

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/03/2021 4:22:37 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: VID115/2021
File Title: THE AUSTRALIAN SALARIED MEDICAL OFFICERS' FEDERATION
& ANOR v PENINSULA HEALTH
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 12/03/2021 4:39:28 PM AEDT

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 17

Rule 8.05(1)(a)

Statement of Claim

VID of 2021

Federal Court of Australia

District Registry: Victoria

Division: Fair Work

The Australian Salaried Medical Officers' Federation and another named in the Schedule
Applicants

Peninsula Health

Respondent

A THE PARTIES

A1 The Applicants and the Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by:

(a) the First Applicant, on behalf of all persons; and

(b) the Second Applicant, on her own behalf and on behalf of all persons,

who, during the period 12 March 2015 and 12 March 2021 (**Relevant Period**):

(c) were employed by Peninsula Health; and

(d) worked at one or more of the following services operated by Peninsula Health:

(i) Frankston Hospital, at 2 Hastings Road, Frankston;

Filed on behalf of: The Australian Salaried Medical Officers' Federation and Gaby Bolton (**the Applicants**)

Prepared by: Andrew Grech

Law firm: Gordon Legal

Tel: (03) 9603 3000 Fax: (03) 9603 3050

Email: agrech@gordonlegal.com.au

Address for service: Level 22, 181 William Street, Melbourne VIC 3000

- (ii) Rosebud Hospital, at 1527 Point Nepean Road, Capel Sound;
 - (iii) the Mornington Centre, at 24 Separation Street, Mornington;
 - (iv) Golf Links Road Rehabilitation Centre, at 125 Golf Links Road, Frankston;
 - (v) locations where Peninsula Mental Health Services (**PMHS**) provided mental health services other than at Frankston Hospital or Rosebud Hospital; and
- (e) were, when employed by Peninsula Health, covered by the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013 (2013 Agreement)* until 6 August 2018, and from 7 August 2018, the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021 (2018 Agreement)* within the meaning of the *Fair Work Act 2009 (Cth) (FW Act)*; and
- (f) were, when employed by Peninsula Health, classified as a:
- (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,
- under the 2013 Agreement and/or the 2018 Agreement (**Doctors in Training**); and
- (g) in the course of their employment by Peninsula Health, worked hours in excess of their ordinary hours, or rostered hours (**unrostered overtime**); and
- (h) were not paid for the unrostered overtime hours worked,
- (Group Members).**

2. The First Applicant, the Australian Salaried Medical Officers' Federation (**ASMOF**), is:

- (a) an organisation registered under the *Fair Work (Registered Organisations) Act 2009 (Cth)*;

- (b) an employee organisation within the meaning of sub-paragraph (c) of Column 2 of Item 4 of the table in s 539, and s 540(6) of the FW Act;
 - (c) entitled to represent the industrial interests of persons, including the Second Applicant, and Group Members.
3. The Second Applicant, Dr Gaby Bolton, was employed by Peninsula Health:
- (a) between 8 January 2019 and 2 February 2020, and classified as a Hospital Medical Officer (**HMO**) (Year 1 – Intern) under the 2018 Agreement; and
 - (b) between 3 February 2020 and 31 January 2021, and classified as a HMO (Year 2) under the 2018 Agreement; and
 - (c) from 1 February 2021, and classified as a HMO (Year 3) under the 2018 Agreement.
4. As at the date of the commencement of this proceeding, there are seven or more persons who have claims against Peninsula Health in respect of the matters set out in this Statement of Claim.

A2 The Respondent

5. Peninsula Health is and at all material times was:
- (a) a body corporate pursuant to s 65P and Schedule 5 of the *Health Services Act 1988* (Vic) and capable of suing and being sued;
 - (b) a Health Service within the meaning of the 2013 Agreement and the 2018 Agreement;
 - (c) a national system employer within the meaning of the FW Act; and
 - (d) since 8 January 2019, the employer of Dr Bolton.

B THE AGREEMENTS

B1 The 2013 Agreement

Application and coverage

6. The 2013 Agreement:

- (a) is an enterprise agreement within the meaning of Part 2-4 of the FW Act;
- (b) was approved by the Fair Work Commission (**FWC**) on 10 December 2013;
- (c) commenced operation on and from 17 December 2013 and continued to operate until 6 August 2018; and
- (d) pursuant to cl 5.3, covered:
 - (i) Peninsula Health;
 - (ii) ASMOF;
 - (iii) employees of Peninsula Health who were employed in, *inter alia*, the classifications set out in paragraph 1(f) above (**Doctors**).

Doctor Responsibilities

7. Clause 14 of the 2013 Agreement provided, relevantly, that a Doctor covered by that Agreement:

- (a) provided medical services, including the keeping and maintaining of adequate medical records for hospital patients (cl 14.1); and
- (b) was required to devote their duty hours to the duties of their appointment (cl 14.2).

Hours of Work, Rostering, and Overtime

8. Clause 25.1.1 of the 2013 Agreement provided that, for full-time HMOs, ordinary hours of work must be 38 hours per week or an average of 38 hours per week for up to 4 weeks.

9. Clause 26.1.2 of the 2013 Agreement provided that rosters must include all working hours including theatre preparation, ward rounds, completing discharge summaries and (for Registrars only) Training Time as defined in clause 11.24.3.

10. Clauses 32.1 and 32.2 of the 2013 Agreement provided, relevantly:

32. OVERTIME

32.1 The provisions of this clause 32 are to be read in conjunction with clause 25 (Hours of Work).

32.2 Entitlement

32.2.1 Overtime is payable for working:

- (a) rostered hours in excess of ordinary hours, pursuant to sub clause 25.1; or
- (b) authorised hours in excess of rostered hours.

32.2.2 The payment of overtime is one and one half (1½) times the Doctor's ordinary hourly rate of pay for the first two (2) hours overtime in a week and then double the Doctor's ordinary hourly rate of pay for all additional overtime hours in that week.

B2 The 2018 Agreement

Application and coverage

11. The 2018 Agreement:

- (a) is an enterprise agreement within the meaning of Part 2-4 of the FW Act;
- (b) was approved by the FWC on 31 July 2018;
- (c) commenced operation on and from 7 August 2018 and continues to operate; and
- (d) pursuant to cl 4.1, covered:
 - (i) Peninsula Health;
 - (ii) ASMOF;
 - (iii) employees of Peninsula Health who were employed in, *inter alia*, the classifications set out in paragraph 1(f) above.

Doctor Responsibilities

12. Clause 23 of the 2018 Agreement provides, relevantly, that a Doctor covered by that Agreement:
 - (a) provides medical services, including the keeping and maintaining of adequate medical records for health service patients (cl 23.1); and
 - (b) is required to devote their duty hours to the duties of their appointment (cl 23.2).

Hours of Work, Rostering, and Overtime

13. Clause 33.1(a) of the 2018 Agreement provides that, for Doctors other than Registrars, the ordinary hours of full-time work are 38 hours per week or an average of 38 hours per week over a period of up to 4 weeks.
14. Clause 35.1(b) of the 2018 Agreement provides that rosters must include all working hours including theatre preparation, ward rounds, completing discharge summaries and (for Registrars only) Training Time in accordance with subclause 34.5.
15. Clauses 36.1 and 36.2 of the 2018 Agreement provide, relevantly:

36 Overtime

36.1 The provisions of this clause 36 are to be read in conjunction with clause 33 (Hours of Work).

36.2 Entitlement

- (a) Overtime is payable for working:
 - (i) rostered hours in excess of ordinary hours, pursuant to subclause 33.1; or
 - (ii) authorised hours in excess of rostered hours.
- (b) Notwithstanding the provisions of subclause 36.2(a) above, where a part-time Doctor is directed by the Health Service to work rostered hours in excess of their contract hours, overtime will be paid pursuant to this clause for all hours worked in excess of their contract hours. A Doctor who offers to work additional hours will be paid their ordinary rate of pay until their total weekly hours of work exceed the full time ordinary hours for their classification, as prescribed in clause 33 (Hours of Work).
- (c) The payment of overtime is one and one half (1½) times the Doctor's ordinary hourly rate of pay for the first two hours overtime in a week and then double the Doctor's ordinary hourly rate of pay for all additional overtime hours in that week.

