

## NOTICE OF FILING

### Details of Filing

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File Title: YING YING THAM v AUSTRALIAN CAPITAL TERRITORY & ANOR  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

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

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



## Defence to Cross-Claim

VID 705 of 2022

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

### **Ying Ying Tham**

Applicant

### **Australian Capital Territory**

First Respondent

### **Calvary Health Care ACT Limited (ACN 105 304 989)**

Second Respondent

### **Calvary Health Care ACT Limited (ACN 105 304 989)**

Cross-Claimant

### **Ying Ying Tham**

Cross-Respondent

### **Relevant parts of the Amended Defence**

1. The Cross-Respondent (**Dr Tham**) admits the allegations in paragraph 1.
2. As to paragraph 2 (which repeats paragraphs 13A and 13C to 13F of the Amended Defence dated 8 June 2023 filed on behalf of the Second Respondent and Cross-Claimant (**Calvary**)), Dr Tham refers to and repeats paragraphs 2, and 4–7 of the Reply to the Amended Defence of the Second Respondent dated 9 June 2023.

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Filed on behalf of:	Dr Ying Ying Tham ( <b>the Cross-Respondent</b> )		
Prepared by:	Andrew Grech		
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## **Alleged Breach of Contract**

3. To the allegations in paragraph 3, Dr Tham:

- (a) admits that her contract of employment identified in paragraph 13C of the Amended Defence stated at clause 10 that *“As a Calvary employee you are to be aware of, and comply with, its policies and procedures which are available to you online. These policies and procedures may be amended from time to time”* (a link was then provided), and stated at clause 12 that *“To meet Calvary’s Mission of ‘Being for Others’ you are required to: ... follow all reasonable and lawful directions given to you by the employer, including complying with policies and procedures as referenced in these terms and conditions”*;

says further that:

- (b) clause 35 of the 2017 EA and clause 36 of the 2021 EA do not, on their proper construction, impose any additional condition on Dr Tham to be paid for overtime, other than as set out in those clauses;
- (c) to the extent there is any conflict between the terms of the Agreements and any overtime policy of Calvary concerning an employee’s entitlement to be paid for working overtime pursuant to a requirement or request to work reasonable additional hours, the terms of the Agreements prevail;
- (d) to the extent there is any conflict between the terms of the Agreements and the terms of any employment contract between Dr Tham and Calvary, concerning an employee’s entitlement to be paid for working overtime pursuant to a requirement or request to work reasonable additional hours, the terms of the Agreements prevail;
- (e) to the extent there is any conflict between the terms of the Agreements and any overtime policy of Calvary, and the terms of any direction or advice given to Dr Tham by Calvary concerning an employee’s entitlement to be paid for working overtime pursuant to a requirement or request to work reasonable additional hours, the terms of the Agreements prevail; and
- (f) Dr Tham otherwise denies the allegations in paragraph 3.

4. To the allegations in paragraph 4, Dr Tham refers to and repeats paragraph 3 above, and otherwise denies the allegations in paragraph 4.
5. To the allegations in paragraph 5, Dr Tham:
  - (a) says that, as pleaded in the Further Amended Statement of Claim dated 19 May 2023 (**FASOC**), Calvary:
    - (i) directed Dr Tham to perform the work pleaded in the FASOC;
    - (ii) knew that Dr Tham could not perform that work during rostered hours;
    - (iii) knew that Dr Tham worked overtime to perform that work; and
    - (iv) did not direct her not to do such overtime;
  - (b) does not know, and so cannot admit, if Calvary would have taken the action pleaded in paragraphs 5(a) and (b);
  - (c) otherwise denies the allegations in paragraph 5.
6. To the allegations in paragraph 6, Dr Tham:
  - (a) says that Calvary has had the benefit of the work performed during unrostered overtime by Dr Tham;
  - (b) refers to and repeats paragraph 5(b) above;
  - (c) otherwise denies that Calvary has suffered the loss as alleged in paragraph 6.
7. Dr Tham denies the allegations in paragraph 7.

**Alleged contraventions of the EAs**

8. Dr Tham admits the allegation in paragraph 8.
9. To the allegations in paragraph 9, Dr Tham:
  - (a) admits that the 2017 and 2021 Agreements contained the clauses identified in the particulars to paragraph 9;

- (b) says she will rely at trial on the full terms and effect of the Agreements;
  - (c) otherwise denies the allegations in paragraph 9.
10. To the allegations in paragraph 10, Dr Tham:
- (a) admits that Appendix 2 of the *Junior Medical Officer Kronos Clock Punch and Unrostered Overtime Approval Process* document contained the matters alleged in subparagraph (b);
  - (b) says she will rely at trial on the full terms and effect of the *Junior Medical Officer Kronos Clock Punch and Unrostered Overtime Approval Process*;
  - (c) refers to and repeats paragraph 3 above;
  - (d) otherwise denies the allegations in paragraph 10.
11. Dr Tham denies the allegations in paragraph 11.
12. To the allegations in paragraph 12, Dr Tham:
- (a) refers to and repeats paragraph 5(a) above;
  - (b) does not know, and so cannot admit, if Calvary would have taken the action pleaded in paragraphs 12(a) and (b);
  - (c) otherwise denies the allegations in paragraph 12.
13. To the allegations in paragraph 13, Dr Tham:
- (a) says that Calvary has had the benefit of the work performed during unrostered overtime by Dr Tham;
  - (b) refers to and repeats paragraph 12(b) above;
  - (c) otherwise denies that Calvary has suffered the loss alleged in paragraph 13.
14. Dr Tham denies that Calvary is entitled to the relief claimed in paragraph 14.
15. Further, Dr Tham denies that Calvary is entitled to any of the relief claimed in the Notice of Cross-Claim, or at all.

Date: 16 June 2023

A handwritten signature in blue ink, appearing to read "Andrew Grech". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

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Signed by Andrew Grech  
Lawyer for the Cross-Respondent

This pleading was prepared by C W Dowling SC and K Burke of counsel

## Certificate of lawyer

I, Andrew Grech, certify to the Court that, in relation to the Reply filed on behalf of the Cross-Respondent, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 16 June 2023



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Signed by Andrew Grech  
Lawyer for the Cross-Respondent