



Federal Court of Australia

District Registry: Victoria

Division: Fair Work

No: VID115/2021

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

PENINSULA HEALTH
Respondent

ORDER

JUDGE: JUSTICE BROMBERG

DATE OF ORDER: 27 August 2021

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

Group Member Communications

1. The Respondent must not communicate with the Second Applicant or Group Members concerning any claim(s) or potential claim(s) for unrostered and unpaid overtime worked within the period 13 March 2015 to 12 March 2021 otherwise than in writing.
2. The Respondent must ensure that any such written communication with the Second Applicant or Group Members referred to in order 1 above, will include information to the effect that:
 - a. they may be a Group Member in the class action; and
 - b. they should consider obtaining legal advice about any proposal or offer made by the Respondent to consider claims or make payment for unrostered and unpaid overtime.
3. The Respondent must not directly contact the Second Applicant, or any Group Members who are known by it to be clients of Gordon Legal, otherwise than with the consent of the Gordon Legal, in respect of any matter directly related to any issue in dispute in the proceedings.

Notice to Group Members to Opt Out

4. Pursuant to s 33J(1) of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), 4:00pm on 18 October 2021 be fixed as the date before which a Group Member may opt out of this proceeding.
5. Pursuant to s 33X of the FCA Act, notice of this proceeding and of the right of Group Members to opt out of the proceeding, is to be given in accordance with orders 6 and 7 below to the individuals identified in accordance with order 6(a) below.



6. Pursuant to s 33Y of the FCA Act, the notice, exhibited to these orders as **Exhibit A** (the **notice**), is to be given by 4:00pm on 13 September 2021 in accordance with the following procedure:
 - a. the Respondent shall use its own resources to identify:
 - i. the names of all persons who, at any time in the period from 13 March 2015 to 12 March 2021, were employed by the Respondent in one or more of the following classifications under the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013 (2013 Agreement)* and/or the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018 – 2021 (2018 Agreement)*:
 1. Hospital Medical Officer;
 2. Medical Officer (but not a Medical Officer classified as Solely Administrative under the 2013 Agreement or the 2018 Agreement);
 3. Registrar,
(Doctors in Training); and
 - ii. the details of employment, and the last known contact details, of the Doctors in Training; and
 - b. the Respondent shall provide the information in order 6(a) in a suitable spreadsheet format to the Applicants’ solicitors on or before 4:00pm on 6 September 2021; and
 - c. the Applicants’ solicitors shall cause the notice, with a covering email or letter, as the case may be, in the form exhibited to these orders as **Exhibit B**, to be sent to the last known email address of each of the Doctors in Training, or, if no email address is known or if the email sent bounces back, to the last known postal address by ordinary mail.
7. Pursuant to s 33Y of the FCA Act, the Applicants shall, by 4:00pm on 13 September 2021, cause a copy of the notice, together with a copy of the Applicants’ Originating Application and Statement of Claim and the Respondent’s Defence, the Amended Reply to the Defence and these orders, to be published on, displayed and available for download from:
 - a. the Applicants’ solicitors website (www.gordonlegal.com.au); and
 - b. the website of the Australian Salaried Medical Officers Federation (www.asmof.org.au); and
 - c. the website of the Victorian branch of the Australian Medical Association (www.amavic.com.au);to remain continuously so displayed and available for download, up to and including the date of any judgment delivered following the trial of this proceeding.
8. The parties will confer during the week commencing 27 September 2021 as to whether or not the class notification procedure set out in order 6 above has been effective or whether (and if so, what) further steps need to be taken and report to the Court on or before 1 October 2021.



9. If the solicitors for the Applicants or the Respondent receive, on or before 4:00pm on 18 October 2021, any notice purporting to be an opt out notice referable to this proceeding, the solicitors shall file the notice in the Victoria District Registry of the Court within three business days and such notice will be treated as an opt out notice received by the Court at the time it was received by the solicitors.

Discovery

10. Discovery is to be conducted by the parties electronically in accordance with the document management protocol at **Exhibit C**.
11. By 4:00pm on 15 October 2021, the Applicants give standard discovery in accordance with rule 20.17, with documents to be produced by the Applicants to the Respondent in a single electronic tranche.
12. By 4:00pm on 26 November 2021, the Respondent give discovery of the categories of documents listed at **Exhibit D**, in accordance with rule 20.17, with documents to be produced by the Respondent to the Applicants in a single electronic tranche.

Pre-Mediation Information

13. By 4:00pm on 30 October 2021 the Applicants provide the Respondent with a list of all Doctors in Training who have not opted out of the proceeding in accordance with orders 6–9 above.
14. Pursuant to s 33ZF of the FCA Act, on or before 4:00 pm on 15 April 2022, the Respondent provide to the Applicants’ solicitors data, in a readable form or a dataset, in electronic form, which, for each Doctor in Training in the list, identifies (to the extent this information is not contained in the spreadsheet provided pursuant to order 6(b) above and has not otherwise previously been discovered by the Respondent):
 - a. the dates during which the Doctor in Training was employed by Peninsula Health;
 - b. the rotations worked by the Doctor in Training during the course of their employment with Peninsula Health, or, if they did not work in rotations, the departments or units in which they worked while employed by Peninsula Health; and
 - c. for each rotation, department or unit worked by the Doctor in Training:
 - i. the period of time worked in the rotation, department or unit by the Doctor in Training;
 - ii. the classification of the Doctor in Training; and
 - iii. the total number of hours of unrostered overtime claimed in writing by the Doctor in Training, and the total number of hours of unrostered overtime paid to the Doctor in Training.
15. The list and its contents is to be kept confidential and shall only be used by the Applicants’ solicitors for the limited purpose of preparing for mediation, or assisting in any negotiations directed at the potential resolution of the matter.