C DUTIES AND RESPONSIBILITIES OF DR BOLTON AND GROUP MEMBERS

16. During the Relevant Period, the duties and responsibilities of Dr Bolton and Group Members when providing medical services included, from time to time:
- (a) preparation for ward rounds (**ward round preparation**);
 - (b) undertaking ward rounds (**ward rounds**);
 - (c) receiving or handing over information about patients between medical staff at the start or end of a shift (**handover**);
 - (d) preparation for medical procedures (**medical procedures preparation**);
 - (e) attending to medical emergencies or critical patient care (**medical emergency**);
 - (f) completion of patient medical records, including discharge summaries, in a timely manner (**medical records**); and
 - (g) carrying out such other duties necessary for the provision of medical services by the Doctor (**other medical services**).

Particulars

The Applicants refer to clauses 14.1, 14.2 and 26.1.2 of the 2013 Agreement, and clauses 23.1, 23.2 and 35.1(b) of the 2018 Agreement.

D THE SECOND APPLICANT'S CLAIM

17. During the course of her employment by Peninsula Health, Dr Bolton was directed by Peninsula Health to work at, relevantly, the following locations on the following dates:
- (a) between 14 January 2019 and 24 March 2019 in the General Medicine department at Frankston Hospital;
 - (b) between 3 June 2019 and 11 August 2019 in the Plastic Surgery department at Frankston Hospital;

- (c) between 12 August 2019 and 20 October 2019 in the General Medicine department at Frankston Hospital; and
- (d) between 2 November 2020 and 31 January 2021 in the Cardiology department at Frankston Hospital.

Particulars

The direction to work in the rotations at subparagraphs (a), (b) and (c) was in writing. It was contained in a letter to Dr Bolton from Peninsula Health dated 26 October 2018. The direction to work in the rotation in sub-paragraph (c) was originally a direction to work at Rosebud Hospital, which was subsequently varied by agreement to be worked at Frankston Hospital.

The directions to work in the rotation in subparagraph (d) was in writing. Further particulars will be provided after discovery.

D1 First General Medicine Rotation – 14 January 2019 to 24 March 2019

- 18. Between 14 January 2019 and 24 March 2019, pursuant to the direction of Peninsula Health set out in paragraph 17(a) above, Dr Bolton worked in the General Medicine department at Frankston Hospital (**First General Medicine rotation**).

Rosters

- 19. During the First General Medicine rotation, Dr Bolton was rostered to work a rotating roster over the following shifts:
 - (a) Week 1: Monday, Tuesday, Thursday and Friday from 8.00am to 4.00pm, Wednesday from 8.00am to 12.00pm, and either Saturday or Sunday from 8.00am to 12.30 or 2.30pm (between 42.5 and 40.5 rostered hours per week) (**Week 1 roster**); and
 - (b) Week 2: Monday, Tuesday, Thursday and Friday from 8.30am to 4.30pm, and Wednesday from 8.30am to 12.30pm (36 rostered hours per week) (**Week 2 roster**).

Particulars

During the First General Medicine rotation, Dr Bolton worked in General Medicine group B.

The hours worked in the Week 1 roster included rostered overtime, for which Dr Bolton was paid. No claim is made in respect of rostered overtime.

Copies of Dr Bolton's rosters for the First General Medicine rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

Ward round preparation

20. During the First General Medicine rotation, Peninsula Health directed Dr Bolton to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

The ward round preparation direction was partly written and is partly to be inferred.

Insofar as it was in writing, it was contained in clause 23.1 of the 2018 Agreement, which provides that a Doctor's duties include the keeping and maintaining of adequate medical records for patients. Ward round preparation involved the creation of medical records for patients.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation in the General Medicine department included the following:

1. identifying and reviewing information regarding new patients who had been admitted overnight;
2. identifying and reviewing patient information to understand any medical issues that may have arisen overnight;
3. reviewing new pathology test results;
4. ensuring that all patients on the ward were under the correct team bed card;
5. printing the patient list; and
6. preparing ward round notes.

21. During the First General Medicine rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Bolton worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

During the First General Medicine rotation, all clinicians whose rostered shift commenced at 8.00am were required to attend a department-wide handover meeting at 8.00am. Ward rounds commenced immediately after each group had received handover, which was anywhere between 10 and 45 minutes after the start of the handover meeting.

Dr Bolton performed ward round preparation overtime before the start of each rostered shift worked in the Week 1 roster on Mondays to Fridays, and on Saturday 2 February 2019 and Sunday 3 March 2019.

Further particulars will be provided after discovery and before trial.

22. Peninsula Health:

- (a) knew that there was insufficient time during rostered hours to undertake ward round preparation in accordance with the ward round preparation direction; and
- (b) knew that Dr Bolton performed ward round preparation overtime; and
- (c) did not direct Dr Bolton not to perform ward round preparation overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from:

1. the ward round preparation direction; and
2. the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 20 above; and
3. Dr Bolton's rostered start time of 8.00am in Week 1; and
4. the commencement of ward rounds in the General Medicine department shortly after 8.00am in the circumstances set out in the particulars to paragraph 21 above; and
5. the fact that Dr Bolton was prepared at the start of ward rounds conducted by the Consultants and Registrars on duty.

23. By reason of the matters alleged in paragraphs 16(a), 18, 20 and 22 above, the ward round preparation overtime worked by Dr Bolton in the First General Medicine rotation constituted "authorised hours" within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

1. the medical services provided by Dr Bolton included ward round preparation before the commencement of ward rounds;
 2. Dr Bolton's rostered start time in Week 1 of the First General Medicine rotation was 8.00am;
 3. ward rounds commenced in the General Medicine department shortly after 8.00am, in the circumstances set out in the particulars to paragraph 21 above;
 4. the conduct of Peninsula Health in giving the ward round preparation direction, as set out in paragraph 20 above;
 5. the knowledge of Peninsula Health, as set out in paragraphs 22(a) and (b); and
 6. the failure by Peninsula Health to direct Dr Bolton not to perform the ward round preparation overtime, as set out in paragraph 22(c) above.
24. In the premises, Dr Bolton was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 21 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
25. Peninsula Health did not pay Dr Bolton overtime, in accordance with clause 36.2 of the 2018 Agreement, for the ward round preparation overtime worked by her during the First General Medicine rotation.
26. By reason of the matters alleged above, Peninsula Health has contravened clause 36.2 of the 2018 Agreement.
27. By reason of the matters alleged in the above paragraph, Peninsula Health has contravened s 50 of the FW Act.

Ward rounds

28. During the First General Medicine rotation, Peninsula Health directed Dr Bolton to undertake ward rounds outside of rostered hours when working the Week 2 shift commencing at 8.30am (the **ward round direction**).

Particulars

The ward round direction is to be inferred from the following:

1. the matters in paragraph 16(b) above; and
 2. the commencement of ward rounds in the General Medicine department shortly after 8.00am in the circumstances set out in the particulars to paragraph 21 above.
29. During the First General Medicine rotation, in order to undertake ward rounds in accordance with the ward round direction, Dr Bolton worked hours in excess of rostered hours (**ward round overtime**).

Particulars

During the First General Medicine rotation, a department-wide handover meeting was held each day at 8.00am. Ward rounds commenced immediately after each group had received handover, which was anywhere between 10 and 45 minutes after the start of the handover meeting.

