

## NOTICE OF FILING

### Details of Filing

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File Title: THE AUSTRALIAN SALARIED MEDICAL OFFICERS FEDERATION &  
ANOR v MONASH HEALTH & ORS  
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.



**Amended Defence**

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

No. VID210/2021

**The Australian Salaried Medical Officers' Federation**

First applicant

**Teak McPadden**

Second applicant

**Monash Health**

First respondent

**Latrobe Regional Hospital**

Second respondent

**Bairnsdale Regional Health Service**

Third respondent

By way of defence to the amended statement of claim dated ~~26 April 2021~~ 17 November 2022 (**Statement of Claim**), the respondents say as follows:

**Notes:**

- A. Unless otherwise defined, capitalised terms have the meaning ascribed to them in the Statement of Claim.

**A THE PARTIES**

**A1 The applicants and the Group Members**

1. As to paragraph 1, the respondents:

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- (a) admit that the first applicant and the second applicant purport to bring this claim pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth);
  - (b) in relation to the second applicant (**Dr McPadden**):
    - (i) admit the allegations in sub-paragraphs (c) to (g);
    - (ii) do not admit the allegations in sub-paragraph (h) and (i);
  - (c) in relation to the alleged Group Members:
    - (i) admit that there were persons with the characteristics alleged in sub-paragraphs (c) to (g) (~~Doctors in Training~~);
    - (ia) Bairnsdale says further that for the period 9 November 2022 until 22 November 2022 Group Members were covered by the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2022 – 2026 (2022 Agreement)*; and
    - (ii) otherwise do not admit the allegations in paragraph 1.
2. The respondents admit paragraph 2.
3. As to paragraph 3:
- (aa) Bairnsdale:
    - (i) admits the allegations in sub-paragraph (3)(aa); and
    - (ii) says further that between 9 January 2017 to 14 January 2018, Dr McPadden was subject to and bound by a contract of employment dated 13 August 2016, which contained the following terms:
      - A. A requirement to follow lawful directions. (Clause 2.1).
      - B. A requirement to follow Hospital By-Laws, Standing Orders Regulations, and Policies as revised from time to time. (Clause 2.2).
      - C. A statement of understanding that Hospital By-Laws, Standing Orders Regulations, and policies were available for Dr McPadden’s perusal and it was expected that Dr McPadden familiarised himself with these documents. (Clause 2.2).

- D. In addition to the duties specified in the position description, Dr McPadden was to perform any other tasks, duties and responsibilities appropriate to his position and any other reasonable duties specifically assigned to him. (Clause 2.6).
- E. The contract could only be amended by a written instrument executed by all parties. (Clause 3.1).
- F. The contract was for the period indicated therein, being 14 January 2018 and no other offer, verbal or written, was to be valid unless signed by the Chief Executive Officer or other delegated Authority. (Clause 3.1).

### **Particulars**

The contract was in writing in a document dated 2 August 2016.

- (a) Monash:
- (i) says that Dr McPadden was employed by it and classified as a HMO (Year 3) from 4 February 2019;
- (ii) otherwise admits sub-paragraph 3(a); and
- (iii) says further that between 5 February 2018 to 3 February 2019, Dr McPadden was subject to and bound by a contract of employment dated 30 November 2017, which contained the following terms:
- A. It was a condition of employment that Dr McPadden may be called upon to perform duties for which he was appropriately qualified, at any hospital within Monash Health. (Clause 3).
- B. He was required to abide by all Monash Health by-laws, safety rules, policies and procedures as they applied to his employment and agreed to so abide. (Clause 3 and Acceptance).
- C. The contract incorporated a document entitled "Junior Medical Staff Rights and Representation" which directed Junior Medical Staff to make claims for overtime according to the "Junior Medical Staff Unrostered Overtime/ Additional Hours Authorisation & Payment Procedure" which was available on the intranet (page 7).

**Particulars**

The contract was in writing in a document dated 30 November 2017.

(iv) says further that between 4 February 2019 to 2 February 2020, Dr McPadden was subject to and bound by a contract of employment dated 7 January 2019, which contained the following terms:

- A. It was a condition of employment that Dr McPadden may be called upon to perform duties for which he was appropriately qualified, at any hospital within Monash Health. (Clause 3).
- B. He was required to abide by all Monash Health by-laws, safety rules, policies and procedures as they applied to his employment and agreed to so abide. (Clause 3 and Acceptance).
- C. The contract incorporated a document entitled "Junior Medical Staff Rights and Representation" which directed Junior Medical Staff to make claims for overtime according to the "Junior Medical Staff Unrostered Overtime/Additional Hours Authorisation & Payment Procedure" which was available on the intranet (page 7).

**Particulars**

The contract was in writing in a document dated 7 January 2019.

(v) says further that between 3 February 2020 to 31 January 2021, Dr McPadden was subject to a contract of employment dated 23 January 2020, which contained the following terms:

- A. His duties were those reasonably required to be performed by an employee undertaking the Position Title being Casual Medical Officer. (Clause 6).
- B. In the performance of his duties, he must:
- (i) comply with all reasonable and lawful directions of Monash Health specific to him and his Position Title;
- (ii) act in accordance and comply with all relevant Monash Health policies and procedures (for which a link was given).

- C. He must comply with Monash Health's policies, procedures and by-laws that apply to his Position (for which a link to PROMPT was provided). It was agreed that the policies, procedures and by-laws did not form part of and were not incorporated into his Contract with Monash Health. Nevertheless, he was required to comply with them and any failure to do so may give Monash Health grounds to terminate his employment. Monash Health could in its sole discretion amend or discontinue any policy, procedure or by-laws from time to time or depart from them in any individual case. (Clause 11).
- D. The agreement constitutes the entire agreement between the parties and supersedes all prior representations and agreements and may only be altered in writing executed by the parties.

### **Particulars**

The contract was in writing in a document dated 23 January 2020.

(b) Latrobe:

- (i) admits the allegations in sub-paragraphs (3)(b) and 3(c); and
- (ii) says further that between 16 April 2018 to 24 June 2018, Dr McPadden was subject to and bound by a contract of employment dated 27 March 2018, which contained the following terms:

- A. Dr McPadden was to perform the duties authorised in the position description attached to the contract and these duties could be varied from time to time by Latrobe. Further, he was to perform other duties he was capable of performing as required by Latrobe;
- B. Dr McPadden was to familiarise himself with various policies of Latrobe that applied to his employment;
- C. Dr McPadden was required to carry out his duties and responsibilities in accordance with the Offer and Latrobe's policies and protocols as varied from time to time.

### **Particulars**

The contract was in writing in a document dated 27 March 2018.

(iii) says further that between 3 September 2018 to 11 November 2018, Dr McPadden was subject to and bound by a contract of employment dated 27 August 2018, which contained the following terms:

- A. Dr McPadden was to perform the duties authorised in the position description attached to the contract and these duties could be varied from time to time by Latrobe. Further, he was to perform other duties he was capable of performing as required by Latrobe;
- B. Dr McPadden was to familiarise himself with various policies of Latrobe that applied to his employment;
- C. Dr McPadden was required to carry out his duties and responsibilities in accordance with the Offer and Latrobe's policies and protocols as varied from time to time.

### **Particulars**

The contract was in writing in a document dated 27 August 2018.

4. As to paragraph 4, ~~the respondents~~ Monash and Latrobe:
- (a) deny that the Group Members have claims against them as pleaded in the Statement of Claim for the reasons set out below;
- (b) otherwise do not know and therefore cannot admit the allegations in paragraph 4;
- (c) Bairnsdale does not plead to paragraph 4 as it contains no allegation of material fact against it.

### **A2 The respondents**

4A. As to paragraph 4A:

- (a) Bairnsdale admits the allegations in paragraph 4A;
- (b) Monash does not plead to paragraph 4A as it contains no allegation of material fact against it;
- (c) Latrobe does not plead to paragraph 4A as it contains no allegation of material fact against it.

5. As to paragraph 5:

(a) Monash admits the allegations in paragraph 5;

(b) Latrobe does not plead to paragraph 5 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 5 as it contains no allegation of material fact against it.

6. As to paragraph 6:

(a) Latrobe admits the allegations in paragraph 6;

(b) Monash does not plead to paragraph 6 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 6 as it contains no allegation of material fact against it.

## **B THE AGREEMENTS**

### **B1 The 2013 Agreement**

#### Application and coverage

7. The respondents admit paragraph 7.

#### Doctor Responsibilities

8. The respondents admit paragraph 8.

#### Hours of Work, Rostering, and Overtime

9. The respondents admit paragraph 9.

10. The respondents admit paragraph 10.

11. As to paragraph 11, the respondents:

(a) admit that the 2013 Agreement contains clauses 32.1, 32.2.1 and 32.2.2 as pleaded in the Statement of Claim;

(b) say further that the 2013 Agreement also contains the following clauses:

32.2.3 *Overtime may be converted into carer's leave in accordance with sub clause 47.3.3.*

**32.3 *Protocols - Authorised Un-rostered Overtime***

32.3.1 *A Protocol must exist in the Hospital whereby overtime that cannot be authorised in advance but has been worked will be paid if it meets appropriate, clearly defined criteria.*

32.3.2 *The protocols described in sub clause 32.3.1 will be structured on the following basis:*

- (a) the Doctor has performed the overtime due to a demonstrable clinical need and that need could not have been met by some other means;*
- (b) authorisation of the overtime could not reasonably have been made in advance of the Doctor performing the work;*
- (c) the Doctor has claimed for retrospective authorisation of overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;*
- (d) the Doctor has recorded the reason for working the overtime and the duties performed in a form capable of Hospital audit and review; and*
- (e) the claim for overtime must be reviewed by a Senior Doctor authorised by the Hospital to do so within 14 days of the claim being submitted.*

**B2 The 2018 Agreement**

Application and coverage

12. The respondents admit paragraph 12.

Doctor Responsibilities

13. The respondents admit paragraph 13.

Hours of Work, Rostering, and Overtime

14. The respondents admit paragraph 14.

15. The respondents admit paragraph 15.

16. As to paragraph 16, the respondents:

- (a) admit that the 2018 Agreement contains clauses 36.1, 36.2(a) to (c) as pleaded in the Statement of Claim;
- (b) say further that the 2018 Agreement also contains the following clauses:

36.2(d) *Overtime may be converted into carer's leave in accordance with subclause 61.3(c).*

**36.3 *Protocols - Authorised Un-rostered Overtime***

- (a) *A Protocol must exist in the Health Service whereby overtime that cannot be authorised in advance but has been worked will be paid if it meets appropriate, clearly defined criteria.*
- (b) *The protocols described in sub clause 36.3(a) will be structured on the following basis:*
  - (i) *the Doctor has performed the overtime due to a demonstrable clinical need and that need could not have been met by some other means;*
  - (ii) *authorisation of the overtime could not reasonably have been made in advance of the Doctor performing the work;*
  - (iii) *the Doctor has claimed for retrospective authorisation of overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;*
  - (iv) *the Doctor has recorded the reason for working the overtime and the duties performed in a form capable of Health Service audit and review; and*
  - (v) *the claim for overtime must be reviewed by a Senior Doctor authorised by the Health Service to do so within 14 days of the claim being submitted.*

**C DUTIES AND RESPONSIBILITIES OF DR MCPADDEN AND GROUP MEMBERS**

17. As to paragraph 17, ~~the respondents:~~

(aa) Bairnsdale:

- (i) admits that from time to time during the Bairnsdale Relevant Period, Dr McPadden's duties and responsibilities when providing medical services included medical records;

- (ii) otherwise denies the allegations in paragraph 17;
- (a) Monash and Latrobe admit that during the Monash and Latrobe Relevant Period, Dr McPadden's duties and responsibilities when providing medical services included, from time to time:
  - (i) handover;
  - (ii) medical records; and
  - (iii) other medical services;
- (b) Monash and Latrobe otherwise deny the allegations in paragraph 17.

#### **D THE SECOND APPLICANT'S CLAIM**

18. As to paragraphs 18:

(aa) Bairnsdale admits the allegations in sub-paragraphs (aa) to (aaaa);

(a) Monash:

(i) says that the secondment was pursuant to the "Doctors in Training Secondment Agreement between Monash Health and Latrobe Regional Hospital 2016 - 2019" dated 18 May 2016 as amended from time to time;

(ii) otherwise admits the allegations in sub-paragraphs (a) to (d)18;

(iii) does not plead to sub-paragraphs (aa) to (aaaa) as they contain no allegation of material fact against it;

(b) Latrobe admits the allegations in sub-paragraphs (a) and (b); and

(c) Latrobe does not plead to sub-paragraphs (aa) to (aaaa), (c) and (d) as they contain no allegation of material fact against it.

#### **DA1 Bairnsdale General Medicine rotation – 16 January 2017 and 26 March 2017**

18A. As to paragraph 18A:

(a) Bairnsdale admits paragraph 18A;

(b) Monash does not plead to paragraph 18A as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18A as it contains no allegation of material fact against it.

Rosters

18B. As to paragraph 18B:

(a) Bairnsdale:

(i) says Dr McPadden was rostered to work from 7.30am to 4.00pm and 6.00pm to 9.00pm on 18 January 2017;

(ii) says in the week beginning Monday, 13 February 2017, Dr McPadden was rostered to work five days from 7.30am to 4.00pm;

(iii) says on 21 February 2017, Dr McPadden was not rostered to work;

(iv) says on 27 February 2017, Dr McPadden was rostered to work from 7.30am to 1.00pm and 5.00pm to 8.00pm;

(v) otherwise admits that during the Bairnsdale General Medicine rotation, Dr McPadden was rostered to work as pleaded;

(vi) further to (v);

A. Rosters were amended on occasions before being worked by Dr McPadden; and/or

B. Dr McPadden, on occasions, may have worked other roster days or patterns than those prescribed by the rosters;

(b) Monash does not plead to paragraph 18B as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18B as it contains no allegation of material fact against it.

Medical records

18C. As to paragraph 18C:

(a) Bairnsdale:

(i) admits that Dr McPadden's duties and responsibilities when providing medical services included completion of medical records;

(ii) Otherwise denies the allegations in paragraph 18C.

(b) Monash does not plead to paragraph 18C as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18C as it contains no allegation of material fact against it.

18D. As to paragraph 18D:

(a) Bairnsdale denies the allegations in paragraph 18D;

(b) Monash does not plead to paragraph 18D as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18D as it contains no allegation of material fact against it.

18E. As paragraph 18E:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 18C and 18D above;

(ii) otherwise it denies the allegations in paragraph 18E.

(b) Monash does not plead to paragraph 18E as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18E as it contains no allegation of material fact against it.

18F. As to paragraph 18F:

(a) Bairnsdale:

- (i) Bairnsdale had implemented a policy and its contents which dealt with the authorisation and payment for overtime or excess unrostered hours worked by employees such as Dr McPadden (the **Bairnsdale Overtime Policy**);

**Particulars**

The Bairnsdale Overtime Policy was partly in writing in various documents provided to or available to Dr McPadden and was partly oral and advised to Dr McPadden at the commencement of his employment with Bairnsdale in his orientation and induction.

There was a hospital wide Scheduling and Time Attendance Policy, as amended from time to time, which stated that unscheduled hours will not be paid unless previously discussed and approved by a Department Manager and that overtime hours must be approved by a Director.

The Junior Medical Staff and Medical Student Support Policy directed that unrostered overtime required prior approval of the Coordinator and that in urgent situations (e.g. a Code Blue or MET call) Bairnsdale would approve the unrostered overtime retrospectively.

Dr McPadden was advised at his induction that unrostered overtime would be accepted if a claim was submitted to the Coordinator and a good reason was provided. Dr McPadden was advised that if he was required to stay longer than his scheduled shift, the Coordinator needed to be contacted as early as possible for approval. A signed overtime form was then to be submitted to the Medical Workforce office.

The Medical Staff Unrostered Overtime Substantiation Form directed that unrostered overtime would only be paid where the situation was either a Code Blue, clinical instability, a MET call or urgent clinical review (that could not be handed over). Where a situation was not clinically urgent, preapproval was required to be sought from the Operations Manager or Coordinator (after hours).

Further particulars will be provided prior to trial.

- (ii) this policy and its contents applied to Dr McPadden:

A. As a term of his contract referred to in paragraph 3(aa) above, and/or;

B. As a lawful and reasonable direction given to Dr McPadden by Bairnsdale:

- 1) through the policy;
- 2) through the various documents provided to or available to Dr McPadden referred to in the particulars to paragraph 18F(a)(i) above.
- 3) through advice to Dr McPadden during his induction to Bairnsdale in or about January 2017; and/or
- 4) through his required use of the Medical Staff Unrostered Overtime Substantiation Form.

(iii) the authorisation of hours within the meaning of clause 32.2.1(b) of the 2013 Agreement at Bairnsdale required compliance with that policy and direction and/or advice;

(iv) further or in the alternative, that policy was in accordance with clause 32.3 of the 2013 Agreement which implemented a protocol for authorisation of and remuneration for unrostered overtime, being overtime in excess of rostered ordering working hours that was required due to a demonstrable operational or clinical need that could not be provided in some other way. (Unrostered Overtime).

### **Particulars**

The Junior Medical Staff and Medical Student Support Policy.

Further particulars will be provided prior to trial.

(v) pursuant to the Bairnsdale Overtime Policy, Dr McPadden was required to either seek authorisation for any medical records overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;

(vi) further or alternatively whether Dr McPadden was authorised to work any alleged medical records overtime (including whether Dr McPadden worked the

alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

(vii) Dr McPadden has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance or any authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;

(viii) otherwise denies the allegations in paragraph 18F;

(b) Monash does not plead to paragraph 18F as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18F as it contains no allegation of material fact against it.

18G. As to paragraph 18G:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 18C to 18F above;

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Bairnsdale Overtime Claim in relation to the overtime purportedly worked;

B. Dr McPadden has not provided particulars of any occasions on which he allegedly:

1) worked medical records overtime;

2) sought and received either advance or retrospective authorisation for such overtime;

3) made a Bairnsdale Overtime Claim for that medical records overtime; and

4) was subsequently not paid;

C. if Dr McPadden did not make a Bairnsdale Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:

1) Dr McPadden did not work such overtime;

2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) Dr McPadden was in attendance at the Bairnsdale Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 298 to 311 below;

(iii) otherwise denies the allegations in paragraph 18G;

(b) Monash does not plead to paragraph 18G as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18G as it contains no allegation of material fact against it.

18H. As to paragraph 18H:

(a) Bairnsdale:

(i) says that if:

A. Dr McPadden had made a Bairnsdale Overtime Claim; and

B. the Bairnsdale Overtime Claim satisfied the criteria set out in the Bairnsdale Overtime Policy,

C. Bairnsdale would have considered and processed the Bairnsdale Overtime Claim in accordance with the Bairnsdale Overtime Policy;

(ii) otherwise denies the allegations in paragraph 18H;

(b) Monash does not plead to paragraph 18H as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18H as it contains no allegation of material fact against it.

18I. As to paragraph 18I:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 18C to 18H above; and

(ii) otherwise denies the allegations in paragraph 18I;

(b) Monash does not plead to paragraph 18I as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 18I as it contains no allegation of material fact made against it.

18J. As to paragraph 18J:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 18C to 18H above; and

(ii) otherwise denies the allegations in paragraph 18J;

(b) Monash does not plead to paragraph 18J as it contains no allegation of material fact made against it.

(c) Latrobe does not plead to paragraph 18J as it contains no allegation of material fact made against it.

**DA2 Rehabilitation, Geriatrics, and Drug and Alcohol Rotation – 27 March 2017 to 4 June 2017**

18K. As to paragraph 18K:

- (a) Bairnsdale admits paragraph 18K;
- (b) Monash does not plead to paragraph 18K as it contains no allegation of material fact against it;
- (c) Latrobe does not plead to paragraph 18K as it contains no allegation of material fact against it.

Rosters

18L. As to paragraph 18L:

- (a) Bairnsdale:
  - (i) says Dr McPadden was rostered to take annual leave on 25 April 2017;
  - (ii) says Dr McPadden was rostered to work from 8.00am to 4.30pm and 5.30pm to 6.30pm on 1 June 2017;
  - (iii) otherwise admits that during the first RGDA rotation, Dr McPadden was rostered to work as pleaded;
  - (iv) further to (iii):
    - A. rosters were amended on occasion before being worked by Dr McPadden; and/ or
    - B. Dr McPadden, on occasion, may have worked other roster days or patterns than those prescribed by the rosters;
- (b) Monash does not plead to paragraph 18L as it contains no allegation of material fact against it;
- (c) Latrobe does not plead to paragraph 18L as it contains no allegation of material fact against it.

Medical Records

18M. As to paragraph 18M:

(a) Bairnsdale:

(i) admits that Dr McPadden's duties and responsibilities when providing medical services included completion of medical records;

(ii) otherwise, it denies the allegations in paragraph 18M;

(c) Monash does not plead to paragraph 18M as it contains no allegation of material fact against it;

(d) Latrobe does not plead to paragraph 18M as it contains no allegation of material fact against it.

18N. As to paragraph 18N:

(a) Bairnsdale denies each and every allegation in paragraph 18N;

(a) Monash does not plead to paragraph 18N as it contains no allegation of material fact against it;

(b) Latrobe does not plead to paragraph 18N as it contains no allegation of material fact against it.

18O. As paragraph 18O:

(a) Bairnsdale denies each and every allegation in paragraph 18O;

(b) Monash does not plead to paragraph 18O as it contains no allegation of material fact against it;(c) Latrobe does not plead to paragraph 18O as it contains no allegation of material fact against it.

18P. As to paragraph 18P:

(a) Bairnsdale refers to and repeats paragraph 18F(a) above;

(b) Monash does not plead to paragraph 18P as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18P as it contains no allegation of material fact against it.

18Q. As to paragraph 18Q:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 18M to 18P above;

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Bairnsdale Overtime Claim in relation to the overtime purportedly worked;

B. Dr McPadden has not provided particulars of any occasions on which he allegedly:

1) worked medical records overtime;

2) sought and received either advance or retrospective authorisation for such overtime;

3) made a Bairnsdale Overtime Claim for that medical records overtime; and

4) was subsequently not paid;

C. if Dr McPadden did not make a Bairnsdale Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:

1) Dr McPadden did not work such overtime;

2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) Dr McPadden was in attendance at the Bairnsdale Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 298 to 311 below;

(iii) otherwise denies the allegations in paragraph 18Q;

(b) Monash does not plead to paragraph 18Q as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18Q as it contains no allegation of material fact against it.

18R. As to paragraph 18R:

(a) Bairnsdale:

(i) says that if:

A. Dr McPadden had made a Bairnsdale Overtime Claim; and

B. the Bairnsdale Overtime Claim satisfied the criteria set out in the Bairnsdale Overtime Policy.

C. Bairnsdale would have considered and processed the Bairnsdale Overtime Claim in accordance with the Bairnsdale Overtime Policy;

(ii) otherwise denies the allegations in paragraph 18R;

(b) Monash does not plead to paragraph 18R as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18R as it contains no allegation of material fact against it.

18S. As to paragraph 18S:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 18M to 18R above; and

(ii) otherwise denies the allegations in paragraph 18S;

(b) Monash does not plead to paragraph 18S as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 18S as it contains no allegation of material fact made against it.

18T. As to paragraph 18T:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 18M to 18R above; and

(ii) otherwise denies the allegations in paragraph 18T;

(b) Monash does not plead to paragraph 18T as it contains no allegation of material fact made against it.

(c) Latrobe does not plead to paragraph 18T as it contains no allegation of material fact made against it.

**DA2 Second Bairnsdale Rehabilitation, Geriatrics, and Drug and Alcohol rotation –  
14 August 2017 to 22 October 2017**

18U. As to paragraph 18U:

(a) Bairnsdale admits paragraph 18U:

(b) Monash does not plead to paragraph 18U as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18U as it contains no allegation of material fact against it.

Rosters

18V. As to paragraph 18V:

(a) Bairnsdale:

- (i) says Dr McPadden was rostered to take annual leave on 18 August 2017;
- (ii) says Dr McPadden was rostered to work from 8.30am to 5.00pm and 5.30pm to 6.30pm on 24 August 2017;
- (iii) says Dr McPadden took sick leave on 28 August 2017 and 29 August 2017 and did not work his rostered hours from 8.30am to 5.00pm on those days;
- (iv) was on Professional Development Leave from 1 September 2017 to 2 September 2017;
- (v) says Dr McPadden was rostered to take annual leave on 20 September 2017;
- (vi) otherwise admits that during the second RGDA rotation, Dr McPadden was rostered to work as pleaded;
- (vii) further to (vii):
  - A. rosters were amended on occasion before being worked by Dr McPadden; and/or
  - B. Dr McPadden, on occasion, may have worked other roster days or patterns than those prescribed by the rosters;
- (b) Monash does not plead to paragraph 18V as it contains no allegation of material fact against it;
- (c) Latrobe does not plead to paragraph 18V as it contains no allegation of material fact against it.

#### Medical records

#### 18W. As to paragraph 18W:

- (a) Bairnsdale:
  - (i) admits that Dr McPadden's duties and responsibilities when providing medical services included completion of medical records;
  - (ii) Otherwise it denies the allegations in paragraph 18W.
- (b) Monash does not plead to paragraph 18W as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18W as it contains no allegation of material fact against it.

18X. As to paragraph 18X:

(a) Bairnsdale denies the allegations in paragraph 18X;

(b) Monash does not plead to paragraph 18X as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18X as it contains no allegation of material fact against it.

18Y.. As paragraph 18Y:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 18W above;

(ii) denies the allegations in paragraph 18Y.

(b) Monash does not plead to paragraph 18Y as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18Y as it contains no allegation of material fact against it.

18Z. As to paragraph 18Z:

(a) Bairnsdale:

(i) refers to and repeats paragraph 18F(a)(i)-(viii) hereof; and

(ii) otherwise denies the allegations in paragraph 18Z;

(b) Monash does not plead to paragraph 18Z as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18Z as it contains no allegation of material fact against it.

18AA. As to paragraph 18AA:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 18W to 18Z above;

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Bairnsdale Overtime Claim in relation to the overtime purportedly worked;

B. Dr McPadden has not provided particulars of any occasions on which he allegedly:

1) worked medical records overtime;

2) sought and received either advance or retrospective authorisation for such overtime;

3) made a Bairnsdale Overtime Claim for that medical records overtime; and

4) was subsequently not paid;

C. if Dr McPadden did not make a Bairnsdale Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:

1) Dr McPadden did not work such overtime;

2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) Dr McPadden was in attendance at the Bairnsdale Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 298 to 311 below;

(iii) otherwise denies the allegations in paragraph 18AA;

(b) Monash does not plead to paragraph 18AA as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18AA as it contains no allegation of material fact against it.

18AB. As to paragraph 18AB:

(a) Bairnsdale:

(i) says that if:

A. Dr McPadden had made a Bairnsdale Overtime Claim; and

B. the Bairnsdale Overtime Claim satisfied the criteria set out in the Bairnsdale Overtime Policy;

C. Bairnsdale would have considered and processed the Bairnsdale Overtime Claim in accordance with the Bairnsdale Overtime Policy;

(ii) otherwise denies the allegations in paragraph 18AB;

(b) Monash does not plead to paragraph 18AB as it contains no allegation of material fact against it;

(c) Latrobe does not plead to paragraph 18AB as it contains no allegation of material fact against it.

18AC. As to paragraph 18AC:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 18W to 18AB above; and

(ii) otherwise denies the allegations in paragraph 18AC;

(b) Monash does not plead to paragraph 18AC as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 18AC as it contains no allegation of material fact made against it.

18AD. As to paragraph 18AD:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 18W to 18AC above; and

(ii) otherwise denies the allegations in paragraph 18AD;

(b) Monash does not plead to paragraph 18AD as it contains no allegation of material fact made against it.

(c) Latrobe does not plead to paragraph 18AD as it contains no allegation of material fact made against it.