Lay Evidence

16. On or before 4:00pm on 17 December 2021, the Applicants are to file and serve an outline of evidence of each witness they intend to call at trial.
17. On or before 4:00pm on 25 March 2022, the Respondent is to file and serve an outline of evidence of each witness it intends to call at trial.
18. On or before 4:00pm on 22 April 2022, the Applicants file and serve any outlines of evidence in reply.

Expert Evidence

19. On or before 4:00pm on 17 December 2021, the Applicants file and serve any expert reports on which they intend to rely.
20. On or before 4:00pm on 25 March 2022, the Respondent file and serve any expert reports on which it intends to rely.
21. On or before 4:00pm on 22 April 2022, the Applicants file and serve any expert reports in reply.

Mediation

22. The parties conduct a mediation to be conducted by a mediator appointed by agreement by the parties. If the parties are unable to agree on a mediator by 2 May 2022, the matter is referred to a Judicial Registrar for mediation, on a date to be fixed between 17 May 2022 and 21 May 2022.
23. If the matter does not settle at mediation, the matter is listed for a pre-trial case management hearing on 24 May 2022.

Trial

24. The matter is set down for trial commencing on 6 June 2022 on an estimate of 4 weeks.

Trial Preparation

Court Book

25. The parties prepare a Court Book, which is to be in two parts:
 - a. Part A is to contain the current pleadings, the common questions, the written opening submissions, and each outline of evidence and expert report filed in the proceeding;
 - b. Part B is to contain each document referred to in a witness outline or expert report, and any other document that a party intends to rely on at trial.
26. By 4:00pm on 22 April 2022, the Applicants provide the Respondent with a draft index of the proposed Court Book to the Respondent.
27. By 4:00pm on 29 April 2022, the Respondent provide the Applicants a list of any additions to the proposed Court Book, and copies of any documents in the list that have not been discovered.



28. By 4:00pm on 6 May 2022, the Applicants serve a copy of Part B of the Court Book on the Respondent.
29. By 4:00pm on 31 May 2022 the Applicants:
 - a. Serve a copy of Part A of the Court Book on the Respondent;
 - b. File a hard copy of Part A and B of the Court Book with the Court;
 - c. Provide a further electronic copy of the Court Book to Chambers in the following format:
 - i. an index setting out each document referred to in Part A and B of the Court Book;
and
 - ii. each document referred to in the index is to be provided as a separate, text searchable pdf with a file name corresponding to the title of the document in the index.

Opening Submissions

30. By 4.00pm on 23 May 2022, the Applicants file and serve a written outline of opening submissions, such submission to be limited to 25 pages (including any annexures).
31. By 4.00pm on 30 May 2022, the Respondent file and serve a written outline of opening submissions, such submission to be limited to 25 pages (including any annexures).



Date that entry is stamped: 27 August 2021

Sia Lagos
Registrar



Schedule

No: VID115/2021

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

Second Applicant GABY BOLTON



Exhibit A

OPT OUT NOTICE

FEDERAL COURT OF AUSTRALIA

‘Doctors in Training’ (Unrostered Unpaid Overtime) Class Action (VID 115/2021)

1. **Why is this notice important?**

On 12 March 2021, the Australian Salaried Medical Officers Federation of Victoria (**ASMOF**) and a doctor (together, **‘the Applicants’**) commenced a class action in the Federal Court of Australia against Peninsula Health (**the Respondent**). The class action is brought by the Applicants on their own behalf and on behalf of other Doctors in Training (**DIT**) who it is alleged have worked unrostered and unpaid overtime while employed by Peninsula Health during the period 13 March 2015 to 12 March 2021. The Federal Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the action. You have been identified as a potential group member. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything that you do not understand you should seek legal advice.

2. **What is a class action?**

A class action, also known as a ‘representative proceeding’, is an action that is brought by one or more persons (“**Applicant(s)**”) on his or her own behalf and on behalf of a class of people (“**group members**”) against another person (“**Respondent**”) where the Applicants and the group members have similar claims against the Respondent.

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

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



related claims against the Respondent in other legal proceedings. Group members should note that:

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

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

3. What is this class action?

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

The Applicants allege in the statement of claim in this proceeding that since 13 March 2015, group members have, in the course of their employment with the Respondent, worked hours in excess of their ordinary hours or rostered hours and were not paid for those unrostered overtime hours.

