



Federal Court of Australia

District Registry: Victoria

Division: Fair Work

No: VID705/2022

**YING YING THAM**

Applicant

**AUSTRALIAN CAPITAL TERRITORY** and another/others named in the schedule

Respondent

### **ORDER**

**JUDGE:** JUSTICE SNADEN

**DATE OF ORDER:** 11 September 2023

**WHERE MADE:** Melbourne

#### **THE COURT ORDERS BY CONSENT THAT:**

##### **Group member communications**

1. Subject to order 6, the respondents must exercise reasonable endeavours to not communicate with the applicant or group members concerning any claim(s) or potential claim(s) for unrostered and unpaid overtime worked within the period 1 December 2016 to 30 November 2022 otherwise than in writing.
2. The respondents must ensure that any such written communication with the group members referred to in order 1 above, will include information to the effect that:
  - a. they may be a group member in the class action; and
  - b. they should consider obtaining legal advice about any proposal or offer made by the relevant respondent to consider claims or make payment for unrostered and unpaid overtime.
3. The respondents must not directly contact the applicant, or any group member who is known to the relevant respondent to be a client of Gordon Legal otherwise than with the consent of Gordon Legal or the leave of the court, in respect of any matter directly related to any issue in dispute in the proceedings.



4. Nothing in these orders shall prevent the respondents from:
  - a. communicating with group members in the ordinary course of business; or
  - b. communicating with group members (other than clients of Gordon Legal) for the purposes of taking instructions from lay witnesses (including potential lay witnesses) or to otherwise determine issues of fact relating to the proceeding.

#### **Notice to group members to opt out**

5. Pursuant to s 33J(1) of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), 4:00pm on 27 October 2023 be fixed as the date before which a group member may opt out of this proceeding.
6. Pursuant to s 33X of the FCA Act, notice of this proceeding and of the right of group members to opt out of the proceeding, is to be given in accordance with orders 7 and 8 below to the individuals identified in accordance with order 7(a) below.
7. Pursuant to s 33Y of the FCA Act, the summary opt out notice, exhibited to these orders as **Exhibit A** (the **Summary Notice**), is to be given by 4:00pm on 22 September 2023, in accordance with the following procedure:
  - a. Each respondent shall identify:
    - i. the names of all persons who, at any time in the period from 1 December 2016 to 30 November 2022, were employed by it in one or more of the following classifications under the *ACT Public Sector Medical Practitioners Enterprise Agreement 2013 – 2017* (**2013 Agreement**) and/or the *ACT Public Sector Medical Practitioners Enterprise Agreement 2017 – 2021* (**2017 Agreement**) and/or the *ACT Public Sector Medical Practitioners Enterprise Agreement 2021 – 2021* (**2021 Agreement**):
      1. Intern;
      2. Resident Medical Officer / RMO 1;
      3. Junior Registrar / Senior Resident Medical Officer / SRMO 1;
      4. Senior Resident Medical Officer / SRMO 2;



5. Senior Resident Medical Officer / SRMO 3;

6. Registrar 1;

7. Registrar 2;

8. Registrar 3;

9. Registrar 4; or

10. Senior Registrar

**(Junior Medical Officers); and**

ii. the details of employment, and the last known contact details, of the Junior Medical Officers; and

b. Each of the respondents shall provide the information in order 7(a) in a suitable spreadsheet format to a third party mail house provider agreed by the parties and engaged jointly by the respondents on or before 4:00pm on 18 September 2023; and

c. The respondents shall cause the third party mail house provider to issue the Summary Notice, with a covering email or letter, as the case may be, in the form exhibited to these orders as **Exhibit C**, to be sent to the last known email address of each of the Junior Medical Officers, or, if no email address is known or if the email sent bounces back, to the last known postal address by ordinary mail.

8. Pursuant to s 33Y of the FCA Act, the applicant shall, by 22 September 2023, cause a copy of the Summary Notice as exhibited to these orders as **Exhibit A**, the opt out notice in the form exhibited to these orders as **Exhibit B (the Opt Out Notice)** together with a copy of the applicant's amended originating application and further amended statement of claim, the respondents' amended defences, the applicant's replies to the amended defences, the second respondent's notice of cross-claim and statement of cross-claim, the applicant's defence to the cross-claim and these orders, to be displayed and available for download from the applicant's solicitors website ([www.gordonlegal.com.au](http://www.gordonlegal.com.au)) and to remain continuously so displayed and available for download, up to and including the date of any judgment delivered following the trial



of this proceeding. The court notes that copies of the documents identified in this Order 8 will be made available for download on the Federal Court of Australia website.

9. The parties will confer during the week commencing 31 October 2023 as to whether or not the class notification procedure set out in order 7 above has been effective or whether (and if so, what) further steps need to be taken and report to the court on or before 3 November 2023.
10. If the solicitors for the applicant or the respondents receive, on or before 4:00pm on 27 October 2023, any notice purporting to be an opt out notice referable to this proceeding, the solicitors shall file the notice in the Victorian District Registry of the court within three business days and such notice will be treated as an opt out notice received by the court at the time it was received by the solicitors.
11. The disbursement costs of distributing the notice are to be borne by the applicant. Any subsequent costs incurred in relation to the distribution of the notice will be subject to conferral between the parties.

### **Discovery**

12. Discovery is to be conducted by the parties electronically in accordance with the document management protocol at **Exhibit D**.

Date that entry is stamped: 11 September 2023

*Sia Lagos*  
Registrar



**Exhibit A**

**SUMMARY NOTICE  
FEDERAL COURT OF AUSTRALIA**

**‘Junior Medical Officers’ (Unrostered Unpaid Overtime) Class Action (VID705/2022)**

This summary notice contains important information about a class action commenced by Dr Ying Ying Tham on 1 December 2022 in the Federal Court of Australia (the **Class Action**). The Federal Court has ordered that this Summary Notice and the Opt Out Notice be published for the information of persons who might be group members, on whose behalf the action is brought and may be affected by the Class Action. If you have received the summary notice, you have been identified as a potential group member.

The class action alleges that the Australian Capital Territory (the **Territory**) and Calvary Health Care ACT Limited (**Calvary**) have not paid junior doctors for unrostered unpaid overtime that they were required to work, between 1 December 2016 and 30 November 2022.