**D1 First Latrobe Emergency Department rotation – 16 April 2018 to 24 June 2018**

19. ~~The respondents admit paragraph 19.~~ As to paragraph 19:

(a) Monash and Latrobe admit the allegations therein;

(b) Bairnsdale does not plead to paragraph 19 as it contains no allegation of material fact against it.

Rosters

20. As to paragraph 20:

(a) Latrobe:

(i) admits that during the First Latrobe ED rotation, Dr McPadden was rostered to work as pleaded;

(ii) further to (i);

A. rosters were amended on occasion before being worked by Dr McPadden; and/or

B. Dr McPadden, on occasion, may have worked other days or roster patterns than those prescribed by the rosters;

~~(ii) says further that, in accordance with cl. 26.1.2 of the 2013 Agreement, as pleaded in paragraph 10 above, the First Latrobe ED rotation rosters factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 17(a) of the Defence;~~

(b) Monash does not plead to paragraph 20 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 20 as it contains no allegation of material fact against it.

#### Medical records overtime

21. As to paragraph 21:

(a) Latrobe:

(i) admits that Dr McPadden's duties and responsibilities when providing medical services included completion of medical records;

~~(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the First Latrobe ED rotation roster factored in and allowed time for the completion of medical records;~~

~~(iii)~~(ii) otherwise denies the allegations in paragraph 21;

(b) Monash does not plead to paragraph 21 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 21 as it contains no allegation of material fact against it.

22. As to paragraph 22:

(a) Latrobe:

(i) says that there were occasions where Dr McPadden was present at Latrobe Hospital during the First Latrobe ED rotation outside of his rostered ordinary working hours;

(ii) ~~says further that:~~

~~A. in accordance with cl. 32.3 of the 2013 Agreement, Latrobe implemented a protocol for the authorisation of and remuneration for unrostered overtime, being overtime in excess of rostered ordinary working hours that was required due to a demonstrable operational or clinical need that could not be provided in some other way (**Unrostered Overtime**);~~

#### **Particulars**

~~"Management of Overtime (Kronos) Protocol" dated 19 November 2015 (Latrobe Overtime Protocol)~~

~~B. any Doctor in Training who works Unrostered Overtime can submit a claim for authorisation and remuneration for that Unrostered Overtime (**Latrobe Overtime Claim**);~~

~~C. in accordance with the Latrobe Overtime Protocol, any Unrostered Overtime must be authorised either:~~

~~1) in advance of the Doctor in Training working the overtime by the Doctor in Training's General Manager (during business hours) or Hospital Co-ordinator (if after hours); or~~

~~2) retrospectively by submitting an Overtime Request Form signed by the Doctor in Training's Department Manager, Consultant on call or Hospital Co-ordinator to the HMO Manager for approval in the pay fortnight the overtime hours are worked, or at the latest, the subsequent fortnight. If a Latrobe Overtime Claim is not submitted in a timely way, payment may be refused;~~

#### **Particulars**

~~Latrobe Overtime Protocol at pages 1 and 2~~

~~D. in accordance with the Latrobe Overtime Protocol, Unrostered Overtime shall not be paid unless for exceptional situations, such as clinical emergencies;~~

**Particulars**

~~Latrobe Overtime Protocol at page 2~~

~~E. any Doctor in Training who works Unrostered Overtime must record such overtime in the Kronos system and submit a Latrobe Overtime Claim;~~

**Particulars**

~~Latrobe Overtime Protocol at page 2~~

~~F. on the proper construction of the Latrobe Overtime Protocol, authorisation must be express, and not implied;~~

~~G. Dr McPadden was aware of the Latrobe Overtime Protocol and Latrobe's approach to Unrostered Overtime;~~

**Particulars**

~~Dr McPadden's Employment Contract dated 7 March 2018.~~

~~Latrobe Regional Hospital 2018 Orientation Manual – Interns / HMOs / Registrars.~~

~~I. if Dr McPadden performed medical records overtime as pleaded in the Statement of Claim, he was able to submit a Latrobe Overtime Claim;~~

~~H. during the First Latrobe ED rotation, Dr McPadden submitted Latrobe Overtime Claims for Unrostered Overtime, which were approved and paid;~~

**Particulars**

~~The Latrobe Overtime Claims made by Dr McPadden and approved during the First Latrobe ED rotation included those set out in the table below:~~

<b>Date of claim</b>	<b>Period for which unrostered overtime paid</b>	<b>Total hours of overtime claimed</b>	<b>Date of approval</b>
6 May 2018	23.30 — 0.04	34 minutes	6 May 2018
13 May 2018	23.30 — 9.00	9 hours	13 May 2018
8 June 2018	15.30 — 23.30	8 hours	NK
19 June 2018	23.30 — 0.030	9 hours	NK

~~(iii)~~(ii) otherwise denies the allegations in paragraph 22.

(b) Monash does not plead to paragraph 22 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 22 as it contains no allegation of material fact against it.

23. As to paragraph 23:

(a) Latrobe:

(i) refers to and repeats paragraphs 21 and 22 above;

(ii) otherwise denies the allegations in paragraph 23;

(b) Monash does not plead to paragraph 23 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 23 as it contains no allegation of material fact against it.

24. As to paragraph 24:

(a) Latrobe says that:

(i) refers to and repeats paragraphs 21, 22 and 23 above; Latrobe had implemented a policy and its contents which dealt with the authorisation and

payment for overtime or excess unrostered hours worked by employees such as Dr McPadden;

Particulars

The Latrobe Overtime Policy was partly in writing in various documents provided to or available to Dr McPadden and was partly oral and advised to Dr McPadden at the commencement of his employment with Latrobe in his induction.

There was a Management of Overtime Kronos Policy that applied to junior medical staff including Dr McPadden, as amended from time to time, which stated that approval for overtime was to be sought prior to commencement of the overtime hours and approved by a general or unit manager or after hours the Hospital Coordinator and that for junior medical staff unrostered overtime for clinical emergencies was to be approved by the Department Manager, Consultant-on-call, Hospital Coordinator or HMO manager for approval.

Dr McPadden was advised at his induction that additional hours worked could only be performed when requested by a Consultant, Clinical Lead or Co-ordinator or Registrar or if there is a clinical need that could not be performed by another person and then the Additional Hours Claim Form was to be used.

The Additional Hours Claim Form directed that additional hours worked were to be authorised in advance of working them by the Unit Head, Consultant or Co-ordinator.

Further particulars will be provided prior to trial.

(ii) says that the Latrobe Overtime Policy and its contents applied to Dr McPadden:

A. As a term of his contract referred to in paragraph 3(b)(ii) hereof;

B. As a lawful and reasonable direction given to Dr McPadden by Latrobe:

1) through the Policy;

- 2) through the various documents provided to or available to Dr McPadden referred to in the particulars to paragraph 24(a)(i) above;
  - 3) through advice to Dr McPadden during his induction to Latrobe in or about 16 April 2018;
  - 4) through advice to Dr McPadden contained in the Latrobe Regional Hospital 2018 Orientation Manual; and/or
  - 5) through his required use of the Additional Hours Claim Form.
- (iii) the authorisation of hours within the meaning of Clause 32.2.1(b) of the 2013 Agreement required compliance with that Policy, the direction and/or the advice;
- (iv) in accordance with the Latrobe Overtime Policy, any Doctor in Training who works Unrostered Overtime can submit a claim for authorisation and remuneration for that Unrostered Overtime (**Latrobe Overtime Claim**);
- (v) in accordance with the Latrobe Overtime Policy, any Unrostered Overtime must be authorised either:
- 1) in advance of the Doctor in Training working the overtime by the Doctor in Training's General Manager (during business hours) or Hospital Co-ordinator (if after hours); or
  - 2) retrospectively by submitting an Overtime Request Form signed by the Doctor in Training's Department Manager, Consultant-on-call or Hospital Co-ordinator to the HMO Manager for approval in the pay fortnight the overtime hours are worked, or at the latest, the subsequent fortnight. If a Latrobe Overtime Claim is not submitted in a timely way, payment may be refused;

**Particulars**

Latrobe Overtime Policy at pages 1 and 2

- (vi) in accordance with the Latrobe Overtime Policy, Unrostered Overtime shall not be paid unless for exceptional situations, such as clinical emergencies;

**Particulars**

Latrobe Overtime Policy at page 2

(vii) any Doctor in Training who works Unrostered Overtime must record such overtime in the Kronos system and submit a Latrobe Overtime Claim;

**Particulars**

Latrobe Overtime Policy at page 2

(viii) if Dr McPadden performed medical records overtime as pleaded he was able to submit a Latrobe Overtime Claim;

(ix) on each occasion additional hours were to be worked, Dr McPadden was required to complete a form for the claiming of additional hours (which contained a lawful and reasonable direction that each additional hours claim was to be approved prospectively in advance of working any unrostered overtime by the Unit Head, Consultant or Hospital Coordinator);

(x) says further that:

- A. whether Dr McPadden was authorised to work any alleged medical records overtime (including whether Dr McPadden worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Latrobe Overtime Policy Protocol, Dr McPadden was required to either seek authorisation for any medical records overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
- C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided

particulars of the claims made by him (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;

~~(iii)~~(xi) otherwise denies the allegations in paragraph 24;

(b) Monash does not plead to paragraph 24 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 24 as it contains no allegation of material fact against it.

25. As to paragraph 25:

(a) Latrobe:

(i) refers to and repeats paragraphs 21 to 24 above;

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Latrobe Overtime Claim in relation to the overtime purportedly worked;

B. Dr McPadden has not provided particulars of any occasions on which he allegedly:

1) worked medical records overtime;

2) sought and received either advance or retrospective authorisation for such overtime;

3) made a Latrobe Overtime Claim for that medical records overtime; and

4) was subsequently not paid;

C. if Dr McPadden did not make a Latrobe Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:

1) Dr McPadden did not work such overtime;

2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) Dr McPadden was in attendance at the Latrobe Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 285 to 297 below;

(iii) otherwise denies the allegations in paragraph 25;

(b) Monash does not plead to paragraph 25 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 25 as it contains no allegation of material fact against it.

26. As to paragraph 26:

(a) Latrobe:

(i) says that if:

A. Dr McPadden had made a Latrobe Overtime Claim; and

B. the Latrobe Overtime Claim satisfied the criteria set out in the Latrobe Overtime ~~Protocol~~ Policy;

Latrobe would have considered and processed the Latrobe Overtime Claim in accordance with the Latrobe Overtime ~~Protocol~~ Policy;

(ii) otherwise denies the allegations in paragraph 26;

(b) Monash does not plead to paragraph 26 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 26 as it contains no allegation of material fact against it.

27. As to paragraph 27:

(a) Latrobe:

(i) refers to and repeats paragraphs 21 to 26 above; and

(ii) otherwise denies the allegations in paragraph 27;

(b) Monash does not plead to paragraph 27 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 27 as it contains no allegation of material fact made against it.

28. As to paragraph 28:

(a) Latrobe:

(i) refers to and repeats paragraphs 21 to 26 above; and

(ii) otherwise denies the allegations in paragraph 28;

(b) Monash does not plead to paragraph 28 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 28 as it contains no allegation of material fact made against it.

#### Handover

29. As to paragraph 29:

(a) Latrobe:

(i) admits that Dr McPadden's duties and responsibilities when providing medical services included conducting handover of patient information;

~~(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the First Latrobe ED rotation roster factored in and allowed time for the conducting of handover of patient information;~~

~~(iii)~~(ii) otherwise denies the allegations in paragraph 29;

(b) Monash does not plead to paragraph 29 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 29 as it contains no allegation of material fact against it.

30. As to paragraph 30:

(a) Latrobe:

(i) refers to and repeats paragraph 24(a) ~~sub-paragraphs 22(a)(i), 22(a)(ii)A to 22(a)(ii)F~~ above;

(ii) says further that if Dr McPadden performed handover overtime as pleaded in the Statement of Claim, he was able to submit a Latrobe Overtime Claim;

(iii) otherwise denies the allegations in paragraph 30;

(b) Monash does not plead to paragraph 30 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 30 as it contains no allegation of material fact against it.

31. As to paragraph 31:

(a) Latrobe:

(i) refers to and repeats paragraphs 29 and 30 above; and

(ii) otherwise denies the allegations in paragraph 31;

(b) Monash does not plead to paragraph 31 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 31 as it contains no allegation of material fact against it.

32. As to paragraph 32:

(a) Latrobe:

(i) refers to and repeats paragraphs 29, 30 and 31 above;

(ii) says that:

- A. whether Dr McPadden was authorised to work any alleged handover overtime (including whether Dr McPadden worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Latrobe Overtime Policy Protocol, Dr McPadden was required to either seek authorisation for any handover overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
- C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of handover overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 32;

(b) Monash does not plead to paragraph 32 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 32 as it contains no allegation of material fact against it.

33. As to paragraph 33:

(a) Latrobe:

(i) refers to and repeats paragraphs 29 to 32 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Latrobe Overtime Claim in relation to the overtime purportedly worked;

B. Dr McPadden has not provided particulars of any occasions on which he allegedly:

- 1) worked handover overtime;
- 2) sought and received either advance or retrospective authorisation for such overtime;
- 3) made a Latrobe Overtime Claim for that handover overtime; and
- 4) was subsequently not paid;

C. if Dr McPadden did not make a Latrobe Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:

- 1) Dr McPadden did not work such overtime;
- 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr McPadden was in attendance at the Latrobe Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 285 to 297 below;

(iii) otherwise denies the allegations in paragraph 33;

(b) Monash does not plead to paragraph 33 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 33 as it contains no allegation of material fact against it.

34. As to paragraph 34:

(a) Latrobe:

(i) says that if:

- A. Dr McPadden had made a Latrobe Overtime Claim; and
- B. the Latrobe Overtime Claim satisfied the criteria set out in the Latrobe Overtime ~~Protocool~~Policy,

Latrobe would have considered and processed the Latrobe Overtime Claim in accordance with the Latrobe Overtime ~~Protocool~~Policy;

- (ii) otherwise denies the allegations in paragraph 34;
- (b) Monash does not plead to paragraph 34 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 34 as it contains no allegation of material fact against it.

35. As to paragraph 35:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 29 to 34 above; and
  - (ii) otherwise denies the allegations in paragraph 35;
- (b) Monash does not plead to paragraph 35 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 35 as it contains no allegation of material fact against it.

36. As to paragraph 36:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 29 to 34 above; and
  - (ii) otherwise denies the allegations in paragraph 36;
- (b) Monash does not plead to paragraph 36 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 36 as it contains no allegation of material fact against it.

Medical emergencies

37. As to paragraph 37:

- (a) Latrobe denies that Dr McPadden's duties and responsibilities when providing medical services included attending to medical emergencies.

**Particulars**

Due to lack of relevant experience, Latrobe does not direct Doctors in Training to attend to medical emergencies.

- (b) Monash does not plead to paragraph 37 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 37 as it contains no allegation of material fact against it.

38. As to paragraph 38:

- (a) Latrobe:
  - (i) refers to and repeats paragraph 24(a) ~~sub-paragraphs 22(a)(i), 22(a)(ii)A to 22(a)(ii)F~~ and paragraph 37(a) above;
  - (ii) says further that if Dr McPadden performed medical emergency overtime as pleaded in the Statement of Claim, he was able to submit a Latrobe Overtime Claim;
  - (iii) otherwise denies the allegations in paragraph 38;
- (b) Monash does not plead to paragraph 38 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 38 as it contains no allegation of material fact against it.

39. As to paragraph 39:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 37 and 38 above; and

- (ii) otherwise denies the allegations in paragraph 39;
  - (b) Monash does not plead to paragraph 39 as it contains no allegation of material fact against it.
  - (c) Bairnsdale does not plead to paragraph 39 as it contains no allegation of material fact against it.
40. As to paragraph 40:
- (a) Latrobe:
    - (i) refers to and repeats paragraphs 37, 38 and 39 above;
    - (ii) says that:
      - A. whether Dr McPadden was authorised to work any alleged medical emergencies overtime (including whether Dr McPadden worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
      - B. further or alternatively, pursuant to the Latrobe Overtime Policy Protocol, Dr McPadden was required to either seek authorisation for any medical emergency overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
      - C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of medical emergency overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;
    - (iii) otherwise denies the allegations in paragraph 40;
  - (b) Monash does not plead to paragraph 40 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 40 as it contains no allegation of material fact against it.

41. As to paragraph 41:

(a) Latrobe:

(i) refers to and repeats paragraphs 37 to 40 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Latrobe Overtime Claim in relation to the overtime purportedly worked;
- B. Dr McPadden has not provided particulars of any occasions on which he allegedly:
  - 1) worked medical emergency overtime;
  - 2) sought and received either advance or retrospective authorisation for such overtime;
  - 3) made a Latrobe Overtime Claim for that medical emergency overtime; and
  - 4) was subsequently not paid;
- C. if Dr McPadden did not make a Latrobe Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:
  - 1) Dr McPadden did not work such overtime;
  - 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - 3) Dr McPadden was in attendance at the Latrobe Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 285 to 297 below;

(iii) otherwise denies the allegations in paragraph 41;

(b) Monash does not plead to paragraph 41 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 41 as it contains no allegation of material fact against it.

42. As to paragraph 42:

(a) Latrobe:

(i) says that if:

A. Dr McPadden had made a Latrobe Overtime Claim; and

B. the Latrobe Overtime Claim satisfied the criteria set out in the Latrobe Overtime ~~Protocol~~ Policy,

Latrobe would have considered and processed the Latrobe Overtime Claim in accordance with the Latrobe Overtime ~~Protocol~~ Policy;

(ii) otherwise denies the allegations in paragraph 42;

(b) Monash does not plead to paragraph 42 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 42 as it contains no allegation of material fact against it.

43. As to paragraph 43:

(a) Latrobe:

(i) refers to and repeats paragraphs 37 to 42 above; and

(ii) otherwise denies the allegations in paragraph 43;

(b) Monash does not plead to paragraph 43 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 43 as it contains no allegation of material fact against it.

44. As to paragraph 44:

(a) Latrobe:

(i) refers to and repeats paragraphs 37 to 42 above; and

(ii) otherwise denies the allegations in paragraph 44;

(b) Monash does not plead to paragraph 44 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 44 as it contains no allegation of material fact against it.

#### Other medical services

45. As to paragraph 45:

(a) Latrobe:

(i) admits that Dr McPadden's duties and responsibilities when providing medical services included undertaking specific tasks relating to patient care;

~~(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the First Latrobe ED rotation roster factored in and allowed time for the undertaking of specific tasks relating to patient care;~~

~~(iii)~~(ii) otherwise denies the allegations in paragraph 45;

(b) Monash does not plead to paragraph 45 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 45 as it contains no allegation of material fact against it.

46. As to paragraph 46:

- (a) Latrobe:
- (i) refers to and repeats paragraphs 21 to 26 ~~sub-paragraphs 22(a)(i), 22(a)(ii)A to 22(a)(ii)F~~ above;
  - (ii) says further that if Dr McPadden performed patient care overtime as pleaded in the Statement of Claim, he was able to submit a Latrobe Overtime Claim;
  - (iii) otherwise denies the allegations in paragraph 46;
- (b) Monash does not plead to paragraph 46 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 46 as it contains no allegation of material fact against it.

47. As to paragraph 47:

- (a) Latrobe:
- (i) refers to and repeats paragraphs 45 and 46 above; and
  - (ii) otherwise denies the allegations in paragraph 47;
- (b) Monash does not plead to paragraph 47 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 47 as it contains no allegation of material fact against it.

48. As to paragraph 48:

- (a) Latrobe:
- (i) refers to and repeats paragraphs 45, 46 and 47 above;
  - (ii) says that:
    - A. whether Dr McPadden was authorised to work any alleged patient care overtime (including whether Dr McPadden worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

B. further or alternatively, pursuant to the Latrobe Overtime Policy Protocol, Dr McPadden was required to either seek authorisation for any patient care overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;

C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of patient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 48;

(b) Monash does not plead to paragraph 48 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 48 as it contains no allegation of material fact against it.

49. As to paragraph 49:

(a) Latrobe:

(i) refers to and repeats paragraphs 45 to 48 above;

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Latrobe Overtime Claim in relation to the overtime purportedly worked;

B. Dr McPadden has not provided particulars of any occasions on which he allegedly:

1) worked patient care overtime;

- 2) sought and received either advance or retrospective authorisation for such overtime;
  - 3) made a Latrobe Overtime Claim for that patient care overtime; and
  - 4) was subsequently not paid;
- C. if Dr McPadden did not make a Latrobe Overtime Claim in respect of the alleged patient care overtime, then it ought be concluded that either:
- 1) Dr McPadden did not work such overtime;
  - 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - 3) Dr McPadden was in attendance at the Latrobe Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 285 to 297 below;
- (iii) otherwise denies the allegations in paragraph 49;
- (b) Monash does not plead to paragraph 49 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 49 as it contains no allegation of material fact against it.
50. As to paragraph 50:
- (a) Latrobe:
- (i) says that if:
    - A. Dr McPadden had made a Latrobe Overtime Claim; and
    - B. the Latrobe Overtime Claim satisfied the criteria set out in the Latrobe Overtime ~~Protocol~~ Policy,

Latrobe would have considered and processed the Latrobe Overtime Claim in accordance with the Latrobe Overtime ~~Protocol~~ Policy;

- (ii) otherwise denies the allegations in paragraph 50;
- (b) Monash does not plead to paragraph 50 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 50 as it contains no allegation of material fact against it.

51. As to paragraph 51:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 45 to 50 above; and
  - (ii) otherwise denies the allegations in paragraph 51;
- (b) Monash does not plead to paragraph 51 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 51 as it contains no allegation of material fact against it.

52. As to paragraph 52:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 45 to 50 above; and
  - (ii) otherwise denies the allegations in paragraph 52;
- (b) Monash does not plead to paragraph 52 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 52 as it contains no allegation of material fact against it.

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~~53. The respondents admit paragraph 53.~~

53. As to paragraph 53:

- (a) Monash and Latrobe admit the allegations therein;
- (b) Bairnsdale does not plead to paragraph 53 as it contains no allegation of material fact against it.

### Rosters

54. As to paragraph 54:

- (a) Latrobe:
  - (i) admits that during the Second Latrobe ED rotation, Dr McPadden was rostered to work as pleaded;
  - (ii) further to (i);
    - A. rosters were amended on occasion before being worked by Dr McPadden; and/ or
    - B. Dr McPadden, on occasion, may have worked other days or roster patterns than those prescribed by the rosters;
  - ~~(ii) says further that, in accordance with cl. 35.1(b) of the 2018 Agreement, as pleaded in paragraph 15 above, the Second Latrobe ED rotation rosters factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 17(a) of the Defence;~~
- (b) Monash does not plead to paragraph 54 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 54 as it contains no allegation of material fact against it.

### Medical records overtime

55. As to paragraph 55:

- (a) Latrobe:
  - (i) admits that Dr McPadden's duties and responsibilities when providing medical services included completion of medical records;

(ii) ~~says that in accordance with cl. 35.1(b) of the 2018 Agreement, the First Latrobe ED rotation roster factored in and allowed time for the completion of medical records;~~

~~(iii)~~(ii) otherwise denies the allegations in paragraph 55;

(b) Monash does not plead to paragraph 55 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 55 as it contains no allegation of material fact against it.

56. As to paragraph 56:

(a) Latrobe:

(i) says that there were occasions when Dr McPadden was present at Latrobe Hospital during the Second Latrobe ED rotation outside of his rostered hours;

(ii) refers to and repeats paragraph 24(a) ~~sub-paragraphs 22(a)(ii)A to 22(a)(ii)E~~ above;

(iii) says further that if Dr McPadden performed medical records overtime as pleaded in the Statement of Claim, he was able to submit a Latrobe Overtime Claim;

(iv) during the Second Latrobe ED rotation, Dr McPadden submitted Latrobe Overtime Claims for Unrostered Overtime, which were approved and paid;

#### **Particulars**

~~The Latrobe Overtime Claims made by Dr McPadden and approved during the Second Latrobe ED rotation included those set out in the table below:~~

<del>Date of claim</del>	<del>Period for which unrostered overtime paid</del>	<del>Total hours of overtime claimed</del>	<del>Date of approval</del>
<del>14 October 2018</del>	<del>23:30-02:00</del>	<del>2.5 hours</del>	<del>14 October 2018</del>
<del>21 October 2018</del>	<del>23:30-00:00</del>	<del>30 minutes</del>	<del>21 October 2018</del>

(v) otherwise denies the allegations in paragraph 56;

(b) Monash does not plead to paragraph 56 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 56 as it contains no allegation of material fact against it.

57. As to paragraph 57:

(a) Latrobe:

(i) refers to and repeats paragraphs 55 and 56 above; and

(ii) otherwise denies the allegations in paragraph 57;

(b) Monash does not plead to paragraph 57 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 57 as it contains no allegation of material fact against it.

58. As to paragraph 58:

(a) Latrobe:

(i) refers to and repeats paragraphs 55, 56 and 57 above;

(ii) says that:

- A. whether Dr McPadden was authorised to work any alleged medical records overtime (including whether Dr McPadden worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Latrobe Overtime Policy Protocol, Dr McPadden was required to either seek authorisation for any medical records overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
- C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the

demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 58;

(b) Monash does not plead to paragraph 58 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 58 as it contains no allegation of material fact against it.

59. As to paragraph 59:

(a) Latrobe:

(i) refers to and repeats paragraphs 57 to 58 above;

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Latrobe Overtime Claim in relation to the overtime purportedly worked;

B. Dr McPadden has not provided particulars of any occasions on which he allegedly:

1) worked medical records overtime;

2) sought and received either advance or retrospective authorisation for such overtime;

3) made a Latrobe Overtime Claim for that medical records overtime; and

4) was subsequently not paid;

C. if Dr McPadden did not make a Latrobe Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:

- 1) Dr McPadden did not work such overtime;
- 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr McPadden was in attendance at the Latrobe Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 285 to 297 below;

(iii) otherwise denies the allegations in paragraph 59;

(b) Monash does not plead to paragraph 59 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 59 as it contains no allegation of material fact against it.

60. As to paragraph 60:

(a) Latrobe:

(i) says that if:

A. Dr McPadden had made a Latrobe Overtime Claim; and

B. the Latrobe Overtime Claim satisfied the criteria set out in the Latrobe Overtime Policy Protocol,

Latrobe would have considered and processed the Latrobe Overtime Claim in accordance with the Latrobe Overtime Policy Protocol;

(ii) otherwise denies the allegations in paragraph 60;

(b) Monash does not plead to paragraph 60 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 60 as it contains no allegation of material fact against it.

61. As to paragraph 61:

(a) Latrobe:

(i) refers to and repeats paragraphs 55 to 60 above; and

(ii) otherwise denies the allegations in paragraph 61;

(b) Monash does not plead to paragraph 61 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 61 as it contains no allegation of material fact against it.

62. As to paragraph 62:

(a) Latrobe:

(i) refers to and repeats paragraphs 55 to 60 above; and

(ii) otherwise denies the allegations in paragraph 62;

(b) Monash does not plead to paragraph 62 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 62 as it contains no allegation of material fact against it.

### Handover

63. As to paragraph 63:

(a) Latrobe:

(i) admits that Dr McPadden's duties and responsibilities when providing medical services included conducting handover of patient information;

~~(ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second Latrobe ED rotation roster factored in and allowed time for the conducting of handover of patient information;~~

~~(iii)~~(ii) otherwise denies the allegations in paragraph 63;

(b) Monash does not plead to paragraph 63 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 63 as it contains no allegation of material fact against it.

64. As to paragraph 64:

(a) Latrobe:

(i) refers to and repeats sub-paragraphs 56(a)(i) and paragraph 24(a)-22(a)(ii)A to 22(a)(ii)F above;

(ii) says further that if Dr McPadden performed handover overtime as pleaded in the Statement of Claim, he was able to submit a Latrobe Overtime Claim;

(iii) otherwise denies the allegations in paragraph 64;

(b) Monash does not plead to paragraph 64 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 64 as it contains no allegation of material fact against it.

65. As to paragraph 65:

(a) Latrobe:

(i) refers to and repeats paragraphs 63 and 64 above; and

(ii) otherwise denies the allegations in paragraph 65;

(b) Monash does not plead to paragraph 65 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 65 as it contains no allegation of material fact against it.