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

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



4. What does ‘opt out’ mean?

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

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

5. Are you a group member?

You are a group member if, during the period between 13 March 2015 and 12 March 2021, you:

- (a) were employed by Peninsula Health; and
- (b) worked at one or more of the following services operated by Peninsula Health:
 - i. Frankston Hospital, at 2 Hastings Road, Frankston;
 - 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 provided mental health services other than at Frankston Hospital or Rosebud Hospital; and
- (c) were, when employed by Peninsula Health, classified as one or more of the following classifications under the 2013 Agreement and/or 2018 Agreement:
 - i. Hospital Medical Officer;
 - ii. Medical Officer (but not a Medical Officer classified as Solely Administrative under the 2013 Agreement or the 2018 Agreement);
 - iii. Registrar; and
- (d) worked un-rostered overtime for which you have not been paid.

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

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

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

Unless you choose to opt out of the class action, you will be bound by any settlement or judgment made in the class action. If the class action is successful, you will be entitled to share in



the benefit of any order, judgment or settlement made in favour of the Applicants and group members. You may be required to satisfy certain conditions before your entitlement arises. If the action is unsuccessful, you will not be able to pursue the same claims and may not be able to pursue related claims against Peninsula Health in other legal proceedings.

8. What group members need to do:

(a) How to remain a group member?

If you wish to remain a group member there is nothing you need to do at the present time. The Applicants will continue to bring the proceeding on your behalf up to the point where the Court determined those questions that are common to the claims of the Applicants and group members. However, you are invited to register as a group member with the Applicants' lawyers Gordon Legal. You can register at: <https://doctorsclassaction.com.au> . When you register, Gordon Legal will provide you with up to date information about the progress of the class action.

(b) How to opt out?

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

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

IMPORTANT: the Notice must reach the Registrar by no later than 4:00pm on 18 October 2021 otherwise your opt out will not be effective.

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

9. Where can you obtain copies of relevant documents?

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

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



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

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



Exhibit B

Dear [INSERT FIRST AND SURNAME]

Please see **enclosed** an important notice from the Federal Court of Australia concerning a class action against Peninsula Health in relation to the alleged underpayment of junior doctors.

The Federal Court has ordered that this notice be sent to all persons who, at any time in the period from 13 March 2015 to 12 March 2021, were employed by Peninsula Health in one or more of the following classifications under the Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013 (**2013 Agreement**) and/or the AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018 – 2021 (**2018 Agreement**):

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

Please do not reply to this correspondence.

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



Exhibit C

DOCUMENT EXCHANGE STANDARDS PROTOCOL

ASMOF & ANOR –V- Peninsula Health – VID115/2021

1. Purpose of this Document

- 1.1 This Protocol sets out the agreement of the parties in the matter of ASMOF & Anor v Peninsula Health (VID115/2021) in relation to the scope, means and format in which Paper Documents and Electronic Documents are to be exchanged between the parties during the discovery process.

2. Document Descriptions

- 2.1 All Documents to be exchanged between the parties and delivered to the Court will be described in a List of Documents containing the following information for each Document:

- (a) Document ID (*see Schedule 1 for details*)
- (b) Document Title
- (c) Document Type (*see Schedule 7 for details*)
- (d) Document Date
- (e) Author (*see Schedules 2 and 6 for details*)
- (f) Email From (*see Schedules 2 and 6 for details*)
- (g) Email To (*see Schedules 2 and 6 for details*)
- (h) Email CC (*see Schedules 2 and 6 for details*)
- (i) Email BCC (*see Schedules 2 and 6 for details*)
- (j) Host Document ID (*see Schedule 3 for details*)
- (k) Load file path
- (l) Text path
- (m) Redacted (*to indicate whether or not file has been redacted, values may be 'Yes', 'No' or blank*)
- (n) Privileged (*to indicate whether the whole or part of the Document is subject to a claim of privilege, values may be 'Yes', 'No', 'Part' or blank*)
- (o) Privilege Reason (*to indicate basis upon which privilege claim is made*)
- (p) Confidential (*to indicate whether the whole or part of the Document is subject to a claim of confidentiality, values may be 'Yes', 'No', 'Part' or blank*)
- (q) Discovery Category (*where the parties have agreed or the court has ordered discovery by category*)
- (r) Placeholder



(s) Estimated Date (*'yes' if date is estimated, otherwise 'no'*)

2.2 The parties will produce indexes of the exchanged documents in a "DAT" file named "export.dat" which contains the information set out in Schedule 6.

3. Document Structure and Format

3.1 The List of Documents should be exchanged between the parties and delivered to the Court in the format described in Schedule 6.

3.2 The parties will exchange native electronic documents as searchable PDF files, unless otherwise agreed or ordered.

3.3 Where Documents are to be provided or exchanged as Searchable Images, Native Electronic Documents should be rendered *directly* to Portable Document Format (PDF) to create Searchable Images. They should not be printed to paper and scanned or rendered to Tagged Image File Format (TIFF) format and then converted to PDF. Rendering Native Electronic Documents directly to PDF will minimise the costs and avoid inaccuracies associated with the Optical Character Recognition (OCR) process.

3.4 Electronic documents that do not lend themselves to conversion to PDF (for example, spreadsheets, databases, ect.) shall be exchanged as native electronic documents.

3.5 Native electronic documents that are imaged files in their native form should be rendered with OCR to improve their ability to be searched.

