

## NOTICE OF FILING

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*Sia Lagos*

Registrar

### Important Information

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Form 17  
Rule 8.05(1)(a)

## **Further Amended Statement of Claim**

~~(Amended pursuant to rule 16.51(1))~~

(Filed pursuant to the Orders of the Honourable Justice Bromberg dated 19 May 2023)

VID 705 of 2022

Federal Court of Australia

District Registry: Victoria

Division: Fair Work

**YING YING THAM**

Applicant

**AUSTRALIAN CAPITAL TERRITORY** and another

Respondents

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## Part A Parties

### A.1 The Applicant and Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the Applicant (“**Dr Tham**”) on behalf of all persons who, during the period 1 December 2016 to 30 November 2022 (“**Relevant Period**”):
  - (a) were employed by:
    - (i) the First Respondent, the Australian Capital Territory (“**Territory**”), and worked at the Canberra Hospital or, on secondment, at Goulburn Hospital;
    - (ii) the Second Respondent, Calvary Health Care ACT Limited (ACN 105 304 989) (“**Calvary**”), and worked at Calvary Public Hospital Bruce (**Calvary Hospital**);
  - (b) when so employed were covered, within the meaning of the *Fair Work Act 2009* (Cth) (“**FW Act**”), by:
    - (i) the *ACT Public Sector Medical Practitioners Enterprise Agreement 2013–2017* (“**2013 EA**”); or
    - (ii) the *ACT Public Sector Medical Practitioners Enterprise Agreement 2017–2021* (“**2017 EA**”); or
    - (iii) the *ACT Public Sector Medical Practitioners Enterprise Agreement 2021–2022* (“**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;

#### **PARTICULARS**

In the case of each of the 2013 EA, the 2017 EA, and the 2021 EA, see the classifications in Annex A and the definition of “Junior Medical Officer” in the Dictionary.

- (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, (“**Group Members**”).

#### 2. Dr Tham:

- (a) between around 13 June 2018 and 03 February 2019, was employed by the Territory and was classified as an “Intern” by her contract and under the 2013 EA;
- (b) between around 04 February 2019 and 16 July 2019, was employed by the Territory and was classified as an “Intern” by her contract and under the 2013 EA;
- (c) between around 17 July 2019 and 02 February 2020, was employed by the Territory and classified by her contract as a “Resident Medical Officer 1–4”, and under the 2013 EA as an “RMO”;
- (d) between around 03 February 2020 and 31 January 2021, was employed by the Territory and classified by her contract as a “Resident Medical Officer 1–4”, and under the 2013 EA and the 2017 EA as an “RMO”;
- (e) between around 01 February 2021 and 07 February 2022, was employed by Calvary and classified by her contract as a “Senior Resident,” and under the 2017 EA and the 2021 EA as a Senior Resident Medical Officer / SRMO 1.

#### **PARTICULARS**

Copies of Dr Tham’s contracts of employment are in the possession of her solicitors and may be inspected on request.

3. As 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 this Amended Statement of Claim.

## **A.2 The Respondents**

4. The Territory:
  - (a) is, and throughout the Relevant Period was, a body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth);
  - (b) may be sued under the name “Australian Capital Territory” by virtue of section 21(2)(a) of the *Court Procedures Act 2004* (ACT);
  - (c) was, between around 13 June 2018 and 31 January 2021, the employer (and a national system employer) of Dr Tham;
  - (d) throughout the Relevant Period was the employer (and a national system employer) of Group Members within the meaning of section 14 of the FW Act.
5. Calvary:
  - (a) is, and throughout the Relevant Period was, a body corporate;
  - (b) may be sued in its corporate name and style;
  - (c) was, between 01 February 2021 and 07 February 2022, the employer (and a national system employer) of Dr Tham;
  - (d) throughout the Relevant Period was the employer (and a national system employer) of Group Members within the meaning of section 14 of the FW Act.

## **Part B The enterprise agreements**

### **B.1 Application and coverage**

6. The 2013 EA:
  - (a) was an enterprise agreement within the meaning of Part 2-4 of the FW Act;
  - (b) was approved by the Fair Work Commission (“**FWC**”) on 20 January 2016;
  - (c) commenced operation on and from 27 January 2016 and continued to operate until 17 January 2021;
  - (d) pursuant to clause 3.1, applied to and covered (within the meaning of the FW Act):
    - (i) the head of service on behalf of the Territory;

- (ii) the Chief Executive of Calvary on behalf of the Territory;
- (iii) persons engaged under the *Public Sector Management Act 1994* (ACT) at any time when the 2013 EA was in operation in one of the classifications in Annex A to the 2013 EA including, relevantly, Junior Medical Officers employed by either the Territory or Calvary.

#### **PARTICULARS**

Throughout the Relevant Period, an agreement (*viz*, the “Calvary Network Agreement”) has been in place between the Territory and Calvary for persons to be employed by Calvary under the *Public Sector Management Act 1994* (ACT) to provide public health services to the Territory.

In these circumstances, by operation of section 26 of the *Public Sector Management Act 1994* (ACT) prior to around 09 March 2017, and section 157 of the *Public Sector Management Act 1994* (ACT) from and after around 09 March 2017, Junior Medical Officers employed by Calvary have been engaged “under” the *Public Sector Management Act 1994* (ACT).

#### 7. The 2017 EA:

- (a) was an enterprise agreement within the meaning of Part 2-4 of the FW Act;
- (b) was approved by the FWC on 11 January 2021;
- (c) commenced operation on 18 January 2021 and continued to operate until 17 January 2022;
- (d) pursuant to clause 3.1, applied to and covered (within the meaning of the FW Act):
  - (i) at all times during its operation, the head of service on behalf of the Territory;
  - (ii) at all times during its operation, the Chief Executive of Calvary on behalf of the Territory;
  - (iii) persons engaged under the *Public Sector Management Act 1994* (ACT) at any time when the 2017 EA was in operation in one of the classifications in Annex A to the 2017 EA including, relevantly, Junior Medical Officers employed by either the Territory or Calvary.

#### **PARTICULARS**

Throughout the Relevant Period, an agreement (*viz*, the “Calvary Network Agreement”) has been in place between the

Territory and Calvary for persons to be employed by Calvary under the *Public Sector Management Act 1994* (ACT) to provide public health services to the Territory.

In these circumstances, by operation of section 157 of the *Public Sector Management Act 1994* (ACT), Junior Medical Officers employed by Calvary have been engaged “under” the *Public Sector Management Act 1994* (ACT).

8. The 2021 EA:
- (a) is an enterprise agreement within the meaning of Part 2-4 of the FW Act;
  - (b) was approved by the FWC on 11 January 2022;
  - (c) commenced operation on 18 January 2022 and remains in operation;
  - (d) pursuant to clause 3.1, applies to and covers (within the meaning of the FW Act):
    - (i) throughout the Relevant Period, the head of service on behalf of the Territory;
    - (ii) throughout the Relevant Period, the Chief Executive of Calvary on behalf of the Territory;
    - (iii) persons engaged under the *Public Sector Management Act 1994* (ACT) at any time when the 2021 EA was in operation in one of the classifications in Annex A to the 2021 EA including, relevantly, Junior Medical Officers employed by either the Territory or Calvary.

#### **PARTICULARS**

Throughout the Relevant Period, an agreement (*viz*, the “Calvary Network Agreement”) has been in place between the Territory and Calvary for persons to be employed by Calvary under the *Public Sector Management Act 1994* (ACT) to provide public health services to the Territory.

In these circumstances, by operation of section 157 of the *Public Sector Management Act 1994* (ACT), Junior Medical Officers employed by Calvary have been engaged “under” the *Public Sector Management Act 1994* (ACT).

#### **B.2 Hours of work, rostering, and overtime**

9. Each of the 2013 EA, the 2017 EA, and the 2021 EA provided or provide that the ordinary weekly hours for Junior Medical Officers were or are 38 hours performed:
- (a) on the basis of 76 hours within a period not exceeding fourteen consecutive days; or

- (b) over any other period of twelve months or less, on a basis agreed between the manager/supervisor and employee in writing, providing for an average working week of 38 hours per week over the agreed period.

**PARTICULARS**

2013 EA, clause 18.2.

2017 EA, clause 17.2.

2021 EA, clause 17.2.

10. Each of the 2013 EA, the 2017 EA, and the 2021 EA provided or provide that ordinary hours of work for full-time employees would or will be performed according to a roster.

**PARTICULARS**

2013 EA, clause 18.3.

2017 EA, clause 17.3.

2021 EA, clause 17.3.

11. Clause 36 of the 2013 EA provided as follows:

**36. OVERTIME FOR MEDICAL OFFICERS**

*36.1 An employee may be required or requested to work reasonable additional hours for duty at any time that the employee is required, subject to the payment for overtime in accordance with the conditions set out in this Clause, and the reasonable additional hours provisions of Section 62 of the FW Act.*

*36.2 All time worked by a Medical Officer, as defined, in excess of their ordinary hours specified in or agreed in accordance with Clause 18, and which does not accrue towards an ADO in accordance with Clause 21, will be paid as overtime.*

*36.3 Where a Medical Officer has been required to work during their meal break and they are not able to finish duty early on the same shift then they will be entitled to receive payment for overtime once the total ordinary work time for that shift has elapsed.*

*36.4 Overtime will be paid at the rate of time and one half for the first 2 hours, and double time for the remaining hours worked, provided that all overtime performed on a Sunday shall be at double time, unless time off in lieu is agreed in accordance with Clause 37.”*

12. Clause 35 of the 2017 EA provided as follows:

*“35. OVERTIME FOR MEDICAL OFFICERS*

- 35.1. An employee may be required or requested by the head of service to work reasonable additional hours for duty at any time that the employee is required, subject to the payment for overtime in accordance with the conditions set out in this clause, and the reasonable additional hours provisions of section 62 of the FW Act.*
- 35.2. All time worked by a Medical Officer, as defined, in excess of their ordinary hours specified in or agreed in accordance with clause 17, and which does not accrue towards an ADO in accordance with clause 20, will be paid as overtime.*
- 35.3. Where a Medical Officer has been required to work during their meal break and they are not able to finish duty early on the same shift then they will be entitled to receive payment for overtime once the total ordinary work time for that shift has elapsed.*
- 35.4. Overtime will be paid at the rate of time and one half for the first two hours, and double time for the remaining hours worked, provided that all overtime performed on a Sunday shall be at double time. For overtime worked on a public holiday or a substituted public holiday as defined in clause 102 of this agreement will be paid a total rate of double time and one half at the employee’s ordinary hourly rate of pay for all time worked, unless time off in lieu is agreed in accordance with clause 36.”*

13. Clause 36 of the 2021 EA provides as follows:

*“36. OVERTIME FOR MEDICAL OFFICERS*

- 36.1. An employee may be required or requested by the head of service to work reasonable additional hours for duty at any time that the employee is required, subject to the payment for overtime in accordance with the conditions set out in this clause, and the reasonable additional hours provisions of section 62 of the FW Act.*
- 36.1.1. Where an employee is requested by the head of service to work additional hours and those additional hours are not rostered in accordance with Clause 19, then the employee and the head of service will ensure the additional hours are recorded.*

- 36.2. *All time worked by a Medical Officer, as defined, in excess of their ordinary hours specified in or agreed in accordance with clause 17, and which does not accrue towards an ADO in accordance with clause 20, will be paid as overtime.*
- 36.3. *Where a Medical Officer has been required to work during their meal break and they are not able to finish duty early on the same shift then they will be entitled to receive payment for overtime once the total ordinary work time for that shift has elapsed.*
- 36.4. *Overtime will be paid at the rate of time and one half for the first two hours, and double time for the remaining hours worked, provided that all overtime performed on a Sunday shall be at double time. For overtime worked on a public holiday or a substituted public holiday as defined in clause 105 of this agreement will be paid a total rate of double time and one half at the employee's ordinary hourly rate of pay for all time worked, unless time off in lieu is agreed in accordance with clause 37."*

### **Part C Duties and responsibilities of Dr Tham and Group Members**

14. During the Relevant Period, the duties and responsibilities of Junior Medical Officers in their employment by the Territory or Calvary included, from time to time:
- (a) admitting patients ("**admissions**");
  - (b) attending to the consult of a patient in a department other than the department in which the Junior Medical Officer was working ("**consults**");
  - (c) preparing for ward rounds ("**ward round preparation**");
  - (d) undertaking ward rounds ("**ward rounds**");
  - (e) preparing medical records ("**medical records preparation**");

#### **PARTICULARS**

Medical records include:

- (a) discharge summaries;
- (b) patient notes;
- (c) paper charts;
- (d) referrals;
- (e) ordering of:
  - (i) scripts from pharmacy;

- (ii) blood tests;
  - (iii) imaging;
  - (iv) infusions.
- (f) paper rounds (“**paper rounds**”);
  - (g) dealing with medical emergencies and/or patients whose condition was deteriorating (“**medical emergencies**”);
  - (h) undertaking, or being involved in the undertaking of, surgical procedures in theatres (“**surgeries**”);
  - (i) procuring the transfer or discharge of patients into other medical facilities (“**transfers**”);
  - (j) performing handovers of patients to doctors on an incoming shift (“**handovers**”);
  - (k) carrying out such other duties necessary for the provision of medical services by the Junior Medical Officer (“**other medical services**”).

#### **Part D Dr Tham’s claim against the Territory**

15. During the course of her employment by the Territory, Dr Tham was directed, relevantly, to work:
- (a) as an intern in the orthopaedics department at Canberra Hospital, from around 13 June 2018 to around 29 July 2018 (“**2018 Orthopaedics Rotation**”);
  - (b) as an intern in the general medicine department at Goulburn Hospital, from around 30 July 2018 to around 28 October 2018 (“**2018 General Medicine Rotation**”);
  - (c) as an intern in the ear nose throat surgery and oral maxillofacial surgery department at Canberra Hospital, from around 04 February 2019 to around 28 April 2019 (“**2019 OMFS Rotation**”);
  - (d) as an intern in the obstetrics and gynaecology department at Canberra Hospital, from around 29 April 2019 to around 16 July 2019 (“**2019 Obstetrics Intern Rotation**”);
  - (e) as an RMO in the obstetrics and gynaecology department at Canberra Hospital, from around 17 July 2019 to around 28 July 2019 (“**2019 Obstetrics RMO Rotation**”);

- (f) as an RMO in the psychiatric medicine department at Canberra Hospital, from around 29 July 2019 to around 27 October 2019 ("**2019 Psychiatric Medicine Rotation**");
- (g) as an RMO in the vascular department at Canberra Hospital, from around 27 July 2020 to around 25 October 2020 ("**2020 Vascular Rotation**").

16. ~~During 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.~~

### **PARTICULARS**

~~The knowledge of the Territory is to be inferred from the following matters:~~

- ~~(a) Dr Tham and Junior Medical Officers working before or after their rostered start or finish times, and being observed by other medical staff while so doing;~~
- ~~(b) directions to Dr Tham and Junior Medical Officers to work before or after their rostered start or finish times providing medical services;~~
- ~~(c) the rostered hours of Dr Tham and Junior Medical Officers;~~
- ~~(d) paper or electronic records created before, after, or in the course of performing overtime, including (for example):~~
  - ~~(i) entrance logs at wards of the hospital or carparks;~~
  - ~~(ii) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records.~~

#### **D.1 2018 Orthopaedics Rotation—13 June 2018 to 29 July 2018—2013 EA**

17. Pursuant to the direction pleaded in [15(a)], from around 13 June 2018 to around 29 July 2018, Dr Tham worked in the orthopaedics department at Canberra Hospital.

##### **D.1.1 Rosters**

18. During the 2018 Orthopaedics Rotation, Dr Tham was rostered to work the following shifts, from time to time:

- (a) day shifts from 0700 to 1700;

- (b) evening shifts from 1200 to 2200;
- (c) weekend shifts from:
  - (i) 0700 to 1430; or
  - (ii) 1400 to 2130.

#### **PARTICULARS**

Copies of Dr Tham's rosters are in the possession of her solicitors and may be inspected on request.

#### **D.1.2 Ward round preparation**

19. During the 2018 Orthopaedics Rotation, the Territory directed Dr Tham to undertake ward round preparation ("**ward round preparation direction**").

#### **PARTICULARS**

The ward round preparation direction was partly oral, and partly implied.

So far as it was oral, it was constituted by:

- (a) Dr Rashmee Dhunnoo, an intern from the previous term, saying on around 17 May 2018 to Dr Tham words to the effect that Dr Tham should arrive early in order that she could, before ward rounds:
  - (i) make sure the patient list was up to date;
  - (ii) check if anything serious had happened overnight;
  - (iii) check for bloods;
- (b) Dr Yi Ren Bong, a Resident, saying on around 15 June 2018 to Dr Tham words to the effect that it was the duty of interns to make sure that patient lists were updated before the commencement of ward rounds.

So far as it was implied, it was implied by:

- (a1) the tasks necessary for ward round preparation, as set out in subparagraph (d) of the particulars to [23] below;
- (a) the fact of ward round preparation being part of Dr Tham's duties, as pleaded in [14(c)];
- (b) the importance of preparing for ward rounds for proper patient care.

20. During the 2018 Orthopaedics Rotation, in order to undertake ward ~~wound~~ round preparation in accordance with the ward round preparation direction, Dr Tham worked hours in excess of her rostered hours ("**ward round preparation overtime**").

**PARTICULARS**

During the 2018 Orthopaedics Rotation, Dr Tham was required to attend a handover meeting at 0700, which was also the start of her rostered days shifts. Ward rounds commenced immediately after handover.

Dr Tham performed around 30 minutes of ward round preparation overtime prior to the start of most or all of her day shifts.

## 21. The Territory:

- (a) knew that there was insufficient time during Dr Tham's rostered hours to undertake ward round preparation in accordance with the ward round preparation direction;
- (b) knew that Dr Tham performed ward round preparation overtime;
- (c) did not direct Dr Tham not to perform ward round preparation overtime.

**PARTICULARS**

The Territory's knowledge is to be inferred from:

(a1) Dr Tham's rostered day shifts, as set out in [18(a)] above;

(a2) the tasks necessary for ward round preparation, as set out in subparagraph (d) of the particulars to [23] below;

(a3) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [22(a1)]-[22(b)] below;

- (a) the ward round preparation direction;
- (b) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance logs at wards of the hospital or carparks,;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records.
- (c) the fact of Dr Tham being prepared for ward rounds when they commenced, in circumstances where:
  - (i) the only available time for preparation was prior to handover;
  - (ii) handover commenced at the same time as Dr Tham's day shifts (0700);
- (d) the knowledge of Registrars and Consultants that Dr Tham was prepared for ward rounds, in the circumstances identified in particular (c).

22. During the Relevant Period, in the Orthopaedics 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;

**PARTICULARS**

Work in the Orthopaedics Department at Canberra Hospital was, relevantly, organised in the following way:

- (a) Day shifts commenced at 0700.
- (b) Handover from the night shift to the day shift commenced at 0700.
- (c) Junior Medical Officers were required to attend handover.
- (d) Ward rounds commenced immediately after the conclusion of handover.
- (e) Junior Medical Officers were required to attend ward rounds.
- (f) Junior Medical Officers were required to prepare for ward rounds.
- (g) Ward rounds had to be completed by 0800.

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

**PARTICULARS**

The knowledge of the Territory is to be inferred from the fact that the Territory, as employer of Dr Tham and Junior Medical Officers, prepared and implemented the rosters, and arranged the work, in the Orthopaedics Department at Canberra Hospital.

- (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;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Dr Tham and Junior Medical Officers working before their rostered start times undertaking ward round preparation, and being observed by other medical staff while so doing;
  - (b) the ward round preparation direction, and like directions given to other Junior Medical Officers;
  - (c) the rostered hours of Dr Tham and Junior Medical Officers; ~~and~~
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
    - (i) entrance logs at wards of the hospital or carparks,;
    - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and
  - (e) the Territory's knowledge of the system of work pleaded in [22(a1)] and [22(a2)].
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking ward round preparation.
23. In the premises pleaded in [19]–[22], Dr Tham was required or requested, within the meaning of clause 36.1 of the 2013 EA, to perform the ward round preparation overtime.

### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of ward round preparation being part of Dr Tham's duties, as pleaded in [14(c)];
- (b) the ward round preparation direction;
- (c) the necessity to be prepared for ward rounds when they commenced;
- (d) the fact that, in order to be prepared for ward rounds, Dr Tham had to:
  - (i) prepare a patient list, including adding any patients who had come in overnight;
  - (ii) search for patients in the Clinical Portal and adding relevant information into the Google document patient list;
  - (iii) check blood tests;
  - (iv) check patient observations such as blood pressure and heart rates;
  - (v) update patient notes to record matters of which Dr Tham had been informed by any other doctor;
  - (vi) know patients' status;
  - (vii) be in a position to provide accurate information in regard to patients' progress;

- (e) the expectation of Registrars conducting ward rounds that Dr Tham would be prepared for ward rounds;
- (f) the fact of ward rounds commencing immediately after handover, where handover commenced at the same time as Dr Tham's day shifts (0700);
- (g) the need for ward rounds to start on time so that Registrars could commence theatre at 0800;
- (h) the Territory's knowledge pleaded in [21(a)] and [21(b)];
- (i) the Territory having not directed Dr Tham not to perform ward round preparation overtime, as pleaded in [21(c)];
- (j) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of each of those matters thereof, and the failure to direct, pleaded in [16] and [22].