66. As to paragraph 66:

(a) Latrobe:

- (i) refers to and repeats paragraphs 63, 64 and 65 above;
- (ii) says that:
  - A. whether Dr McPadden was authorised to work any alleged handover overtime (including whether Dr McPadden worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
  - B. further or alternatively, pursuant to the Latrobe Overtime Policy Protocol, Dr McPadden was required to either seek authorisation for any handover overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
  - C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of handover overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;
- (iii) otherwise denies the allegations in paragraph 66;
- (b) Monash does not plead to paragraph 66 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 66 as it contains no allegation of material fact against it.

67. As to paragraph 67:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 63 to 66 above;
  - (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Latrobe Overtime Claim in relation to the overtime purportedly worked;
  - B. Dr McPadden has not provided particulars of any occasions on which he allegedly:
    - 1) worked handover overtime;
    - 2) sought and received either advance or retrospective authorisation for such overtime;
    - 3) made a Latrobe Overtime Claim for that handover overtime; and
    - 4) was subsequently not paid;
  - C. if Dr McPadden did not make a Latrobe Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:
    - 1) Dr McPadden did not work such overtime;
    - 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
    - 3) Dr McPadden was in attendance at the Latrobe Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
  - D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 285 to 297 below;
- (iii) otherwise denies the allegations in paragraph 67;
- (b) Monash does not plead to paragraph 67 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 67 as it contains no allegation of material fact against it.

68. As to paragraph 68:

(a) Latrobe:

(i) says that if:

A. Dr McPadden had made a Latrobe Overtime Claim; and

B. the Latrobe Overtime Claim satisfied the criteria set out in the Latrobe Overtime-~~Protect~~ Policy,

Latrobe would have considered and processed the Latrobe Overtime Claim in accordance with the Latrobe Overtime-~~Protect~~ Policy;

(ii) otherwise denies the allegations in paragraph 68;

(b) Monash does not plead to paragraph 68 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 68 as it contains no allegation of material fact against it.

69. As to paragraph 69:

(a) Latrobe:

(i) refers to and repeats paragraphs 63 to 68 above; and

(ii) otherwise denies the allegations in paragraph 69;

(b) Monash does not plead to paragraph 69 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 69 as it contains no allegation of material fact against it.

70. As to paragraph 70:

(a) Latrobe:

(i) refers to and repeats paragraphs 63 to 68 above; and

(ii) otherwise denies the allegations in paragraph 70;

(b) Monash does not plead to paragraph 70 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 70 as it contains no allegation of material fact against it.

#### Medical emergencies

71. As to paragraph 71:

(a) Latrobe:

(i) denies that Dr McPadden's duties and responsibilities when providing medical services included attending to medical emergencies;

#### **Particulars**

Due to lack of relevant experience, Latrobe does not direct Doctors in Training to attend to medical emergencies.

(ii) otherwise denies the allegations in paragraph 71;

(b) Monash does not plead to paragraph 71 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 71 as it contains no allegation of material fact against it.

72. As to paragraph 72:

(a) Latrobe:

(i) refers to and repeats sub-paragraphs 56(a)(i) and paragraph 24(a) ~~22(a)(ii)A to 22(a)(ii)F~~ and paragraph 71(a) above;

(ii) says further that if Dr McPadden performed medical emergency overtime as pleaded in the Statement of Claim, he was able to submit a Latrobe Overtime Claim;

(iii) otherwise denies the allegations in paragraph 72;

(b) Monash does not plead to paragraph 72 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 72 as it contains no allegation of material fact against it.

73. As to paragraph 73:

(a) Latrobe:

- (i) refers to and repeats paragraphs 71 and 72 above; and
- (ii) otherwise denies the allegations in paragraph 73;

(b) Monash does not plead to paragraph 73 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 73 as it contains no allegation of material fact against it.

74. As to paragraph 74:

(a) Latrobe:

- (i) refers to and repeats paragraphs 71, 72 and 73 above;
- (ii) says that:

- A. whether Dr McPadden was authorised to work any alleged medical emergency overtime (including whether Dr McPadden worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Latrobe Overtime Policy Protocol, Dr McPadden was required to either seek authorisation for any medical emergency overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
- C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of medical emergency overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for

such overtime, nor provided particulars of the claims made by him (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 74;

(b) Monash does not plead to paragraph 74 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 74 as it contains no allegation of material fact against it.

75. As to paragraph 75:

(a) Latrobe:

(i) refers to and repeats paragraphs 71 to 74 above;

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Latrobe Overtime Claim in relation to the overtime purportedly worked;

B. Dr McPadden has not provided particulars of any occasions on which he allegedly:

1) worked medical emergency overtime;

2) sought and received either advance or retrospective authorisation for such overtime;

3) made a Latrobe Overtime Claim for that medical emergency overtime; and

4) was subsequently not paid;

C. if Dr McPadden did not make a Latrobe Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:

1) Dr McPadden did not work such overtime;

- 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr McPadden was in attendance at the Latrobe Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 285 to 297 below;

(iii) otherwise denies the allegations in paragraph 75;

(b) Monash does not plead to paragraph 75 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 75 as it contains no allegation of material fact against it.

76. As to paragraph 76:

(a) Latrobe:

(i) says that if:

A. Dr McPadden had made a Latrobe Overtime Claim; and

B. the Latrobe Overtime Claim satisfied the criteria set out in the Latrobe Overtime ~~Protocol~~ Policy,

Latrobe would have considered and processed the Latrobe Overtime Claim in accordance with the Latrobe Overtime ~~Protocol~~ Policy;

(ii) otherwise denies the allegations in paragraph 76;

(b) Monash does not plead to paragraph 76 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 76 as it contains no allegation of material fact against it.

77. As to paragraph 77:

(a) Latrobe:

(i) refers to and repeats paragraphs 71 to 76 above; and

(ii) otherwise denies the allegations in paragraph 77;

(b) Monash does not plead to paragraph 77 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 77 as it contains no allegation of material fact against it.

78. As to paragraph 78:

(a) Latrobe:

(i) refers to and repeats paragraphs 71 to 76 above; and

(ii) otherwise denies the allegations in paragraph 78;

(b) Monash does not plead to paragraph 78 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 78 as it contains no allegation of material fact against it.

#### Other medical services

79. As to paragraph 79:

(a) Latrobe:

(i) admits that Dr McPadden's duties and responsibilities when providing medical services included undertaking specific tasks relating to patient care;

~~(ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second Latrobe ED rotation roster factored in and allowed time for undertaking specific tasks relating to patient care;~~

~~(iii)~~(ii) otherwise denies the allegations in paragraph ~~7980~~;

(b) Monash does not plead to paragraph ~~79~~<sup>80</sup> as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 79 as it contains no allegation of material fact against it.

80. As to paragraph 80:

(a) Latrobe:

(i) refers to and repeats sub-paragraphs 56(a)(i) and paragraph 24(a) ~~22(a)(ii)A~~  
to ~~22(a)(ii)F~~ above;

(ii) says further that if Dr McPadden performed patient care overtime as pleaded in the Statement of Claim, he was able to submit a Latrobe Overtime Claim;

(iii) otherwise denies the allegations in paragraph 80;

(b) Monash does not plead to paragraph 80 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 80 as it contains no allegation of material fact against it.

81. As to paragraph 81:

(a) Latrobe:

(i) refers to and repeats paragraphs 79 and 80 above; and

(ii) otherwise denies the allegations in paragraph 81;

(b) Monash does not plead to paragraph 81 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 81 as it contains no allegation of material fact against it.

82. As to paragraph 82:

(a) Latrobe:

(i) refers to and repeats paragraphs 79, 80 and 81 above;

(ii) says that:

- A. whether Dr McPadden was authorised to work any alleged patient care overtime (including whether Dr McPadden worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Latrobe Overtime ~~Protocol~~ Policy, Dr McPadden was required to either seek authorisation for any patient care overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
- C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of patient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 82;

(b) Monash does not plead to paragraph 82 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 82 as it contains no allegation of material fact against it.

83. As to paragraph 83:

(a) Latrobe:

(i) refers to and repeats paragraphs 79 to 82 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Latrobe Overtime Claim in relation to the overtime purportedly worked;

B. Dr McPadden has not provided particulars of any occasions on which he allegedly:

- 1) worked patient care overtime;
- 2) sought and received either advance or retrospective authorisation for such overtime;
- 3) made a Latrobe Overtime Claim for that patient care overtime; and
- 4) was subsequently not paid;

C. if Dr McPadden did not make a Latrobe Overtime Claim in respect of the alleged patient care overtime, then it ought be concluded that either:

- 1) Dr McPadden did not work such overtime;
- 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr McPadden was in attendance at the Latrobe Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 285 to 297 below;

(iii) otherwise denies the allegations in paragraph 83;

(b) Monash does not plead to paragraph 83 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 83 as it contains no allegation of material fact against it.

84. As to paragraph 84:

(a) Latrobe:

(i) says that if:

- A. Dr McPadden had made a Latrobe Overtime Claim; and
- B. the Latrobe Overtime Claim satisfied the criteria set out in the Latrobe Overtime ~~Protocool~~Policy,

Latrobe would have considered and processed the Latrobe Overtime Claim in accordance with the Latrobe Overtime ~~Protocool~~Policy;

- (ii) otherwise denies the allegations in paragraph 84;
- (b) Monash does not plead to paragraph 84 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 84 as it contains no allegation of material fact against it.

85. As to paragraph 85:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 80 to 84 above; and
  - (ii) otherwise denies the allegations in paragraph 85;
- (b) Monash does not plead to paragraph 85 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 85 as it contains no allegation of material fact against it.

86. As to paragraph 86:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 80 to 84 above; and
  - (ii) otherwise denies the allegations in paragraph 86;
- (b) Monash does not plead to paragraph 86 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 86 as it contains no allegation of material fact against it.

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87. As to paragraph 87:

- (a) Monash admits the allegations therein;
- (b) Latrobe does not plead to paragraph 87 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 87 as it contains no allegation of material fact against it.

Rosters

88. As to paragraph 88:

- (a) Monash:
  - (i) admits that during the First Dandenong ED rotation, Dr McPadden was rostered to work as pleaded;
  - (ii) further to (i);
    - A. rosters were amended on occasion before being worked by Dr McPadden; and/or
    - B. Dr McPadden, on occasion, may have worked other days roster patterns than those prescribed by the rosters;
  - ~~(ii) says further that, in accordance with cl. 35.1(b) of the 2018 Agreement, as pleaded in paragraph 15 above, the First Dandenong ED rotation rosters factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 17(a) of the Defence;~~
- (b) Latrobe does not plead to paragraph 88 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 88 as it contains no allegation of material fact against it.

Medical records overtime

89. As to paragraph 89:

(a) Monash:

(i) admits that Dr McPadden's duties and responsibilities when providing medical services included completion of medical records;

~~(ii) — says that in accordance with cl. 35.1(b) of the 2018 Agreement, the First Dandenong ED rotation roster factored in and allowed time for the completion of medical records;~~

~~(iii)~~(ii) otherwise denies the allegations in paragraph 89;

(b) Latrobe does not plead to paragraph 89 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 89 as it contains no allegation of material fact against it.

90. As to paragraph 90:

(a) Monash says:

(i) Monash had implemented a policy and its contents which dealt with the authorisation and payment for overtime or excess unrostered hours worked by employees such as Dr McPadden.

### **Particulars**

The Monash Overtime Policy was partly in writing in various documents provided to or available to Dr McPadden and was partly oral and advised to Dr McPadden at the commencement of his employment with Monash in his orientation and induction.

There was an unrostered overtime payment memorandum that required Junior Medical Staff to obtain prospective approval of unrostered overtime from their Unit Heads during business hours or the on-call consultant after hours. On occasions where overtime was performed due to a demonstrable clinical need and authorisation of the overtime could not reasonably have been made in advance a claim for retrospective authorisation of overtime could be submitted within the pay fortnight.

Dr McPadden was advised at his induction that unrostered overtime would be accepted if a claim was submitted using the Additional Hours Overtime Form which had been approved by the Unit Head. Where overtime was performed due to a demonstrable clinical need, and authorisation could not be obtained in advance, a retrospective claim could be made within the fortnight.

The Additional Hours Claim Form directed that additional hours claims must be approved prospectively in advance of working the overtime by the Unit Head. If prospective approval was unable to be obtained, then the form had to be completed and provided to the Program Director.

Further particulars will be provided prior to trial.

(ii) The Monash Overtime Policy applied to Dr McPadden:

A. As a term of his contract referred to in paragraph 3(b)(ii) hereof;

B. As a lawful and reasonable direction given to Dr McPadden by Monash:

1) through the Policy;

2) through advice to Dr McPadden during his induction to Monash in or about February 2018;

3) through advice to Dr McPadden contained in the Junior Medical Staff Orientation;

4) through advice in the Unrostered Overtime Payment Memorandums; and

5) through the Additional Hours Claim Form.

(iii) the authorisation of hours within the meaning of Clause 32.2.1(b) of the 2013 Agreement required compliance with that Policy, the direction and/or the advice.

(iv) in accordance with the Monash Overtime Policy, any Doctor in Training who works Unrostered Overtime can submit a claim for authorisation and remuneration for that Unrostered Overtime (**Monash Overtime Claim**);

(v) in accordance with the Monash Overtime Policy, any Unrostered Overtime must be authorised either:

- 1) in advance of the Doctor in Training working the overtime verbally by the Doctor in Training's Medical Unit Head (during business hours) or Consultant on call (if after hours) and by providing an explanation of the need to work additional hours; or
- 2) retrospectively by submitting an Additional Hours Claim Form authorised by the Medical Unit Head and reviewed by the Program Medical Director for approval at the first available occasion and in the pay fortnight the overtime hours are worked.

**Particulars**

"Monash Doctors - Junior Medical Staff: Unrostered Overtime / Additional Hours & On-call / Recall Authorisation & Payment Procedure" dated 18 March 2013, as amended from time to time (Monash Overtime Policy), pages 1 and 2.

(vi) any Doctor in Training who works Unrostered Overtime can submit a JMS Additional Hours Claim Form to the Monash Doctors Workforce Office or the Kronos Manager for authorisation of and payment for that Unrostered Overtime (Monash Overtime Claim);

**Particulars**

Monash Overtime Policy at page 1, section headed "This procedure applies in the following setting" and at paragraph 3a; page 2, paragraph 2.1.

~~(a) — Monash:~~

~~(i) — says that there were occasions where Dr McPadden was present at Dandenong Hospital during the First Monash ED rotation outside of his rostered ordinary working hours;~~

~~(ii) — says further that:~~

A. ~~in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Monash implemented a protocol for the authorisation of and remuneration for Unrostered Overtime;~~

**Particulars**

~~"Monash Doctors—Junior Medical Staff: Unrostered Overtime / Additional Hours & On-call / Recall Authorisation & Payment Procedure" dated 18 March 2013, as amended from time to time (**Monash Overtime Protocol**).~~

B. ~~in accordance with the Monash Overtime Protocol, any Unrostered Overtime must be authorised either:~~

- ~~1) verbally in advance of the Doctor in Training working the overtime by the Doctor in Training's Medical Unit Head (during business hours) or On Call Consultant (if after hours); or~~
- ~~2) retrospectively by forwarding a completed JMS Additional Hours Claim form to the Medical Head Unit for approval and signature on the first occasion possible after the overtime hours were worked, and on no occasion later than the completion of that pay fortnight.~~

**Particulars**

~~Monash Overtime Protocol on page 1 at paragraph 1 and on page 2 at paragraph 1.1 and 2.1~~

C. ~~any Doctor in Training who works Unrostered Overtime can submit a JMS Additional Hours Claim form to the Monash Doctors Workforce Office or the Kronos Manager for authorisation of and payment for that Unrostered Overtime (**Monash Overtime Claim**);~~

**Particulars**

~~Monash Overtime Protocol at page 1, section headed "This procedure applies in the following setting" and at paragraph 3a; page 2, paragraph 2.1~~

D. ~~on the proper construction of the Monash Overtime Protocol, authorisation must be express, and not implied;~~

~~E.— Dr McPadden was aware of the Monash Overtime Protocol and Monash's approach to Unrostered Overtime;~~

**Particulars**

~~1) — Dr McPadden's Employment Contracts dated 30 November 2017 and 7 January 2019.~~

~~2) — <https://monashdoctors.org/procedures-forms-2>~~

~~3) — Orientation in around February 2018~~

~~F.— if Dr McPadden performed medical records overtime as pleaded in the Statement of Claim, he was able to submit a Monash Overtime Claim;~~

~~(iii)(vi) otherwise denies the allegations in paragraph 90;~~

(b) Latrobe does not plead to paragraph 90 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 90 as it contains no allegation of material fact against it.

91. As to paragraph 91:

(a) Monash:

(i) refers to and repeats paragraphs 89 and 90 above;

(ii) otherwise denies the allegations in paragraph 91;

(b) Latrobe does not plead to paragraph 91 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 91 as it contains no allegation of material fact against it.

92. As to paragraph 92:

(a) Monash:

(i) refers to and repeats paragraphs 89, 90 and 91 above;

(ii) says that:

- A. whether Dr McPadden was authorised to work any alleged medical records overtime (including whether Dr McPadden worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Monash Overtime ~~Protocol~~ Policy, Dr McPadden was required to either seek verbal authorisation for any medical records overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 92;

(b) Latrobe does not plead to paragraph 92 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 92 as it contains no allegation of material fact against it.

93. As to paragraph 93:

(a) Monash:

(i) refers to and repeats paragraphs 89 to 92 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Monash Overtime Claim in relation to the overtime purportedly worked;

B. Dr McPadden has not provided particulars of any occasions on which he allegedly:

- 1) worked medical records overtime;
- 2) sought and received either advance or retrospective authorisation for such overtime;
- 3) made a Monash Overtime Claim for that medical records overtime; and
- 4) was subsequently not paid;

C. if Dr McPadden did not make a Monash Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:

- 1) Dr McPadden did not work such overtime;
- 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr McPadden was in attendance at the Dandenong Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 272 to 284 below;

(iii) otherwise denies the allegations in paragraph 93;

(b) Latrobe does not plead to paragraph 93 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 93 as it contains no allegation of material fact against it.

94. As to paragraph 94:

(a) Monash:

(i) says that if:

A. Dr McPadden had made a Monash Overtime Claim; and

B. the Monash Overtime Claim satisfied the criteria set out in the Monash Overtime-~~Protocol~~ Policy,

Monash would have considered and processed the Monash Overtime Claim in accordance with the Monash Overtime-~~Protocol~~ Policy,

(ii) otherwise denies the allegations in paragraph 94;

(b) Latrobe does not plead to paragraph 94 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 94 as it contains no allegation of material fact against it.

95. As to paragraph 95:

(a) Monash:

(i) refers to and repeats paragraphs 91 to 94 above; and

(ii) otherwise denies the allegations in paragraph 95;

(b) Latrobe does not plead to paragraph 95 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 95 as it contains no allegation of material fact against it.

96. As to paragraph 96:

(a) Monash:

(i) refers to and repeats paragraphs 91 to 94 above; and

(ii) otherwise denies the allegations in paragraph 96;

(b) Latrobe does not plead to paragraph 96 as it contains no allegation of material fact made against it.

- (c) Bairnsdale does not plead to paragraph 96 as it contains no allegation of material fact against it.

Handover

97. As to paragraph 97:

(a) Monash:

(i) admits that Dr McPadden's duties and responsibilities when providing medical services included conducting handover of patient information;

~~(ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the First Dandenong ED rotation roster factored in and allowed time for conducting handover of patient information;~~

~~(iii)~~(ii) otherwise denies the allegations in paragraph 97;

(b) Latrobe does not plead to paragraph 97 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 97 as it contains no allegation of material fact against it.

98. As to paragraph 98:

(a) Monash:

(i) refers to and repeats sub-paragraphs 90(a)(i) and 90(a)(ii)A to 90(a)(ii)E above;

(ii) says further that if Dr McPadden performed handover overtime as pleaded in the Statement of Claim, he was able to submit a Monash Overtime Claim;

(iii) otherwise denies the allegations in paragraph 98;

(b) Latrobe does not plead to paragraph 98 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 98 as it contains no allegation of material fact against it.

99. As to paragraph 99:

- (a) Monash:
  - (i) refers to and repeats paragraphs 97 and 98 above; and
  - (ii) otherwise denies the allegations in paragraph 99;
- (b) Latrobe does not plead to paragraph 99 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 99 as it contains no allegation of material fact against it.

100. As to paragraph 100:

- (a) Monash:
  - (i) refers to and repeats paragraphs 97, 98 and 99 above;
  - (ii) says that:
    - A. whether Dr McPadden was authorised to work any alleged handover overtime (including whether Dr McPadden worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
    - B. further or alternatively, pursuant to the Monash Overtime Policy Protocol, Dr McPadden was required to either seek verbal authorisation for any handover overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime hours were worked and on no occasion later than the completion of that pay fortnight;
    - C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of handover overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 100;
- (b) Latrobe does not plead to paragraph 100 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 100 as it contains no allegation of material fact against it.

101. As to paragraph 101:

- (a) Monash:
  - (i) refers to and repeats paragraphs 97 to 100 above;
  - (ii) says further that:
    - A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Monash Overtime Claim in relation to the overtime purportedly worked;
    - B. Dr McPadden has not provided particulars of any occasions on which he allegedly:
      - 1) worked handover overtime;
      - 2) sought and received either advance or retrospective authorisation for such overtime;
      - 3) made a Monash Overtime Claim for that handover overtime; and
      - 4) was subsequently not paid;
    - C. if Dr McPadden did not make a Monash Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:
      - 1) Dr McPadden did not work such overtime;
      - 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) Dr McPadden was in attendance at the Dandenong Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 272 to 284 below;

(iii) otherwise denies the allegations in paragraph 101;

(b) Latrobe does not plead to paragraph 101 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 101 as it contains no allegation of material fact against it.

102. As to paragraph 102:

(a) Monash:

(i) says that if:

A. Dr McPadden had made a Monash Overtime Claim; and

B. the Monash Overtime Claim satisfied the criteria set out in the Monash Overtime-~~Protocol~~ Policy,

Monash would have considered and processed the Monash Overtime Claim in accordance with the Monash Overtime-~~Protocol~~ Policy,

(ii) otherwise denies the allegations in paragraph 102;

(b) Latrobe does not plead to paragraph 102 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 102 as it contains no allegation of material fact against it.

103. As to paragraph 103:

(a) Monash:

(i) refers to and repeats paragraphs 97 to 102 above; and

- (ii) otherwise denies the allegations in paragraph 103;
- (b) Latrobe does not plead to paragraph 103 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 103 as it contains no allegation of material fact against it.

104. As to paragraph 104:

- (a) Monash:
  - (i) refers to and repeats paragraphs 97 to 102 above; and
  - (ii) otherwise denies the allegations in paragraph 104;
- (b) Latrobe does not plead to paragraph 104 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 104 as it contains no allegation of material fact against it.

#### Medical emergencies

105. As to paragraph 105:

- (a) Monash:
  - (i) denies that Dr McPadden's duties and responsibilities when providing medical services included attending to medical emergencies;

#### **Particulars**

Due to lack of relevant experience, Monash does not direct Doctors in Training to attend to medical emergencies.

- (ii) otherwise denies the allegations in paragraph 105;
- (b) Latrobe does not plead to paragraph 105 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 105 as it contains no allegation of material fact against it.

106. As to paragraph 106:

- (a) Monash:
  - (i) refers to and repeats sub-paragraphs 90(a)(i) and 90(a)(ii)A to 90(a)(ii)E and paragraph 105(a) above;
  - (ii) says further that if Dr McPadden performed medical emergency overtime as pleaded in the Statement of Claim, he was able to submit a Monash Overtime Claim;
  - (iii) otherwise denies the allegations in paragraph 106;
- (b) Latrobe does not plead to paragraph 106 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 106 as it contains no allegation of material fact against it.

107. As to paragraph 107:

- (a) Monash:
  - (i) refers to and repeats paragraphs 105 and 106 above; and
  - (ii) otherwise denies the allegations in paragraph 107;
- (b) Latrobe does not plead to paragraph 107 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 107 as it contains no allegation of material fact against it.

108. As to paragraph 108:

- (a) Monash:
  - (i) refers to and repeats paragraphs 105, 106 and 107 above;
  - (ii) says that:
    - A. whether Dr McPadden was authorised to work any alleged medical emergencies overtime (including whether Dr McPadden worked the

alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- B. further or alternatively, pursuant to the Monash Overtime Policy Protocol, Dr McPadden was required to either seek verbal authorisation for any medical emergency overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime as soon as possible after the overtime hours were worked and on no occasion after the completion of that pay fortnight;
- C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of medical emergencies overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 108;

(b) Latrobe does not plead to paragraph 108 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 108 as it contains no allegation of material fact against it.

109. As to paragraph 109:

(a) Monash:

(i) refers to and repeats paragraphs 105 to 108 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Monash Overtime Claim in relation to the overtime purportedly worked;
- B. Dr McPadden has not provided particulars of any occasions on which he allegedly:

- 1) worked medical emergency overtime;
  - 2) sought and received either advance or retrospective authorisation for such overtime;
  - 3) made a Monash Overtime Claim for that medical emergency overtime; and
  - 4) was subsequently not paid;
- C. if Dr McPadden did not make a Monash Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:
- 1) Dr McPadden did not work such overtime;
  - 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - 3) Dr McPadden was in attendance at the Dandenong Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 272 to 284 below;
- (iii) otherwise denies the allegations in paragraph 109;
- (b) Latrobe does not plead to paragraph 109 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 109 as it contains no allegation of material fact against it.

110. As to paragraph 110:

- (a) Monash:
  - (i) says that if:

- A. Dr McPadden had made a Monash Overtime Claim; and
- B. the Monash Overtime Claim satisfied the criteria set out in the Monash Overtime-~~Protect~~ Policy,

Monash would have considered and processed the Monash Overtime Claim in accordance with the Monash Overtime-~~Protect~~ Policy,

- (ii) otherwise denies the allegations in paragraph 110;
- (b) Latrobe does not plead to paragraph 110 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 110 as it contains no allegation of material fact against it.

111. As to paragraph 111:

- (a) Monash:
  - (i) refers to and repeats paragraphs 105 to 110 above; and
  - (ii) otherwise denies the allegations in paragraph 111;
- (b) Latrobe does not plead to paragraph 111 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 111 as it contains no allegation of material fact against it.

112. As to paragraph 112:

- (a) Monash:
  - (i) refers to and repeats paragraphs 105 to 110 above; and
  - (ii) otherwise denies the allegations in paragraph 112;
- (b) Latrobe does not plead to paragraph 112 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 112 as it contains no allegation of material fact against it.

Other medical services

113. As to paragraph 113:

- (a) Monash:
  - (i) admits that Dr McPadden's duties and responsibilities when providing medical services included undertaking specific tasks relating to patient care;
  - ~~(ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the First Dandenong ED rotation roster factored in and allowed time for undertaking specific tasks relating to patient care;~~
  - (iii) otherwise denies the allegations in paragraph 113;
- (b) Latrobe does not plead to paragraph 113 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 113 as it contains no allegation of material fact against it.

114. As to paragraph 114:

- (a) Monash:
  - (i) refers to and repeats sub-paragraphs 90(a)(i) and 90(a)(ii)A to 90(a)(ii)E above;
  - (ii) says further that if Dr McPadden performed patient care overtime as pleaded in the Statement of Claim, he was able to submit a Monash Overtime Claim;
  - (iii) otherwise denies the allegations in paragraph 114;
- (b) Latrobe does not plead to paragraph 114 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 114 as it contains no allegation of material fact against it.

115. As to paragraph 115:

- (a) Monash:

- (i) refers to and repeats paragraphs 113 and 114 above; and
  - (ii) otherwise denies the allegations in paragraph 115;
- (b) Latrobe does not plead to paragraph 115 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 115 as it contains no allegation of material fact against it.