3.6 Blank, irrelevant pages will be removed where practicable, and will not be allocated Page Number Labels.

4. Page Numbers

4.1 Subject to this section, a unique Page Number Label in the format described in Schedule 1 will be placed on each page of every Document as described in Schedule 5.

4.2 The Page Number assigned to the first page of a Document will also be assigned as the Document ID for that Document.

4.3 Native Electronic Documents will be assigned a single Document ID and individual Page Number Labels are not required.

5. Electronic Exchange Media

5.1 Unless otherwise agreed or ordered by the Court, the information to be exchanged between the parties will be exchanged by encrypted electronic file transfer. In the event that this is not feasible, data may be exchanged via encrypted USB or hard drive.

6. Data Security

6.1 The parties will take reasonable steps to ensure that the data they produce is useable and is not infected by Malicious Software.

6.2 Notwithstanding paragraph 8.1, the onus is on each party receiving the data to test the contents of any exchange media prior to its use to ensure that the data does not contain Malicious Software.

6.3 If data is found to be corrupted, infected by Malicious Software or is otherwise unusable, the producing party will, within 2 working days of receipt of a written request



from a receiving party, provide to the receiving party a copy of the data that is not corrupted, infected by Malicious Software or otherwise unusable (as the case may be).

7. Redaction of Privileged or Confidential Documents

- 7.1 If the whole or part of a document is subject to a claim of privilege or confidentiality, the parts of the document that are subject to the claim should be identified or, if appropriate, redacted pending determination of the claim. If the whole or part of the document is redacted, the party producing the document must retain an unredacted version of the Document which must be produced to the Court if required to do so.
- 7.2 If the Court makes an order that the whole or part of a document is subject to privilege, the copy of the document to be exchanged between the parties and provided to the Court may be permanently redacted in accordance with that order.
- 7.3 If the Court makes an order that the whole or part of a document is confidential, arrangements will be made to ensure that access to the document, or to the confidential parts of the document, is restricted in accordance with that order.
- 7.4 If the whole or part of a document is subject to a claim of privilege or confidentiality it will be:
- (a) allocated a Document ID;
 - (b) given a Document Description that does not disclose the information that is the subject of the claim of privilege or confidentiality; and
 - (c) if the claim of privilege or confidentiality relates to the whole document – represented by a single Placeholder Page with the words ‘Document subject to claim of privilege/confidentiality’ inserted under the Document ID.
- 7.5 If the whole or part of a Host Document is subject to a claim of privilege or confidentiality it will be:
- (a) identified as a Host Document;
 - (b) allocated a Document ID;
 - (c) given a Document Description that does not disclose the information that is the subject of the claim of privilege or confidentiality; and
 - (d) if the claim of privilege or confidentiality relates to the whole Document – represented in the Document Group to which it belongs by a single Placeholder Page with the words ‘Document subject to claim of privilege/confidentiality’ inserted under the Document ID.
- 7.6 If the whole or part of an Attached Document is subject to a claim of privilege or confidentiality it will be:
- (a) identified as an Attached Document;
 - (b) allocated a Document ID;
 - (c) given a Document Description that does not disclose the information that is the subject of the claim of privilege or confidentiality; and
 - (d) if the claim of privilege or confidentiality relates to the whole Document – represented in the Document Group to which it belongs by a single Placeholder



Page with the words 'Document subject to claim of privilege/confidentiality' inserted under the Document ID.

8. Privilege Clawback

- 8.1. The parties acknowledge that, by error or inadvertence, documents that contain (in whole or part) privileged information may be disclosed erroneously or inadvertently by one party to another party and that the erroneous or inadvertent disclosure of a document will not waive any claim for privilege if the disclosing party, on becoming aware of the relevant circumstances, promptly requests the receiving party to return the document.
- 8.2. The receiving party must on written request from the disclosing party immediately return or destroy all copies of the document
- 8.3. If, when reviewing another party's disclosure material, it becomes apparent to the receiving party that some of the disclosed material is likely to be privileged, the receiving party will:
 - (a) Immediately suspend review of the apparently privileged material;
 - (b) Not make copies of the apparently privileged material;
 - (c) Prevent further access to the apparently privileged material; and
 - (d) Notify the producing party of the disclosure of the apparently privileged material as soon as practical.
- 8.4. Upon receipt of a notification, the producing party will, as soon as is reasonably practicable, either request the return of the apparently privileged material, or confirm that it does not maintain a claim for privilege over the material.

9. De-Duplication of Documents

- 9.1 Where appropriate, each party will take reasonable steps to ensure that duplicated Documents are removed from the exchanged material ('De-Duplication').
- 9.2 However, the Court acknowledges that there may be circumstances where Duplicates need to be identified and retained for evidential purposes.¹
- 9.3 Duplication will be considered at a Document Group level. That is, all the Documents within a Document Group (that is, a Host Document and Attached Documents) will be treated as Duplicates if the *entire* Document Group is duplicated elsewhere within the collection. An Attached Document in a Document Group will not be treated as a duplicate if it is merely duplicated elsewhere as an individual, stand alone Document that is not associated with another Document Group.

¹ For example, it may be relevant to retain multiple copies of an email in sender and recipient email boxes due to the fact that it will be of evidential relevance to know who actually received the email after it was sent.



