three-year duration expiring on 3 March 2025. On 18-20 November 2024, the Home underwent a full re-accreditation site audit by the Commission. The Commission's assessment team recommended that the Home met all requirements of the Quality Standards. Estia Health Valley View also had assessment contacts by the Commission in January and June 2024, in which requirements including clinical care and workforce were assessed as compliant.
- (ii) Estia Health Valley View has 84 operating places with 79 Care Recipients as at 27 November 2024.
- (iii) Estia Health Valley View has a full time Residential Aged Care Manager (**RACM**) and Care Director allocated to the Home.
- (iv) Estia Health Valley View has a 3-star rating (which is classified as '*acceptable*').
- (v) There are eighty-three (83) Direct care staff members at Estia Health Valley View as of 27 November 2024.
- (vi) There are twenty-five (25) other staff employed at Estia Health Valley View in roles such as Lifestyle, Food Service, Allied Health and Maintenance as of 27 November 2024.
- (vii) Thirty-eight (38) new employees have been onboarded in Estia Health Valley View between 1 January 2024 to October 2024.

(b) The average amount of Direct care minutes provided by Direct care staff members per Care Recipient per day (as calculated under s9(1)) of the Quality of Care Principles) for the following periods is as follows:

- (i) October 2023 to December 2023: 172 minutes
- (ii) January 2024 to March 2024: 171 minutes
- (iii) April 2024 to June 2024: 175 minutes
- (iv) July 2024 to September 2024: 183 minutes

- (v) Month of October 2024: 198 minutes
- (vi) Month of November 2024: 227 minutes

3.4 **Background in relation to Estia Health Golden Grove**

- (a) Estia Health Golden Grove has the following characteristics:
 - (i) Estia Health Golden Grove was accredited for a three-year duration, with expiry on 13 December 2025. Estia Health Golden Grove also had an assessment contact by the Commission in July 2024, in which requirements including workforce were assessed as compliant.
 - (ii) Estia Health Golden Grove has 102 operating places with 101 Care Recipients as at 27 November 2024.
 - (iii) Estia Health Golden Grove has a full time RACM and Care Director allocated to the Home.
 - (iv) Estia Health Golden Grove has a 3-star rating (which is classified as '*acceptable*').
 - (v) There are one hundred and one (101) Direct care staff members at Estia Health Golden Grove as of 27 November 2024.
 - (vi) There are thirty (30) other staff employed at Estia Health Golden Grove in roles such as Lifestyle, Food Service, Allied Health and Maintenance as of 27 November 2024.
 - (vii) Twenty-seven (27) new employees have been onboarded into Estia Health Golden Grove between 1 January 2024 to October 2024.
- (b) The average amount of Direct care provided through Estia Health Golden Grove by Direct care staff members per Care Recipient per day (as calculated under s9(1)) of the Quality of Care Principles) for the following periods is as follows:
 - (i) October 2023 to December 2023: 181 minutes
 - (ii) January 2024 to March 2024: 185 minutes
 - (iii) April 2024 to June 2024: 186 minutes
 - (iv) July 2024 to September 2024: 188 minutes
 - (v) Month of October 2024: 204 minutes
 - (vi) Month of November 2024: 211 minutes

3.5 **Progress towards and challenges with meeting Care Minutes Responsibilities at both Homes**

- (a) Since the introduction of the Care Minutes Responsibilities, both Homes have significantly increased their Direct care minutes, as demonstrated by the data provided in 3.3 and 3.4 above.

Between the quarter ended 30 September 2023 and the month ended 30 November 2024, care minutes have increased by 39 minutes(s) at Estia Health Golden Grove and 73 minutes(s) at Estia Health Valley View.

- (b) Notwithstanding the significant improvement, both Homes are forecast to remain below their Care Minutes Responsibilities for the current quarter (ending December 2024).
- (c) Both Homes have met their requirements to have a Registered Nurse onsite at all times.
- (d) There have been a number of factors that have impacted progress towards achieving the Care Minutes Responsibilities at these Homes:
 - (i) While master rosters have been set to meet Care Minutes Responsibilities, unplanned leave has been at a level where sufficient replacements cannot be sourced at short notice (~6.5% in September 2024).
 - (ii) Both Homes have historically had a significant reliance on employees on student visas (due to shortage of other suitable workforce). The changed restrictions on their working hours to a maximum of 48 hours a fortnight from January 2024 has impacted labour availability.
 - (iii) Both Homes have Care Minute Responsibilities well above the industry average for total care minutes for the September 2024 quarter (200 minutes), based on their higher acuity Care Recipient mix (Golden Grove 220 minutes & Valley View 219 minutes). Therefore, while being in a position to support higher acuity Care Recipients, the relative uplift required at these Homes was more significant.
 - (iv) Both Homes have experienced strong occupancy in excess of 98% over the preceding 12 months reflective of strong demand for residential aged care places in South Australia. While seeking to support their local communities, this in turn increases the staffing requirements needed for the Homes to support compliance with the Care Minutes Responsibilities.
 - (v) Both Homes have a number of Enrolled Nurses in their rosters, in addition to Registered Nurses, which has an impact on meeting registered nurse care minutes. From October 2024, the Department of Health and Aged Care permitted providers to demonstrate compliance with up to 10% of the relevant Registered Nurse care minutes target through Enrolled Nurse minutes. This change will positively contribute to the total Registered Nurse care minutes at the Homes.
 - (vi) The volume of recruitment required across the Estia Health portfolio has been significant, with an increase in employee numbers of 1,126 in 2024 alone. There is a dedicated Talent Acquisition team within Estia Health, including dedicated resources allocated to South Australia.
 - (vii) Estia Health has an approved Aged Care Industry Labour Agreement (**ACILA**), however this was only ratified for South Australia in May 2024 following the finalisation of the required Memorandum of Understanding with relevant trade unions. As of 27 November 2024, one ACILA visa submitted by Estia Health in South Australia has been approved by the Department of Home Affairs and efforts to progress these visas continues.