24. The ward round preparation overtime did not accrue to an accrued day off ("ADO") within the meaning of clause 36.2 of the 2013 EA.
25. In the premises, clause 36.2 of the 2013 EA required the Territory to pay Dr Tham for the ward round preparation overtime, at the rates set out in clause 36.4 of the 2013 EA.
26. The Territory did not pay Dr Tham for the ward round preparation overtime, at the rates set out in clause 36.4 of the 2013 EA.
27. In the premises, the Territory has contravened:
- (a) clause 36.2 of the 2013 EA; and
  - (b) section 50 of the FW Act.

### D.1.3 Medical records

28. During the 2018 Orthopaedics Rotation, the Territory directed Dr Tham:
- (a) to undertake medical records preparation; and
  - (b) to complete medical records in a timely manner; and
  - (c) that the timely completion of medical records was necessary to ensure patient care.
- ("medical records direction").

### PARTICULARS

The medical records direction was partly oral, and partly implied.

So far as it was oral, it was constituted by Dr Yi Ren Bong, Resident, saying on around 15 June 2018 to Dr Tham that interns were responsible for completing discharge summaries.

So far as it was implied, it was implied by:

- (a) the fact of medical records preparation being part of Dr Tham's duties, as pleaded in [14(e)];
- (b) the importance of up-to-date medical records for proper care of a patient, including continuity of care as between the hospital and ongoing care from general practitioners;
- (c) the importance of completion of medical records in a timely way, so that (for example):
  - (i) blood tests are undertaken as soon as possible;
  - (ii) scripts are ready for collection when a patient is discharged;
  - (iii) any further necessary medical care could be provided.

29. During the 2018 Orthopaedics Rotation, in order to undertake medical records preparation in accordance with the medical records direction, Dr Tham worked hours in excess of her rostered hours ("**medical records overtime**").

#### **PARTICULARS**

Dr Tham performed around 30 minutes of medical records overtime at the end of most or all of her shifts.

30. The Territory:

- (a) knew that there was insufficient time during Dr Tham's rostered hours to undertake medical records preparation in accordance with the medical records direction;
- (b) knew that Dr Tham performed medical records overtime;
- (c) did not direct Dr Tham not to perform medical records overtime.

#### **PARTICULARS**

The Territory's knowledge is to be inferred from:

- (a1) Dr Tham's rostered day shifts, as set out in [18(a)] above;
- (a2) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [31(a1)]–[31(b)] below;
- (a) the medical records direction;
- (b) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (c) Residents and Registrars seeing Dr Tham on the ward preparing medical records after the end of her rostered shift (the Residents during the 2018 Orthopaedics Rotation being

Dr Yi Ren Bong, Dr Choon Lin Wong, and Dr Pi Lip Seet, and the Registrars including Dr Tom Cheng and Dr Yi Deng).

31. During the Relevant Period in the Orthopaedics Department at Canberra 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;

**PARTICULARS**

Work in the Orthopaedics Department at Canberra Hospital was, relevantly, organised in the following way:

- (a) Patients to be discharged that day or the following day were identified by Registrars during the morning ward round, or were otherwise identified by Registrars during the day.
- (b) Dr Tham and Junior Medical Officers were directed to complete discharge summaries in a timely manner.
- (c) Throughout the day, clinically urgent tasks took priority for Dr Tham and Junior Medical Officers.
- (d) Patient notes had to be completed contemporaneously, or if that was not possible, on the same day, to ensure that nursing staff had up to date information about a patient.
- (e) Patients being discharged to a nursing home or transferred to another facility could not leave the hospital without a discharge summary.

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

**PARTICULARS**

The knowledge of the Territory is to be inferred from the fact that the Territory, as employer of Dr Tham and Junior Medical Officers, prepared and implemented the rosters, and arranged the work, in the Orthopaedics Department at Canberra Hospital.

- (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;

### **PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Dr Tham and Junior Medical Officers working after their rostered finish times undertaking medical records preparation, and being observed by other medical staff while so doing;
- (b) the medical records direction, and like directions given to other Junior Medical Officers;
- (c) the rostered hours of Dr Tham and Junior Medical Officers;
- (d) the volume of patient medical records required to be completed in a timely manner, which included discharge summaries, patient notes, prescriptions and investigation requests; and
- (e) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and
- (f) the Territory's knowledge of the system of work pleaded in [31(a1) and [31(a2)] above.

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

32. In the premises pleaded in [28]–[31], Dr Tham was required or requested, within the meaning of clause 36.1 of the 2013 EA, to perform the medical records overtime.

### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of medical records preparation being part of Dr Tham's duties, as pleaded in [14(e)];
- (b) the medical records direction;
- (c) the Territory's knowledge pleaded in [30(a)]–[30(b)];
- (d) the Territory having not directed Dr Tham not to perform medical records overtime, as pleaded in [30(c)];
- (e) the system of work, the practice of Junior Medical Officers' working unrostered overtime, and ~~custom, or practice,~~ the Territory's knowledge of each of those matters thereof, and the failure to direct, pleaded in ~~[16]~~ and [31].

33. The medical records overtime did not accrue to an ADO within the meaning of clause 36.2 of the 2013 EA.

34. In the premises, clause 36.2 of the 2013 EA required the Territory to pay Dr Tham for the medical records overtime, at the rates set out in clause 36.4 of the 2013 EA.
35. The Territory did not pay Dr Tham for the medical records overtime, at the rates set out in clause 36.4 of the 2013 EA.
36. In the premises, the Territory has contravened:
- (a) clause 36.2 of the 2013 EA; and
  - (b) section 50 of the FW Act.

#### **D.1.4 Medical emergencies**

37. During the 2018 Orthopaedics Rotation, the Territory directed Dr Tham to deal with medical emergencies (“**medical emergencies direction**”).

##### **PARTICULARS**

The medical emergencies direction was partly written, partly oral, and partly implied.

So far as it was written, it was contained in a position description for Dr Tham’s position, which she no longer possesses.

So far as it was oral, it was constituted by requests from nurses and other medical staff, from time to time, that Dr Tham attend to an unwell patient.

So far as it was implied, it was implied by:

- (a) the fact of dealing with medical emergencies being part of Dr Tham’s duties, as pleaded in [14(g)];
- (b) the centrality to a doctor’s role of attending to patients whose condition is poor, deteriorating, or in an emergency situation;
- (c) the unsafeness or undesirability of handing over a patient in such a situation to a doctor who is coming onto shift;
- (d) the difficulty, unsafeness, or undesirability of trying to find another doctor to whom to hand over a patient in such a situation;
- (e) the desirability or appropriateness for patient care, in such a situation, that a doctor who is aware of the patient’s circumstances continue to provide care for that patient.

38. During the 2018 Orthopaedics Rotation, in order to deal with medical emergencies in accordance with the medical emergencies direction, Dr Tham worked hours in excess of her rostered hours (“**medical emergencies overtime**”).

##### **PARTICULARS**

If a medical emergency presented itself past Dr Tham’s rostered finish time, the doctor on the incoming shift would attend to the emergency.

If a medical emergency presented itself well before the end of Dr Tham's rostered finish time, usually it was addressed before the end of Dr Tham's rostered finish time.

From time to time, however, a medical emergency presented itself near enough to the end of Dr Tham's shift that it could not be handed over including for the reasons particularised under the previous paragraph, and it was not addressed by the end of Dr Tham's shift.

In such circumstances, Dr Tham continued to deal with the emergency until it was addressed. On some occasions, this required Dr Tham to work around 15 minutes after the end of her rostered shift; on other occasions, 60 minutes.

On average, Dr Tham worked around 1.25 hours of medical emergencies overtime per week, but this amount varied considerably from week to week.

39. The Territory:

- (a) knew that there was insufficient time during Dr Tham's rostered hours to deal with medical emergencies in accordance with the medical emergencies direction;
- (b) knew that Dr Tham performed medical emergencies overtime;
- (c) did not direct Dr Tham not to perform medical emergencies overtime.

**PARTICULARS**

The Territory's knowledge is to be inferred from:

- (a1) Dr Tham's rostered day shifts, as set out in [18(a)] above;
- (a2) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [40(a1)]–[40(b)] below;
  - (a) the medical emergencies direction;
  - (b) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records.
  - (c) the circumstances giving rise to the medical emergencies direction by implication, as particularised above;
  - (d) the fact of Dr Tham telephoning Registrars after the end of her rostered shift to speak with such Registrars concerning the status of a patient (the Registrars during the 2018 Orthopaedics Rotation including Dr Tom Cheng and Dr Yi Deng).

40. During 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;

**PARTICULARS**

Work in the Orthopaedics Department at Canberra Hospital was, relevantly, organised in the following way:

- (a) Medical emergencies, including but not limited to MET calls, could arise at any time.
- (b) If a MET call occurred, a Registrar and Junior Medical Officer would attend the call.
- (c) If an emergency that was not a MET call occurred, a Junior Medical Officer could attend the call without a Registrar.
- (d) In either case, where Dr Tham attended a medical emergency before the end of her shift, which was not addressed before the end of her shift, then it was the responsibility of Dr Tham and any other attending doctor to attend to the patient until the issue was resolved, or could be safely handed over to the evening doctors, even if that attendance exceeded the doctor's rostered hours.

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

**PARTICULARS**

The knowledge of the Territory is to be inferred from the fact that the Territory, as employer of Dr Tham and Junior Medical Officers, prepared and implemented the rosters, and arranged the work, in the Orthopaedics Department at Canberra Hospital.

- (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;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Dr Tham and Junior Medical Officers working after their rostered finish times dealing with medical emergencies, and being observed by other medical staff while so doing;
- (b) the medical emergencies direction, and like directions given to other Junior Medical Officers;
- (c) the rostered hours of Dr Tham and Junior Medical Officers; and
- (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records; and
- (e) the Territory's knowledge of the system of work pleaded in [40(a1)] and [40(a2)].

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

41. In the premises pleaded in [37]–[40], Dr Tham was required or requested, within the meaning of clause 36.1 of the 2013 EA, to perform the medical emergencies overtime.

#### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of dealing with medical emergencies being part of Dr Tham's duties, as pleaded in [14(g)];
- (b) the medical emergencies direction;
- (c) the Territory's knowledge pleaded in [39(a)] and [39(b)];
- (d) the Territory having not directed Dr Tham not to perform medical records overtime, as pleaded in [39(c)];
- (e) the system of work, the practice of Junior Medical Officers working overtime, and custom, or practice, the Territory's knowledge of each of those matters thereof, and the failure to direct, pleaded in [16] and [40].

42. The medical emergencies overtime did not accrue to an ADO within the meaning of clause 36.2 of the 2013 EA.

43. In the premises, clause 36.2 of the 2013 EA required the Territory to pay Dr Tham for the medical emergencies overtime, at the rates set out in clause 36.4 of the 2013 EA.

44. The Territory did not pay Dr Tham for the medical emergencies overtime, at the rates set out in clause 36.4 of the 2013 EA.

45. In the premises, the Territory has contravened:

- (a) clause 36.2 of the 2013 EA; and

(b) section 50 of the FW Act.

## **D.2 2018 General Medicine Rotation—30 July 2018 to 28 October 2018—2013 EA**

46. Pursuant to the direction pleaded in [15(b)], from around 30 July 2018 to around 28 October 2018, Dr Tham worked in the general medicine department at Goulburn Hospital.

### **D.2.1 Rosters**

47. During the 2018 General Medicine Rotation, Dr Tham was rostered to work the following shifts, from time to time:

- (a) day shifts, Monday to Friday, from 0800 to 1630;
- (b) long day shifts, from 0800 to 2030, around once per fortnight;
- (c) on-call shifts, after a long day shift, from 2030 to 0800 the following morning.

#### **PARTICULARS**

~~Copies of Dr Tham's rosters are in the possession of her solicitors and may be inspected on request.~~

### **D.2.2 Medical records**

48. During the 2018 General Medicine Rotation, the Territory directed Dr Tham:

- (a) to undertake medical records preparation; and
- (b) to complete medical records in a timely manner; and
- (c) that the timely completion of medical records was necessary to ensure patient care.

("medical records direction").

#### **PARTICULARS**

~~The medical records direction was partly oral, and partly is to be implied.~~

~~So far as it was oral, it was constituted by Dr Yi Ren Bong, Resident, saying on around 15 June 2018 to Dr Tham that interns were responsible for completing discharge summaries, which statement Dr Tham understood to be the position during secondment, as well.~~

The medical records direction ~~So far as it was implied, it was implied by:~~

- (a) the fact of medical records preparation being part of Dr Tham's duties, as pleaded in [14(e)];

- (b) the importance of up-to-date medical records for proper care of a patient, including continuity of care as between the hospital and ongoing care from general practitioners;
- (c) the importance of discharge summaries specifically for ongoing care, including in that they are a means of communication with a patient's general practitioner;
- (d) the importance of completion of medical records in a timely way, so that (for example):
  - (i) blood tests are undertaken as soon as possible;
  - (ii) scripts are ready for collection when a patient is discharged;
  - (iii) any further necessary medical care could be provided.

49. During the 2018 General Medicine Rotation, in order to undertake medical records preparation in accordance with the medical records direction, Dr Tham worked hours in excess of her rostered hours ("**medical records overtime**").

#### **PARTICULARS**

Dr Tham worked medical records overtime after all or nearly all day shifts, for a total of around five to ten hours per week.

50. The Territory:

- (a) knew that there was insufficient time during Dr Tham's rostered hours to undertake medical records preparation in accordance with the medical records direction;
- (b) knew that Dr Tham performed medical records overtime;
- (c) did not direct Dr Tham not to perform medical records overtime.

#### **PARTICULARS**

The Territory's knowledge is to be inferred from:

- (a1) Dr Tham's rostered day shifts, as set out in [47] above;
- (a2) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [51(a1)]–[51(b)] below:
  - (a) the medical records direction;
  - (b) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records.
  - (c) Registrars, who were themselves employees of the Territory seconded to Goulburn Hospital, seeing Dr Tham on the ward preparing medical records after the end of her rostered shift

(the Registrars during the 2018 General Medicine Rotation being Dr Viet Phan and Dr Lilian Wang);

- (d) Dr Tham submitting claims for overtime payments for some of the medical records overtime that she worked.

51. During the Relevant Period in 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;

**PARTICULARS**

Work in the General Medicine Department at Goulburn Hospital was, relevantly, organised in the following way:

- (a) Patients to be discharged that day or the following day were identified by Registrars during the morning ward round, or were otherwise identified by Registrars during the day.
- (b) Dr Tham and Junior Medical Officers were directed to complete discharge summaries in a timely manner.
- (c) Throughout the day, clinically urgent tasks took priority for Dr Tham and Junior Medical Officers.
- (d) Patient notes had to be completed contemporaneously, or if that was not possible, on the same day, to ensure that nursing staff had up to date information about a patient.
- (e) Patients being discharged to a nursing home or transferred to another facility could not leave the hospital without a discharge summary.

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

(a1) above;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the fact that the Territory, as employer of Dr Tham and Junior Medical Officers, either prepared and implemented the rosters, and arranged the work, in the General Medicine Department of Goulburn Hospital, or was aware of those matters by reason of the Territory agreeing to second Dr Tham and other Junior Medical Officers to work at Goulburn Hospital.

- (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;

#### **PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Dr Tham and Junior Medical Officers working after their rostered finish times undertaking medical records preparation, and being observed by other medical staff (including Dr Ganesh Ramanathan) while so doing;
  - (b) the medical records direction, and like directions given to other Junior Medical Officers;
  - (c) the rostered hours of Dr Tham and Junior Medical Officers;
  - (d) the volume of patient medical records required to be completed in a timely manner, which was mostly discharge summaries; and
  - (e) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records and
  - (f) the Territory's knowledge of the system of work pleaded in [51(a1)] and [51(a2)].
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking medical records preparation.

52. In the premises pleaded in [48]–[51], Dr Tham was required or requested, within the meaning of clause 36.1 of the 2013 EA, to perform the medical records overtime.

#### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of medical records preparation being part of Dr Tham's duties, as pleaded in [14(e)];
- (b) the medical records direction;
- (c) the Territory's knowledge pleaded in [50(a)] and [50(b)];
- (d) the Territory having not directed Dr Tham not to perform medical records overtime, as pleaded in [50(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and ~~custom, or practice,~~ the

Territory's knowledge of each of those matters thereof, and the failure to direct, pleaded in ~~[46]~~ and [51].

53. The medical records overtime did not accrue to an ADO within the meaning of clause 36.2 of the 2013 EA.
54. In the premises, clause 36.2 of the 2013 EA required the Territory to pay Dr Tham for the medical records overtime, at the rates set out in clause 36.4 of the 2013 EA.
55. The Territory did not pay Dr Tham for the medical records overtime, at the rates set out in clause 36.4 of the 2013 EA.
56. In the premises, the Territory has contravened:
  - (a) clause 36.2 of the 2013 EA; and
  - (b) section 50 of the FW Act.

### **D.3 2019 OMFS Rotation—04 February 2019 to 28 April 2019—2013 EA**

57. Pursuant to the direction pleaded in [15(c)], from around 04 February 2019 to around 28 April 2019, Dr Tham worked in the ear nose throat surgery and oral maxillofacial surgery department at Canberra Hospital.

#### **D.3.1 Rosters**

58. During the 2019 OMFS Rotation, Dr Tham was rostered to work the following shifts, from time to time:
  - (a) day shifts, Monday to Friday, from 0700 to 1630;
  - (b) long day shifts, on a Saturday or Sunday, from 0700 to 2100;
  - (c) night shifts, from 2030 or 2100 to 0730 the following day, between 25 and 31 March 2019.

#### **PARTICULARS**

Copies of Dr Tham's rosters are in the possession of her solicitors and may be inspected on request.

#### **D.3.2 Ward round preparation**

59. During the 2019 OMFS Rotation, the Territory directed Dr Tham to undertake ward round preparation ("**ward round preparation direction**").

#### **PARTICULARS**

~~The ward round preparation direction was partly oral, and partly implied.~~

So far as it was oral, it was constituted by:

~~(a) Dr Rashmee Dhunoo, the intern on the term prior to Dr Tham's 2018 Orthopaedics Rotation, saying on around 17 May 2018 to Dr Tham words to the effect that Dr Tham should arrive early in order that she could, before ward rounds commenced:~~

~~(i) make sure the patient list was up to date;~~

~~(ii) check if anything serious had happened overnight;~~

~~(iii) check for bloods;~~

~~(b) Dr Yi Ren Bong, a Resident during Dr Tham's 2018 Orthopaedics Rotation, saying on around 15 June 2018 to Dr Tham words to the effect that it was the duty of interns to make sure that patient lists were updated before the commencement of ward rounds.~~

The ward round preparation direction ~~So far as it was implied, it was implied by:~~

(a1) the tasks necessary for ward round preparation, as set out in subparagraph (d) of the particulars to [63] below;

(a) the fact of ward round preparation being part of Dr Tham's duties, as pleaded in [14(c)];

(b) the importance of preparing for ward rounds for proper patient care.

60. During the 2019 OMFS Rotation, in order to undertake ward ~~wound~~ round preparation in accordance with the ward round preparation direction, Dr Tham worked hours in excess of her rostered hours ("**ward round preparation overtime**").

#### **PARTICULARS**

During the 2019 OMFS Rotation, both Dr Tham's rostered day shifts, and ward rounds, commenced at 0700.

Dr Tham worked around 20–30 minutes of ward round preparation overtime before most or all of her day shifts.

61. The Territory:

(a) knew that there was insufficient time during Dr Tham's rostered hours to undertake ward round preparation in accordance with the ward round preparation direction;

(b) knew that Dr Tham performed ward round preparation overtime;

(c) did not direct Dr Tham not to perform ward round preparation overtime.

#### **PARTICULARS**

The Territory's knowledge is to be inferred from:

(a1) Dr Tham's rostered day shifts, as set out in [58(a)] above;

- (a2) the tasks necessary for ward round preparation, as set out in subparagraph (d) of the particulars to [63] below;
- (a3) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of those matters, as set out in [62(a1)]–[62(b)] below;
- (a) the ward round preparation direction;
- (b) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
- (i) entrance at wards of the hospital or carparks,
  - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (c) The fact of Dr Tham being prepared for ward rounds when they commenced, in circumstances where:
- (i) the only available time for preparation was prior to ward rounds commencing;
  - (ii) ward rounds commenced at the same time as Dr Tham's day shifts (0700);
- (d) The knowledge of Registrars ~~Senior Residents~~ and Consultants that Dr Tham was prepared for ward rounds, in the circumstances identified in particular (c).