116. As to paragraph 116:

- (a) Monash:
  - (i) refers to and repeats paragraphs 113, 114 and 115 above;
  - (ii) says that:
    - A. whether Dr McPadden was authorised to work any alleged patient care overtime (including whether Dr McPadden worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
    - B. further or alternatively, pursuant to the Monash Overtime ~~Protocol~~ Policy, Dr McPadden was required to either seek verbal authorisation for any patient care overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime as soon as possible after the overtime hours were worked and on no occasion after the completion of that pay fortnight;
    - C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of patient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;
  - (iii) otherwise denies the allegations in paragraph 116;

(b) Latrobe does not plead to paragraph 116 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 116 as it contains no allegation of material fact against it.

117. As to paragraph 117:

(a) Monash:

(i) refers to and repeats paragraphs 113 to 116 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Monash Overtime Claim in relation to the overtime purportedly worked;
- B. Dr McPadden has not provided particulars of any occasions on which he allegedly:
  - 1) worked patient care overtime;
  - 2) sought and received either advance or retrospective authorisation for such overtime;
  - 3) made a Monash Overtime Claim for that patient care overtime; and
  - 4) was subsequently not paid;
- C. if Dr McPadden did not make a Monash Overtime Claim in respect of the alleged patient care overtime, then it ought be concluded that either:
  - 1) Dr McPadden did not work such overtime;
  - 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - 3) Dr McPadden was in attendance at the Dandenong Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 272 to 284 below;

(iii) otherwise denies the allegations in paragraph 117;

(b) Latrobe does not plead to paragraph 117 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 117 as it contains no allegation of material fact against it.

118. As to paragraph 118:

(a) Monash:

(i) says that if:

A. Dr McPadden had made a Monash Overtime Claim; and

B. the Monash Overtime Claim satisfied the criteria set out in the Monash Overtime-~~Protect~~ Policy,

Monash would have considered and processed the Monash Overtime Claim in accordance with the Monash Overtime-~~Protect~~ Policy,

(ii) otherwise denies the allegations in paragraph 118;

(b) Latrobe does not plead to paragraph 118 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 118 as it contains no allegation of material fact against it.

119. As to paragraph 119:

(a) Monash:

(i) refers to and repeats paragraphs 113 to 118 above; and

(ii) otherwise denies the allegations in paragraph 119;

(b) Latrobe does not plead to paragraph 119 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 119 as it contains no allegation of material fact against it.

120. As to paragraph 120:

(a) Monash:

(i) refers to and repeats paragraphs 113 to 118 above; and

(ii) otherwise denies the allegations in paragraph 120;

(b) Latrobe does not plead to paragraph 120 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 120 as it contains no allegation of material fact against it.

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121. As to paragraph 121:

(a) Monash admits the allegations therein;

(b) Latrobe does not plead to paragraph 121 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 121 as it contains no allegation of material fact against it.

Rosters

122. As to paragraph 122:

(a) Monash:

(i) admits that during the Second Dandenong ED rotation, Dr McPadden was rostered to work as pleaded;

(ii) further to (i);

A. rosters were amended on occasion before being worked by Dr McPadden; and/or

B. Dr McPadden, on occasion, may have worked other days or roster patterns than those prescribed by the rosters;

~~(iii) says further that, in accordance with cl. 35.1(b) of the 2018 Agreement, as pleaded in paragraph 15 above, the Second Dandenong ED rotation rosters factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 17(a) of the Defence;~~

(b) Latrobe does not plead to paragraph 122 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 122 as it contains no allegation of material fact against it.

#### Medical records overtime

123. As to paragraph 123:

(a) Monash:

(i) admits that Dr McPadden's duties and responsibilities when providing medical services included completion of medical records;

~~(ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second Dandenong ED rotation roster factored in and allowed time for the completion of medical records;~~

(iii) otherwise denies the allegations in paragraph 123;

(b) Latrobe does not plead to paragraph 123 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 123 as it contains no allegation of material fact against it.

124. As to paragraph 124:

(a) Monash:

- (i) says that there were occasions where Dr McPadden was present at Dandenong Hospital during the Second Monash ED rotation outside of his rostered ordinary working hours;
  - (ii) refers to and repeats sub-paragraphs 90(a)(ii)A to 90(a)(ii)E above;
  - (iii) says further that if Dr McPadden performed medical records overtime as pleaded in the Statement of Claim, he was able to submit a Monash Overtime Claim;
  - (iv) otherwise denies the allegations in paragraph 124;
- (b) Latrobe does not plead to paragraph 124 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 124 as it contains no allegation of material fact against it.

125. As to paragraph 125:

- (a) Monash:
  - (i) refers to and repeats paragraphs 123 and 124 above;
  - (ii) otherwise denies the allegations in paragraph 125;
- (b) Latrobe does not plead to paragraph 125 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 125 as it contains no allegation of material fact against it.

126. As to paragraph 126:

- (a) Monash:
  - (i) refers to and repeats paragraphs 123, 124 and 125 above;
  - (ii) says that:
    - A. whether Dr McPadden was authorised to work any alleged medical records overtime (including whether Dr McPadden worked the alleged

overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- B. further or alternatively, pursuant to the Monash Overtime Policy Protocol, Dr McPadden was required to either seek verbal authorisation for any medical records overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime hours were worked and on no occasion later than the completion of that pay fortnight;
- C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 126;

(b) Latrobe does not plead to paragraph 126 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 126 as it contains no allegation of material fact against it.

127. As to paragraph 127:

(a) Monash:

(i) refers to and repeats paragraphs 123 to 126 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Monash Overtime Claim in relation to the overtime purportedly worked;
- B. Dr McPadden has not provided particulars of any occasions on which he allegedly:

- 1) worked medical records overtime;
  - 2) sought and received either advance or retrospective authorisation for such overtime;
  - 3) made a Monash Overtime Claim for that medical records overtime; and
  - 4) was subsequently not paid;
- C. if Dr McPadden did not make a Monash Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
- 1) Dr McPadden did not work such overtime;
  - 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - 3) Dr McPadden was in attendance at the Dandenong Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 272 to 284 below;
- (iii) otherwise denies the allegations in paragraph 127;
- (b) Latrobe does not plead to paragraph 127 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 127 as it contains no allegation of material fact against it.

128. As to paragraph 128:

- (a) Monash:
  - (i) says that if:
    - A. Dr McPadden had made a Monash Overtime Claim; and

B. the Monash Overtime Claim satisfied the criteria set out in the Monash Overtime-~~Protocol~~ Policy,

Monash would have considered and processed the Monash Overtime Claim in accordance with the Monash Overtime-~~Protocol~~ Policy,

(ii) otherwise denies the allegations in paragraph 128;

(b) Latrobe does not plead to paragraph 128 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 128 as it contains no allegation of material fact against it.

129. As to paragraph 129:

(a) Monash:

(i) refers to and repeats paragraphs 123 to 128 above; and

(ii) otherwise denies the allegations in paragraph 129;

(b) Latrobe does not plead to paragraph 129 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 129 as it contains no allegation of material fact against it.

130. As to paragraph 130:

(a) Monash:

(i) refers to and repeats paragraphs 123 to 128 above; and

(ii) otherwise denies the allegations in paragraph 130;

(b) Latrobe does not plead to paragraph 130 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 130 as it contains no allegation of material fact against it.

Handover

131. As to paragraph 131:

- (a) Monash:
  - (i) admits that Dr McPadden's duties and responsibilities when providing medical services included conducting handover of patient information;
  - (ii) ~~says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second Dandenong ED rotation roster factored in and allowed time for conducting handover of patient information;~~
  - (iii) otherwise denies the allegations in paragraph 131;
- (b) Latrobe does not plead to paragraph 131 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 131 as it contains no allegation of material fact against it.

132. As to paragraph 132:

- (a) Monash:
  - (i) refers to and repeats sub-paragraphs 124(a)(i) and 90(a)(ii) ~~A to 90(a)(ii) E~~ above;
  - (ii) says further that if Dr McPadden performed handover overtime as pleaded in the Statement of Claim, he was able to submit a Monash Overtime Claim;
  - (iii) otherwise denies the allegations in paragraph 132;
- (b) Latrobe does not plead to paragraph 132 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 132 as it contains no allegation of material fact against it.

133. As to paragraph 133:

- (a) Monash:
  - (i) refers to and repeats paragraphs 131 and 132 above; and

- (ii) otherwise denies the allegations in paragraph 133;
- (b) Latrobe does not plead to paragraph 133 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 133 as it contains no allegation of material fact against it.

134. As to paragraph 134:

- (a) Monash:
  - (i) refers to and repeats paragraphs 131, 132 and 133 above;
  - (ii) says that:
    - A. whether Dr McPadden was authorised to work any alleged handover overtime (including whether Dr McPadden worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
    - B. further or alternatively, pursuant to the Monash Overtime Policy Protocol, Dr McPadden was required to either seek verbal authorisation for any handover overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime hours were worked and on no occasion later than the completion of that pay fortnight;
    - C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of handover overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;
  - (iii) otherwise denies the allegations in paragraph 134;
- (b) Latrobe does not plead to paragraph 134 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 134 as it contains no allegation of material fact against it.

135. As to paragraph 135:

(a) Monash:

(i) refers to and repeats paragraphs 131 to 134 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Monash Overtime Claim in relation to the overtime purportedly worked;
- B. Dr McPadden has not provided particulars of any occasions on which he allegedly:
  - 1) worked handover overtime;
  - 2) sought and received either advance or retrospective authorisation for such overtime;
  - 3) made a Monash Overtime Claim for that handover overtime; and
  - 4) was subsequently not paid;
- C. if Dr McPadden did not make a Monash Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:
  - 1) Dr McPadden did not work such overtime;
  - 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - 3) Dr McPadden was in attendance at the Dandenong Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 272 to 284 below;

(iii) otherwise denies the allegations in paragraph 135;

(b) Latrobe does not plead to paragraph 135 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 135 as it contains no allegation of material fact against it.

136. As to paragraph 136:

(a) Monash:

(i) says that if:

A. Dr McPadden had made a Monash Overtime Claim; and

B. the Monash Overtime Claim satisfied the criteria set out in the Monash Overtime ~~Protocol~~ Policy,

Monash would have considered and processed the Monash Overtime Claim in accordance with the Monash Overtime ~~Protocol~~ Policy;

(ii) otherwise denies the allegations in paragraph 136;

(b) Latrobe does not plead to paragraph 136 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 136 as it contains no allegation of material fact against it.

137. As to paragraph 137:

(a) Monash:

(i) refers to and repeats paragraphs 131 to 136 above; and

(ii) otherwise denies the allegations in paragraph 137;

(b) Latrobe does not plead to paragraph 137 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 137 as it contains no allegation of material fact against it.

138. As to paragraph 138:

(a) Monash:

(i) refers to and repeats paragraphs 131 to 136 above; and

(ii) otherwise denies the allegations in paragraph 138;

(b) Latrobe does not plead to paragraph 138 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 138 as it contains no allegation of material fact against it.

#### Medical emergencies

139. As to paragraph 139:

(a) Monash:

(i) denies that Dr McPadden's duties and responsibilities when providing medical services included attending to medical emergencies;

#### **Particulars**

Due to lack of relevant experience, Monash does not direct Doctors in Training to attend to medical emergencies.

(ii) otherwise denies the allegations in paragraph 139;

(b) Latrobe does not plead to paragraph 139 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 139 as it contains no allegation of material fact against it.

140. As to paragraph 140:

(a) Monash:

- (i) refers to and repeats sub-paragraphs 124(a)(i) and 90(a)(ii)A to 90(a)(ii)E and paragraph 139(a) above;
- (ii) says further that if Dr McPadden performed medical emergency overtime as pleaded in the Statement of Claim, he was able to submit a Monash Overtime Claim;
- (iii) otherwise denies the allegations in paragraph 140;

(b) Latrobe does not plead to paragraph 140 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 140 as it contains no allegation of material fact against it.

141. As to paragraph 141:

(a) Monash:

- (i) refers to and repeats paragraphs 139 and 140 above; and
- (ii) otherwise denies the allegations in paragraph 141;

(b) Latrobe does not plead to paragraph 141 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 141 as it contains no allegation of material fact against it.

142. As to paragraph 142:

(a) Monash:

- (i) refers to and repeats paragraphs 139, 140 and 141 above;
- (ii) says that:

A. whether Dr McPadden was authorised to work any alleged medical emergency overtime (including whether Dr McPadden worked the alleged overtime due to a demonstrable clinical need that could not be

met by other means) depends on the circumstances of each alleged occasion;

- B. further or alternatively, pursuant to the Monash Overtime Policy Protocol, Dr McPadden was required to either seek verbal authorisation for any medical emergency overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime as soon as possible after the overtime hours were worked and on no occasion after the completion of that pay fortnight;
- C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of medical emergencies overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 142;

(b) Latrobe does not plead to paragraph 142 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 142 as it contains no allegation of material fact against it.

143. As to paragraph 143:

(a) Monash:

(i) refers to and repeats paragraphs 139 to 142 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Monash Overtime Claim in relation to the overtime purportedly worked;
- B. Dr McPadden has not provided particulars of any occasions on which he allegedly:

- 1) worked medical emergency overtime;
  - 2) sought and received either advance or retrospective authorisation for such overtime;
  - 3) made a Monash Overtime Claim for that medical emergency overtime; and
  - 4) was subsequently not paid;
- C. if Dr McPadden did not make a Monash Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:
- 1) Dr McPadden did not work such overtime;
  - 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - 3) Dr McPadden was in attendance at the Dandenong Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 272 to 284 below;
- (iii) otherwise denies the allegations in paragraph 143;
- (b) Latrobe does not plead to paragraph 143 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 143 as it contains no allegation of material fact against it.

144. As to paragraph 144:

- (a) Monash:
  - (i) says that if:

- A. Dr McPadden had made a Monash Overtime Claim; and
- B. the Monash Overtime Claim satisfied the criteria set out in the Monash Overtime-~~Protect~~ Policy,

Monash would have considered and processed the Monash Overtime Claim in accordance with the Monash Overtime-~~Protect~~ Policy,

- (ii) otherwise denies the allegations in paragraph 144;
- (b) Latrobe does not plead to paragraph 144 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 144 as it contains no allegation of material fact against it.

145. As to paragraph 145:

- (a) Monash:
  - (i) refers to and repeats paragraphs 139 to 144 above; and
  - (ii) otherwise denies the allegations in paragraph 145;
- (b) Latrobe does not plead to paragraph 145 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 145 as it contains no allegation of material fact against it.

146. As to paragraph 146:

- (a) Monash:
  - (i) refers to and repeats paragraphs 139 to 144 above; and
  - (ii) otherwise denies the allegations in paragraph 146;
- (b) Latrobe does not plead to paragraph 146 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 146 as it contains no allegation of material fact against it.

Other medical services overtime

147. As to paragraph 147:

(a) Monash:

(i) admits that Dr McPadden's duties and responsibilities when providing medical services included undertaking specific tasks relating to patient care;

~~(ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second Dandenong ED rotation roster factored in and allowed time for undertaking specific tasks relating to patient care;~~

~~(iii)~~(ii) otherwise denies the allegations in paragraph 147;

(b) Latrobe does not plead to paragraph 147 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 147 as it contains no allegation of material fact against it.

148. As to paragraph 148:

(a) Monash:

(i) refers to and repeats sub-paragraphs 124(a)(i) and 90(a)(ii)A to 90(a)(ii)E above;

(ii) says further that if Dr McPadden performed patient care overtime as pleaded in the Statement of Claim, he was able to submit a Monash Overtime Claim;

(iii) otherwise denies the allegations in paragraph 148;

(b) Latrobe does not plead to paragraph 148 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 148 as it contains no allegation of material fact against it.

149. As to paragraph 149:

(a) Monash:

- (i) refers to and repeats paragraphs 147 and 148 above; and
  - (ii) otherwise denies the allegations in paragraph 149;
- (b) Latrobe does not plead to paragraph 149 as it contains no allegation of material fact against it.
- (c) Bairnsdale does not plead to paragraph 149 as it contains no allegation of material fact against it.

150. As to paragraph 150:

- (a) Monash:
  - (i) refers to and repeats paragraphs 147, 148 and 149 above;
  - (ii) says that:
    - A. whether Dr McPadden was authorised to work any alleged patient care overtime (including whether Dr McPadden worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
    - B. further or alternatively, pursuant to the Monash Overtime Policy Protocol, Dr McPadden was required to either seek verbal authorisation for any patient care overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime as soon as possible after the overtime hours were worked and on no occasion after the completion of that pay fortnight;
    - C. Dr McPadden has not provided particulars of the circumstances of each alleged occasion of patient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him for such overtime, nor provided particulars of the claims made by him (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;
  - (iii) otherwise denies the allegations in paragraph 150;

(b) Latrobe does not plead to paragraph 150 as it contains no allegation of material fact against it;

(c) Bairnsdale does not plead to paragraph 150 as it contains no allegation of material fact against it.

151. As to paragraph 151:

(a) Monash:

(i) refers to and repeats paragraphs 147 to 150 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr McPadden make a Monash Overtime Claim in relation to the overtime purportedly worked;
- B. Dr McPadden has not provided particulars of any occasions on which he allegedly:
  - 1) worked patient care overtime;
  - 2) sought and received either advance or retrospective authorisation for such overtime;
  - 3) made a Monash Overtime Claim for that patient care overtime; and
  - 4) was subsequently not paid;
- C. if Dr McPadden did not make a Monash Overtime Claim in respect of the alleged patient care overtime, then it ought be concluded that either:
  - 1) Dr McPadden did not work such overtime;
  - 2) Dr McPadden was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - 3) Dr McPadden was in attendance at the Dandenong Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr McPadden is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 272 to 284 below;

(iii) otherwise denies the allegations in paragraph 151;

(b) Latrobe does not plead to paragraph 151 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 151 as it contains no allegation of material fact against it.

152. As to paragraph 152:

(a) Monash:

(i) says that if:

A. Dr McPadden had made a Monash Overtime Claim; and

B. the Monash Overtime Claim satisfied the criteria set out in the Monash Overtime-~~Protect~~ Policy,

Monash would have considered and processed the Monash Overtime Claim in accordance with the Monash Overtime-~~Protect~~ Policy,

(ii) otherwise denies the allegations in paragraph 152;

(b) Latrobe does not plead to paragraph 152 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 152 as it contains no allegation of material fact against it.

153. As to paragraph 153:

(a) Monash:

(i) refers to and repeats paragraphs 147 to 152 above; and

(ii) otherwise denies the allegations in paragraph 153;

(b) Latrobe does not plead to paragraph 153 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 153 as it contains no allegation of material fact against it.

154. As to paragraph 154:

(a) Monash:

(i) refers to and repeats paragraphs 147 to 152 above; and

(ii) otherwise denies the allegations in paragraph 154;

(b) Latrobe does not plead to paragraph 154 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 154 as it contains no allegation of material fact against it.

#### **D5 Loss**

155. As to paragraph 155, the respondents deny the allegations for the reasons pleaded above.

#### **EA GROUP MEMBERS' CLAIMS AGAINST BAIRNSDALE**

155A. As to paragraph 155A:

(a) Bairnsdale:

(i) admits that, in the course of their employment during the Relevant Period,

Group Members:

A. worked at Bairnsdale Hospital; and

B. were rostered to work 38 ordinary hours per week, or an average of 38 hours per week for up to 4 weeks;

(b) says that such Group Members were parties to contracts of employment with Bairnsdale which contained terms similar to or identical to those terms pleaded in respect of Dr McPadden as set out in paragraph 3(aa)(ii) hereof;

- (c) otherwise denies the allegations in paragraph 155A;
- (d) Monash does not plead to paragraph 155A as it contains no allegation of material fact made against it;
- (e) Latrobe does not plead to paragraph 155A as it contains no allegation of material fact made against it.

**EA1 Ward round preparation overtime**

155B. As to paragraph 155B:

- (a) Bairnsdale:
  - (i) admits that the duties and responsibilities of some or all of the Group Members when providing medical services included ward round preparation; and
  - (iii) otherwise denies the allegations in paragraph 155B;
- (b) Monash does not plead to paragraph 155B as it contains no allegation of material fact made against it;
- (c) Latrobe does not plead to paragraph 155B as it contains no allegation of material fact made against it.

155C. As to paragraph 155C:

- (a) Bairnsdale:
  - (i) says that:
    - A. Bairnsdale had implemented the Bairnsdale Overtime Policy set out above in paragraph 18F(a) hereof;
    - B. some or all of the Group Members were, or ought to have been, aware of the Bairnsdale Overtime Policy and Bairnsdale's approach to Unrostered Overtime;
    - C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Bairnsdale Overtime Claim;
  - (ii) otherwise denies the allegations in paragraph 155C;

(b) Monash does not plead to paragraph 155C as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155C as it contains no allegation of material fact made against it.

155D. As to paragraph 155D:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155B and 155C above;

(ii) otherwise denies the allegations in paragraph 155D;

(b) Monash does not plead to paragraph 155D as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155D as it contains no allegation of material fact made against it.

155E. As to paragraph 155E:

(a) Bairnsdale:

(i) refers to and repeats paragraph 155C above; and

(ii) otherwise denies the allegations in paragraph 155E;

(b) Monash does not plead to paragraph 155E as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155E as it contains no allegation of material fact made against it.

155F. As to paragraph 155F:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155B and 155C above; and

(ii) says that Bairnsdale had implemented a policy and its contents which dealt with the authorisation and payment for overtime or excess unrostered hours worked by some or all of the Group Members;

### Particulars

The Bairnsdale Overtime Policy was partly in writing in various documents provided to available to Group Members and was partly oral and advised to Group Members at the commencement of their employment with Bairnsdale in orientations and inductions.

There was a hospital wide Scheduling and Time Attendance Policy, as amended from time to time, which stated that unscheduled hours will not be paid unless previously discussed and approved by a Department Manager and that overtime hours must be approved by a Director.

There was a Junior Medical Staff and Medical Student Support Policy that applied to Group Members, as amended from time to time, that directed that unrostered overtime required prior approval of the Coordinator and that in urgent situations (e.g. a Code Blue or MET call) Bairnsdale would approve the unrostered overtime retrospectively.

From time to time, Group Members were advised at their inductions and orientations that unrostered overtime would be accepted if a claim was submitted to the Coordinator and a good reason was provided. From time to time, Group Members were advised that if they were required to stay longer than their scheduled shift, the Coordinator needed to be contacted as early as possible for approval. A signed Medical Staff Unrostered Overtime Substantiation Form was then to be submitted to the Medical Workforce Office.

Group Members were directed that the Medical Staff Unrostered Overtime Substantiation Form directed that unrostered overtime would only be paid where the situation was either a Code Blue, clinical instability, a MET call or urgent clinical review (that could not be handed over). Where a situation was not clinically urgent, preapproval was required to be sought from the Operations Manager or Coordinator (after hours).

Further particulars will be provided prior to trial.

(iii) This policy and its contents applied to some or all of the Group Members:

A. As terms of the contracts referred to in paragraph 155A(b) hereof; and/or

B. as a lawful and reasonable direction given to Group Members by Bairnsdale:

- 1) through the policy;
- 2) through the various documents provided to or available to some or all of the Group Members referred to in paragraph 155F(a)(i) above;
- 3) through advice to some or all of the Group Members during their induction; and/or
- 4) through required use of the Medical Staff Unrostered Overtime Substantiation Form by Group Members.

(iv) The authorisation of hours within the meaning of clause 32.2.1 (b) of the 2013 Agreement at Bairnsdale required compliance with that policy and direction and/or advice;

(v) Further or in the alternative, that policy was in accordance with clause 32.3 of the 2013 Agreement which implemented a protocol for authorisation of and remuneration for unrostered overtime, being overtime in excess of rostered ordering working hours that was required due to a demonstrable operational or clinical need that could not be provided in some other way (**Unrostered Overtime**);

#### Particulars

Junior Medical Staff and Medical Student Support Policy.

Further particulars will be provided prior to trial.

(vi) Pursuant to the Bairnsdale Overtime Policy, some or all of the Group Members were required to either seek authorisation for any ward round preparation overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;

(vii) Further or alternatively whether some or all of the Group Members were authorised to work any alleged ward round preparation overtime (including

whether Group Members worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- (viii) Group Members have not provided particulars of the circumstances of each alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance or any authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;
- (ix) pursuant to the Bairnsdale Overtime Policy, the Group Members were required to either seek verbal authorisation for any ward round preparation overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;
- (x) further or alternatively whether a Group Member was authorised to work any alleged ward round preparation overtime (including whether the Group Member worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- (xi) no Group Member has provided particulars of the circumstances of any alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;
- (xii) otherwise denies the allegations in paragraph 155F;
- (xiii) Monash does not plead to paragraph 155F as it contains no allegation of material fact made against it;

(xiv) Latrobe does not plead to paragraph 155F as it contains no allegation of material fact made against it.

155G. As to paragraph 155G:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155C to 155F above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Bairnsdale Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a Bairnsdale Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:

1) the Group member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 298 to 311 below;

(iii) otherwise denies the allegations in paragraph 155G;

(b) Monash does not plead to paragraph 155G as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155G as it contains no allegation of material fact made against it.

155H. As to paragraph 155H:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155B to 155G above; and

(ii) otherwise denies the allegations in paragraph 155H;

(b) Monash does not plead to paragraph 155H as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155H as it contains no allegation of material fact made against it.

155I. As to paragraph 155I:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155B to 155G above; and

(ii) otherwise denies the allegations in paragraph 155I;

(b) Monash does not plead to paragraph 155I as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155I as it contains no allegation of material fact made against it.

## **EA2 Ward round overtime**

155J. As to paragraph 155J:

(a) Bairnsdale:

(i) admits that the duties and responsibilities of Group Members when providing medical services included undertaking ward rounds;

(ii) otherwise denies the allegations in paragraph 155J;

(b) Monash does not plead to paragraph 155J as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155J as it contains no allegation of material fact made against it.

155K. As to paragraph 155K:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155B and 155C above; and

(ii) says that Bairnsdale had implemented a policy and its contents which dealt with the authorisation and payment for overtime or excess unrostered hours worked by some or all of the Group Members;

**Particulars**

Refers to the particulars of paragraph 155F(a)(i) above.

Further particulars will be provided prior to trial.

(iii) This policy and its contents applied to some or all of the Group Members:

A. as a term of the contracts referred to in paragraph 155A(b) hereof; and/or

B. as a lawful and reasonable direction given to Group Members by Bairnsdale:

1) through the policy;

2) through the various documents provided to or available to some or all of the Group Members referred to in paragraph 155F(a)(i) above;

3) through advice to some or all of the Group Members during their induction; and/or

4) through required use of the Medical Staff Unrostered Overtime Substantiation Form by Group Members.

(iv) The authorisation of hours within the meaning of clause 32.2.1(b) of the 2013 Agreement at Bairnsdale required compliance with that policy and direction and/or advice;

(v) Further or in the alternative, that policy was in accordance with clause 32.3 of the 2013 Agreement which implemented a protocol for authorisation of and

remuneration for unrostered overtime, being overtime in excess of rostered ordering working hours that was required due to a demonstrable operational or clinical need that could not be provided in some other way (**Unrostered Overtime**):

**Particulars**

Junior Medical Staff and Medical Student Support Policy.

Further particulars will be provided prior to trial.

- (vi) Pursuant to the Bairnsdale Overtime Policy, some or all of the Group Members were required to either seek authorisation for any ward round overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
- (vii) Further or alternatively whether some or all of the Group Members were authorised to work any alleged ward round overtime (including whether Group Members worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- (viii) Group Members have not provided particulars of the circumstances of each alleged occasion of ward round overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance or any authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;
- (ix) pursuant to the Bairnsdale Overtime Policy, the Group Members were required to either seek verbal authorisation for any ward round overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;
- (x) further or alternatively whether a Group Member was authorised to work any alleged ward round overtime (including whether the Group Member worked

the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

(xi) no Group Member has provided particulars of the circumstances of any alleged occasion of ward round overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;

(xii) otherwise denies the allegations in paragraph 155K;

(b) Monash does not plead to paragraph 155K as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155K as it contains no allegation of material fact made against it.

