

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: VID700/2021  
File Title: THE AUSTRALIAN SALARIED MEDICAL OFFICERS' FEDERATION  
& ANOR v ALFRED HEALTH & ANOR  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 21/12/2021 4:28:03 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)

**Amended Statement of Claim**

VID 700 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

**Alfred Health**

First Respondent

**St Vincent's ~~Health~~ Hospital (Melbourne) Limited (ACN 052 110 755)**

Second 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 his own behalf and on behalf of all persons,

who, during the period 27 November 2015 and 26 November 2021 (**Relevant Period**):

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Filed on behalf of:	The Australian Salaried Medical Officers' Federation and James Lisik ( <b>the Applicants</b> )		
Prepared by:	Andrew Grech		
Law firm:	Gordon Legal		
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- (c) were employed by St Vincent's Health Hospital (Melbourne) Limited (**St Vincent's**) and worked at St Vincent's Hospital Melbourne, at 41 Victoria Parade, Fitzroy (**St Vincent's Hospital**);
- (d) and/or were employed by Alfred Health (**Alfred**) and worked at one or more of the following services operated by Alfred Health:
  - (i) The Alfred, at 55 Commercial Road, Melbourne;
  - (ii) Caulfield Hospital, at 260 Kooyong Road, Caulfield; and
  - (iii) Sandringham Hospital, at 193 Bluff Road, Sandringham.
- (e) were, when employed by either or both of Alfred Health and St Vincent's, 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)*;
- (f) were, when employed by either or both of Alfred Health and St Vincent's, 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
- (g) in the course of their employment by either or both of Alfred Health and St Vincent's, worked hours in excess of their ordinary hours, or rostered hours (unrostered overtime); and
- (h) were not paid for the unrostered overtime 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 the Group Members.
  
3. The Second Applicant, Dr James Lisik:
  - (a) between 7 January 2015 and 10 January 2016, was employed by St Vincent's and classified as a Hospital Medical Officer (**HMO**) (Year 1 – Intern) under the 2013 Agreement; and
  - (b) between 1 February 2016 and 5 February 2017, was employed by Alfred Health and classified as an HMO Year 2 under the 2013 Agreement; and
  - (c) between 6 February 2017 and 4 February 2018, was employed by Alfred Health and classified as an HMO Year 3 under the 2013 Agreement.
  
4. As at the date of the commencement of this proceeding, there are seven or more persons who have claims against Alfred Health, and claims against St Vincent's, in respect of the matters set out in this Statement of Claim.

**A2 The Respondents**

5. St Vincent's is and at all material times was:
  - (a) a ~~body corporate pursuant to s 65P and~~ denominational hospital within the meaning of, and listed in Schedule ~~5~~ 2 of, the *Health Services Act 1988* (Vic);
  - (aa) ~~and an Australian Public Company limited by guarantee,~~ capable of suing and being sued in its corporate name and style;

- (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;
- (d) between 7 January 2015 and 10 January 2016, the employer of Dr Lisik.

6. Alfred 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;
- (d) between 1 February 2016 and 4 February 2018, the employer of Dr Lisik.

## **B THE AGREEMENTS**

### **B1 The 2013 Agreement**

#### Application and coverage

7. 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 clause 5.3, covered:
  - (i) Alfred Health;
  - (ii) St Vincent's;
  - (iii) ASMOF;

- (iv) employees of Alfred Health and/or St Vincent's who were employed in the classifications set out in paragraph 1(f) above (**Doctors**).

### Doctor Responsibilities

- 8. 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

- 9. The 2013 Agreement provided:
  - (a) in clause 25.1.1 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; and
  - (b) in clause 25.1.3, that, for full-time Registrars, ordinary hours of work must be 38 hours per week plus five reasonable additional hours of training time, equalling 43 hours per week or an average of 43 hours per week for up to 4 weeks.
- 10. 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.

- 11. 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

12. 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 clause 4.1, covered:
  - (i) Alfred Health;
  - (ii) St Vincent's;
  - (iii) ASMOF;
  - (iv) Doctors.

### Doctor Responsibilities

13. 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

14. The 2018 Agreement provides:

- (a) in clause 33.1(a) 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; and
  - (b) in clause 33.1(b), that, for Registrars, the ordinary hours of full-time work will be 38 hours plus five reasonable additional hours of Training Time (as defined at subclause 3.1(dd)) equalling 43 hours per week or an average of 43 hours per week over a period of up to four weeks.
15. 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.
16. 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 LISIK AND GROUP MEMBERS**

17. During the Relevant Period, the duties and responsibilities of Dr Lisik 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) completion of patient medical records, including discharge summaries, in a timely manner (**medical records**);
- (e) providing medical care to patients in a clinic (**outpatient care**);
- (f) attending to medical emergencies or critical patient care (**medical emergencies**);
- (g) preparation for medical procedures (**medical procedures preparation**);
- (h) undertaking surgical procedures (**surgical procedures**);
- (i) admitting patients into a particular ward or department (**patient admissions**);  
and
- (j) 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**