62. During the Relevant Period in the ear nose throat surgery and oral maxillofacial surgery 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;

**PARTICULARS**

Work in the ear nose throat surgery and oral maxillofacial surgery department at Canberra Hospital was, relevantly, organised in the following way:

- (a) Day shifts commenced at 0700.
- (b) Ward rounds were scheduled to commence at 0700.
- (c) Junior Medical Officers were required to attend ward rounds.
- (d) Junior Medical Officers were required to prepare for ward rounds.
- (e) Theatre and clinics commenced at 0800.

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

**PARTICULARS**

The knowledge of the Territory is to be inferred from the fact that the Territory, as employer of Dr Tham and Junior Medical Officers,

prepared and implemented the rosters, and arranged the work, in the ear nose throat surgery and oral maxillofacial surgery department at Canberra Hospital.

- (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;

### **PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Dr Tham and Junior Medical Officers working before their rostered start times undertaking ward round preparation, and being observed by other medical staff while so doing;
  - (b) the ward round preparation direction, and like directions given to other Junior Medical Officers;
  - (c) the rostered hours of Dr Tham and Junior Medical Officers; and
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
    - (i) entrance logs at wards of the hospital or carparks;
    - (ii) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records; and
  - (e) the Territory's knowledge of the system of work pleaded in [62(a1) and [62(a2)].
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking ward round preparation.

63. In the premises pleaded in [59]–[62], Dr Tham was required or requested, within the meaning of clause 36.1 of the 2013 EA, to perform the ward round preparation overtime.

### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of ward round preparation being part of Dr Tham's duties, as pleaded in [14(c)];

- (b) the ward round preparation direction;
- (c) the necessity to be prepared for ward rounds when they commenced;
- (d) the fact that, in order to be prepared for ward rounds, Dr Tham had to:
  - (i) prepare a patient list, including adding any patients who had come in overnight;
  - (ii) review results that had come in overnight;
  - (iii) check blood tests;
  - (iv) check imaging;
  - (v) check patient observations such as blood pressure and heart rates;
  - (vi) be in a position to provide accurate information in regard to patients' progress;
- (e) the expectation of Registrars conducting ward rounds, including Dr Jacqueline Ho, Dr Akim Adhikari, and Dr Anthony Fabo, that Dr Tham would be prepared for ward rounds;
- (f) the fact of ward rounds commencing at the same time as Dr Tham's day shifts (0700);
- (g) the need for ward rounds to start on time so that Registrar could commence theatre at 0800.
- (h) the Territory's knowledge pleaded in [61(a)] and [61(b)];
- (i) the Territory having not directed Dr Tham not to perform ward round preparation overtime, as pleaded in [61(c)];
- (j) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in [16] and [62].

64. The ward round preparation overtime did not accrue to an ADO within the meaning of clause 36.2 of the 2013 EA.
65. In the premises, clause 36.2 of the 2013 EA required the Territory to pay Dr Tham for the ward round preparation overtime, at the rates set out in clause 36.4 of the 2013 EA.
66. The Territory did not pay Dr Tham for the ward round preparation overtime, at the rates set out in clause 36.4 of the 2013 EA.
67. In the premises, the Territory has contravened:
- (a) clause 36.2 of the 2013 EA; and
  - (b) section 50 of the FW Act.

### D.3.3 Paper rounds

68. During the 2019 OMFS Rotation, the Territory directed Dr Tham to undertake paper rounds (“**paper rounds direction**”).

#### PARTICULARS

The paper rounds direction was partly written and partly implied.

So far as it was written, it was constituted by WhatsApp text messages from time to time, from a Registrar (Dr Ashim Adhikari, Dr Anthony Fabbo) to Dr Tham, saying words to the effect that Dr Tham should meet the Registrar in order to conduct rounds.

So far as it was implied, it was implied by:

- (a) the fact of paper rounds being part of Dr Tham’s duties, as pleaded in [14(f)];
  - (b) the importance for patient care of Registrars being updated about:
    - (i) the status of patients;
    - (ii) what had happened in regard to the care of patients during Dr Tham’s shifts;
    - (iii) whether patients needed further care or were deteriorating.
69. During the 2019 OMFS Rotation, in order to undertake paper rounds in accordance with the paper rounds direction, Dr Tham worked hours in excess of her rostered hours (“**paper rounds overtime**”).

#### PARTICULARS

During the 2019 OMFS Rotation, Dr Tham’s rostered day shifts concluded at 1630. Paper rounds were scheduled to start at close to 1630. Dr Tham worked paper rounds overtime when the paper rounds started late, or continued past her rostered finishing time.

Dr Tham worked around one hour of paper rounds overtime per week, the amount per day varying from day to day (sometimes, for example, once per week for an hour; other times 15 minutes per day, several days in a row).

70. The Territory:
- (a) knew that there was insufficient time during Dr Tham’s rostered hours to undertake paper rounds in accordance with the paper rounds direction;
  - (b) knew that Dr Tham performed paper rounds overtime;
  - (c) did not direct Dr Tham not to perform paper rounds overtime.

**PARTICULARS**

The Territory's knowledge is to be inferred from:

- (a1) Dr Tham's rostered day shifts, as set out in [58(a)] above;
- (a2) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [71(a)]-[71(b)] below;
  - (a) the paper rounds direction;
  - (b) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records.
  - (c) Registrars being present with Dr Tham during paper rounds, after the end of Dr Tham's rostered hours.

71. During the Relevant Period in the ear nose throat surgery and oral maxillofacial surgery 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;

**PARTICULARS**

Work in the ear nose throat surgery and oral maxillofacial surgery department at Canberra Hospital was, relevantly, organised in the following way:

- (a) Dr Tham's rostered shift concluded at 1630.
- (b) Paper ward rounds were scheduled to commence close to 1630 during every day shift. The start time was subject to the matter in subparagraph (f) below.
- (c) Junior Medical Officers were required to attend paper ward rounds.
- (d) Registrars conducted the paper ward rounds.
- (e) Junior Medical Officers were notified by the doctor conducting the paper round of the time that the paper round would commence.
- (f) The paper round would not commence until the doctor conducting the round had finished in theatre or in clinics.

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

**PARTICULARS**

The knowledge of the Territory is to be inferred from the fact that the Territory, as employer of Dr Tham and Junior Medical Officers, prepared and implemented the rosters, and arranged the work, in the

ear nose throat surgery and oral maxillofacial surgery department at Canberra Hospital.

- (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;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Dr Tham and Junior Medical Officers working after their rostered finish times undertaking paper rounds, and being observed by other medical staff while so doing;
  - (b) the paper rounds direction, and like directions given to other Junior Medical Officers;
  - (c) the rostered hours of Dr Tham and Junior Medical Officers; and
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records; and
  - (e) the Territory's knowledge of the system of work pleaded in [71(a1)] and [71(a2)].
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking paper rounds.

72. In the premises pleaded in [68]–[71], Dr Tham was required or requested, within the meaning of clause 36.1 of the 2013 EA, to perform the paper rounds overtime.

**PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of paper rounds being part of Dr Tham's duties, as pleaded in [14(f)];
- (b) the paper rounds direction;
- (c) the Territory's knowledge pleaded in [70(a)] and [70(b)];
- (d) the Territory having not directed Dr Tham not to perform paper rounds overtime, as pleaded in [70(c)];

- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in [46] and [71].

73. The paper rounds overtime did not accrue to an ADO within the meaning of clause 36.2 of the 2013 EA.
74. In the premises, clause 36.2 of the 2013 EA required the Territory to pay Dr Tham for the paper rounds overtime, at the rates set out in clause 36.4 of the 2013 EA.
75. The Territory did not pay Dr Tham for the paper rounds overtime, at the rates set out in clause 36.4 of the 2013 EA.
76. In the premises, the Territory has contravened:
- (a) clause 36.2 of the 2013 EA; and
- (b) section 50 of the FW Act.

**D.4 2019 Obstetrics Intern Rotation / 2019 Obstetrics RMO Rotation—  
29 April 2019 to 28 July 2019—2013 EA**

77. Pursuant to the directions pleaded in:
- (a) [15(d)], from around 29 April 2019 to around 16 July 2019, Dr Tham worked as an Intern in the obstetrics and gynaecology department at Canberra Hospital;
- (b) [15(e)], from around 17 July 2019 to around 28 July 2019, Dr Tham worked as an RMO in the obstetrics and gynaecology department at Canberra Hospital.

**D.4.1 Rosters**

78. During the 2019 Obstetrics Intern Rotation and the 2019 Obstetrics RMO Rotation, Dr Tham was rostered to work the following shifts, from time to time:
- (a) day shifts, Monday to Friday, from 0745 to 1600 or 1630;
- (b) Saturday weekend and public holiday shifts, from 0745 to 1400.

**PARTICULARS**

Copies of Dr Tham's rosters are in the possession of her solicitors and may be inspected on request.

**D.4.2 Medical records**

79. During the 2019 Obstetrics Intern Rotation and the 2019 Obstetrics RMO Rotation the Territory directed Dr Tham:

- (a) to undertake medical records preparation; and
- (b) to complete medical records in a timely manner; and
- (c) that the timely completion of medical records was necessary to ensure patient care,

(“**medical records direction**”).

### **PARTICULARS**

The medical records direction was partly written, partly oral, and partly implied.

So far as it was written, it was constituted by fortnightly emails with lists of uncompleted discharge summaries.

So far as it was oral, it was constituted by:

- (a) ~~Dr Yi Ren Bong, Resident, saying on around 15 June 2018 to Dr Tham that interns were responsible for completing discharge summaries;~~
- (b) Senior Resident Registrar Dr Varaidzo Mukwedeya saying in around the period 29 April 2019 to 12 May 2019 to Dr Tham that tasks such as sending scripts to pharmacy or ordering infusions needed to be completed the day before they were required;

So far as it was implied, it was implied by:

- (a) the fact of medical records preparation being part of Dr Tham’s duties, as pleaded in [14(e)];
- (b) the importance of up-to-date medical records for proper care of a patient, including continuity of care as between the hospital and ongoing care from general practitioners;
- (c) the importance of completion of medical records in a timely way, so that (for example):
  - (i) blood tests are undertaken as soon as possible;
  - (ii) infusions were available when required;
  - (iii) scripts are ready for collection when a patient is discharged;
  - (iv) any further necessary medical care could be provided;
- (d) the importance of completing records the day before a patient’s discharge so as to avoid disruption during that day.

80. During the 2019 Obstetrics Intern Rotation and the 2019 Obstetrics RMO Rotation in order to undertake medical records preparation in accordance with the medical records direction, Dr Tham worked hours in excess of her rostered hours (“**medical records overtime**”).

**PARTICULARS**

Dr Tham worked around 30 minutes of medical records overtime after each weekday shift, for around 2.5 hours of medical records overtime per week.

81. The Territory:

- (a) knew that there was insufficient time during Dr Tham's rostered hours to undertake medical records preparation in accordance with the medical records direction;
- (b) knew that Dr Tham performed medical records overtime;
- (c) did not direct Dr Tham not to perform medical records overtime.

**PARTICULARS**

The Territory's knowledge is to be inferred from:

- (a1) Dr Tham's rostered day shifts, as set out in [78(a)] above;
- (a2) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [82(a1)]–[82(b)] below;

- (a) the medical records direction;
- (b) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.

82. During the Relevant Period in the Obstetrics and Gynaecology Department at Canberra 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;

**PARTICULARS**

Work in the Obstetrics and Gynaecology Department at Canberra Hospital was, relevantly, organised in the following way:

- (a) Patients to be discharged that day or the following day were identified by Registrars during the morning ward round, or were otherwise identified by Registrars during the day.
- (b) Dr Tham and Junior Medical Officers were directed to complete discharge summaries for patients in a timely manner.

- (c) Throughout the day, clinically urgent tasks took priority for Dr Tham and Junior Medical Officers.
- (d) Patient notes had to be completed contemporaneously, or if that was not possible, on the same day, to ensure that nursing staff had up to date information about a patient.

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

### **PARTICULARS**

The knowledge of the Territory is to be inferred from the fact that the Territory, as employer of Dr Tham and Junior Medical Officers, prepared and implemented the rosters, and arranged the work, in the Obstetrics and Gynaecology Department at Canberra Hospital.

- (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;

### **PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Dr Tham and Junior Medical Officers working after their rostered finish times undertaking medical records preparation, and being observed by other medical staff while so doing;
- (b) the medical records direction, and like directions given to other Junior Medical Officers;
- (c) the rostered hours of Dr Tham and Junior Medical Officers;
- (d) the volume of patient medical records required to be completed in a timely manner, which included discharge summaries, preparing for discharges to take place the following day including sending scripts to pharmacy, and investigation requests such as infusions for the following day; and
- (e) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records; and

- (f) the Territory's knowledge of the system of work pleaded in [82(a1) and [82(a2)] above.
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking medical records preparation.
83. In the premises pleaded in [79]–[82], Dr Tham was required or requested, within the meaning of clause 36.1 of the 2013 EA, to perform the medical records overtime.

#### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of medical records preparation being part of Dr Tham's duties, as pleaded in [14(e)];
- (b) the medical records direction;
- (c) the Territory's knowledge pleaded in [81(a)] and [81(b)];
- (d) the Territory having not directed Dr Tham not to perform medical records overtime, as pleaded in [81(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in [16] and [82].
84. The medical records overtime did not accrue to an ADO within the meaning of clause 36.2 of the 2013 EA.
85. In the premises, clause 36.2 of the 2013 EA required the Territory to pay Dr Tham for the medical records overtime, at the rates set out in clause 36.4 of the 2013 EA.
86. The Territory did not pay Dr Tham for the medical records overtime, at the rates set out in clause 36.4 of the 2013 EA.
87. In the premises, the Territory has contravened:
- (a) clause 36.2 of the 2013 EA; and
- (b) section 50 of the FW Act.

#### **D.4.3 Other medical services—weekend and public holiday overtime**

88. During the 2019 Obstetrics Intern Rotation and the 2019 Obstetrics RMO Rotation the Territory directed Dr Tham provide, on her weekend and public holiday shifts, such medical services to patients as was required arising out of ward rounds ("**other medical services direction**").

#### **PARTICULARS**

The other medical services direction was implied by the following matters:

- (a) the importance to proper patient care of jobs identified during ward round review of those patients being performed in a timely fashion;
- (b) the unavailability of the afternoon doctor rostered to start after Dr Tham's shift finished to perform those tasks, on account of that doctor covering the entire department and being unavailable to perform tasks that arose out of the morning shift;
- (c) the importance of those tasks being performed in a timely fashion so that patients who were due to be discharged could be discharged.

89. During the 2019 Obstetrics Intern Rotation and the 2019 Obstetrics RMO Rotation in order to provide medical services in accordance with the other medical services direction, Dr Tham worked hours in excess of her rostered hours ("**other medical services overtime**").

#### **PARTICULARS**

During the 2019 Obstetrics Intern Rotation and the 2019 Obstetrics RMO Rotation, when rostered to work on weekends or public holidays, Dr Tham worked unrostered overtime completing tasks arising out of the morning ward round, where those tasks could not be handed over to the incoming shift.

Dr Tham worked around 1.5 hours of other medical services overtime after each of her weekend and public holiday shifts during this rotation.

90. The Territory:

- (a) knew that there was insufficient time during Dr Tham's rostered hours to provide medical services in accordance with the other medical services direction;
- (b) knew that Dr Tham performed other medical services overtime;
- (c) did not direct Dr Tham not to perform other medical services overtime.

#### **PARTICULARS**

The Territory's knowledge is to be inferred from:

(a1) Dr Tham's rostered weekend and public holiday shifts, as set out in [78(b)] above;

(a2) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [91(a1)]–[91(b)] below;

- (a) the other medical services direction;
- (b) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.

- (c) the fact of Dr Tham claiming (and being paid for) other medical services overtime in respect of overtime worked after one of her weekend shifts.

91. During 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;

**PARTICULARS**

Work in the Obstetrics and Gynaecology Department at Canberra Hospital was, relevantly, organised in the following way:

- (a) Weekend and public holiday shifts commenced at 0745.  
 (b) Junior Medical Officers rostered to work a weekend and public holiday shift commencing at 0745 were required, by themselves, to undertake a ward round of post-natal patients and their babies.  
 (c) Junior Medical Officers were required to attend to any tasks that arose from the ward round for those patients.  
 (d) Weekend or public holiday shifts concluded at 1400.  
 (e) Junior Medical Officers were required to complete any tasks that could not be handed over to the afternoon shift, even if completing those tasks exceeded the doctor's rostered hours.

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

**PARTICULARS**

The knowledge of the Territory is to be inferred from the fact that the Territory, as employer of Dr Tham and Junior Medical Officers, prepared and implemented the rosters, and arranged the work, in the Obstetrics and Gynaecology Department at Canberra Hospital.

- (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;
- (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;

#### **PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Dr Tham and Junior Medical Officers working after their rostered finish times providing medical services, on weekends, arising out of ward rounds, and being observed by other medical staff while so doing;
  - (b) the other medical services direction, and like directions given to other Junior Medical Officers;
  - (c) the rostered hours of Dr Tham and Junior Medical Officers; and
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records, and
  - (e) the Territory's knowledge of the system of work pleaded in [91(a1)] and [91(a2)].
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime providing medical services, on weekends and public holidays, arising out of ward rounds.

92. In the premises pleaded in [88]–[91], Dr Tham was required or requested, within the meaning of clause 36.1 of the 2013 EA, to perform other medical services overtime.

#### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of provision of these other medical services being part of Dr Tham's duties, as pleaded in [14(k)];
  - (b) the other medical services direction;
  - (c) the Territory's knowledge pleaded in [90(a)] and [90(b)];
  - (d) the Territory having not directed Dr Tham not to perform other medical services overtime, as pleaded in [90(c)];
  - (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and ~~custom, or practice,~~ the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in ~~[16]~~ and [91].
93. The other medical services overtime did not accrue to an ADO within the meaning of clause 36.2 of the 2013 EA.

94. In the premises, clause 36.2 of the 2013 EA required the Territory to pay Dr Tham for the other medical services overtime, at the rates set out in clause 36.4 of the 2013 EA.
95. The Territory did not pay Dr Tham for all of the other medical services overtime worked by her, at the rates set out in clause 36.4 of the 2013 EA.
96. In the premises, the Territory has contravened:
- (a) clause 36.2 of the 2013 EA; and
  - (b) section 50 of the FW Act.

#### **D.5 2019 Psychiatric Medicine Rotation—29 July 2019 to 27 October 2019—2013 EA**

97. Pursuant to the direction pleaded in [15(f)], from around 29 July 2019 to around 27 October 2019, Dr Tham worked in the psychiatric medicine department at Canberra Hospital.

##### **D.5.1 Rosters**

98. During the 2019 Psychiatric Medicine Rotation, Dr Tham was rostered to work the following shifts, from time to time:
- (a) day shifts, from 0800 to 1630;
  - (b) extended shifts, from 1630 to 2230; and
  - (c) on-call shifts, rostered from 0800 to 0800 the following day.

#### **PARTICULARS**

Copies of Dr Tham's rosters are in the possession of her solicitors and may be inspected on request.

##### **D.5.2 Medical records**

99. During the 2019 Psychiatric Medicine Rotation, the Territory directed Dr Tham:
- (a) to undertake medical records preparation; and
  - (b) to complete medical records in a timely manner; and
  - (c) that the timely completion of medical records was necessary to ensure patient care.
- ("medical records direction").

#### **PARTICULARS**

The medical records direction was implied by:

- (a) the fact of medical records preparation being part of Dr Tham's duties, as pleaded in [14(e)];
- (b) the importance of up-to-date medical records for proper care of a patient, including continuity of care as between the hospital and ongoing care from general practitioners;
- (c) the nature of care required by patients in psychiatric wards, the proper provision of which requires detailed progress notes to be taken each day in regard to the patient's condition and progress.

100. During the 2019 Psychiatric Medicine Rotation, in order to undertake medical records preparation in accordance with the medical records direction, Dr Tham worked hours in excess of her rostered hours ("**medical records overtime**").

#### **PARTICULARS**

Dr Tham worked around 30–60 minutes of medical records overtime, around four out of five days per week. On average, Dr Tham worked around two to four hours of medical records overtime per week.

101. The Territory:

- (a) knew that there was insufficient time during Dr Tham's rostered hours to undertake medical records preparation in accordance with the medical records direction;
- (b) knew that Dr Tham performed medical records overtime;
- (c) did not direct Dr Tham not to perform medical records overtime.

#### **PARTICULARS**

The Territory's knowledge is to be inferred from:

(a1) Dr Tham's rostered shifts, as set out in [98] above;

(a2) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [102(a1)]–[102(b)] below;

- (a) the medical records direction;
- (b) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (c) ~~Senior Residents Registrars~~ seeing Dr Tham on the ward preparing medical records after the end of her rostered shift (the ~~Residents Registrar~~ during the 2019 Psychiatric Medicine rotation being Dr Fiona Wilkes).

