

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application Starting a Representative Proceeding under Part IVA
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File Number: VID705/2022

File Title: YING YING THAM v AUSTRALIAN CAPITAL TERRITORY & ANOR

Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Reason for Listing: To Be Advised

Time and date for hearing: To Be Advised

Place: To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



**Amended Originating Application
starting a representative proceeding
under Part IVA of the Federal Court of Australia Act 1976**

VID 705 of 2022

Federal Court of Australia
District Registry: Victoria
Division: Fair Work

YING YING THAM

Applicant

AUSTRALIAN CAPITAL TERRITORY and another

Respondents

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Federal Court of Australia
305 William Street
Melbourne, Victoria, 300

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of:	Dr Ying Ying Tham (the Applicant)		
Prepared by:	Andrew Grech		
Law firm:	Gordon Legal		
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Address for service:	Level 22, 181 William Street, Melbourne VIC 3000		



Details of claim

On the grounds stated in the accompanying Further Amended Statement of Claim, the Applicant claims the following relief:

Against the First Respondent

1. A declaration pursuant to section 21 of the *Federal Court of Australia Act 1976* (Cth) (“**FCA Act**”) that the First Respondent (“**the Territory**”) contravened section 50 of the *Fair Work Act 2009* (Cth) (“**FW Act**”) by failing to pay the Applicant overtime as required by clause 36.2 of the *ACT Public Sector Medical Practitioners Enterprise Agreement 2013–2017* (“**2013 EA**”).
2. An order pursuant to section 545 of the FW Act that the Territory pay compensation to the Applicant for the loss suffered by her because of the contraventions described in [1] above.
3. An order pursuant to section 547 of the FW Act for interest on any amount ordered to be paid to the Applicant under [2] above.
4. An order pursuant to section 546(1) of the FW Act that the Territory pay pecuniary penalties for the contravention of the FW Act described above.
5. An order pursuant to section 546(3) of the FW Act that any penalty ordered by the Court pursuant to section 546(1) be paid to the Applicant.
6. Such further or other orders as the Court considers to be necessary or appropriate.

Against the Second Respondent

7. A declaration pursuant to section 21 of the FCA Act that the Second Respondent (“**Calvary**”) contravened section 50 of the FW Act by failing to pay the Applicant overtime as required by clause 36.2 of the 2013 EA.
8. A declaration pursuant to section 21 of the FCA Act that Calvary contravened section 50 of the FW Act by failing to pay the Applicant overtime as required by clause 35.2 of the *ACT Public Sector Medical Practitioners Enterprise Agreement 2017–2021* (“**2017 EA**”).
9. An order pursuant to section 545 of the FW Act that Calvary pay compensation to the Applicant for the loss suffered by her because of the contraventions described in [7] and/or [8] above.
10. An order pursuant to section 547 of the FW Act for interest on any amount ordered to be paid to the Applicant under [9] above.
11. An order pursuant to section 546(1) of the FW Act that Calvary pay pecuniary penalties for the contravention of the FW Act described above.



12. An order pursuant to section 546(3) of the FW Act that any penalty ordered by the Court pursuant to section 546(1) be paid to the Applicant.
13. Such further or other orders as the Court considers to be necessary or appropriate.

Further, on the grounds stated in the accompanying Further Amended Statement of Claim, the Applicant claims the following relief on behalf of Group Members:

Against the First Respondent

14. A declaration pursuant to section 21 of the FCA Act that the Territory contravened section 50 of the FW Act by failing to pay Group Members overtime as required by clause 36.2 of the 2013 EA.
15. A declaration pursuant to section 21 of the FCA Act that the Territory contravened section 50 of the FW Act by failing to pay Group Members overtime as required by clause 35.2 of the 2017 EA.
16. A declaration pursuant to section 21 of the FCA Act that the Territory contravened section 50 of the FW Act by failing to pay Group Members overtime as required by clause 36.2 of the *ACT Public Sector Medical Practitioners Enterprise Agreement 2021–2022* (“**2021 EA**”).
17. An order pursuant to section 545 of the FW Act that the Territory pay compensation to Group Members for the loss suffered by each of them because of the contraventions described in any one or more of [14]–[16] above.
18. An order pursuant to section 547 of the FW Act for interest on any amount ordered to be paid to Group Members under [17] above.
19. An order pursuant to section 546(1) of the *Fair Work Act 2009* (Cth) that the Territory pay pecuniary penalties for the contraventions of the FW Act described above.
20. An order pursuant to section 546(3) of the FW Act that any penalty ordered by the Court pursuant to section 546(1) be paid to the Applicant.
21. Such further or other orders as the Court considers to be necessary or appropriate.