18. During the course of his employment by St Vincent's and by Alfred Health, Dr Lisik was directed, relevantly:
- (a) by St Vincent's, between 12 January 2015 and 22 March 2015, to work in the General Medicine Department at St Vincent's Hospital;
  - (b) by St Vincent's, between 23 March 2015 and 31 May 2015, to work in the Plastic Surgery Department at St Vincent's Hospital;
  - (c) by Alfred Health, between 1 February 2016 and 1 May 2016, to work in the Orthopaedics Department at The Alfred Hospital;

- (d) by Alfred Health, between 2 May 2016 and 31 July 2016, to work in the Plastic Surgery Department at The Alfred Hospital;
- (e) by Alfred Health, between 31 October 2016 and 5 February 2017, to work in the Trauma Department at The Alfred Hospital;
- (f) by Alfred Health, between 6 November 2017 and 4 February 2018, to work in the Neurosurgery Department at The Alfred Hospital.

**D1 St Vincent's General Medicine rotation – 12 January 2015 and 22 March 2015**

19. Between 12 January 2015 and 22 March 2015, pursuant to the direction of St Vincent's set out in paragraph 18(a) above, Dr Lisik worked in the General Medicine Department at St Vincent's Hospital (**General Medicine rotation**).

Rosters

20. During the General Medicine rotation, Dr Lisik was rostered to work the following shifts, from time to time during the rotation:
- (a) morning shift, from 8.00am – 5:30pm;
  - (b) short morning shift, from 8:00am – 12:30pm;
  - (c) evening cover shift, from 8:00am – 10:00pm;
  - (d) night shift, from 9:45pm – 8:15am the following day; and
  - (e) night shift, from 9:30pm – 8:30am the following day.

**Particulars**

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

Ward round preparation overtime

21. During the General Medicine rotation, St Vincent's directed Dr Lisik undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

## Particulars

The ward round preparation direction was partly oral, partly written and partly to be implied.

Insofar as it was oral, it was conveyed by the intern who was employed in Dr Lisik's role before Dr Lisik during the handover to Dr Lisik, and by more senior medical staff (including registrars) from time to time during the General Medicine rotation.

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

- (1) clause 14.1 of the 2013 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.
- (2) a document titled 'St Vincent's Hospital Rover (Rolling Handover)' that was provided to Dr Lisik at the start of his rotation in the General Medicine department, and which described at pages 1 and 2, the "daily responsibilities" of an HMO as follows:

*"0740:*

- *Receive handover from night cover intern – arrive a bit before 8am to do this*
- *Print lists - Master Control (if working) list includes recent path results, PAS list has accurate list of what bed each patient is in. Ring IT to get Master Control access.*
- *Update and print patient list document on USB (the USB lives in one of the two GMB computers)*
- *Check bloods/radiology results to prepare for the round*

*0800: Attend morning handover..."*

Insofar as it was to be implied, it was to be implied from the matters in paragraph 17(a) above, and from the fact that the tasks necessary to complete ward round preparation in the General Medicine department included the following:

- (1) receiving a handover from the night cover intern;
- (2) printing the patient lists;
- (3) updating the patient list document on the USB; and
- (4) reviewing pathology and radiology results.

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

#### **Particulars**

The ward round preparation overtime was worked by Dr Lisik before the start of each shift that Dr Lisik was rostered to begin at 8:00am, for around 30 minutes on each occasion. Formal handover from the night staff occurred at 8:00am and ward round was scheduled to begin between 8:30 and 9:00am, upon completion of handover. Dr Lisik could not prepare for ward rounds during the formal handover, so was required to prepare for ward rounds before 8:00am.

Further particulars will be provided after discovery and before trial.

23. St Vincent's:
- (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 Lisik performed ward round preparation overtime; and
  - (c) did not direct Dr Lisik not to perform ward round preparation overtime.

#### **Particulars**

The knowledge of St Vincent's 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 21 above; and
- (3) Dr Lisik's rostered start time of 8:00am for morning shifts, short morning shifts and evening cover shifts;
- (4) the commencement of ward rounds in the General Medicine department at around 8:30am; and
- (5) the fact that Dr Lisik was prepared for ward rounds at around 8:30am which occurred directly after handover at 8:00am;
- (6) the fact that Dr Lisik's attendance at the hospital was on at least some occasions recorded electronically by sign in logs that were created as a result of Dr Lisik using a swipe

card to enter areas of the facility (*e.g.*, the bike shed or a building).