102. During the Relevant Period in the Psychiatric Medicine Department at Canberra 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;

**PARTICULARS**

Work in the Psychiatric Medicine Department at Canberra Hospital was, relevantly, organised in the following way:

- (a) Patients to be discharged that day or the following day were identified by Registrars during the morning ward round, or were otherwise identified by Registrars during the day.
- (b) Dr Tham and Junior Medical Officers were directed to complete discharge summaries for patients in a timely manner.
- (c) Throughout the day, clinically urgent tasks took priority for Dr Tham and Junior Medical Officers.
- (d) Patient progress notes had to be completed contemporaneously, or if that was not possible, on the same day, to ensure that overnight and nursing staff had up to date information about a patient.

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

(a1) above;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the fact that the Territory, as employer of Dr Tham and Junior Medical Officers, prepared and implemented the rosters, and arranged the work, in the Psychiatry Department at Canberra Hospital.

- (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;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Dr Tham and Junior Medical Officers working after their rostered finish times undertaking medical records preparation, and being observed by other medical staff while so doing;
- (b) the medical records direction, and like directions given to other Junior Medical Officers;
- (c) the rostered hours of Dr Tham and Junior Medical Officers;
- (d) the volume of patient medical records required to be completed in a timely manner, which included mostly drafting lengthy patient progress notes which documented a patient's treatment and current condition; and
- (e) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records; and
- (f) the Territory's knowledge of the system of work pleaded in [102(a1) and [102(a2)] above.

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

103. In the premises pleaded in [99]–[102], Dr Tham was required or requested, within the meaning of clause 36.1 of the 2013 EA, to perform the medical records overtime.

**PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of medical records preparation being part of Dr Tham's duties, as pleaded in [14(e)];
- (b) the medical records direction;
- (c) the Territory's knowledge pleaded in [101(a)] and [101(b)];
- (d) the Territory having not directed Dr Tham not to perform medical records overtime, as pleaded in [101(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in [16] and [102].

104. The medical records overtime did not accrue to an ADO within the meaning of clause 36.2 of the 2013 EA.

105. In the premises, clause 36.2 of the 2013 EA required the Territory to pay Dr Tham for the medical records overtime, at the rates set out in clause 36.4 of the 2013 EA.

106. The Territory did not pay Dr Tham for the medical records overtime, at the rates set out in clause 36.4 of the 2013 EA.
107. In the premises, the Territory has contravened:
- (a) clause 36.2 of the 2013 EA; and
  - (b) section 50 of the FW Act.

#### **D.6 2020 Vascular Rotation—27 July 2020 to 25 October 2020—2013 EA**

108. Pursuant to the direction pleaded in [15(g)], from around 27 July 2020 to around 25 October 2020, Dr Tham worked in the vascular department at Canberra Hospital.

##### **D.6.1 Rosters**

109. During the 2020 Vascular Rotation, Dr Tham was rostered to work a two week rotating roster as follows: the following shifts, from time to time:
- (a) in week one, three days per week, from 0630 to 1830 and one day per week 0930 to 2130;
  - (b) ~~one day per fortnight, 0930 to 2130;~~ in week two, four days per week, from 0630 to 1830; and
  - (c) a cover shift, around once every three weeks on a Sunday, from 0700 to 2100.

##### **PARTICULARS**

Dr Tham and another Junior Medical Officer arranged to swap shifts so that Dr Tham worked these shifts during the 2020 Vascular Rotation.

~~Copies of Dr Tham's rosters are in the possession of her solicitors and may be inspected on request.~~

##### **D.6.2 Ward round preparation**

110. During the 2020 Vascular Rotation, the Territory directed Dr Tham to undertake ward round preparation ("**ward round preparation direction**").

##### **PARTICULARS**

The ward round preparation direction was partly oral, and partly implied.

So far as it was oral, it was constituted by:

- (a) ~~Dr Rashmee Dhunoo, the intern on the term prior to Dr Tham's 2018 Orthopaedics Rotation, saying on around 17 May 2018 to Dr Tham words to the effect that Dr Tham should arrive early in order that she could, before ward rounds commenced:~~

- ~~(i) make sure the patient list was up to date;~~
- ~~(ii) check if anything serious had happened overnight;~~
- ~~(iii) check for bloods;~~
- ~~(b) Dr Yi Ren Bong, a Resident during Dr Tham's 2018 Orthopaedics Rotation, saying on around 15 June 2018 to Dr Tham words to the effect that it was the duty of interns to make sure that patient lists were updated before the commencement of ward rounds;~~
- ~~(c) Dr Tham's understanding based on observations in previous rotations that, in regard to preparation of patient lists before the commencement of ward rounds, interns and residents have similar roles, especially in teams which have a resident but not an intern;~~
- (d) Registrars, including Dr Andrew Holmes, Dr Aadil Rahim, and Dr Zafreen Rahman, saying on around 27 July 2020 (and from time to time thereafter) to Dr Tham words to the effect that, on Tuesdays (when Dr Tham's shift and ward rounds both commenced at 0630), Dr Tham had to get in early to prepare for ward rounds.
- (e) Dr Samuel Ferraro, the Resident on the term prior to Dr Tham's 2020 Vascular Rotation, saying on or around 20 July 2020 to Dr Tham words to the effect that Dr Tham should arrive earlier on Tuesday mornings because the ward round commenced at 0630 that day each week.

So far as it was implied, it was implied by:

- (a1) the tasks necessary for ward round preparation, as set out in subparagraph (d) of the particulars to [114] below;
- (a) the fact of ward round preparation being part of Dr Tham's duties, as pleaded in [14(c)];
- (b) the importance of preparing for ward rounds for proper patient care.

111. During the 2020 Vascular Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Tham worked hours in excess of her rostered hours ("**ward round preparation overtime**").

### **PARTICULARS**

During the 2020 Vascular Rotation, Dr Tham's rostered shifts started at 0630. Ward rounds commenced at 0700 on Monday and Wednesday to Friday, and at 0630 on Tuesdays. In order to have sufficient time to prepare for ward rounds, Dr Tham worked unrostered overtime before the commencement of her shifts.

Dr Tham worked around 10–15 minutes of ward round preparation overtime three days per week, and 30 minutes of ward round preparation overtime one day per week. On average, Dr Tham worked around 1 hour of ward round preparation overtime per week.

112. The Territory:

- (a) knew that there was insufficient time during Dr Tham's rostered hours to undertake ward round preparation in accordance with the ward round preparation direction;
- (b) knew that Dr Tham performed ward round preparation overtime;
- (c) did not direct Dr Tham not to perform ward round preparation overtime.

**PARTICULARS**

The Territory's knowledge is to be inferred from:

- (a1) Dr Tham's rostered day shifts, as set out in [109(a)] and [109(b)] above;
- (a2) the tasks necessary for ward round preparation, as set out in subparagraph (d) of the particulars to [114] below;
- (a3) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [113(a1)]–[113(b)] below;
- (a) the ward round preparation direction;
- (b) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance logs at wards of the hospital or carparks;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (c) Registrars, including Dr Andrew Holmes, Dr Aadil Rahim, and Dr Zafreen Rahman, on Tuesdays, seeing Dr Tham performing ward round preparation before her rostered start time.

113. During the Relevant Period in 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;

**PARTICULARS**

Work in the Vascular Department at Canberra Hospital was, relevantly, organised in the following way:

- (a) Day shifts commenced at 0630.
- (b) Ward rounds commenced at 0700 on Mondays and Wednesdays to Fridays, and at 0630 on Tuesdays.
- (c) Junior Medical Officers were required to attend ward rounds.
- (d) Junior Medical Officers were required to prepare for ward rounds.
- (e) Theatre and clinics commenced at approximately 0800.

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

**PARTICULARS**

The knowledge of the Territory is to be inferred from the fact that the Territory, as employer of Dr Tham and Junior Medical Officers, prepared and implemented the rosters, and arranged the work, in the Vascular Department at Canberra Hospital.

- (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;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Dr Tham and Junior Medical Officers working before their rostered start times undertaking ward round preparation, and being observed by other medical staff while so doing;
  - (b) the ward round preparation direction, and like directions given to other Junior Medical Officers;
  - (c) the rostered hours of Dr Tham and Junior Medical Officers; and
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
    - (i) entrance logs at wards of the hospital or carparks;
    - (ii) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records; and
  - (e) the Territory's knowledge of the system of work pleaded in [113(a1)] and [113(a2)].
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking ward round preparation.

114. In the premises pleaded in [110]–[113], Dr Tham was required or requested, within the meaning of clause 36.1 of the 2013 EA, to perform the ward round preparation overtime.

## PARTICULARS

The requirement or request is implied by the following matters:

- (a) the fact of ward round preparation being part of Dr Tham's duties, as pleaded in [14(c)];
- (b) the ward round preparation direction;
- (c) the necessity to be prepared for ward rounds when they commenced;
- (d) the fact that, in order to be prepared for ward rounds, Dr Tham had to:
  - (i) update the patient list, including adding any blood results that had come in overnight;
  - (ii) check if anything serious had happened overnight;
  - (iii) check each patient's location had not changed;
  - (iv) check patient results such as blood results or scans;
  - (v) check whether patient's dressings had been removed;
- (e) the expectation of Registrars conducting ward rounds that Dr Tham would be prepared for ward rounds;
- (f) the fact of ward rounds commencing, except on Tuesdays, at 0700, which was 30 minutes after Dr Tham's 0630 shifts commenced;
- (g) the impracticability of completing the tasks listed in particular (d) above within thirty minutes;
- (h) the fact of ward rounds commencing, on Tuesdays, at 0630, at the same time as Dr Tham's 0630 shifts commenced;
- (i) the need on Tuesdays, in this light, for Dr Tham to arrive before her shift commenced in order to complete the tasks listed in particular (d) above.
- (j) the Territory's knowledge pleaded in [112(a)] and [112(b)];
- (k) the Territory having not directed Dr Tham not to perform ward round preparation overtime, as pleaded in [112(c)];
- (l) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of each of those matters thereof, and the failure to direct, pleaded in [46] and [113].

- 115. The ward round preparation overtime did not accrue to an ADO within the meaning of clause 36.2 of the 2013 EA.
- 116. In the premises, clause 36.2 of the 2013 EA required the Territory to pay Dr Tham for the ward round preparation overtime, at the rates set out in clause 36.4 of the 2013 EA.
- 117. The Territory did not pay Dr Tham for the ward round preparation overtime, at the rates set out in clause 36.4 of the 2013 EA.

118. In the premises, the Territory has contravened:

- (a) clause 36.2 of the 2013 EA; and
- (b) section 50 of the FW Act.

### D.6.3 Paper rounds

119. During the 2020 Vascular Rotation, the Territory directed Dr Tham to undertake paper rounds (“**paper rounds direction**”).

#### PARTICULARS

The paper rounds direction was partly written and partly implied.

Insofar as it was written, it was constituted by WhatsApp text messages from time to time, from a Registrar (Dr Andrew Holmes, Dr Aadil Rahim or Dr Zafreen Rahman) to Dr Tham, saying words to the effect that Dr Tham should meet the Registrar in order to conduct rounds.

Insofar ~~The paper rounds direction~~ as it was implied, it was implied by:

- (a) the fact of paper rounds being part of Dr Tham’s duties, as pleaded in [14(f)];
- (b) the importance for patient care of:
  - (i) Registrars being updated about the status of patients, what had happened in regard to the care of patients during Dr Tham’s shifts, and whether patients needed further care or were deteriorating.
  - (ii) performing tasks arising out of paper rounds including ordering bloods and updating nurses in changes to patients’ plans.

120. During the 2020 Vascular Rotation, in order to undertake paper rounds in accordance with the paper rounds direction, Dr Tham worked hours in excess of her rostered hours (“**paper rounds overtime**”).

#### PARTICULARS

During the 2020 Vascular Rotation, Dr Tham’s rostered day shifts concluded at 1830. Paper rounds were scheduled to commence at approximately 1800. Dr Tham worked paper rounds overtime when the paper round started late, or continued past her rostered finishing time.

Dr Tham worked around 30 minutes of paper rounds overtime, three days per week, or around 1.5 hours per week.

121. The Territory:

- (a) knew that there was insufficient time during Dr Tham’s rostered hours to undertake paper rounds in accordance with the paper rounds direction;
- (b) knew that Dr Tham performed paper rounds overtime;

- (c) did not direct Dr Tham not to perform paper rounds overtime.

**PARTICULARS**

The Territory's knowledge is to be inferred from:

- (a1) Dr Tham's rostered day shifts, as set out in [109(a)] and [109(b)] above;
- (a2) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [12271(a1)]–[122(b)] below;
- (a) the paper rounds direction;
- (b) the fact that, despite that paper rounds (which usually took around 30–40 minutes) were meant to commence 30 minutes before the end of her shift, they often started later than that, so that overtime was inevitable;
- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records;.
- (d) Registrars being present with Dr Tham during paper rounds, after the end of Dr Tham's rostered hours.

122. During the Relevant Period in 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 the doctor's rostered hours;

**PARTICULARS**

Work in the Vascular Department at Canberra Hospital was, relevantly, organised in the following way:

- (a) Dr Tham's rostered shifts concluded at 1830.
- (b) Paper ward rounds were scheduled to commence at approximately 1800 during every day shift. The start time was subject to the matter in subparagraph (f) below.
- (c) Junior Medical Officers were required to attend paper ward rounds.
- (d) Registrars conducted the paper ward round.
- (e) Junior Medical Officers were notified by the doctor conducting the paper round of the time that the paper round would commence.
- (f) The paper round would not commence until the doctor conducting the round had finished in theatre or in clinics.

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

**PARTICULARS**

The knowledge of the Territory is to be inferred from the fact that the Territory, as employer of Dr Tham and Junior Medical Officers, prepared and implemented the rosters, and arranged the work, in the Vascular Department at Canberra Hospital.

- (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;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Dr Tham and Junior Medical Officers working after their rostered finish times undertaking paper rounds, and being observed by other medical staff while so doing;
  - (b) the paper rounds direction, and like directions given to other Junior Medical Officers;
  - (c) the rostered hours of Dr Tham and Junior Medical Officers; and
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and
  - (e) the Territory's knowledge of the system of work pleaded in [122(a1)] and [122(a2)].
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking paper rounds.

123. In the premises pleaded in [119]–[122], Dr Tham was required or requested, within the meaning of clause 36.1 of the 2013 EA, to perform the paper rounds overtime.

**PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of paper rounds being part of Dr Tham's duties, as pleaded in [14(f)];
- (b) the paper rounds direction;
- (c) the Territory's knowledge pleaded in [121(a)] and [121(b)];

- (d) the Territory having not directed Dr Tham not to perform paper rounds overtime, as pleaded in [121(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in [16] and [122].

124. The paper rounds overtime did not accrue to an ADO within the meaning of clause 36.2 of the 2013 EA.
125. In the premises, clause 36.2 of the 2013 EA required the Territory to pay Dr Tham for the paper rounds overtime, at the rates set out in clause 36.4 of the 2013 EA.
126. The Territory did not pay Dr Tham for the paper rounds overtime, at the rates set out in clause 36.4 of the 2013 EA.
127. In the premises, the Territory has contravened:
- (a) clause 36.2 of the 2013 EA; and
  - (b) section 50 of the FW Act.

#### **D.6.4 Medical records**

128. During the 2020 Vascular Rotation, the Territory directed Dr Tham:
- (a) to undertake medical records preparation; and
  - (b) to complete medical records in a timely manner; and
  - (c) that the timely completion of medical records was necessary to ensure patient care,
- ("medical records direction").

#### **PARTICULARS**

The medical records direction was partly written, ~~partly oral,~~ and partly implied.

So far as it was written, it was constituted by weekly emails with lists of uncompleted discharge summaries.

~~So far as it was oral, it was constituted by Dr Yi Ren Bong, Resident, saying on around 15 June 2018 to Dr Tham that interns were responsible for completing discharge summaries;~~

So far as it was implied, it was implied by:

- (a) the fact of medical records preparation being part of Dr Tham's duties, as pleaded in [14(e)];
- (b) the importance of up-to-date medical records for proper care of a patient, including continuity of care as between the hospital and ongoing care from general practitioners;

- (c) the importance of completion of medical records in a timely way, so that (for example):
  - (i) blood tests are undertaken as soon as possible;
  - (ii) infusions were available when required;
  - (iii) scripts are ready for collection when a patient is discharged;
  - (iv) any further necessary medical care could be provided;
- (d) the importance of completing records the day before a patient's discharge so as to avoid disruption during that day.

129. During the 2020 Vascular Rotation, in order to undertake medical records preparation in accordance with the medical records direction, Dr Tham worked hours in excess of her rostered hours (“**medical records overtime**”).

#### **PARTICULARS**

Dr Tham worked around one hour of medical records overtime each week, with varying amounts per day.

130. The Territory:

- (a) knew that there was insufficient time during Dr Tham's rostered hours to undertake medical records preparation in accordance with the medical records direction;
- (b) knew that Dr Tham performed medical records overtime;
- (c) did not direct Dr Tham not to perform medical records overtime.

#### **PARTICULARS**

The Territory's knowledge is to be inferred from:

(a1) Dr Tham's rostered day shifts, as set out in [109(a)] and [109(b)] above;

(a2) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [131(a1)]–[131(b)] below;

- (a) the medical records direction;
- (b) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.

131. During the Relevant Period in the Vascular Department at Canberra 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;

### **PARTICULARS**

Work in the Vascular Department at Canberra Hospital was, relevantly, organised in the following way:

- (a) Patients to be discharged that day or the following day were identified by Registrars during the morning ward round, or were otherwise identified by Registrars during the day.
  - (b) Dr Tham and Junior Medical Officers were directed to complete discharge summaries in a timely manner.
  - (c) Throughout the day, clinically urgent tasks took priority for Dr Tham and Junior Medical Officers.
  - (d) Patient notes had to be completed contemporaneously, or if that was not possible, on the same day, to ensure that nursing staff had up to date information about a patient.
  - (e) Patients being discharged to a nursing home or transferred to another facility could not leave the hospital without a discharge summary.
- (a2) the Territory knew that there was the system of work set out in subparagraph (a1) above;

### **PARTICULARS**

The knowledge of the Territory is to be inferred from the fact that the Territory, as employer of Dr Tham and Junior Medical Officers, prepared and implemented the rosters, and arranged the work, in the Vascular Department at Canberra Hospital.

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

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Dr Tham and Junior Medical Officers working after their rostered finish times undertaking medical records preparation, and being observed by other medical staff while so doing;
- (b) the medical records direction, and like directions given to other Junior Medical Officers;
- (c) the rostered hours of Dr Tham and Junior Medical Officers;
- (d) the volume of patient medical records required to be completed in a timely manner, which included mostly discharge summaries; and
- (e) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records; and
- (f) The Territory's knowledge of the system of work pleaded in [131(a1) and [131(a2)] above.

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

132. In the premises pleaded in [128]–[131], Dr Tham was required or requested, within the meaning of clause 36.1 of the 2013 EA, to perform the medical records overtime.

**PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of medical records preparation being part of Dr Tham's duties, as pleaded in [14(e)];
- (b) the medical records direction;
- (c) the Territory's knowledge pleaded in [130(a)] and [130(b)];
- (d) the Territory having not directed Dr Tham not to perform medical records overtime, as pleaded in [130(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in ~~[16]~~ and [131].

133. The medical records overtime did not accrue to an ADO within the meaning of clause 36.2 of the 2013 EA.

134. In the premises, clause 36.2 of the 2013 EA required the Territory to pay Dr Tham for the medical records overtime, at the rates set out in clause 36.4 of the 2013 EA.

135. The Territory did not pay Dr Tham for the medical records overtime, at the rates set out in clause 36.4 of the 2013 EA.

136. In the premises, the Territory has contravened:

- (a) clause 36.2 of the 2013 EA; and
- (b) section 50 of the FW Act.

#### **D.7 Loss**

137. Dr Tham has suffered loss by reason of the Territory's contraventions of the FW Act.

#### **PARTICULARS**

Dr Tham's loss is that she was not paid for overtime that she was required or requested to work, at the rates applicable at the time that that overtime was worked, as pleaded above.

Particulars (including a calculation of loss) will be provided after discovery and before trial.

#### **D.8 Section 557C**

137A. Each of the 2013 EA, 2017 EA and 2021 EA provide that a penalty rate must be paid for overtime actually worked by Dr Tham.

#### **PARTICULARS**

2013 EA, clause 36.

2017 EA, clause 35.

2021 EA, clause 36.

137B. In the premises, and by operation of the FW Act, the Territory was required on and from 16 September 2017 to make, and keep for seven years, a record that specifies:

- (a) the number of overtime hours worked by Dr Tham during each day; or
- (b) when Dr Tham started and ceased working overtime hours.

#### **PARTICULARS**

FW Act s 535, s 557C.

