

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:

Farwell Nominees Pty Ltd
ABN 37 089 021 303
Lifeview Willow Wood (RACS ID 3745)
PO Box 910
Carnegie VIC 3163

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.

Farwell Nominees means Farwell Nominees Pty Ltd (ACN 089 021 303), in its capacity as an approved provider.

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, described below, through which Farwell Nominees provides residential care:

- Lifeview Willow Wood (RACS ID 3745), situated at 135 Duff Street, Cranbourne VIC 3977

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 and may be varied from time to time with the Commissioner's consent, from the acceptance date until it is withdrawn by Farwell Nominees 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** Farwell Nominees operates three residential care services, including the Service. All of the residential care services operated by Farwell Nominees are located in Victoria. Background information relating to the Service is set out below.
- 3.2** The Service which is the subject of this Undertaking is situated at 135 Duff Street, Cranbourne VIC 3977. Following a site audit which took place between 13 and 15 December 2022, the Service was reaccredited on 10 February 2023 until 25 March 2026. As at the Acceptance Date, the Service has 119 approved allocated places, and there are 116 care recipients residing at the Service.
- 3.3** There are currently 105 staff members who provide direct care to care recipients, comprising 87 carers, eight enrolled nurses and ten registered nurses. There are 22 further staff members who do not provide direct care.
- 3.4** The average amount of direct care provided through the Service by direct care staff members of Farwell Nominees per care recipient per day (as calculated under section 9 of the Quality of Care Principles) for the following period(s):
- October 2023 to December 2023 – 185 minutes
 - January 2024 to March 2024 – 182 minutes
 - April 2024 to June 2024 – 184 minutes
 - July 2024 to September 2024 – 205 minutes
- 3.5** The average amount of direct care that the Service was required to provide to meet its care minutes responsibilities in each of the above periods was as follows:
- October 2023 to December 2023 – 209 minutes
 - January 2024 to March 2024 – 207 minutes
 - April 2024 to June 2024 – 206 minutes
 - July 2024 to September 2024 – 205 minutes

Part 4. History of non-compliance

- 4.1** Farwell Nominees' compliance with its care minutes responsibilities has been the subject of regulatory and administrative action since 31 May 2024. A history of the regulatory and administrative action taken against Farwell Nominees with respect to its compliance with the care minutes responsibilities is as follows:
- 4.1.1 On 3 June 2024, Farwell Nominees received a letter dated 31 May 2024 from the Commissioner following Quarterly Financial Report data for the October-December 2023 that showed Farwell Nominees had delivered below care minute targets.
 - 4.1.2 On 30 October 2024, Farwell Nominees received a notice from the Commissioner under section 74GA of the Commission Act. The notice required Farwell Nominees to give information and/or produce documents to the Commissioner in relation to its compliance with its care minute responsibilities.
 - 4.1.3 Farwell Nominees complied with the notice on 1 November 2024, by providing the relevant information and/or documents to the Commissioner.
 - 4.1.4 On 8 November 2024, Farwell Nominees received a letter from the Commission which stated, that through its risk surveillance function that monitors provider compliance with care minute targets, an analysis of the Service highlighted that the Service had maintained care minute gaps required to meet its care minutes responsibilities and the actual average amount of direct care it provided to care recipients in three subsequent quarters, and that due to this sustained non-compliance with the care minute obligation, the Service had been placed under active supervision. Specific gaps and quarters where these gaps occurred are referred to at paragraphs 3.4 and 3.5 above. The letter also gave Farwell Nominees the opportunity to offer the Commission an Undertaking setting out its reasons for failing to meet the targets and the actions it would take to meet its care minutes responsibilities in a reasonable timeframe.

- 4.2** During a telephone conference between Farwell Nominees and the Commission on 14 November 2024, Farwell Nominees explained the challenges it had faced in meeting its care minutes responsibilities in relation to this Service, including the costs of labour associated with meeting its care minutes responsibilities, having regard to rates of pay under an Enterprise Bargaining Agreement.
- 4.3** During the same telephone conference, Farwell Nominees discussed the actions it has taken to improve its compliance with its care minutes responsibilities specific to the Service, including:
- 4.3.1 recruiting additional registered nurse staff members, enrolled nurse staff members, other direct care staff members and other staff who do not provide direct care within the meaning of the Aged Care Act;
 - 4.3.2 entering into agreements and/or memorandums of understanding with educational institutions in relation to student placements at the Service with the aim of recruiting those students into permanent staff when they complete their training;
 - 4.3.3 offering study assistance to staff undertaking certain qualifications including Certificate III in Individual Support (Aged Care) and Bachelor of Nursing;
 - 4.3.4 offering a graduate registered nurse training program; and
 - 4.3.5 attending community events to promote working at the Service and our other homes.
- 4.4** Since that time, Farwell Nominees has also advertised for the following positions:
- 4.4.1 Seven registered nurse staff members;
 - 4.4.2 Two enrolled nurse staff members;
 - 4.4.3 Six direct care staff members who are not registered nurse staff members or enrolled nurse staff members.