When working the Week 2 roster, Dr Bolton attended work before the start of her shift at 8.30am in order to ensure she was present for the start of ward rounds, 5 days per week.

Further particulars will be provided after discovery and before trial.

30. Peninsula Health:
- (a) knew that there was insufficient time during rostered hours to undertake ward rounds in accordance with the ward round direction; and
 - (b) knew that Dr Bolton performed ward round overtime; and
 - (c) did not direct Dr Bolton not to perform ward round overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from:

1. the ward round direction; and
2. Dr Bolton's rostered start time of 8.30am in Week 2; and
3. the commencement of ward rounds in the General Medicine department shortly after 8.00am in the circumstances set out in the particulars to paragraph 21 above; and
4. the fact that Dr Bolton was present at ward rounds conducted by the Consultants and Registrars on duty.

31. By reason of the matters alleged in paragraphs 16(b), 18, 28 and 30 above, the ward round overtime worked by Dr Bolton constituted “authorised hours” within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

1. the medical services provided by Dr Bolton included undertaking ward rounds;
 2. Dr Bolton’s rostered hours in the First General Medicine rotation as set out in paragraph 19 above;
 3. the conduct of Peninsula Health in giving the ward round direction, as set out in paragraph 28 above;
 4. the knowledge of Peninsula Health, as set out in paragraphs 30(a) and (b) above; and
 5. the failure by Peninsula Health to direct Dr Bolton not to perform medical records overtime as set out in paragraph 30(c) above.
32. In the premises, Dr Bolton was entitled to be paid overtime for the ward round overtime that she worked, as set out in paragraph 29 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
33. Peninsula Health did not pay Dr Bolton overtime, in accordance with clause 36.2 of the 2018 Agreement, for the ward round overtime worked by her during the First General Medicine rotation.
34. By reason of the matters alleged above, Peninsula Health has contravened clause 36.2 of the 2018 Agreement.
35. By reason of the matters alleged in the above paragraph, Peninsula Health has contravened s 50 of the FW Act.

Medical records

36. During the First General Medicine rotation, Peninsula Health directed Dr Bolton:
- (a) to complete medical records for all patients in the General Medicine department;
- and

- (b) to complete medical records in a timely manner; and
- (c) that the timely completion of medical records was necessary to ensure patient safety

(the **medical records direction**).

Particulars

The medical records direction was partly written, partly oral, and is partly to be inferred.

Insofar as it was in writing, it was contained in:

1. clause 23.1 of the 2018 Agreement, which provides that a Doctor's duties include the keeping and maintaining of adequate medical records for patients. Medical records include discharge summaries, outpatient referrals, prescriptions, requests for external hospital medical records, clinical notes, and investigation requests;
2. an email sent by Peninsula Health to Dr Bolton and others during the First General Medicine Rotation stating that the threshold for completion of discharge summaries was that 90 per cent would be completed within 48 hours of patient discharge, and that this was monitored as a Key Performance Indicator (**KPI**) at Frankston Hospital. A copy of the email is in the possession of the solicitors for the Applicants and available for inspection on request;

Insofar as it was oral, it was conveyed:

3. by a member of the Medical Workforce Unit to new interns during orientation held between 7 and 11 January 2019, where the interns were told that completion of discharge summaries were monitored as a KPI, and it was expected that they would be completed in a timely manner;

Insofar as it is to be inferred, it is inferred from:

4. the matters in subparagraphs (1) to (3) above; and
 5. the matters in paragraph 16(f) above.
37. During the First General Medicine rotation, in order to complete medical records in accordance with the medical records direction, Dr Bolton worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The medical records overtime was worked by Dr Bolton after the conclusion of her rostered shifts, approximately 3 days per week.

Further particulars will be provided after discovery and before trial.

38. Peninsula Health:

- (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the medical records direction; and
- (b) knew that Dr Bolton performed medical records overtime; and
- (c) did not direct Dr Bolton not to perform medical records overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from the following matters:

1. during the First General Medicine rotation, the Registrars on duty observed Dr Bolton and other Interns in General Medicine working after hours completing medical records; and
2. the medical records direction; and
3. Dr Bolton's rostered hours.

39. By reason of the matters alleged in paragraphs 16(b), 18, 36 and 38 above, the medical records overtime worked by Dr Bolton constituted "authorised hours" within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

1. the medical services provided by Dr Bolton included the timely completion of medical records;
2. Dr Bolton's rostered hours in the First General Medicine rotation as set out in paragraph 19 above;
3. the conduct of Peninsula Health in giving the medical records direction, as set out in paragraph 36 above;
4. the knowledge of Peninsula Health, as set out in paragraphs 38(a) and (b) above; and

5. the failure by Peninsula Health to direct Dr Bolton not to perform medical records overtime as set out in paragraph 38(c) above.

40. In the premises, Dr Bolton was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 37 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
41. Peninsula Health did not pay Dr Bolton overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical records overtime worked by her during the First General Medicine rotation.
42. By reason of the matters alleged above, Peninsula Health has contravened clause 36.2 of the 2018 Agreement.
43. By reason of the matters alleged in the above paragraph, Peninsula Health has contravened s 50 of the FW Act.

D2 Plastic Surgery Rotation – 3 June 2019 to 11 August 2019

44. Between 3 June 2019 and 11 August 2019, pursuant to the direction of Peninsula Health set out in paragraph 17(b) above, Dr Bolton worked in the Plastic Surgery department at Frankston Hospital (**Plastics rotation**).

Rosters

45. During the Plastics rotation, Dr Bolton was rostered to work:
 - (a) between 3 June 2019 and 30 June 2019, between 7.00am – 4.30pm four days per week, and 7.00am – 5.30pm on the fifth day (48.5 rostered hours per week); and
 - (b) between 1 July 2019 and 11 August 2019, between 7.00am – 4.30pm five days per week (47.5 rostered hours per week).

Particulars

The rostered hours worked during this rotation included rostered overtime, for which Dr Bolton was paid. No claim is made in respect of rostered overtime.

Copies of Dr Bolton's rosters for the Plastics rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

Ward round preparation

46. During the Plastics rotation, Peninsula Health directed Dr Bolton to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

The ward round preparation direction was partly written and is partly to be inferred.

Insofar as it was in writing, it was contained in:

1. clause 23.1 of the 2018 Agreement, which provides that a Doctor's duties include the keeping and maintaining of adequate medical records for patients; ward round preparation involved the creation of medical records for patients; and
2. a document titled 'Plastics Intern Handover – Rotation 2 2019', that was provided to Dr Bolton at the start of her rotation in the Plastic Surgery ward, and which stated, at page 1, that there was a "7am ward round", and as follows:

"Daily Structure:

- *Arrive 6.30:*
 - *Update Plastics Ward List (excel document) – check Clover and WhatsApp for new admits, patient locations*
 - *Update any bloods/imaging etc. that has been done overnight*
 - *Check all patient obs*
 - *Call wards and check ensure dressings are down for patients that need to have a wound reviewed ...*
 - *Print theatre list and photocopy/attach to ward list ...*
- *7am Ward Round...*

Ward round preparation in the Plastic Surgery ward included the matters in the document above, as well as checking drain outputs in appropriate patients, and ensuring the wound dressing bag was stocked.

Inssofar as it is to be inferred, it is inferred from the matters in subparagraphs (1) and (2) above, and paragraph 16(a) above.

47. During the Plastics rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Bolton worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

The ward round preparation overtime was worked by Dr Bolton before the start of each rostered shift.

Further particulars will be provided after discovery and before trial.