Fair Work Regulations 2009 (Cth), reg 3.34.

137C. The Territory has failed to:

- (a) make; and/or
- (b) keep.

a record of the kind described in paragraph 137B above.

## Part E Dr Tham's claim against Calvary

138. During the course of her employment by Calvary, Dr Tham was directed, relevantly, to work, as an SRMO, in the following departments of Calvary Hospital:

- (a) in the medical assessment planning unit, from around 03 May 2021 to around 01 August 2021 ("**2021 MAPU Rotation**");
- (b) in the cardiology department, from around 02 August 2021 to around 31 October 2021 ("**2021 Cardiology Rotation**").

~~139. During 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.~~

### **PARTICULARS**

~~The knowledge of Calvary is to be inferred from the following matters:~~

- ~~(a) Dr Tham and Junior Medical Officers working before or after their rostered start or finish times, and being observed by other medical staff while so doing;~~
- ~~(b) directions to Dr Tham and Junior Medical Officers to work before or after their rostered start or finish times providing medical services;~~
- ~~(c) the rostered hours of Dr Tham and Junior Medical Officers;~~
- ~~(d) the existence of time stamps on electronically created records, or times written in paper records.~~

## **E.1 2021 MAPU Rotation—03 May 2021 to 01 August 2021—2017 EA**

140. Pursuant to the direction pleaded in [138(a)], from around 03 May 2021 to around 01 August 2021, Dr Tham worked in the medical assessment planning unit at Calvary Hospital.

### **E.1.1 Rosters**

141. During the 2021 MAPU Rotation, Dr Tham was rostered to work the following shifts, from time to time:

- (a) day shifts, from 0800 to 1630;
- (b) day shifts, on Tuesdays, from 0730 to 1630;

- (c) evening shifts, from 1300 to 2130;
- (d) night shifts, from 2100 to 0830 the following day;
- (e) weekend shifts, from:
  - (i) 0800 to 2130;
  - (ii) 0800 to 1630.

### **PARTICULARS**

Copies of Dr Tham's rosters are in the possession of her solicitors and may be inspected on request.

#### **E.1.2 Handover**

142. During the 2021 MAPU Rotation, Calvary directed Dr Tham to undertake handovers ("**handover direction**").

### **PARTICULARS**

The handover direction was partly written and partly implied.

So far as it was written, it was constituted by WhatsApp text messages from time to time, from a Registrar (Dr Brendan Cantwell or Dr Yi Chen Lim) to Dr Tham, saying words to the effect that handover would commence at a particular time.

So far as it was implied, it was implied by:

- (a) the fact of undertaking handover being part of Dr Tham's duties, as pleaded in [14(j)];
  - (b) the importance of handover for patient care.
143. During the 2021 MAPU Rotation, in order to undertake handovers in accordance with the handover direction, Dr Tham worked hours in excess of her rostered hours ("**handover overtime**").

### **PARTICULARS**

During the 2021 MAPU Rotation, Dr Tham's rostered day shifts concluded at 1630. There was a handover meeting scheduled to start at 1600, but the start time was regularly delayed. When this occurred, or if there were a large number of patients to hand over, Dr Tham attended handover until it was finished.

Dr Tham worked around 15 minutes of handover overtime at the end of most or all of her day shifts, or around 75 minutes of handover overtime per week.

144. Calvary:
- (a) knew that there was insufficient time during Dr Tham's rostered hours to undertake handovers in accordance with the handover direction;

- (b) knew that Dr Tham performed handover overtime;
- (c) did not direct Dr Tham not to perform handover overtime.

**PARTICULARS**

Calvary's knowledge is to be inferred from:

- (a1) Dr Tham's rostered day shifts, as set out in [141(a)]-[141(b)] above;
- (a2) the system of work, the practice of Junior Medical Officers working overtime, and Calvary's knowledge of each of those matters, as set out in [145(a1)] and [145(a2)];
- (a) the handover direction;
- (b) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records.
- (c) Registrars being present during handover and thereby observing Dr Tham undertaking handover after the end of her rostered shift.

145. During 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;

**PARTICULARS**

Work in the MAPU Unit was, relevantly, organised in the following way:

- (a) Day shifts were rostered to finish at 1630.
  - (b) Handover was scheduled to commence at 1600. The start time was subject to the matter in subparagraph (d) below.
  - (c) All medical staff working the day shift were required to attend handover.
  - (d) Handover did not commence until all medical staff working the day shift were in attendance.
- (a2) Calvary knew that there was the system of work set out in subparagraph (a1) above;

**PARTICULARS**

The knowledge of Calvary is to be inferred from the fact that Calvary as employer of Dr Tham and Junior Medical Officers, prepared and implemented the rosters, and arranged the work, in the MAPU Unit at Calvary Hospital.

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

**PARTICULARS**

The knowledge of ~~the Territory~~ Calvary is to be inferred from the following matters:

- (a) Dr Tham and Junior Medical Officers working after their rostered finish times undertaking handover, and being observed by other medical staff while so doing;
  - (b) the handover direction, and like directions given to other Junior Medical Officers;
  - (c) the rostered hours of Dr Tham and Junior Medical Officers; and
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
    - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks;
    - (ii) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records; and
  - (e) Calvary's knowledge of the system of work pleaded in [145(a1)] and [145(a2)].
- (c) ~~the Territory~~ Calvary did not direct Junior Medical Officers not to work unrostered overtime undertaking handover.

146. In the premises pleaded in [142]–[145], Calvary required or requested Dr Tham, within the meaning of clause 35.1 of the 2017 EA, to perform the handover overtime.

**PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of undertaking handover being part of Dr Tham's duties, as pleaded in [14(c)];
- (b) the handover direction;
- (c) ~~the Territory~~ Calvary's knowledge pleaded in [144(a)] and [144(b)];
- (d) ~~the Territory~~ Calvary having not directed Dr Tham not to perform handover overtime, as pleaded in [144(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, Calvary's knowledge of those matters thereof, and the failure to direct, pleaded in ~~[139]~~ and [145].

147. The handover overtime did not accrue to an ADO within the meaning of clause 35.2 of the 2017 EA.
148. In the premises, clause 35.2 of the 2017 EA required Calvary to pay Dr Tham for the handover overtime, at the rates set out in clause 35.4 of the 2017 EA.
149. Calvary did not pay Dr Tham for the handover overtime, at the rates set out in clause 35.4 of the 2017 EA.
150. In the premises, Calvary has contravened:
- (a) clause 35.2 of the 2017 EA; and
  - (b) section 50 of the FW Act.

## **E.2 2021 Cardiology Rotation—02 August 2021 to 31 October 2021—2017 EA**

151. Pursuant to the direction pleaded in [138(b)], from around 02 August 2021 to around 31 October 2021, Dr Tham worked in the cardiology department at Calvary Hospital.

### **E.2.1 Rosters**

152. During the 2021 Cardiology Rotation, Dr Tham was rostered to work the following shifts, from time to time:
- (a) day shifts, from 0800 to 1630;
  - (b) long shifts, around once per fortnight in the medical assessment planning unit, from 0800 to 2130.

### **PARTICULARS**

Copies of Dr Tham's rosters are in the possession of her solicitors and may be inspected on request.

## E.2.2 Ward round preparation

153. During the 2021 Cardiology Rotation, Calvary directed Dr Tham to undertake ward round preparation (“**ward round preparation direction**”).

### PARTICULARS

The ward round preparation direction was implied by:

- (a1) the tasks necessary for ward round preparation, as set out in subparagraph (d) of the particulars to [157] below;
  - (a) the fact of ward round preparation being part of Dr Tham’s duties, as pleaded in [14(c)];
  - (b) the importance of preparing for ward rounds for proper patient care.
154. During the 2021 Cardiology Rotation, in order to undertake ward ~~wound~~ round preparation in accordance with the ward round preparation direction, Dr Tham worked hours in excess of her rostered hours (“**ward round preparation overtime**”).

### PARTICULARS

During the 2021 Cardiology Rotation, Dr Tham’s rostered day shifts, and ward rounds, commenced at 0800.

Dr Tham worked around 20–30 minutes of ward round preparation overtime before most or all of her day weekday shifts, or around 1.6–2.5 hours of ward round preparation overtime per week.

155. Calvary:
- (a) knew that there was insufficient time during Dr Tham’s rostered hours to undertake ward round preparation in accordance with the ward round preparation direction;
  - (b) knew that Dr Tham performed ward round preparation overtime;
  - (c) did not direct Dr Tham not to perform ward round preparation overtime.

### PARTICULARS

Calvary’s knowledge is to be inferred from:

- (a1) Dr Tham’s rostered day shifts, as set out in [152] above;
- (a2) the tasks necessary for ward round preparation, as set out in subparagraph (d) of the particulars to [157] below;
- (a3) the system of work, the practice of Junior Medical Officers working unrostered overtime, and Calvary’s knowledge of each of those matters, as set out in [156(a1)]–[156(b)] below;
- (a) the ward round preparation direction;

- (b) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (c) the fact of Dr Tham being prepared for ward rounds when they commenced, in circumstances where:
  - (i) the only available time for preparation was prior to ward rounds commencing;
  - (ii) ward rounds commencing at the same time as Dr Tham's day weekday shifts (0800);
- (d) the knowledge of Registrars and Consultants that Dr Tham was prepared for ward rounds, in the circumstances identified in particular (c).

156. During 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;

**PARTICULARS**

Work in the Cardiology Department at Calvary Hospital was, relevantly, organised in the following way:

- (a) Day shifts commenced at 0800.
- (b) Ward rounds commenced at 0800.
- (c) Junior Medical Officers were required to attend ward rounds.
- (d) Junior Medical Officers were required to prepare for ward rounds.

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

**PARTICULARS**

The knowledge of Calvary is to be inferred from the fact that Calvary, as employer of Dr Tham and Junior Medical Officers, prepared and implemented the rosters, and arranged the work, in the Cardiology Department at Calvary Hospital.

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

### **PARTICULARS**

The knowledge of ~~the Territory~~ Calvary is to be inferred from the following matters:

- (a) Dr Tham and Junior Medical Officers working before their rostered start times undertaking ward round preparation, and being observed by other medical staff while so doing;
  - (b) the ward round preparation direction, and like directions given to other Junior Medical Officers;
  - (c) the rostered hours of Dr Tham and Junior Medical Officers; and
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
    - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks;
    - (ii) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records, and
  - (e) Calvary's knowledge of the system of work pleaded in [156(a1)] and [156(a2)].
- (c) ~~the Territory~~ Calvary did not direct Junior Medical Officers not to work unrostered overtime undertaking ward round preparation.

157. In the premises pleaded in [153]–[156], Calvary required or requested Dr Tham, within the meaning of clause 35.1 of the 2017 EA, to perform the ward round preparation overtime.

### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of ward round preparation being part of Dr Tham's duties, as pleaded in [14(c)];
- (b) the ward round preparation direction;
- (c) the necessity to be prepared for ward rounds when they commenced;
- (d) the fact that, in order to be prepared for ward rounds, Dr Tham had to:
  - (i) check blood results;
  - (ii) update the patient list;

- (iii) know the location of patients, especially if they were new;
  - (iv) know whether anything had changed overnight in regard to patients (including knowing the situation of new patients);
  - (e) the expectation of Registrars conducting ward rounds that Dr Tham would be prepared for ward rounds;
  - (f) the fact of ward rounds commencing at 0800, at the same time as Dr Tham's 0800 shifts commenced;
  - (g) the need, in this light, for Dr Tham to arrive before her shift commenced in order to complete the tasks listed in particular (d) above.
  - (h) Calvary's knowledge pleaded in [155(a)] and [155(b)];
  - (i) Calvary having not directed Dr Tham not to perform ward round preparation overtime, as pleaded in [155(c)];
  - (j) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, Calvary's knowledge of those matters thereof, and the failure to direct, pleaded in [139] and [156].
158. The ward round preparation overtime did not accrue to an ADO within the meaning of clause 35.2 of the 2017 EA.
159. In the premises, clause 35.2 of the 2017 EA required Calvary to pay Dr Tham for the ward round preparation overtime, at the rates set out in clause 35.4 of the 2017 EA.
160. Calvary did not pay Dr Tham for the ward round preparation overtime, at the rates set out in clause 35.4 of the 2017 EA.
161. In the premises, Calvary has contravened:
- (a) clause 35.2 of the 2017 EA; and
  - (b) section 50 of the FW Act.

### **E.3 Loss**

162. Dr Tham has suffered loss by reason of Calvary's contraventions of the FW Act.

#### **PARTICULARS**

Dr Tham's loss is that she was not paid for overtime that she was required or requested to work, at the rates applicable at the time that that overtime was worked, as pleaded above.

Particulars (including a calculation of loss) will be provided after discovery and before trial.

**E.4 Section 557C**

162A. Each of the 2013 EA, 2017 EA and 2021 EA provide that a penalty rate must be paid for overtime actually worked by Dr Tham.

**PARTICULARS**

2013 EA, clause 36.

2017 EA, clause 35.

2021 EA, clause 36.

162B. In the premises, and by operation of the FW Act, Calvary was required on and from 16 September 2017 to make, and keep for seven years, a record that specifies:

- (a) the number of overtime hours worked by Dr Tham during each day; or
- (b) when Dr Tham started and ceased working overtime hours.

**PARTICULARS**

FW Act s 535, s 557C.

Fair Work Regulations 2009 (Cth), reg 3.34.

162C. Calvary has failed to:

- (c) make; and/or
- (d) keep.

a record of the kind described in paragraph 162B above.

**Part F Group Members' claims against the Territory**

163. Each Group Member who during the Relevant Period was employed by the Territory, in the course of his or her employment by the Territory:

- (a) worked in a service operated by the Territory pleaded in [1(a)(i)];
- (b) was rostered to work consistently with the ordinary weekly hours pleaded in [9].

**F.1 Admissions**

164. Some or all Group Members, in the course of their employment by the Territory during the relevant period, were subject to directions to admit patients into the department or ward in which those Group Members were working ("**admissions directions**").

**PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to admit patients by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to admit patients.

So far as they were implied, they were implied by:

- (a) the fact that patient admissions were part of Group Members' duties, as pleaded in [14(a)];
- (b) the importance of patient admissions for proper patient care.

165. Some or all Group Members subject to admissions directions worked in excess of rostered hours to admit patients, in accordance with the direction ("**admissions overtime**").

166. In respect of each Group Member who worked admissions overtime, the Territory:

- (a) knew that there was insufficient time during rostered hours to admit patients;
- (b) knew that Group Members were working admissions overtime;
- (c) did not direct Group Members not to perform admissions overtime.

#### **PARTICULARS**

The Territory's knowledge is to be inferred from:

(a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [167(a1)]–[167(b)] below;

- (a) the admissions directions;
- (b) the fact of admissions directions being made, from time to time, after or near the end of Group Members' rostered shifts;
- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

167. During the Relevant Period, in the department or ward in which Group Members worked:

(a1) there was a system of work whereby Junior Medical Officers were required to attend to admitting a patient until that admission was complete, even if that attendance exceeded the doctor's rostered hours;

#### **PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

- (a) there was a ~~system, custom, or~~ practice of Junior Medical Officers employed by the Territory working unrostered overtime admitting patients;
- (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 admitting patients;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Junior Medical Officers working after their rostered finish times admitting patients, and being observed by other medical staff while so doing;
  - (b) the admissions direction;
  - (c) the rostered hours of Junior Medical Officers;
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records; and
  - (e) The Territory's knowledge of the system of work pleaded in [167(a1) and [167(a2)] above.
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime admitting patients.

168. In the premises pleaded in [164]–[167], Group Members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;
  - (b) clause 35.1 of the 2017 EA; or
  - (c) clause 36.1 of the 2021 EA,
- to perform the admissions overtime.

## PARTICULARS

The requirement or request is implied by the following matters:

- (a) the fact of patient admissions being part of Group Members' duties, as pleaded in [14(a)];
- (b) the admissions directions;
- (c) the Territory's knowledge pleaded in [166(a)] and [166(b)];
- (d) the Territory having not directed Group Members not to perform admissions overtime, as pleaded in [166(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of those matters, ~~thereof,~~ and the failure to direct, pleaded in ~~[16]~~ and [167].

169. The admissions overtime did not accrue to an ADO within the meaning of:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA.

170. In the premises:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

required the Territory to pay Group Members for the admissions overtime that they worked, at the rates set out in:

- (d) clause 36.4 of the 2013 EA;
- (e) clause 35.4 of the 2017 EA; or
- (f) clause 36.4 of the 2021 EA.

171. The Territory did not pay some or all Group Members for some or all of the admissions overtime that they worked, at the rates set out in:

- (a) clause 36.4 of the 2013 EA;
- (b) clause 35.4 of the 2017 EA; or
- (c) clause 36.4 of the 2021 EA.

172. In the premises, the Territory has contravened:

- (a) clause 36.2 of the 2013 EA;

- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

and the Territory has contravened section 50 of the FW Act.

## F.2 Consults

173. Some or all Group Members, in the course of their employment by the Territory during the relevant period, were subject to directions to attend another department for a patient consult (“**consult directions**”).

### PARTICULARS

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to perform patient consults by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to perform patient consults.

So far as they were implied, they were implied by:

- (a) the fact that patient consults were part of group members’ duties, as pleaded in [14(b)] above;
  - (b) the importance of patient consults for proper patient care.
174. Some or all Group Members subject to consult directions worked in excess of rostered hours to attend patient consults, in accordance with the direction (“**consult overtime**”).
175. In respect of each Group Member who worked consult overtime, the Territory:
- (a) knew that there was insufficient time during rostered hours to attend patient consults;
  - (b) knew that Group Members were working consult overtime;
  - (c) did not direct Group Members not to perform consult overtime.

### PARTICULARS

The Territory’s knowledge is to be inferred from:

(a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory’s knowledge of each of those matters, as set out in [176(a1)]–[176(b)] below;

- (a) the consult directions;
- (b) the fact of consult directions being made, from time to time, after or near the end of Group Members’ rostered shifts;

- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

176. During the Relevant Period, in the department or ward in which Group Members worked:

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

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

that there was a ~~system, custom, or~~ practice of Junior Medical Officers working unrostered overtime attending patient consults;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Junior Medical Officers working after their rostered finish times attending patient consults, and being observed by other medical staff while so doing;
- (b) the consult direction;
- (c) the rostered hours of Junior Medical Officers;
- (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and

- (e) the Territory's knowledge of the system of work pleaded in [176(a1)] and [176(a2)].
  - (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime attending patient consults.
177. In the premises pleaded in [173]–[176], Group Members were required or requested, within the meaning of:
- (a) clause 36.1 of the 2013 EA;
  - (b) clause 35.1 of the 2017 EA; or
  - (c) clause 36.1 of the 2021 EA,
- to perform the consult overtime.

### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of patient consults being part of Group Members' duties, as pleaded in [14(b)];
  - (b) the consult directions;
  - (c) the Territory's knowledge pleaded in [175(a)] and [175(b)];
  - (d) the Territory having not directed Group Members not to perform consult overtime, as pleaded in [175(c)];
  - (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and—custom, or practice, the Territory's knowledge of those matters thereof, pleaded in [16] and [176].
178. The consult overtime did not accrue to an ADO within the meaning of:
- (a) clause 36.2 of the 2013 EA;
  - (b) clause 35.2 of the 2017 EA; or
  - (c) clause 36.2 of the 2021 EA.
179. In the premises:
- (a) clause 36.2 of the 2013 EA;
  - (b) clause 35.2 of the 2017 EA; or
  - (c) clause 36.2 of the 2021 EA,
- required the Territory to pay Group Members for the consult overtime that they worked, at the rates set out in:
- (d) clause 36.4 of the 2013 EA;

- (e) clause 35.4 of the 2017 EA; or
  - (f) clause 36.4 of the 2021 EA.
180. The Territory did not pay some or all Group Members for some or all of the consult overtime that they worked, at the rates set out in:
- (a) clause 36.4 of the 2013 EA;
  - (b) clause 35.4 of the 2017 EA; or
  - (c) clause 36.4 of the 2021 EA.
181. In the premises, the Territory has contravened:
- (a) clause 36.2 of the 2013 EA;
  - (b) clause 35.2 of the 2017 EA; or
  - (c) clause 36.2 of the 2021 EA,
- and the Territory has contravened section 50 of the FW Act.

### **F.3 Medical emergencies**

182. Some or all Group Members, in the course of their employment by the Territory during the relevant period, were subject to directions to deal with medical emergencies (“**medical emergencies directions**”).

#### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to deal with medical emergencies by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors and other medical staff directing Group Members to deal with medical emergencies.