5 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 Farwell Nominees' compliance with its care minutes responsibilities, specifically the requirement to ensure that the average amount of direct care provided through the service by direct care staff members of the provider per care recipient per day is at least the required combined staff average amount of direct care per care recipient per day calculated under subsection 9(1) of the Quality of Care Principles in respect of the Service for the relevant quarter, under section 10(2) of the Quality of Care Principles.
- 5.2** Farwell Nominees acknowledges and regrets that its care minutes responsibilities have not been fully met at the Service.

Part 6. Admissions

Farwell Nominees admits the non-compliance identified in Part 4 and accepts the Commissioner's concerns identified in Part 5.

Part 7. Undertakings

In accordance with the operation of section 114 of the Regulatory Powers Act and section 74EC of the Commission Act, Farwell Nominees has offered, and the Commissioner has accepted, the following undertakings:

- 7.1** To continue to conduct up to 50 interviews by 31 January 2025 with a view to hiring 15 additional direct care staff members, including for the following positions:
 - 7.1.1 Seven registered nurse staff members;
 - 7.1.2 Two enrolled nurse staff members;
 - 7.1.3 Six direct care staff members who are not registered nurse staff members or enrolled nurse staff members.
- 7.2** To make offers by 7 February 2025 for the following additional positions:
 - 7.2.1 Seven registered nurse staff members;
 - 7.2.2 Two enrolled nurse staff members;
 - 7.2.3 Six direct care staff members who are not registered nurse staff members or enrolled nurse staff members.
- 7.3** To request acceptances to the offers referred to at paragraph 7.2 by 14 February 2025.
- 7.4** To commence staff members who have accepted offers as referred to in paragraphs 7.2 and 7.3 by 14 March 2025, or as soon after this date as the new staff members are able to commence.
- 7.5** By 14 March 2025, to 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.
- 7.6** To submit a comprehensive and detailed self-assessment of the above undertakings to the Commission by 15 March 2025 demonstrating with clear evidence:
 - 7.6.1 what steps Farwell Nominees has taken to give effect to each undertaking;
 - 7.6.2 the impact of those steps on achieving compliance with its care minutes responsibilities; and
 - 7.6.3 a statement explaining how improved compliance will be sustained.

- 7.7** To implement fortnightly meetings between Farwell Nominees' Finance and Operations teams in relation to the care minutes responsibilities of the Service, from 16 December 2024 until at least 30 June 2025.
- 7.8** To determine whether the appointment of an external workforce consultant would assist Farwell Nominees in improving its compliance with its care minutes responsibilities and, if so, to appoint an external workforce consultant for that purpose, by 30 March 2025.
- 7.9** To be compliant with its care minutes responsibilities at the Service by 30 June 2025.

Commitment

- 7.10** Farwell Nominees commits to giving the Commission information and/or documents in response to any request the Commissioner may make for information and/or documents to monitor progress and compliance with the terms of the undertaking throughout the duration of the Undertaking.
- 7.11** Farwell Nominees is responsible for demonstrating compliance with the Undertaking and evidence of compliance will be submitted to the Commission in accordance with paragraph 7.6.

Costs of Compliance

- 7.12** Farwell Nominees undertakes that it will pay all costs associated with its compliance with this Undertaking.

Part 8. Acknowledgments and statements

8.1 Farwell Nominees acknowledges that the Commissioner:

- 8.1.1 Will publish this Undertaking on the Commission's website.
- 8.1.2 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 Farwell Nominees acknowledges that:

- 8.2.1 This Undertaking has no operative force until accepted by the Commissioner.
- 8.2.2 The date of the Undertaking is the date on which it is accepted by the Commissioner.
- 8.2.3 The Undertaking is given voluntarily by Farwell Nominees, who has obtained legal advice in relation to its obligations under, and the effect of, this Undertaking.
- 8.2.4 The Commissioner's acceptance of this Undertaking does not affect any rights, remedies and powers available to the Commission, or the Commonwealth.
- 8.2.5 The Commission may undertake compliance monitoring activities to verify the evidence submitted as required by Part 7 and Farwell Nominees compliance with the Undertaking.
- 8.2.6 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.
- 8.2.7 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.
- 8.2.8 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

- Farwell Nominees 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 attention: Senior Executive Scott Rumbold

If you are unable to provide the documents please send to:

Aged Care Quality and Safety Commission

GPO Box 9819

CANBERRA ACT 2601

Executed by Farwell Nominees Pty Ltd

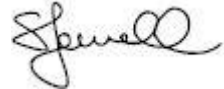
(ACN 089 021 303) in accordance with its constitution



Signature of Executive Director

Peter T Reilly

Name of Executive Director
(please print)



Signature of Chief Executive Officer

Samantha Jewell

Name of Chief Executive Officer
(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)*