48. Peninsula Health:

- (a) knew that there was insufficient time during rostered hours to undertake ward round preparation in accordance with the ward round preparation direction; and
- (b) knew that Dr Bolton performed ward round preparation overtime; and
- (c) did not direct Dr Bolton not to perform ward round preparation overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from:

1. the ward round preparation direction; and
2. the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 46 above; and
3. Dr Bolton's rostered start time of 7.00am; and
4. the commencement of ward rounds at 7.00am; and
5. the fact that Dr Bolton was prepared at the start of ward rounds conducted by the Registrars on duty; and
6. a conversation between Dr Bolton and Registrar Dr Rob Phan during the Plastics rotation, in which Dr Phan said words to the effect that he and the other Registrars knew and appreciated that Dr Bolton was coming in early to prepare for ward rounds.

49. By reason of the matters alleged in paragraphs 16(a), 44, 46 and 48 above, the ward round preparation overtime worked by Dr Bolton constituted "authorised hours" within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

1. the medical services provided by Dr Bolton included ward round preparation before the commencement of ward rounds;
2. Dr Bolton's rostered hours in the Plastics rotation as set out in paragraph 45 above;
3. the commencement of ward rounds in the Plastic Surgery department at 7.00am, as set out in paragraph 46 above;
4. the conduct of Peninsula Health in giving the ward round preparation direction, as set out in paragraph 46 above;
5. the knowledge of Peninsula Health, as set out in paragraphs 48(a) and (b) above; and
6. the failure by Peninsula Health to direct Dr Barton not to perform ward round preparation overtime, as set out in paragraphs 48(c) above.

50. In the premises, Dr Bolton was entitled to be paid overtime for the ward round preparation overtime that she worked, as set out in paragraph 47 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
51. Peninsula Health did not pay Dr Bolton overtime, in accordance with clause 36.2 of the 2018 Agreement, for the ward round preparation overtime worked by her during the Plastics rotation.
52. By reason of the matters alleged above, Peninsula Health has contravened clause 36.2 of the 2018 Agreement.
53. By reason of the matters alleged in the above paragraph, Peninsula Health has contravened s 50 of the FW Act.

D3 Second General Medicine Rotation – 12 August 2019 to 20 October 2019

54. Between 12 August 2019 and 20 October 2019, pursuant to the direction of Peninsula Health set out in paragraph 17(c) above, Dr Bolton worked in the General Medicine department at Frankston Hospital (**Second General Medicine rotation**).

Rosters

55. During the Second General Medicine rotation, Dr Bolton was rostered to work the following shifts:

- (a) Monday, Tuesday, Thursday and Friday from 8.00am to 4.30pm, and Wednesday from 8.00am to 12.00pm (38 hours per week); and
- (b) one weekend day every second week between 8.00am and 2.30pm (rostered overtime).

Particulars

During the Second General Medicine rotation, Dr Bolton worked in General Medicine group C.

The hours worked in the Second General Medicine rotation included rostered overtime, for which Dr Bolton was paid. No claim is made in respect of rostered overtime.

Copies of Dr Bolton's rosters for the Second General Medicine rotation are in the possession of the solicitors for the Applicants and available for inspection on request,

Ward round preparation

56. During the Second General Medicine rotation, Peninsula Health directed Dr Bolton to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

The ward round preparation direction was partly written and is partly to be inferred. The Second Applicant refers to and repeats the particulars to paragraph 20 above.

57. During the Second General Medicine rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Bolton worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

As to the timing of ward rounds in the General Medicine department, the Second Applicant refers to and repeats the particulars to paragraph 21 above.

The ward round preparation overtime was worked by Dr Bolton before the start of each rostered shift, approximately 5 days per week.

Further particulars will be provided after discovery and before trial.

58. Peninsula Health:

- (a) knew that there was insufficient time during rostered hours to undertake ward round preparation in accordance with the ward round preparation direction; and
- (b) knew that Dr Bolton performed ward round preparation overtime; and
- (c) did not direct Dr Bolton not to perform ward round preparation overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from:

- 1. the ward round preparation direction; and
- 2. the tasks necessary to complete ward round preparation, including the matters in the particulars to paragraph 20 above; and
- 3. Dr Bolton's rostered start time of 8.00am; and
- 4. the commencement of ward rounds in the General Medicine department shortly after 8.00am in the circumstances set out in the particulars to paragraph 21 above; and
- 5. the fact that Dr Bolton was prepared at the start of ward rounds conducted by the Consultants and Registrars on duty.

59. By reason of the matters alleged in paragraphs 16(a), 54, 56 and 58 above, the ward round preparation overtime worked by Dr Bolton constituted "authorised hours" within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

- 1. the medical services provided by Dr Bolton included ward round preparation before the commencement of ward rounds;
- 2. Dr Bolton's rostered start time in the Second General Medicine rotation was 8.00am;
- 6. the commencement of ward rounds in the General Medicine department shortly after 8.00am in the circumstances set out in the particulars to paragraph 21 above;

3. the conduct of Peninsula Health in giving the ward round preparation direction, as set out in paragraph 56 above;
 4. the knowledge of Peninsula Health, as set out in paragraphs 58(a) and (b) above; and
 5. the failure by Peninsula Health to direct Dr Bolton not to perform the ward round preparation overtime as set out in paragraph 58(c) above.
60. In the premises, Dr Bolton was entitled to be paid overtime for the ward round preparation overtime that she worked, as set out in paragraph 57 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
61. Peninsula Health did not pay Dr Bolton overtime, in accordance with clause 36.2 of the 2018 Agreement, for the ward round preparation overtime worked by her during the Second General Medicine rotation.
62. By reason of the matters alleged above, Peninsula Health has contravened clause 36.2 of the 2018 Agreement.
63. By reason of the matters alleged in the above paragraph, Peninsula Health has contravened s 50 of the FW Act.

Medical records

64. During the Second General Medicine rotation, Peninsula Health directed Dr Bolton:
- (a) to complete medical records for all patients in the General Medicine department;
and
 - (b) to complete medical records in a timely manner; and
 - (c) that the timely completion of medical records was necessary to ensure patient safety
- (the **medical records direction**).

Particulars

The Second Applicant refers to and repeat the particulars to paragraph 36 above.

65. During the Second General Medicine rotation, in order to complete medical records in accordance with the medical records direction, Dr Bolton worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The medical records overtime was worked by Dr Bolton after the conclusion of her rostered shifts, approximately 2 days per week.

Further particulars will be provided after discovery and before trial.

66. Peninsula Health:

- (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the medical records direction; and
- (b) knew that Dr Bolton performed medical records overtime; and
- (c) did not direct Dr Bolton not to perform medical records overtime.

Particulars

The Second Applicant refers to and repeat the particulars to paragraph 38 above.

67. By reason of the matters alleged in paragraphs 16(b)(f), 54, 64 and 66 above, the medical records overtime worked by Dr Bolton constituted “authorised hours” within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

1. the medical services provided by Dr Bolton included the timely completion of medical records;
2. Dr Bolton’s rostered hours in the Second General Medicine rotation as set out in paragraph 55 above;
3. the conduct of Peninsula Health in giving the medical records direction, as set out in paragraph 64 above;
4. the knowledge of Peninsula Health, as set out in paragraphs 66(a) and (b) above; and
5. the failure by Peninsula Health to direct Dr Bolton not to perform medical records overtime as set out in paragraph 66(c) above.

68. In the premises, Dr Bolton was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 65 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
69. Peninsula Health did not pay Dr Bolton overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical records overtime worked by her during the Second General Medicine rotation.
70. By reason of the matters alleged above, Peninsula Health has contravened clause 36.2 of the 2018 Agreement.
71. By reason of the matters alleged in the above paragraph, Peninsula Health has contravened s 50 of the FW Act.

D4 Cardiology Rotation – 2 November 2020 to 31 January 2021

72. Between 2 November 2020 and 31 January 2021, pursuant to the direction of Peninsula Health set out in paragraph 17(d) above, Dr Bolton worked in the Cardiology department at Frankston Hospital (**Cardiology rotation**).