24. By reason of the matters alleged in paragraphs 17(a), 19, 21 and 23 above, the ward round preparation overtime worked by Dr Lisik constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the medical services provided by Dr Lisik included ward round preparation before the commencement of ward rounds;
  - (2) Dr Lisik’s rostered start time of 8:00am;
  - (3) the commencement of ward rounds at 8:30am (directly after the handover which took place between 8:00am and 8:30am);
  - (4) the ward round preparation direction;
  - (5) the knowledge of St Vincent’s, as set out in paragraphs 23(a) and 23(b) above; and
  - (6) the failure by St Vincent’s to direct Dr Lisik not to perform the ward round preparation overtime, as set out in paragraph 23(c) above.
25. In the premises, Dr Lisik was entitled to be paid overtime for the ward round preparation overtime that he worked as set out in paragraph 22 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
26. St Vincent’s did not pay Dr Lisik overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by him during the General Medicine rotation.
27. By reason of the matters alleged above, St Vincent’s has contravened clause 32.2 of the 2013 Agreement.
28. By reason of the matters alleged in the above paragraph, St Vincent’s has contravened s 50 of the FW Act.

### Medical records overtime

29. During the General Medicine rotation, St Vincent’s directed Dr Lisik:

- (a) to complete medical records for patients in the General Medicine department;
- (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 and is partly to be implied.

- (1) Insofar as it was in writing, it was contained in:
  - (a) clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Patient notes, patient drug charts, ward run sheets, and discharge paperwork each constitute "medical records" for patients;
  - (b) a document titled 'St Vincent's Hospital Rover (Rolling Handover)' that was provided to Dr Lisik at the start of his rotation in the General Medicine department, and which described at page 3, the role of an HMO including:
    - *"Discharge Summaries*
      - *Ideally within 48 hours of patient discharge (but no later than 1 week post-discharge)*
      - *Include a brief HOPC and admission IX, then ADMISSION ISSUES with Ix/Rx and PLAN*
      - *Keep it clear and concise so that LMO is up to date with patient's discharge plan and specific tasks required of them."*
  - (c) emails received by Dr Lisik from time to time directing completion of medical records, usually in relation to discharge summaries;
  - (d) emails received by Dr Lisik from time to time which detailed the number of outstanding discharge summaries that the General Medicine team had not completed.
- (2) Insofar as it is to be implied, it is to be implied from

- (a) particular (1) above;
  - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
  - (c) the fact that a variable number of patients' drug charts would expire at around 8:00am each day and needed to be updated before a patient could have their next dose of medication administered (i.e., drug charts expired around every 7 days and required rewriting).
  - (d) the matters in paragraph 17(d) above.
30. During the General Medicine rotation, in order to complete medical records in accordance with the medical records direction, Dr Lisik worked hours in excess of rostered hours (**medical records overtime**).

#### **Particulars**

The medical records overtime was worked by Dr Lisik after the conclusion of each of his rostered weekday shifts, for between 30 and 60 minutes on each occasion and after the end of each of his rostered weekend shifts, for approximately 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

31. St Vincent's:
- (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 Lisik performed medical records overtime; and
  - (c) did not direct Dr Lisik not to perform medical records overtime.

#### **Particulars**

The knowledge of St Vincent's is to be inferred from the following matters:

- (1) the medical records direction;
- (2) the medical records, including discharge summaries and pathology results, completed by Dr Lisik outside of rostered hours were time-stamped;

- (3) other medical staff (including senior medical staff) observing Dr Lisik working after hours completing medical records.
32. By reason of the matters alleged in paragraphs 17(d), 19, 29 and 31 above, the medical records overtime worked by Dr Lisik constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the medical services provided by Dr Lisik included the timely completion of medical records;
  - (2) the conduct of St Vincent’s in giving the medical records direction, as set out in paragraph 29 above;
  - (3) the knowledge of St Vincent’s as set out in paragraphs 31(a) and 31(b) above; and
  - (4) the failure by St Vincent’s to direct Dr Lisik not to perform medical records overtime as set out in paragraph 31(c) above.
33. In the premises, Dr Lisik was entitled to be paid overtime for the medical records overtime that he worked, as set out in paragraph 30 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
34. St Vincent’s did not pay Dr Lisik overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by him during the General Medicine rotation.
35. By reason of the matters alleged above, St Vincent’s has contravened clause 32.2 of the 2013 Agreement.
36. By reason of the matters alleged in the above paragraph, St Vincent’s has contravened s 50 of the FW Act.
- D2 St Vincent’s Plastic Surgery Department rotation – 23 March 2015 and 31 May 2015**
37. Between 23 March 2015 and 31 May 2015, pursuant to the direction of St Vincent’s set out in paragraph 18(b) above, Dr Lisik worked in the Plastic Surgery Department at St Vincent’s Hospital (**Plastic Surgery rotation**).

## Rosters

38. During the Plastic Surgery rotation, Dr Lisik was rostered to work the following shifts:
- (a) Monday and Tuesday, from 7:00am – 3:30pm;
  - (b) Wednesday, from 7:00am – 6:30pm;
  - (c) Thursday, from 7:00am – 1:00pm; and
  - (d) Friday, from 7:00am – 4:30pm.

### **Particulars**

Copies of Dr Lisik’s rosters for the Plastic Surgery rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

## Ward round preparation overtime

39. During the Plastic Surgery rotation, St Vincent’s directed Dr Lisik to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

### **Particulars**

The ward round preparation direction was partly oral, partly written and partly to be implied.

