



Federal Court of Australia

District Registry: Victoria

Division: Fair Work

No: VID210/2021

THE AUSTRALIAN SALARIED MEDICAL OFFICERS' FEDERATION and another
named in the schedule
Applicant

MONASH HEALTH and others named in the schedule
Respondent

ORDER

JUDGE: JUSTICE BROMBERG

DATE OF ORDER: 11 November 2022

WHERE MADE: Melbourne

THE COURT ORDERS BY CONSENT THAT:

Joinder

1. Bairnsdale Regional Health Service is joined as the Third Respondent to this proceeding and the title of the proceeding is amended accordingly.

Pleadings

2. Leave is granted to the Applicants to file and serve by 4:00pm on 18 November 2022 an Amended Originating Application and an Amended Statement of Claim in substantially the same form as the draft Amended Originating Application and draft Amended Statement of Claim provided to the solicitors for the Respondents on 19 October 2022.
3. On or before 4:00pm on 23 December 2022, the Respondents file and serve an Amended Defence to the Amended Statement of Claim.
4. On or before 4:00pm on 27 January 2023, the Applicants file and serve any Amended Reply to the Amended Defence.

Vacation of orders

5. Orders 1, 2 and 3 of the orders dated 26 May 2022 are vacated.



Group Member Communications

6. The Third Respondent must not communicate with the Second Applicant or Group Members concerning any claim(s) or potential claim(s) for unrostered and unpaid overtime worked within the period 18 November 2016 to 17 November 2022 otherwise than in writing.
7. The Third Respondent must ensure that any such written communication with the Second Applicant or Group Members referred to in order 6 above will include information to the effect that:
 - a. they may be a Group Member in the class action;
 - b. they should consider obtaining legal advice about any proposal or offer made by the Third Respondent to consider claims or make payment for unrostered and unpaid overtime.
8. The Third Respondent must not directly contact the Second Applicant, or Group Members who are known by it to be clients of Gordon Legal, otherwise than with consent of Gordon Legal, in respect of any matter directly related to any issue in dispute in the proceeding.

Notice to Group Members to Opt Out

9. Pursuant to s 33J(1) of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), 4:00pm on 24 March 2023 be fixed as the date before which any Group Member who worked hours in excess of their ordinary hours, or rostered hours, during any employment with the Third Respondent (**Bairnsdale Group Members**) may opt out of this proceeding.
10. Pursuant to s 33X of the FCA Act, notice of this proceeding and of the right of Bairnsdale Group Members to opt out of the proceeding, is to be given in accordance with orders 11 and 12 below to the individuals identified in accordance with order 11(a) below.
11. Pursuant to s 33Y of the FCA Act, the notice, exhibited to these orders as **Exhibit A** (the notice), is to be given by 4:00pm on 10 February 2023 in accordance with the following procedure:



- a. The Third Respondent shall use its own resources to identify:
 - i. the names of all persons who, at any time in the period from 18 November 2016 to 17 November 2022 were employed by it in one or more of the following classifications under the Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013 (**2013 Agreement**) and/or the AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018 – 2021 (**2018 Agreement**):
 1. Hospital Medical Officer;
 2. Medical Officer (but not a Medical Officer classified as Solely Administrative under the 2013 Agreement or the 2018 Agreement);
 3. Registrar;

(Doctors in Training); and
 - ii. the details of employment, and the last known contact details, of the Doctors in Training; and
 - b. The Third Respondent shall provide the information in order 11(a) in a suitable spreadsheet format to the Applicants' solicitors on or before 4:00pm on 27 January 2022; and
 - c. the Applicants' solicitors shall cause the notice, with a covering email or letter, as the case may be, in the form exhibited to these orders as **Exhibit B**, to be sent to the last known email address of each of the Doctors in Training, or, if no email address is known or if the email sent bounces back, to the last known postal address by ordinary mail.
12. Pursuant to s 33Y of the FCA Act, the Applicants shall, on or before 4:00pm on 10 February 2023, cause a copy of the notice, together with a copy of the Amended Originating Application and Amended Statement of Claim, the Amended Defence, any Amended Reply and these orders:
- a. to be published on, displayed and available for download from:
 - i. the Applicants' solicitors website (www.gordonlegal.com.au); and
 - ii. the website of the Australian Salaried Medical Officers Federation (www.asmof.org.au); and
 - iii. the website of the Victorian branch of the Australian Medical Association (www.amavic.com.au); and



- b. to remain continuously so displayed and available for download, up to and including the date of any judgment delivered following the trial of this proceeding.
13. The parties will confer during the week commencing 20 February 2023 as to whether or not the class notification procedure set out in order 8 above has been effective or whether (and if so, what) further steps need to be taken and report to the Court on or before 24 February 2023.
14. If the solicitors for the Applicants or the Third Respondent receive, on or before 4:00pm on 24 March 2023, any notice purporting to be an opt out notice referable to this proceeding, the solicitors shall file the notice in the Victorian District Registry of the Court within three business days and such notice will be treated as an opt out notice received by the Court at the time it was received by the solicitors.