Rosters

73. During the Cardiology rotation, Dr Bolton was rostered to work a three week rotating roster as follows:
 - (a) Week 1: Monday, Tuesday, and Thursday from 8.00am to 4.00pm; Wednesday from 7.30am – 4.00pm; and Sunday from 8.00am to 3.00pm (39.5 rostered hours per week);
 - (b) Week 2: Monday–Friday, 3.45pm – 9.45pm (30 rostered hours per week); and
 - (c) Week 3: Monday, Tuesday, and Friday from 8.00am to 4.00pm; Wednesday from 7.30am – 4.00pm; Thursday from 8.00am to 1.00pm; and Saturday from 8.00am to 3.00pm (44.5 rostered hours per week).

Medical procedures preparation

74. During the Cardiology rotation, Peninsula Health directed Dr Bolton to undertake preparation of patients for angiograms (**medical procedures preparation direction**).

Particulars

The medical procedures preparation direction was partly written and is partly to be inferred.

Insofar as it is in writing, it was contained in clause 23.1 of the 2018 Agreement, which provides that a Doctor's duties include the keeping and maintaining of adequate medical records for patients. Preparing patients for angiograms involves the creation of medical records for patients, as described in subparagraphs (4) and (5) below.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(d) above, and from the fact that the tasks necessary for preparation of patients for angiograms in the Cardiology department included the following:

1. angiograms commenced at 8.00am;
2. there could be anywhere between 5 and 10 patients listed to undergo angiograms each morning;
3. Dr Bolton and other clinicians were not informed prior to each morning of the order in which patients will undergo the procedure that day;
4. it was necessary for patients to provide consent to the angiogram before undergoing the procedure;
5. consent was recorded on paper forms. To complete the consent forms, the doctor was required to speak to the patient, explain the procedure, obtain their consent, and manually complete the form, before the angiogram takes place.

75. During the Cardiology rotation, in order to prepare patients for angiograms in accordance with the medical procedures preparation direction, in Weeks 1 and 3 of the roster Dr Bolton worked hours in excess of rostered hours (**medical procedures preparation overtime**).

Particulars

The medical procedures preparation overtime was worked by Dr Bolton before the start of each rostered shift in Weeks 1 and 3, except on Wednesdays.

Further particulars will be provided after discovery and before trial.

76. Peninsula Health:

- (a) knew that there was insufficient time during rostered hours to undertake angiogram preparation in accordance with the medical procedures preparation direction; and
- (b) knew that Dr Bolton performed medical procedures preparation overtime; and
- (c) did not direct Dr Bolton not to perform medical procedures preparation overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from:

- 1. the medical procedures preparation direction; and
- 2. the tasks necessary to complete angiogram preparation, including those matters in the particulars to paragraph 74 above; and
- 3. Dr Bolton's rostered start time of 8.00am on Monday, Tuesday, Thursday and Sunday in Week 1, and Monday, Tuesday, Thursday, Friday and Saturday in Week 3;
- 4. the commencement of angiograms at 8.00am, and the need to undertake preparation; and
- 5. the fact that patient consent forms were completed prior to patients undergoing angiograms.

77. By reason of the matters alleged in paragraphs 16(d), 72, 74 and 76 above, the medical procedures preparation overtime worked by Dr Bolton constituted "authorised hours" within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

- 1. the medical services provided by Dr Bolton included preparing patients for angiograms before the commencement of the procedure;
- 2. Dr Bolton's rostered start time of 8.00am in Weeks 1 and 3 in the Cardiology rotation, as set out in paragraph 73 above;
- 3. the commencement of angiograms for patients in the Cardiology department at 8.00am as set out in the particulars to paragraph 74 above;

4. the conduct of Peninsula Health in giving the medical procedures preparation direction, as set out in paragraph 74 above;
 5. the knowledge of Peninsula Health, as set out in paragraphs 76(a) and (b) above; and
 6. the failure by Peninsula Health to direct Dr Bolton not to perform the medical procedures preparation overtime as set out in paragraph 76(c) above.
78. In the premises, Dr Bolton was entitled to be paid overtime for the medical procedures preparation overtime that she worked, as set out in paragraph 75 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
79. Peninsula Health did not pay Dr Bolton overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical procedures preparation overtime worked by her during the Cardiology rotation.
80. By reason of the matters alleged above, Peninsula Health has contravened clause 36.2 of the 2018 Agreement.
81. By reason of the matters alleged in the above paragraph, Peninsula Health has contravened s 50 of the FW Act.

Ward round preparation

82. During the Cardiology rotation, Peninsula Health directed Dr Bolton to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

Insofar as it was in writing, it was contained in clause 23.1 of the 2018 Agreement, which provides that a Doctor's duties include the keeping and maintaining of adequate medical records for patients. Ward round preparation involved the creation of medical records for patients.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation in the Cardiology department included the following:

1. identifying and reviewing information regarding new patients who had been admitted overnight;

2. identifying and reviewing patient information to understand any medical issues that may have arisen overnight;
 3. reviewing new pathology test results;
 4. ensuring that all patients on the ward were under the correct team bed card;
 6. printing the patient list; and
 7. preparing ward round notes.
83. During the Cardiology rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, in Weeks 1 and 3 of the roster Dr Bolton worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

During the Cardiology rotation, ward rounds commenced each day at a time determined by the Consultant conducting the ward round. Doctors were not notified in advance of the commencement time for ward rounds.

In order to ensure she was prepared for a ward round which might commence at 8.00am, Dr Bolton worked overtime to prepare for ward rounds before the start of each rostered shift in Weeks 1 and 3, except on Wednesdays.

Further particulars will be provided after discovery and before trial.

84. Peninsula Health:
- (a) knew that there was insufficient time during rostered hours to undertake ward round preparation in accordance with the ward round preparation direction; and
 - (b) knew that Dr Bolton performed ward round preparation overtime; and
 - (c) did not direct Dr Bolton not to perform ward round preparation overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from:

1. the ward round preparation direction; and
2. the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 82 above; and

3. Dr Bolton's rostered start time of 8.00am on Monday, Tuesday, Thursday and Sunday in Week 1, and Monday, Tuesday, Thursday, Friday and Saturday in Week 3;
 4. the commencement of ward rounds in the Cardiology department in the circumstances set out in the particulars to paragraph 83 above; and
 5. the fact that Dr Bolton was prepared at the start of ward rounds conducted by the Consultants on duty.
85. By reason of the matters alleged in paragraphs 16(a), 72, 82 and 84 above, the ward round preparation overtime worked by Dr Bolton constituted "authorised hours" within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

1. the medical services provided by Dr Bolton included ward round preparation before the commencement of ward rounds;
 2. Dr Bolton's rostered start time of 8.00am in Weeks 1 and 3 in the Cardiology rotation, as set out in paragraph 73 above;
 3. the commencement of ward rounds in the Cardiology department in the circumstances set out in the particulars to paragraph 83 above;
 4. the conduct of Peninsula Health in giving the ward round preparation direction, as set out in paragraph 82 above;
 5. the knowledge of Peninsula Health, as set out in paragraphs 84(a) and (b) above; and
 6. the failure by Peninsula Health to direct Dr Bolton not to perform the ward round preparation overtime as set out in paragraph 84(c) above.
86. In the premises, Dr Bolton was entitled to be paid overtime for the ward round preparation overtime that she worked, as set out in paragraph 83 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
87. Peninsula Health did not pay Dr Bolton overtime, in accordance with clause 36.2 of the 2018 Agreement, for the ward round preparation overtime worked by her during the Cardiology rotation.
88. By reason of the matters alleged above, Peninsula Health has contravened clause 36.2 of the 2018 Agreement.