Insofar as it was oral, it was conveyed to Dr Lisik by more senior medical staff (including registrars) who from time to time during the Plastic Surgery rotation would direct Dr Lisik to make sure particular tasks were completed prior to the ward round the following day.

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

- (1) clause 14.1 of the 2013 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.
- (2) a document titled ‘St Vincent’s Hospital, Rover (Rolling Handover)’ that was provided to Dr Lisik at the start of his rotation in the Plastic Surgery department, and which described at page 3, the “morning jobs” which are the responsibility of a HMO including:

*“As the intern, it is your responsibility to prepare the ward list and fax theatre transport slips for the following day’s theatre schedule every morning which means you usually have to arrive at the hospital by about 630am at the latest.”*

- (3) messages sent to Dr Lisik from colleagues from time to time advising him of the ward round commencement time.

Insofar as it was to be implied, it was to be implied from the matters in paragraph 17(a) above, and from the fact that the tasks necessary to complete ward round preparation in the Plastic Surgery department included the following:

- (1) collating pathology results;
- (2) filling out forms, including theatre transport slips;
- (3) receiving handover from the overnight team;
- (4) preparing, updating and printing the patient list.

40. During the Plastic Surgery rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Lisik worked hours in excess of rostered hours (**ward round preparation overtime**).

#### **Particulars**

The ward round preparation overtime was worked by Dr Lisik before the start of each shift that Dr Lisik was rostered to begin at 7:00am, for approximately 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

41. St Vincent’s:
  - (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 Lisik performed ward round preparation overtime; and
  - (c) did not direct Dr Lisik not to perform ward round preparation overtime.

#### **Particulars**

The knowledge of St Vincent’s is to be inferred from:

- (1) the ward round preparation direction;

- (2) the tasks necessary to complete ward round preparation including those matters in the particulars to paragraph 39 above;
- (3) Interns, residents, and registrars (including night-shift workers) seeing Dr Lisik perform this overtime.
- (4) Dr Lisik's rostered start time of 7:00am;
- (5) the commencement of ward rounds in the Plastic Surgery department at 7:00am; and
- (6) the fact that Dr Lisik was prepared for ward rounds by 7:00am;
- (7) the fact that Dr Lisik's attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Dr Lisik using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

42. By reason of the matters alleged in paragraphs 17(a), 37, 39 and 41 above, the ward round preparation overtime worked by Dr Lisik constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

#### **Particulars**

Authorisation is implied from the following matters:

- (1) the medical services provided by Dr Lisik included ward round preparation before the commencement of ward rounds;
- (2) Dr Lisik's rostered start time of 7:00am;
- (3) the commencement of ward rounds at 7:00am;
- (4) the ward round preparation direction;
- (5) the knowledge of St Vincent's, as set out in paragraphs 41(a) and 41(b) above; and
- (6) the failure by St Vincent's to direct Dr Lisik not to perform the ward round preparation overtime, as set out in paragraph 41(c) above.

43. In the premises, Dr Lisik was entitled to be paid overtime for the ward round preparation overtime that he worked as set out in paragraph 40 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

44. St Vincent's did not pay Dr Lisik overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by him during the Plastic Surgery rotation.

45. By reason of the matters alleged above, St Vincent's has contravened clause 32.2 of the 2013 Agreement.
46. By reason of the matters alleged in the above paragraph, St Vincent's has contravened s 50 of the FW Act.

#### Medical records overtime

47. During the Plastic Surgery rotation, St Vincent's directed Dr Lisik:
  - (a) to complete medical records for patients in the Plastic Surgery department;
  - (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 and is partly to be implied.

- (1) Insofar as it was in writing, it was contained in:
  - (a) clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Discharge paperwork, drug charts, ward run sheets, and patient notes each comprise "medical records" for patients;
  - (b) a document titled 'St Vincent's Hospital Rover (Rolling Handover)' which provided at page 6 that it is the responsibility of the HMO to complete discharge summaries and stated:

#### ■ *"Discharge Summaries*

- *There is a really high turn over in plastics and it can be difficult to keep up with discharge summaries. Try to be strict about doing them BEFORE the patient leaves. This can be difficult and it is very easy for them to back up to a list of about 40.*

■ *It is helpful to include information about when they will be followed up in clinic, when sutures will be removed, when the patient can mobilise and any information from other teams who have had input into the patient.”*

- (2) Insofar as it is to be implied, it is to be implied from
  - (a) particular (1) above;
  - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
  - (c) the fact that patients’ drug charts would expire every seven days and needed to be updated before that patient could have their next dose of medication administered.
- (3) the matters in paragraph 17(d) above.

48. During the Plastic Surgery rotation, in order to complete medical records in accordance with the medical records direction, Dr Lisik worked hours in excess of rostered hours (**medical records overtime**).