So far as they were implied, they were implied by:

- (a) the fact that dealing with medical emergencies was part of Group Members’ duties, as pleaded in [14(g)];
- (b) the centrality to a doctor’s role of attending to patients whose condition is poor, deteriorating, or in an emergency situation;
- (c) the unsafeness or undesirability of handing over a patient in such a situation to a doctor who is coming onto shift;
- (d) the difficulty, unsafeness, or undesirability of trying to find another doctor to whom to hand over a patient in such a situation;

- (e) the desirability or appropriateness for patient care, in such a situation, that a doctor who is aware of the patient's circumstances continue to provide care for that patient.
183. Some or all Group Members subject to the medical emergencies direction worked in excess of rostered hours to deal with medical emergencies, in accordance with the direction ("**medical emergencies overtime**").
184. In respect of each Group Member who worked medical emergencies overtime, the Territory:
- (a) knew that there was insufficient time during rostered hours to deal with medical emergencies;
  - (b) knew that Group Members were working medical emergencies overtime;
  - (c) did not direct Group Members not to perform medical emergencies overtime.

#### **PARTICULARS**

The Territory's knowledge is to be inferred from:

- (a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [185(a1)]–[185(b)] below;
- (a) the medical emergencies directions;
  - (b) the fact of medical emergencies directions being made, from time to time, after or near the end of Group Members' rostered shifts;
  - (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
  - (d) the rostered hours for each ward or department in which Group Members were working.
185. During the Relevant Period, in the department or ward in which Group Members worked:
- (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;

#### **PARTICULARS**

The Applicant refers to and repeats the particulars to paragraph 40(a1). Further particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

The Applicant refers to and repeats the particulars to paragraph 40(a2). Further particulars will be provided following the trial of the common issues.

- (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;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Junior Medical Officers working after their rostered finish times dealing with medical emergencies, and being observed by other medical staff while so doing;
  - (b) the medical emergencies directions;
  - (c) the rostered hours of Junior Medical Officers;
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and
  - (e) the Territory's knowledge of the system of work pleaded in [185(a1)] and [185(a2)].
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime dealing with medical emergencies.

186. In the premises pleaded in [182]–[185], Group Members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;
- (b) clause 35.1 of the 2017 EA; or
- (c) clause 36.1 of the 2021 EA,

to perform the medical emergencies overtime.

### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of medical emergencies being part of Group Members' duties, as pleaded in [14(g)];
- (b) the medical emergencies direction;
- (c) the Territory's knowledge pleaded in [184(a)] and [184(b)];
- (d) the Territory having not directed Group Members not to perform medical emergencies overtime, as pleaded in [184(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in [16] and [185].

187. The medical emergencies overtime did not accrue to an ADO within the meaning of:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA.

188. In the premises:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

required the Territory to pay Group Members for the medical emergencies overtime that they worked, at the rates set out in:

- (d) clause 36.4 of the 2013 EA;
- (e) clause 35.4 of the 2017 EA; or
- (f) clause 36.4 of the 2021 EA.

189. The Territory did not pay some or all Group Members for some or all of the medical emergencies overtime that they worked, at the rates set out in:

- (a) clause 36.4 of the 2013 EA;
- (b) clause 35.4 of the 2017 EA; or
- (c) clause 36.4 of the 2021 EA.

190. In the premises, the Territory has contravened:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

and the Territory has contravened section 50 of the FW Act.

#### **F.4 Surgical procedures**

191. Some or all Group Members, in the course of their employment by the Territory during the relevant period, were subject to directions assist in theatre in the performance of surgical procedures (“**surgical procedures directions**”).

##### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to perform assist in theatre in the performance of surgical procedures by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to assist in theatre in the performance of surgical procedures.

So far as they were implied, they were implied by:

- (a) the fact that assisting in theatre in the performance of surgical procedures was part of Group Members’ duties, as pleaded in [14(h)];
- (b) the importance of assisting in theatre in the performance of surgical procedures for proper patient care.

192. Some or all Group Members subject to the surgical procedures direction worked in excess of rostered hours to assist in theatre in the performance of surgical procedures, in accordance with the direction (“**surgical procedures overtime**”).

193. In respect of each Group Member who worked surgical procedures overtime, the Territory:

- (a) knew that there was insufficient time during rostered hours to assist in theatre in the performance of surgical procedures;
- (b) knew that Group Members were working surgical procedures overtime;
- (c) did not direct Group Members not to perform surgical procedures overtime.

**PARTICULARS**

The Territory's knowledge is to be inferred from:

- (a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [194(a1)]-[194(b)] below;
- (a) the surgical procedures directions;
  - (b) the fact of surgical procedures commencing, from time to time, after or near the end of Group Members' rostered shifts or with insufficient time left in rostered shifts for completion of the procedure;
  - (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records.
  - (d) the rostered hours for each ward or department in which Group Members were working.

194. During the Relevant Period, in the department or ward in which Group Members worked:

- (a1) there was a system of work whereby Junior Medical Officers were required to assist in theatre in the performance of surgical procedures until that procedure was finished, even if that attendance exceeded that doctor's rostered hours;

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

that there was a ~~system, custom, or~~ practice of Junior Medical Officers working unrostered overtime performing surgical procedures;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Junior Medical Officers working after their rostered finish times performing surgical procedures, and being observed by other medical staff while so doing;
- (b) the surgical procedures direction;
- (c) the rostered hours of Junior Medical Officers;
- (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and
- (e) the Territory's knowledge of the system of work pleaded in [194(a1)] and [194(a2)].

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

195. In the premises pleaded in [191]–[194], ~~Error! Reference source not found.~~, Group M members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;
- (b) clause 35.1 of the 2017 EA; or
- (c) clause 36.1 of the 2021 EA,

to perform the surgical procedures overtime.

**PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact that assisting in theatre in the performance of surgical procedures was part of Group Members' duties, as pleaded in [14(h)];
- (b) the surgical procedures direction;
- (c) the Territory's knowledge pleaded in [193(a)] and [193(b)];
- (d) the Territory having not directed Group Members not to perform surgical procedures overtime, as pleaded in [193(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in [16] and ~~Error! Reference source not found.~~ [194].

196. The surgical procedures overtime did not accrue to an ADO within the meaning of:

- (a) clause 36.2 of the 2013 EA;

- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA.

197. In the premises:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

required the Territory to pay Group Members for the surgical procedures overtime that they worked, at the rates set out in:

- (d) clause 36.4 of the 2013 EA;
- (e) clause 35.4 of the 2017 EA; or
- (f) clause 36.4 of the 2021 EA.

198. The Territory did not pay some or all Group Members for some or all of the surgical procedures overtime that they worked, at the rates set out in:

- (a) clause 36.4 of the 2013 EA;
- (b) clause 35.4 of the 2017 EA; or
- (c) clause 36.4 of the 2021 EA.

199. In the premises, the Territory has contravened:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

and the Territory has contravened section 50 of the FW Act.

## **F.5 Transfers**

200. Some or all Group Members, in the course of their employment by the Territory during the relevant period, were subject to procure the transfer or discharge of patients into other medical facilities (“**transfer directions**”).

### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to procure the transfer or discharge

of patients into other medical facilities by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to procure the transfer or discharge of patients into other medical facilities.

So far as they were implied, they were implied by:

- (a) the fact that procuring the transfer or discharge of patients into other medical facilities was part of Group Members' duties, as pleaded in [14(i)];
- (b) the importance of procuring the transfer or discharge of patients into other medical facilities for proper patient care.

201. Some or all Group Members subject to the transfer direction worked in excess of rostered hours to procure the transfer or discharge of patients into other medical facilities, in accordance with the direction ("**transfer overtime**").

202. In respect of each Group Member who worked transfer overtime, the Territory:

- (a) knew that there was insufficient time during rostered hours to procure the transfer or discharge of patients into other medical facilities;
- (b) knew that Group Members were working transfer overtime;
- (c) did not direct Group Members not to perform transfer overtime.

### **PARTICULARS**

The Territory's knowledge is to be inferred from:

(a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [203(a1)]–[203(b)] below;

- (a) the transfer directions;
- (b) the fact of transfer directions being made, from time to time, after or near the end of Group Members' rostered shifts;
- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

203. During the Relevant Period in the department or ward in which Group Members worked:

(a1) there was a system of work whereby Junior Medical Officers were required to attend to transferring or discharging a patient into other medical facilities until

that transfer or discharge was complete, even if that attendance exceeded the doctor's rostered hours;

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

that there was a ~~system, custom, or~~ practice of Junior Medical Officers working unrostered overtime transferring or discharging patients into other medical facilities;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Junior Medical Officers working after their rostered finish times transferring or discharging patients into other medical facilities, and being observed by other medical staff while so doing;
- (b) the transfer directions;
- (c) the rostered hours of Junior Medical Officers;
- (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and
- (e) the Territory's knowledge of the system of work pleaded in [203(a1)] and [203(a2)].

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

204. In the premises pleaded in [200]–[203], Group Members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;
- (b) clause 35.1 of the 2017 EA; or
- (c) clause 36.1 of the 2021 EA,

to perform the transfer overtime.

### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact that procuring the transfer or discharge of patients into other medical facilities was part of Group Members' duties, as pleaded in [14(i)];
- (b) the transfer direction;
- (c) the Territory's knowledge pleaded in [202(a)] and [202(b)];
- (d) the Territory having not directed Group Members not to perform transfer overtime, as pleaded in [202(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in [16] and [203].

205. The transfer overtime did not accrue to an ADO within the meaning of:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA.

206. In the premises:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

required the Territory to pay Group Members for the transfer overtime that they worked, at the rates set out in:

- (d) clause 36.4 of the 2013 EA;
- (e) clause 35.4 of the 2017 EA; or

- (f) clause 36.4 of the 2021 EA.
207. The Territory did not pay some or all Group Members for some or all of the transfer overtime that they worked, at the rates set out in:
- (a) clause 36.4 of the 2013 EA;
- (b) clause 35.4 of the 2017 EA; or
- (c) clause 36.4 of the 2021 EA.
208. In the premises, the Territory has contravened:
- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,
- and the Territory has contravened section 50 of the FW Act.

#### **F.6 Medical records**

209. Some or all Group Members, in the course of their employment by the Territory during the relevant period, were subject to directions:
- (a) to undertake medical records preparation; and
- (b) to complete medical records in a timely manner; and
- (c) that the timely completion of medical records was necessary to ensure patient care,
- ("medical records directions").

#### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to undertake medical records preparation by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to perform undertake medical records preparation.

So far as they were implied, they were implied by:

- (a) the fact that undertaking medical records preparation was part of Group Members' duties, as pleaded in [14(e)];
- (b) the importance of undertaking medical records preparation for proper patient care.

210. Some or all Group Members subject to the medical records direction worked in excess of rostered hours to undertake medical records preparation, in accordance with the direction (“**medical records overtime**”).
211. In respect of each Group Member who worked medical records overtime, the Territory:
- (a) knew that there was insufficient time during rostered hours to undertake medical records preparation;
  - (b) knew that Group Members were working medical records overtime;
  - (c) did not direct Group Members not to perform medical records overtime.

### **PARTICULARS**

The Territory’s knowledge is to be inferred from:

- (a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory’s knowledge of each of those matters, as set out in [212(a1)]–[212(b)] below;
    - (a) the medical records directions;
    - (b) the fact of medical records directions being made, from time to time, after or near the end of Group Members’ rostered shifts;
    - (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
    - (d) the rostered hours for each ward or department in which Group Members were working.
212. During the Relevant Period in the department or ward in which Group Members worked:

- (a1) there was a system of work whereby Junior Medical Officers were required to attend work until medical records were completed ~~a patient consult had concluded~~, even if that attendance exceeded that doctor’s rostered hours;

### **PARTICULARS**

The Applicant refers to and repeats the particulars to paragraphs 31(a1), 51(a1), 82(a1), 102(a1) and 131(a1). Further particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

The Applicant refers to and repeats the particulars to paragraphs 31(a2), 51(a2), 82(a2), 102(a2) and 131(a2). Further particulars will be provided following the trial of the common issues.

- (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;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Junior Medical Officers working after their rostered finish times undertaking medical records preparation, and being observed by other medical staff while so doing;
  - (b) the medical records preparation direction;
  - (c) the rostered hours of Junior Medical Officers;
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and
  - (e) the Territory's knowledge of the system of work pleaded in [212(a1)] and [212(a2)].
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking medical records preparation.

213. In the premises pleaded in [209]–[212], Group Members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;
- (b) clause 35.1 of the 2017 EA; or
- (c) clause 36.1 of the 2021 EA,

to perform the medical records overtime.

## PARTICULARS

The requirement or request is implied by the following matters:

- (a) the fact of medical records being part of Group Members' duties, as pleaded in [14(e)];
- (b) the medical records direction;
- (c) the Territory's knowledge pleaded in [211(a)] and [211(b)];
- (d) the Territory having not directed Group Members not to perform medical records overtime, as pleaded in [211(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in [16] and [212].

214. The medical records overtime did not accrue to an ADO within the meaning of:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA.

215. In the premises:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

required the Territory to pay Group Members for the medical records overtime that they worked, at the rates set out in:

- (d) clause 36.4 of the 2013 EA;
- (e) clause 35.4 of the 2017 EA; or
- (f) clause 36.4 of the 2021 EA.

216. The Territory did not pay some or all Group Members for some or all of the medical records overtime that they worked, at the rates set out in:

- (a) clause 36.4 of the 2013 EA;
- (b) clause 35.4 of the 2017 EA; or
- (c) clause 36.4 of the 2021 EA.

217. In the premises, the Territory has contravened:

- (a) clause 36.2 of the 2013 EA;

- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

and the Territory has contravened section 50 of the FW Act.

#### **F.7 Ward round preparation**

218. Some or all Group Members, in the course of their employment by the Territory during the relevant period, were subject to directions to prepare for ward rounds (“**ward round preparation directions**”).

#### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to prepare for ward rounds by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to prepare for ward rounds.

So far as they were implied, they were implied by:

- (a) the fact that preparing for ward rounds was part of Group Members’ duties, as pleaded in [14(c)];
- (b) the importance of preparing for ward rounds for proper patient care.

219. Some or all Group Members subject to the ward round preparation direction worked in excess of rostered hours to prepare for ward rounds, in accordance with the direction (“**ward round preparation overtime**”).

220. In respect of each Group Member who worked ward round preparation overtime, the Territory:

- (a) knew that there was insufficient time during rostered hours to prepare for ward rounds;
- (b) knew that Group Members were working ward round preparation overtime;
- (c) did not direct Group Members not to perform ward round preparation overtime.

#### **PARTICULARS**

The Territory’s knowledge is to be inferred from:

(a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory’s knowledge of each of those matters, as set out in [221(a1)]–[221(b)] below;

- (a) the ward round preparation directions;

- (b) the fact of ward rounds commencing, from time to time, at or shortly after the beginning of Group Members' rostered shifts;
- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance logs at wards of the hospital, or the entrances to the hospital;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

221. During the Relevant Period, in the department or ward in which Group Members worked:

(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:

**PARTICULARS**

The Applicant refers to and repeats the particulars to paragraphs 22(a1), 62(a1) and 113(a1). Further particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

The Applicant refers to and repeats the particulars to paragraphs 22(a2), 62(a2) and 113(a2). Further particulars will be provided following the trial of the common issues.

(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;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Junior Medical Officers working before their rostered start times undertaking ward round preparation, and being observed by other medical staff while so doing;
  - (b) the ward round preparation direction;
  - (c) the rostered hours of Junior Medical Officers; ~~and~~
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
    - (i) entrance logs at wards of the hospital or carparks,;
    - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and
  - (e) the Territory's knowledge of the system of work pleaded in [230(a1)] and [230(a2)].
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking ward round preparation.
222. In the premises pleaded in [218]–[221], Group Members were required or requested, within the meaning of:
- (a) clause 36.1 of the 2013 EA;
  - (b) clause 35.1 of the 2017 EA; or
  - (c) clause 36.1 of the 2021 EA,
- to perform the ward round preparation overtime.

### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact that preparing for ward rounds was part of Group Members' duties, as pleaded in [14(c)];
  - (b) the ward round preparation direction;
  - (c) the Territory's knowledge pleaded in [220(a)] and [220(b)];
  - (d) the Territory having not directed Group Members not to perform ward round preparation overtime, as pleaded in [220(c)];
  - (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in [16] and [221].
223. The ward round preparation overtime did not accrue to an ADO within the meaning of:
- (a) clause 36.2 of the 2013 EA;
  - (b) clause 35.2 of the 2017 EA; or

(c) clause 36.2 of the 2021 EA.

224. In the premises:

(a) clause 36.2 of the 2013 EA;

(b) clause 35.2 of the 2017 EA; or

(c) clause 36.2 of the 2021 EA,

required the Territory to pay Group Members for the ward round preparation overtime that they worked, at the rates set out in:

(d) clause 36.4 of the 2013 EA;

(e) clause 35.4 of the 2017 EA; or

(f) clause 36.4 of the 2021 EA.

225. The Territory did not pay some or all Group Members for some or all of the ward round preparation overtime that they worked, at the rates set out in:

(a) clause 36.4 of the 2013 EA;

(b) clause 35.4 of the 2017 EA; or

(c) clause 36.4 of the 2021 EA.

226. In the premises, the Territory has contravened:

(a) clause 36.2 of the 2013 EA;

(b) clause 35.2 of the 2017 EA; or

(c) clause 36.2 of the 2021 EA,

and the Territory has contravened section 50 of the FW Act.

## **F.8 Ward rounds**

227. Some or all Group Members, in the course of their employment by the Territory during the relevant period, were subject to directions to undertake ward rounds (“**ward rounds directions**”).

### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to undertake ward rounds by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to undertake ward rounds.

So far as they were implied, they were implied by:

- (a) the fact that undertaking ward rounds was part of Group Members' duties, as pleaded in [14(d)];
- (b) the importance of ward rounds for proper patient care.

228. Some or all Group Members subject to the ward rounds direction worked in excess of rostered hours to perform ward rounds, in accordance with the direction ("**ward rounds overtime**").

229. In respect of each Group Member who worked ward rounds overtime, the Territory:

- (a) knew that there was insufficient time during rostered hours to perform ward rounds;
- (b) knew that Group Members were working ward rounds overtime;
- (c) did not direct Group Members not to perform ward rounds overtime.

#### **PARTICULARS**

The Territory's knowledge is to be inferred from:

(a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [230(a1)]-[230(b)] below;

- (a) the ward rounds directions;
- (b) the fact of ward rounds commencing, from time to time, before the start of Group Members' rostered shifts;
- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance logs at wards of the hospital, or, the entrances to the hospital;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

230. During the Relevant Period, in the department or ward in which Group Members worked:

(a1) there was a system of work whereby Junior Medical Officers were required to undertake ward rounds, even if that attendance exceeded that doctor's rostered hours;

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

- (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:
- (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 rounds;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Junior Medical Officers working before or after their rostered start or finish times undertaking ward rounds, and being observed by other medical staff while so doing;
- (b) the ward rounds direction;
- (c) the rostered hours of Junior Medical Officers; and
- (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
- (i) entrance logs at wards of the hospital, or the entrances to the hospital;
- (ii) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records; and
- (e) the Territory's knowledge of the system of work pleaded in [230(a1)] and [230(a2)].
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking ward rounds.

231. In the premises pleaded in [227]–[230], Group Members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;

- (b) clause 35.1 of the 2017 EA; or
  - (c) clause 36.1 of the 2021 EA,
- to perform the ward rounds overtime.

### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact that undertaking ward rounds was part of Group Members' duties, as pleaded in [14(d)];
- (b) the ward rounds direction;
- (c) the Territory's knowledge pleaded in [229(a)] and [229(b)];
- (d) the Territory having not directed Group Members not to perform ward rounds overtime, as pleaded in [229(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in [16] and [230].

232. The ward rounds overtime did not accrue to an ADO within the meaning of:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA.

233. In the premises:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

required the Territory to pay Group Members for the ward rounds overtime that they worked, at the rates set out in:

- (d) clause 36.4 of the 2013 EA;
- (e) clause 35.4 of the 2017 EA; or
- (f) clause 36.4 of the 2021 EA.

234. The Territory did not pay some or all Group Members for some or all of the ward rounds overtime that they worked, at the rates set out in:

- (a) clause 36.4 of the 2013 EA;
- (b) clause 35.4 of the 2017 EA; or

(c) clause 36.4 of the 2021 EA.

235. In the premises, the Territory has contravened:

(a) clause 36.2 of the 2013 EA;

(b) clause 35.2 of the 2017 EA; or

(c) clause 36.2 of the 2021 EA,

and the Territory has contravened section 50 of the FW Act.

## **F.9 Paper rounds**

236. Some or all Group Members, in the course of their employment by the Territory during the relevant period, were subject to directions to undertake paper rounds (“**paper rounds directions**”).

### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to undertake paper rounds by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to undertake paper rounds.

So far as they were implied, they were implied by:

(a) the fact that undertaking paper rounds was part of Group Members’ duties, as pleaded in [14(f)];

(b) the importance of undertaking paper rounds for proper patient care.

237. Some or all Group Members subject to the paper rounds direction worked in excess of rostered hours to undertake paper rounds, in accordance with the direction (“**paper rounds overtime**”).

