

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 23/12/2021 2:11:37 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	VID774/2021
File Title:	THE AUSTRALIAN SALARIED MEDICAL OFFICERS' FEDERATION & ANOR v BENDIGO HEALTH
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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

Dated: 23/12/2021 4:18:53 PM AEDT

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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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.



**Originating application starting a representative proceeding
under Part IVA of the Federal Court of Australia Act 1976**

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
First Applicant

Bendigo Health

Respondent

To the Respondents

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Federal Court of Australia
305 William Street
Melbourne, Victoria, 3000

Date:

.....
Signed by an officer acting with the authority of
the District Registrar

Filed on behalf of: The Australian Salaried Medical Officers' Federation and Catherine Gaggin (the Applicants)
Prepared by: Andrew Grech
Law firm: Gordon Legal
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Details of claim

On the grounds stated in the accompanying Statement of Claim, the First Applicant and Second Applicant claim the following relief on behalf of Group Members:

1. A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) that the Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay Group Members overtime as required by clause 32.2 of the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013*.
2. A declaration pursuant s 21 of the *Federal Court of Australia Act 1976* (Cth) that the Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay Group Members overtime as required by clause 36.2 of the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021*.
3. An order pursuant to s 545 of the *Fair Work Act 2009* (Cth) that the Respondent pay compensation to Group Members for the loss suffered by each of them because of the contraventions described in paragraphs 1 and 2 above.
4. An order pursuant to s 547 of the *Fair Work Act 2009* (Cth) for interest on any amount ordered to be paid to Group Members under paragraph 3 above.
5. An order pursuant to s 546(1) of the *Fair Work Act 2009* (Cth) that the Respondent pay pecuniary penalties for the contraventions of the *Fair Work Act 2009* (Cth) described above.
6. An order pursuant to s 546(3) of the *Fair Work Act 2009* (Cth) that any penalty ordered by the Court pursuant to s 546(1) be paid to the First Applicant.
7. Any other orders as the Court considers appropriate.

Further, on the grounds stated in the accompanying Statement of Claim, the Second Applicant claims the following relief:

8. A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) that the Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay the Second Applicant overtime as required by clause 32.2 of the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013*.
9. A declaration pursuant s 21 of the *Federal Court of Australia Act 1976* (Cth) that the Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay the



Second Applicant overtime as required by clause 36.2 of the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021*.

10. An order pursuant to s 545 of the *Fair Work Act 2009* (Cth) that the Respondent pay compensation to the Second Applicant for the loss suffered by her because of the contraventions described in paragraphs 8 and 9 above.
11. An order pursuant to s 547 of the *Fair Work Act 2009* (Cth) for interest on any amount ordered to be paid to the Second Applicant under paragraph 10 above.
12. An order pursuant to s 546(1) of the *Fair Work Act 2009* (Cth) that the Respondent pay pecuniary penalties for the contravention of the *Fair Work Act 2009* (Cth) described above.
13. An order pursuant to s 546(3) of the *Fair Work Act 2009* (Cth) that any penalty ordered by the Court pursuant to s 546(1) be paid to the First Applicant.
14. Any other orders as the Court considers appropriate.

Questions Common to Claims of Group Members

The questions of law or fact common to the claims of Group Members are:

Duties of Group Members

1. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, the preparation for ward rounds before the commencement of ward rounds.
2. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, undertaking ward rounds.
3. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, receiving or handing over information about patients between medical staff at the start or end of a shift.
4. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, preparation for medical procedures.
5. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, attending to medical emergencies or critical patient care.



6. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, the completion of patient medical records, including discharge summaries, in a timely manner.
7. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, providing medical care to patients in a clinic.
8. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, carrying out such other duties necessary for the provision of medical services by the Doctor.

Authorisation

9. Whether authorisation to work overtime in excess of rostered hours, within the meaning of clause 32.2.1(b) of the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013*, is capable of being implied by the conduct of the Respondent.
10. Whether authorisation to work overtime in excess of rostered hours, within the meaning of clause 36.2(a)(ii) of the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021*, is capable of being implied by the conduct of the Respondent.

Ward round preparation

11. If the answer to common questions (1) and either or both of (9) and (10) above is yes, whether authorisation to work overtime in excess of rostered hours by preparing for ward rounds before the commencement of ward rounds can be implied from some or all of:
 - (a) the fact that the work performed by Group Members included ward round preparation before the commencement of ward rounds;
 - (b) a direction given by the Respondent to Group Members to prepare for ward rounds before the commencement of ward rounds;
 - (c) the knowledge of the Respondent that there was insufficient time during rostered hours to prepare for ward rounds, in accordance with the direction in (b) above;
 - (d) the knowledge of the Respondent that Group Members worked overtime to prepare for ward rounds;



- (e) the failure by the Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

Ward rounds

12. If the answer to common questions (2) and either or both of (9) and (10) above is yes, whether authorisation to work overtime in excess of rostered hours by undertaking ward rounds in excess of rostered hours can be implied from some or all of:
- (a) the fact that the work performed by Group Members included undertaking ward rounds;
 - (b) a direction given by the Respondent to Group Members to undertake ward rounds outside of rostered hours;
 - (c) the knowledge of the Respondent that there was insufficient time during rostered hours to undertake ward rounds in accordance with the direction in (b) above;
 - (d) the knowledge of the Respondent that Group Members worked overtime to undertake ward rounds;
 - (e) the failure by the Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

