

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:

TriCare Dudley St Aged Care Pty Ltd

ABN 29 605 597 297

RACS 5460

Gooding Drive, Clear Island Waters. QLD 4226

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 company or incorporated body approved by the Commissioner under section 63D of the Commission Act as a provider of aged care.

Care minutes means the number of minutes of care provided by Direct care staff members to each Care recipient at the Service (as calculated under s9(1) of the Quality of Care Principles).

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.

Care recipients means individuals receiving care and services from TriCare Cypress Gardens through the 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.

Management team means the group of senior executives and managers who oversee the operations, strategic planning and decision-making processes for the Service.

Non-direct care staff member means a staff member other than a Direct care staff member.

Personal care workers means a personal care worker who is a Direct care staff member.

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

Registered nurse means a registered nurse who is a Direct care staff member as defined 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 through which TriCare Cypress Gardens provides residential care at Gooding Drive, Clear Island Waters, QLD 4226.

TriCare Cypress Gardens means TriCare Dudley St Aged Care Pty Ltd, 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 Commission under section 74EC of the Commission Act and section 114 of the Regulatory Powers Act in relation to the delivered Care minute deficits 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 the undertakings in section 7.1 are satisfied, or the Undertaking is withdrawn by TriCare Cypress Gardens with the Commissioner's consent under section 114 of the Regulatory Powers Act, or the Undertaking is cancelled by the Commissioner under section 114 of the Regulatory Powers Act, whichever is earlier.

Part 3. Background

3.1 Specific information on TriCare Cypress Gardens

- The street address of the Service is Gooding Drive, Clear Island Waters, Queensland 4226.

- TriCare Cypress Gardens current accreditation approval period is 20 September 2024 to 20 September 2027.
- The Service has 166 approved places.
- 142 Residents reside at the Service as of 10 December 2024
- Key Personnel for TriCare Cypress Gardens are:
 - Facility Manager
 - Clinical Manager
 - Chief Executive Officer
 - Operations Manager
 - Group Care and Compliance Manager
 - Board of Directors
- The Commonwealth issued Star Rating for FY24 Q4 (April to June 2024) is not applicable as TriCare Cypress Gardens has new Provider status from 30 June 2023.

3.2 As at 10 December 2024, TriCare Cypress Gardens employed 144 Direct care staff members.

3.3 As at 10 December 2024, TriCare Cypress Gardens employed 41 Non-direct care staff members.

3.4 The Care minutes provided by TriCare Cypress Gardens (as calculated under s9(1) of the Quality of Care Principles) for the following period(s) were:

TriCare Cypress delivered Minutes of care between October 2023 to September 2024		
Quarter	Target minutes of Care	Minutes of care delivered
October 2023 to December 2023	206.44	162.47
January 2024 to March 2024	209.25	166.32
April 2024 to June 2024	211.10	170.95
July 2024 to September 2024	208.90	191.33

Part 4. History of Care Minute targets

4.1 In response to TriCare Cypress Gardens deficit in Care minutes responsibilities under section 10(2) of the Quality Care Principles, the Commission has undertaken what it determines as regulatory and administrative action since 31 May 2024. A history of this regulatory and administrative action and TriCare Cypress Gardens 's responses are:

- On 31 May 2024, the Commission held a video link meeting with TriCare Cypress Gardens to discuss the deficit with the Care minutes responsibility under section 10(2) of the Quality of Care Principles for the period October to December 2023.
- On 5 June 2024, the Commission issued a letter to TriCare Cypress Gardens summarising the key points discussed in the meeting of 31 May 2024:
 - TriCare Cypress Gardens had delivered Care minutes below the target Care minutes between October and December 2023.
 - The challenges faced by TriCare Cypress Gardens, particularly the quality and availability of the workforce and the impact of COVID.
 - The ongoing actions by TriCare Cypress Gardens such as roster review and enhanced recruitment practices.
 - A reminder of TriCare Cypress Gardens 's obligation to meet the Care minutes responsibility under section 10(2) of the Quality of Care Principles.
 - A recommendation to plan for a 5% increase in the target Care minutes from 1 October 2024.
- In response to the meeting with the Commission and their letter of 5 June 2024, there was a substantial increase by TriCare Cypress Gardens in Direct care staff members and Care minutes. This necessitated taking a broader approach with respect to employment practices.
- On 31 October 2024, TriCare Cypress Gardens received a notice from the Commission requiring TriCare Cypress Gardens to supply information and/or produce documents in relation to the Care minutes responsibility under section 10(2) of the Quality of Care Principles.
- On 1 November 2024, TriCare Cypress Gardens provided a response to the Commission with the supply of the requested information.
- On 8 November, TriCare Cypress Gardens received a letter from the Commission highlighting a deficiency in Care minutes responsibilities for the period October to December 2023 (previously identified) and January to June 2024 under section 10(2) of the Quality of Care Principles.
- On 19 November 2024, the Commission contacted TriCare Cypress Gardens to discuss the deficit to Care minutes responsibilities for the period October 2023 to June 2024 under section 10(2) of the Quality of Care Principles.