Schedule 1 – Document IDs

1.1. A Document ID must be unique because it is the sole means by which each Document will be referenced.

1.2 A Document ID will be in the following format:

SSS.BBB.FFF.NNNN (*italics represent optional elements*)

1.3 The elements of the Document ID are set out in the following table:

Level	Description
SSS	The Party Code (also, often referred to as ‘Source’) identifies a party to the proceedings. It should comprise three alpha digits. The determination of the Party Codes to be used for a particular case will take place prior to the commencement of discovery in order to ensure that all Document IDs will be unique (ie. To ensure that no two documents have the same Document ID so that each Document can be uniquely referenced). See Schedule 1.3 for the list of available Party Codes.
BBB	The Box Number identifies a specific physical archive box or email mailbox or any other Container or physical or virtual classification that is appropriate for the party to use. Use of the Box Number is optional. The box number should comprise 3 digits
FFF	The Folder Number identifies a unique folder number allocated by each party in their own Document collection. ² The Folder Number is padded with zeros to consistently result in a 3 digit structure. The Folder Number may, where appropriate, correspond to the Box Number of any Container in which the Document is contained.
NNNN	This refers to each individual page within each Folder for Paper Documents and Unsearchable Images or Searchable Images. For Native Electronic Documents, this number applies to the whole Document irrespective of the number of pages within it. In such cases, it therefore operates as a Document Number rather than a Page Number because individual pages are not numbered. This number is padded with zeros to consistently result in a 4 digit structure.

² A Party may allocate loose or unsorted Documents, either hard-copy or electronic, to 1 or more folders. This is acceptable providing that the originals of such Documents are able to be promptly sourced for inspection if required. It may also identify an electronic folder (as part of a directory structure) or a folder within an email mailbox.



Level	Description
_XX(XX)	This number is optional and is may be required where: - additional pages need to be inserted into a Document; or - to number the pages of multi-page PDF documents rendered from original native files. .A suffix will be used preceded by an underscore padded with zeros to consistently result in a two-digit, three-digit or four-digit structure.

1.4 Party Codes for the Document ID

For the purposes of the Document ID: the following codes will be used:

Party Code	Party
PHS	Peninsula Health
FLA	First Lead Applicant - ASMOF
SLA	Second Lead Applicant – Gaby Bolton



Schedule 2 – Describing People

2.1. People names may be referenced using:

- (a) email addresses (e.g. jcitizen@abc.com.au); or
- (b) Surname [space] Initial (e.g. Citizen J) where email addresses are not available; or
- (c) by reference to a position (e.g. Marketing Manager) where email addresses and Surname, Initial is not available; or
- (d) by reference to an organisation associated with the person where email address, Surname, Initial and Position are not available.

2.2. Multiple Recipients will be entered in a single cell of the spreadsheet separated by a semicolon [space].



Schedule 3 – Document Hosts and Attachments³

- 3.1 Every Document that is attached to or embedded within another Document will be called an Attached Document.
- 3.2 A Container is not a Host Document for the purposes of this Protocol.⁴
- 3.3 Attached Documents will have the Document ID of their Host Document in the descriptive field called ‘Host Document ID’.
- 3.4 Host Documents and Attached Documents are jointly referred to as a ‘Document Group’.
- 3.5 Subject to paragraphs 3.6 and 3.7 below, in a Document Group the Host Document will be immediately followed by each Attached Document in the order in which the Attached Documents are numbered in their Document ID. If a Document Group includes Documents that are subject to a claim of privilege or confidentiality, the Documents should be treated in accordance with Section 12 of this Protocol.
- 3.6 If a Document is contained within a Container (for example, a single ZIP file) that is attached to an email then the email should be treated as the Host Document and the Document in the Container should be treated as an Attached Document to that Host Document (that is, the Host Document will be the email and not the Container within which the Document is contained).
- 3.7 If the Document Group consists of a number of Paper Documents fastened together, the first Document will be treated as the Host Document and the remaining Documents will be treated as the Attached Documents within the Document Group unless those Documents are not related, in which case each Document will be treated as a separate Document without a Host Document.
- 3.8 Annexures, Attachments and Schedules that are attached to an Agreement, Report, Legal Document or Minutes of a Meeting may be described as separate Attached Documents associated with the relevant Host Document.

³ May be referred to as Document Delimiting.

⁴ See the Glossary to Practice Note CM 6 and Related Materials for further information on Host Documents and Containers.



Schedule 4 – Electronic Folders and Filenames

- 4.1 This schedule specifies how Electronic Images are to be located and named for the purposes of Document exchange. It does not relate to the capture and exchange of the original source location of an Electronic Document.
- 4.2 The Folder containing all Documents will be named either ‘\Documents\’ or ‘\Images\’
- 4.3 Documents produced as Searchable Images will be named ‘DocumentID.pdf’
- 4.4 Documents produced as Native Electronic Documents will be named ‘DocumentID.xxx(x)’ where ‘xxx(x)’ is the original default file extension typically assigned to source Native Electronic Files of that type.⁵
- 4.5 The Documents folder will be structured in accordance with the Document ID hierarchy, for example:

The Document produced as a Searchable Image called ‘ABC.001.0004.00392.pdf’ would be located in the folder called ‘*Documents\ABC\001\0004*’. So, it will appear in the directory listing as ‘*Documents\ABC\001\0004\ABC.001.0004.00392.pdf*’.