155L. As to paragraph 155L:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155J and 155K above; and

(ii) otherwise denies the allegations in paragraph 155L;

(b) Monash does not plead to paragraph 155L as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155L as it contains no allegation of material fact made against it.

155M. As to paragraph 155M:

(a) Bairnsdale:

(i) refers to and repeats paragraph 155K above; and

(ii) otherwise denies the allegations in paragraph 155M;

(b) Monash does not plead to paragraph 155M as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155M as it contains no allegation of material fact made against it.

155N. As to paragraph 155N:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155L and 155M above; and

(ii) says that:

A. whether a Group Member was authorised to work any alleged ward round overtime (including whether the Group Member worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

B. further or alternatively, pursuant to the Bairnsdale Overtime Policy, the Group Member was required to either seek verbal authorisation for any ward round overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;

C. No Group Member has provided particulars of the circumstances of any alleged occasion of ward round overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 155N;

(b) Monash does not plead to paragraph 155N as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155N as it contains no allegation of material fact made against it.

155O. As to paragraph 155O:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155K to 155N above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Bairnsdale Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a Bairnsdale Overtime Claim in respect of the alleged ward round overtime, then it ought be concluded that either:

1) the Group member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 298 to 311 below;

(iii) otherwise denies the allegations in paragraph 155O;

(b) Monash does not plead to paragraph 155O as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155O as it contains no allegation of material fact made against it.

155P. As to paragraph 155P:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155J to 155O above; and

(ii) otherwise denies the allegations in paragraph 155P;

(b) Monash does not plead to paragraph 155P as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155P as it contains no allegation of material fact made against it.

155Q. As to paragraph 155Q:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155J to 155O above; and

(ii) otherwise denies the allegations in paragraph 155Q;

(b) Monash does not plead to paragraph 155Q as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155Q as it contains no allegation of material fact made against it.

### **EA3 Handover overtime**

155R. As to paragraph 155R:

(a) Bairnsdale:

(i) admits that a Group Members duties and responsibilities when providing medical services included conducting handover.

(b) Monash does not plead to paragraph 155R as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155R as it contains no allegation of material fact made against it.

155S. As to paragraph 155S:

(a) Bairnsdale:

(i) says further that:

A. Bairnsdale implemented the Bairnsdale Overtime Policy in accordance with paragraph 18F(a) above;

B. Group Members were, or ought to have been, aware of the Bairnsdale Overtime Policy and Bairnsdale's approach to Unrostered Overtime;

C. if Group Members performed Unrostered Overtime, they were able to submit a Bairnsdale Overtime Claim;

(ii) otherwise denies the allegations in paragraph 155S;

(b) Monash does not plead to paragraph 155S as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155S as it contains no allegation of material fact made against it.

155T. As to paragraph 155T:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155R and 155S above; and

(ii) otherwise denies the allegations in paragraph 155T;

(b) Monash does not plead to paragraph 155T as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155T as it contains no allegation of material fact made against it.

155U. As to paragraph 155U:

(a) Bairnsdale:

(i) refers to and repeats paragraph 155S above; and

(ii) otherwise denies the allegations in paragraph 155U;

(b) Monash does not plead to paragraph 155U as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155U as it contains no allegation of material fact made against it.

155V. As to paragraph 155V:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155R and 155S above; and

(ii) says that:

A. whether a Group Member was authorised to work any alleged ward round preparation overtime (including whether the Group Member worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

B. further or alternatively, pursuant to the Bairnsdale Overtime Policy, the Group Member was required to either seek verbal authorisation for any ward round preparation overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;

C. no Group Member has provided particulars of the circumstances of any alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 155V;

(b) Monash does not plead to paragraph 155V as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155V as it contains no allegation of material fact made against it.

155W. As to paragraph 155W:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155R to 155V above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Bairnsdale Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a Bairnsdale Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:

1) the Group member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 298 to 311 below;

(iii) otherwise denies the allegations in paragraph 155W;

(b) Monash does not plead to paragraph 155W as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155W as it contains no allegation of material fact made against it.

155X. As to paragraph 155X:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155R to 155W above; and

(ii) otherwise denies the allegations in paragraph 155X;

(b) Monash does not plead to paragraph 155X as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155X as it contains no allegation of material fact made against it.

155Y. As to paragraph 155Y:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155R to 155W above; and

(ii) otherwise denies the allegations in paragraph 155Y;

(b) Monash does not plead to paragraph 155Y as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155Y as it contains no allegation of material fact made against it.

### **EA3 Medical procedures preparation overtime**

155Z. As to paragraph 155Z:

(a) Bairnsdale:

(i) admits that the duties and responsibilities of Group Members when providing medical services included medical procedures preparation.

(b) Monash does not plead to paragraph 155Z as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155Z as it contains no allegation of material fact made against it.

155AA. As to paragraph 155AA:

(a) Bairnsdale:

(i) says that Bairnsdale had implemented a policy and its contents which dealt with the authorisation and payment for overtime or excess unrostered hours worked by some or all of the Group Members;

**Particulars**

Refers to the particulars of paragraph 155F(a)(i) above.

Further particulars will be provided prior to trial.

(ii) this policy and its contents applied to some or all of the Group Members:

A. as a term of the contracts referred to in paragraph 155A(b) hereof;  
and/or

B. as a lawful and reasonable direction given to Group Members by  
Bairnsdale:

1) through the policy;

2) through the various documents provided to or available to some or  
all of the Group Members referred to in paragraph 155F(a)(i)  
above;

3) through advice to some or all of the Group Members during their  
induction; and/or

4) through required use of the Medical Staff Unrostered Overtime  
Substantiation Form by Group Members.

(iii) the authorisation of hours within the meaning of clause 32.2.1(b) of the 2013  
Agreement at Bairnsdale required compliance with that policy and direction  
and/or advice;

(iv) further or in the alternative, that policy was in accordance with clause 32.3 of  
the 2013 Agreement which implemented a protocol for authorisation of and  
remuneration for unrostered overtime, being overtime in excess of rostered  
ordering working hours that was required due to a demonstrable operational or  
clinical need that could not be provided in some other way (Unrostered  
Overtime);

**Particulars**

Junior Medical Staff and Medical Student Support Policy.

Further particulars will be provided prior to trial.

- (v) pursuant to the Bairnsdale Overtime Policy, some or all of the Group Members were required to either seek authorisation for any medical procedures preparation overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
- (vi) further or alternatively whether some or all of the Group Members were authorised to work any alleged medical procedures preparation overtime (including whether Group Members worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- (vii) Group Members have not provided particulars of the circumstances of each alleged occasion of medical procedures preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance or any authorisation given to him/her for such overtime, nor provided particulars of the claims made by them (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;
- (viii) pursuant to the Bairnsdale Overtime Policy, the Group Members were required to either seek verbal authorisation for any medical procedures preparation in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;
- (ix) further or alternatively whether a Group Member was authorised to work any alleged medical procedures preparation overtime (including whether the Group Member worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

(x) no Group Member has provided particulars of the circumstances of any alleged occasion of medical procedures preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;

(xi) otherwise denies the allegations in paragraph 155AA;

(b) Monash does not plead to paragraph 155AA as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AA as it contains no allegation of material fact made against it.

155AB. As to paragraph 155AB:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155Z and 155AA above;

(ii) otherwise denies the allegations in paragraph 155AB;

(b) Monash does not plead to paragraph 155AB as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AB as it contains no allegation of material fact made against it.

155AC. As to paragraph 155AC:

(a) Bairnsdale:

(i) refers to and repeats paragraph 155AA above; and

(ii) otherwise denies the allegations in paragraph 155AC;

(b) Monash does not plead to paragraph 155AC as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AC as it contains no allegation of material fact made against it.

155AD. As to paragraph 155AD:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155Z and 155AA above;

(ii) says that:

A. whether a Group Member was authorised to work any alleged medical procedures preparation overtime (including whether the Group Member the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

B. further or alternatively, pursuant to the Bairnsdale Overtime Policy, the Group Member was required to either seek verbal authorisation for any medical procedures preparation overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;

C. no Group Member has provided particulars of the circumstances of any alleged occasion of medical procedures preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 155AD;

(b) Monash does not plead to paragraph 155AD as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AD as it contains no allegation of material fact made against it.

155AE. As to paragraph 155AE:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155AA to 155AD above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Bairnsdale Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a Bairnsdale Overtime Claim in respect of the alleged medical procedures preparation overtime, then it ought be concluded that either:

1) the Group member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 298 to 311 below;

(iii) otherwise denies the allegations in paragraph 155AE;

(b) Monash does not plead to paragraph 155AE as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AE as it contains no allegation of material fact made against it.

155AF. As to paragraph 155AF:

(a) Bairnsdale:

- (i) refers to and repeats paragraphs 155Z to 155AE above; and
- (ii) otherwise denies the allegations in paragraph 155AF;
- (b) Monash does not plead to paragraph 155AF as it contains no allegation of material fact made against it;
- (c) Latrobe does not plead to paragraph 155AF as it contains no allegation of material fact made against it.

155AG. As to paragraph 155AG:

- (a) Bairnsdale:
  - (i) refers to and repeats paragraphs 155Z to 155AE above; and
  - (ii) otherwise denies the allegations in paragraph 155AG;
- (b) Monash does not plead to paragraph 155AG as it contains no allegation of material fact made against it;
- (c) Latrobe does not plead to paragraph 155AG as it contains no allegation of material fact made against it.

155AH. As to paragraph 155AH:

- (a) Bairnsdale:
  - (i) denies that the duties and responsibilities of Group Members when providing medical services included attending to medical emergencies;

**Particulars**

Due to lack of relevant experience, Bairnsdale did not direct Group Members to attend to medical emergencies.

- (ii) otherwise denies the allegations in paragraph 155AH;
- (b) Monash does not plead to paragraph 155AH as it contains no allegation of material fact made against it;
- (c) Latrobe does not plead to paragraph 155AH as it contains no allegation of material fact made against it.

155A1. As to paragraph 155A1:

(a) Bairnsdale:

(i) says that Bairnsdale had implemented a policy and its contents which dealt with the authorisation and payment for overtime or excess unrostered hours worked by some or all of the Group Members;

**Particulars**

Refers to the particulars of paragraph 155F(a)(i) above.

Further particulars will be provided prior to trial.

(ii) This policy and its contents applied to some or all of the Group Members:

A. as a term of the contracts referred to in paragraph 155A(b) hereof;  
and/or

B. as a lawful and reasonable direction given to Group Members by  
Bairnsdale:

1) through the policy;

2) through the various documents provided to or available to some or  
all of the Group Members referred to in paragraph 155F(a)(i)  
above;

3) through advice to some or all of the Group Members during their  
induction; and/or

4) through required use of the Medical Staff Unrostered Overtime  
Substantiation Form by Group Members.

(iii) The authorisation of hours within the meaning of clause 32.2.1(b) of the 2013  
Agreement at Bairnsdale required compliance with that policy and direction  
and/or advice;

(iv) Further or in the alternative, that policy was in accordance with clause 32.3 of  
the 2013 Agreement which implemented a protocol for authorisation of and  
remuneration for unrostered overtime, being overtime in excess of rostered  
ordering working hours that was required due to a demonstrable operational or

clinical need that could not be provided in some other way (**Unrostered Overtime**):

**Particulars**

Junior Medical Staff and Medical Student Support Policy.

Further particulars will be provided prior to trial.

- (v) Pursuant to the Bairnsdale Overtime Policy, some or all of the Group Members were required to either seek authorisation for any medical emergency overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
- (vi) Further or alternatively whether some or all of the Group Members were authorised to work any alleged medical emergency overtime (including whether Group Members worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- (vii) Group Members have not provided particulars of the circumstances of each alleged occasion of medical emergency overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance or any authorisation given to him/her for such overtime, nor provided particulars of the claims made by them (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;
- (viii) pursuant to the Bairnsdale Overtime Policy, the Group Members were required to either seek verbal authorisation for any medical emergency overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;
- (ix) further or alternatively whether a Group Member was authorised to work any alleged medical emergency overtime (including whether the Group Member worked the alleged overtime due to a demonstrable clinical need that could not

be met by other means) depends on the circumstances of each alleged occasion;

(x) no Group Member has provided particulars of the circumstances of any alleged occasion of medical emergency overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by them (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;

(xi) otherwise denies the allegations in paragraph 155AI;

(b) Monash does not plead to paragraph 155AI as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AI as it contains no allegation of material fact made against it.

155AJ. As to paragraph 155AJ:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155AH and 15AI above;

(ii) otherwise denies the allegations in paragraph 155AJ;

(b) Monash does not plead to paragraph 155AJ as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AJ as it contains no allegation of material fact made against it.

155AK. As to paragraph 155AK:

(a) Bairnsdale:

(i) refers to and repeats paragraph 155AI above; and

(ii) otherwise denies the allegations in paragraph 155AK;

(b) Monash does not plead to paragraph 155AK as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AK as it contains no allegation of material fact made against it.

155AL. As to paragraph 155AL:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155AH and 155AI above;

(ii) says that:

A. whether a Group Member was authorised to work any alleged medical emergency overtime (including whether the Group Member worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

B. further or alternatively, pursuant to the Bairnsdale Overtime Policy, the Group Member was required to either seek verbal authorisation for any medical emergency overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;

C. no Group Member has provided particulars of the circumstances of any alleged occasion of medical emergency overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 155AL;

(b) Monash does not plead to paragraph 155AL as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AL as it contains no allegation of material fact made against it.

155AM. As to paragraph 155AM:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155AI to 155AL above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Bairnsdale Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a Bairnsdale Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:

1) the Group member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 298 to 311 below;

(iii) otherwise denies the allegations in paragraph 155AM;

(b) Monash does not plead to paragraph 155AM as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AM as it contains no allegation of material fact made against it.

155AN. As to paragraph 155AN:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155AH to 155AM above; and

(ii) otherwise denies the allegations in paragraph 155AN;

(b) Monash does not plead to paragraph 155AN as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AN as it contains no allegation of material fact made against it.

155AO. As to paragraph 155AO:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155AH to 155AM above; and

(ii) otherwise denies the allegations in paragraph 155AO;

(b) Monash does not plead to paragraph 155AO as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AO as it contains no allegation of material fact made against it.

### **EA3 Medical records overtime**

155AP. As to paragraph 155AP:

(a) Bairnsdale:

(i) admits that the duties and responsibilities of Group Members when providing medical services included completing medical records;

(b) Monash does not plead to paragraph 155AP as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AP as it contains no allegation of material fact made against it.

155AQ. As to paragraph 155AQ:

(a) Bairnsdale:

(i) says that Bairnsdale had implemented a policy and its contents which dealt with the authorisation and payment for overtime or excess unrostered hours worked by some or all of the Group Members;

**Particulars**

Refers to the particulars of paragraph 155F(a)(i) above.

Further particulars will be provided prior to trial.

(ii) This policy and its contents applied to some or all of the Group Members:

A. as a term of the contracts referred to in paragraph 155A(b) hereof;  
and/or

B. as a lawful and reasonable direction given to Group Members by  
Bairnsdale:

1) through the policy;

2) through the various documents provided to or available to some or  
all of the Group Members referred to in paragraph 155F(a)(i)  
above;

3) through advice to some or all of the Group Members during their  
induction; and/or

4) through required use of the Medical Staff Unrostered Overtime  
Substantiation Form by Group Members.

(iii) The authorisation of hours within the meaning of clause 32.2.1(b) of the 2013 Agreement at Bairnsdale required compliance with that policy and direction and/or advice;

(iv) Further or in the alternative, that policy was in accordance with clause 32.3 of the 2013 Agreement which implemented a protocol for authorisation of and remuneration for unrostered overtime, being overtime in excess of rostered ordering working hours that was required due to a demonstrable operational or clinical need that could not be provided in some other way (**Unrostered Overtime**);

**Particulars**

Junior Medical Staff and Medical Student Support Policy.

Further particulars will be provided prior to trial.

- (v) Pursuant to the Bairnsdale Overtime Policy, some or all of the Group Members were required to either seek authorisation for any medical records overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
- (vi) Further or alternatively whether some or all of the Group Members were authorised to work any alleged medical records overtime (including whether Group Members worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- (vii) Group Members have not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance or any authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;
- (viii) pursuant to the Bairnsdale Overtime Policy, the Group Members were required to either seek verbal authorisation for any medical records overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;
- (ix) further or alternatively whether a Group Member was authorised to work any alleged medical records overtime (including whether the Group Member worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

(x) no Group Member has provided particulars of the circumstances of any alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by them (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;

(xi) otherwise denies the allegations in paragraph 155AQ;

(b) Monash does not plead to paragraph 155AQ as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AQ as it contains no allegation of material fact made against it.

155AR. As to paragraph 155AR:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155AP and 155AQ above;

(ii) otherwise denies the allegations in paragraph 155AR;

(b) Monash does not plead to paragraph 155AR as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AR as it contains no allegation of material fact made against it.

155AS. As to paragraph 155AS:

(a) Bairnsdale:

(i) refers to and repeats paragraph 155AQ above; and

(ii) otherwise denies the allegations in paragraph 155AS;

(b) Monash does not plead to paragraph 155AS as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AS as it contains no allegation of material fact made against it.

155AT. As to paragraph 155AT:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155AP and 155AQ above;

(ii) says that:

A. whether a Group Member was authorised to work any alleged medical records overtime (including whether the Group Member worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

B. further or alternatively, pursuant to the Bairnsdale Overtime Policy, the Group Member was required to either seek verbal authorisation for any medical records overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;

C. no Group Member has provided particulars of the circumstances of any alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 155AT;

(b) Monash does not plead to paragraph 155AT as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AT as it contains no allegation of material fact made against it.

155AU. As to paragraph 155AU:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155AQ to 155AT above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Bairnsdale Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a Bairnsdale Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:

1) the Group member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 298 to 311 below;

(iii) otherwise denies the allegations in paragraph 155AU;

(b) Monash does not plead to paragraph 155AU as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AU as it contains no allegation of material fact made against it.

155AV. As to paragraph 155AV:

(a) Bairnsdale:

- (i) refers to and repeats paragraphs 155AP to 155AU above; and
- (ii) otherwise denies the allegations in paragraph 155AV;
- (b) Monash does not plead to paragraph 155AV as it contains no allegation of material fact made against it;
- (c) Latrobe does not plead to paragraph 155AV as it contains no allegation of material fact made against it.

155AW. As to paragraph 155AW:

- (a) Bairnsdale:
  - (i) refers to and repeats paragraphs 155AP to 155AU above; and
  - (ii) otherwise denies the allegations in paragraph 155AW;
- (b) Monash does not plead to paragraph 155AW as it contains no allegation of material fact made against it;
- (c) Latrobe does not plead to paragraph 155AW as it contains no allegation of material fact made against it.

#### **EA4 Other medical services overtime**

155AX. As to paragraph 155AX:

- (a) Bairnsdale:
  - (i) admits that the duties and responsibilities of Group Members when providing medical services included other medical services;
- (b) Monash does not plead to paragraph 155AX as it contains no allegation of material fact made against it;
- (c) Latrobe does not plead to paragraph 155AX as it contains no allegation of material fact made against it.

155AY. As to paragraph 155AY:

- (a) Bairnsdale:

(i) says that:

A. Bairnsdale had implemented the Bairnsdale Overtime Policy set out above in paragraph 18F(a) hereof;

B. some or all of the Group Members were, or ought to have been, aware of the Bairnsdale Overtime Policy and Bairnsdale's approach to Unrostered Overtime;

C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Bairnsdale Overtime Claim;

(ii) otherwise denies the allegations in paragraph 155AY;

(b) Monash does not plead to paragraph 155AY as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AY as it contains no allegation of material fact made against it.

155AZ. As to paragraph 155AZ:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155AX and 155AY above;

(ii) otherwise denies the allegations in paragraph 155AZ;

(b) Monash does not plead to paragraph 155AZ as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155AZ as it contains no allegation of material fact made against it.

155BA. As to paragraph 155BA:

(a) Bairnsdale:

(i) refers to and repeats paragraph 155AY above; and

(ii) otherwise denies the allegations in paragraph 155BA;

(b) Monash does not plead to paragraph 155BA as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155BA as it contains no allegation of material fact made against it.

155BB. As to paragraph 155BB:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155AX and 155AY above;

(ii) says that:

A. whether a Group Member was authorised to work any other alleged medical services overtime (including whether the Group Member worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

B. further or alternatively, pursuant to the Bairnsdale Overtime Policy, the Group Member was required to either seek verbal authorisation for any other medical services overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;

C. no Group Member has provided particulars of the circumstances of any alleged occasion of other medical services overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 155BB;

(b) Monash does not plead to paragraph 155BB as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155BB as it contains no allegation of material fact made against it.

155BC. As to paragraph 155BC:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155AY to 155BB above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Bairnsdale Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a Bairnsdale Overtime Claim in respect of the alleged other medical services overtime, then it ought be concluded that either:

1) the Group member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 298 to 311 below;

(iii) otherwise denies the allegations in paragraph 155BC;

(b) Monash does not plead to paragraph 155BC as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155BC as it contains no allegation of material fact made against it.

155BD. As to paragraph 155BD:

(a) Bairnsdale:

A. refers to and repeats paragraphs 155AX to 155BC above; and

B. otherwise denies the allegations in paragraph 155BD;

(b) Monash does not plead to paragraph 155BD as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155BD as it contains no allegation of material fact made against it.

155BE. As to paragraph 155BE:

(a) Bairnsdale:

(i) refers to and repeats paragraphs 155AX to 155BC above; and

(ii) otherwise denies the allegations in paragraph 155BE;

(b) Monash does not plead to paragraph 155BE as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155BE as it contains no allegation of material fact made against it.

### **EA5 Loss and damage**

155BF. As to paragraph 155BF:

(a) Bairnsdale denies the allegations in paragraph 155BF for the reasons pleaded herein;

(b) Monash does not plead to paragraph 155BF as it contains no allegation of material fact made against it;

(c) Latrobe does not plead to paragraph 155BF as it contains no allegation of material fact made against it.

### **GROUP MEMBERS' CLAIMS AGAINST MONASH HEALTH**

156. As to paragraph 156:

- (a) Monash:
- (i) admits that, in the course of their employment during the Relevant Period, Group Members-Doctors in Training:
    - A. worked in one or more of the services operated by Monash as set out in paragraph 1(d) of the Statement of Claim; and
    - B. were rostered to work 38 ordinary hours per week, or an average of 38 hours per week for up to 4 weeks;
  - (ii) otherwise denies the allegations in paragraph 156;
  - (iii) says that such Group Members were parties to contracts of employment with Monash which contained terms similar to or identical to those terms pleaded in respect of Dr McPadden as set out in paragraph 3(a)(iii) hereof.
- (b) Latrobe does not plead to paragraph 156 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 156 as it contains no allegation of material fact made against it.

## **E1 Ward round preparation overtime**

157. As to paragraph 157:

- (a) Monash:
- (i) admits that the duties and responsibilities of a Group Member when providing medical services included ward round preparation;
  - (ii) ~~says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the performance of ward round preparation; and~~
  - ~~(iii)~~(ii) otherwise denies the allegations in paragraph 157;
- (b) Latrobe does not plead to paragraph 157 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 157 as it contains no allegation of material fact made against it.

158. As to paragraph 158:

(a) Monash:

(i) says that:

- A. Monash had implemented the Monash Overtime Policy set out above in paragraph 90(a) hereof;
- B. some or all of the Group Members were, or ought to have been, aware of the Monash Overtime Policy and Monash's approach to Unrostered Overtime;
- C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Monash Overtime Claim;

~~(i) refers to and repeats sub-paragraphs 90(a)(ii)A to 90(a)(ii)E above;~~

~~(ii) says further that:~~

- ~~A. in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Monash implemented the Monash Overtime Protocol;~~
- ~~B. Doctors in Training were, or ought to have been, aware of the Monash Overtime Protocol and Monash's approach to Unrostered Overtime;~~
- ~~C. if Doctors in Training performed Unrostered Overtime, they were able to submit a Monash Overtime Claim;~~

(iii) otherwise denies the allegations in paragraph 158;

(b) Latrobe does not plead to paragraph 158 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 158 as it contains no allegation of material fact made against it.

159. As to paragraph 159:

(a) Monash:

- (i) refers to and repeats paragraphs 157 and 158 above;
  - (ii) otherwise denies the allegations in paragraph 159;
- (b) Latrobe does not plead to paragraph 159 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 159 as it contains no allegation of material fact made against it.

160. As to paragraph 160:

- (a) Monash:
- (i) refers to and repeats paragraph 158 above; and
  - (ii) otherwise denies the allegations in paragraph 160;
- (b) Latrobe does not plead to paragraph 160 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 160 as it contains no allegation of material fact made against it.

161. As to paragraph 161:

- (a) Monash says that:
- (i) Monash had implemented a policy and its contents which dealt with the authorisation and payment for overtime or excess unrostered hours worked by some or all of the Group Members;

### **Particulars**

The Monash Overtime Policy was partly in writing in various documents provided to or available to Group Members and was partly oral and advised to some or all Group Members at the commencement of their employment with Monash in their orientations and inductions.

From time to time, there were unrostered overtime payment memorandums that required Group Members to obtain prospective approval of unrostered overtime from their Unit Heads during business

hours or the on-call consultant after hours. On occasions where overtime was performed due to a demonstrable clinical need and authorisation of the overtime could not reasonably have been made in advance a claim for retrospective authorisation of overtime could be submitted within the pay fortnight.

Some or all Group Members were advised at their inductions and orientations that unrostered overtime would be accepted if a claim was submitted using the Additional Hours Claim Form which had been approved by the Unit Head. Where overtime was performed due to a demonstrable clinical need by a Group Member, and authorisation could not be obtained in advance, a retrospective claim could be made within the fortnight by the Group Members.

The Additional Hours Claim Form, as amended from time to time, directed that additional hours claims must be approved prospectively in advance of working the overtime by the Unit Head. If prospective approval was unable to be obtained, then the form had to be completed and provided to the Program Director.

Further particulars will be provided prior to trial.

(ii) This policy and its contents applied to some or all of the Group Members:

A. As terms of the contracts referred to in paragraph 156(a)(iii) hereof; and/or

B. as lawful and reasonable directions given to Group Members by Monash:

1) through the policy;

2) through the various documents provided to or available to some or all of the Group Members referred to in paragraph 161(a)(i) above;

3) through advice to some or all of the Group Members during their induction;

4) through advice in the unrostered overtime payment memorandums; and/or

5) through the Additional Hours Claim Form.

- (iii) The authorisation of hours within the meaning of clause 32.2.1 (b) of the 2013 Agreement at Monash required compliance with that policy and direction and/or advice;
- (iv) Further or in the alternative, that policy was in accordance with clause 32.3 of the 2013 Agreement which implemented a protocol for authorisation of and remuneration for unrostered overtime, being overtime in excess of rostered ordering working hours that was required due to a demonstrable operational or clinical need that could not be provided in some other way (**Unrostered Overtime**);

### **Particulars**

Further particulars will be provided prior to trial.

- (v) Pursuant to the Monash Overtime Policy, some or all of the Group Members were required to either seek authorisation for any medical records overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
- (vi) Further or alternatively whether some or all of the Group Members were authorised to work any alleged medical records overtime (including whether Group Members worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- (vii) Group Members have not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance or any authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;
- (viii) pursuant to the Monash Overtime Policy, the Group Members were required to either seek verbal authorisation for any ward round preparation overtime in advance of working the overtime or, alternatively, to make a claim for

retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;

(ix) further or alternatively whether a Group Member was authorised to work any alleged ward round preparation overtime (including whether the Group Member worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

(x) no Group Member has provided particulars of the circumstances of any alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;

~~(a) Monash:~~

~~(i) refers to and repeats paragraphs 157 and 158 above;~~

~~(ii) says that:~~

~~A. whether a Doctor in Training was authorised to work any alleged ward round preparation overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;~~

~~B. further or alternatively, pursuant to the Monash Overtime Protocol, the Doctor in Training was required to either seek verbal authorisation for any ward round preparation overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;~~

~~C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by~~

~~other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;~~

~~(iii)(xi)~~ otherwise denies the allegations in paragraph 161;

(b) Latrobe does not plead to paragraph 161 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 161 as it contains no allegation of material fact against it.

