



**HARDI**  
AGED CARE

## **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:

**Manly Vale Nursing Home PTY LTD**

**ABN 81 000 863 178**

**RACS 2603**

**CNR CONDAMINE & GORDON STREETS**

**MANLY VALE NSW**

## Part 1. Definitions

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

**Manly Vale Nursing Home** means Manly Vale Nursing Home Pty Ltd, in its capacity as an approved provider.

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

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

**Approved provider** means a person approved by the Commissioner or Delegate 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.

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

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

**Nursing assistant staff** 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).

**Commission Notice** means an official communication issued by the Aged Care Quality and Safety Commission. This notice may request information or the production of documents, or it may present findings from assessments or audit related to compliance issues.

**Executive Funding Analysis and Business Partner** means the group manager who is responsible for overseeing and assisting the facilities to comply with the care minutes obligation and workforce responsibilities.

**Total Occupied Bed Days** means the number of beds occupied in the entire quarter.

**Service(s)** means the residential care service(s), described below, through which Manly Vale Nursing Home provides residential care:

- Manly Vale Nursing Home Pty Ltd
- Address: Crn Condamine & Gordon Streets, Manly Vale NSW 2093

**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 commencement date until it is withdrawn by Manly Vale Nursing Home, 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**

Hardi Aged Care operates six facilities, including Manly Vale Nursing Home, all located in New South Wales (NSW).

Each facility holds its own separate ABN and is recognized as an independent Approved Provider.

### **3.2**

Manly Vale Nursing Home is approved to provide care and accommodation for 92 Care recipients, though it currently has 70 Care recipients in care.

Manly Vale Nursing Home is accredited as an Approved Provider until the 26<sup>th</sup> of October 2025, with a 3 year accreditation. The service is managed by two key personnel: the Facility Manager, who oversees the day-to-day operations, and the Assistant Facility Manager, who is responsible for clinical care.

Manly Vale Nursing Home currently holds a 3-star rating.

**3.3 Number of direct care staff members currently employed at the service:**

Assistant Facility Manager = 1

Registered Nurse staff members = 14

Nursing Assistant Staff members = 64

**3.4 Number of other staff (not direct care staff members) currently employed at the service:**

Facility Manager = 1

Facility Clerical Officer = 1

Maintenance Manager = 1

Lifestyle = 4

Catering = 16 including Catering Manager

Housekeeping = 4

**3.5 The average amount of Direct care provided through the Service by Direct care staff members of Manly Vale Nursing Home per Care recipient per day for the following period(s):**

- October 2023 to December 2023 – Actual RN care minutes 32 Total care minutes 171 versus Target RN care minutes 40.84 Total Care Minutes 209.58 and Total Occupied Bed Days: 7290
- January 2024 to March 2024 – Actual RN care minutes 34 Total care minutes 175 versus Target RN care minutes 41.25 and Total Care Minutes 211.54 Total Occupied Bed Days: 6996
- April 2024 to June 2024 – Actual RN care minutes of 34 Total care minutes of 185 versus Target RN care minutes 41.84 Total Care Minutes 215.7 and Total Occupied Bed Days: 7185
- July 2024 to September 2024 – Actual RN care minutes 37 Total care minutes 196 versus Target RN care minutes 41.22 Total Care Minutes 212.27 and Total Occupied Bed Days: 6796

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

**4.1** Manly Vale Nursing Home compliance with its Care minutes responsibilities, specifically section 10(2), 10(3) and 10(3A) has been the subject of regulatory and administrative action since at least 8<sup>th</sup> of November 2024. A history of the regulatory and administrative action taken against Manly Vale Nursing Home with respect to its compliance with the Care minutes responsibilities is as follows:

- On the 30<sup>th</sup> of October 2024, Manly Vale Nursing Home received a notice from the Commission requesting to provide the information and documents below to ensure compliance with the Care minutes responsibilities:
  1. Workforce information including, for the four (4) weeks (prior to the date of this request).
  2. Nursing Roster (or other related information such as allocation sheets, master roster tools); and information relating to the service's care minutes target for the last month which identifies:
    - The number of shifts where a Registered nurse staff member is not rostered on-site and on duty at the service during the last month.
    - Total care hours.
    - Type of Direct care staff member coverage.
    - Shifts (Direct care minutes).
  3. Information and/or documentation to support how the Service monitors meeting mandatory Care minutes responsibilities.
  4. Any other additional information and/or supporting documentation to demonstrate the Service's compliance with Care minute responsibilities.
- On the 7<sup>th</sup> of November 2024, Manly Vale Nursing Home submitted a response to the Commission's notice, outlining the reasons for the inability to meet the Care minutes responsibilities.
- On the 8<sup>th</sup> of November 2024, Manly Vale Nursing Home received a communication from the Commission under Section 74GA of the Commission act. This communication included the response review and the decision that Manly Vale Nursing Home failed to meet the required care minutes responsibilities, of quarter 4 data, which highlights that Manly Vale Nursing Home has maintained large Direct care minute gaps in three (3) subsequent quarters.