Where this same Document has been produced as a Native Electronic Document, and, assuming it is a Microsoft Excel spreadsheet file, for example, it would be called ‘ABC.OO1.0004.00392.xls’ and will be located in the folder called ‘*Documents\ABC\001\0004*’. So it will appear in the directory listing as ‘*Documents\ABC\001\0004\ABC.001.0004.00392.xls*’

⁵ For example, Microsoft Word documents will have a ‘.doc’ extension, Microsoft Excel spreadsheets will have a ‘.xls’ extension, so Native Electronic Documents will be named along the following lines *ABC.001.003.0456.xls (Excel Spreadsheet)*, *XYZ.099.456.0093.doc (Word Document)* A four character extension may be required for particular file types.



Schedule 5 – Page Number Labels

- 5.1 Wherever possible, Page Number Labels will be placed on the top right corner⁶ at least 3 millimetres from both edges of the page
- 5.2 If there is insufficient space for a Page Number Label on a Searchable Image or an Unsearchable Image, the electronic image of the page will, if possible, be reduced in size to make room for the Page Number Label.
- 5.3 Page Number Labels may also include machine readable barcodes.
- 5.4 Where feasible, landscape pages of Searchable Images, Unsearchable Images and Paper Documents should be positioned so that the title is on the left side of the page⁷ and the Label is oriented to the text, preferably at the bottom right corner of the original page so it appears down the top right side edge of the rotated page. .
- 5.5 The parties may apply Page Number Labels to the following Paper Documents where they contain relevant content:
- (a) folder covers, spines, separator sheets and dividers
 - (b) hanging file labels
 - (c) the reverse pages of any Document.

Adhesive notes should not normally be labelled but should be scanned in place on the page to which they were attached. If this cannot be done without obscuring text, the adhesive note should be numbered as the page after the page to which it was attached and the page should be scanned twice – first with and then without the adhesive note.

⁶ This ensures that upon electronic retrieval, images will not need to be scrolled down manually on the screen in order to view the Page Number Label.

⁷ This generally involves a 90 degree anti-clockwise rotation.



Schedule 6 – Document Load File

6.1

Relativity/Concordance Load file

Where parties agree to provide the data in Relativity load file format (.DAT file) they will exchange discoverable documents in the following format. The first line of the .DAT file must be a header row identifying the field names.

The .DAT file should use the following Concordance default delimiters:

- a) *Column* - ASCII 020
- b) *Quote* - ASCII 254
- c) *Newline* - ASCII 174
- d) *Multi-Value* - ASCII 059
- e) *Nested Values* - ASCII 092

The following fields should be included in the DAT file:

Part A: Electronic Data to be Exchanged			
Field	Details	Hard Copy Documents	Electronic Documents
Document ID	Unique Document ID assigned to every document.		
Host Reference	If the Document is an Attachment, this field contains the Document ID of its Host Document.		
Host Document ID	Relational field to group family items. Hosts and all attachments should have the same value on each document in the group (the Host's Document ID)		
Document Type		Please see Document Types list found at Schedule 7	Native File Type as extracted by eDiscovery processing software



Part A: Electronic Data to be Exchanged			
Field	Details	Hard Copy Documents	Electronic Documents
Document Date	In format DD/MM/YYYY	Date is determined on the basis of the Date appearing on the face of the Document. Where document is undated it should be left blank.	Available electronic metadata processed in Australian Eastern Standard Time
Document Title		Determined on the basis of the title appearing on the face of the Document	Email – extracted from the Email Subject Field Other Electronic Documents – extracted from Electronic Metadata being the File Name or determined on the basis of the Title appearing on the face of the Document
Document Author		Parties delimited by a semicolon, organisations to be listed within "[]" brackets. Refer to Schedule 2 on coding People & Organisations for Hard Copy Documents.	Emails - Not captured Other electronic files - Populated from metadata with parties delimited by a semicolon
Email From		Parties delimited by a semicolon, organisations to be listed within "[]" brackets. Refer to Schedule 2 on coding People & Organisations for Hard Copy Documents.	Emails – Populated from metadata with parties delimited by a semicolon Other electronic files – Not Captured
Email To		Parties delimited by a semicolon, organisations to be listed within "[]" brackets. Refer to Schedule 2 on coding People & Organisations for Hard Copy Documents.	Emails – Populated from metadata with parties delimited by a semicolon Other electronic files – Not Captured



Part A: Electronic Data to be Exchanged			
Field	Details	Hard Copy Documents	Electronic Documents
Email CC		Parties delimited by a semicolon, organisations to be listed within '[]' brackets. Refer to Schedule 2 on coding People & Organisations for Hard Copy Documents.	Emails – Populated from metadata with parties delimited by a semicolon Other electronic files – Not Captured
Email BCC		Parties delimited by a semicolon, organisations to be listed within '[]' brackets. Refer to Schedule 2 on coding People & Organisations for Hard Copy Documents.	Emails – Populated from metadata with parties delimited by a semicolon Other electronic files – Not Captured
Relativity - Load File Path	Path to the native file, including filename and extension in accordance with Document Naming at schedule 4		
Relativity - Text Path	Path to the text file, including filename and extension in accordance with Document Naming at schedule 4		