89. By reason of the matters alleged in the above paragraph, Peninsula Health has contravened s 50 of the FW Act.

Medical records

90. During the Cardiology rotation, Peninsula Health directed Dr Bolton:

- (a) to complete medical records for all patients in the Cardiology department; and
- (b) to complete medical records in a timely manner; and
- (c) that the timely completion of medical records was necessary to ensure patient safety

(the **medical records direction**).

Particulars

The medical records direction was partly written, partly oral, and is partly to be inferred.

Insofar as it was in writing, it was contained in clause 23.1 of the 2018 Agreement, which provides that a Doctor's duties include the keeping and maintaining of adequate medical records for patients. Medical records include discharge summaries, outpatient referrals, prescriptions, requests for external hospital medical records, clinical notes, and investigation requests.

Further, with respect to discharge summaries, it was a KPI at Frankston Hospital that 90 per cent of all discharge summaries were to be completed within 48 hours of the patient being discharged. The Second Applicant refers to and repeats the particulars to paragraph 36 above.

Insofar as it is to be inferred, it is inferred from the matters above, and the matters in paragraph 16(f) above.

91. During the Cardiology rotation, in order to complete medical records in accordance with the medical records direction, Dr Bolton worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The medical records overtime was worked by Dr Bolton after the conclusion of her rostered shifts in Weeks 1 and 3.

Further particulars will be provided after discovery and before trial.

92. Peninsula Health:

- (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the medical records direction; and
- (b) knew that Dr Bolton performed medical records overtime; and
- (c) did not direct Dr Bolton not to perform medical records overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from the following matters:

- 1. During the Cardiology rotation, Registrars and other senior staff observed Dr Bolton and other HMOs in Cardiology working after hours completing medical records;
- 2. the medical records direction; and
- 3. Dr Bolton's rostered hours.

93. By reason of the matters alleged in paragraphs 16(b)(f), 72, 90 and 92 above, the medical records overtime worked by Dr Bolton constituted "authorised hours" within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

- 1. the medical services provided by Dr Bolton included the timely completion of medical records;
- 2. Dr Bolton's rostered hours in the Cardiology rotation as set out in paragraph 73 above;
- 3. the conduct of Peninsula Health in giving the medical records direction, as set out in paragraph 90 above;
- 4. the knowledge of Peninsula Health, as set out in paragraphs 92(a) and (b) above; and
- 5. the failure by Peninsula Health to direct Dr Bolton not to perform medical records overtime as set out in paragraph 92(c) above.

94. In the premises, Dr Bolton was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 91 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.

95. Peninsula Health did not pay Dr Bolton overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical records overtime worked by her during the Cardiology rotation.
96. By reason of the matters alleged above, Peninsula Health has contravened clause 36.2 of the 2018 Agreement.
97. By reason of the matters alleged in the above paragraph, Peninsula Health has contravened s 50 of the FW Act.

Handover

98. During the Cardiology rotation, Peninsula Health directed Dr Bolton to conduct handover of patient information between medical staff at the end of each shift (**handover direction**).

Particulars

The handover direction is to be inferred from the matters in paragraph 16(c) above, and from the tasks necessary to conduct handover in the Cardiology department, which included the following:

1. in Weeks 1 and 3, handover commenced at 3.45pm, when the incoming shift roster began;
2. there were usually between 25 – 30 patients on the handover list;
3. during handover, the outgoing shift explained to the incoming shift each patient's condition, updated information, treatment plans, and tasks to be carried out; and
4. during handover, Doctors were required to continue to provide care to patients, and attend to queries from other medical staff including nurses.

99. During the Cardiology rotation, in order to conduct handover, in Weeks 1 and 3 of the roster Dr Bolton worked hours in excess of rostered hours (**handover overtime**).

Particulars

The handover overtime was worked by Dr Bolton after the end of each rostered shift in Weeks 1 and 3.

Further particulars will be provided after discovery and before trial.

100. Peninsula Health:

- (a) knew that there was insufficient time during rostered hours to undertake handover in accordance with the handover direction; and
- (b) knew that Dr Bolton performed handover overtime; and
- (c) did not direct Dr Bolton not to perform handover overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from:

- 1. the handover direction; and
- 2. the matters in the particulars to paragraph 98 above;
- 3. Dr Bolton's rostered finish time of 4.00pm in Weeks 1 and 3; and
- 4. the commencement of handover at 3.45pm.

101. By reason of the matters alleged in paragraphs 16(b), 72, 98 and 100 above, the handover overtime worked by Dr Bolton constituted "authorised hours" within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

- 1. part of the medical services provided by Dr Bolton included conducting handover;
- 2. Dr Bolton's rostered finish time of 4.00pm in Weeks 1 and 3 of the Cardiology rotation as set out in paragraph 73 above;
- 3. the commencement of handover at 3.45pm in the circumstances described in the particulars to paragraph 98 above;
- 4. the conduct of Peninsula Health in giving the handover direction, as set out in paragraph 98 above;
- 5. the knowledge of Peninsula Health, as set out in paragraphs 100(a) and (b) above; and
- 6. the failure by Peninsula Health to direct Dr Bolton not to perform handover overtime as set out in paragraph 100(c) above.

102. In the premises, Dr Bolton was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 99 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
103. Peninsula Health has not paid Dr Bolton overtime, in accordance with clause 36.2 of the 2018 Agreement, for the handover overtime worked by her during the Cardiology rotation.
104. By reason of the matters alleged above, Peninsula Health has contravened clause 36.2 of the 2018 Agreement.
105. By reason of the matters alleged in the above paragraph, Peninsula Health has contravened s 50 of the FW Act.

D5 Loss

106. Dr Bolton has suffered loss by reason of Peninsula Health's contraventions of s 50 of the FW Act.

Particulars

Particulars will be provided after discovery and before trial.

E GROUP MEMBERS' CLAIMS

107. Each Group Member, in the course of their employment by Peninsula Health during the Relevant Period:
 - (a) worked in one or more of the services operated by Peninsula Health as set out in paragraph 1(d) above; and
 - (b) was rostered to work 38 ordinary hours per week, or an average of 38 hours per week for up to 4 weeks.

E1 Ward round preparation overtime

108. Some or all Group Members, in the course of their employment by Peninsula Health during the Relevant Period, were subject to a direction to prepare for ward rounds before the commencement of ward rounds.

Particulars

The direction was partly written and partly implied.

Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement and clause 23.1 of the 2018 Agreement, which provided that a Doctor's duties included the keeping and maintaining of adequate medical records for patients. Ward round preparation involved the creation of medical records for patients.

Insofar as it was implied, it was implied by the matters in paragraph 16(a) above, where ward rounds were conducted in a particular ward or department of a service operated by Peninsula Health as set out in paragraph 1(d) above.

109. Each Group Member subject to the direction in paragraph 108 above worked overtime in excess of rostered hours to prepare for ward rounds, in accordance with that direction.
110. In respect of each Group Member in paragraph 109 above, Peninsula Health:
- (a) knew that there was insufficient time during rostered hours to prepare for ward rounds, in accordance with the direction in paragraph 108 above;
 - (b) knew that Group Members worked overtime to prepare for ward rounds;
 - (c) did not direct Group Members not to perform ward round preparation overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 108 above;
2. the tasks necessary to complete ward round preparation including, but not limited to, the need to review patient records prepared by overnight staff including admissions, pathology test results, and notes prepared by clinicians;
3. the rostered hours for each ward where ward rounds were conducted;

4. the time for the commencement of ward rounds in each ward;
and
5. that Group Members had completed ward round preparation when ward rounds commenced each morning.

111. Peninsula Health did not pay Group Members overtime:

- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
- (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,

for the ward round preparation overtime in paragraph 109 above worked by them.

