

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:

Fresh Fields Aged Care Pty Ltd

ABN 57 063 959 759

NAPS 934

16-18 Mayfair St, West Perth WA

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.

BCT means the base care tariff subsidy, being the fixed funding component of Australian National Aged Care Classification designed to cover shared care costs that do not change significantly with changes in individual Care Recipient's needs, or with small changes in occupancy.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Western Australia.

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 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.

Notice to Produce means a notice to give information or produce documents under section 74GA of the Commission Act.

Occupied Bed Days means the aggregate number of days for which the Provider delivered subsidised care to Care Recipients at the Service in a specified period.

Personal Care Worker means a Direct Care Staff Member who is not an Enrolled Nurse Staff Member or Registered Nurse Staff Member.

Provider means Fresh Fields Aged Care Pty Ltd, 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 the provider provides residential care:

- Windsor Park Nursing Home (RACS ID 4856) located at 110 Star Street Carlisle WA 6101.

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 voluntarily offered to the Commissioner under section 74EC of the Commission Act and section 114 of the Regulatory Powers Act in relation to the matters described in Parts 3 and 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 the Provider 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 Provider

The Provider operates 13 residential aged care services in metropolitan Perth and regional Western Australia.

3.2 Service

The Service is a 98-bed residential aged care service located in Carlisle, Western Australia. The Service provides specialist care and wellbeing services, including for Care Recipients with complex care needs.

The Service offers a specialist Aboriginal care program and a homeless care program.

The Service receives the specialised BCT for provision of the homeless care program. Under the terms of the BCT funding status, at least 50% of non-respite Care Recipients at the Service have demonstrated complex behavioural needs and social disadvantage associated with their background as a homeless person.

The Service provides care for Care Recipients with lifelong behavioural issues, including residents who have previously been incarcerated, often for violent or predatory offences. There are also a large number of Care Recipients with psychiatric diagnoses such as schizophrenia and personality disorders.

The Commission conducted a site audit between 3 July 2024 and 5 July 2024, a decision was made to re-accredit the Service and the accreditation will expire on 29 September 2027.

The Service currently has approval for 114 allocated places.

As at 6 May 2025:

- there are 98 Care Recipients at the Service; and
- the Service has an overall star rating of 3 stars. Sub-ratings are:
 - compliance - 4 stars;
 - residents' experience - 4 stars;
 - quality measures - 3 stars; and
 - staffing - 2 stars.

There are 6 key personnel nominated at the Provider level and 1 key personnel at the Service, the Director of Nursing.

There are 119 staff at the Service, of which 106 are Direct Care Staff Members. The Direct Care Staff Members comprise:

- 18 Registered Nurse Staff Members
- 2 Enrolled Nurse Staff Members; and
- 83 Personal Care Workers.

Since October 2024 the service has enacted strategies that has had an immediate impact on care minute provision. These strategies have included

1. Introducing daily care minute reporting to enable service management, executive and the governing body to have real time data on performance
2. Enhanced workforce analytics leading to recruitment for specific shifts that were proving difficult to staff
3. Further training to Human Resource business partners in workforce analytics to drive recruitment and retention strategies. This has contributed to the growth of workforce from 88 to 106 Direct Care Workers.
4. More active involvement from Human Resource Business in workforce management meetings
5. Fortnightly reporting to Executive on progress

The average amount of Direct Care provided through the Service by Direct Care Staff Members of the Provider per Care Recipient per day (as calculated under section 9(1) of the Quality Care Principles) for the following periods is as follows:

November 2024

Care minutes 210/222 (95%); RN Minutes 43/45 (96%)

December 2024

Care minutes 209/222 (94%); RN Minutes 40/45 (89%)

January 2025

Care minutes 207/219 (95%); RN Minutes 41/45 (91%)

February 2025

Care minutes 209 / 219 (95%); RN Minutes 45/45 (100%)

March 2025

Care minutes 206 / 219 (94%); RN Minutes 40/45 (89%)

April 2025

Care minutes 212/200 (96%); RN Minutes 41/45 (91%)

Part 4. Commission Engagement

On 30 May 2024, representatives of the Provider met with Commission Executive Director Anthony Speed to discuss the Provider's performance in relation to care minute targets for the reporting period Q2 23-24 (October to December 2023). Following this meeting, Mr Speed wrote to the Provider on outlining the Commission's expectations regarding care minutes performance.