### **Particulars**

The medical records overtime was worked by Dr Lisik after the conclusion of his rostered shifts, on three out of five days each week and for between 30 and 60 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

49. St Vincent’s:
- (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 Lisik performed medical records overtime; and
  - (c) did not direct Dr Lisik not to perform medical records overtime.

### **Particulars**

The knowledge of St Vincent’s is to be inferred from the following matters:

- (1) the medical records direction;
- (2) that medical records completed by Dr Lisik outside of rostered hours were timestamped;
- (3) other medical staff (including senior medical staff) observing Dr Lisik working after hours completing medical records; and
- (4) the fact that Dr Lisik's attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Dr Lisik using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

50. By reason of the matters alleged in paragraphs 17(d), 37, 47 and 49 above, the medical records overtime worked by Dr Lisik constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the medical services provided by Dr Lisik included the timely completion of medical records;
- (2) the conduct of St Vincent's in giving the medical records direction, as set out in paragraph 29 above;
- (3) the knowledge of St Vincent's as set out in paragraphs 49(a) and 49(b) above; and
- (4) the failure by St Vincent's to direct Dr Lisik not to perform medical records overtime as set out in paragraph 49(c) above.

51. In the premises, Dr Lisik was entitled to be paid overtime for the medical records overtime that he worked, as set out in paragraph 48 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

52. St Vincent's did not pay Dr Lisik overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by him during the Plastic Surgery rotation.

53. By reason of the matters alleged above, St Vincent's has contravened clause 32.2 of the 2013 Agreement.

54. By reason of the matters alleged in the above paragraph, St Vincent's has contravened s 50 of the FW Act.

**D3 Orthopaedics Department at the Alfred Hospital – 1 February 2016 to 1 May 2016**

55. Between 1 February 2016 and 1 May 2016, pursuant to the direction of Alfred Health set out in paragraph 18(c) above, Dr Lisik worked in the Orthopaedics Department at the Alfred Hospital (**Orthopaedics rotation**).

Rosters

56. During the Orthopaedics rotation, Dr Lisik was rostered to work the following shifts, from time to time during the rotation:
- (a) day shifts, from 6:45am to 5:00pm;
  - (b) long day shifts, from 7:00am to 9:30pm;
  - (c) long day shifts, from 6:45am to 9:30pm;
  - (d) half day shifts, from 6:45am to 1:00pm; and
  - (e) half day shifts, from 7:30am to 12:00pm

**Particulars**

Copies of Dr Lisik’s rosters for the Orthopaedics rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

Ward round preparation overtime

57. During the Orthopaedics rotation, Alfred Health directed Dr Lisik 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 partly to be implied.

Insofar as it was in writing, it was contained in clause 14.1 of the 2013 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 implied, it is to be implied from the matters in paragraph 17(a) above, and from the fact that the tasks necessary to complete ward round preparation included the following:

- (1) reviewing new pathology results;
- (2) receiving handover from the night staff about patients who had been admitted overnight;
- (3) pre-writing notes for each patient for use on the ward round
- (4) on days with consultant meetings, printing out slide shows for presentation by the registrar, printing out extra blood tests and pathology results; and
- (5) preparing the ward round patient list.

58. During the Orthopaedics rotation, in order to prepare for ward rounds in accordance with the ward round preparation direction, Dr Lisik worked hours in excess of rostered hours (**ward round preparation overtime**).

#### **Particulars**

The scheduled time for the start of ward rounds was 7:00am. Dr Lisik's rostered shifts began at either 6:45am, 7:00am or 7:30am.

Once a week the Orthopaedics department held a consultant meeting that was scheduled to begin at 7:00am. On each occasion that there was a consultant meeting scheduled, Dr Lisik attended work around 45 minutes early for his rostered shift to prepare for the meeting.

On every other occasion, Dr Lisik arrived approximately 15 minutes early for his rostered shift to prepare for ward rounds.

Further particulars will be provided after discovery and before trial.

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

### **Particulars**

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

- (1) the ward round preparation direction;
- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 57 above;
- (3) Dr Lisik's rostered start times;
- (4) the commencement of ward rounds at 7:00am;
- (5) more senior medical staff (including registrars) observing Dr Lisik attending work early to perform ward round preparation overtime;
- (6) the fact that Dr Lisik was prepared at the start of ward rounds conducted by the consultants on duty and that the patient notes ready for insertion into patient's bedsides had been printed / updated; and
- (7) the fact that Dr Lisik's attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Dr Lisik using a swipe card to enter areas of the facility (*e.g.*, the bike shed, car park or a building).

60. By reason of the matters alleged in paragraph 17(a), 55, 57 and 59 above, the ward round preparation overtime worked by Dr Lisik constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the medical services provided by Dr Lisik included ward round preparation before the commencement of ward rounds;
- (2) Dr Lisik's rostered start times;
- (3) the commencement of ward rounds at 7:00am;
- (4) the ward round preparation direction;
- (5) the knowledge of Alfred Health set out at paragraphs 59(a) and 59(b) above; and
- (6) the failure of Alfred Health to direct Dr Lisik not to perform the ward round preparation overtime, as set out in paragraph 59(c) above.