**You should read this Summary Notice and the Opt Out Notice carefully and seek legal advice if you wish to do so.**

**Do NOT direct any questions you have concerning this summary or the notice to the Federal Court.**

**If you wish to opt out of the Class Action, you must do so by no later than 4.00pm on 27 October 2023. By opting out of the Class Action you will not be bound by or entitled to any share in the benefit of any settlement or judgment made. However, you will be at liberty to bring your own claim against the respondents, provided it is within applicable time limits.**

**If you do not wish to opt out of the Class Action, you do not need to do anything. If you do not opt out, you will be bound by any settlement or judgment made in the Class Action. If the Class Action is successful, you may be entitled to share in the benefit of any order, judgment or settlement.**

**You can obtain further information by contacting Gordon Legal by:**

- email at [doctors@gordonlegal.com.au](mailto:doctors@gordonlegal.com.au); or
- phone on +61 3 9603 3000.



## Exhibit B

### OPT OUT NOTICE

#### FEDERAL COURT OF AUSTRALIA

#### 'Junior Medical Officers' (Unrostered Unpaid Overtime) Class Action (VID705/2022)

#### WHY IS THIS NOTICE IMPORTANT?

This is an important notice approved by the Federal Court of Australia concerning a class action commenced against the Australian Capital Territory and Calvary Health Care ACT Limited on behalf of junior doctors who it is alleged were required to work unrostered overtime in for which they were not paid in the period from 1 December 2016 to 30 November 2022.

As explained below, this notice provides you with information about the class action and your right to **opt out** of the class action, if you wish to do so.

**You should read this information carefully. Any questions you have concerning these matters should not be directed to the Court.** If there is anything that you do not understand you should seek legal advice.

#### 1. What is this notice about?

On 30 November 2022, Dr Ying Ying Tham (**the Applicant**) commenced a class action in the Federal Court of Australia against the Australian Capital Territory (**the Territory**) and Calvary Health Care ACT Limited (**Calvary**) (**the Respondents**). The class action is brought by the Applicant on their own behalf and on behalf of other Junior Medical Officers (**JMOs**). It is alleged that JMOs were required to work unrostered overtime for which they were not paid while employed by either or both of the Respondents during the period 1 December 2016 to 30 November 2022.

The Federal Court of Australia has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the action. If you are receiving this notice by email or post, you have been identified as a potential group member, based on the respondents' records.



## 2. What is a class action?

A class action, also known as a ‘representative proceeding’, is an action that is brought by one or more persons (applicant(s)) on his or her own behalf and on behalf of a class of people (group members) against one or more persons (respondent(s)) where the applicant(s) and the group members have similar claims against the respondent(s).

Group members in a class action are not individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicant(s) are responsible for the legal costs.

Group members are bound by the outcome in the class action, unless they have opted out of the proceedings. A binding result can happen in two ways: (a) a *judgment* following a trial, or (b) a *settlement* at any time. If there is a judgment or a settlement of a class action, group members will not be able to pursue the same claims and may not be able to pursue similar or related claims against the Respondent(s) in other legal proceedings.

Group members should note that:

- (a) In a *judgment* following trial, the court will decide certain factual and legal issues in respect of the claims made by the Applicant(s) and group members. Unless those decisions are successfully appealed, they bind the Applicant(s), group members and the Respondent(s). Importantly, if there are other proceedings between a group member and either or both Respondent(s), it may be that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with factual or legal issues decided in the class action.
- (b) In a *settlement* of a class action, where the settlement provides for compensation to group members it may extinguish *all* rights to compensation which a group member might have against either or both the Respondent(s) which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against either or both of the Respondents which are based on your individual circumstances or otherwise additional to the claims that are described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out.

More information about how you can opt out of these proceedings is provided in Section 4 below.

## 3. What is this class action?

This class action is brought by the Applicant on her own behalf and on behalf of all persons who are “group members” as defined in the proceeding.

The Applicant alleges in the further amended statement of claim in this proceeding that from 1 December 2016 to 30 November 2022, group members were required, in the course of their



employment with the Respondents, to work hours in excess of their ordinary hours or rostered hours and were not paid for those unrostered overtime hours.

The Applicant alleges that the Respondents' alleged failure to pay group members for their unrostered overtime hours is a breach of their obligations under the applicable enterprise agreements which are the *ACT Public Sector Medical Practitioners Enterprise Agreement 2013 – 2017 (2013 Agreement)* and/or the *ACT Public Sector Medical Practitioners Enterprise Agreement 2017 – 2021 (2017 Agreement)* and/or the *ACT Public Sector Medical Practitioners Enterprise Agreement 2021 – 2021 (2021 Agreement)*.

As a result of this alleged breach, the Applicant alleges that the Respondents have breached section 50 of the *Fair Work Act 2009 (Cth) (FW Act)*.

The Respondents deny the claims and are defending the class action. For example, they each allege that the Applicant and the Group Members were required to seek approval of any unrostered overtime before they could be paid. Calvary has also cross claimed against the Applicant for failing to record and claim any such overtime in accordance with the terms of the relevant enterprise agreements and employment contract. The Applicant denies the cross claim and says that she has not breached her contract or any enterprise agreements. She says that Calvary has had the benefit of the work she performed during unrostered overtime and that Calvary is not entitled to any relief sought in the cross claim.

#### **4. What does 'opt out' mean?**

The Applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member.

However, group members can cease to be group members by opting out of the class action. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you may bring your own claim against either or both of the Respondents, provided that you issue court proceedings within the time limit applicable to your claim. If you wish to opt out and bring your own claim against either or both of the Respondents, you should seek your own legal advice about your claim and the applicable time limit before opting out.

An explanation of how you can opt out is found below in the section 8(b) "How to opt out".