Discovery

15. On or before 4:00pm on 11 August 2023, the First Respondent and Second Respondent each give discovery of the categories of documents agreed as between the parties or ordered by the Court. Discovery is to be given in a single electronic tranche by each Respondent.
16. Discovery is to be conducted between the Applicants and the Third Respondent in accordance with the document management protocol at Exhibit C of the Order dated 16 August 2021.
17. On or before 4:00pm on 27 January 2023, the Applicants provide the Third Respondent a proposed schedule of categories of discovery to be made by the Third Respondent.
18. On or before 4:00pm on 10 February 2023, the parties confer for the purpose of settling the categories of documents to be discovered by the Third Respondent.
19. In default of agreement being reached in regard to the matters raised in order 18, the parties shall attend a conference before a judicial registrar occurring on a date to be fixed by the Court after 10 February 2023 but before 24 February 2023, to facilitate discussion between the parties concerning the categories of documents to be discovered by the Third Respondent in the proceeding.
20. On or before 4:00pm on 21 April 2023, the Applicants give standard discovery in respect of the Third Respondent in accordance with rule 20.17, with documents to be produced by the Applicants to the Third Respondent in a single electronic tranche.
21. On or before 4:00pm on 11 August 2023, the Third Respondent give discovery of the categories of documents determined in accordance with order 18 or 19 above.

Lay Evidence

22. On or before 4:00pm on 3 November 2024, the Applicants file and serve an outline of evidence of each witness they intend to call at trial.



23. On or before 4:00pm on 27 December 2024, the Respondents file and serve an outline of evidence of each witness they intend to call at trial.
24. On or before 4:00pm on 24 January 2025, the Applicants file and serve any outlines of evidence in reply.

Expert Evidence

25. On or before 4:00pm on 3 November 2024, the Applicants file and serve any expert reports on which they intend to rely.
26. On or before 4:00pm on 27 December 2024, the Respondents file and serve any expert reports on which they intend to rely.
27. On or before 4:00pm on 24 January 2025, the Applicants file and serve any expert reports on which they intend to rely.

Case Management Hearing

28. The matter is set down for a case management hearing on 17 November 2023.

Date that entry is stamped: 11 November 2022

Sia Lagos
Registrar



EXHIBIT A

OPT OUT NOTICE FOR BAIRNSDALE REGIONAL HEALTH SERVICE GROUP MEMBERS

FEDERAL COURT OF AUSTRALIA

‘Doctors in Training’ (Unrostered Unpaid Overtime) Class Action (VID 210/2021)

1. Why is this notice important?

On 26 April 2021, the Australian Salaried Medical Officers Federation of Victoria (ASMOF) and a doctor (together, **the Applicants**) commenced a class action in the Federal Court of Australia against Monash Health (**First Respondent**) and Latrobe Regional Hospital (**Second Respondent**). In November 2022, Bairnsdale Regional Health Service (**Third Respondent**) was joined to this proceeding. The class action is brought by the Applicants on their own behalf and on behalf of other Doctors in Training (**DIT**) who it is alleged have worked unrostered and unpaid overtime while employed by the First, Second and/or Third Respondent.

The Federal Court has ordered that this notice be published for the information of persons who might be members of the class **in respect of their employment with the Third Respondent** on whose behalf the action is brought and may be affected by the action. You have been identified as a potential group member **by virtue of your employment with the Third Respondent. You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything that you do not understand you should seek legal advice.

2. What is a class action?

A class action, also known as a ‘representative proceeding’, is an action that is brought by one or more persons (“**Applicant(s)**”) on his or her own behalf and on behalf of a class of people

(“**group members**”) against another person (“**Respondent**”) where the Applicants and the group members have similar claims against the Respondent.

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



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

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

If you consider that you have claims against any or all of the First, Second and Third Respondents which are based on your individual circumstances or otherwise additional to the claims that are described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see below).

3. **What is this class action?**

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

The Applicants allege in the statement of claim in this proceeding that since 27 April 2015 (in respect of the First Respondent and Second Respondent) and since 18 November 2016 (in respect of the Third Respondent) group members have, in the course of their employment with the First Respondent or Second Respondent or Third respondent, worked hours in excess of their ordinary hours or rostered hours and were not paid for those unrostered overtime hours.



The Applicants allege that the Respondents' failure to pay group members for their unrostered overtime hours is a breach of their obligations under the applicable enterprise agreements which include the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013 (2013 Agreement)* applicable up to 6 August 2018, and from 7 August 2018 the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021 (2018 Agreement)*.

