



ST JOSEPH'S  
AGED CARE FACILITY  
KENSINGTON

ABN 80 117 329 861

2 Kensington Road, Kensington NSW 2033

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## **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:

**St Joseph's Aged Care Facility Kensington**

**ABN 80 117 329 861**

**RACS 518**

**2 Kensington Road**

**Kensington, NSW 2033**

## 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).

**AN-ACC** means the Australian National Aged Care Classification funding model.

**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

**Nursing Assistant** means the job title equivalent to a personal care worker that is described in SJAC's 2023 Enterprise Agreement.

**Personal Care Worker** means a staff member working in a residential aged care home who is responsible for caring for care recipients living in the residential aged care home.

**QFR** means Quarterly Financial Reporting responsibilities under section 10 of the Quality of Care Principles.

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

**Registered nurse** 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 provider provides residential care:

St Joseph's Aged Care Facility Kensington of 2 Kensington Road, Kensington, NSW 2033

**SJAC** means St Joseph's Aged Care Facility Kensington, in its capacity as an approved provider.

**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 SJAC 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** The following briefly sets out the relevant background information about the Service:
- Period of SJAC's approval: 3 years to 15 November 2025
  - Number of approved allocated places at the Service: 46
  - Number of Care recipients currently at the Service: 43 Care recipients, the majority of whom are retired Nuns and Priests from catholic religious organisations.
  - Number of Key personnel at the Service and their title: 12 comprising Directors (8), Director of Nursing, Deputy Director of Nursing, Registered Nurse, Finance Manager/Company Secretary.
  - Current star rating for the Service: 3 stars
- 3.2** Number of direct care staff members at the Service: 39, 13 of whom are Registered Nurses and 26 of whom are Nursing Assistants.
- 3.3** Number of other staff (not direct care staff members) currently employed at the Service: 32
- 3.4** SJAC's services are specifically targeted toward the catholic religious cohort and its governing body and clinical management team are also predominantly made up of Sisters from the catholic religious organisation – the Daughters of Our Lady of the Scared Heart. SJAC does not pay wages to these Sisters, several of who are Registered Nurses working full-time and living on site at the Service. Instead SJAC pays stipends to the Daughters of Our Lady of the Scared Heart.
- 3.5** The average amount of Direct care provided through the Service by Direct care staff members of SJAC per Care recipient per day (as calculated under s9(1)) of the Quality of Care Principles for the following period(s):
- October 2023 to December 2023: 178 minutes (reported in QFR when the Direct care target for the quarter was 200 minutes and there were an average of 43 Care recipients at the Service for the quarter).
  - January 2024 to March 2024: 186 minutes (reported in QFR when the Direct care target for the quarter was 209 minutes and there were an average of 44 Care recipients at the Service for the quarter).

- April 2024 to June 2024: 187 minutes (reported in QFR when the Direct care target for the quarter was 209 minutes and there were an average of 45 Care recipients at the Service for the quarter).
- July 2024 to September 2024: 200 minutes (reported in QFR when the Direct care target for the quarter was 212 minutes and there were an average of 41 Care recipients at the Service for the quarter).

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

- 4.1** On 13 April 2024, SJAC received a reminder letter from the Commission advising SJAC that it is required to meet its Care minutes responsibilities in relation to the Service.
- 4.2** On 3 June 2024, SJAC received an email from the Commission advising that SJAC's QFR for October to December 2023 showed that SJAC had delivered less than 10 minutes below its Registered Nurse Direct care target and 30 minutes or more below its care minutes responsibilities.
- 4.3** On 30 October 2024, SJAC was contacted by the Commission to discuss the identified non-compliance with its Care minutes responsibilities. Specifically, the Commission advised its analysis of SJAC's QFR data shows a deficit in Care minute responsibilities in the 4<sup>th</sup> quarter Financial Year ending 2024 and the 2 preceding quarters. The Commission was also concerned that SJAC may have been under-spending on care at the Service.
- 4.4** SJAC has actively engaged with the AN-ACC & Care Minutes Compliance Section of the Department of Health and Aged Care (the Department). SJAC has provided its Direct care minute calculation workings and also explained its workforce deployment given the unique nature of the Service's resident profile and the religious organisation that governs the Service. These disclosures have revealed that SJAC was not accurately capturing the care minute contributions of all of its personnel involved in the delivery of care to the residents at the Service. Further, SJAC's process of paying stipends (as opposed to wages) to the Sisters working at the Service, demonstrated that SJAC was not under spending on care at the Service. The revised calculations revealed that SJAC was exceeding its Registered Nurse care minutes responsibilities and was above 90% of its total care minutes responsibilities for the 4<sup>th</sup> Quarter ending 30 June 2024.
- 4.5** Alongside conversations with the Department, SJAC has actively engaged with the Commission and on 23<sup>rd</sup> December 2024 agreed to enter into this Enforceable 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 SJAC's compliance with its Care minutes responsibilities, specifically sections 10(2), 10(3) and 10(3A) of the Quality of Care Principles.

## **Part 6. Admissions**

- 6.1** SJAC 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, SJAC has offered, and the Commissioner has accepted, the following undertakings:

- SJAC will, by 31 March 2025:
  - Add 2 additional Nursing Assistant shifts to its staff roster for the morning shift and 1 additional Nursing Assistant shift to its staff roster for the afternoon shift in order to ensure that its total care minutes per fortnight increase from 121,044 to 121,344 in order to meet its care minutes responsibilities (based on 44 Care Recipients on average) in future.
  - Appoint new Nursing Assistant staff members (equivalent to 4 additional full time equivalent staff members) necessary to fill these additional Nursing Assistant shifts.
- SJAC will submit a monthly report to the Commission within 10 business days following on from the end of the previous month (with the first report due 14<sup>th</sup> February 2025 and the final report due 14<sup>th</sup> July 2025) advising its progress in meeting the recruitment undertakings and its compliance with the care minute responsibilities.

### **7.2 Commitment**

- SJAC 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.
- SJAC is responsible for demonstrating compliance with the Undertaking and evidence of compliance will be submitted to the Commission in accordance with the undertakings described in clause 7.1.

### **7.3 Costs of Compliance**

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

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

- 8.1** SJAC 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 SJAC 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 SJAC, 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 SJAC'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 SJAC 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**

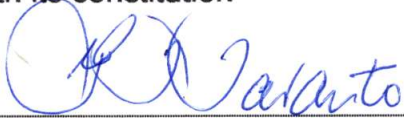
GPO Box 9819

CANBERRA ACT 2601



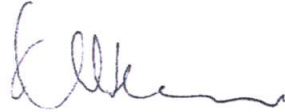
**Executed by St Joseph's Aged Care  
Facility Kensington**

**ABN 80 117 329 861** in accordance  
with its constitution



Signature of Chairperson/Director

Paul Taranto



Signature of Secretary

James Carter

Date accepted by the Commissioner: 24 December 2024

**ACCEPTED** by the **AGED CARE  
QUALITY AND SAFETY  
COMMISSIONER** 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*)