**5. Are you a group member?**

You are a group member if, during the period between 1 December 2016 to 30 November 2022, you:

- (a) were employed by the Territory and/or Calvary; and
- (b) worked at one or more of the following services operated by Territory and/or Calvary:
  - i. Canberra Hospital;
  - ii. Goulburn Hospital (on secondment by the Territory);
  - iii. Calvary Public Hospital Bruce; and
- (c) were, when employed by Territory and/or Calvary, classified as one or more of the following classifications under the 2013 Agreement and/or 2017 Agreement and/or the 2021 Agreement:
  - i. Intern;
  - ii. Resident Medical Officer / RMO 1;
  - iii. Junior Registrar / Senior Resident Medical Officer / SRMO 1;
  - iv. Senior Resident Medical Officer / SRMO 2;
  - v. Senior Resident Medical Officer / SRMO 3;
  - vi. Registrar 1;
  - vii. Registrar 2;
  - viii. Registrar 3;
  - ix. Registrar 4; or
  - x. Senior Registrar; and
- (d) in the course of such employment, worked hours in excess of your ordinary hours, or your rostered hours; and
- (e) were not paid for some or all of the unrostered overtime you worked.

**6. Will you be liable for legal costs if you remain a group member?**

You will not become liable for any legal costs simply by remaining a group member for the determination of the common questions.

However, if a successful outcome is achieved, the Applicant intends to seek an order from the court that requires group members to contribute to legal costs incurred on behalf of the Applicant who has brought the class action.

**7. What will happen if you choose to remain a group member?**

Unless you choose to opt out of the class action, you will be bound by any settlement or judgment made in the class action. If the class action is successful, you may be entitled to share



in the benefit of any order, judgment or settlement made in favour of the Applicant and group members. You may be required to satisfy certain conditions before your entitlement arises.

If the action is unsuccessful, you will not be able to pursue the same claims, and you may not be able to pursue related claims against the Respondents in other legal proceedings.

**8. What group members need to do:**

**(a) How to remain a group member?**

If you wish to remain a group member there is nothing you need to do at the present time. The Applicant will continue to bring the proceeding on your behalf up to the point where the court determines those questions that are common to the claims of the Applicant and group members. However, you are invited to register as a group member with the Applicant's lawyers Gordon Legal. You can register at: <https://doctorsclassaction.com.au>. When you register, Gordon Legal will provide you with up to date information about the progress of the class action.

**(b) How to opt out?**

If you do not wish to remain a group member, you must opt out of the class action. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you may bring your own claim against the Respondents, provided that you issue court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the Respondents, you should seek your own legal advice about your claim and the applicable time limit before opting out.

If you wish to opt out of the class action, you must do so by completing a "Notice of opting out by group member" in the form shown below (Form 21 of the court's approved forms), then returning it to the Registrar of the Federal Court of Australia at the address on the form.

**IMPORTANT: the Notice must reach the Registrar by no later than 4:00pm on 27 October 2023** otherwise your opt out will not be effective.

Each group member that wishes to opt out should fill out a separate form.

**9. Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the application, the further amended statement of claim and the amended defences, may be obtained by:

- (a) Downloading them from <https://gordonlegal.com.au>;
- (b) Inspecting them between 9am and 5pm at one of the offices of Gordon Legal, contact details for which are available from <https://gordonlegal.com.au> or by calling (03) 9603 3000;



- (c) By contacting a District Registry of the Federal Court (contact details are available at [www.fedcourt.gov.au](http://www.fedcourt.gov.au)) and paying the appropriate inspection fee; or
- (d) Where appropriate arrangements have been made with the court, inspecting them on the Federal Court website at [www.fedcourt.gov.au](http://www.fedcourt.gov.au).

Please consider the above matters carefully. If there is anything you are unsure about, you should contact Gordon Legal on (03) 9603 3000 or email [doctors@gordonlegal.com.au](mailto:doctors@gordonlegal.com.au) or seek your own legal advice. You should not delay in making your decision.



Form 21  
Rule 9.34

**Opt out notice**

No. VID 705 of 2022

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

**YING YING THAM**

Applicant

**AUSTRALIAN CAPITAL TERRITORY and another named in the Schedule**

Respondents

By email (preferred method): [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au)

OR

By post: The Registrar  
Federal Court of Australia  
Victoria District Registry  
305 William Street  
MELBOURNE VIC 3000

[Name of group member], a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [Name of group member] is opting out of the representative proceeding.

Date: [eg 19 June 20..]

\_\_\_\_\_  
Signed by [Name]  
[Insert capacity eg group member / Lawyer for the group member]

\_\_\_\_\_  
Filed on behalf of (name & role of party)

\_\_\_\_\_  
Prepared by (name of person/lawyer)

\_\_\_\_\_  
Law firm (if applicable)

Tel \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**Address for service**  
(include state and postcode) \_\_\_\_\_

[Version 2 form approved  
9/10/13]



### Exhibit C

Dear [INSERT FIRST AND SURNAME]

Please see **enclosed** an important notice given by the order of the Federal Court of Australia concerning a class action against the Australian Capital Territory (**the Territory**) and Calvary Health Care ACT Limited (ACN 105 304 989) (**Calvary**) in relation to the alleged underpayment of junior doctors.

The Federal Court of Australia has ordered that this notice be sent to all persons who, at any time in the period from 1 December 2016 to 30 November 2022, were employed by either the Territory and/or Calvary in one or more of the following classifications under the *ACT Public Sector Medical Practitioners Enterprise Agreement 2013 – 2017 (2013 Agreement)* and/or the *ACT Public Sector Medical Practitioners Enterprise Agreement 2017 – 2021 (2017 Agreement)* and/or the *ACT Public Sector Medical Practitioners Enterprise Agreement 2021 – 2021 (2021 Agreement)*:

1. Intern;
2. Resident Medical Officer / RMO 1;
3. Junior Registrar / Senior Resident Medical Officer / SRMO 1;
4. Senior Resident Medical Officer / SRMO 2;
5. Senior Resident Medical Officer / SRMO 3;
6. Registrar 1;
7. Registrar 2;
8. Registrar 3;
9. Registrar 4; or
10. Senior Registrar.

Please do not reply to this correspondence.

If you have any questions about the notice, please direct them to Gordon Legal who can provide legal advice and whose contact details are in the notice, or seek alternative legal advice.



## Exhibit D

### DOCUMENT EXCHANGE STANDARDS PROTOCOL

#### Tham v Australian Capital Territory & Anor – VID705/2022

#### 1. Purpose of this Document

- 1.1 This Protocol sets out the agreement of the parties in the matter of Tham v Australian Capital Territory & Anor (VID705/2022) in relation to the scope, means and format in which Paper Documents and Electronic Documents are to be exchanged between the parties during the discovery process.

