



Federal Court of Australia

District Registry: Victoria Registry

Division: Fair Work

No: VID705/2022

**YING YING THAM**

Applicant

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

Respondent

## ORDER

**JUDGE:** Justice Snaden

**DATE OF ORDER:** 15 October 2024

**WHERE MADE:** Melbourne

### THE COURT ORDERS BY CONSENT THAT:

#### Settlement Approval Hearing

1. The application filed on 10 October 2024 pursuant to s 33V of the *Federal Court of Australia Act 1976* (Cth) (the **Act**), for orders approving the proposed settlement be listed for hearing on 18 December 2024 (the **Settlement Approval Hearing**).

#### Notice to Group Members

2. Pursuant to ss 33X(1)(a) and 33X(4) of the Act, Group Members be sent a Notice of Proposed Settlement in the form of Exhibit A or B and in accordance with the procedure set out in order 5 below by no later than 28 October 2024.
3. The form and content of:
  - a. the Notice of Proposed Settlement to Group Members (the **Group Member Notice**) which is Exhibit A;
  - b. the Notice of Proposed Settlement to persons defined as a Group Member following the Applicant filing the Second Further Amended Statement of Claim (**New Group Members**) (the **New Group Member Notice**) which is Exhibit B;
  - c. the Notice of Opt Out of Proposed Settlement (the **Opt Out Notice**) which is Exhibit C;



- d. the Notice of Objection to Proposed Settlement (the **Objection Notice**) which is Exhibit D; and
  - e. the Registration Form which is Exhibit E
- to these orders (together, the **Notice Documents**) be approved pursuant to s 33Y(2) of the Act.
4. Pursuant to s 33ZF of the Act, the Notice Documents may be amended by the Applicant on the request of the Respondents before they are published in order to correct any website or email address or telephone number or other non-substantive error.
  5. Pursuant to s 33Y(3) of the Act, the Notice Documents be distributed according to the following procedure:
    - a. By no later than 4:00pm on 23 October 2024, each of the Respondents will provide the following information to the solicitors for the Applicant in a Microsoft Excel spreadsheet single sheet:
      - i. the names of all Group Members, their date of birth and their last known contact details; and
      - ii. the names of all New Group Members as defined in the Deed of Settlement, their date of birth and their last known contact details.
    - b. By no later than 4:00pm on 28 October 2024, the solicitors for the Applicant shall cause a third party mail house provider to issue, with a covering email in the form exhibited at Exhibit F, the Group Member Notice and Objection Notice to the email address of all persons identified in paragraph [5](a)(i).
    - c. By no later than 4:00pm on 28 October 2024, the solicitors for the Applicant shall cause a third party mail house provider to issue, with a covering email in the form exhibited at Exhibit G, the New Group Member Notice, Opt Out Notice and Objection Notice to the email address of all persons identified in paragraph [5](a)(ii).
  6. In the event that the email transmission to any person referred to above is unsuccessful, the solicitors for the Applicant shall contact that person by telephone for the purpose of identifying a current email address maintained by that person, and shall cause the Notice Documents to be sent to that email address.



7. From 4:00pm on 28 October 2024 until the conclusion of the Settlement Approval Hearing, the solicitors for the Applicant will cause the Notice Documents to be published on their website.

### **Participation in Proposed Settlement**

8. By no later than 4:00pm on 27 November 2024, any Group Member who intends to make a claim in the settlement scheme under the proposed settlement must submit a completed Registration Form with the solicitors for the Applicant by any of the following methods:
  - a. Completing the Registration Form on the website portal established by the solicitors for the Applicant; or
  - b. Emailing the completed Registration Form to [doctors@gordonlegal.com.au](mailto:doctors@gordonlegal.com.au); or
  - c. Posting or delivering the completed Registration Form to the solicitors for the Applicant at Level 22, 181 William Street, Melbourne VIC 3000; or
  - d. Via a teleconference with the solicitors for the Applicant.