Against the Second Respondent

22. A declaration pursuant to section 21 of the FCA Act that Calvary contravened section 50 of the FW Act by failing to pay Group Members overtime as required by clause 36.2 of the 2013 EA.
23. A declaration pursuant to section 21 of the FCA Act that Calvary contravened section 50 of the FW Act by failing to pay Group Members overtime as required by clause 35.2 of the 2017 EA.



24. A declaration pursuant to section 21 of the FCA Act that Calvary contravened section 50 of the FW Act by failing to pay Group Members overtime as required by clause 36.2 of the 2021 EA.
25. An order pursuant to section 545 of the FW Act that Calvary pay compensation to Group Members for the loss suffered by each of them because of the contraventions described in any one or more of [22]–[24] above.
26. An order pursuant to section 547 of the FW Act for interest on any amount ordered to be paid to Group Members under [25] above.
27. An order pursuant to section 546(1) of the *Fair Work Act 2009* (Cth) that Calvary pay pecuniary penalties for the contraventions of the FW Act described above.
28. An order pursuant to section 546(3) of the FW Act that any penalty ordered by the Court pursuant to section 546(1) be paid to the Applicant.
29. Such further or other orders as the Court considers to be necessary or appropriate.

Questions Common to Claims of Group Members

The questions of law or fact common to the claims of Group Members are:

Authorisation

1. Whether a requirement or request to work overtime in excess of rostered hours, within the meaning of clause 36.1 of the 2013 EA, is capable of being implied by the conduct of either or both of the Territory and Calvary.
2. Whether a requirement or request to work overtime in excess of rostered hours, within the meaning of clause 35.1 of the 2017 EA, is capable of being implied by the conduct of either or both of the Territory and Calvary.
3. Whether a requirement or request to work overtime in excess of rostered hours, within the meaning of clause 36.1 of the 2021 EA, is capable of being implied by the conduct of either or both of the Territory and Calvary.

System of work, custom or practice of working overtime, and knowledge—the Territory

- ~~4. Whether, during some or all of the Relevant Period (as defined in the Statement of Claim):~~
 - ~~(a) there was a system, custom, or practice of Junior Medical Officers (within the meaning of the Statement of Claim) employed by the Territory working unrostered overtime admitting patients;~~
 - ~~(b) the Territory knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime admitting patients;~~



~~(c) the Territory did not direct Junior Medical Officers not to work unrostered overtime admitting patients.~~

~~5. Whether, during some or all of the Relevant Period:~~

~~(a) there was a system, custom, or practice of Junior Medical Officers employed by the Territory working unrostered overtime attending patient consults;~~

~~(b) the Territory knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime attending patient consults;~~

~~(c) the Territory did not direct Junior Medical Officers not to work unrostered overtime attending patient consults.~~

6. Whether, during some or all of the Relevant Period, in the Orthopaedics Department at Canberra Hospital:

(a1) there was a system of work whereby Junior Medical Officers were required to attend to a patient in circumstances of medical emergency until that patient could be safely handed over, even if that attendance exceeded that doctor's rostered hours;

(a2) the Territory knew that there was the system of work set out in subparagraph (a1) above;

(a) there was a ~~system, custom, or practice~~ of Junior Medical Officers employed by the Territory working unrostered overtime dealing with medical emergencies;

(b) the Territory;

(i) knew; alternatively

(ii) ought to have known,

that there was a ~~system, custom, or practice~~ of Junior Medical Officers working unrostered overtime dealing with medical emergencies;

(c) the Territory did not direct Junior Medical Officers not to work unrostered overtime dealing with medical emergencies.