162. As to paragraph 162:

(a) Monash:

(i) refers to and repeats paragraphs 158 to 161 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Monash Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a Monash Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:

1) the Group member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 272 to 284 below;

(iii) otherwise denies the allegations in paragraph 162;

(b) Latrobe does not plead to paragraph 162 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 162 as it contains no allegation of material fact made against it.

163. As to paragraph 163:

(a) Monash:

(i) refers to and repeats paragraphs 157 to 162 above; and

(ii) otherwise denies the allegations in paragraph 163;

(b) Latrobe does not plead to paragraph 163 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 163 as it contains no allegation of material fact made against it.

164. As to paragraph 164:

(a) Monash:

(i) refers to and repeats paragraphs 157 to 162 above; and

(ii) otherwise denies the allegations in paragraph 164;

(b) Latrobe does not plead to paragraph 164 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 164 as it contains no allegation of material fact made against it.

## **E2 Ward round overtime**

165. As to paragraph 165:

- (a) Monash:
- (i) admits that the duties and responsibilities of Doctors in Training when providing medical services included undertaking ward rounds; and
  - ~~(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the undertaking of ward rounds; and~~
  - ~~(iii)~~(ii) otherwise denies the allegations in paragraph 165;
- (b) Latrobe does not plead to paragraph 165 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 165 as it contains no allegation of material fact made against it.

166. As to paragraph 166:

- (a) Monash:
- (i) refers to and repeats sub-paragraphs 90(a)~~(ii)A to 90(a)(ii)E~~ above;
  - (ii) says further that:
    - A. Monash had implemented the Monash Overtime Policy set out above in paragraph 90(a) hereof;
    - B. some or all of the Group Members were, or ought to have been, aware of the Monash Overtime Policy and Monash's approach to Unrostered Overtime;
    - C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Monash Overtime Claim;
    - ~~A. in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Monash implemented the Monash Overtime Protocol;~~
    - ~~B. Doctors in Training were, or ought to have been, aware of the Monash Overtime Protocol and Monash's approach to Unrostered Overtime;~~

~~C. if Doctors in Training performed Unrostered Overtime, they were able to submit a Monash Overtime Claim;~~

(iii) otherwise denies the allegations in paragraph 166;

(b) Latrobe does not plead to paragraph 166 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 166 as it contains no allegation of material fact made against it.

167. As to paragraph 167:

(a) Monash:

(i) refers to and repeats paragraphs 165 and 166 above;

(ii) otherwise denies the allegations in paragraph 167;

(b) Latrobe does not plead to paragraph 167 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 167 as it contains no allegation of material fact made against it.

168. As to paragraph 168:

(a) Monash:

(i) refers to and repeats paragraph 166 above; and

(ii) otherwise denies the allegations in paragraph 168;

(b) Latrobe does not plead to paragraph 168 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 168 as it contains no allegation of material fact made against it.

169. As to paragraph 169:

(a) Monash:

- (i) refers to and repeats paragraphs 167 and 168 above;
- (ii) says that:
  - A. whether a Group Member ~~Doctor in Training~~ was authorised to work any alleged ward round overtime (including whether the Group Member ~~Doctor in Training~~ worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
  - B. further or alternatively, pursuant to the Monash Overtime Policy Protocol, the Group Member ~~Doctor in Training~~ was required to either seek verbal authorisation for any ward round overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;
  - C. no Group Member ~~Doctor in Training~~ has provided particulars of the circumstances of any alleged occasion of ward round overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;
- (iii) otherwise denies the allegations in paragraph 169;
- (b) Latrobe does not plead to paragraph 169 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 169 as it contains no allegation of material fact made against it.

170. As to paragraph 170:

- (a) Monash:
  - (i) refers to and repeats paragraphs 166 to 169 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Monash Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make a Monash Overtime Claim in respect of the alleged ward round overtime, then it ought be concluded that either:
  - 1) the Group member did not work such overtime;
  - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - 3) the Group Member was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 272 to 284 below;

(iii) otherwise denies the allegations in paragraph 170;

(b) Latrobe does not plead to paragraph 170 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 170 as it contains no allegation of material fact made against it.

171. As to paragraph 171:

(a) Monash:

- (i) refers to and repeats paragraphs 165 to 170 above; and
- (ii) otherwise denies the allegations in paragraph 171;

(b) Latrobe does not plead to paragraph 171 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 171 as it contains no allegation of material fact made against it.

172. As to paragraph 172:

(a) Monash:

- (i) refers to and repeats paragraphs 165 to 170 above; and
- (ii) otherwise denies the allegations in paragraph 172;

(b) Latrobe does not plead to paragraph 172 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 172 as it contains no allegation of material fact made against it.

### **E3 Handover overtime**

173. As to paragraph 173:

(a) Monash:

- (i) admits that a Group Member's ~~Doctors in Training's~~ duties and responsibilities when providing medical services included conducting handover; and
- ~~(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the conducting of handover; and~~
- (iii) otherwise denies the allegations in paragraph 173;

(b) Latrobe does not plead to paragraph 173 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 173 as it contains no allegation of material fact made against it.

174. As to paragraph 174:

(a) Monash:

- (i) refers to and repeats sub-paragraphs 90(a)(ii)A to 90(a)(ii)E above;

(ii) says further that:

A. Monash had implemented the Monash Overtime Policy set out above in paragraph 90(a) hereof;

B. some or all of the Group Members were, or ought to have been, aware of the Monash Overtime Policy and Monash's approach to Unrostered Overtime;

C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Monash Overtime Claim;

~~A. in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Monash implemented the Monash Overtime Protocol;~~

~~B. Doctors in Training were, or ought to have been, aware of the Monash Overtime Protocol and Monash's approach to Unrostered Overtime;~~

~~C. if Doctors in Training performed Unrostered Overtime, they were able to submit a Monash Overtime Claim;~~

(iii) otherwise denies the allegations in paragraph 174;

(b) Latrobe does not plead to paragraph 174 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 174 as it contains no allegation of material fact made against it.

175. As to paragraph 175:

(a) Monash:

(i) refers to and repeats paragraphs 173 and 174 above;

(ii) otherwise denies the allegations in paragraph 175;

(b) Latrobe does not plead to paragraph 175 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 175 as it contains no allegation of material fact made against it.

176. As to paragraph 176:

- (a) Monash:
  - (i) refers to and repeats paragraph 174 above; and
  - (ii) otherwise denies the allegations in paragraph 176;
- (b) Latrobe does not plead to paragraph 176 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 176 as it contains no allegation of material fact made against it.

177. As to paragraph 177:

- (a) Monash:
  - (i) refers to and repeats paragraphs 173 and 174 above;
  - (ii) says that:
    - A. whether a Group Member Doctor in Training was authorised to work any alleged ward round preparation overtime (including whether the Group Member Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
    - B. further or alternatively, pursuant to the Monash Overtime Policy Protocol, the Group Member Doctor in Training was required to either seek verbal authorisation for any ward round preparation overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;
    - C. no Group Member Doctor in Training has provided particulars of the circumstances of any alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars

of the claims made by him/her (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 177;
- (b) Latrobe does not plead to paragraph 177 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 177 as it contains no allegation of material fact made against it.

178. As to paragraph 178:

- (a) Monash:
  - (i) refers to and repeats paragraphs 173 to 177 above; and
  - (ii) says further that:
    - A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Monash Overtime Claim in relation to the overtime purportedly worked;
    - B. if a Group Member did not make a Monash Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:
      - 1) the Group member did not work such overtime;
      - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
      - 3) the Group Member was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
    - C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 272 to 284 below;
  - (iii) otherwise denies the allegations in paragraph 178;

(b) Latrobe does not plead to paragraph 178 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 178 as it contains no allegation of material fact made against it.

179. As to paragraph 179:

(a) Monash:

(i) refers to and repeats paragraphs 173 to 178 above; and

(ii) otherwise denies the allegations in paragraph 179;

(b) Latrobe does not plead to paragraph 179 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 179 as it contains no allegation of material fact made against it.

180. As to paragraph 180:

(a) Monash:

(i) refers to and repeats paragraphs 173 to 178 above; and

(ii) otherwise denies the allegations in paragraph 180;

(b) Latrobe does not plead to paragraph 180 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 180 as it contains no allegation of material fact made against it.

#### **E4 Medical procedures preparation overtime**

181. As to paragraph 181:

(a) Monash:

(i) admits that the duties and responsibilities of Group Members ~~Doctors in Training~~ when providing medical services included medical procedures preparation;

~~(ii) — says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the performance of medical procedures preparation; and~~

~~(iii)(ii)~~ otherwise denies the allegations in paragraph 181;

(b) Latrobe does not plead to paragraph 181 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 181 as it contains no allegation of material fact made against it.

182. As to paragraph 182:

(a) Monash:

(i) refers to and repeats sub-paragraphs 90(a)(ii)A to 90(a)(ii)E above;

(ii) says further that:

A. Monash had implemented the Monash Overtime Policy set out above in paragraph 90(a) hereof;

B. some or all of the Group Members were, or ought to have been, aware of the Monash Overtime Policy and Monash's approach to Unrostered Overtime;

C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Monash Overtime Claim;

~~A. — in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Monash implemented the Monash Overtime Protocol;~~

~~B. — Doctors in Training were, or ought to have been, aware of the Monash Overtime Protocol and Monash's approach to Unrostered Overtime;~~

~~C. — if Doctors in Training performed Unrostered Overtime, they were able to submit a Monash Overtime Claim;~~

(iii) otherwise denies the allegations in paragraph 182;

(b) Latrobe does not plead to paragraph 182 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 182 as it contains no allegation of material fact made against it.

183. As to paragraph 183:

(a) Monash:

(i) refers to and repeats paragraphs 181 and 182 above;

(ii) otherwise denies the allegations in paragraph 183;

(b) Latrobe does not plead to paragraph 183 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 183 as it contains no allegation of material fact made against it.

184. As to paragraph 184:

(a) Monash:

(i) refers to and repeats paragraph 182 above; and

(ii) otherwise denies the allegations in paragraph 184;

(b) Latrobe does not plead to paragraph 184 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 184 as it contains no allegation of material fact made against it.

185. As to paragraph 185:

(a) Monash:

(i) refers to and repeats paragraphs 181 and 182 above;

(ii) says that:

- A. whether a Group Member Doctor in Training was authorised to work any alleged medical procedures preparation overtime (including whether the Group Member Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
  - B. further or alternatively, pursuant to the Monash Overtime Policy Protocol, the Group Member Doctor in Training was required to either seek verbal authorisation for any medical procedures preparation overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;
  - C. no Group Member Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical procedures preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;
    - (iii) otherwise denies the allegations in paragraph 185;
- (b) Latrobe does not plead to paragraph 185 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 185 as it contains no allegation of material fact made against it.

186. As to paragraph 186:

- (a) Monash:
  - (i) refers to and repeats paragraphs 182 to 185 above; and
  - (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Monash Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make a Monash Overtime Claim in respect of the alleged medical procedures preparation overtime, then it ought be concluded that either:
  - 1) the Group member did not work such overtime;
  - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - 3) the Group Member was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 272 to 284 below;

(iii) otherwise denies the allegations in paragraph 186;

(b) Latrobe does not plead to paragraph 186 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 186 as it contains no allegation of material fact made against it.

187. As to paragraph 187:

(a) Monash:

(i) refers to and repeats paragraphs 181 to 186 above; and

(ii) otherwise denies the allegations in paragraph 187;

(b) Latrobe does not plead to paragraph 187 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 187 as it contains no allegation of material fact made against it.

188. As to paragraph 188:

(a) Monash:

- (i) refers to and repeats paragraphs 181 to 186 above; and
- (ii) otherwise denies the allegations in paragraph 188;

(b) Latrobe does not plead to paragraph 188 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 188 as it contains no allegation of material fact made against it.

#### **E5 Medical emergency overtime**

189. As to paragraph 189:

(a) Monash:

- (i) denies that the duties and responsibilities of Group Members ~~Doctors in Training~~ when providing medical services included attending to medical emergencies;

#### **Particulars**

Due to lack of relevant experience, Monash ~~does~~ did not direct HMOs Group Members to attend to medical emergencies.

- (ii) otherwise denies the allegations in paragraph 189;

(b) Latrobe does not plead to paragraph 189 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 189 as it contains no allegation of material fact made against it.

190. As to paragraph 190:

(a) Monash:

(i) refers to and repeats sub-paragraphs 90(a)(ii)A to 90(a)(ii)E and paragraph 189(a) above;

(ii) says further that:

A. Monash had implemented the Monash Overtime Policy set out above in paragraph 90(a) hereof;

B. some or all of the Group Members were, or ought to have been, aware of the Monash Overtime Policy and Monash's approach to Unrostered Overtime;

C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Monash Overtime Claim;

~~A. in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Monash implemented the Monash Overtime Protocol;~~

~~B. Doctors in Training were, or ought to have been, aware of the Monash Overtime Protocol and Monash's approach to Unrostered Overtime;~~

~~C. if Doctors in Training performed Unrostered Overtime, they were able to submit a Monash Overtime Claim;~~

(iii) otherwise denies the allegations in paragraph 190;

(b) Latrobe does not plead to paragraph 190 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 190 as it contains no allegation of material fact made against it.

191. As to paragraph 191:

(a) Monash:

(i) refers to and repeats paragraphs 189 and 190 above;

(ii) otherwise denies the allegations in paragraph 191;

(b) Latrobe does not plead to paragraph 191 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 191 as it contains no allegation of material fact made against it.

192. As to paragraph 192:

(a) Monash:

- (i) refers to and repeats paragraph 190 above; and
- (ii) otherwise denies the allegations in paragraph 192;

(b) Latrobe does not plead to paragraph 192 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 192 as it contains no allegation of material fact made against it.

193. As to paragraph 193:

(a) Monash:

- (i) refers to and repeats paragraphs 189 and 190 above;
- (ii) says that:

- A. whether a Group Member Doctor in Training was authorised to work any alleged medical emergency overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Monash Overtime Policy Protocol, the Group Member Doctor in Training was required to either seek verbal authorisation for any medical emergency overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;
- C. no Group Member Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical emergency overtime worked (including of the demonstrable clinical need that could not be

met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 193;

(b) Latrobe does not plead to paragraph 193 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 193 as it contains no allegation of material fact made against it.

194. As to paragraph 194:

(a) Monash:

(i) refers to and repeats paragraphs 190 to 193 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Monash Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a Monash Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:

1) the Group member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 272 to 284 below;

(iii) otherwise denies the allegations in paragraph 194;

(b) Latrobe does not plead to paragraph 194 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 194 as it contains no allegation of material fact made against it.

195. As to paragraph 195:

(a) Monash:

(i) refers to and repeats paragraphs 189 to 194 above; and

(ii) otherwise denies the allegations in paragraph 195;

(b) Latrobe does not plead to paragraph 195 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 195 as it contains no allegation of material fact made against it.

196. As to paragraph 196:

(a) Monash:

(i) refers to and repeats paragraphs 189 to 194 above; and

(ii) otherwise denies the allegations in paragraph 196;

(b) Latrobe does not plead to paragraph 196 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 196 as it contains no allegation of material fact made against it.

## **E6 Medical records overtime**

197. As to paragraph 197:

- (a) Monash:
- (i) admits that the duties and responsibilities of Group Members ~~Doctors in Training~~ when providing medical services included completing medical records;
  - ~~(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the completion of medical records; and~~
  - ~~(iii)~~(ii) otherwise denies the allegations in paragraph 197;
- (b) Latrobe does not plead to paragraph 197 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 197 as it contains no allegation of material fact made against it.

198. As to paragraph 198:

- (a) Monash:
- (i) refers to and repeats sub-paragraphs 90(a)~~(ii)~~A to 90(a)~~(ii)~~E above;
  - (ii) says further that:
    - A. Monash had implemented the Monash Overtime Policy set out above in paragraph 90(a) hereof;
    - B. some or all of the Group Members were, or ought to have been, aware of the Monash Overtime Policy and Monash's approach to Unrostered Overtime;
    - C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Monash Overtime Claim;
    - ~~A. in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Monash implemented the Monash Overtime Protocol;~~
    - ~~B. Doctors in Training were, or ought to have been, aware of the Monash Overtime Protocol and Monash's approach to Unrostered Overtime;~~

~~C. if Doctors in Training performed Unrostered Overtime, they were able to submit a Monash Overtime Claim;~~

(iii) otherwise denies the allegations in paragraph 198;

(b) Latrobe does not plead to paragraph 198 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 198 as it contains no allegation of material fact made against it.

199. As to paragraph 199:

(a) Monash:

(i) refers to and repeats paragraphs 197 and 198 above;

(ii) otherwise denies the allegations in paragraph 199;

(b) Latrobe does not plead to paragraph 199 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 199 as it contains no allegation of material fact made against it.

200. As to paragraph 200:

(a) Monash:

(i) refers to and repeats paragraph 198 above; and

(ii) otherwise denies the allegations in paragraph 200;

(b) Latrobe does not plead to paragraph 200 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 200 as it contains no allegation of material fact made against it.

201. As to paragraph 201:

(a) Monash:

- (i) refers to and repeats paragraphs 197 and 198 above;
- (ii) says that:
  - A. whether a Group Member ~~Doctor in Training~~ was authorised to work any alleged medical records overtime (including whether the Group Member ~~Doctor in Training~~ worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
  - B. further or alternatively, pursuant to the Monash Overtime Policy Protocol, the Group Member ~~Doctor in Training~~ was required to either seek verbal authorisation for any medical records overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;
  - C. no Group Member ~~Doctor in Training~~ has provided particulars of the circumstances of any alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;
- (iii) otherwise denies the allegations in paragraph 201;
- (b) Latrobe does not plead to paragraph 201 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 201 as it contains no allegation of material fact made against it.

202. As to paragraph 202:

- (a) Monash:
  - (i) refers to and repeats paragraphs 198 to 201 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Monash Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make a Monash Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
  - 1) the Group member did not work such overtime;
  - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - 3) the Group Member was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 272 to 284 below;

(iii) otherwise denies the allegations in paragraph 202;

(b) Latrobe does not plead to paragraph 202 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 202 as it contains no allegation of material fact made against it.

203. As to paragraph 203:

(a) Monash:

(i) refers to and repeats paragraphs 197 to 202 above; and

(ii) otherwise denies the allegations in paragraph 203;

(b) Latrobe does not plead to paragraph 203 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 203 as it contains no allegation of material fact made against it.

204. As to paragraph 204:

(a) Monash:

- (i) refers to and repeats paragraphs 197 to 202 above; and
- (ii) otherwise denies the allegations in paragraph 204;

(b) Latrobe does not plead to paragraph 204 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 204 as it contains no allegation of material fact made against it.

#### **E7 Other medical services overtime**

205. As to paragraph 205:

(a) Monash:

- (i) admits that the duties and responsibilities of Group Members ~~Doctors in Training~~ when providing medical services included other medical services; and
- ~~(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the performance of other medical services; and~~
- ~~(iii)~~ (ii) otherwise denies the allegations in paragraph 205;

(b) Latrobe does not plead to paragraph 205 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 205 as it contains no allegation of material fact made against it.

206. As to paragraph 206:

(a) Monash:

- (i) refers to and repeats sub-paragraphs 90(a)(ii)A to 90(a)(ii)E above;

(ii) says further that:

A. Monash had implemented the Monash Overtime Policy set out above in paragraph 90(a) hereof;

B. some or all of the Group Members were, or ought to have been, aware of the Monash Overtime Policy and Monash's approach to Unrostered Overtime;

C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Monash Overtime Claim;

~~A. in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Monash implemented the Monash Overtime Protocol;~~

~~B. Doctors in Training were, or ought to have been, aware of the Monash Overtime Protocol and Monash's approach to Unrostered Overtime;~~

~~C. if Doctors in Training performed Unrostered Overtime, they were able to submit a Monash Overtime Claim;~~

(iii) otherwise denies the allegations in paragraph 206;

(b) Latrobe does not plead to paragraph 206 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 206 as it contains no allegation of material fact made against it.

207. As to paragraph 207:

(a) Monash:

(i) refers to and repeats paragraphs 205 and 206 above;

(ii) otherwise denies the allegations in paragraph 207;

(b) Latrobe does not plead to paragraph 207 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 207 as it contains no allegation of material fact made against it.

208. As to paragraph 208:

- (a) Monash:
  - (i) refers to and repeats paragraph 206 above; and
  - (ii) otherwise denies the allegations in paragraph 208;
- (b) Latrobe does not plead to paragraph 208 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 208 as it contains no allegation of material fact made against it.

209. As to paragraph 209:

- (a) Monash:
  - (i) refers to and repeats paragraphs 205 and 206 above;
  - (ii) says that:
    - A. whether a Group Member Doctor in Training was authorised to work any other alleged medical services overtime (including whether the Group Member Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
    - B. further or alternatively, pursuant to the Monash Overtime Policy Protocol, the Group Member Doctor in Training was required to either seek verbal authorisation for any other medical services overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;
    - C. no Group Member Doctor in Training has provided particulars of the circumstances of any alleged occasion of other medical services overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars

of the claims made by him/her (and approved by Monash) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 209;
- (b) Latrobe does not plead to paragraph 209 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 209 as it contains no allegation of material fact made against it.

210. As to paragraph 210:

- (a) Monash:
  - (i) refers to and repeats paragraphs 206 to 209 above; and
  - (ii) says further that:
    - A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Monash Overtime Claim in relation to the overtime purportedly worked;
    - B. if a Group Member did not make a Monash Overtime Claim in respect of the alleged other medical services overtime, then it ought be concluded that either:
      - 1) the Group member did not work such overtime;
      - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
      - 3) the Group Member was in attendance at the Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
    - C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 272 to 284 below;

- (iii) otherwise denies the allegations in paragraph 210;
- (b) Latrobe does not plead to paragraph 210 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 210 as it contains no allegation of material fact made against it.

211. As to paragraph 211:

- (a) Monash:
  - (i) refers to and repeats paragraphs 205 to 210 above; and
  - (ii) otherwise denies the allegations in paragraph 211;
- (b) Latrobe does not plead to paragraph 211 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 211 as it contains no allegation of material fact made against it.

212. As to paragraph 212:

- (a) Monash:
  - (i) refers to and repeats paragraphs 205 to 210 above; and
  - (ii) otherwise denies the allegations in paragraph 212;
- (b) Latrobe does not plead to paragraph 212 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 212 as it contains no allegation of material fact made against it.

## **E8 Loss and damage**

213. As to paragraph 213:

- (a) Monash denies the allegations in paragraph 213 for the reasons pleaded herein;

(b) Latrobe does not plead to paragraph 213 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 213 as it contains no allegation of material fact made against it.

**F GROUP MEMBERS' CLAIMS AGAINST LATROBE REGIONAL HOSPITAL**

214. As to paragraph 214:

(a) Latrobe:

(i) admits that, in the course of their employment during the Relevant Period, of Group Members-Doctors in Training:

A. worked at Latrobe Hospital; and

B. were rostered to work 38 ordinary hours per week, or an average of 38 hours per week for up to 4 weeks;

(ii) otherwise denies the allegations in paragraph 214;

(iii) says that such Group Members were parties to contracts of employment with Latrobe which contained terms similar to or identical to those terms pleaded in respect of Dr McPadden as set out in paragraph 3(b)(ii) hereof.

(b) Monash does not plead to paragraph 214 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 214 as it contains no allegation of material fact made against it.

**F1 Ward round preparation overtime**

215. As to paragraph 215:

(a) Latrobe:

(i) admits that the duties and responsibilities of Group Members-Doctors in Training when providing medical services included ward round preparation; and

~~(ii) — says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the performance of ward round preparation; and~~

~~(iii)(ii)~~ otherwise denies the allegations in paragraph 215;

(b) Monash does not plead to paragraph 215 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 215 as it contains no allegation of material fact made against it.

216. As to paragraph 216:

(a) Latrobe:

(i) refers to and repeats paragraph 24(a) ~~sub-paragraphs 22(a)(ii)A to 22(a)(ii)F~~ above;

(ii) says further that:

A. Latrobe had implemented the Latrobe Overtime Policy set out above in paragraph 24(a) hereof;

B. some or all of the Group Members were, or ought to have been, aware of the Latrobe Overtime Policy and Monash's approach to Unrostered Overtime;

C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Latrobe Overtime Claim;

~~A. — in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Latrobe implemented the Latrobe Overtime Protocol;~~

~~B. — Doctors in Training were, or ought to have been, aware of the Latrobe Overtime Protocol and Latrobe's approach to Unrostered Overtime;~~

~~C. — if Doctors in Training performed Unrostered Overtime, they were able to submit a Latrobe Overtime Claim;~~

(iii) otherwise denies the allegations in paragraph 216;

(b) Monash does not plead to paragraph 216 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 216 as it contains no allegation of material fact made against it.

217. As to paragraph 217:

(a) Latrobe:

(i) refers to and repeats paragraphs 215 and 216 above;

(ii) otherwise denies the allegations in paragraph 217;

(b) Monash does not plead to paragraph 217 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 217 as it contains no allegation of material fact made against it.

218. As to paragraph 218:

(a) Latrobe:

(i) refers to and repeats paragraph 216 above; and

(ii) otherwise denies the allegations in paragraph 218;

(b) Monash does not plead to paragraph 218 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 218 as it contains no allegation of material fact made against it.

219. As to paragraph 219:

(a) ~~Monash~~ La Trobe:

(i) refers to and repeats paragraphs 215 and 216 above;

(ii) says that:

- A. whether a Group Member Doctor in Training was authorised to work any alleged ward round preparation overtime (including whether the Group Member Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Latrobe Overtime Policy Protocol, the Group Member Doctor in Training was required to either seek authorisation for any ward round preparation overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
- C. no Group Member Doctor in Training has provided particulars of the circumstances of any alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 219;

(b) Monash does not plead to paragraph 219 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 219 as it contains no allegation of material fact made against it.

220. As to paragraph 220:

(a) Latrobe says that Latrobe had implemented a policy and its contents which dealt with the authorisation and payment for overtime or excess unrostered hours worked by some or all of the Group Members;

#### **Particulars**

The Latrobe Overtime Policy was partly in writing in various documents provided to or available to some or all Group Members from time to time

and was partly oral and advised to some or all Group Members at the commencement of their employment with Latrobe in their inductions and orientations.

There was a Management of Overtime Kronos Policy that applied to some or all Group Members, as amended from time to time, which stated that approval for overtime was to be sought prior to commencement of the overtime hours and approved by a general or unit manager or after hours the Hospital Coordinator and Group Members un-rostered overtime for clinical emergencies was to be approved by the Department Manager, Consultant-on-call, Hospital Coordinator or HMO manager for approval.

Some or all Group Members were advised, from time to time, at their inductions and orientations that additional hours worked could only be performed when requested by a Consultant, Clinical Lead or Co-ordinator or Registrar or where there is a clinical need that could not be performed by another person and then the Additional Hours Claim Form was to be used.

The Additional Hours Claim Form, as amended from time to time, directed that additional hours worked were to be authorised in advance of working them by the Unit Head, Consultant or Co-ordinator.

Further particulars will be provided prior to trial.

(i) This policy and its contents applied to some or all of the Group Members:

A. As a term of the contracts referred to in paragraph 214(a)(iii) hereof; and/or

B. as a lawful and reasonable direction given to Group Members by Latrobe:

1) through the policy;

2) through the various documents provided to or available to some or all of the Group Members referred to in paragraph 220(a)(i) above;

3) through advice to some or all of the Group Members during their induction; and/or

- 4) through required use of the Additional Hours Claim Form by Group Members.
- (ii) The authorisation of hours within the meaning of clause 32.2.1 (b) of the 2013 Agreement at Latrobe required compliance with that policy and direction and/or advice;
- (iii) Further or in the alternative, that policy was in accordance with clause 32.3 of the Latrobe Agreement which implemented a protocol for authorisation of and remuneration for unrostered overtime, being overtime in excess of rostered ordering working hours that was required due to a demonstrable operational or clinical need that could not be provided in some other way (**Unrostered Overtime**);

### **Particulars**

Further particulars will be provided prior to trial.