Part B: Review to be Exchanged	
Field	Details
Privilege	Values may be 'Yes', 'Part', 'No' or blank
Privilege Basis	Values may be: <ul style="list-style-type: none"> • LPP - Legal professional privilege/Client legal privilege • WPP - Without prejudice privilege/Settlement negotiations
Confidential	Values may be 'Yes', 'Part', 'No' or blank
Confidential Basis	Values may be: <ul style="list-style-type: none"> • Commercial in Confidence • Commercially sensitive or personal private information (including medical information)
Redacted	If a document has been redacted for privilege or confidentiality, this field must hold a value of 'Yes'. Values may be 'Yes', 'No' or blank
Redaction Reason	Values may be: <ul style="list-style-type: none"> • LPP - Legal professional privilege/Client legal privilege • WPP - Without prejudice privilege/Settlement negotiations • Commercial in Confidence – Relevant commercial in confidence/ Commercially sensitive or personal private information (including medical information) • Blank - No Redaction applied



Part B: Review to be Exchanged	
Placeholder	If an electronic file is provided with a placeholder PDF, this value is 'Yes'.
Estimated Date	'Yes' if date is estimated, otherwise 'No'



Schedule 7 – Document Type List

This list is a guide. It may be amended as necessary.

Agreement/Contract/Deed
Affidavit
Annual Report
Article
Authority
Board Papers
Brochure
Cheque Remittance
Company Search
Court Document
CV
Diagram – Plan
Diary Entry
Drawing
eFile
Email
Email attachment
Expert Report
Fax Transmission
File Note
Form
Graph
Guide
Handwritten Note
Invoice – statement
Letter
List
Manual
Map
Media Release
Medical Record
Meeting Agenda
Memorandum
Minutes of Meeting
Notice
Overtime claim
Pay slip
Performance/training assessment
Phone Record
Photograph



Policy
Position Description
Presentation
Receipt
Record
Recording
Report
Rover
Roster
Search
Specification
Spreadsheet
Statement
Submissions
Text message
Timesheet
Transcript
Video
Whatsapp message





Exhibit D

Categories of documents to be discovered by Peninsula Health

In these categories:

Document has the meaning set out in the Dictionary to the *Evidence Act 1995* (Cth)

Doctor in Training has the meaning in paragraph 1(f) of the Statement of Claim.

Employment Period means between 8 January 2019 and 31 January 2021.

Relevant Period means between 13 March 2015 and 12 March 2021.

A. Employment records

1. All contracts of employment between the Second Applicant and the Respondent applying in the Employment Period.
2. All position descriptions applicable to the Second Applicant in the Employment Period.
3. All documents, including payslips, recording all money paid to the Second Applicant by the Respondent in the Employment Period.
4. To the extent that any payslips do not record the actual hours worked by the Second Applicant, all documents recording the actual hours worked by the Second Applicant in the Employment Period.
5. All rosters recording the dates, hours (including ordinary hours, rostered overtime and if recorded, un-rostered overtime) and department in which the Second Applicant was required to work during the Employment Period.
6. All documents recording any claims for the payment of un-rostered overtime made by the Second Applicant, and all documents recording any responses to those claims, during the Employment Period.
7. All position descriptions applicable to any Doctor in Training in the Relevant Period.

B. Work instructions and procedures

8. All documents, including any policies, manuals, guides, rovers, orientation materials, or work plans, recording any instruction or direction given to the Second Applicant during the employment period regarding the performance of overtime, including any procedure for obtaining authorisation of overtime.
9. All documents recording any instruction or direction given to the Second Applicant regarding the performance of any of the following duties in the General Medicine



department at Frankston Hospital between 14 January 2019 to 24 March 2019 (**First General Medicine Rotation**):

- a. preparation for ward rounds;
 - b. undertaking ward rounds;
 - c. completion of patient medical records.
10. All documents recording any instruction or direction given to the Second Applicant regarding the performance of ward round preparation in the Plastic Surgery department at the Frankston Hospital between 3 June 2019 to 11 August 2019 (**Plastic Surgery Rotation**).
11. All documents recording any instruction or direction given to the Second Applicant regarding the performance of any of the following duties in the General Medicine department at Frankston Hospital between 12 August 2019 to 20 October 2019 (**Second General Medicine Rotation**):
- a. preparation for ward rounds;
 - b. completion of patient medical records.
12. All documents recording any instruction or direction given to the Second Applicant regarding the performance of any of the following duties in the Cardiology department at Frankston Hospital between 2 November 2020 to 31 January 2021 (**Cardiology Rotation**):
- a. preparation for medical procedures;
 - b. preparation for ward rounds;
 - c. completion of patient medical records;
 - d. receiving or handing over information about patients between medical staff at the start or end of a shift.
13. All policies, procedures, manuals, or guides regarding overtime applying to any Doctor in Training in the Relevant Period.
14. All policies, procedures, manuals, guides, rovers, or work plans, regarding the performance of any of the following duties by any Doctor in Training in the Relevant Period:
- a. preparation for ward rounds;
 - b. undertaking ward rounds;
 - c. receiving or handing over information about patients between medical staff at the start or end of a shift;
 - d. preparation for medical procedures;