TriCare Cypress Gardens acknowledges delivered Care minutes were below target Care minutes for the period October 2023 to September 2024 as shown in the table in section 3.4 above.

As at 1 January 2024, TriCare Cypress Gardens had 124 Direct care staff members and 41 Non-direct care staff members. The number of Direct care staff members has increased by 16%, from 124 to 144 Direct care staff members as at 10 December

2024 (refer table below), which added an additional 29 minutes of Care minutes for the July to September 2024 quarter compared to October to December 2023 quarter.

Direct care staff members as at 1 January 2024	124
Resignations / terminations since 1 January	39
New hires since 1 January	59
Direct care staff members as at 10 December 2024	144

TriCare Cypress Gardens has had difficulty recruiting qualified and competent employees, with ten (10) of the Direct care staff members new hires terminated during probation.

TriCare Cypress Gardens has faced challenges recruiting Registered nurses to work night duty and Personal care workers generally. While applicants were being screened and invited to interviews, it was common for applicants to not attend scheduled interviews.

Remediation actions already implemented by TriCare Cypress Gardens to increase Care minutes:

- A comprehensive roster review consultation with Direct care staff members was conducted to evaluate current roster allocations and determine a more effective model for enhanced operational efficiency. As a result, shift start and finish times were adjusted, allowing greater flexibility for Direct care staff members to select personalized rosters; plus casual Direct care staff members were converted to permanent part-time positions.
- Increased use of recruitment platforms such as LinkedIn, and Indeed, as well as TriCare Cypress Gardens registering with the Workforce Australia recruitment platform.
- Providing open access to SEEK for all TriCare Gold Coast facilities to enable cross-sharing of applicants.
- A regional group assessment centre for recruitment was held as a combined effort for the Gold Coast facilities, allowing for efficient interviewing of applicants, ensuring a streamlined approach.
- Partnered with training organizations to boost student placements as a pathway for employment.

As a result of the above detailed remediation efforts, there was a significant increase in Care minutes for October and November 2024 as shown in the table below:

TriCare Cypress Minutes of care October and November 2024		
Month	Target minutes of Care	Minutes of care delivered
2024 October	211.99	191.74
2024 November	211.99	199.18

Part 5. Acknowledgement of Commissioner's concerns

5.1 As a result of the matters referred to in Part 4 above, the Commissioner has expressed concerns with respect to TriCare Cypress Gardens 's compliance with Care minutes under section 10(2) of the Quality of Care Principles for the period October 2023 and June 2024.

Part 6. Acknowledgement

6.1 TriCare Cypress Gardens acknowledges it delivered Care minutes below target for the period October 2023 to September 2024, under section 10(2) of the Quality of Care Principles, identified in section 3.4, and acknowledges 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, TriCare Cypress Gardens has offered, and the Commissioner has accepted, the following undertakings, to have TriCare Cypress Gardens satisfy the Care minute responsibilities:

- *The appointment of one permanent part time Registered nurse by 31 March 2025, to fill the remaining vacant shifts on the roster, increasing the number of Registered nurses from 20 to 21.*
- *The appointment of five Personal care workers by 31 March 2025, to cover 105 hours per fortnight not allocated in the master roster, plus roster for scheduled and unscheduled leave, increasing the number of Personal care workers from 124 to 129.*
- *The recruitment of an additional person into the Management team by 28 February 2025, to provide overall leadership and management of the current processes, including recruitment and training support for TriCare Cypress Gardens.*
- *The newly appointed person to undertake a review of the existing recruitment model by 31 March 2025 to identify additional opportunities to recruit. A summary of the review is to be provided to the Commission by 31 March 2025.*
- *Submit a report to the Commission on the tenth working day of each month, commencing on 10 February 2025, and until the increases to Registered nurses and Personal care workers described above have been achieved, detailing 1) the appointments of Direct care staff members at the Service, and 2) the delivered Care minutes against the target Care minutes.*

7.2 Commitment

- TriCare Cypress Gardens 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.
- TriCare Cypress Gardens is responsible for demonstrating compliance with the Undertaking and evidence of compliance will be submitted to the Commission in accordance with Part 7 of the Undertaking.

7.3 Costs of Compliance

- TriCare Cypress Gardens undertakes that it will pay all its costs associated with its compliance with this Undertaking.

Part 8. Acknowledgments and statements

8.1 TriCare Cypress Gardens 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 TriCare Cypress Gardens 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.
- TriCare Cypress Gardens voluntarily provides this Undertaking under the terms and conditions provided by the Commission and in the specified format. TriCare Cypress Gardens 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 TriCare Cypress Gardens 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

- TriCare Cypress Gardens confirms it has the operational 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 TriCare Dudley St
Aged Care Pty Ltd**

ABN 29 605 597 297 in accordance
with its constitution



Signature of director



Signature of witness



Name of director
(please print)



Name of witness
(please print)

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
Commissioner or Delegate



Witness

Scott Rumbold

Witness full name *(please print)*