- (iv) Pursuant to the Monash Overtime Policy, some or all of the Group Members were required to either seek authorisation for any medical records overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
- (v) Further or alternatively whether some or all of the Group Members were authorised to work any alleged medical records overtime (including whether Group Members worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- (vi) Group Members have not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance or any authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Monash cannot properly plead without those particulars;
- (vii) pursuant to the Latrobe Overtime Policy, the Group Members were required to either seek verbal authorisation for any ward round preparation overtime in

advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime were worked but on no occasion after completion of that pay fortnight;

(viii) further or alternatively whether a Group Member was authorised to work any alleged ward round preparation overtime (including whether the Group Member worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

(ix) no Group Member has provided particulars of the circumstances of any alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Bairnsdale) for retrospective authorisation of such overtime, and Bairnsdale cannot properly plead without those particulars;

~~(a) — Latrobe:~~

~~(i) — refers to and repeats paragraphs 216 to 219 above; and~~

~~(ii)(i) — says further that:~~

~~A. — payment for Unrostered Overtime is subject to the condition that a Group Member make a Latrobe Overtime Claim in relation to the overtime purportedly worked;~~

~~B. — if a Group Member did not make a Latrobe Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:~~

~~1) — the Group member did not work such overtime;~~

~~2) — the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or~~

~~3) — the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;~~

~~C. — further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 285 to 297 below;~~

~~(iii) — otherwise denies the allegations in paragraph 220;~~

~~(iii)(x) otherwise denies the allegations in paragraph 220;~~

(b) Monash does not plead to paragraph 220 as it contains no allegation of material fact against it.

(c) Bairnsdale does not plead to paragraph 220 as it contains no allegation of material fact against it.

221. As to paragraph 221:

(a) Latrobe:

(i) refers to and repeats paragraphs 215 to 220 above; and

(ii) otherwise denies the allegations in paragraph 221;

(b) Monash does not plead to paragraph 221 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 221 as it contains no allegation of material fact made against it.

222. As to paragraph 222:

(a) Latrobe:

(i) refers to and repeats paragraphs 215 to 220 above; and

(ii) otherwise denies the allegations in paragraph 222;

(b) Monash does not plead to paragraph 222 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 222 as it contains no allegation of material fact made against it.

## F2 Ward round overtime

223. As to paragraph 223:

(a) Latrobe:

(i) admits that a Group Member's Doctors in Training's duties and responsibilities when providing medical services included undertaking ward rounds; and

~~(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the undertaking of ward rounds; and~~

(iii) otherwise denies the allegations in paragraph 223;

(b) Monash does not plead to paragraph 223 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 223 as it contains no allegation of material fact made against it.

224. As to paragraph 224:

(a) Latrobe:

(i) refers to and repeats sub-paragraphs 1 to 1 above;

(ii) says further that:

A. Latrobe had implemented the Latrobe Overtime Policy set out above in paragraph 24(a) hereof;

B. some or all of the Group Members were, or ought to have been, aware of the Latrobe Overtime Policy and Monash's approach to Unrostered Overtime;

C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Latrobe Overtime Claim;

- ~~A. in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Latrobe implemented the Latrobe Overtime Protocol;~~
- ~~B. Doctors in Training were, or ought to have been, aware of the Latrobe Overtime Protocol and Latrobe's approach to Unrostered Overtime;~~
- ~~C. if Doctors in Training performed Unrostered Overtime, they were able to submit a Latrobe Overtime Claim;~~

(iii) otherwise denies the allegations in paragraph 224;

(b) Monash does not plead to paragraph 224 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 224 as it contains no allegation of material fact made against it.

225. As to paragraph 225:

(a) Latrobe:

(i) refers to and repeats paragraphs 223 and 224 above;

(ii) otherwise denies the allegations in paragraph 225;

(b) Monash does not plead to paragraph 225 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 225 as it contains no allegation of material fact made against it.

226. As to paragraph 226:

(a) Latrobe:

(i) refers to and repeats paragraph 224 above; and

(ii) otherwise denies the allegations in paragraph 226;

(b) Monash does not plead to paragraph 226 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 226 as it contains no allegation of material fact made against it.

227. As to paragraph 227:

(a) Latrobe:

(i) refers to and repeats paragraphs 223 and 224 above;

(ii) says that:

A. whether a Group Member ~~Doctor in Training~~ was authorised to work any alleged ward round overtime (including whether the Group Member ~~Doctor in Training~~ worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

B. further or alternatively, pursuant to the Latrobe Overtime Policy Protocol, the Group Member ~~Doctor in Training~~ was required to either seek authorisation for any ward round overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;

C. no Group Member ~~Doctor in Training~~ has provided particulars of the circumstances of any alleged occasion of ward round overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 227;

(b) Monash does not plead to paragraph 227 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 227 as it contains no allegation of material fact made against it.

228. As to paragraph 228:

(a) Latrobe:

(i) refers to and repeats paragraphs 224 to 227 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Latrobe Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a Latrobe Overtime Claim in respect of the alleged ward round overtime, then it ought be concluded that either:

1) the Group member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 285 to 297 below;

(iii) otherwise denies the allegations in paragraph 228;

(b) Monash does not plead to paragraph 228 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 228 as it contains no allegation of material fact made against it.

229. As to paragraph 229:

(a) Latrobe:

(i) refers to and repeats paragraphs 223 to 228 above; and

- (ii) otherwise denies the allegations in paragraph 229;
- (b) Monash does not plead to paragraph 229 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 229 as it contains no allegation of material fact made against it.

230. As to paragraph 230:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 223 to 228 above; and
  - (ii) otherwise denies the allegations in paragraph 230;
- (b) Monash does not plead to paragraph 230 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 230 as it contains no allegation of material fact made against it.

### **F3 Handover overtime**

231. As to paragraph 231:

- (a) Latrobe:
  - (i) admits that duties and responsibilities of Group Members-Doctors in Training when providing medical services included conducting handover; and
  - ~~(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the conducting of handover; and~~
  - ~~(iii)~~(ii) otherwise denies the allegations in paragraph 231;
- (b) Monash does not plead to paragraph 231 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 231 as it contains no allegation of material fact made against it.

232. As to paragraph 232:

(a) Latrobe:

(i) refers to and repeats paragraph 24(a) ~~sub-paragraphs 22(a)(ii)A to 22(a)(ii)E~~ above;

(ii) says further that:

A. Latrobe had implemented the Latrobe Overtime Policy set out above in paragraph 24(a) hereof;

B. some or all of the Group Members were, or ought to have been, aware of the Latrobe Overtime Policy and Monash's approach to Unrostered Overtime;

C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Latrobe Overtime Claim;

~~A. in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Latrobe implemented the Latrobe Overtime Protocol;~~

~~B. Doctors in Training were, or ought to have been, aware of the Latrobe Overtime Protocol and Latrobe's approach to Unrostered Overtime;~~

~~C. if Doctors in Training performed Unrostered Overtime, they were able to submit a Latrobe Overtime Claim;~~

(iii) otherwise denies the allegations in paragraph 232;

(b) Monash does not plead to paragraph 232 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 232 as it contains no allegation of material fact made against it.

233. As to paragraph 233:

(a) Latrobe:

(i) refers to and repeats paragraphs 231 and 232 above;

(ii) otherwise denies the allegations in paragraph 233;

(b) Monash does not plead to paragraph 233 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 233 as it contains no allegation of material fact made against it.

234. As to paragraph 234:

(a) Latrobe:

(i) refers to and repeats paragraph 232 above; and

(ii) otherwise denies the allegations in paragraph 234;

(b) Monash does not plead to paragraph 234 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 232 as it contains no allegation of material fact made against it.

235. As to paragraph 235:

(a) Latrobe:

(i) refers to and repeats paragraphs 231 and 232 above;

(ii) says that:

A. whether a Group Member ~~Doctor in Training~~ was authorised to work any authorised handover overtime (including whether the Group Member ~~Doctor in Training~~ worked the authorised overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

B. further or alternatively, pursuant to the Latrobe Overtime Policy Protocol I, the Group Member ~~Doctor in Training~~ was required to either seek authorisation for any handover overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;

C. No Group Member Doctor in Training has provided particulars of the circumstances of any alleged occasion of handover overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 235;

(b) Monash does not plead to paragraph 235 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 235 as it contains no allegation of material fact made against it.

236. As to paragraph 236:

(a) Latrobe:

(i) refers to and repeats paragraphs 232 to 235 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Latrobe Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a Latrobe Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:

1) the Group member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 285 to 297 below;

(iii) otherwise denies the allegations in paragraph 236;

(b) Monash does not plead to paragraph 236 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 236 as it contains no allegation of material fact made against it.

237. As to paragraph 237:

(a) Latrobe:

(i) refers to and repeats paragraphs 231 to 236 above; and

(ii) otherwise denies the allegations in paragraph 237;

(b) Monash does not plead to paragraph 237 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 237 as it contains no allegation of material fact made against it.

238. As to paragraph 238:

(a) Latrobe:

(i) refers to and repeats paragraphs 231 to 236 above; and

(ii) otherwise denies the allegations in paragraph 238;

(b) Monash does not plead to paragraph 238 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 238 as it contains no allegation of material fact made against it.

#### **F4 Medical procedures preparation overtime**

239. As to paragraph 239:

- (a) Latrobe:
- (i) admits that the duties and responsibilities of Group Members ~~Doctors in Training~~ when providing medical services included medical procedures preparation; and
  - ~~(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for medical procedures preparation; and~~
  - ~~(iii)~~(ii) otherwise denies the allegations in paragraph 239;
- (b) Monash does not plead to paragraph 239 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 239 as it contains no allegation of material fact made against it.

240. As to paragraph 240:

- (a) Latrobe:
- (i) refers to and repeats paragraph 24(a) ~~sub-paragraphs 22(a)(ii)A to 22(a)(ii)E~~ above;
  - (ii) says further-that:
    - A. Latrobe had implemented the Latrobe Overtime Policy set out above in paragraph 24(a) hereof;
    - B. some or all of the Group Members were, or ought to have been, aware of the Latrobe Overtime Policy and Monash's approach to Unrostered Overtime;
    - C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Latrobe Overtime Claim;
    - ~~A. in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Latrobe implemented the Latrobe Overtime Protocol;~~
    - ~~B. Doctors in Training were, or ought to have been, aware of the Latrobe Overtime Protocol and Latrobe's approach to Unrostered Overtime;~~

~~C. — if Doctors in Training performed Unrostered Overtime, they were able to submit a Latrobe Overtime Claim;~~

(iii) otherwise denies the allegations in paragraph 240;

(b) Monash does not plead to paragraph 240 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 240 as it contains no allegation of material fact made against it.

241. As to paragraph 241:

(a) Latrobe:

(i) refers to and repeats paragraphs 239 and 240 above;

(ii) otherwise denies the allegations in paragraph 241;

(b) Monash does not plead to paragraph 241 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 241 as it contains no allegation of material fact made against it.

242. As to paragraph 242:

(a) Latrobe:

(i) refers to and repeats paragraph 240 above; and

(ii) otherwise denies the allegations in paragraph 242;

(b) Monash does not plead to paragraph 242 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 242 as it contains no allegation of material fact made against it.

243. As to paragraph 243:

(a) Latrobe:

- (i) refers to and repeats paragraphs 239 and 240 above;
- (ii) says that:
  - A. whether a Group Member ~~Doctor in Training~~ was authorised to work any alleged medical procedures preparation overtime (including whether the Group Member ~~Doctor in Training~~ worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
  - B. further or alternatively, pursuant to the Latrobe Overtime Policy Protocol, the Group Member ~~Doctor in Training~~ was required to either seek authorisation for any medical procedures preparation overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
  - C. No Group Member ~~Doctor in Training~~ has provided particulars of the circumstances of any alleged occasion of medical procedures preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 243;

(b) Monash does not plead to paragraph 243 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 243 as it contains no allegation of material fact made against it.

244. As to paragraph 244:

(a) Latrobe:

(i) refers to and repeats paragraphs 240 to 243 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Latrobe Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make a Latrobe Overtime Claim in respect of the alleged medical procedures preparation overtime, then it ought be concluded that either:
  - 1) the Group member did not work such overtime;
  - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 285 to 297 below;

(iii) otherwise denies the allegations in paragraph 244;

(b) Monash does not plead to paragraph 244 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 244 as it contains no allegation of material fact made against it.

245. As to paragraph 245:

(a) Latrobe:

(i) refers to and repeats paragraphs 239 to 244 above; and

(ii) otherwise denies the allegations in paragraph 245;

(b) Monash does not plead to paragraph 245 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 245 as it contains no allegation of material fact made against it.

246. As to paragraph 246:

(a) Latrobe:

(i) refers to and repeats paragraphs 239 to 244 above; and

(ii) otherwise denies the allegations in paragraph 246;

(b) Monash does not plead to paragraph 246 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 246 as it contains no allegation of material fact made against it.

#### **F5 Medical emergency overtime**

247. As to paragraph 247:

(a) Latrobe:

(i) denies that the duties and responsibilities of Group Members ~~Doctors in Training~~ when providing medical services included attending to medical emergencies;

#### **Particulars**

Due to lack of relevant experience, Latrobe does not direct Group Members ~~Doctors in Training~~ to attend to medical emergencies.

(ii) otherwise denies the allegations in paragraph 247;

(b) Monash does not plead to paragraph 247 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 247 as it contains no allegation of material fact made against it.

248. As to paragraph 248:

(a) Latrobe:

(i) refers to and repeats ~~paragraphs 24(a) sub-paragraphs 22(a)(ii)A to 22(a)(ii)E and paragraph 247(a) above;~~

(ii) says further that:

A. Latrobe had implemented the Latrobe Overtime Policy set out above in paragraph 24(a) hereof;

B. some or all of the Group Members were, or ought to have been, aware of the Latrobe Overtime Policy and Monash's approach to Unrostered Overtime;

C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Latrobe Overtime Claim;

~~A. in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Latrobe implemented the Latrobe Overtime Protocol;~~

~~B. Doctors in Training were, or ought to have been, aware of the Latrobe Overtime Protocol and Latrobe's approach to Unrostered Overtime;~~

~~C. if Doctors in Training performed Unrostered Overtime, they were able to submit a Latrobe Overtime Claim;~~

(iii) otherwise denies the allegations in paragraph 248;

(b) Monash does not plead to paragraph 248 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 248 as it contains no allegation of material fact made against it.

249. As to paragraph 249:

(a) Latrobe:

(i) refers to and repeats paragraphs 247 and 248 above;

(ii) otherwise denies the allegations in paragraph 249;

(b) Monash does not plead to paragraph 249 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 249 as it contains no allegation of material fact made against it.

250. As to paragraph 250:

(a) Latrobe:

- (i) refers to and repeats paragraph 248 above; and
- (ii) otherwise denies the allegations in paragraph 250;

(b) Monash does not plead to paragraph 250 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 250 as it contains no allegation of material fact made against it.

251. As to paragraph 251:

(a) Latrobe:

- (i) refers to and repeats paragraphs 247 and 248 above;
- (ii) says that:

- A. whether a Group Member Doctor in Training was authorised to work any alleged medical emergency overtime (including whether the Group Member ~~Doctor in Training~~ worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Latrobe Overtime Policy Protocol, the Group Member Doctor in Training was required to either seek authorisation for any medical emergency overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
- C. No Group Member Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical emergency overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance

authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 251;
- (b) Monash does not plead to paragraph 251 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 251 as it contains no allegation of material fact made against it.

252. As to paragraph 252:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 248 to 251 above; and
  - (ii) says further that:
    - A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Latrobe Overtime Claim in relation to the overtime purportedly worked;
    - B. if a Group Member did not make a Latrobe Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:
      - 1) the Group member did not work such overtime;
      - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
      - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
    - C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 285 to 297 below;

- (iii) otherwise denies the allegations in paragraph 252;
- (b) Monash does not plead to paragraph 252 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 252 as it contains no allegation of material fact made against it.

253. As to paragraph 253:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 247 to 252 above; and
  - (ii) otherwise denies the allegations in paragraph 253;
- (b) Monash does not plead to paragraph 253 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 253 as it contains no allegation of material fact made against it.

254. As to paragraph 254:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 247 to 252 above; and
  - (ii) otherwise denies the allegations in paragraph 254;
- (b) Monash does not plead to paragraph 254 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 254 as it contains no allegation of material fact made against it.

## **F6 Medical records overtime**

255. As to paragraph 255:

- (a) Latrobe:

- (i) admits that the duties and responsibilities of Group Members ~~Doctors in Training~~ when providing medical services included completing medical records; and
  - (ii) ~~says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the completion of medical records; and~~
  - ~~(iii)~~(ii) otherwise denies the allegations in paragraph 255;
- (b) Monash does not plead to paragraph 255 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 255 as it contains no allegation of material fact made against it.

256. As to paragraph 256:

- (a) Latrobe:
  - (i) refers to and repeats paragraph 24(a) ~~sub-paragraphs 22(a)(ii)A to 22(a)(ii)E~~ above;
  - (ii) says further that:
    - A. Latrobe had implemented the Latrobe Overtime Policy set out above in paragraph 24(a) hereof;
    - B. some or all of the Group Members were, or ought to have been, aware of the Latrobe Overtime Policy and Monash's approach to Unrostered Overtime;
    - C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Latrobe Overtime Claim;
    - ~~A. in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Latrobe implemented the Latrobe Overtime Protocol;~~
    - ~~B. Doctors in Training were, or ought to have been, aware of the Latrobe Overtime Protocol and Latrobe's approach to Unrostered Overtime;~~

~~C. — if Doctors in Training performed Unrostered Overtime, they were able to submit a Latrobe Overtime Claim;~~

(iii) otherwise denies the allegations in paragraph 256;

(b) Monash does not plead to paragraph 256 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 256 as it contains no allegation of material fact made against it.

257. As to paragraph 257:

(a) Latrobe:

(i) refers to and repeats paragraphs 255 and 256 above;

(ii) otherwise denies the allegations in paragraph 257;

(b) Monash does not plead to paragraph 257 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 257 as it contains no allegation of material fact made against it.

258. As to paragraph 258:

(a) Latrobe:

(i) refers to and repeats paragraph 256 above; and

(ii) otherwise denies the allegations in paragraph 258;

(b) Monash does not plead to paragraph 258 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 258 as it contains no allegation of material fact made against it.

259. As to paragraph 259:

(a) Latrobe:

- (i) refers to and repeats paragraphs 255 and 256 above;
- (ii) says that:
  - A. whether a Group Member ~~Doctor in Training~~ was authorised to work any alleged medical records overtime (including whether the Group Member ~~Doctor in Training~~ worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
  - B. further or alternatively, pursuant to the Latrobe Overtime Policy Protocol, the Group Member ~~Doctor in Training~~ was required to either seek authorisation for any medical records overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
  - C. no Group Member ~~Doctor in Training~~ has provided particulars of the circumstances of any alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 259;

(b) Monash does not plead to paragraph 259 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 259 as it contains no allegation of material fact made against it.

260. As to paragraph 260:

(a) Latrobe:

(i) refers to and repeats paragraphs 256 to 259 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Latrobe Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make a Latrobe Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
  - 1) the Group member did not work such overtime;
  - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
  - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 285 to 297 below;

(iii) otherwise denies the allegations in paragraph 260;

(b) Monash does not plead to paragraph 260 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 260 as it contains no allegation of material fact made against it.

261. As to paragraph 261:

(a) Latrobe:

(i) refers to and repeats paragraphs 255 to 260 above; and

(ii) otherwise denies the allegations in paragraph 261;

(b) Monash does not plead to paragraph 261 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 261 as it contains no allegation of material fact made against it.

262. As to paragraph 262:

(a) Latrobe:

(i) refers to and repeats paragraphs 255 to 260 above; and

(ii) otherwise denies the allegations in paragraph 262;

(b) Monash does not plead to paragraph 262 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 262 as it contains no allegation of material fact made against it.

#### **F7 Other medical services overtime**

263. As to paragraph 263:

(a) Latrobe:

(i) admits that a Group Member's Doctor in Training's duties and responsibilities when providing medical services included other medical services; and

~~(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the performance of other medical services; and~~

~~(iii)~~(ii) otherwise denies the allegations in paragraph 263;

(b) Monash does not plead to paragraph 263 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 263 as it contains no allegation of material fact made against it.

264. As to paragraph 264:

(a) Latrobe:

(i) refers to and repeats paragraphs 24(a) sub-paragraphs 22(a)(ii)A to 22(a)(ii)E above;

(ii) says further that:

A. Latrobe had implemented the Latrobe Overtime Policy set out above in paragraph 24(a) hereof;

B. some or all of the Group Members were, or ought to have been, aware of the Latrobe Overtime Policy and Monash's approach to Unrostered Overtime; and

C. if some or all of the Group Members performed Unrostered Overtime, they were able to submit a Latrobe Overtime Claim;

~~A. in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Latrobe implemented the Latrobe Overtime Protocol;~~

~~B. Doctors in Training were, or ought to have been, aware of the Latrobe Overtime Protocol and Latrobe's approach to Unrostered Overtime;~~

~~C. if Doctors in Training performed Unrostered Overtime, they were able to submit a Latrobe Overtime Claim;~~

(iii) otherwise denies the allegations in paragraph 264;

(b) Monash does not plead to paragraph 264 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 264 as it contains no allegation of material fact made against it.

265. As to paragraph 265:

(a) Latrobe:

(i) refers to and repeats paragraphs 263 and 264 above;

(ii) otherwise denies the allegations in paragraph 265;

(b) Monash does not plead to paragraph 265 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 265 as it contains no allegation of material fact made against it.

266. As to paragraph 266:

(a) Latrobe:

- (i) refers to and repeats paragraph 264 above; and
- (ii) otherwise denies the allegations in paragraph 266;

(b) Monash does not plead to paragraph 266 as it contains no allegation of material fact made against it.

(c) Bairnsdale does not plead to paragraph 266 as it contains no allegation of material fact made against it.

267. As to paragraph 267:

(a) Latrobe:

- (i) refers to and repeats paragraphs 263 and 264 above;
- (ii) says that:

- A. whether a Group Member Doctor in Training was authorised to work any alleged other medical services overtime (including whether the Group Member Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Latrobe Overtime Policy Protocol, the Group Member Doctor in Training was required to either seek authorisation for any other medical services overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime in the pay fortnight that the overtime hours were worked, or at the latest, the subsequent fortnight;
- C. no Group Member Doctor in Training has provided particulars of the circumstances of any alleged occasion of other medical services overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance

authorisation given to him/her for such overtime, nor provided particulars of the claims made by him/her (and approved by Latrobe) for retrospective authorisation of such overtime, and Latrobe cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 267;
- (b) Monash does not plead to paragraph 267 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 267 as it contains no allegation of material fact made against it.

268. As to paragraph 268:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 264 to 267 above; and
  - (ii) says further that:
    - A. payment for Unrostered Overtime is subject to the condition that a Group Member make a Latrobe Overtime Claim in relation to the overtime purportedly worked;
    - B. if a Group Member did not make a Latrobe Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
      - 1) the Group member did not work such overtime;
      - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
      - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
    - C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 285 to 297 below;

- (iii) otherwise denies the allegations in paragraph 268;
- (b) Monash does not plead to paragraph 268 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 268 as it contains no allegation of material fact made against it.

269. As to paragraph 269:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 263 to 267 above; and
  - (ii) otherwise denies the allegations in paragraph 269;
- (b) Monash does not plead to paragraph 269 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 269 as it contains no allegation of material fact made against it.

270. As to paragraph 270:

- (a) Latrobe:
  - (i) refers to and repeats paragraphs 263 to 267 above; and
  - (ii) otherwise denies the allegations in paragraph 270;
- (b) Monash does not plead to paragraph 270 as it contains no allegation of material fact made against it.
- (c) Bairnsdale does not plead to paragraph 270 as it contains no allegation of material fact made against it.

## **F8 Loss and damage**

271. As to paragraph 271:

- (a) Latrobe denies the allegations in paragraph 271 for the reasons pleaded herein-;

(b) Monash does not plead to paragraph 271 as it contains no allegation of material fact made against it;

(c) Bairnsdale does not plead to paragraph 271 as it contains no allegation of material fact made against it.

## **G ESTOPPEL BY CONDUCT**

### **G1 Claim against Monash**

#### Background to the estoppel

272. Pursuant to the terms of their employment contracts, Dr McPadden and the Group Members were:

- (a) informed that their conditions of employment were governed by:
  - (i) the 2013 Agreement or the 2018 Agreement;
  - (ii) their individual contracts of employment;
- (b) obliged to abide by all Monash by-laws, safety rules, policies and procedures;

273. Pursuant to the Monash Overtime Policy Protocol, Dr McPadden and Group Members were required to:

- (a) seek verbal approval for each occasion of Unrostered Overtime in advance of working the Unrostered Overtime by contacting their Medical Unit Head (during business hours) or On Call Consultant (if after hours);
- (b) where authorisation of the Unrostered Overtime could not reasonably have been made in advance of the doctor performing the work:
  - (i) complete a Monash Overtime Claim, setting out the reasons for the Unrostered Overtime (including patient label / UR numbers or patients treated), as well as the time and date of communication with the Medical Unit Head / On Call Consultant;
  - (ii) forward the Monash Overtime Claim to the Medical Unit Head for approval and signature on the first occasion possible after the Unrostered Overtime hours were worked, and on no occasion later than the completion of the pay fortnight;

- (iii) submit the signed Monash Overtime Claim to Monash Doctors Workforce Office (or the Kronos Manager, where applicable).

### Particulars

Monash Overtime Policy Protocol at page 1 [1], [3]; page 2 [2.1]

274. Further, the Monash Overtime Policy Protocol provided that a claim for Unrostered Overtime must satisfy the following criteria:

- (a) the doctor has performed the overtime due to demonstrable clinical need and that need could not be met by other means;
- (b) authorisation of the overtime could not reasonably have been made in advance of the doctor performing the work;
- (c) the doctor has claimed for retrospective payment of the Unrostered Overtime on the first occasion possible after the Unrostered Overtime was worked and on no occasion later than the completion of that pay fortnight;
- (d) the doctor has recorded the reason for working the overtime and the duties performed in a form capable of hospital audit and review (the clinical need must be demonstrated, for example, unexpected admission, sick patient etc, including patient label / UR number); and
- (e) the claim for Unrostered Overtime must be authorised by the Medical Head Until and reviewed by the Program Director within 14 days of the Monash Overtime Claim being submitted.

275. Dr McPadden and Group Members who commenced employment with Monash at the beginning of their first clinical year as a medical officer, in the position of intern, participated in orientation during which they were informed of:

- (a) their ordinary hours of work (and given a copy of the 2013 Agreement or the 2018 Agreement);
- (b) the existence of, and obligation to comply with, the Monash Overtime Policy Protocol;
- (c) the location of the Monash Overtime Policy Protocol at <https://monashdoctors.org/procedures-forms-2>

- (d) the requirement to seek either advance, or retrospective, authorisation for any Unrostered Overtime;
- (e) the requirement to make a claim for Unrostered Overtime;
- (f) the requirements of any claim for Unrostered Overtime;
- (g) the requirement for a claim for Unrostered Overtime to be submitted on the first occasion possible after the Unrostered Overtime was worked and on no occasion later than the completion of the pay fortnight;
- (h) the process for claiming Unrostered Overtime.

#### **Particulars**

- A. Dr McPadden attended orientation in around February 2018
- B. Particulars in relation to Group Members will be provided after the Group Members are known.

276. From time to time throughout the Relevant Period, Dr McPadden and Group Members submitted claims for Unrostered Overtime which were approved and for which they were paid (**Claimed Unrostered Overtime**).