- e. attending to medical emergencies or critical patient care;
 - f. completion of patient medical records including discharge summaries;
 - g. any other such duties necessary for the provision of medical services.
15. All documents referring to any key performance indicator applying in the First General Medicine Rotation regarding the time, period or manner in which any Doctor in Training was to perform any of the following tasks:
- a. preparation for ward rounds;
 - b. undertaking ward rounds;
 - c. completion of medical records.
16. All documents referring to any key performance indicator applying in the Plastic Surgery Rotation regarding the time, period or manner in which any Doctor in Training was to prepare for ward rounds.
17. All documents referring to any key performance indicator applying in the Second General Medicine Rotation regarding the time, period or manner in which any Doctor in Training was to perform any of the following tasks:
- a. preparation for ward rounds;
 - b. completion of medical records;
18. All documents referring to any key performance indicator applying in the Cardiology Rotation regarding the time, period or manner in which any Doctor in Training was to perform any of the following tasks:
- a. preparation for medical procedures;
 - b. preparation for ward rounds;
 - c. completion of medical records;
 - d. receiving or handing over information about patients between medical staff at the start of and end of a shift.
19. All policies, procedures, manuals, or guides regarding the rostering, including the adequacy of rostered hours to complete their duties, of Doctors in Training in the Relevant Period.
20. All documents recording the supervisory structure of each ward or department of the Respondent in which Doctors in Training worked in the Relevant Period.
- C. Second Applicant's work**
21. All documents recording any work performed by the Second Applicant outside of her rostered hours in the employment period, including:
- a. time sheets;



- b. records of any phone, pager or any other mobile communication device used by the Second Applicant;
 - c. emails or any other electronic communication including WhatsApp chat transcripts;
 - d. any documents recording the dates and times that any medical records were accessed, created or completed by the Second Applicant.
22. All documents recording the presence of the Second Applicant at any of the Respondent's premises or on any of the Respondent's systems outside of her rostered hours during the First General Medicine Rotation, the Plastic Surgery Rotation, the Second General Medicine Rotation, or the Cardiology Rotation, including:
- a. records of any swipe card system of the Respondent's premises;
 - b. records of any personal access point of the Respondent's premises;
 - c. records of any other system recording entry and exit from any of the Respondent's premises, and any car parks used by the Respondent and its employees;
 - d. records of any computers, equipment or software used by the Second Applicant.
23. All documents recording any performance or training assessment, or performance review, of the Second Applicant.
24. All patient lists demonstrating the number of patients treated in:
- a. in the General Medicine department during the First General Medicine Rotation and the Second General Medicine Rotation;
 - b. in the Plastic Surgery department during the Plastic Surgery Rotation;
 - c. in the Cardiology department during the Cardiology Rotation.
25. All staff lists or rosters demonstrating the staffing levels of doctors:
- a. in the General Medicine department during the First General Medicine Rotation and the Second General Medicine Rotation;
 - b. in the Plastic Surgery department during the Plastic Surgery Rotation;
 - c. in the Cardiology department during the Cardiology Rotation.

D. Respondent's knowledge of overtime

26. All documents recording any communication during the Employment Period between any:
- a. supervisor or manager of the Second Applicant;



- b. consultant with whom the Second Applicant worked;
- c. head of any department or unit in which the Second Applicant worked;
- d. medical workforce or human resources staff member;
- e. member of the executive,

which refers to the performance of overtime by any Doctor in Training in the Employment Period.

27. All documents recording any communication during the Relevant Period between any:
- a. head of any department or unit;
 - b. medical workforce or human resources staff member;
 - c. member of the executive,

which refers to the performance of overtime by any Doctor in Training in the Relevant Period.

28. All correspondence between the Respondent and the Australian Medical Association in the Relevant Period regarding the performance of unrostered overtime by Doctors in Training.
29. All documents recording or referring to any claims for payment of any overtime (other than those that expressly refer to rostered overtime only) by any Doctor in Training in the Relevant Period, which were rejected by the Respondent, and the reasons (if any) for the rejection.
30. All documents recording any complaints regarding overtime made by any Doctor in Training in the Relevant Period, and any responses to those complaints.
31. All documents recording:
- a. any formal analysis undertaken by or on behalf of the Respondent, in the Relevant Period, of overtime worked by Doctors in Training;
 - b. any communication between any head of department or unit, medical workforce or human resources staff member, or member of the executive in relation to the taking or consideration of any steps available to the Respondent to reduce overtime worked by Doctors in Training including:
 - i. any changes to rostering arrangements to reduce the possibility of unrostered overtime arising;
 - ii. changing models of care and making operational changes in the delivery of health services, such as changing theatre scheduling arrangements, to address the causes of unrostered overtime;
 - iii. employing or rostering more medical officers;



- iv. reallocating responsibility for some activities or functions to more senior doctors or other personnel;
- v. reinforcing policies and guidelines in relation to working or not working unrostered overtime or performing or not performing particular activities;
- vi. forecasting unrostered overtime to facilitate planning and budgeting of operational changes to reduce unrostered overtime.