238. In respect of each Group Member who worked paper rounds overtime, the Territory:

(a) knew that there was insufficient time during rostered hours to undertake paper rounds;

(b) knew that Group Members were working paper rounds overtime;

(c) did not direct Group Members not to perform paper rounds overtime.

### **PARTICULARS**

The Territory’s knowledge is to be inferred from:

(a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [239(a1)]-[239(b)] below;

- (a) the paper rounds directions;
- (b) the fact of paper rounds directions being made, from time to time, after or near the end of Group Members' rostered shifts;
- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

239. During the Relevant Period, in the department or ward in which Group Members worked:

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

**PARTICULARS**

The Applicant refers to and repeats the particulars to paragraphs 71(a1) and 122(a1). Further particulars will be provided following the trial of common questions.

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

**PARTICULARS**

The Applicant refers to and repeats the particulars to paragraphs 71(a2) and 122(a2). Further particulars will be provided following the trial of common questions.

- (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;

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Junior Medical Officers working after their rostered finish times undertaking paper rounds, and being observed by other medical staff while so doing;
  - (b) the paper rounds direction;
  - (c) the rostered hours of Junior Medical Officers;
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and
  - (e) the Territory's knowledge of the system of work pleaded in [239(a1)] and [239(a2)].
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking paper rounds.
240. In the premises pleaded in [236]–[239], Group Members were required or requested, within the meaning of:
- (a) clause 36.1 of the 2013 EA;
  - (b) clause 35.1 of the 2017 EA; or
  - (c) clause 36.1 of the 2021 EA,
- to perform the paper rounds overtime.

**PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact that undertaking paper rounds was part of Group Members' duties, as pleaded in [14(f)];
  - (b) the paper rounds direction;
  - (c) the Territory's knowledge pleaded in [238(a)] and [238(b)];
  - (d) the Territory having not directed Group Members not to perform paper rounds overtime, as pleaded in [238(c)];
  - (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and—custom, or practice, the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in [16] and [239].
241. The paper rounds overtime did not accrue to an ADO within the meaning of:
- (a) clause 36.2 of the 2013 EA;
  - (b) clause 35.2 of the 2017 EA; or

(c) clause 36.2 of the 2021 EA.

242. In the premises:

(a) clause 36.2 of the 2013 EA;

(b) clause 35.2 of the 2017 EA; or

(c) clause 36.2 of the 2021 EA,

required the Territory to pay Group Members for the paper rounds overtime that they worked, at the rates set out in:

(d) clause 36.4 of the 2013 EA;

(e) clause 35.4 of the 2017 EA; or

(f) clause 36.4 of the 2021 EA.

243. The Territory did not pay some or all Group Members for some or all of the paper rounds overtime that they worked, at the rates set out in:

(a) clause 36.4 of the 2013 EA;

(b) clause 35.4 of the 2017 EA; or

(c) clause 36.4 of the 2021 EA.

244. In the premises, the Territory has contravened:

(a) clause 36.2 of the 2013 EA;

(b) clause 35.2 of the 2017 EA; or

(c) clause 36.2 of the 2021 EA,

and the Territory has contravened section 50 of the FW Act.

## **F.10 Handover**

245. Some or all Group Members, in the course of their employment by the Territory during the relevant period, were subject to directions to undertake handovers (“**handover directions**”).

### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to undertake handovers by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to undertake handovers.

So far as they were implied, they were implied by:

- (a) the fact that undertaking handovers was part of Group Members' duties, as pleaded in [14(j)];
- (b) the importance of undertaking handovers for proper patient care.

246. Some or all Group Members subject to the handover direction worked in excess of rostered hours to undertake handovers, in accordance with the direction ("**handover overtime**").

247. In respect of each Group Member who worked handover overtime, the Territory:

- (a) knew that there was insufficient time during rostered hours to undertake handovers;
- (b) knew that Group Members were working handover overtime;
- (c) did not direct Group Members not to perform handover overtime.

#### **PARTICULARS**

The Territory's knowledge is to be inferred from:

(a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and the Territory's knowledge of each of those matters, as set out in [248(a1)]–[248(b)] below;

- (a) the handover directions;
- (b) the fact of handover directions being made, from time to time, after or near the end of Group Members' rostered shifts;
- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

248. During the Relevant Period, in the department or ward in which Group Members worked:

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

#### **PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

The knowledge of the Territory is to be inferred from the following matters:

- (a) Junior Medical Officers working after their rostered finish times undertaking handovers, and being observed by other medical staff while so doing;
  - (b) the handover direction;
  - (c) the rostered hours of Junior Medical Officers;
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and
  - (e) the Territory's knowledge of the system of work pleaded in [248(a1)] and [248(a2)].
- (c) the Territory did not direct Junior Medical Officers not to work unrostered overtime undertaking handovers.

249. In the premises pleaded in [245]–[248], Group Members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;
- (b) clause 35.1 of the 2017 EA; or
- (c) clause 36.1 of the 2021 EA,

to perform the handover overtime.

## PARTICULARS

The requirement or request is implied by the following matters:

- (a) the fact that undertaking handovers was part of Group Members' duties, as pleaded in [14(j)];
- (b) the handover direction;
- (c) the Territory's knowledge pleaded in [247(a)] and [247(b)];
- (d) the Territory having not directed Group Members not to perform handover overtime, as pleaded in [247(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, the Territory's knowledge of those matters thereof, and the failure to direct, pleaded in [16] and [248].

250. The handover overtime did not accrue to an ADO within the meaning of:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA.

251. In the premises:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

required the Territory to pay Group Members for the handover overtime that they worked, at the rates set out in:

- (d) clause 36.4 of the 2013 EA;
- (e) clause 35.4 of the 2017 EA; or
- (f) clause 36.4 of the 2021 EA.

252. The Territory did not pay some or all Group Members for some or all of the handover overtime that they worked, at the rates set out in:

- (a) clause 36.4 of the 2013 EA;
- (b) clause 35.4 of the 2017 EA; or
- (c) clause 36.4 of the 2021 EA.

253. In the premises, the Territory has contravened:

- (a) clause 36.2 of the 2013 EA;

- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

and the Territory has contravened section 50 of the FW Act.

#### **F.11 Other medical services overtime**

254. Some or all Group Members, in the course of their employment by the Territory during the Relevant Period, were subject to a direction to provide medical services other than those set out in [14(a)]–[14(j)] above (“**other medical services directions**”).

#### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to provide medical services of particular kinds by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to provide medical services of particular kinds.

So far as they were implied, they were implied by:

- (a) the fact that providing medical services other than those set out in [14(a)]–[14(j)] above was part of Group Members’ duties, as pleaded in [14(k)];
- (b) the importance of the particular medical services provided for proper patient care.

255. Some or all Group Members subject to other medical services directions worked in excess of rostered hours to perform the medical services the subject of the directions (“**other medical services overtime**”).

256. In respect of each Group Member who worked other medical services overtime, the Territory:

- (a) knew that there was insufficient time during rostered hours to perform the medical services the subject of the directions;
- (b) knew that Group Members were working other medical services overtime;
- (c) did not direct Group Members not to perform other medical services overtime.

#### **PARTICULARS**

The Territory’s knowledge is to be inferred from:

- (a) the other medical services directions;

- (b) the fact of other medical services directions being made, from time to time, after or near the end of Group Members' rostered shifts;
- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

~~257. During the Relevant Period:~~

- ~~(a) there was a system, custom, or practice of Junior Medical Officers employed by the Territory working unrostered overtime providing medical services other than those set out in [14(a)]–[14(j)] above;~~
- ~~(b) the Territory knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime providing medical services other than those set out in [14(a)]–[14(j)] above;~~
- ~~(c) the Territory did not direct Junior Medical Officers not to work unrostered overtime providing medical services other than those set out in [14(a)]–[14(j)] above.~~

#### **PARTICULARS**

~~The knowledge of the Territory is to be inferred from the following matters:~~

- ~~(a) Junior Medical Officers working before or after their rostered start or finish times providing medical services other than those set out in [14(a)]–[14(j)] above, and being observed by other medical staff while so doing;~~
- ~~(b) the other medical services direction;~~
- ~~(c) the rostered hours of Junior Medical Officers;~~
- ~~(d) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.~~

258. In the premises pleaded in [254]–[257] [256], Group Members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;
- (b) clause 35.1 of the 2017 EA; or
- (c) clause 36.1 of the 2021 EA,

to perform the other medical services overtime.

### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact that providing medical services other than those set out in [14(a)]–[14(j)] above was part of Group Members’ duties, as pleaded in [14(k)];
- (b) the other medical services direction;
- (c) the Territory’s knowledge pleaded in [256(a)] and [256(b)];
- (d) the Territory having not directed Group Members not to perform handover overtime, as pleaded in [256(c)].
- (e) ~~the system, custom, or practice, the Territory’s knowledge thereof, and the failure to direct, pleaded in [16] and [257].~~

259. The handover overtime did not accrue to an ADO within the meaning of:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA.

260. In the premises:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

required the Territory to pay Group Members for the handover overtime that they worked, at the rates set out in:

- (d) clause 36.4 of the 2013 EA;
- (e) clause 35.4 of the 2017 EA; or
- (f) clause 36.4 of the 2021 EA.

261. The Territory did not pay some or all Group Members for some or all of the handover overtime that they worked, at the rates set out in:

- (a) clause 36.4 of the 2013 EA;
- (b) clause 35.4 of the 2017 EA; or
- (c) clause 36.4 of the 2021 EA.

262. In the premises, the Territory has contravened:

- (a) clause 36.2 of the 2013 EA;

(b) clause 35.2 of the 2017 EA; or

(c) clause 36.2 of the 2021 EA,

and the Territory has contravened section 50 of the FW Act.

#### **F.12 Loss**

263. Group Members have suffered loss by reason of the Territory's contraventions of the FW Act.

#### **PARTICULARS**

Group Members' losses are that they were not paid for overtime that they were required or requested to work, at the rates applicable at the time that that overtime was worked, as pleaded above.

#### **F.13 Section 557C**

263A. Each of the 2013 EA, 2017 EA and 2021 EA provide that a penalty rate must be paid for overtime actually worked by Junior Medical Officers.

#### **PARTICULARS**

2013 EA, clause 36.

2017 EA, clause 35.

2021 EA, clause 36.

263B. In the premises, and by operation of the FW Act, the Territory was required on and from 16 September 2017 to make, and keep for seven years, a record that specifies:

(a) the number of overtime hours worked by Junior Medical Officers during each day; or

(b) when Junior Medical Officers started and ceased working overtime hours.

#### **PARTICULARS**

FW Act s 535, s 557C.

Fair Work Regulations 2009 (Cth), reg 3.34.

263C. The Territory has failed to:

(c) make; and/or

(d) keep.

a record of the kind described in paragraph 263B above.

## Part G Group Members' claims against Calvary

264. Each Group Member who during the Relevant Period was employed by Calvary, in the course of his or her employment by Calvary:

- (a) worked in a service operated by Calvary pleaded in [1(a)(ii)];
- (b) was rostered to work consistently with the ordinary weekly hours pleaded in [9].

### G.1 Admissions

265. Some or all Group Members, in the course of their employment by Calvary during the relevant period, were subject to directions to admit patients into the department or ward in which those Group Members were working ("**admissions directions**").

#### PARTICULARS

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to admit patients by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to admit patients.

So far as they were implied, they were implied by:

- (a) the fact that patient admissions were part of Group Members' duties, as pleaded in [14(a)];
- (b) the importance of patient admissions for proper patient care.

266. Some or all Group Members subject to admissions directions worked in excess of rostered hours to admit patients, in accordance with the direction ("**admissions overtime**").

267. In respect of each Group Member who worked admissions overtime, Calvary:

- (a) knew that there was insufficient time during rostered hours to admit patients;
- (b) knew that Group Members were working admissions overtime;
- (c) did not direct Group Members not to perform admissions overtime.

#### PARTICULARS

Calvary's knowledge is to be inferred from:

(a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and Calvary's knowledge of each of those matters, as set out in [268(a1)]–[268(b)] below;

- (a) the admissions directions;

- (b) the fact of admissions directions being made, from time to time, after or near the end of Group Members' rostered shifts;
- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and car parks;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

268. During the Relevant Period, in the department or ward in which Group Members were working:

(a1) there was a system of work whereby Junior Medical Officers were required to attend to admitting a patient until that admission was complete, even if that attendance exceeded the doctor's rostered hours;

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

(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 admitting patients;

**PARTICULARS**

The knowledge of Calvary is to be inferred from the following matters:

- (a) Junior Medical Officers working after their rostered finish times admitting patients, and being observed by other medical staff while so doing;
- (b) the admissions direction;

- (c) the rostered hours of Junior Medical Officers;
- (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records; and
- (e) Calvary's knowledge of the system of work pleaded in [268(a1)] and [268(a2)].

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

269. In the premises pleaded in [265]–~~[268]–[Error! Reference source not found.]~~, Group Members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;
- (b) clause 35.1 of the 2017 EA; or
- (c) clause 36.1 of the 2021 EA,

to perform the admissions overtime.

#### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of patient admissions being part of Group Members' duties, as pleaded in [14(a)];
- (b) the admissions directions;
- (c) Calvary's knowledge pleaded in [267(a)] and [267(b)];
- (d) Calvary having not directed Group Members not to perform admissions overtime, as pleaded in [267(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, Calvary's knowledge of those matters thereof, and the failure to direct, pleaded in [139] and ~~[Error! Reference source not found.]~~ [268].

270. The admissions overtime did not accrue to an ADO within the meaning of:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA.

271. In the premises:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or

(c) clause 36.2 of the 2021 EA,  
required Calvary to pay Group Members for the admissions overtime that they worked, at the rates set out in:

- (d) clause 36.4 of the 2013 EA;
- (e) clause 35.4 of the 2017 EA; or
- (f) clause 36.4 of the 2021 EA.

272. Calvary did not pay some or all Group Members for some or all of the admissions overtime that they worked, at the rates set out in:

- (a) clause 36.4 of the 2013 EA;
- (b) clause 35.4 of the 2017 EA; or
- (c) clause 36.4 of the 2021 EA.

273. In the premises, Calvary has contravened:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

and Calvary has contravened section 50 of the FW Act.

## **G.2 Medical emergencies**

274. Some or all Group Members, in the course of their employment by Calvary during the relevant period, were subject to directions to deal with medical emergencies (“**medical emergencies directions**”).

### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to deal with medical emergencies by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors and other medical staff directing Group Members to deal with medical emergencies.

So far as they were implied, they were implied by:

- (a) the fact that dealing with medical emergencies was part of Group Members’ duties, as pleaded in [14(g)];
- (b) the centrality to a doctor’s role of attending to patients whose condition is poor, deteriorating, or in an emergency situation;

- (c) the unsafeness or undesirability of handing over a patient in such a situation to a doctor who is coming onto shift;
  - (d) the difficulty, unsafeness, or undesirability of trying to find another doctor to whom to hand over a patient in such a situation;
  - (e) the desirability or appropriateness for patient care, in such a situation, that a doctor who is aware of the patient's circumstances continue to provide care for that patient.
275. Some or all Group Members subject to the medical emergencies direction worked in excess of rostered hours to deal with medical emergencies, in accordance with the direction ("**medical emergencies overtime**").
276. In respect of each Group Member who worked medical emergencies overtime, Calvary:
- (a) knew that there was insufficient time during rostered hours to deal with medical emergencies;
  - (b) knew that Group Members were working medical emergencies overtime;
  - (c) did not direct Group Members not to perform medical emergencies overtime.

#### **PARTICULARS**

Calvary's knowledge is to be inferred from:

- (a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and Calvary's knowledge of each of those matters, as set out in [268(a1)]-[268(b)] below:
- (a) the medical emergencies directions;
  - (b) the fact of medical emergencies directions being made, from time to time, after or near the end of Group Members' rostered shifts;
  - (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
    - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks;
    - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
  - (d) the rostered hours for each ward or department in which Group Members were working.

277. During the Relevant Period, in the department or ward in which Group Members worked:

(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:

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

(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 dealing with medical emergencies;

**PARTICULARS**

The knowledge of Calvary is to be inferred from the following matters:

(a) Junior Medical Officers working after their rostered finish times dealing with medical emergencies, and being observed by other medical staff while so doing;

(b) the medical emergencies directions;

(c) the rostered hours of Junior Medical Officers;

(d) paper or electronic records created before, after, or in the course of performing overtime, including (for example) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and

(e) Calvary's knowledge of the system of work pleaded in [277(a1)] and [277(a2)].

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

278. In the premises pleaded in [274]–[277], Group Members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;
- (b) clause 35.1 of the 2017 EA; or
- (c) clause 36.1 of the 2021 EA,

to perform the medical emergencies overtime.

### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of medical emergencies being part of Group Members' duties, as pleaded in [14(g)];
- (b) the medical emergencies direction;
- (c) Calvary's knowledge pleaded in [276(a)] and [276(b)];
- (d) Calvary having not directed Group Members not to perform medical emergencies overtime, as pleaded in [276(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, Calvary's knowledge of those matters thereof, and the failure to direct, pleaded in [139] and [277].

279. The medical emergencies overtime did not accrue to an ADO within the meaning of:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA.

280. In the premises:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

required Calvary to pay Group Members for the medical emergencies overtime that they worked, at the rates set out in:

- (d) clause 36.4 of the 2013 EA;
- (e) clause 35.4 of the 2017 EA; or
- (f) clause 36.4 of the 2021 EA.

281. Calvary did not pay some or all Group Members for some or all of the medical emergencies overtime that they worked, at the rates set out in:

- (a) clause 36.4 of the 2013 EA;
- (b) clause 35.4 of the 2017 EA; or
- (c) clause 36.4 of the 2021 EA.

282. In the premises, Calvary has contravened:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

and Calvary has contravened section 50 of the FW Act.

### **G.3 Transfers**

283. Some or all Group Members, in the course of their employment by Calvary during the relevant period, were subject to procure the transfer or discharge of patients into other medical facilities ("**transfer directions**").

#### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to procure the transfer or discharge of patients into other medical facilities by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to procure the transfer or discharge of patients into other medical facilities.

So far as they were implied, they were implied by:

- (a) the fact that procuring the transfer or discharge of patients into other medical facilities was part of Group Members' duties, as pleaded in [14(i)];
- (b) the importance of procuring the transfer or discharge of patients into other medical facilities for proper patient care.

284. Some or all Group Members subject to the transfer direction worked in excess of rostered hours to procure the transfer or discharge of patients into other medical facilities, in accordance with the direction ("**transfer overtime**").

285. In respect of each Group Member who worked transfer overtime, Calvary:
- (a) knew that there was insufficient time during rostered hours to procure the transfer or discharge of patients into other medical facilities;
  - (b) knew that Group Members were working transfer overtime;
  - (c) did not direct Group Members not to perform transfer overtime.

**PARTICULARS**

Calvary's knowledge is to be inferred from:

(a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and Calvary's knowledge of each of those matters, as set out in [286(a1)]–[286(b)] below:

- (a) the transfer directions;
- (b) the fact of transfer directions being made, from time to time, after or near the end of Group Members' rostered shifts;
- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

286. During the Relevant Period in the department or ward in which Group Members worked:

(a1) there was a system of work whereby Junior Medical Officers were required to attend to transferring or discharging a patient into other medical facilities until that transfer or discharge was complete, even if that attendance exceeded the doctor's rostered hours:

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

that there was a ~~system, custom, or~~ practice of Junior Medical Officers working unrostered overtime transferring or discharging patients into other medical facilities;

### **PARTICULARS**

The knowledge of Calvary is to be inferred from the following matters:

- (a) Junior Medical Officers working after their rostered finish times transferring or discharging patients into other medical facilities, and being observed by other medical staff while so doing;
  - (b) the transfer direction;
  - (c) the rostered hours of Junior Medical Officers;
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
    - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks;
    - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and
  - (e) Calvary's knowledge of the system of work pleaded in [286(a1)] and [286(a2)].
- (c) Calvary did not direct Junior Medical Officers not to work unrostered overtime transferring or discharging patients into other medical facilities.

287. In the premises pleaded in [283]–[286], Group Members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;
- (b) clause 35.1 of the 2017 EA; or
- (c) clause 36.1 of the 2021 EA,

to perform the transfer overtime.

### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact that procuring the transfer or discharge of patients into other medical facilities was part of Group Members' duties, as pleaded in [14(i)];
- (b) the transfer directions;
- (c) Calvary's knowledge pleaded in [285(a)] and [285(b)];
- (d) Calvary having not directed Group Members not to perform transfer overtime, as pleaded in [285(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, Calvary's knowledge of those matters thereof, pleaded in [139] and [286].

288. The transfer overtime did not accrue to an ADO within the meaning of:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA.

289. In the premises:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

required Calvary to pay Group Members for the transfer overtime that they worked, at the rates set out in:

- (d) clause 36.4 of the 2013 EA;
- (e) clause 35.4 of the 2017 EA; or
- (f) clause 36.4 of the 2021 EA.