#### **Particulars**

In relation to Dr McPadden, see the particulars of sub-paragraphs 90(a)(ii)(G) and 124(a)(iii).

Particulars in relation to Group Members will be provided after the Group Members are known.

277. By reason of paragraphs 272 to 276 above, Dr McPadden and Group Members were:

- (a) aware of their ordinary hours of work;
- (b) aware of the requirement to either:
  - (i) obtain authorisation in advance for Unrostered Overtime from the Medical Unit Head (during business hours) or On Call Consultant (if after hours) in accordance with the Monash Overtime Policy Protocol or

- (ii) where no authorisation in advance was obtained, obtain retrospective authorisation for Unrostered Overtime from the Medical Unit Head / On Call Consultant on the first occasion possible after the Unrostered Overtime was worked and in no occasion later than the completion of that pay fortnight in accordance with the Monash Overtime Policy Protocol;
- (c) aware of the requirement to submit a Monash Overtime Claim and the process for doing so; and
- (d) capable of complying those requirements.

#### Operation of the estoppel

278. In the circumstances set out in paragraphs 272 to 277 above, to the extent that Dr McPadden and the Group Members:

- (a) attended or remained at work outside their ordinary hours of work other than for rostered overtime or authorised Unrostered Overtime, having not obtained advance authorisation in accordance with the Monash Overtime Policy Protocol; or
- (b) did not submit a Monash Overtime Claim in accordance with the Monash Overtime Policy Protocol;

then, by that conduct, Dr McPadden and the Group Members induced Monash to assume, and Monash did assume:

- (c) that they were not, or were not required to be, in attendance at a hospital to carry out functions that they had been called upon to perform on behalf of Monash during any such time;
- (d) further or alternatively, that any attendance at a Monash facility during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntary.

278A. Further, and in the alternative, by the conduct referred to in paragraph 278 Dr McPadden represented the matters set out in sub-paragraph 278(c) and, further or alternatively, sub-paragraph 278(d).

279. Dr McPadden and the Group Members did not correct any mistake in the assumptions set out in sub-paragraph 278(c) and, further or alternatively, sub-paragraph 278(d) above (**unapproved or unclaimed time assumptions**), despite being under a duty to do so:

- (a) by reason of their contractual obligations set out in paragraph 272 above;
- (b) further or alternatively, because, by reason of the matters in paragraphs 272 to 277 above:
  - (i) Dr McPadden and Group Members knew, or should reasonably have known, that the respondent would be induced by the acts or omissions referred to in sub-paragraphs 278(a) or 278(b) above to make the unapproved or unclaimed overtime assumptions; and
  - (ii) a reasonable person would have expected Dr McPadden and Group Members to correct any mistake in those assumptions by submitting a Monash Overtime Claim in accordance with the Monash Overtime Policy Protocol.

280. In the circumstances set out in paragraph 8 above, to the extent that Dr McPadden or Group Members engaged in the conduct in sub-paragraphs 278(a) or 278(b) above, it amounted to a representation by Dr McPadden and Group Members as to the matters in sub-paragraph 278(c) and, further or alternatively, sub-paragraph 278(d) above **(unapproved or unclaimed overtime representations)**.

281. Monash acted in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions, in that Monash, by reason of the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions:

- (a) was not aware of, and did not investigate contemporaneously, any assertion that Dr McPadden or Group Members had purportedly attended at work outside their ordinary hours of work other than during the periods of Rostered Overtime and claimed Unrostered Overtime;
- (b) did not make any payment to Dr McPadden or Group Members in relation to any purported attendance at work outside their ordinary hours of work other during the periods of Rostered Overtime and claimed Unrostered Overtime; and
- (c) did not take steps that were available to Monash to reduce any such time being worked by Dr McPadden and Group Members.

### **Particulars**

The steps that would have been available to the respondent included:

- 1) changing roster arrangements to reduce the possibility of Unrostered Overtime arising;
- 2) changing models of care and making operational changes in the delivery of health services, such as changing theatre scheduling arrangements, to address the causes of Unrostered Overtime, based on the information provided by Dr McPadden and Group Members;
- 3) employing or rostering more doctors;
- 4) reallocating responsibility for some activities or functions to more senior doctors or other personnel;
- 5) issuing directions in relation to working or not working Unrostered Overtime or performing or not performing particular activities;
- 6) planning, forecasting or budgeting for the Unrostered Overtime to ensure that the respondent could meet any liability for Unrostered Overtime.

282. To the extent that Dr McPadden or Group Members engaged in the conduct in subparagraphs 278(a) and 278(b) above, it was reasonable for Monash to regard that conduct as amounting to the unapproved and unclaimed time representations, to make the unapproved or unclaimed overtime assumptions, and to rely on those assumptions as set out paragraph 281 above, in circumstances in which Dr McPadden and Group Members:

- (a) were obliged to comply with the Monash Overtime Policy Protocol in relation to obtaining authorisation for Unrostered Overtime and submitting claims for Unrostered Overtime, as set out in paragraphs 272 to 274 above;
- (b) were informed of those obligations by Monash as set out in paragraph 272 and 274 above;
- (c) were capable of complying with those obligations as set out in paragraphs 275 and 276 above; and
- (d) were on notice that Monash's reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

### Particulars

Dr McPadden and the Group Members were on notice including because:

- 1) they were not paid in relation to any purported attendance at work outside their ordinary hours of work other than during the periods of Rostered Overtime and claimed Unrostered Overtime;
- 2) their day-to-day work was autonomous, such that they could not reasonably expect the senior staff with authority to approve or require Unrostered Overtime on behalf of Monash to have known they were working outside their ordinary hours unless they submitted a claim or otherwise brought that work to Monash's attention.

283. Monash would suffer detriment if Dr McPadden and Group Members were permitted to assert to the contrary of any of the unapproved or unclaimed overtime assumptions, to the extent that any of those assumptions is incorrect (which is not admitted), being that:

- (a) Monash would be required to make further payments to Dr McPadden and Group Members in relation to Unrostered Overtime;
- (b) further or alternatively, Monash has lost the opportunity to avoid all or some of the Unrostered Overtime by taking the steps referred to in sub-paragraph 281(c) above,

which they did not take in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

284. By reason of paragraphs 278 to 283 above, Dr McPadden and Group Members are estopped from asserting:

- (a) that they were, or were required to be, in attendance at a Monash facility to carry out functions that they had been called upon to perform on behalf of Monash during any such time;
- (b) further or alternatively, that any attendance at a Monash facility during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntary.

## G2 Claim against Latrobe

Background to the estoppel

285. Pursuant to the terms of their employment contracts, Dr McPadden and the Group Members were:

- (a) informed that their conditions of employment were governed by:
  - (i) the 2013 Agreement or the 2018 Agreement;
  - (ii) their individual contracts of employment;
- (b) obliged to familiarise themselves with Latrobe's policies and required to carry out their duties and responsibilities at all times in accordance with the terms and conditions of Latrobe's policies and protocols as varied from time to time;

286. Pursuant to the Latrobe Overtime ~~Protocol~~ Policy, Dr McPadden and Group Members were required to:

- (a) obtain authorisation in advance for Unrostered Overtime from their General Manager (during business hours) or Hospital Coordinator (if after hours); or
- (b) where no authorisation in advance was obtained:
  - (i) complete a Latrobe Overtime Claim and have it signed by the Department Manager, Consultant-on-call or Hospital Co-ordinator;
  - (ii) record any overtime hours worked in Kronos based on the times registered by the doctor at the Kronos clock;
  - (iii) submit the Latrobe Overtime Claim in the pay fortnight that the Unrostered Overtime was worked, or at the latest, the subsequent pay fortnight;

**Particulars**

Latrobe Overtime ~~Protocol~~ Policy at pages 1 and 2

287. Further, the Latrobe Overtime ~~Protocol~~ Policy provided that a decision to authorise the Unrostered Overtime shall be made according to the following protocol:

- (a) the doctor has performed the overtime due to demonstrable clinical need and that need could not be met by other means;

- (b) authorisation of the overtime could not reasonably have been made in advance of the doctor performing the work;
- (c) the doctor has recorded the reason for working the overtime and the duties performed in a form capable of hospital audit and review; and
- (d) the claim for overtime shall be reviewed by a senior doctor authorised by the hospital to do so within 14 days of the Latrobe Overtime Claim being submitted.

288. Dr McPadden and Group Members who commenced employment with Latrobe at the beginning of their first clinical year as a medical officer, in the position of intern, receive orientation during which they were informed of:

- (a) their ordinary hours of work (and directed to the 2013 Agreement or the 2018 Agreement on the intranet);
- (b) the existence of, and obligation to comply with, the Latrobe Overtime ~~Protocol~~ Policy;
- (c) the location of the Latrobe Overtime ~~Protocol~~ Policy on the intranet;
- (d) the requirement to seek either advance, or retrospective, authorisation for any Unrostered Overtime;
- (e) the requirement to make a claim for Unrostered Overtime;
- (f) the requirements of any claim for Unrostered Overtime;
- (g) the requirement for a claim for Unrostered Overtime to be submitted in the pay fortnight in which the Unrostered Overtime was worked but no later than the subsequent pay fortnight;
- (h) the process for claiming Unrostered Overtime.

### **Particulars**

In relation to Dr McPadden:

- 1) Latrobe Regional Hospital 2018 Orientation Manual - Interns / HMOs / Registrars
- 2) JMS Additional Hours Claim Form

## 3) Latrobe intranet

Particulars in relation to Group Members will be provided after the Group Members are known.

289. From time to time throughout the Relevant Period, Dr McPadden and Group Members submitted claims for Unrostered Overtime which were approved and for which they were paid (**Claimed Unrostered Overtime**).

### Particulars

In relation to Dr McPadden, see the particulars of ~~sub-paragraphs 22(a)(ii)(G) and 56(a)(iii)~~ sub-paragraph 24(a)(i).

Particulars in relation to Group Members will be provided after the Group Members are known.

290. By reason of paragraphs ~~272 285~~ to ~~276 289~~ above, Dr McPadden and Group Members were:

- (a) aware of their ordinary hours of work;
- (b) aware of the requirement to either:
  - (i) obtain authorisation in advance for Unrostered Overtime from their ~~their~~ General Manager (during business hours) or Hospital Coordinator (during after hours); or
  - (ii) where no authorisation in advance was obtained, obtain retrospective authorisation for Unrostered Overtime from the appropriate Department Manager, Consultant-on-call or Hospital Co-ordinator in the pay fortnight in which the overtime was worked but no later than the subsequent pay fortnight in accordance with the Latrobe Overtime Policy Protocol;
- (c) aware of the requirement to submit a Latrobe Overtime Claim and the process for doing so; and
- (d) capable of complying those requirements.

Operation of the estoppel

291. In the circumstances set out in paragraphs ~~272~~ 286 to ~~277~~ 290 above, to the extent that Dr McPadden and the Group Members:

- (a) attended or remained at work outside their ordinary hours of work other than for rostered overtime or authorised Unrostered Overtime, having not obtained advance authorisation in accordance with the Latrobe Overtime ~~Protocol~~ Policy; or
- (b) did not submit a Latrobe Overtime Claim in accordance with the Latrobe Overtime ~~Protocol~~ Policy;

then, by that conduct, Dr McPadden and the Group Members induced Latrobe to assume, and Latrobe did assume:

- (c) that they were not, or were not required to be, in attendance at a hospital to carry out functions that they had been called upon to perform on behalf of Latrobe during any such time;
- (d) further or alternatively, that any attendance at Latrobe Hospital during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntary.

291A. Further, and in the alternative, by the conduct referred to in paragraph 291 Dr McPadden represented the matters set out in sub-paragraph 286(c) and, further or alternatively, sub-paragraph 286(d).

292. Dr McPadden and the Group Members did not correct any mistake in the assumptions set out in sub-paragraph-~~278~~ 286(c) and, further or alternatively, sub-paragraph-~~278~~ 286(d) above (**unapproved or unclaimed time assumptions**), despite being under a duty to do so:

- (a) by reason of their contractual obligations set out in paragraphs-~~272~~ 285 above;
- (b) further or alternatively, because, by reason of the matters in paragraphs-~~272~~ 285 to ~~277~~ 290 above:
  - (i) Dr McPadden and Group Members knew, or should reasonably have known, that the respondent would be induced by the acts or omissions referred to in sub-paragraphs ~~278~~ 286(a) or ~~278~~ 286(b) above to make the unapproved or unclaimed overtime assumptions; and

- (ii) a reasonable person would have expected Dr McPadden and Group Members to correct any mistake in those assumptions by submitting a Latrobe Overtime Claim in accordance with the Latrobe Overtime ~~Protocol~~ Policy.

293. In the circumstances set out in paragraph ~~279-290~~ above, to the extent that Dr McPadden or Group Members engaged in the conduct in sub-paragraphs ~~278~~ 286(a) or ~~278~~ 286(b) above, it amounted to a representation by Dr McPadden and Group Members as to the matters in sub-paragraph ~~278~~ 286(c) and, further or alternatively, sub-paragraph ~~278~~ 286(d) above (**unapproved or unclaimed overtime representations**).

294. Latrobe acted in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions, in that Latrobe, by reason of the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions:

- (a) was not aware of, and did not investigate contemporaneously, any assertion that Dr McPadden or Group Members had purportedly attended at work outside their ordinary hours of work other than during the periods of Rostered Overtime and claimed Unrostered Overtime;
- (b) did not make any payment to Dr McPadden or Group Members in relation to any purported attendance at work outside their ordinary hours of work other during the periods of Rostered Overtime and claimed Unrostered Overtime; and
- (c) did not take steps that were available to Latrobe to reduce any such time being worked by Dr McPadden and Group Members.

### Particulars

The steps that would have been available to the respondent included:

- 1) changing roster arrangements to reduce the possibility of Unrostered Overtime arising;
- 2) changing models of care and making operational changes in the delivery of health services, such as changing theatre scheduling arrangements, to address the causes of Unrostered Overtime, based on the information provided by Dr McPadden and Group Members;

- 3) employing or rostering more doctors;
- 4) offering additional training to Group Members ~~Doctors in Training~~;
- 5) reallocating responsibility for some activities or functions to more senior doctors or other personnel;
- 6) issuing directions in relation to working or not working Unrostered Overtime or performing or not performing particular activities;
- 7) planning, forecasting or budgeting for the Unrostered Overtime to ensure that the respondent could meet any liability for Unrostered Overtime.

295. To the extent that Dr McPadden or Group Members engaged in the conduct in subparagraphs ~~278~~ 286(a) and ~~278~~ 286(b) above, it was reasonable for Latrobe to regard that conduct as amounting to the unapproved and unclaimed time representations, to make the unapproved or unclaimed overtime assumptions, and to rely on those assumptions as set out paragraph ~~284~~ 291 above, in circumstances in which Dr McPadden and Group Members:

- (a) were obliged to comply with the Latrobe Overtime Policy ~~Protocol~~ in relation to obtaining authorisation for Unrostered Overtime and submitting claims for Unrostered Overtime, as set out in paragraphs ~~272~~ 286 to ~~274~~ 287 above;
- (b) were informed of those obligations by Latrobe as set out in paragraph ~~272~~ 286 and 287 above;
- (c) were capable of complying with those obligations as set out in paragraphs 288 and ~~276~~ 289 above; and
- (d) were on notice of Latrobe's reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

### **Particulars**

Dr McPadden and the Group Members were on notice including because:

- 1) they were not paid in relation to any purported attendance at work outside their ordinary hours of work other than during the periods of Rostered Overtime and claimed Unrostered Overtime;
- 2) their day-to-day work was autonomous, such that they could not reasonably expect the senior staff with authority to approve or require Unrostered Overtime on behalf of Latrobe to have known they were working outside their ordinary hours unless they submitted a claim or otherwise brought that work to Latrobe's attention.

296. Latrobe would suffer detriment if Dr McPadden and Group Members were permitted to assert to the contrary of any of the unapproved or unclaimed overtime assumptions, to the extent that any of those assumptions is incorrect (which is not admitted), being that:

- (a) Latrobe would be required to make further payments to Dr McPadden and Group Members in relation to Unrostered Overtime;
- (b) further or alternatively, Latrobe has lost the opportunity to avoid all or some of the Unrostered Overtime by taking the steps referred to in sub-paragraph 281(c) above,

which they did not take in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

297. By reason of paragraphs ~~278~~ 286 to ~~283~~ 290 above, Dr McPadden and Group Members are estopped from asserting:

- (a) that they were, or were required to be, in attendance at Latrobe Hospital to carry out functions that they had been called upon to perform on behalf of Latrobe during any such time;
- (b) further or alternatively, that any attendance at Latrobe Hospital during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntary.

## **G2 Claim against Bairnsdale**

### Background to the estoppel

298. Pursuant to the terms of their employment contracts, Dr McPadden and the Group Members were:

(a) informed that their conditions of employment were governed by:

(i) the 2013 Agreement or the 2018 Agreement;

(ii) their individual contracts of employment;

(b) obliged to familiarise themselves with Bairnsdale's policies and required to carry out their duties and responsibilities at all times in accordance with the terms and conditions of Bairnsdale's policies and protocols as varied from time to time;

299. Pursuant to the Bairnsdale Overtime Policy, Dr McPadden and Group Members were required to:

(a) obtain authorisation in advance for Unrostered Overtime from their Manager or Coordinator; or

(b) where no authorisation in advance was obtained:

(i) complete a Bairnsdale Overtime Claim and have it signed by the Manager (in business hours) or the Coordinator (if after hours);

(ii) record any overtime hours worked in Kronos based on the times registered by the doctor at the Kronos clock;

(iii) submit the Bairnsdale Overtime Claim in the pay fortnight that the Unrostered Overtime was worked, or at the latest, the subsequent pay fortnight;

### **Particulars**

The Bairnsdale Overtime Policy was partly in writing in various documents provided to available to Group Members and was partly oral and advised to Group Members at the commencement of their employment with Bairnsdale in their orientations and inductions.

There was a Scheduling and Time Attendance Policy, amended from time to time, which stated that unscheduled hours will not be paid unless previously discussed and approved by a department manager and that overtime hours must be approved by a Director.

There was a Junior Medical Staff and Medical Student Support Policy, amended from time to time, that applied to Group Members that directed that unrostered overtime

required prior approval of the Coordinator and that in urgent situations (e.g. a Code Blue or MET call) Bairnsdale would approve the unrostered overtime retrospectively.

Group Members were directed that the Medical Staff Unrostered Overtime Substantiation Form directed that unrostered overtime would only be paid where the situation was either a Code Blue, clinical instability, a MET call or urgent clinical review (that could not be handed over). Where a situation was not clinically urgent, preapproval was required to be sought from the Operations Manager or Coordinator (after hours).

Further particulars will be provided prior to trial.

300. Further, the Bairnsdale Overtime Policy provided that a decision to authorise the Unrostered Overtime shall be made according to the following protocol:

- (a) the doctor has performed the overtime due to demonstrable clinical need and that need could not be met by other means;
- (b) authorisation of the overtime could not reasonably have been made in advance of the doctor performing the work;
- (c) the doctor has recorded the reason for working the overtime and the duties performed in a form capable of hospital audit and review; and
- (d) the claim for overtime shall be reviewed by a senior doctor authorised by the hospital to do so within 14 days of the Bairnsdale Overtime Claim being submitted.

301. Dr McPadden and Group Members who commenced employment with Bairnsdale at the beginning of their first clinical year as a medical officer, in the position of intern, receive orientation during which they were informed of:

- (a) their ordinary hours of work (and directed to the 2013 Agreement or the 2018 Agreement on the intranet);
- (b) the existence of, and obligation to comply with, the Bairnsdale Overtime Policy;
- (c) the location of the Bairnsdale Overtime Policy on the intranet;
- (d) the requirement to seek either advance, or retrospective, authorisation for any Unrostered Overtime;
- (e) the requirement to make a claim for Unrostered Overtime;

- (f) the requirements of any claim for Unrostered Overtime;
- (g) the requirement for a claim for Unrostered Overtime to be submitted in the pay fortnight in which the Unrostered Overtime was worked but no later than the subsequent pay fortnight;
- (h) the process for claiming Unrostered Overtime.

### **Particulars**

In relation to Dr McPadden:

Group Members were advised at their orientations and / or inductions that unrostered overtime would be accepted if a claim was submitted to the Coordinator and a good reason was provided. They were advised that if they were required to stay longer than their scheduled shift, the Coordinator needed to be contacted as early as possible for approval and a signed overtime form was then to be submitted to the Medical Workforce Office.

Particulars in relation to Group Members will be provided after the Group Members are known.

302. From time to time throughout the Relevant Period, Dr McPadden and Group Members submitted claims for Unrostered Overtime which were approved and for which they were paid (**Claimed Unrostered Overtime**).

303. By reason of paragraphs 298 to 302 above, Dr McPadden and Group Members were:

- (a) aware of their ordinary hours of work;
- (b) aware of the requirement to either:
  - (i) obtain authorisation in advance for Unrostered Overtime from their General Manager (during business hours) or Hospital Coordinator (during after hours);  
or
  - (ii) where no authorisation in advance was obtained, obtain retrospective authorisation for Unrostered Overtime from the appropriate Department Manager, Consultant-on-call or Hospital Co-ordinator in the pay fortnight in which the overtime was worked but no later than the subsequent pay fortnight in accordance with the Bairnsdale Overtime Policy;

- (c) aware of the requirement to submit a Bairnsdale Overtime Claim and the process for doing so; and
- (d) capable of complying those requirements.

Operation of the estoppel

304. In the circumstances set out in paragraphs 302 to 304 above, to the extent that Dr McPadden and the Group Members:

- (a) attended or remained at work outside their ordinary hours of work other than for rostered overtime or authorised Unrostered Overtime, having not obtained advance authorisation in accordance with the Bairnsdale Overtime Policy; or
- (b) did not submit a Bairnsdale Overtime Claim in accordance with the Bairnsdale Overtime Policy;

then, by that conduct, Dr McPadden and the Group Members induced Bairnsdale to assume, and Bairnsdale did assume:

- (c) that they were not, or were not required to be, in attendance at a hospital to carry out functions that they had been called upon to perform on behalf of Bairnsdale during any such time;
- (d) further or alternatively, that any attendance at Bairnsdale Hospital during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntary.

305. Further, and in the alternative, by the conduct referred to in paragraph 304 Dr McPadden and the Group Members represented the matters set out in sub-paragraph 304(c) and, further or alternatively, sub-paragraph 304(d).

306. Dr McPadden and the Group Members did not correct any mistake in the assumptions set out in sub-paragraph 304(c) and, further or alternatively, sub-paragraph 304(d) above **(unapproved or unclaimed time assumptions)**, despite being under a duty to do so:

- (a) by reason of their contractual obligations set out in paragraphs 305 above;
- (b) further or alternatively, because, by reason of the matters in paragraphs 302 to 306 above:

- (i) Dr McPadden and Group Members knew, or should reasonably have known, that the respondent would be induced by the acts or omissions referred to in sub-paragraphs 304(a) or 304(b) above to make the unapproved or unclaimed overtime assumptions; and
- (ii) a reasonable person would have expected Dr McPadden and Group Members to correct any mistake in those assumptions by submitting a Bairnsdale Overtime Claim in accordance with the Bairnsdale Overtime Policy.

307. In the circumstances set out in paragraph 304 above, to the extent that Dr McPadden or Group Members engaged in the conduct in sub-paragraphs 204(a) or 304(b) above, it amounted to a representation by Dr McPadden and Group Members as to the matters in sub-paragraph 304(c) and, further or alternatively, sub-paragraph 304(d) above (unapproved or unclaimed overtime representations).

308. Bairnsdale acted in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions, in that Bairnsdale, by reason of the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions:

- (a) was not aware of, and did not investigate contemporaneously, any assertion that Dr McPadden or Group Members had purportedly attended at work outside their ordinary hours of work other than during the periods of Rostered Overtime and claimed Unrostered Overtime;
- (b) did not make any payment to Dr McPadden or Group Members in relation to any purported attendance at work outside their ordinary hours of work other during the periods of Rostered Overtime and claimed Unrostered Overtime; and
- (c) did not take steps that were available to Bairnsdale to reduce any such time being worked by Dr McPadden and Group Members.

### **Particulars**

The steps that would have been available to the respondent included:

- 1) changing roster arrangements to reduce the possibility of Unrostered Overtime arising;

- 2) changing models of care and making operational changes in the delivery of health services, such as changing theatre scheduling arrangements, to address the causes of Unrostered Overtime, based on the information provided by Dr McPadden and Group Members;
- 3) employing or rostering more doctors;
- 4) offering additional training to Group Members;
- 5) reallocating responsibility for some activities or functions to more senior doctors or other personnel;
- 6) issuing directions in relation to working or not working Unrostered Overtime or performing or not performing particular activities;
- 7) planning, forecasting or budgeting for the Unrostered Overtime to ensure that the respondent could meet any liability for Unrostered Overtime.

309. To the extent that Dr McPadden or Group Members engaged in the conduct in subparagraphs 304(a) and 304(b) above, it was reasonable for Bairnsdale to regard that conduct as amounting to the unapproved and unclaimed time representations, to make the unapproved or unclaimed overtime assumptions, and to rely on those assumptions as set out paragraph 307 above, in circumstances in which Dr McPadden and Group Members:

- (a) were obliged to comply with the Bairnsdale Overtime Policy in relation to obtaining authorisation for Unrostered Overtime and submitting claims for Unrostered Overtime, as set out in paragraphs 300 to 302 above;
- (b) were informed of those obligations by Bairnsdale as set out in paragraphs 300 and 301 above;
- (c) were capable of complying with those obligations as set out in paragraphs 300 and 302 above; and
- (d) were on notice of Bairnsdale's reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

### **Particulars**

Dr McPadden and the Group Members were on notice including because:

- 1) they were not paid in relation to any purported attendance at work outside their ordinary hours of work other than during the periods of Rostered Overtime and claimed Unrostered Overtime;
- 2) their day-to-day work was autonomous, such that they could not reasonably expect the senior staff with authority to approve or require Unrostered Overtime on behalf of Bairnsdale to have known they were working outside their ordinary hours unless they submitted a claim or otherwise brought that work to Bairnsdale's attention.

310. Bairnsdale would suffer detriment if Dr McPadden and Group Members were permitted to assert to the contrary of any of the unapproved or unclaimed overtime assumptions, to the extent that any of those assumptions is incorrect (which is not admitted), being that:

- (a) Bairnsdale would be required to make further payments to Dr McPadden and Group Members in relation to Unrostered Overtime;
- (b) further or alternatively, Bairnsdale has lost the opportunity to avoid all or some of the Unrostered Overtime by taking the steps referred to in sub-paragraph 303 above,

which they did not take in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

311. By reason of paragraphs 306 to 310 above, Dr McPadden and Group Members are estopped from asserting:

- (a) that they were, or were required to be, in attendance at Bairnsdale Hospital to carry out functions that they had been called upon to perform on behalf of Bairnsdale during any such time;
- (b) further or alternatively, that any attendance at Bairnsdale Hospital during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntary.

Date: ~~22 June 2021~~ 23 December 2022

.....  
Signed by Andrew Morrison  
Lawyer for the respondents

This amended pleading was prepared by Andrew Morrison and ~~Emma Mawson~~, Lawyers for the respondents and settled by Frank Parry QC and ~~Helen Tiplady~~ Natalie Campbell, Counsel for the respondents.

**Certificate of lawyer**

I Andrew Morrison certify to the Court that, in relation to the amended defence filed on behalf of the respondents, the factual and legal material available to me at present provides a proper basis for:

1. each allegation in the pleading; and
2. each denial in the pleading; and
3. each non admission in the pleading.

Date: 23 December 2022

.....  
Signed by Andrew Morrison  
Lawyer for the respondents

**Schedule of Parties**

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

No. VID210/2021

**Applicants**

First Applicant: The Australian Salaried Medical Officers' Federation  
Second Applicant: Teak McPadden

**Respondents**

First Respondent: Monash Health  
Second Respondent: Latrobe Regional Hospital  
Third Respondent: Bairnsdale Regional Health Service