



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:

Menarock Aged Care Services (Templestowe) Pty Ltd

ABN 46 132 414 263

RACS 4271

3 Salisbury Rd

Beaconsfield Upper

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.

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

Key personnel has the same meaning as in section 8B of the Commission Act.

Menarock means Menarock Aged Care Services (Templestowe) Pty Ltd (ACN 132 414 263), in its capacity as an approved provider.

Quality Care Advisory Body is a committee of the Board established in accordance with the Company's Clinical Governance Framework and is authorised by the Board to assist it in fulfilling its statutory and regulatory responsibilities.

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(s), described below, through which the provider provides residential care:

Salisbury House Nursing Home (RACS ID 4271), situated at 3 Salisbury Road, Beaconsfield Upper VIC 3808

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 Menarock 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 Background information relating to the Service is set out below.

3.2 The Service is situated at 3 Salisbury Road, Beaconsfield Upper VIC 3808. Following a Site Audit which took place between 24 and 26 September 2024, the Service was reaccredited on 21 October 2024 until 25 February 2028. As at the date of the Undertaking, the Service has 90 allocated places, there are 79 care recipients (permanent and respite care recipients) residing at the Service, and the Service's overall star rating is four stars.

3.3 The Direct care staff members who provide Direct care to Care recipients are comprised of ten Registered nurse staff members in charge, eight Registered nurse staff members, eight Enrolled nurse staff members and fifty-one Direct care

staff members who are not Registered nurse staff members or Enrolled nurse staff members. There are twenty-three staff members who provide non-direct care to Care recipients.

3.4 There are twelve key personnel (under the Aged Care Act) at the Service, being:

- Two directors;
- Four non-executive members of the governing body;
- The Chief Executive Officer;
- One general managers in the People and Culture team;
- One financial controller;
- One general manager in the Quality, Risk and Compliance team;
- One residential manager; and
- One clinical manager.

3.5 The average amount of Direct care provided through the Service by Direct care staff members of Menarock per Care recipient per day (as calculated under s9(1)) of the Quality Care Principles for the last four quarters as follows:

	Q2 Oct-Dec 2023		Q3 Jan-Mar 2024		Q4 Apr-Jun 2024		Q1 Jul-Sep 2024	
Direct Care Minutes (reported in QFR)	RN	34	RN	36	RN	37	RN	39
	Total	169	Total	179	Total	172	Total	182
Direct Care Minute Target	RN	43	RN	43	RN	42	RN	42
	Total	221	Total	216	Total	211	Total	205
Deficit in Care minutes responsibilities	52		37		39		23	

Part 4. History of non-compliance

4.1 Menarock's non-compliance with its Care minutes responsibilities specifically under sections 10(2), 10(3) and 10(3A) of the Quality of Care Principles, has been the subject of regulatory and administrative action since 30 October 2024. A history of the regulatory and administrative action taken against Menarock with respect to its compliance with the Care minutes responsibilities is as follows:

- On 30 October 2024, Menarock received a Section 74GA Notice (**Notice**) from the Commission confirming continued non-compliance with its Care minutes responsibilities at the Service. The Notice required Menarock to give information and/or produce documents in relation to its compliance with its care minute responsibilities.
- On 7 November 2024, Menarock complied with the Notice by providing the relevant information and/or documents to the Commission. These included:
 - A letter providing additional information regarding the action that Menarock had taken to comply with its Care minutes responsibilities;
 - A copy of the latest Residents' Experience Report from a survey visit;
 - A care minute tracker, prepared and distributed to the Operations team, fortnightly to monitor care minutes; and
 - The Service's roster for Registered nurse staff members, Enrolled nurse staff members and Direct care staff members for the 4 weeks prior to the date of the Notice.
- On 8 November 2024, Menarock received a letter from the Commission because Menarock's response to the Notice showed that it had engaged in a sustained period of non-compliance with its Care minutes responsibilities, including having maintained large care minute gaps in three subsequent quarters and indicating expenditure less than 75% of the funding provided to assist in complying with its Care minutes responsibilities. The letter gave Menarock an opportunity to offer the Commission an Undertaking that sets out the reasons for failing to meet its Care minute responsibilities and actions Menarock will take under their workforce strategy to meet this obligation in a reasonable timeframe.
- On 22 November 2024, Menarock informed the Commission the following factors had impacted its compliance with its Care minutes responsibilities:
 - Time required and recruitment delays to adopt a planned risk-based approach following implementation of the new direct care shifts to enable safe and quality care for care recipients with changing care needs and increasing occupancy. The Service had commissioned 30 new beds over 2 wings and in recent quarters, occupancy had slowly increased.
 - Menarock's recruitment procedures ensure that it recruits Direct care staff members who are experienced, qualified and fit the culture to suit the cohort of Care recipients for the Service. This means that not all applicants will be suitable. Unfortunately, Menarock has also had

instances of applicants declining our offer to work elsewhere, inadvertently delaying the recruitment process to be able to fill our roster to meet the Care minutes responsibilities.

- Challenges with roster management continue despite the onboarding of new Direct care staff members due to staff availability, working restrictions on the holders of student visas, limited availability of public transport for staff who rely on public transport to attend the Service for work, and higher unplanned leave during Quarter 1 of 2024 (July to September) due to outbreaks of COVID-19 and gastroenteritis.