#### 2. Document Descriptions

- 2.1 All Documents to be exchanged between the parties and delivered to the Court will be described in a List of Documents containing the following information for each Document:
- (a) Document ID (*see Schedule 1 for details*)
  - (b) Document Title
  - (c) Document Type (*see Schedule 7 for details*)
  - (d) Document Date
  - (e) Author (*see Schedules 2 and 6 for details*)
  - (f) Email From (*see Schedules 2 and 6 for details*)
  - (g) Email To (*see Schedules 2 and 6 for details*)
  - (h) Email CC (*see Schedules 2 and 6 for details*)
  - (i) Email BCC (*see Schedules 2 and 6 for details*)
  - (j) Host Document ID (*see Schedule 3 for details*)
  - (k) Redacted (*to indicate whether or not file has been redacted, values may be 'Yes', 'No' or blank*)
  - (l) Privileged (*to indicate whether the whole or part of the Document is subject to a claim of privilege, values may be 'Yes', 'No', 'Part' or blank*)
  - (m) Privilege Reason (*to indicate basis upon which privilege claim is made*)
  - (n) Confidential (*to indicate whether the whole or part of the Document is subject to a claim of confidentiality, values may be 'Yes', 'No', 'Part' or blank*)
  - (o) Placeholder
  - (p) Estimated Date (*'yes' if date is estimated, otherwise 'no'*)
- 2.2 The parties will produce indexes of the exchanged documents in either a "DAT" file named "export.dat" or an "mdb" file named "export.mdb", which contains the information set out in Schedule 6.

#### 3. Document Structure and Format

- 3.1 The List of Documents should be exchanged between the parties and delivered to the Court in the format described in Schedule 6.



- 3.2 The parties will exchange native electronic documents as searchable PDF files, unless otherwise agreed or ordered.
- 3.3 Where Documents are to be provided or exchanged as Searchable Images, Native Electronic Documents should be rendered *directly* to Portable Document Format (PDF) to create Searchable Images. They should not be printed to paper and scanned or rendered to Tagged Image File Format (TIFF) format and then converted to PDF. Rendering Native Electronic Documents directly to PDF will minimise the costs and avoid inaccuracies associated with the Optical Character Recognition (OCR) process.
- 3.4 Electronic documents that do not lend themselves to conversion to PDF (for example, spreadsheets, databases, etc.) shall be exchanged as native electronic documents.
- 3.5 Native electronic documents that are image files in their native form should be rendered with OCR to improve their ability to be searched.
- 3.6 Blank, irrelevant pages will be removed where practicable, and will not be allocated Page Number Labels.

#### **4. Page Numbers**

- 4.1 Subject to this section, a unique Page Number Label in the format described in Schedule 1 will be placed on each page of every Document as described in Schedule 5.
- 4.2 The Page Number assigned to the first page of a Document will also be assigned as the Document ID for that Document.
- 4.3 Native Electronic Documents will be assigned a single Document ID and individual Page Number Labels are not required.

#### **5. Electronic Exchange Media**

- 5.1 Unless otherwise agreed or ordered by the Court, the information to be exchanged between the parties will be exchanged by encrypted electronic file transfer. In the event that this is not feasible, data may be exchanged via encrypted USB or hard drive.

#### **6. Data Security**

- 6.1 The parties will take reasonable steps to ensure that the data they produce is useable and is not infected by Malicious Software.
- 6.2 Notwithstanding paragraph 8.1, the onus is on each party receiving the data to test the contents of any exchange media prior to its use to ensure that the data does not contain Malicious Software.
- 6.3 If data is found to be corrupted, infected by Malicious Software or is otherwise unusable, the producing party will, within 2 working days of receipt of a written request from a receiving party, provide to the receiving party a copy of the data that is not corrupted, infected by Malicious Software or otherwise unusable (as the case may be).
- 6.4 Parties must take reasonable steps to ensure that documents produced under discovery are stored in a secured environment and to prevent unauthorised access or disclosure.
- 6.5 Without limitation of each party's obligations arising elsewhere, each party must promptly inform the other of any unauthorised access or disclosure of any documents produced under discovery.

#### **7. Redaction of Privileged or Confidential Documents**

- 7.1 If the whole or part of a document is subject to a claim of privilege or confidentiality, the parts of the document that are subject to the claim should be identified or, if appropriate, redacted pending determination of the claim. If the whole or part of the document is redacted, the party



producing the document must retain an unredacted version of the Document which must be produced to the Court if required to do so.

- 7.2 If the Court makes an order that the whole or part of a document is subject to privilege, the copy of the document to be exchanged between the parties and provided to the Court may be permanently redacted in accordance with that order.
- 7.3 If the Court makes an order that the whole or part of a document is confidential, arrangements will be made to ensure that access to the document, or to the confidential parts of the document, is restricted in accordance with that order.
- 7.4 If the whole or part of a document is subject to a claim of privilege or confidentiality it will be:
  - (a) allocated a Document ID;
  - (b) given a Document Description that does not disclose the information that is the subject of the claim of privilege or confidentiality; and
  - (c) if the claim of privilege or confidentiality relates to the whole document –represented by a single Placeholder Page with the words ‘Document subject to claim of privilege/confidentiality’ inserted under the Document ID.
- 7.5 If the whole or part of a Host Document is subject to a claim of privilege or confidentiality it will be:
  - (a) identified as a Host Document;
  - (b) allocated a Document ID;
  - (c) given a Document Description that does not disclose the information that is the subject of the claim of privilege or confidentiality; and
  - (d) if the claim of privilege or confidentiality relates to the whole Document –represented in the Document Group to which it belongs by a single Placeholder Page with the words ‘Document subject to claim of privilege/confidentiality’ inserted under the Document ID.
- 7.6 If the whole or part of an Attached Document is subject to a claim of privilege or confidentiality it will be:
  - (a) identified as an Attached Document;
  - (b) allocated a Document ID;
  - (c) given a Document Description that does not disclose the information that is the subject of the claim of privilege or confidentiality; and
  - (d) if the claim of privilege or confidentiality relates to the whole Document –represented in the Document Group to which it belongs by a single Placeholder Page with the words ‘Document subject to claim of privilege/confidentiality’ inserted under the Document ID.