On 30 October 2024, the Commission issued the Provider with a Notice to Produce. The Notice to Produce required the Provider to give information and/or produce documents in relation to compliance with its Care Minutes Responsibilities in relation to the Service.

On 4 November 2024, the Provider provided a detailed written response to the Notice to Produce in relation to the Service and the Provider's Care Minutes Responsibilities. The response highlighted the challenges associated with the recruitment and retention of staff at the Service.

On 8 November 2024, the Provider received a letter from the Commission which stated that an analysis of the Service highlighted that the Service maintained large care minutes gaps in three consecutive quarters. The Commission gave the Provider the opportunity to offer the Commission an Enforceable Undertaking that set out reasons for the gap between target and actual care minutes over the period and the actions it will take to meet its care minutes responsibilities within a reasonable timeframe.

On 22 November 2024 the Provider confirmed to the Commission that it would offer the Commission an Enforceable Undertaking.

Part 5. Acknowledgement of Commissioner's concerns

As a result of the matters referred to in Parts 3 and 4 above, the Commissioner has, and continues to have, concerns with respect to the Provider's compliance with its Care Minutes Responsibilities, specifically the delivery of Direct Care by Direct Care Staff Members and Registered Nurse Staff Members in accordance with targets prescribed under sections 10(2), 10(3) and/or 10(3A) of the Quality of Care Principles.

Part 6. Acceptance of Commissioner's Concerns

The Provider acknowledges the matters described in Parts 3 and 4 and accepts the Commissioner's concerns identified in Part 5 in relation to the Provider's compliance with its Care Minutes Responsibilities.

Part 7. Undertakings

7.1 Undertakings

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:

- The Provider will make the necessary adjustments to its recruitment strategy and other staffing solutions to ensure it delivers Direct Care in accordance with the following care minute performance across both Personal Care Worker and Registered Nurse Staff Member domains at the Service:
 - 95% - May and June 2025;
 - 97% - July and August 2025; and
 - 100% - by 30 September 2025.

The Provider will:

- appoint its Chief Operating Officer as the executive sponsor with responsibility for:
 - monitoring the ongoing performance of the Service against the undertakings in this Part 7; and
- Continue active and targeted recruitment to address specific gaps in the roster, and build towards the 100% target. It is forecasted that the net gain in Personal Care Workers to be
 - 1 – May 2025
 - 1 – June 2025
 - 1 – July 2025
- deliver milestone reporting in monthly compliance reports to the nominated representatives from the Commission, demonstrating, with clear evidence, progress towards meeting its Care Minutes Responsibilities at the Service and the steps taken to give effect to each undertaking. The Provider will provide the Commission with its initial compliance report within ten Business Days following the end of February 2025.

7.2 Commitment

The Provider 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.

The Provider is responsible for demonstrating compliance with each Undertaking and evidence of compliance will be submitted to the Commission in accordance with clause 7.1.

7.3 Cost of Compliance

The Provider undertakes that it will pay all costs associated with its compliance with this Undertaking.

Part 8. Acknowledgments and statements

8.1 Public Statements

The Provider 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 Acknowledgements

The Provider 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 the Provider, 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 The Provider'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**

The Provider confirms it has the operational and financial capacity to comply with the Undertaking.

Part 9. Provision of Documents

The address for providing the Commission with any notice or document which this Undertaking requires to be provided is:

**Executed by Fresh Fields Aged
Care Pty Ltd**

ABN 57 063 959 759 in accordance
with the requirements of section 127 of
the Corporations Act 2001 (Cth) by:



Signature of Director

GRAEME BRUCE PRIOR

Name of Director
(please print)



Signature of Director

MICHAEL PETER HALL

Name of Director
(please print)

Date accepted by the Executive Director

16 May 2025

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



Aged Care Quality and
Safety Executive Director
Compliance and Enforcement



Witness

Scott Rumbold

Witness full name (please print)