Handover

13. If the answer to common questions (3) and either or both of (9) and (10) above is yes, whether authorisation to work overtime in excess of rostered hours by conducting handover outside of rostered hours can be implied from some or all of:
- (a) the fact that the work performed by Group Members included conducting handover;
 - (b) a direction given by the Respondent to Group Members to conduct handover outside of rostered hours;
 - (c) the knowledge of the Respondent that there was insufficient time during rostered hours to conduct handover in accordance with the direction in (b) above;
 - (d) the knowledge of the Respondent that Group Members worked overtime to conduct handover;



- (e) the failure by the Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

Medical procedures preparation

14. If the answer to common questions (4) and either or both of (9) and (10) above is yes, whether authorisation to work overtime in excess of rostered hours by preparing for medical procedures outside of rostered hours can be implied from some or all of:
- (a) the fact that the work performed by Group Members included preparing for medical procedures;
 - (b) a direction given by the Respondent to Group Members to prepare for medical procedures outside of rostered hours;
 - (c) the knowledge of the Respondent that there was insufficient time during rostered hours to prepare for medical procedures in accordance with the direction in (b) above;
 - (d) the knowledge of the Respondent that Group Members worked overtime to prepare for medical procedures;
 - (e) the failure by the Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

Medical emergencies

15. If the answer to common questions (5) and either or both of (9) and (10) above is yes, whether authorisation to work overtime in excess of rostered hours by attending to medical emergencies outside of rostered hours can be implied from some or all of:
- (a) the fact that the work performed by Group Members included attending to medical emergencies;
 - (b) a direction given by the Respondent to Group Members to attend to medical emergencies outside of rostered hours;
 - (c) the knowledge of the Respondent that there was insufficient time during rostered hours to attend to medical emergencies in accordance with the direction in (b) above;



- (d) the knowledge of the Respondent that Group Members worked overtime to attend to medical emergencies;
- (e) the failure by the Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

Medical records

16. If the answer to common questions (6) and either or both of (9) and (10) above is yes, whether authorisation to work overtime in excess of rostered hours by completing medical records in a timely manner can be implied from some or all of:

- (a) the fact that the work performed by Group Members included completing medical records in a timely manner;
- (b) a direction given by the Respondent to Group Members to complete medical records in a timely manner;
- (c) the knowledge of the Respondent that there was insufficient time during rostered hours to complete medical records in a timely manner in accordance with the direction in (b) above;
- (d) the knowledge of the Respondent that Group Members worked overtime to complete medical records;
- (e) the failure by the Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

Outpatient care

17. If the answer to common questions (7) and either or both of (9) and (10) above is yes, whether authorisation to work overtime in excess of rostered hours by providing medical care to patients in a clinic can be implied from some or all of:

- (a) the fact that the work performed by Group Members included providing medical care to patients in a clinic;
- (b) a direction given by the Respondent to Group Members to provide medical care to patients in a clinic;



- (c) the knowledge of the Respondent that there was insufficient time during rostered hours to provide medical care to patients in a clinic, in accordance with the direction in (b) above;
- (d) the knowledge of the Respondent that Group Members worked overtime to provide medical care to patients in a clinic;
- (e) the failure by the Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

Other medical services

18. If the answer to common questions (8) and either or both of (9) and (10) above is yes, whether authorisation to work overtime in excess of rostered hours by providing medical services (other than the medical services identified in common questions (1) to (7) above) (**other medical services**) outside of rostered hours can be implied from some or all of:

- (a) the fact that the work performed by Group Members included providing other medical services;
- (b) a direction given by the Respondent to Group Members to provide other medical services outside of rostered hours;
- (c) the knowledge of the Respondent that there was insufficient time during rostered hours to provide other medical services in accordance with the direction in (b) above;
- (d) the knowledge of the Respondent that Group Members worked overtime to provide other medical services;
- (e) the failure by the Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

Representative action

1. The Applicants bring this application as representative parties under Part IVA of the *Federal Court of Australia Act 1976* (Cth).



2. The group members to whom this proceeding relates are persons who, during the period 24 December 2015 and 23 December 2021:
- (a) were employed by Bendigo Health, or Bendigo Health Care Group (as it was formerly known)—(together, **Bendigo Health**); and
 - (b) worked at Bendigo Health Hospital, at 100 Barnard Street, Bendigo; and
 - (c) were, when employed by Bendigo 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/or 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)*; and
 - (d) were, when employed by Bendigo 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; and
 - (e) in the course of their employment by Bendigo Health, worked hours in excess of their ordinary hours, or rostered hours (**unrostered overtime**); and
 - (f) were not paid for the unrostered overtime hours worked.
3. As at the date of commencement of this proceeding, there are seven or more persons who have claims against the Respondent in respect of the matters set out in the statement of claim.



Applicants' address

The Applicants' address for service is:

Gordon Legal
Level 22, 181 William Street
Melbourne VIC 3000

Email:

agrech@gordonlegal.com.au

The Applicants' address is:

c/- Gordon Legal
Level 22, 181 William Street
Melbourne VIC 3000

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 23 December 2021

A handwritten signature in blue ink, appearing to read "Andrew Grech".

Signed by Andrew Grech
Lawyer for the Applicants



Schedule

No. of 2021

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

Applicants

Second Applicant: **Catherin Gaggin**

Date: 23 December 2021