

**NOTICE OF PROPOSED SETTLEMENT
FEDERAL COURT OF AUSTRALIA**

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

THIS NOTICE IS IMPORTANT

PLEASE READ IT CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

1. WHAT IS THIS NOTICE?

- 1.1. The parties to the ‘Junior Medical Officers’ (Unrostered Unpaid Overtime) Class Action (the, **Class Action**) have agreed to resolve the case without a trial. This is called a ‘settlement’. The settlement will only take effect if it is approved by the Court.
- 1.2. The Federal Court has ordered that this notice be sent to all Group Members, and you have been identified as a potential Group Member. The purpose of this notice is to explain the proposed settlement, how the proposed settlement terms apply to Group Members generally, and what options you can take in relation to the proposed settlement.
- 1.3. It is important that you read the notice carefully because it contains information about:
 - (a) what you need to do if you wish to **register** to participate in the proposed settlement of the Class Action;
 - (b) what you need to do if you wish to **object** to the proposed settlement; and
 - (c) what you need to do if you previously removed yourself from the Class Action and want to participate in the proposed settlement.
- 1.4. If there is anything in this notice which you do not understand, you should contact Gordon Legal whose contact details are at paragraph 2.4 of the notice, or alternatively seek your own legal advice. **Please do not contact the Court with inquiries regarding this notice.**

2. WHY HAVE YOU RECEIVED THIS NOTICE?

- 2.1. You are receiving this notice because you have been identified as a potential Group Member in the Class Action.
- 2.2. You are a Group Member if:
 - a) between 30 November 2016 and the date of the Final Approval Hearing or 16 December 2024, whichever is the earlier, you were employed by the Australian Capital Territory (the First Respondent) and worked at Canberra Hospital or on secondment at Goulburn Hospital, or employed by Calvary Health Care ACT Limited (the Second Respondent) and worked at Calvary Hospital (now called North Canberra Hospital); or
 - b) between 3 July 2023 and the date of the Final Approval Hearing or 16 December 2024, whichever is the earlier, you were employed by the Australian Capital Territory (the First Respondent) and worked at North Canberra Hospital; and
 - c) were covered by the *ACT Public Sector Medical Practitioners Enterprise Agreement 2013–2017*, or the *ACT Public Sector Medical Practitioners Enterprise Agreement 2017–2021*, or the *ACT Public Sector Medical Practitioners Enterprise Agreement 2021–2022*; and

- d) were employed as a “junior medical officer” including the following classifications: intern, resident medical officer, senior resident medical officer, junior registrar, registrar, or senior registrar; and
 - e) in the course of your employment, you were not paid for some of all of the unrostered overtime that you worked.
- 2.3. If you meet the criteria above, you may be eligible to receive money if the proposed settlement is approved by the Court.
- 2.4. If you are unsure whether you are a group member, you should contact Gordon Legal on (03) 9603 3000 or email doctors@gordonlegal.com.au or seek your own legal advice.

3. THE CLASS ACTION

- 3.1. The Class Action was commenced by Dr Ying Ying Tham (**the Applicant**) on her own behalf and on behalf of all persons who are “Group Members” as defined in the proceedings (see section 2.2 of this notice). The class action was lodged in the Federal Court of Australia on 30 November 2022 against the First and Second Respondents. The Applicant is legally represented by Gordon Legal and Hayden Stephens and Associates.
- 3.2. The Applicant alleged in the statement of claim in this proceeding that since 1 December 2016, Group Members have, in the course of their employment with the Respondents, worked hours in excess of their ordinary hours or rostered hours, and were not paid for those unrostered overtime hours.
- 3.3. The Applicant alleged that the Respondents’ failure to pay Group Members for their unrostered overtime hours is a breach of their obligations under the applicable Enterprise Agreements.
- 3.4. As a result of this alleged breach, the Applicant alleges that the Respondents have breached section 50 of the *Fair Work Act 2009* (Cth) (**FW Act**).
- 3.5. The Respondents have denied each of the breaches and contraventions alleged by the Applicant.