61. In the premises, Dr Lisik was entitled to be paid overtime for the ward round preparation overtime that he worked as set out in paragraph 58 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
62. Alfred Health did not pay Dr Lisik overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by him during the Orthopaedics rotation.
63. By reason of the matters alleged above, Alfred Health has contravened clause 32.2 of the 2013 Agreement.
64. By reason of the matters alleged in the above paragraph, Alfred Health has contravened s 50 of the FW Act.

#### Medical records overtime

65. During the Orthopaedics rotation, Alfred Health directed Dr Lisik:
  - (a) to complete medical records for all patients in the Orthopaedics department;
  - (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 and is partly to be implied.

Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Dictating notes for clinic, writing drug charts, writing patient notes, adding to ward round notes, updating patient lists, and completing discharge summaries are all "medical records" for patients.

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

- (1) the matters in paragraph 17(d) above; and
- (2) the clinical requirement to complete medical records for proper patient care.

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

#### **Particulars**

The medical records overtime was worked by Dr Lisik after the conclusion of almost all of his rostered shifts (other than clinic shifts), for between 30 and 60 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

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

#### **Particulars**

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

- (1) the medical records direction;
  - (2) other medical staff (including senior medical staff) observing Dr Lisik working after hours completing medical records;
  - (3) the fact that many medical records (including accessing blood results, patient files and ordering laboratory tests) prepared by Dr Lisik were timestamped; and
  - (4) the fact that Dr Lisik's attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Dr Lisik using a swipe card to enter areas of the facility (*e.g.*, the bike shed or car park).
68. By reason of the matters alleged in paragraph 17(d), 55, 65 and 67 above, the medical records overtime worked by Dr Lisik constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

## Particulars

Authorisation is implied from the following matters:

- (1) the medical services provided by Dr Lisik included the timely completion of medical records;
- (2) the medical records direction;
- (3) the knowledge of Alfred Health, as set out in paragraphs 67(a) and 67(b) above;
- (4) the failure by Alfred Health to direct Dr Lisik not to perform medical records overtime as set out in paragraph 67(c) above.

69. In the premises, Dr Lisik was entitled to be paid overtime for the medical records overtime that he worked, as set out in paragraph 66 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
70. Alfred Health did not pay Dr Lisik overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by him during the Orthopaedics rotation.
71. By reason of the matters alleged above, Alfred Health has contravened clause 32.2 of the 2013 Agreement.
72. By reason of the matters alleged in the above paragraph, Alfred Health has contravened s 50 of the FW Act.

### Outpatient care overtime

73. During the Orthopaedics rotation, Alfred Health directed Dr Lisik to provide medical care to outpatients who had appointments in or were referred to the Consultant Clinic before he finished work on particular days (**outpatient care direction**).

## Particulars

The outpatient care direction was partly oral and is partly to be implied.

Insofar as it was oral, the direction was given from time to time by a Registrar or Consultant in the Orthopaedics department who would call Dr Lisik and request that he attend the clinic.

Insofar as it is to be implied, it is to be implied from the following:

- (1) the matters in paragraph 17(e) above;
- (2) the fact that there were patients who had been booked in, or referred to the clinic to be reviewed by Dr Lisik and his team on that day;
- (3) the fact that reviewing patients in a timely manner is necessary for proper patient care and was a core responsibility of Dr Lisik during the Orthopaedics rotation.

74. During the Orthopaedics rotation, in order to comply with the outpatient care direction, Dr Lisik worked hours in excess of rostered hours (**outpatient care overtime**).

#### **Particulars**

Dr Lisik worked outpatient care overtime once per week after the end of Dr Lisik's rostered shift, for between 30 - 45 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

75. Alfred Health:

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

#### **Particulars**

The knowledge of Alfred Health is to be inferred from:

- (1) the outpatient care direction; and
- (2) other medical staff observing Dr Lisik working after hours dealing with clinic appointments;
- (3) the fact that Dr Lisik did not leave work until he had completed all of the clinic appointment;
- (4) the fact that Dr Lisik would dictate letters to patients after their appointments in the outpatient clinic and those dictated letters were timestamped; and
- (5) the fact that Dr Lisik's attendance at the hospital was on at least some occasions recorded electronically by logs

that were created as a result of Dr Lisik using a swipe card to enter areas of the facility (e.g., the bike shed or car park).

76. By reason of the matters alleged in paragraphs 17(e), 55, 73 and 75 above, the outpatient care overtime worked by Dr Lisik constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) part of the medical services provided by Dr Lisik included reviewing patients in outpatient clinics;
- (2) the fact that there were patients waiting in the outpatient clinic who needed to be reviewed before the end of the day;
- (3) the outpatient care direction;
- (4) the knowledge of Alfred Health, as set out in paragraphs 75(a) and 75(b) above; and
- (5) the failure by Alfred Health to direct Dr Lisik not to perform the clinic appointments overtime, as set out in paragraph 75(c) above.