In the response to the Commission, Menarock included a table setting out its improvements in compliance with its Care minutes responsibilities in each subsequent quarter.

Menarock also referred to the steps it had taken to move towards compliance with its Care minutes responsibilities, including:

- attempts to recruit staff by:
 - publishing eight advertisements for the roles of Registered nurse staff members, Enrolled nurse staff members and other Direct care staff members;
 - establishing relationships with seven Registered Training Organisations to train Direct care staff members with a view to employing those Direct care staff members upon completion of their qualification; and
 - implementing a bonus referral program for current employees to refer new Direct care staff members to Menarock;
- recruiting and onboarding the following new staff in the following quarters:

	Quarter 2 (Oct – Dec 2023)	Quarter 3 (Jan – Mar 2024)	Quarter 4 (Apr – Jun 2024)	Quarter 1 (Jul – Sept 2024)
Registered nurse staff members	0	6	3	3
Enrolled nurse staff members	0	0	1	0
Direct care staff members	12	1	8	7

- Increasing the Direct care minutes provided by Direct care staff members and Registered Nurse staff members on the roster.
- Commencing an additional Registered nurse staff member shifts in the morning and Direct care staff member shifts in the morning and afternoon, seven days per week,
- Recruiting both permanent and casual Registered nurse staff members and other Direct care staff members in Quarter 2 of the 2024/25

financial year to staff these roster changes.

- Providing Menarock's Quality Care Advisory Body with clinical information through monthly quality assurance activity, including in relation to pressure injuries, falls, wounds, number of incidents, resident of the day audits, assessment audits, clinical and non-clinical risks and continuous improvement to ensure that Direct care is provided to Care recipients by appropriately qualified Direct care staff members;
 - Implementing processes to effectively manage its roster, including immediately publishing shifts on its communication platforms, approving overtime and extended shifts, approving cash incentives to motivate Direct care staff members to take on additional shifts, and engaging agency staff who have previously worked at and are familiar with the Service; and
 - Implementing additional reporting and tracking tools to monitor the Service's compliance with its Care minutes responsibilities, and discussion of the results of that monitoring on a fortnightly basis to inform further steps that it would take to improve compliance with its Care minutes responsibilities.
- On 25 November 2024, the Commission acknowledged Menarock's response and asked Menarock to enter into an Undertaking.
 - On 26 November 2024, Menarock confirmed that it would offer the Commission an Undertaking.

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 under sections 10(2), 10(3) and 10(3A) of the Quality Care Principles.

Part 6. Admissions

6.1. Menarock 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 implement a revised roster for the Service by 20 December 2024 to include an additional:
 - 7.1.1.1 14 Direct care morning shifts per fortnight with a duration of 5.5 hours each;
 - 7.1.1.2 14 Direct care afternoon shifts per fortnight with a duration of 6.0 hours each;
 - 7.1.1.3 14 Direct care afternoon shifts per fortnight with a duration of 6.5 hours each;

- 7.1.1.4 14 Direct care night shifts per fortnight with a duration of 7.5 each; and
- 7.1.1.5 14 Registered nurse staff member morning shifts per fortnight with a duration of 7.5 each.
- 7.1.2 To appoint the following positions at the Service by 14 March 2024:
 - 7.1.2.1 5 Registered nurse staff members; and
 - 7.1.2.2 14 Direct care staff members who are not registered nurse staff members or enrolled nurse staff members.
- 7.1.3 By 14 March 2025, determine whether the requirements of staffing to meet its Care minutes responsibilities have changed and, if so, to meet those new requirements by 30 June 2025.
- 7.1.4 To complete and distribute to the Commission a monthly “Care minutes compliance report”, on 31 January 2025, 28 February 2025, 28 March 2025, 30 April 2025, 30 May 2025 and 27 June 2025, setting out:
 - 7.1.4.1 a copy of Menarock’s direct care roster for the prior two fortnightly pay period;
 - 7.1.4.2 the number of care minutes delivered;
 - 7.1.4.3 if not all shifts in the roster were filled, the number of care minutes which would be delivered if they were;
 - 7.1.4.4 the number of Registered nurse staff members and other Direct care staff members employed;
 - 7.1.4.5 feedback on Menarock’s progress on complying with the Undertaking including a discussion of factors contributing to any deficits with its Care minutes responsibilities for the relevant period; and
 - 7.1.4.6 leave taken by Direct care staff members during the relevant period.

7.2 Commitment

- 7.2.1 Menarock 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 Menarock 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.

7.3 Costs of Compliance

- 7.3.1 Menarock undertakes that it will pay all costs associated with its compliance with this Undertaking.

Part 8. Acknowledgments and statements

8.1 Menarock 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 Menarock 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 Menarock, 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 Menarock's 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 Menarock 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 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 Menarock Aged Care
Services (Templestowe) Pty Ltd

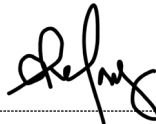
(ACN 132 414 263) in accordance with
its constitution



Signature of Chief Executive Officer

Kyan Ho

Name of Chief Executive Officer
(please print)




Signature of secretary

Anne Denega

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*)