## **8. Privilege Clawback**

- 8.1. The parties acknowledge that, by error or inadvertence, documents that contain (in whole or part) privileged information may be disclosed erroneously or inadvertently by one party to another party and that the erroneous or inadvertent disclosure of a document will not waive any claim for privilege if the disclosing party, on becoming aware of the relevant circumstances, promptly requests the receiving party to return the document.
- 8.2. The receiving party must on written request from the disclosing party immediately return or destroy all copies of the document





- 8.3. If, when reviewing another party's disclosure material, it becomes apparent to the receiving party that some of the disclosed material is likely to be privileged, the receiving party will:
- (a) Immediately suspend review of the apparently privileged material;
  - (b) Not make copies of the apparently privileged material;
  - (c) Prevent further access to the apparently privileged material; and
  - (d) Notify the producing party of the disclosure of the apparently privileged material as soon as practical.
- 8.4. Upon receipt of a notification, the producing party will, as soon as is reasonably practicable, either request the return of the apparently privileged material, or confirm that it does not maintain a claim for privilege over the material.

## **9. De-Duplication of Documents**

- 9.1 Where appropriate, each party will take reasonable steps to ensure that duplicated Documents are removed from the exchanged material ('De-Duplication').
- 9.2 However, the Court acknowledges that there may be circumstances where Duplicates need to be identified and retained for evidential purposes.<sup>1</sup>
- 9.3 Duplication will be considered at a Document Group level. That is, all the Documents within a Document Group (that is, a Host Document and Attached Documents) will be treated as Duplicates if the *entire* Document Group is duplicated elsewhere within the collection. An Attached Document in a Document Group will not be treated as a duplicate if it is merely duplicated elsewhere as an individual, stand alone Document that is not associated with another Document Group.

## **10. Technology assisted review and email threading**

- 10.1 Parties may use 'Email threading' technology to minimise the document review.
- 10.2 Each party will utilise the best technology and practices in preparation of discovery, including, if considered appropriate, the use of technology assisted review (TAR), as indicated by the electronic discovery checklist under GPN-TECH. If a party proposes to utilise TAR in preparation of discovery, the parties will seek to agree on a protocol on the use of TAR.

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<sup>1</sup> For example, it may be relevant to retain multiple copies of an email in sender and recipient email boxes due to the fact that it will be of evidential relevance to know who actually received the email after it was sent.



## Schedule 1 – Document IDs

- 1.1. A Document ID must be unique because it is the sole means by which each Document will be referenced.
- 1.2 A Document ID will be in the following format:

**SSS.BBBB.FFFF.NNNN** (*italics represent optional elements*)

- 1.3 The elements of the Document ID are set out in the following table:

<b>Level</b>	<b>Description</b>
<b>SSS</b>	The Party Code (also, often referred to as ‘Source’) identifies a party to the proceedings. It should comprise three alpha digits. The determination of the Party Codes to be used for a particular case will take place prior to the commencement of discovery in order to ensure that all Document IDs will be unique (ie. To ensure that no two documents have the same Document ID so that each Document can be uniquely referenced). See Schedule 1.3 for the list of available Party Codes.
<b>BBBB</b>	The Box Number identifies a specific physical archive box or email mailbox or any other Container or physical or virtual classification that is appropriate for the party to use.  Use of the Box Number is optional. The box number should comprise 4 digits
<b>FFFF</b>	The Folder Number identifies a unique folder number allocated by each party in their own Document collection. <sup>2</sup> The Folder Number is padded with zeros to consistently result in a 4 digit structure. The Folder Number may, where appropriate, correspond to the Box Number of any Container in which the Document is contained.
<b>NNNN</b>	This refers to each individual page within each Folder for Paper Documents and Unsearchable Images or Searchable Images. For Native Electronic Documents, this number applies to the whole Document irrespective of the number of pages within it. In such cases, it therefore operates as a Document Number rather than a Page Number because individual pages are not numbered.  This number is padded with zeros to consistently result in a 4 digit structure.
<b>_XX(XX)</b>	This number is optional and is may be required where:  - additional pages need to be inserted into a Document; or  - to number the pages of multi-page PDF documents rendered from original native files.  .A suffix will be used preceded by an underscore padded with zeros to consistently result in a two-digit, three-digit or four-digit structure.

<sup>2</sup> A Party may allocate loose or unsorted Documents, either hard-copy or electronic, to 1 or more folders. This is acceptable providing that the originals of such Documents are able to be promptly sourced for inspection if required. It may also identify an electronic folder (as part of a directory structure) or a folder within an email mailbox.



#### 1.4 Party Codes for the Document ID

For the purposes of the Document ID: the following codes will be used:

<b>Party Code</b>	<b>Party</b>
ACT	Australian Capital Territory
CHC	Calvary Health Care ACT Limited (ACN 105 304 989)
YYT	Lead Applicant – Ying Ying Tham



## **Schedule 2 – Describing People**

2.1. People names may be referenced using:

- (a) email addresses (e.g. jcitizen@abc.com.au); or
- (b) Surname [space] Initial (e.g. Citizen J) where email addresses are not available; or
- (c) by reference to a position (e.g. Marketing Manager) where email addresses and Surname, Initial is not available; or
- (d) by reference to an organisation associated with the person where email address, Surname, Initial and Position are not available.