112. The ward round preparation overtime worked by Group Members constituted “authorised hours” within the meaning of:

- (a) clause 32.2.1(b) of the 2013 Agreement; and
- (b) clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

1. the work performed by the Group Member was the provision of medical services which included preparation for ward rounds before the commencement of ward rounds;
2. the conduct of Peninsula Health in giving the direction set out in paragraph 108 above;
3. the knowledge of Peninsula Health, as set out in paragraphs 110(a) and (b) above; and
4. the failure by Peninsula Health to direct Group Members not to perform the overtime set out in paragraph 109 above, as set out in paragraph 110(c) above.

113. In the premises, Group Members were entitled to be paid overtime for the ward round preparation overtime they worked as set out in paragraph 109 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

114. By reason of the matters alleged in paragraphs 111 and 113 above, Peninsula Health has contravened:

- (a) clause 32.2 of the 2013 Agreement; and
- (b) clause 36.2 of the 2018 Agreement.

115. By reason of the matters in the paragraph above, Peninsula Health has contravened s 50 of the FW Act.

E2 Ward round overtime

116. Some or all Group Members, in the course of their employment by Peninsula Health during the Relevant Period, were subject to a direction to undertake ward rounds outside of rostered hours.

Particulars

The direction was partly oral and partly implied.

Insofar as it was oral, it was given by a Group Member's supervisor directing the Doctor to undertake a ward round commencing at or immediately before or after a Doctor's rostered start or finish time, which necessitated working outside rostered hours.

Insofar as it was implied, it was implied by the matters in paragraph 16(b) above, where ward rounds were undertaken in a particular ward or department of a service operated by Peninsula Health as set out in paragraph 1(d) above.

117. Each Group Member subject to the direction in paragraph 116 above worked overtime in excess of rostered hours to undertake ward rounds, in accordance with that direction.

118. In respect of each Group Member in paragraph 117 above, Peninsula Health:

- (a) knew that there was insufficient time during rostered hours to undertake ward rounds, in accordance with the direction in paragraph 116 above;
- (b) knew that Group Members worked overtime to undertake ward rounds;
- (c) did not direct Group Members not to undertake ward round overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 116 above;

2. the tasks necessary to undertake ward rounds; and
3. the rostered hours for each ward where ward rounds were undertaken.

119. Peninsula Health did not pay Group Members overtime:

- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
 - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the ward round overtime in paragraph 117 above worked by them.

120. The ward round overtime worked by Group Members constituted “authorised hours” within the meaning of:

- (a) clause 32.2.1(b) of the 2013 Agreement; and
- (b) clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

1. the work performed by the Group Member was the provision of medical services which included undertaking ward rounds;
2. the conduct of Peninsula Health in giving the direction set out in paragraph 116 above;
3. the knowledge of Peninsula Health, as set out in paragraphs 118(a) and (b) above; and
4. the failure by Peninsula Health to direct Group Members not to perform the overtime set out in paragraph 117 above, as set out in paragraph 118(c) above.

121. In the premises, Group Members were entitled to be paid overtime for the ward round overtime they worked as set out in paragraph 117 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

122. By reason of the matters alleged in paragraphs 119 and 121 above, Peninsula Health has contravened:

- (a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

123. By reason of the matters in the paragraph above, Peninsula Health has contravened s 50 of the FW Act.

E3 Handover overtime

124. Some or all Group Members, in the course of their employment by Peninsula Health during the Relevant Period, were subject to a direction to conduct handover outside of rostered hours.

Particulars

The direction was partly oral and partly implied.

Insofar as it was oral, it was given by a Group Member's supervisor directing the Doctor to conduct a handover commencing at or immediately before or after a Doctor's rostered start or finish time, which necessitated working outside rostered hours.

Insofar as it was implied, it was implied by the matters in paragraph 16(c) above, where handover was conducted in a particular ward or department of a service operated by Peninsula Health as set out in paragraph 1(d) above.

125. Each Group Member subject to the direction in paragraph 124 above worked overtime in excess of rostered hours to conduct handover, in accordance with that direction.

126. In respect of each Group Member in paragraph 125 above, Peninsula Health:

- (a) knew that there was insufficient time during rostered hours to conduct handover, in accordance with the direction in paragraph 124 above;
- (b) knew that Group Members worked overtime to conduct handover;
- (c) did not direct Group Members not to conduct handover overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 124 above;
2. the rostered hours for each ward or department where handover was conducted;

3. the time for the commencement of handover in each ward or department; and
4. the tasks necessary to conduct handover.

127. Peninsula Health did not pay Group Members overtime:

- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
 - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the handover overtime in paragraph 125 above worked by them.

128. The handover overtime worked by Group Members constituted “authorised hours” within the meaning of:

- (a) clause 32.2.1(b) of the 2013 Agreement; and
- (b) clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

1. the work performed by the Group Member was the provision of medical services which included conducting handover;
2. the conduct of Peninsula Health in giving the direction set out in paragraph 124 above;
3. the knowledge of Peninsula Health, as set out in paragraphs 126(a) and (b) above; and
4. the failure by Peninsula Health to direct Group Members not to perform the overtime set out in paragraph 125 above, as set out in paragraph 126(c) above.

129. In the premises, Group Members were entitled to be paid overtime for the handover overtime they worked as set out in paragraph 125 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

130. By reason of the matters alleged in paragraphs 127 and 129 above, Peninsula Health has contravened:

- (a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

131. By reason of the matters in the paragraph above, Peninsula Health has contravened s 50 of the FW Act.

E4 Medical procedures preparation overtime

132. Some or all Group Members, in the course of their employment by Peninsula Health during the Relevant Period, were subject to a direction to prepare for medical procedures outside of rostered hours.

Particulars

The direction was partly oral and partly implied.

Insofar as it was oral, it was given by a Group Member's supervisor directing the Doctor to prepare for medical procedures which commenced at or immediately before or after a Doctor's rostered start or finish time, which necessitated working outside rostered hours.

Insofar as it was implied, it was implied by the matters in paragraph 16(d) above, where medical procedures were performed in a particular ward or department of a service operated by Peninsula Health as set out in paragraph 1(d) above.

133. Each Group Member subject to the direction in paragraph 132 above worked overtime in excess of rostered hours to prepare for medical procedures, in accordance with that direction.

134. In respect of each Group Member in paragraph 133 above, Peninsula Health:

- (a) knew that there was insufficient time during rostered hours to prepare for medical procedures in accordance with the direction in paragraph 132 above;
- (b) knew that Group Members worked overtime to prepare for medical procedures;
- (c) did not direct Group Members not to conduct medical procedures preparation overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 132 above;
2. the tasks necessary to prepare for medical procedures; and
3. the rostered hours for each ward or department where medical procedures were performed.

135. Peninsula Health did not pay Group Members overtime:

(a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and

(b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,

for the medical procedures preparation overtime in paragraph 133 above worked by them.

136. The medical procedures preparation overtime worked by Group Members constituted “authorised hours” within the meaning of:

(a) clause 32.2.1(b) of the 2013 Agreement; and

(b) clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

1. the work performed by the Group Member was the provision of medical services which included preparing for medical procedures;
2. the conduct of Peninsula Health in giving the direction set out in paragraph 132 above;
3. the knowledge of Peninsula Health, as set out in paragraphs 134(a) and (b) above; and
4. the failure by Peninsula Health to direct Group Members not to perform the overtime set out in paragraph 133 above, as set out in paragraph 134(c) above.

137. In the premises, Group Members were entitled to be paid overtime for the medical procedures preparation overtime they worked as set out in paragraph 133 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

138. By reason of the matters alleged in paragraphs 135 and 137 above, Peninsula Health has contravened:

- (a) clause 32.2 of the 2013 Agreement; and
- (b) clause 36.2 of the 2018 Agreement.

139. By reason of the matters in the paragraph above, Peninsula Health has contravened s 50 of the FW Act.

E5 Medical emergency overtime

140. Some or all Group Members, in the course of their employment by Peninsula Health during the Relevant Period, were subject to a direction to attend to medical emergencies outside of rostered hours.