77. In the premises, Dr Lisik was entitled to be paid overtime for the outpatient care overtime that he worked, as set out in paragraph 74 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

78. Alfred Health did not pay Dr Lisik overtime, in accordance with clause 32.2 of the 2013 Agreement, for all of the outpatient care overtime worked by him during the Orthopaedics rotation.

### **Particulars**

Dr Lisik made overtime claims in relation to outpatient care overtime as follows:

- (1) 26/02/2016: 4.75 hours
- (2) 11/03/2016: 1.75 hours
- (3) 17/03/2016: 3 hours
- (4) 12/04/2016: 1.5 hours
- (5) 29/04/2016: 2.25 hours (only part of which was in relation to outpatient care overtime)

Dr Lisik's practice was not to make overtime claims in relation to outpatient care overtime that was less than around 60 to 90 minutes in a given shift. He did, however, work outpatient care overtime for which he was neither paid nor did he make a claim at the time.

79. By reason of the matters alleged above, Alfred Health has contravened clause 32.2 of the 2013 Agreement.
80. By reason of the matters alleged in the above paragraph, Alfred Health has contravened s 50 of the FW Act.

**D4 Plastic Surgery Department at the Alfred Hospital – 2 April 2016 to 31 July 2016**

81. Between 2 April 2016 and 31 July 2016, pursuant to the direction of Alfred Health set out in paragraph 18(d) above, Dr Lisik worked in the Plastic Surgery Department at the Alfred Hospital (**Plastic Surgery rotation**).

Rosters

82. During the Plastic Surgery rotation, Dr Lisik was rostered to work the following shifts, from time to time during the rotation:
- (a) day shifts, from 6:30am to 6:00pm;
  - (b) day shifts, from 6:30am to 5:00pm;
  - (c) day shifts, from 7:00 to 5:00pm;
  - (d) half day shifts, from 6:30am to 12:30pm;
  - (e) afternoon shifts, from 1:00pm to 5:00pm;
  - (f) evening shifts from 1:30pm to 9:30pm; and
  - (g) evening shifts, from 5:30pm to 9:30pm.

**Particulars**

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

Dr Lisik was on annual leave between 16 May 2016 and 20 May 2016 (inclusive), and 23 May 2016 and 27 May 2016 (inclusive).

### Ward rounds overtime

83. During the Plastic Surgery rotation, Alfred Health directed Dr Lisik to undertake paper ward rounds alongside the registrar on duty outside of rostered hours, at the end of Dr Lisik's rostered shifts (**ward rounds direction**).

#### **Particulars**

The ward rounds direction was partly written and partly to be implied.

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

- (1) clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Paper ward rounds involved writing patient notes which are a form of "medical records" for patients; and
- (2) messages sent to Dr Lisik by more senior medical staff (including registrars) during the course of his rostered shifts, advising that the paper round would commence at a specific time (which was often at or near the end of Dr Lisik's rostered shift).

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

- (1) the matters in paragraph 17(d) above; and
- (2) attending ward rounds being one of Dr Lisik's core responsibilities; and
- (3) the clinical requirement that Dr Lisik update the registrar on duty as to any changes to the patients' care plans for proper continuity of patient care.

84. During the Plastic Surgery rotation, in order to complete the paper ward rounds in accordance with the ward rounds direction, Dr Lisik worked hours in excess of rostered hours (**ward rounds overtime**).

#### **Particulars**

Dr Lisik worked ward rounds overtime approximately three times per week, for approximately 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

85. Alfred Health:

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

### **Particulars**

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

- (1) the ward rounds direction;
- (2) other medical staff (including senior medical staff) observing Dr Lisik working after hours completing paper ward rounds, or completing paper ward rounds with him in the case of registrars in particular;
- (3) the rostered end time for Dr Lisik's shifts;
- (4) the fact that Dr Lisik's attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Dr Lisik using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

86. By reason of the matters alleged in paragraphs 17(b), 81, 83 and 85 above, the ward rounds overtime worked by Dr Lisik constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) part of the medical services provided by Dr Lisik included attending paper ward rounds;
- (2) the ward rounds direction;
- (3) the knowledge of Alfred Health as set out in paragraphs 85(a) and 85(b) above;
- (4) the failure by Alfred Health to direct Dr Lisik not to perform ward rounds overtime as set out at paragraph 85(c) above.

87. In the premises, Dr Lisik was entitled to be paid overtime for the ward rounds overtime that he worked, as set out in paragraph 84 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

88. Alfred Health did not pay Dr Lisik overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward rounds overtime worked by him during the Plastic Surgery rotation.
89. By reason of the matters alleged above, Alfred Health has contravened clause 32.2 of the 2013 Agreement.
90. By reason of the matters alleged in the above paragraph, Alfred Health has contravened s 50 of the FW Act.

**D5 Trauma Department at The Alfred – 31 October 2016 to 5 February 2017**

91. Between 31 October 2016 to 5 February 2017, pursuant to the direction of Alfred Health set out in paragraph 18(e) above, Dr Lisik worked in the Trauma Department at The Alfred Hospital (**Trauma rotation**).