290. Calvary did not pay some or all Group Members for some or all of the transfer overtime that they worked, at the rates set out in:

- (a) clause 36.4 of the 2013 EA;
- (b) clause 35.4 of the 2017 EA; or
- (c) clause 36.4 of the 2021 EA.

291. In the premises, Calvary has contravened:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or

- (c) clause 36.2 of the 2021 EA,  
and Calvary has contravened section 50 of the FW Act.

#### **G.4 Medical records**

292. Some or all Group Members, in the course of their employment by Calvary during the relevant period, were subject to directions:

- (a) to undertake medical records preparation;
- (b) to complete medical records in a timely manner; and
- (c) that the timely completion of medical records was necessary to ensure patient care.

(“**medical records directions**”).

#### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to undertake medical records preparation by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to perform undertake medical records preparation.

So far as they were implied, they were implied by:

- (a) the fact that undertaking medical records preparation was part of Group Members’ duties, as pleaded in [14(e)];
- (b) the importance of undertaking medical records preparation for proper patient care.

293. Some or all Group Members subject to the medical records direction worked in excess of rostered hours to undertake medical records preparation, in accordance with the direction (“**medical records overtime**”).

294. In respect of each Group Member who worked medical records overtime, Calvary:

- (a) knew that there was insufficient time during rostered hours to undertake medical records preparation;
- (b) knew that Group Members were working medical records overtime;
- (c) did not direct Group Members not to perform medical records overtime.

**PARTICULARS**

Calvary's knowledge is to be inferred from:

(a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and Calvary's knowledge of each of those matters, as set out in [295(a1)]-[295(b)] below;

- (a) the medical records directions;
- (b) the fact of medical records directions being made, from time to time, after or near the end of Group Members' rostered shifts;
- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and car parks;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

295. During the Relevant Period in the department or ward in which Group Members worked:

(a1) there was a system of work whereby:

- (i) Junior Medical Officers' rostered 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;

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

Particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

The knowledge of Calvary is to be inferred from the following matters:

- (a) Junior Medical Officers working after their rostered finish times undertaking medical records preparation, and being observed by other medical staff while so doing;
- (b) the medical records direction;
- (c) the rostered hours of Junior Medical Officers;
- (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and
- (e) Calvary's knowledge of the system of work pleaded in [295(a1)] and [295(a2)].

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

296. In the premises pleaded in [292]–[295], Group Members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;
- (b) clause 35.1 of the 2017 EA; or
- (c) clause 36.1 of the 2021 EA,

to perform the medical records overtime.

**PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact of medical records being part of Group Members' duties, as pleaded in [14(e)];
- (b) the medical records direction;
- (c) Calvary's knowledge pleaded in [294(a)] and [294(b)];
- (d) Calvary having not directed Group Members not to perform medical records overtime, as pleaded in [294(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and ~~custom, or practice,~~

Calvary's knowledge of those matters thereof, and the failure to direct, pleaded in [139] and [295].

297. The medical records overtime did not accrue to an ADO within the meaning of:
- (a) clause 36.2 of the 2013 EA;
  - (b) clause 35.2 of the 2017 EA; or
  - (c) clause 36.2 of the 2021 EA.
298. In the premises:
- (a) clause 36.2 of the 2013 EA;
  - (b) clause 35.2 of the 2017 EA; or
  - (c) clause 36.2 of the 2021 EA,
- required Calvary to pay Group Members for the medical records overtime that they worked, at the rates set out in:
- (d) clause 36.4 of the 2013 EA;
  - (e) clause 35.4 of the 2017 EA; or
  - (f) clause 36.4 of the 2021 EA.
299. Calvary did not pay some or all Group Members for some or all of the medical records overtime that they worked, at the rates set out in:
- (a) clause 36.4 of the 2013 EA;
  - (b) clause 35.4 of the 2017 EA; or
  - (c) clause 36.4 of the 2021 EA.
300. In the premises, Calvary has contravened:
- (a) clause 36.2 of the 2013 EA;
  - (b) clause 35.2 of the 2017 EA; or
  - (c) clause 36.2 of the 2021 EA,
- and Calvary has contravened section 50 of the FW Act.

#### **G.5 Ward round preparation**

301. Some or all Group Members, in the course of their employment by Calvary during the relevant period, were subject to directions to prepare for ward rounds ("**ward round preparation directions**").

## PARTICULARS

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to prepare for ward rounds by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to prepare for ward rounds.

So far as they were implied, they were implied by:

- (a) the fact that preparing for ward rounds was part of Group Members' duties, as pleaded in [14(c)];
  - (b) the importance of preparing for ward rounds for proper patient care.
302. Some or all Group Members subject to the ward round preparation direction worked in excess of rostered hours to prepare for ward rounds, in accordance with the direction ("**ward round preparation overtime**").
303. In respect of each Group Member who worked ward round preparation overtime, Calvary:
- (a) knew that there was insufficient time during rostered hours to prepare for ward rounds;
  - (b) knew that Group Members were working ward round preparation overtime;
  - (c) did not direct Group Members not to perform ward round preparation overtime.

## PARTICULARS

Calvary's knowledge is to be inferred from:

(a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and Calvary's knowledge of each of those matters, as set out in [304(a1)]–[304(b)] below;

- (a) the ward round preparation directions;
- (b) the fact of ward rounds commencing, from time to time, at or shortly after the beginning of Group Members' rostered shifts;
- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

304. During the Relevant Period, in the department or ward in which Group Members worked:

(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;

**PARTICULARS**

The Applicant refers to and repeats the particulars to paragraph 156(a1). Further particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

The Applicant refers to and repeats the particulars to paragraph 156(a2). Further particulars will be provided following the trial of the common issues.

(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;

**PARTICULARS**

The knowledge of Calvary is to be inferred from the following matters:

(a) Junior Medical Officers working before their rostered start times preparing for ward rounds, and being observed by other medical staff while so doing;

(b) the ward round preparation direction;

(c) the rostered hours of Junior Medical Officers; ~~and~~

(d) the existence of time stamps on electronically-created records, or times written in paper records; and

(e) Calvary's knowledge of the system of work pleaded in [230(a1)] and [230(a2)].

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

305. In the premises pleaded in [301]–[304] ~~[Error! Reference source not found.]~~, Group Members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;
- (b) clause 35.1 of the 2017 EA; or
- (c) clause 36.1 of the 2021 EA,

to perform the ward round preparation overtime.

#### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact that preparing for ward rounds was part of Group Members' duties, as pleaded in [14(c)];
- (b) the ward round preparation direction;
- (c) Calvary's knowledge pleaded in [303(a)] and [303(b)];
- (d) Calvary having not directed Group Members not to perform ward round preparation overtime, as pleaded in [303(c)];
- (e) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and
- (f) the system of work, the practice of Junior Medical Officers working unrostered overtime, and Calvary's knowledge of those matters, and the failure to direct, pleaded in [304] ~~[Error! Reference source not found.]~~

306. The ward round preparation overtime did not accrue to an ADO within the meaning of:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA.

307. In the premises:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

required Calvary to pay Group Members for the ward round preparation overtime that they worked, at the rates set out in:

- (d) clause 36.4 of the 2013 EA;
- (e) clause 35.4 of the 2017 EA; or
- (f) clause 36.4 of the 2021 EA.

308. Calvary did not pay some or all Group Members for some or all of the ward round preparation overtime that they worked, at the rates set out in:

- (a) clause 36.4 of the 2013 EA;
- (b) clause 35.4 of the 2017 EA; or
- (c) clause 36.4 of the 2021 EA.

309. In the premises, Calvary has contravened:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

and Calvary has contravened section 50 of the FW Act.

## **G.6 Paper rounds**

310. Some or all Group Members, in the course of their employment by Calvary during the relevant period, were subject to directions to undertake paper rounds ("**paper rounds directions**").

### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to undertake paper rounds by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to undertake paper rounds.

So far as they were implied, they were implied by:

- (a) the fact that undertaking paper rounds was part of Group Members' duties, as pleaded in [14(f)];
- (b) the importance of undertaking paper rounds for proper patient care.

311. Some or all Group Members subject to the paper rounds direction worked in excess of rostered hours to undertake paper rounds, in accordance with the direction (“**paper rounds overtime**”).
312. In respect of each Group Member who worked paper rounds overtime, Calvary:
- (a) knew that there was insufficient time during rostered hours to undertake paper rounds;
  - (b) knew that Group Members were working paper rounds overtime;
  - (c) did not direct Group Members not to perform paper rounds overtime.

### **PARTICULARS**

Calvary’s knowledge is to be inferred from:

(a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and Calvary’s knowledge of each of those matters, as set out in [313(a1)]–[313(b)] below:

- (a) the paper rounds directions;
- (b) the fact of paper rounds directions being made, from time to time, after or near the end of Group Members’ rostered shifts;
- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

313. During the Relevant Period, in the department or ward in which Group Members worked:

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

### **PARTICULARS**

Particulars will be provided following the trial of common questions.

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

**PARTICULARS**

Particulars will be provided following the trial of common questions.

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

**PARTICULARS**

The knowledge of Calvary is to be inferred from the following matters:

- (a) Junior Medical Officers working after their rostered finish times undertaking paper rounds, and being observed by other medical staff while so doing;
  - (b) the paper rounds direction;
  - (c) the rostered hours of Junior Medical Officers;
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
    - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks,;
    - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records; and
  - (e) Calvary's knowledge of the system of work pleaded in [313(a1)] and [313(a2)].
- (c) Calvary did not direct Junior Medical Officers not to work unrostered overtime undertaking paper rounds.

314. In the premises pleaded in [310]–[313] Group Members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;
- (b) clause 35.1 of the 2017 EA; or
- (c) clause 36.1 of the 2021 EA,

to perform the paper rounds overtime.

**PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact that undertaking paper rounds was part of Group Members' duties, as pleaded in [14(f)];
- (b) the paper rounds direction;
- (c) Calvary's knowledge pleaded in [312(a)] and [312(b)];
- (d) Calvary having not directed Group Members not to perform paper rounds overtime, as pleaded in [312(c)];
- (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, Calvary's knowledge of those matters thereof, and the failure to direct, pleaded in ~~[139]~~ and [313].

315. The paper rounds overtime did not accrue to an ADO within the meaning of:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA.

316. In the premises:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

required Calvary to pay Group Members for the paper rounds overtime that they worked, at the rates set out in:

- (d) clause 36.4 of the 2013 EA;
- (e) clause 35.4 of the 2017 EA; or
- (f) clause 36.4 of the 2021 EA.

317. Calvary did not pay some or all Group Members for some or all of the paper rounds overtime that they worked, at the rates set out in:

- (a) clause 36.4 of the 2013 EA;
- (b) clause 35.4 of the 2017 EA; or
- (c) clause 36.4 of the 2021 EA.

318. In the premises, Calvary has contravened:

- (a) clause 36.2 of the 2013 EA;

- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

and Calvary has contravened section 50 of the FW Act.

## **G.7 Handover**

319. Some or all Group Members, in the course of their employment by Calvary during the relevant period, were subject to directions to undertake handovers (“**handover directions**”).

### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to undertake handovers by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to undertake handovers.

So far as they were implied, they were implied by:

- (a) the fact that undertaking handovers was part of Group Members’ duties, as pleaded in [14(j)];
- (b) the importance of undertaking handovers for proper patient care.

320. Some or all Group Members subject to the handover direction worked in excess of rostered hours to undertake handovers, in accordance with the direction (“**handover overtime**”).

321. In respect of each Group Member who worked handover overtime, Calvary:

- (a) knew that there was insufficient time during rostered hours to undertake handovers;
- (b) knew that Group Members were working handover overtime;
- (c) did not direct Group Members not to perform handover overtime.

### **PARTICULARS**

Calvary’s knowledge is to be inferred from:

(a1) the system of work, the practice of Junior Medical Officers working unrostered overtime, and Calvary’s knowledge of each of those matters, as set out in [322(a1)]–[322(b)] below;

- (a) the handover directions;
- (b) the fact of handover directions being made, from time to time, after or near the end of Group Members’ rostered shifts;

- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

322. During the Relevant Period, in the department or ward in which Group Members worked:

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

**PARTICULARS**

The Applicant refers to and repeats the particulars to paragraph 248(a1). Further particulars will be provided following the trial of the common issues.

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

**PARTICULARS**

The Applicant refers to and repeats the particulars to paragraph 248(a2). Further particulars will be provided following the trial of the common issues.

(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;

**PARTICULARS**

The knowledge of Calvary is to be inferred from the following matters:

- (a) Junior Medical Officers working after their rostered finish times undertaking handovers, and being observed by other medical staff while so doing;

- (b) the handover direction;
  - (c) the rostered hours of Junior Medical Officers;
  - (d) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
    - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks;
    - (ii) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records; and
  - (e) Calvary's knowledge of the system of work pleaded in [322(a1)] and [322(a2)].
- (c) Calvary did not direct Junior Medical Officers not to work unrostered overtime undertaking handovers.
323. In the premises pleaded in [319]–~~[322]~~~~[Error! Reference source not found.]~~, Group Members were required or requested, within the meaning of:
- (a) clause 36.1 of the 2013 EA;
  - (b) clause 35.1 of the 2017 EA; or
  - (c) clause 36.1 of the 2021 EA,
- to perform the handover overtime.

### PARTICULARS

The requirement or request is implied by the following matters:

- (a) the fact that undertaking handovers was part of Group Members' duties, as pleaded in [14(j)];
  - (b) the handover direction;
  - (c) Calvary's knowledge pleaded in [321(a)] and [321(b)];
  - (d) Calvary having not directed Group Members not to perform handover overtime, as pleaded in [321(c)];
  - (e) the system of work, the practice of Junior Medical Officers working unrostered overtime, and custom, or practice, Calvary's knowledge of those matters thereof, and the failure to direct, pleaded in [139] and [322]~~[Error! Reference source not found.]~~.
324. The handover overtime did not accrue to an ADO within the meaning of:
- (a) clause 36.2 of the 2013 EA;
  - (b) clause 35.2 of the 2017 EA; or
  - (c) clause 36.2 of the 2021 EA.

325. In the premises:
- (a) clause 36.2 of the 2013 EA;
  - (b) clause 35.2 of the 2017 EA; or
  - (c) clause 36.2 of the 2021 EA,
- required Calvary to pay Group Members for the handover overtime that they worked, at the rates set out in:
- (d) clause 36.4 of the 2013 EA;
  - (e) clause 35.4 of the 2017 EA; or
  - (f) clause 36.4 of the 2021 EA.
326. Calvary did not pay some or all Group Members for some or all of the handover overtime that they worked, at the rates set out in:
- (a) clause 36.4 of the 2013 EA;
  - (b) clause 35.4 of the 2017 EA; or
  - (c) clause 36.4 of the 2021 EA.
327. In the premises, Calvary has contravened:
- (a) clause 36.2 of the 2013 EA;
  - (b) clause 35.2 of the 2017 EA; or
  - (c) clause 36.2 of the 2021 EA,
- and Calvary has contravened section 50 of the FW Act.

#### **G.8 Other medical services overtime**

328. Some or all Group Members, in the course of their employment by Calvary during the Relevant Period, were subject to a direction to provide medical services other than those set out in [14(a)]–[14(j)] above (“**other medical services directions**”).

#### **PARTICULARS**

Directions were sometimes written, sometimes oral, and were in any event implied.

So far as they were written, they were constituted by more senior doctors directing Group Members to provide medical services of particular kinds by WhatsApp, text message, or email.

So far as they were oral, they were constituted by more senior doctors directing Group Members to provide medical services of particular kinds.

So far as they were implied, they were implied by:

- (a) the fact that providing medical services other than those set out in [14(a)]–[14(j)] above was part of Group Members’ duties, as pleaded in [14(k)];
- (b) the importance of the particular medical services provided for proper patient care.

329. Some or all Group Members subject to other medical services directions worked in excess of rostered hours to perform the medical services the subject of the directions (“**other medical services overtime**”).

330. In respect of each Group Member who worked other medical services overtime, Calvary:

- (a) knew that there was insufficient time during rostered hours to perform the medical services the subject of the directions;
- (b) knew that Group Members were working other medical services overtime;
- (c) did not direct Group Members not to perform other medical services overtime.

#### **PARTICULARS**

Calvary’s knowledge is to be inferred from:

- (a) the other medical services directions;
- (b) the fact of other medical services directions being made, from time to time, after or near the end of Group Members’ rostered shifts;
- (c) paper or electronic records created before, after, or in the course of performing overtime, including (for example):
  - (i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks;
  - (ii) records of log-ins and documents being created, modified, printed, deleted, *etc.*, in IT systems, or paper records.
- (d) the rostered hours for each ward or department in which Group Members were working.

~~331. During 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 those set out in [14(a)]–[14(j)];~~
- ~~(b) Calvary knew that there was a system, custom, or practice of Junior Medical Officers working unrostered overtime providing medical services other than those set out in [14(a)]–[14(j)];~~

- ~~(c) Calvary did not direct Junior Medical Officers not to work unrostered overtime providing medical services other than those set out in [14(a)]–[14(j)].~~

### **PARTICULARS**

The knowledge of Calvary is to be inferred from the following matters:

- ~~(a) Junior Medical Officers working before or after their rostered start or finish times providing medical services other than those set out in [14(a)]–[14(j)], and being observed by other medical staff while so doing;~~
- ~~(b) the other medical services direction;~~
- ~~(c) the rostered hours of Junior Medical Officers;~~
- ~~(d) paper or electronic records created before, after, or in the course of performing overtime, including (for example):~~
- ~~(i) entrance or exit logs at wards of the hospital, the entrances or exits of the hospital, and carparks;~~
- ~~(ii) records of log-ins and documents being created, modified, printed, deleted, etc., in IT systems, or paper records.~~

332. In the premises pleaded in [328]–~~[331]~~ [330], Group Members were required or requested, within the meaning of:

- (a) clause 36.1 of the 2013 EA;
- (b) clause 35.1 of the 2017 EA; or
- (c) clause 36.1 of the 2021 EA,

to perform the other medical services overtime.

### **PARTICULARS**

The requirement or request is implied by the following matters:

- (a) the fact that providing medical services other than those set out in [14(a)]–[14(j)] above was part of Group Members' duties, as pleaded in [14(k)];
- (b) the other medical services direction;
- (c) Calvary's knowledge pleaded in [330(a)] and [330(b)];
- (d) Calvary having not directed Group Members not to perform handover other medical services overtime, as pleaded in [330(c)];
- ~~(e) the system, custom, or practice, Calvary's knowledge thereof, and the failure to direct, pleaded in [139] and [331].~~

333. The handover other medical services overtime did not accrue to an ADO within the meaning of:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA.

334. In the premises:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

required Calvary to pay Group Members for the ~~handover~~ other medical services overtime that they worked, at the rates set out in:

- (d) clause 36.4 of the 2013 EA;
- (e) clause 35.4 of the 2017 EA; or
- (f) clause 36.4 of the 2021 EA.

335. Calvary did not pay some or all Group Members for some or all of the ~~handover~~ other medical services overtime that they worked, at the rates set out in:

- (a) clause 36.4 of the 2013 EA;
- (b) clause 35.4 of the 2017 EA; or
- (c) clause 36.4 of the 2021 EA.

336. In the premises, Calvary has contravened:

- (a) clause 36.2 of the 2013 EA;
- (b) clause 35.2 of the 2017 EA; or
- (c) clause 36.2 of the 2021 EA,

and Calvary has contravened section 50 of the FW Act.

## **G.9 Loss**

337. Group Members have suffered loss by reason of Calvary's contraventions of the FW Act.

### **PARTICULARS**

Group Members' losses are that they were not paid for overtime that they were required or requested to work, at the rates applicable at the time that that overtime was worked, as pleaded above.

**G.10 Section 557C**

337A. Each of the 2013 EA, 2017 EA and 2021 EA provide that a penalty rate must be paid for overtime actually worked by Junior Medical Officers.

**PARTICULARS**

2013 EA, clause 36.

2017 EA, clause 35.

2021 EA, clause 36.

337B. In the premises, and by operation of the FW Act, Calvary was required on and from 16 September 2017 to make, and keep for seven years, a record that specifies:

- (a) the number of overtime hours worked by Junior Medical Officers during each day; or
- (b) when Junior Medical Officers started and ceased working overtime hours.

**PARTICULARS**

FW Act s 535, s 557C.

Fair Work Regulations 2009 (Cth), reg 3.34.

337C. Calvary has failed to:

- (c) make; and/or
- (d) keep,

a record of the kind described in paragraph 137B above.

Date: ~~30 November 2022~~ ~~17 March 2023~~ 19 May 2023



.....  
Signed by Andrew Grech  
Lawyer for the Applicant

This pleading was prepared by C W Dowling, K Burke and J E Hartley of counsel

**Certificate of lawyer**

I, Andrew Grech, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~30 November 2022~~ ~~17 March 2023~~ 19 May 2023



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Signed by Andrew Grech  
Lawyer for the Applicant