4. THE PROPOSED SETTLEMENT

- 4.1. On 16 August 2024 the parties reached a settlement of the Class Action in consideration of:
- (a) a sum of \$25,340,000 (**Settlement Sum**) to be paid to Eligible Claimants; and
 - (b) the sum of \$2,860,000 in full and final satisfaction of the legal costs and disbursements (both inclusive of all GST) incurred in the course of the Proceedings (**Legal Costs Sum**); and
 - (c) a sum of \$3,300,000 in respect of the implementation and operation of the claims assessment and settlement scheme process (both inclusive of all GST) (**Assessment and Settlement Scheme Administration Costs Sum**).
- 4.2. Approval of the settlement will be sought from the Court on the basis that it is without any admission by the Respondents as to the occurrence of the alleged breaches and contraventions or that they are in any way liable or under an obligation to do so, but instead, for the purpose of avoiding ongoing and costly litigation that would otherwise unnecessarily divert public resources from the provision of healthcare and other services in the Australian Capital Territory.
- 4.3. If the proposed settlement is approved, Gordon Legal and Hayden Stephens Associates will be appointed the Scheme Administrator.

4.4. A small amount (not exceeding \$30,000 in total) will be deducted from the Settlement Sum to compensate the Applicant for the reimbursement of her time and out-of-pocket expenses in performing her role as representative of Group Members in the conduct of the Proceedings.

4.5. The proposed settlement involves the following phases:

- a) Registration Phase: where Group Members wishing to participate in the Settlement Scheme will be required to lodge a Registration Form with Gordon Legal by 4:00pm on 27 November 2024.
- b) Eligibility Phase: where the Scheme Administrator will determine whether a potential Group Member is a Group Member pursuant to the Group Member definition above at paragraph 2.2.

This phase involves the Respondents confirming, for those Registered Group Members, their employment period with either or both Respondents, their classification or classifications, and the rotations undertaken by each Group Member. Following this, the Scheme Administrator will determine whether each Group Member is an Eligible Claimant. If a Group Member is determined not to be an Eligible Claimant, the Group Member may apply for the decision to be reviewed by a Review Panel.

Group Members will receive confirmation of whether they are eligible to participate in the Settlement Scheme approximately 35 days after the Court has approved the settlement.

Claims Assessment Phase: where an Eligible Claimant's claims are assessed, based on their period of employment, the rotations they completed and the types of unrostered overtime they performed.

This phase involves Eligible Claimants completing a Notice of Claim within 45 days of it being issued, which will be reconciled with the information from the Respondents received during the eligibility phase. The Scheme Administrator will provide a Preliminary Notice of Assessment to the Group Member, which may be reviewed at the request of an Eligible Claimant.

Eligible Claimants can expect to receive a Preliminary Notice of Assessment within 6 months of lodging their Notice of Claim.

- c) Settlement Scheme Distribution Phase, for the settlement sum to be distributed to Eligible Claimants.

Settlement Payments will be paid within 14 days of all Final Notices of Assessments being issued.

5. LEGAL COSTS

5.1. If the proposed settlement is approved, the Respondents will pay Gordon Legal and Hayden Stephens and Associates \$2,860,000 in respect of the legal costs incurred for and on behalf of the Applicant and Group Members in respect of the commencement and conduct of the Class Action. This amount is separate to, and therefore will not reduce, any other amount that is to be paid to Group Members as part of the proposed settlement.

6. THE PROCESS FOR APPROVAL OF THE SETTLEMENT

- 6.1. The settlement is subject to the approval of the Federal Court. The Court will only approve the proposed settlement if it decides that it is fair and reasonable and in the interests of the Group Members as a whole.
- 6.2. The parties will attend an approval hearing on 18 December 2024 at the Federal Court of Australia. In deciding to approve the settlement, the Court will receive and consider submissions from the Applicant and the Respondents. The Court will also consider any objections filed by Group Members. Information about how to object to the proposed settlement is at section 7.1 of this notice.