### **Objections to Proposed Settlement**

9. By no later than 4:00pm on 27 November 2024, any Group Member who wishes to object to the proposed settlement must complete an Objection Notice and send it to the Court either by:
  - a. Emailing to the registry of the Federal Court of Australia at the email address [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au); or
  - b. Posting to the postal address:  
The Registrar  
Federal Court of Australia  
Victoria District Registry  
305 William Street  
MELBOURNE VIC 3000
10. Any Group Member who delivers to the Court an Objection Notice must include any written submissions (not exceeding 2 pages in length) and any affidavit evidence that they wish to rely on in support of their objection to the proposed settlement.
11. Leave is granted to solicitors for the parties to inspect the Court file for, and make, copies of, any Objection Notice and any evidence or submissions filed in support of an objection to the proposed settlement.



### **Group Member Reinstatement**

12. Any person who wishes to be reinstated as a Group Member must apply to the Court via written submissions by 4:00pm on 27 November 2024 and file the submissions either by:
  - a. Emailing to the registry of the Federal Court of Australia at the email address [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au); or
  - b. Posting to the postal address:  
The Registrar  
Federal Court of Australia  
Victoria District Registry  
305 William Street  
MELBOURNE VIC 3000
13. Leave is granted to the solicitors for the parties to inspect the Court file for, and make copies of, any submissions filed by any person seeking to be reinstated as a Group Member.
14. Subject to further order, the determination of each reinstatement application be determined on the papers.

### **Further Opt Out for New Group Members**

15. Any person who is defined as a Group Member pursuant to the definition in paragraph [1] of the Applicant's proposed Second Further Amended Statement of Claim and has not previously been notified of their right to opt out of the Proceeding, may file an Opt Out Notice with the Court by 4:00pm on 27 November 2024 either by:
  - a. Emailing to the registry of the Federal Court of Australia at the email address [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au); or
  - b. Posting to the postal address:  
The Registrar  
Federal Court of Australia  
Victoria District Registry  
305 William Street  
MELBOURNE VIC 3000
16. Leave is granted to the solicitors for the parties to inspect the Court file for, and make copies of, any Opt Out Notice filed with the Court.
17. Subject to further order, the determination of each Opt Out Notice be determined on the papers.



### **Settlement Approval Timetable**

18. By 4.00 pm on 4 December 2024, the Applicant file and serve any further affidavit material upon which they intend to rely in support of the application for approval of the proposed settlement (and serve any non-confidential materials).
19. Leave be granted to the Applicant to file any affidavit or exhibit or part thereof in respect of which confidentiality orders are to be sought in a sealed envelope marked “Confidential Affidavit – Not to be Opened Except by Direction of a Judge of the Court” and the Applicant be excused from any requirement to serve any such affidavit or exhibit on the Respondent.
20. By 4.00 pm on 11 December 2024, the Respondents file and serve any affidavit material upon which they intend to rely in support of the approval of the proposed settlement.
21. Liberty be granted to both parties to apply on three days’ notice or on such shorter notice as a Judge might allow.

### **Other**

22. The Applicant is granted leave to file a Second Further Amended Statement of Claim before 4:00pm on 28 October 2024.

Date orders authenticated: 15 October 2024

  
Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



**Schedule**

No: VID705/2022

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

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

**CROSS CLAIM**

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

Cross Respondent YING YING THAM

Respondent AUSTRALIAN CAPITAL TERRITORY

**ASSISTED DISPUTE RESOLUTION**

Applicant YING YING THAM

Respondent AUSTRALIAN CAPITAL TERRITORY

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



**EXHIBIT A – GROUP MEMBER NOTICE  
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](mailto: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](http://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](http://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](http://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](http://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](http://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](mailto:doctors@gordonlegal.com.au) or seek your own legal advice.
- 9.2. Please do not contact the Court with inquiries regarding this notice.



## EXHIBIT B – NEW GROUP MEMBER NOTICE

### 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 remove yourself from the Class Action and the proposed settlement (this is called ‘**Opt Out**’); and
  - (c) what you need to do if you wish to **object** to 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](mailto: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. 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.
- 4.4. If the proposed settlement is approved, Gordon Legal and Hayden Stephens Associates will be appointed the Scheme Administrator.
- 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.

- c) 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.



- d) 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](http://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](http://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, but not if they have opted out pursuant to Option 4 below.
- 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 or Opt Out will not be able have their claim for unrostered, unpaid overtime assessed, either as part of the proposed settlement or otherwise.