2.2. Multiple Recipients will be entered in a single cell of the spreadsheet separated by a semicolon [space].



### **Schedule 3 – Document Hosts and Attachments<sup>3</sup>**

- 3.1 Every Document that is attached to or embedded within another Document will be called an Attached Document.
- 3.2 A Container is not a Host Document for the purposes of this Protocol.<sup>4</sup>
- 3.3 Attached Documents will have the Document ID of their Host Document in the descriptive field called ‘Host Document ID’.
- 3.4 Host Documents and Attached Documents are jointly referred to as a ‘Document Group’.
- 3.5 Subject to paragraphs 3.6 and 3.7 below, in a Document Group the Host Document will be immediately followed by each Attached Document in the order in which the Attached Documents are numbered in their Document ID. If a Document Group includes Documents that are subject to a claim of privilege or confidentiality, the Documents should be treated in accordance with Section 12 of this Protocol.
- 3.6 If a Document is contained within a Container (for example, a single ZIP file) that is attached to an email then the email should be treated as the Host Document and the Document in the Container should be treated as an Attached Document to that Host Document (that is, the Host Document will be the email and not the Container within which the Document is contained).
- 3.7 If the Document Group consists of a number of Paper Documents fastened together, the first Document will be treated as the Host Document and the remaining Documents will be treated as the Attached Documents within the Document Group unless those Documents are not related, in which case each Document will be treated as a separate Document without a Host Document.
- 3.8 Annexures, Attachments and Schedules that are attached to an Agreement, Report, Legal Document or Minutes of a Meeting may be described as separate Attached Documents associated with the relevant Host Document.

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<sup>3</sup> May be referred to as Document Delimiting.

<sup>4</sup> See the Glossary to Practice Note CM 6 and Related Materials for further information on Host Documents and Containers.



#### Schedule 4 – Electronic Folders and Filenames

- 4.1 This schedule specifies how Electronic Images are to be located and named for the purposes of Document exchange. It does not relate to the capture and exchange of the original source location of an Electronic Document.
- 4.2 The Folder containing all Documents will be named either ‘\Documents\’ or ‘\Images\’
- 4.3 Documents produced as Searchable Images will be named ‘DocumentID.pdf’
- 4.4 Documents produced as Native Electronic Documents will be named ‘DocumentID.xxx(x)’ where ‘xxx(x)’ is the original default file extension typically assigned to source Native Electronic Files of that type.<sup>5</sup>
- 4.5 The Documents folder will be structured in accordance with the Document ID hierarchy, for example:

The Document produced as a Searchable Image called ‘ABC.001.0004.00392.pdf’ would be located in the folder called ‘*Documents\ABC\0001\0004\*’. So, it will appear in the directory listing as ‘*Documents\ABC\0001\0004\ABC.0001.0004.0392.pdf*’.

Where this same Document has been produced as a Native Electronic Document, and, assuming it is a Microsoft Excel spreadsheet file, for example, it would be called ‘ABC.0001.0004.0392.xls’ and will be located in the folder called ‘*Documents\ABC\0001\0004\*’. So it will appear in the directory listing as ‘*Documents\ABC\0001\0004\ABC.001.0004.0392.xls*’

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<sup>5</sup> For example, Microsoft Word documents will have a ‘.doc’ extension, Microsoft Excel spreadsheets will have a ‘.xls’ extension, so Native Electronic Documents will be named along the following lines *ABC.001.003.0456.xls (Excel Spreadsheet)*, *XYZ.099.456.0093.doc (Word Document)* A four character extension may be required for particular file types.



## Schedule 5 – Page Number Labels

- 5.1 Wherever possible, Page Number Labels will be placed on the top right corner<sup>6</sup> at least 3 millimetres from both edges of the page.
- 5.2 If there is insufficient space for a Page Number Label on a Searchable Image or an Unsearchable Image, the electronic image of the page will, if possible, be reduced in size to make room for the Page Number Label.
- 5.3 Page Number Labels may also include machine readable barcodes.
- 5.4 Where feasible, landscape pages of Searchable Images, Unsearchable Images and Paper Documents should be positioned so that the title is on the left side of the page<sup>7</sup> and the Label is oriented to the text, preferably at the bottom right corner of the original page so it appears down the top right side edge of the rotated page.
- 5.5 The parties may apply Page Number Labels to the following Paper Documents where they contain relevant content:
  - (a) folder covers, spines, separator sheets and dividers
  - (b) hanging file labels
  - (c) the reverse pages of any Document.

Adhesive notes should not normally be labelled but should be scanned in place on the page to which they were attached. If this cannot be done without obscuring text, the adhesive note should be numbered as the page after the page to which it was attached and the page should be scanned twice – first with and then without the adhesive note.

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<sup>6</sup> This ensures that upon electronic retrieval, images will not need to be scrolled down manually on the screen in order to view the Page Number Label.

<sup>7</sup> This generally involves a 90 degree anti-clockwise rotation.



### Schedule 6 – Document Load File

Parties may elect to produce a document load file in either Dat file (6.1) or Export.mdb load file (6.2) formats. Each party is responsible for conversion of load files to alternative formats which suit the systems it elects to use.

#### 6.1

##### Dat File

Where parties agree to provide the data in Relativity load file format (.DAT file) they will exchange discoverable documents in the following format. The first line of the .DAT file must be a header row identifying the field names.

The .DAT file should use the following Concordance default delimiters:

- a) *Column - ASCII 020*
- b) *Quote - ASCII 254*
- c) *Newline - ASCII 174*
- d) *Multi-Value - ASCII 059*
- e) *Nested Values - ASCII 092*

The following fields should be included in the DAT file:

<b>Electronic Data to be Exchanged</b>			
<b>Field</b>	<b>Details</b>	<b>Hard Copy Documents</b>	<b>Electronic Documents</b>
<b>Document ID</b>	Unique Document ID assigned to every document.		
<b>Host Reference</b>	If the Document is an Attachment, this field contains the Document ID of its Host Document.		
<b>Host Document ID</b>	Relational field to group family items. Hosts and all attachments should have the same value on each document in the group (the Host's Document ID)		
<b>Document Type</b>		Please see Document Types list found at Schedule 7	Native File Type as extracted by eDiscovery processing software
<b>Document Date</b>	In format	Date is determined on the	Available electronic