~~7. Whether, during some or all of the Relevant Period:~~

~~(a) there was a system, custom, or practice of Junior Medical Officers employed by the Territory working unrostered overtime performing surgical procedures;~~

~~(b) the Territory knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime performing surgical procedures;~~

~~(c) the Territory did not direct Junior Medical Officers not to work unrostered overtime performing surgical procedures.~~



8. ~~Whether, during some or all of the Relevant Period:~~

- ~~(a) there was a system, custom, or practice of Junior Medical Officers employed by the Territory working unrostered overtime transferring or discharging patients into other medical facilities;~~
- ~~(b) the Territory knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime transferring or discharging patients into other medical facilities;~~
- ~~(c) the Territory did not direct Junior Medical Officers not to work unrostered overtime transferring or discharging patients into other medical facilities.~~

9. Whether, during some or all of the Relevant Period, in the Orthopaedics Department, the Obstetrics and Gynaecology Department, the Psychiatric Medicine Department, and the Vascular Department at Canberra Hospital, and the General Medicine Department at Goulburn Hospital:

(a1) there was a system of work whereby:

- (i) Junior Medical Officers' rostered day shifts did not include sufficient time for the completion of medical records; and
- (ii) Junior Medical Officers were required to complete medical records in a timely manner;

(a2) the Territory knew that there was the system of work set out in subparagraph (a1) above;

(a) there was a ~~system, custom, or practice~~ of Junior Medical Officers employed by the Territory working unrostered overtime undertaking medical records preparation;

(b) the Territory:

- (i) knew; alternatively
- (ii) ought to have known,

that there was a ~~system, custom, or practice~~ of Junior Medical Officers working unrostered overtime undertaking medical records preparation;

(c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking medical records preparation.



10. Whether, during some or all of the Relevant Period, in the Orthopaedics Department, the ear nose throat surgery and oral maxillofacial surgery department and the Vascular Department at Canberra Hospital,

(a1) there was a system of work whereby Junior Medical Officers' rostered day shifts did not include time in the morning for preparation for ward rounds;

(a2) the Territory knew that there was the system of work set out in subparagraph (a1) above;

(a) there was a ~~system, custom, or~~ practice of Junior Medical Officers employed by the Territory working unrostered overtime undertaking ward round preparation;

(b) the Territory:

(i) knew; alternatively

(ii) ought to have known

that there was a ~~system, custom, or~~ practice of Junior Medical Officers working unrostered overtime undertaking ward round preparation;

(c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking ward round preparation.

~~11. Whether, during some or all of the Relevant Period:~~

~~(a) there was a system, custom, or practice of Junior Medical Officers employed by the Territory working unrostered overtime undertaking ward rounds;~~

~~(b) the Territory knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime undertaking ward rounds;~~

~~(c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking ward rounds.~~

12. Whether, during some or all of the Relevant Period, in the ear nose throat surgery and oral maxillofacial surgery department and the Vascular Department at Canberra Hospital:

(a1) there was a system of work whereby Junior Medical Officers, when rostered to work day shifts, were required to attend work until the afternoon paper round had concluded, even if that attendance exceeded that doctor's rostered hours;

(a2) the Territory knew that there was the system of work set out in subparagraph (a1) above;

(a) there was a ~~system, custom, or~~ practice of Junior Medical Officers employed by the Territory working unrostered overtime undertaking paper rounds;



- (b) the Territory:
 - (i) knew; alternatively
 - (ii) ought to have known.

that there was a ~~system, custom, or practice~~ of Junior Medical Officers working unrostered overtime undertaking paper rounds;

- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking paper rounds.