Particulars

The direction was partly oral and partly implied.

Insofar as it was oral, it was given by a Group Member's supervisor directing the Doctor to attend to medical emergencies commencing at or immediately before or after a Doctor's rostered start or finish time, which necessitated working outside rostered hours.

Insofar as it was implied, it was implied by the matters in paragraph 16(e) above, where patients were treated in a particular ward or department of a service operated by Peninsula Health as set out in paragraph 1(d) above.

141. Each Group Member subject to the direction in paragraph 140 above worked overtime in excess of rostered hours to attend to medical emergencies, in accordance with that direction.

142. In respect of each Group Member in paragraph 141 above, Peninsula Health:

- (a) knew that there was insufficient time during rostered hours to attend to medical emergencies, in accordance with the direction in paragraph 140 above;
- (b) knew that Group Members worked overtime to attend to medical emergencies;
- (c) did not direct Group Members not to conduct medical emergency overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 140 above;
2. the tasks necessary to attend to medical emergencies;
3. the rostered hours for each ward or department where medical emergencies occurred.

143. Peninsula Health did not pay Group Members overtime:

- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
 - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the medical emergency overtime in paragraph 141 above worked by them.

144. The medical emergency overtime worked by Group Members constituted “authorised hours” within the meaning of:

- (a) clause 32.2.1(b) of the 2013 Agreement; and
- (b) clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

1. the work performed by the Group Member was the provision of medical services which included attending to medical emergencies;
2. the conduct of Peninsula Health in giving the direction set out in paragraph 140 above;
3. the knowledge of Peninsula Health, as set out in paragraphs 142(a) and (b) above; and
4. the failure by Peninsula Health to direct Group Members not to perform the overtime set out in paragraph 141 above, as set out in paragraph 142(c) above.

145. In the premises, Group Members were entitled to be paid overtime for the medical emergency overtime they worked as set out in paragraph 141 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

146. By reason of the matters alleged in paragraphs 143 and 145 above, Peninsula Health has contravened:

- (a) clause 32.2 of the 2013 Agreement; and
- (b) clause 36.2 of the 2018 Agreement.

147. By reason of the matters in the paragraph above, Peninsula Health has contravened s 50 of the FW Act.

E6 Medical records overtime

148. Further, some or all Group Members, in the course of their employment by Peninsula Health during the Relevant Period, were subject to a direction to complete medical records in a timely manner.

Particulars

The direction was partly written and partly implied.

Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement and clause 23.1 of the 2018 Agreement, which provided that a Doctor's duties included the keeping and maintaining of adequate medical records for patients.

Insofar as it was implied, it was implied by the matters in paragraph 16(b)(f) above, where medical records were completed in a particular ward or department of a service operated by Peninsula Health as set out in paragraph 1(d) above.

149. Each Group Member subject to the direction in paragraph 148 above worked overtime in excess of rostered hours to complete medical records, in accordance with that direction.

150. In respect of each Group Member in paragraph 149 above, Peninsula Health:

- (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the direction in paragraph 148 above; and
- (b) knew that Group Members worked overtime to complete medical records; and
- (c) did not direct Group Members not to perform medical records overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 148 above;
2. the volume of patient medical records required to be completed in a timely manner, which included discharge summaries, outpatient referrals, prescriptions, requests for external hospital medical records, clinical notes and investigation requests; and
3. the rostered hours for each ward or department where medical records were required to be completed.

151. Peninsula Health did not pay Group Members overtime:

- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
 - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the medical records overtime in paragraph 149 worked by them.

152. The medical records overtime worked by Group Members constituted “authorised hours” within the meaning of:

- (a) clause 32.2.1(b) of the 2013 Agreement; and
- (b) clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

1. that the work performed by Group Members was the provision of medical services which included the completion of medical records in a timely manner;
2. the conduct of Peninsula Health in giving the direction in paragraph 148 above;
3. the knowledge of Peninsula Health, as set out in paragraphs 150(a) and (b) above; and
4. the failure by Peninsula Health to direct Group Members not to perform the overtime set out in paragraph 149 above, as set out in paragraph 150(c) above.

153. In the premises, Group Members were entitled to be paid overtime for the medical records overtime they worked, as set out in paragraph 149 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.
154. By reason of the matters alleged in paragraphs 151 and 153 above, Peninsula Health has contravened:
- (a) clause 32.2 of the 2013 Agreement; and
 - (b) clause 36.2 of the 2018 Agreement.
155. By reason of the matters in the paragraph above, Peninsula Health has contravened s 50 of the FW Act.

E7 Other medical services overtime

156. Some or all Group Members, in the course of their employment by Peninsula Health during the Relevant Period, were subject to a direction to provide medical services (other than the medical services set out in paragraph 16(a) to (f) above) (**other medical services**) outside of rostered hours.

Particulars

The direction was partly oral and partly implied.

Insofar as it was oral, it was given by a Group Member's supervisor directing the Doctor to provide other medical services commencing at or immediately before or after a Doctor's rostered start or finish time, which necessitated working outside rostered hours.

Insofar as it was implied, it was implied by the matters in paragraph 16(g) above, at a particular ward or department of a service operated by Peninsula Health as set out in paragraph 1(d) above.

157. Each Group Member subject to the direction in paragraph 156 above worked overtime in excess of rostered hours to provide other medical services, in accordance with that direction.
158. In respect of each Group Member in paragraph 157 above, Peninsula Health:
- (a) knew that there was insufficient time during rostered hours to provide other medical services in accordance with the direction in paragraph 156 above;

- (b) knew that Group Members worked overtime to provide other medical services;
- (c) did not direct Group Members not to provide other medical services overtime.

Particulars

The knowledge of Peninsula Health is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 156 above; and
2. the rostered hours for each ward or department where medical services were provided.

159. Peninsula Health did not pay Group Members overtime:

- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
- (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement, for the other medical services overtime in paragraph 157 above worked by them.

160. The other medical services overtime worked by Group Members constituted “authorised hours” within the meaning of:

- (a) clause 32.2.1(b) of the 2013 Agreement; and
- (b) clause 36.2(a)(ii) of the 2018 Agreement.

Particulars

Authorisation is implied from the following matters:

1. the work performed by the Group Member was the provision of medical services;
2. the conduct of Peninsula Health in giving the direction set out in paragraph 156 above;
3. the knowledge of Peninsula Health, as set out in paragraphs 158(a) and (b) above; and
4. the failure by Peninsula Health to direct Group Members not to perform the overtime set out in paragraph 157 above, as set out in paragraph 158(c) above.

161. In the premises, Group Members were entitled to be paid overtime for providing other medical services as set out in paragraph 157 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

162. By reason of the matters alleged in paragraphs 159 and 161 above, Peninsula Health has contravened:

(a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

163. By reason of the matters in the paragraph above, Peninsula Health has contravened s 50 of the FW Act.

E8 Loss and damage

164. Some or all Group Members suffered loss by reason of Peninsula Health's contraventions of s 50 of the FW Act.

AND THE APPLICANTS CLAIM

The Applicants claim on their own behalf and on behalf of the Group Members the relief set out in the Originating Application.

Date: 12 March 2021



.....

Signed by Andrew Grech

Lawyer for the Applicants

This pleading was prepared by C W Dowling SC and K Burke of counsel

Certificate of lawyer

I, Andrew Grech, certify to the Court that, in relation to the Statement of Claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 12 March 2021



Signed by Andrew Grech
Lawyer for the Applicants

Schedule

VID of 2021

Federal Court of Australia

District Registry: Victoria

Division: Fair Work

First Applicant: **The Australian Salaried Medical Officers' Federation**

Second Applicant: **Gaby Bolton**

Respondent: **Peninsula Health**

Date: 12 March 2021