



## 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]