~~13. Whether, during some or all of the Relevant Period:~~

- ~~(a) there was a system, custom, or practice of Junior Medical Officers employed by the Territory working unrostered overtime undertaking handovers;~~
- ~~(b) the Territory knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime undertaking handovers;~~
- ~~(c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking handovers.~~

14. Whether, during some or all of the Relevant Period, in the Obstetrics and Gynaecology Department at Canberra Hospital:

(a1) there was a system of work whereby Junior Medical Officers rostered to work weekend and public holiday day shifts were required to complete patient tasks where those tasks could not be handed over, even if completing those tasks resulted in the doctor exceeding rostered hours;

(a2) the Territory knew that there was the system of work set out in subparagraph (a1) above;

- (a) there was a ~~system, custom, or practice~~ of Junior Medical Officers employed by the Territory working unrostered overtime providing medical services on weekends and public holidays arising out of ward rounds ~~other than the medical services referred to in questions [4]–[13] above;~~

- (b) the Territory:
 - (i) knew; alternatively
 - (ii) ought to have known.

that there was a ~~system, custom, or practice~~ of Junior Medical Officers working unrostered overtime providing medical services on weekends and public holidays arising out of ward rounds ~~other than the medical services referred to in questions [4]–[13] above;~~



- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime providing medical services other than the medical services on weekends and public holidays arising out of ward rounds referred to in questions [4] [13] above.

~~15. Whether, during some or all of the Relevant Period:~~

- ~~(a) there was a system, custom, or practice of Junior Medical Officers employed by the Territory working unrostered overtime;~~
- ~~(b) the Territory knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime;~~
- ~~(c) the Territory did not direct Junior Medical Officers not to work unrostered overtime.~~

~~**System of work, custom or practice of working overtime and knowledge—
Calvary**~~

~~16. Whether, during some or all of the Relevant Period:~~

- ~~(a) there was a system, custom, or practice of Junior Medical Officers (here, and hereafter, within the meaning of the Statement of Claim) employed by Calvary working unrostered overtime admitting patients;~~
- ~~(b) Calvary knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime admitting patients;~~
- ~~(c) Calvary did not direct Junior Medical Officers not to work unrostered overtime admitting patients.~~

~~17. Whether, during some or all of the Relevant Period:~~

- ~~(a) there was a system, custom, or practice of Junior Medical Officers employed by Calvary working unrostered overtime dealing with medical emergencies;~~
- ~~(b) Calvary knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime dealing with medical emergencies;~~
- ~~(c) Calvary did not direct Junior Medical Officers not to work unrostered overtime dealing with medical emergencies.~~

~~18. Whether, during some or all of the Relevant Period:~~

- ~~(a) there was a system, custom, or practice of Junior Medical Officers employed by Calvary working unrostered overtime transferring or discharging patients into other medical facilities;~~
- ~~(b) Calvary knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime transferring or discharging patients into other medical facilities;~~



~~(c) Calvary did not direct Junior Medical Officers not to work unrostered overtime transferring or discharging patients into other medical facilities.~~

~~19. Whether, during some or all of the Relevant Period:~~

~~(a) there was a system, custom, or practice of Junior Medical Officers employed by Calvary working unrostered overtime undertaking medical records preparation;~~

~~(b) Calvary knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime undertaking medical records preparation;~~

~~(c) Calvary did not direct Junior Medical Officers not to work unrostered overtime undertaking medical records preparation.~~

20. Whether, during some or all of the Relevant Period, in the Cardiology Department at Calvary Hospital:

(a1) there was a system of work whereby Junior Medical Officers' rostered day shifts did not include time in the morning for preparation for ward rounds;

(a1) there was a system of work whereby Junior Medical Officers' rostered day shifts did not include time in the morning for preparation for ward rounds;

(a) there was a ~~system, custom, or practice~~ of Junior Medical Officers employed by Calvary working unrostered overtime undertaking ward round preparation;

(b) Calvary;

(i) knew; alternatively

(ii) ought to have known

that there was a ~~system, custom, or practice~~ of Junior Medical Officers working unrostered overtime undertaking ward round preparation;

(c) Calvary did not direct Junior Medical Officers not to work unrostered overtime undertaking ward round preparation.