<b>Electronic Data to be Exchanged</b>			
<b>Field</b>	<b>Details</b>	<b>Hard Copy Documents</b>	<b>Electronic Documents</b>
	DD/MM/YYYY	basis of the Date appearing on the face of the Document. Where document is undated it should be left blank.	metadata processed in Australian Eastern Standard Time
<b>Document Title</b>		Determined on the basis of the title appearing on the face of the Document	Email – extracted from the Email Subject Field <b>Other Electronic Documents</b> – extracted from Electronic Metadata being the File Name or determined on the basis of the Title appearing on the face of the Document
<b>Document Author</b>		Parties delimited by a semicolon, organisations to be listed within "[]" brackets. Refer to Schedule 2 on coding People & Organisations for Hard Copy Documents.	Emails - Not captured  Other electronic files - Populated from metadata with parties delimited by a semicolon
<b>Email From</b>		Parties delimited by a semicolon, organisations to be listed within "[]" brackets. Refer to Schedule 2 on coding People & Organisations for Hard Copy Documents.	Emails – Populated from metadata with parties delimited by a semicolon  Other electronic files – Not Captured
<b>Email To</b>		Parties delimited by a semicolon, organisations to be listed within "[]" brackets. Refer to Schedule 2 on coding People & Organisations for Hard Copy Documents.	Emails – Populated from metadata with parties delimited by a semicolon  Other electronic files – Not Captured
<b>Email CC</b>		Parties delimited by a semicolon, organisations to be listed within "[]" brackets. Refer to Schedule 2 on coding People & Organisations for Hard Copy Documents.	Emails – Populated from metadata with parties delimited by a semicolon  Other electronic files – Not Captured
<b>Email BCC</b>		Parties delimited by a	Emails – Populated from



<b>Electronic Data to be Exchanged</b>			
<b>Field</b>	<b>Details</b>	<b>Hard Copy Documents</b>	<b>Electronic Documents</b>
		semicolon, organisations to be listed within "[]" brackets. Refer to Schedule 2 on coding People & Organisations for Hard Copy Documents.	metadata with parties delimited by a semicolon  Other electronic files – Not Captured
<b>Relativity - Load File Path</b>	Path to the native file, including filename and extension in accordance with Document Naming at schedule 4		
<b>Relativity - Text Path</b>	Path to the text file, including filename and extension in accordance with Document Naming at schedule 4		

<b>Review to be Exchanged</b>	
<b>Field</b>	<b>Details</b>
<b>Privilege</b>	Values may be 'Yes', 'Part', 'No' or blank
<b>Privilege Basis</b>	Values may be: <ul style="list-style-type: none"> <li>• LPP - Legal professional privilege/Client legal privilege</li> <li>• WPP - Without prejudice privilege/Settlement negotiations</li> <li>• Parliamentary Privilege</li> <li>• Cabinet Confidence Privilege</li> </ul>
<b>Confidential</b>	Values may be 'Yes', 'Part', 'No' or blank
<b>Confidential Basis</b>	Values may be: <ul style="list-style-type: none"> <li>• Commercial in Confidence</li> <li>• Commercially sensitive or personal private information (including medical information)</li> <li>• Subject to secrecy provision (unless disclosure permitted under or as required by law)</li> </ul>
<b>Redacted</b>	If a document has been redacted for privilege or confidentiality, this field must hold a value of 'Yes'. Values may be 'Yes', 'No' or blank
<b>Redaction Reason</b>	Values may be: 'Privileged' or 'Confidential'. Multiple Reasons for Redaction may be itemised.  Parties must indicate the reason for redacting a particular section of a Document on the image by stamping the redacted section with the reason for redaction Values may be: <ul style="list-style-type: none"> <li>• LPP - Legal professional privilege/Client legal privilege</li> <li>• WPP - Without prejudice privilege/Settlement negotiations</li> <li>• Parliamentary Privilege</li> <li>• Commercial in Confidence – Relevant commercial in confidence/ Commercially sensitive or personal private information (including medical information)</li> <li>• Cabinet Confidence Privilege</li> <li>• Secrecy provision</li> <li>• Blank - No Redaction applied</li> </ul>
<b>Placeholder</b>	If an electronic file is provided with a placeholder PDF, this value is 'Yes'.
<b>Estimated Date</b>	'Yes' if date is estimated, otherwise 'No'



## 6.2

### Export.mdb load file

Media	Format
Data file type and format	<p>The parties will exchange a Microsoft Access export.mdb file, which contains the four tables that make up the database export format. They are:</p> <ul style="list-style-type: none"> <li>(i) <b>Export</b> - main Document information.</li> <li>(ii) <b>Pages</b> - listing of files for each Document.</li> <li>(iii) <b>Parties</b> - people and organisation information for each Document.</li> <li>(iv) <b>Export_Extras</b> - additional Metadata for each Document that is not held in any of the other tables.</li> </ul> <p>The format of the data in each of the tables is outlined below.</p>

1. Export load file format

2. Export table

The export table contains the core fields. All other tables are linked to the export table by the Document ID field.

Field Name	Format	Note
Document_ID	SSS.BBBB.FFFF.NNNN_xx(xx)	Each numeric string is to be padded with '0s' to the required length. Each Document ID must be unique.
Host_Reference	SSS.BBBB.FFFF.NNNN_xx(xx)	If a Document is an Attachment, the Document ID of the Host is entered here.
Document_Date	DD-MMM-YYYY eg 01-JAN-2019	<p><b>Hardcopy Documents</b></p> <p>Date is determined on the basis of the Date appearing on the face of the Document.</p> <p>Where document is undated it should be left blank.</p> <p><b>Electronic Documents</b></p> <p>Available electronic metadata processed in Australian Eastern Standard Time</p>
Estimated_Date	Yes/No	'Yes' if date is estimated, otherwise 'No' or blank.



Field Name	Format	Note
Document_Type	Short Text	Please see Document Types list found at Schedule 7
Title	Short Text	<p><b>Hardcopy Documents</b> Determined on the basis of the title appearing on the face of the Document</p> <p><b>Electronic Documents</b> Email – extracted from the Email Subject Field Other Electronic Documents – extracted from Electronic Metadata being the File Name or determined on the basis of the Title appearing on the face of the Document</p>

3. Pages table

The pages table is used to describe the location of the images. It is linked to the export table via the Document ID field. Each PDF or native file provided for a Document should have an entry in the pages table. Multi page PDF files and native files (if provided) will have one entry per Document.

Field Name	Format	Note
Document_ID	Text	Each Document will be referred to by its unique Document ID, which is the pagination on the first page of each Document. Format: SSS.BBBB.FFFF.NNNN_xx(xx)
Image_File_Name	Text	Filename for each image including padding '0s'.
Page_Label	Text	The page label for PDF Documents will be PDF. Other native records will be Native.
Page_Num	Number	A number indicating the order in which the files related to the Document ID should be sequenced when viewing the full Document.
Num_Pages	Number	The total number of pages in the PDF image of the Document. Other native files will be considered to have 1 page.