## **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 Manly Vale Nursing Home's compliance with its Care minutes responsibilities, specifically the non-compliance in relation to section 10(2), 10(3) and 10(3A).

Manly Vale acknowledges and regrets that care responsibilities have not been fully met at the Service with respect to the compliance of the care minute responsibilities.

## **Part 6. Admissions**

- 6.1** Manly Vale Nursing Home, 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, Manly Vale Nursing Home has offered, and the Commissioner has accepted, the following undertakings:

### **7.1.1 Staffing and Care Minutes Compliance:**

Manly Vale Nursing Home will implement a number of strategies to ensure that Direct care staffing levels meet the required Direct care minutes for all Care recipients in line with its responsibilities. To achieve that, Manly Vale Nursing Home will take the following actions:

- Facility Manager was instructed to conduct a fortnightly staffing needs assessment and review of Direct care minutes to identify shortfalls.
- The staffing needs assessment outcome will be discussed with the Executive Funding Analysis and Business Partner (EFABP) during the fortnightly meetings to create a roster plan to ensure that Direct care minutes are consistently met, the meeting to be conducted every second Thursday.
- A Direct care minutes monitoring tool to continue to be maintained and updated by the Facility Manager daily and reviewed by the EFABP fortnightly to ensure it is accurate and updated correctly by the Facility Manager.
- The care minutes responsibilities and the notice received from the Commission will be providing a regular updated on the care minutes with all residents and their representatives during the monthly Resident and Relative Meeting. This topic will continue to be addressed, with regular updates provided during all monthly meetings.

- Manly Vale Nursing Home will submit a progress report which includes care minutes monitoring tool, as well as the evaluation process and outcome of the above strategies post implementation, to the Commission monthly until the completion date on the 30<sup>th</sup> of April 2025.

The reporting dates will be as following:

- The data for January will be reported to the commission on 14<sup>th</sup> February 2025.
- The data for February will be reported to the commission on 14<sup>th</sup> March 2025.
- The data for March will be reported to the commission on 11<sup>th</sup> April 2025.
- Final report will be provided on 30<sup>th</sup> of April 2025.

### **7.1.2 Staff Training on Care Minutes and Rostering:**

The EFABP have developed and will implement a training program for the facility management team (Facility Manager and the Assistant facility Manager) to ensure they understand the Care minutes responsibilities and how these impact the quality of care. The training will also cover effective rostering practices. Manly Vale Nursing Home will:

- Ongoing Training to be conducted by the Executive Funding Analysis and Business Partner and will continue to be provided to the Facility Management Teams at Manly Vale Nursing Home to ensure compliance with Care minutes responsibilities by the 3<sup>rd</sup> of January 2025.

### **7.1.3 Ongoing Monitoring and Reporting:**

- Internal audits and reviews will also be conducted by EFABP to ensure consistent and accurate reporting of Direct care minutes by 31<sup>st</sup> of January 2025.
- A copy of the audit outcome and recommendations will be shared with the facility Management team by the 3<sup>rd</sup> of February 2025.
- A copy of the audit conducted will be provided to the Commission along with another report highlighting the actions by the 7<sup>th</sup> of February 2025.
- The Executive Funding Analysis and Business Partner provides a monthly report of the Direct care minutes outcomes to the General Manager by the 7<sup>th</sup> of every month.

## **7.2 Commitment**

- Manly Vale Nursing Home, 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.
- Manly Vale Nursing Home, is responsible for demonstrating compliance with the Undertaking and evidence of compliance will be submitted to the Commission in accordance with clause 7.1.



### 7.3 Costs of Compliance

- Manly Vale Nursing Home, undertakes that it will pay all costs associated with its compliance with this Undertaking.

## Part 8. Acknowledgments and statements

### 8.1 Manly Vale Nursing Home, 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 Manly Vale Nursing Home, 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 Manly Vale Nursing Home, who has had the opportunity to obtain 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 Manly Vale Nursing Home, 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

- #### 8.3.1
- Manly Vale Nursing Home, 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 Commissioner 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

If unable to provide the document by way of email, documents will be sent to:

**Aged Care Quality and Safety Commission**

GPO Box 9819

CANBERRA ACT 2601

**Executed by Manly Vale Nursing Home  
Pty Ltd**

**ABN 81 000 863 178** in accordance with  
its constitution



Signature of Director

Robert Oxford  
Name of Director  
*(please print)*




Signature of Facility Manager

Damian Lutvey  
Name of Facility Manager  
*(please print)*

Date accepted by the Commissioner:

20 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)*