~~21. Whether, during some or all of the Relevant Period:~~

~~(a) there was a system, custom, or practice of Junior Medical Officers employed by Calvary working unrostered overtime undertaking paper rounds;~~

~~(b) Calvary knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime undertaking paper rounds;~~

~~(c) Calvary did not direct Junior Medical Officers not to work unrostered overtime undertaking paper rounds.~~



22. Whether, during some or all of the Relevant Period, in the Medical Assessment Planning Unit at Calvary Hospital:

(a1) there was a system of work whereby Junior Medical Officers, when rostered to work day shifts, were required to attend work until the afternoon handover had concluded, even if that attendance exceeded the doctor's rostered hours;

(a2) Calvary knew that there was the system of work set out in subparagraph (a1) above;

(a) there was a ~~system, custom, or practice~~ of Junior Medical Officers employed by Calvary working unrostered overtime undertaking handovers;

(b) Calvary;

(i) knew; alternatively

(ii) ought to have known,

that there was a ~~system, custom, or practice~~ of Junior Medical Officers working unrostered overtime undertaking handovers;

(c) Calvary did not direct Junior Medical Officers not to work unrostered overtime undertaking handovers.

~~23. Whether, during some or all of the Relevant Period:~~

~~(a) there was a system, custom, or practice of Junior Medical Officers employed by Calvary working unrostered overtime providing medical services other than the medical services referred to in questions [16]–[22] above;~~

~~(b) Calvary knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime providing medical services other than the medical services referred to in questions [16]–[22] above;~~

~~(c) Calvary did not direct Junior Medical Officers not to work unrostered overtime providing medical services other than the medical services referred to in questions [16]–[22] above.~~

~~24. Whether, during some or all of the Relevant Period:~~

~~(a) there was a system, custom, or practice of Junior Medical Officers employed by Calvary working unrostered overtime;~~

~~(b) Calvary knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime;~~

~~(c) Calvary did not direct Junior Medical Officers not to work unrostered overtime.~~



Representative action

1. The Applicant brings this application as a representative party under Part IVA of the FCA Act.
2. The group members to whom this proceeding relates are persons who, during the Relevant Period
 - (a) were employed by:
 - (i) the Territory and worked at the Canberra Hospital or, on secondment, at Goulburn Hospital.
 - (ii) Calvary, and worked at Calvary Public Hospital Bruce;
 - (b) when so employed were covered, within the meaning of the FW Act, by:
 - (i) the 2013 EA; or
 - (ii) the 2017 EA; or
 - (iii) the 2021 EA,
 - (c) when so employed and covered, were classified as:
 - (i) Interns;
 - (ii) Resident Medical Officers / RMO 1s;
 - (iii) Junior Registrars / Senior Resident Medical Officers / SRMO 1s;
 - (iv) Senior Resident Medical Officers / SRMO 2s;
 - (v) Senior Resident Medical Officers / SRMO 3s;
 - (vi) Registrar 1s;
 - (vii) Registrar 2s;
 - (viii) Registrar 3s;
 - (ix) Registrar 4s; or
 - (x) Senior Registrars,and hence were “**Junior Medical Officers**” within the meaning of that term in the 2013 EA, the 2017 EA, or the 2021 EA;
 - (d) in the course such employment, worked hours in excess of their ordinary hours, or their rostered hours (“**unrostered overtime**”);
 - (e) were not paid for some or all of the unrostered overtime that they worked,



3. At the date of the commencement of this proceeding, there are seven or more persons who have claims against each of the Territory and Calvary in respect of the matters set out in the Further Amended Statement of Claim.



Applicants' address

The Applicants' address for service is:

Gordon Legal
Level 22, 181 William Street
Melbourne VIC 3000

Email:

agrech@gordonlegal.com.au

The Applicants' address is:

c/- Gordon Legal
Level 22, 181 William Street
Melbourne VIC 3000

Service on the Respondent

It is intended to serve this application on the Respondents.

Date: ~~30 November 2022~~ 14 July 2023

A handwritten signature in blue ink, appearing to read 'Andrew Grech'.

Signed by Andrew Grech
Lawyer for the Applicant

Schedule



VID 705 of 2022

Federal Court of Australia
District Registry: Victoria
Division: Fair Work

Applicant: **YING YING THAM**

First Respondent: **AUSTRALIAN CAPITAL TERRITORY**

Second Respondent: **CALVARY HEALTH CARE ACT LIMITED**
(ACN 105 304 989)

Date: ~~30 November 2022~~ 14 July 2023