4. Parties table

The parties table contains people and organisation information for To (addressees), From (Authors), CC (copied), BCC (blind copied), Between (Parties) and Attendees (present at meetings). It is linked to the export table via the Document ID.

Note: If there are multiple parties for a single Document, there will be multiple entries in this table for that Document.

Field Name	Format	Note
Document_ID	Text	Each Document will be referred to by its unique Document ID, which is the pagination on the first page of each Document.  Format: SSS.BBBB.FFFF.NNNN_nnnn
Correspondence_Type	Text	One of the following 6 options identifying the type of person must be used:  'From' – author of a Document or sender of an item of correspondence; 'To' – to whom the correspondence was addressed; 'CC' – to whom the correspondence was copied; 'BCC' – to whom the correspondence was blind copied (if available); 'Between' – for parties to an agreement or other legal Document (not correspondence); and 'Attendees' – for persons/organisations who attended a meeting.
People	Text	There should be a separate entry for each person belonging to one of the categories set out in the field Correspondence_Type above.  <b>Hardcopy Documents</b>  Completed using information on the face of the Document. If the Document is a deed this field will contain the names of the parties if they are individuals.  Where possible, the value must be in the format of last name, first initial. If the person is identified by title and not



Field Name	Format	Note
		<p>by name, the title should be entered into this field.</p> <p><b>Electronic Documents</b></p> <p>The People information for electronic Documents will be extracted from the Document metadata.</p> <p>If the Document metadata does not adequately identify the People information of an Native Electronic Document the People information may be discerned from the face of Document.</p>
Organisations	Text	<p><b>Hardcopy Documents</b></p> <p>If the person listed in the people field above belongs to an organisation (as determined on the face of the Document this field should contain the name of that organisation.</p> <p>If there is no person, then specify the name of the organisation to whom the Document relates for any of the correspondence types that apply to the Document.</p> <p><b>Electronic Documents</b></p> <p>Field should be left blank for electronic Documents unless the producing party is manually identifying the People information from the face of the Document.</p>

5. Export\_extras table

The export\_extras table contains additional fields to those contained in the export table. It is linked to the export table via the Document ID field.

Field Name	Format	Note
Document_ID	Text	<p>Each Document will be referred to by its unique Document ID, which is the pagination on the first page of each Document.</p> <p>Format: SSS.BBBB.FFFF.NNNN_xx(xx)</p>
theCategory	Text	One of the following options identifying the



		data type must be selected: 'TEXT', 'MEMO', 'BOOL', 'NUMB', 'DATE', 'PICK'.
theLabel	Text	The name of the field.
theValue	Text	The data as a text string.

An entry should be made in this table for the following fields for each Document where they contain data. Fields that cannot be left blank are marked with an asterisk.

Note: There can be multiple entries in the Reason for Redaction field.

theLABEL	theVALUE	theCATEGORY
Placeholder	If an electronic file is provided with a placeholder PDF, this value is 'Yes'.	PICK
Redacted	This field identifies whether a Document is reacted. Valid values for this field are 'Yes' or 'No'.	PICK
Redaction Reason	This field identifies the reason for redaction for any redacted Document. The PICK values are 'Privileged' or 'Confidential'. Multiple Reasons for Redaction may be itemised on separate rows for an individual Document.  Parties must indicate the reason for redacting a particular section of a Document on the image by stamping the redacted section with the reason for redaction.	PICK
Privilege	This field identifies whether a claim of privilege is made over the Document. Valid PICK values are 'Yes' (for wholly privileged Documents), 'No' or 'Part' (for partly privileged Documents). If the field is completed 'Yes' or 'Part' the 'Privilege Basis' field must be completed.	PICK
Privileged Basis	This field identifies the basis of the privilege claim. Valid PICK values are: 'LPP' (for legal professional privilege), 'WPP' (for without prejudice privilege)	PICK
Confidential	This field identifies whether a claim of confidentiality is made over the Document. Valid PICK values are 'Yes' (for wholly confidential Documents), 'No', or 'Part' (for partly confidential Documents).	PICK
Confidential Basis	This field identifies the basis of the claim of confidentiality. Valid PICK values are 'Commercial in Confidence; or Commercially sensitive or personal private information (including medical information)	PICK



## Schedule 7 – Document Type List

*This list is a guide. It may be amended as necessary.*

(1)	Agreement/Contract/Deed
(2)	Affidavit
(3)	
(4)	Annual Report
(5)	Article
(6)	Authority
(7)	Board Papers
(8)	Brochure
(9)	Cheque Remittance
(10)	
(11)	Company Search
(12)	Court Document
(13)	
(14)	CV
(15)	Diagram – Plan
(16)	Diary Entry
(17)	Drawing
(18)	eFile
(19)	Email
(20)	Email attachment
(21)	Expert Report
(22)	Fax Transmission
(23)	File Note
(24)	Form
(25)	Graph
(26)	Guide
(27)	Handwritten Note
(28)	Invoice – statement
(29)	Letter
(30)	List
(31)	Manual
(32)	Map
(33)	Media Release
(34)	Medical Record
(35)	Meeting Agenda
(36)	Memorandum
(37)	Minutes of Meeting
(38)	Notice
(39)	Overtime claim
(40)	Pay slip
(41)	Performance/training assessment
(42)	Phone Record
(43)	Photograph
(44)	Policy
(45)	Position Description
(46)	Presentation
(47)	Receipt





(48)	Record
(49)	Recording
(50)	Report
(51)	Rover
(52)	Roster
(53)	Search
(54)	Specification
(55)	Spreadsheet
(56)	Statement
(57)	Submissions
(58)	Text message
(59)	Timesheet
(60)	Transcript
(61)	Video
(62)	Whatsapp message



**Schedule**

No: VID705/2022

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

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

**CROSS CLAIM**

Cross-Claimant      CALVARY HEALTH CARE ACT LIMITED (ACN 105 304 989)

Cross Respondent      YING YING THAM

Respondent      AUSTRALIAN CAPITAL TERRITORY