As a result of this breach, the Applicants allege that the Respondents has breached section 50 of the *Fair Work Act 2009* (Cth) (**FW Act**).

4. What does 'opt out' mean?

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

However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is found below in the section headed "How can you opt out of the proceeding."

5. Are you a group member?

You are a group member if, during the period between you were employed by either or all of:

- (a) you were employed by either or all of:
 - i. the First Respondent or Second Respondent between 27 April 2015 and 26 April 2021; or
 - ii. the Third Respondent between 18 November 2016 and 17 November 2022; and
- (b) worked:
 - i. between 27 April 2015 and 26 April 2021 at one or more of the following services operated by the First Respondent or Second Respondent:
 - 1 Casey Hospital, at 62-70 Kangan Drive, Berwick;
 - 2 Dandenong Hospital, at 135 David Street, Dandenong;
 - 3 Kingston Centre, corner Warrigal Road and Heatherton Road, Cheltenham;



- 4 Monash Children's Hospital, at 246 Clayton Road, Clayton;
 - 5 Monash Medical Centre, at 246 Clayton Road, Clayton;
 - 6 Moorabbin Hospital, at 823 – 865 Centre Road, Bentleigh East;
 - 7 the hospital (Latrobe Hospital) at 10 Village Avenue, Traralgon; or
- ii. between 18 November 2016 and 17 November 2022 at the hospital operated by the Third Respondent at 122 Day Street, Bairnsdale; and
- (c) were, when employed by any or all of First Respondent, the Second Respondent or the Third Respondent classified as one or more of the following classifications under the 2013 Agreement and/or 2018 Agreement:
- i. Hospital Medical Officer;
 - ii. Medical Officer (but not a Medical Officer classified as Solely Administrative under the 2013 Agreement or the 2018 Agreement);
 - iii. Registrar; and
- (d) worked unrostered overtime for which you have not been paid.

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

You will not become liable for any legal costs simply by remaining a group member for the determination of the common questions. However, if a successful outcome is achieved, the Court may make orders requiring group members to contribute to legal costs incurred on behalf of the Applicants who have brought the class action.

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

Unless you choose to opt out of the class action, you will be bound by any settlement or judgment made in the class action. If the class action is successful, you will be entitled to share in the benefit of any order, judgment or settlement made in favour of the Applicants and group members. You may be required to satisfy certain conditions before your entitlement arises.

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



8. What group members need to do:

(a) How to remain a group member?

If you wish to remain a group member there is nothing you need to do at the present time. The Applicants will continue to bring the proceeding on your behalf up to the point where the Court determined those questions that are common to the claims of the Applicants and group members. However, you are invited to register as a group member with the

Applicants' lawyers Gordon Legal. You can register at:

<https://doctorsclassaction.com.au> . When you register, Gordon Legal will provide you with up to date information about the progress of the class action.

(b) How to opt out?

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

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

IMPORTANT: the Notice must reach the Registrar by no later than 4:00pm on 24 March 2023 otherwise your opt out will not be effective.

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

9. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the application, the statement of claim and the defence(s), may be obtained by:

- (a) Downloading them from <https://gordonlegal.com.au>, or www.asmf.org.au, or www.amavic.com.au;



- (b) Inspecting them between 9am and 5pm at one of the offices of Gordon Legal, contact details for which are available from <https://gordonlegal.com.au> or by calling (03)9603 3000;
- (c) By contacting a District Registry of the Federal Court (contact details are available at www.fedcourt.gov.au) and paying the appropriate inspection fee; or
- (d) Where appropriate arrangements have been made with the Court, inspecting them on the Federal Court website at www.fedcourt.gov.au.

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



EXHIBIT B

Dear [INSERT FIRST AND SURNAME]

Please see **enclosed** an important notice from the Federal Court of Australia concerning a class action against Monash Health, Latrobe Regional Hospital, and Bairnsdale Regional Health Service in relation to the alleged underpayment of junior doctors.

The Federal Court has ordered that this notice be sent to all persons who, at any time in the period from 18 November 2016 to 17 November 2022, were employed by Bairnsdale Regional Health Service in one or more of the following classifications under the Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013 (**2013 Agreement**) and/or the AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018 – 2021 (**2018 Agreement**):

1. Hospital Medical Officer;
2. Medical Officer (but not a Medical Officer classified as solely Administrative under the 2013 Agreement or the 2018 Agreement); and/or
3. Registrar

Please do not reply to this correspondence.

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



Schedule

No: VID210/2021

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

Second Applicant	TEAK MCPADDEN
Second Respondent	LATROBE REGIONAL HOSPITAL
Third Respondent:	BAIRNSDALE REGIONAL HEALTH SERVICE