### **Option 4: Opt Out of the Class Action**

- Group Members who wish to Opt Out of the Class Action must file an Opt Out Notice with the Federal Court by 4:00pm on 27 November 2024. The Opt Out Notice is available from [www.actjuniordoctors.com.au](http://www.actjuniordoctors.com.au).
- Group Members who Opt Out of the Class Action will not be bound by the outcome of the Class Action, and will not be entitled to receive any settlement payment that might result from the proposed settlement.
- Group Members who Opt Out of the Class Action may still pursue their claim for unpaid, unrostered overtime individually in the Fair Work Commission or the Federal Court.

## **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](http://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](http://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](http://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](mailto:doctors@gordonlegal.com.au) or seek your own legal advice.
- 9.2. Please do not contact the Court with inquiries regarding this notice.



## EXHIBIT C – OPT OUT NOTICE

Form 21  
Rule 9.34

### Opt out notice

No. 705 of 2022

Federal Court of  
District Registry: Victoria  
Division: Fair Work

### YING YING THAM

Applicant

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

Respondents

By email: vicreg@fedcourt.gov.au

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

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

I understand that by opting out:

- 1 I will not be eligible to share in any relief obtained by the Applicant in this proceeding.
- 2 I will not receive any further communications about the proceeding.
- 3 Any limitation period suspended by the commencement of this proceeding has recommenced.

Date: [eg 19 June 20..]

Signed by [Name]

[Insert capacity eg group member / Lawyer for the group member]



**EXHIBIT D – OBJECTION NOTICE**

**JUNIOR MEDICAL OFFICERS UNROSTERED UNPAID OVERTIME CLASS ACTION  
(VID705/2022)**

**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT**

The person identified below:

1. Is a group member in the Class Action;
2. Wishes to object to the proposed settlement of the Class Action.

**Details of objector**

Name:

Postal address:

Email address:

Telephone:

**Grounds of objection**

I object to the proposed settlement for the following reasons:

I [do/not] intend to appear at the settlement approval hearing. I [will/will] not be represented by a lawyer.

Signature .....

Date .....



### EXHIBIT E – REGISTRATION FORM

The Notice of Claim process will be conducted via an online form. The below is a list of questions that will appear on the online form.

**Salutation**

**First Name**

**Last Name**

**Date of Birth**

**Street Address or postal box**

**Suburb**

**State**

**Country**

**Postcode**

**Phone**

**Mobile**

**Email**

**Declaration**

I declare that I was employed as a Junior Medical Officer pursuant to the 2013, 2017 or 2021 *ACT Public Sector Medical Practitioners Enterprise Agreements* during the Relevant Period.

I declare that I was employed by the ACT Government during the Relevant Period

Yes/ No

If yes, provide last known or current staff identification number

I declare that I was employed by Calvary Health Care during the Relevant Period

Yes/ No

If yes, provide last known or current staff identification number

I declare I worked unpaid, unrostered overtime.



## EXHIBIT F – COVERING EMAIL

Dear [INSERT FIRST AND SURNAME],

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

Please read the Notice carefully, which is intended to assist you to decide whether you want to:

- Register your interest in participating in the Settlement Scheme;
- Apply to be reinstated in the class action, if you have previously opted out of the proceedings; or
- Object to the proposed settlement.

**If you wish to take any of the above steps, you must do by 4:00pm on 27 November 2024.**

Please do not reply to this correspondence.

If you have any questions about the notice, please direct them to Gordon Legal, on (03) 9603 3000 or via email at [doctors@gordonlegal.com.au](mailto:doctors@gordonlegal.com.au), who can provide legal advice or seek alternative legal advice.



### EXHIBIT G – COVERING EMAIL

Dear [INSERT FIRST AND SURNAME],

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

Please read the Notice carefully, which is intended to assist you to decide whether you want to:

- Register your interest in participating in the Settlement Scheme;
- Opt out of the class action; or
- Object to the proposed settlement.

**If you wish to take any of the above steps, you must do by 4:00pm on 27 November 2024.**

Please do not reply to this correspondence.

If you have any questions about the notice, please direct them to Gordon Legal, on (03) 9603 3000 or via email at [doctors@gordonlegal.com.au](mailto:doctors@gordonlegal.com.au), who can provide legal advice or seek alternative legal advice.