7. WHAT OPTIONS ARE AVAILABLE FOR GROUP MEMBERS?

- 7.1. There are four options that Group Members may choose to take in relation to the proposed settlement. The option that you take will affect if and how you can receive a financial benefit in relation to your claim. The four options, and the consequences of each option, are set out below.

Option 1: register to participate in the proposed settlement

- Group Members who wish to participate in the proposed settlement must register their details by completing a Registration Form at www.actjuniordoctors.com.au. All forms must be registered by the Group Member with Gordon Legal by 4:00pm on 27 November 2024.
- If you are assessed as an Eligible Claimant, you will be issued a Notice of Claim, which you must complete within 30 business days.
- Eligible Claimants who provide a Notice of Claim to the Scheme Administrator will have their claim finally determined through the settlement and will not be able to commence legal proceedings in relation to their claim.
- You will be eligible to receive settlement payment if the Scheme Administrator decides that you are an Eligible Claimant and it or the Review Panel issues a Notice of Assessment in relation to your Notice of Claim.

Option 2: object to the proposed settlement

- Group Members have the right to make submissions to the Court as to whether or not the proposed settlement should be approved and take effect. If you do not wish for the proposed settlement to go ahead, you can object to the settlement by filling in the Objection Notice, which is available from www.actjuniordoctors.com.au.
- Any Notice of Objection and written submissions or evidence must be filed with the Court by no later than 4:00pm on 27 November 2024.
- The Court will consider any objections filed by Group Members when it considers whether to approve the proposed settlement at the hearing on 18 December 2024 at the Federal Court in Melbourne, commencing at 10:15am.
- Group Members may object to the settlement even if they have registered pursuant to Option 1 above.
- Any Group Member who objects may be required to appear before the Court at the approval hearing.

Option 3: do nothing

- Group Members who neither register to participate in the proposed settlement nor opt out will remain as Group Members in the Class Action, but will not, unless the Court determines otherwise, be entitled to participate in the proposed settlement. This

means that a Group Member who does not register a claim will not be able to have their claim assessed through the settlement payment process.

- **Group Members who do nothing will also be bound by the proposed settlement.** This means that a Group Member who does not register and who has not previously Opted Out will not be able have their claim for unrostered, unpaid overtime assessed, either as part of the proposed settlement or otherwise.

Option 4: seek to be reinstated as a Group Member

- Group Members who have previously filed an Opt Out Notice with the Court and removed themselves from the Class Action but wish to participate in the Settlement Scheme can make submissions to the Court to be reinstated as a Group Member.
- Any submissions must be filed with the Court by no later than 4:00pm on 27 November 2024. The submissions can be provided to the Court either by email or post to the following addresses:

By email: vicreg@fedcourt.gov.au

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

- The Court will consider any submissions filed by persons seeking to be reinstated as Group Members when it considers whether to approve the proposed settlement at the hearing on 18 December 2024 at the Federal Court in Melbourne, commencing at 10:15am.

8. COPIES OF THE RELEVANT DOCUMENTS

8.1. Copies of documents relevant to the Class Action may be obtained by:

- (a) downloading them from Gordon Legal's website (www.actjuniordoctors.com.au);
- (b) inspecting them between 9:00 a.m. and 5:00 p.m. at one of the offices of Gordon Legal, contact details for which are available from (www.gordonlegal.com.au) or by calling (03) 9603 3000; or
- (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.

9. FURTHER INFORMATION

9.1. If there is anything of which you are unsure, you should check Gordon Legal's website for more information. You can also call Gordon Legal on (03) 9603 3000 or email doctors@gordonlegal.com.au or seek your own legal advice.

9.2. Please do not contact the Court with inquiries regarding this notice.