Part 4 History of non-compliance in relation to Care Minutes Responsibilities

4.1 Estia Health has engaged with the Commission both informally, and formally through the following engagement:

- (a) On 31 May 2024, the Commission asked Estia Health to participate in a 30-minute meeting involving the executive of the Commission, representatives from the Department of Health and Aged Care, and Estia Health's Chief Executive Officer. The purpose of the meeting was to discuss Direct care minute targets, following the Commission and the Department's analysis of the first tranche of Care Minutes Responsibilities data. The Commission highlighted that the meeting was part of broader engagement with CEOs of providers identified as having gaps in meeting Care Minute Responsibilities. The discussion was intended to explore contributing factors and outline steps being undertaken to address the identified gaps and achieve compliance.
- (b) On 28 October 2024, Estia Health received a notice given by the Commission under section 74GA of the Commission Act requiring Estia Health to give information and/or produce documents in relation to Care Minute Responsibilities at Estia Health Golden Grove and Estia Health Valley View.
- (c) On 6 November 2024, Estia Health supplied the Commission detailed information in regard to the two Homes, including:
 - (i) information relating to the challenges associated with meeting Care Minutes Responsibilities at the Homes; and
 - (ii) current care minute information for the quarter ended September 2024 and the months of September 2024 and October 2024.
- (d) On 8 November 2024, Estia Health received a letter from the Commission advising of a decision to place Estia Health under active supervision in relation to the Care Minutes Responsibilities at the two Homes and seeking a formalised commitment from Estia Health to meet the Care Minutes Responsibilities.
- (e) Estia Health has voluntarily elected to engage with the Commission and provide a formal undertaking acknowledging its non-compliance and demonstrating its commitment to meet the Care Minutes Responsibilities at the Homes.

Part 5 Estia Health's acknowledgements

Estia Health:

- (a) acknowledges the Care Minutes Responsibilities specifically, section 10(2), 10(3) and 10(3A) of the Quality of Care Principles are not being met at the Homes; and
- (b) is committed to meeting the Care Minutes Responsibilities at the Homes.

Part 6 Undertakings

In accordance with the operation of section 114 of the Regulatory Powers Act and section 74EC of the Commission Act, Estia Health has offered, and the Commissioner has accepted, the following undertakings to achieve compliance with Care Minutes Responsibilities at the Homes.

6.1 Undertakings in relation to Estia Health Valley View and Estia Health Golden Grove

Estia Health undertakes to:

- (a) by no later than 31 March 2025, meet total Care Minutes Responsibilities at both Homes, with sustained compliance for a calendar month demonstrated to the Commission;
- (b) by 31 January 2025, appoint an additional Talent Acquisition Business Partner focussed on recruitment in South Australia to work with the Homes to ensure recruitment resources are sufficient to grow and maintain the workforce to meet Care Minute Responsibilities;
- (c) maintain the allocation of a resource in the Estia Health Central Workforce Planning team to work directly with the Homes to ensure rosters are fully allocated and recruitment targets are understood and being met;
- (d) by 14 February 2025, establish a formal casual pool across the two Homes to provide roster flexibility for unplanned leave and unexpected workforce shortages and support sustained compliance with the Care Minutes Responsibilities. This casual pool will be managed by the Estia Health Central Workforce Planning team to ensure equitable access for both Homes.
- (e) by 14 February 2025, increase the number of Direct care staff members employed at each Home by at least [7] staff, increasing Estia Health Valley View from 83 to [90] and Estia Health Golden Grove from 101 to [108].
- (f) Provide a monthly report to the Commission on progress towards achieving the undertakings listed in this section 6.1 within one week of the end of each calendar month, commencing from January 2025.

6.2 Commitment

- (a) Estia Health 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.
- (b) Estia Health is responsible for demonstrating compliance with the Undertaking and evidence of compliance will be submitted to the Commission in accordance with Section 6.1(f).

6.3 Costs of Compliance

Estia Health undertakes that it will pay all costs associated with its compliance with this Undertaking.

Part 7 Acknowledgments and statements

7.1 Estia Health acknowledges that the Commissioner:

- (a) Will publish this Undertaking on the Commission's website.
- (b) 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.

7.2 Estia Health acknowledges that:

- (a) This Undertaking has no operative force until accepted by the Commissioner.
- (b) The date of the Undertaking is the Acceptance Date.
- (c) The Undertaking is given voluntarily by Estia Health, which has had the opportunity to obtain legal advice in relation to its obligations under, and the effect of, this Undertaking.
- (d) The Commissioner's acceptance of this Undertaking does not affect any rights, remedies and powers available to the Commission, or the Commonwealth.
- (e) The Commission may undertake compliance monitoring activities to verify the evidence submitted as required by Section Part 6 and Estia Health's compliance with the Undertaking.
- (f) 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.
- (g) 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.
- (h) 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.

Part 8 Statement of ability to comply

Estia Health confirms it has the operational and financial capacity to comply with the Undertaking.

Part 9 Provision of Documents

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, 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 Estia Investments Pty Ltd ACN 164 350 387 in accordance with section 127 of the *Corporations Act 2001* (Cth):



Director

Sean Anthony Bilton

Name of Director



Company Secretary

Leanne Ralph

Name of Company Secretary

Date accepted by the Commissioner: 23 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 Commission
or Delegate



Witness

Scott Rumbold

Witness full name (*please print*)