Rosters

92. During the Trauma rotation, Dr Lisik was rostered to work the following shifts, from time to time during the rotation:
  - (a) night shifts, from 9:00pm to 8:00am the following day;
  - (b) night shifts, from 9:00pm to 8:30am the following day;
  - (c) night shifts, from 9:00pm to 9:00am the following day;
  - (d) day shifts, from 7:30am to 5:00pm;
  - (e) day shifts, from 8:00am to 5:00pm;
  - (f) day shifts, from 8:00am to 6:00pm;
  - (g) long day shifts from 7:00am to 9:30pm;
  - (h) long day shifts, from 7:30am to 9:30pm;
  - (i) long day shifts, from 8:00am to 9:30pm;
  - (j) short day shifts, from 8:00am to 1:00pm;

- (k) short days shifts, from 7:30am to 3:00pm; and
- (l) evening shifts, from 2:00pm to 9:30pm.

### **Particulars**

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

### Medical records overtime

93. During the Trauma rotation, Alfred Health directed Dr Lisik:
- (a) to complete discharge summaries for patients in the Trauma department;
  - (b) to complete discharge summaries in a timely manner; and
  - (c) that the timely completion of discharge summaries was necessary to ensure patient safety.

(the **medical records direction**)

### **Particulars**

The medical records direction was partly written and partly to be implied.

Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Discharge summaries are "medical records" for patients.

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

- (1) the matters in paragraph 17(d) above; and
  - (2) that fact that discharge summaries form an important part of patient care and effect continuity of the patient's care after they leave hospital.
94. During the Trauma rotation, in order to complete discharge summaries in accordance with the medical records direction, Dr Lisik worked hours in excess of rostered hours (**medical records overtime**).

### **Particulars**

Medical records overtime was worked by Dr Lisik after the end of his rostered day shifts approximately three days per rostered 'week on' for between 30 – 60 minutes on each occasion, excluding night shifts .

Further particulars will be provided after discovery and before trial.

95. Alfred Health:

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

### **Particulars**

The knowledge of Alfred Health is to be inferred from:

- (1) the medical records direction;
- (2) the importance to patient care of completing discharge summaries in a timely manner;
- (3) other medical staff (including senior medical staff) observing Dr Lisik completing medical records after the end of Dr Lisik's rostered shifts; and
- (4) the fact that the medical software known as Powerchart that was used to update patient records would have timestamped the medical records prepared by Dr Lisik;
- (5) the fact that Dr Lisik's attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Dr Lisik using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

96. By reason of the matters alleged in paragraphs 17(d), 91, 93 and 95 above, the medical records overtime worked by Dr Lisik constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) part of the medical services provided by Dr Lisik included completing medical records;
- (2) the medical records direction;
- (3) the fact of other, higher-priority work, consuming available time during rostered hours;
- (4) the knowledge of Alfred Health, as set out in paragraph 95(a) and 95(b) above; and
- (5) the failure of Alfred Health to direct Dr Lisik not to perform medical records overtime, as set out in paragraph 95(c) above.

97. In the premises, Dr Lisik was entitled to be paid overtime for the medical records overtime that he worked, as set out in paragraph 94 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

98. Alfred Health did not pay Dr Lisik overtime, in accordance with clause 32.2 of the 2013 Agreement, for all of the medical records overtime worked by him during the Trauma rotation.

#### **Particulars**

Dr Lisik made overtime claims in relation to medical records overtime as follows:

- (1) 17/11/2016: 2 hours
- (2) 24/11/2016: 1 hour
- (3) 28/11/2016: 1.5 hours (only part of which was in relation to medical records overtime)
- (4) 30/11/2016: 1.5 hours (only part of which was in relation to medical records overtime)

Dr Lisik did not make overtime claims in relation to all medical records overtime that he worked.

99. By reason of the matters alleged above, Alfred Health has contravened clause 32.2 of the 2013 Agreement.

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

**D6 Neurosurgery Department at The Alfred – 6 November 2017 to 4 February 2018**

101. Between 6 November 2017 to 4 February 2018, pursuant to the direction of Alfred Health set out in paragraph 18(e) above, Dr Lisik worked in the Neurosurgery Department at The Alfred Hospital (**Neurosurgery rotation**).

Rosters

102. During the Neurosurgery rotation, Dr Lisik was rostered to work the following shifts, from time to time during the rotation:

- (a) day shifts, from 7:00am to 6:00pm;
- (b) day shifts, from 8:00am to 5:00pm;
- (c) long day shifts, from 8:00am to 9:30pm;
- (d) half day shifts, from 8:00am to 1:00pm;
- (e) evening shifts, from 12:00pm to 9:30pm; and
- (f) night shifts, from 9:00pm to 8:00am the following day.

**Particulars**

Copies of Dr Lisik’s rosters for the Neurosurgery rotation are in the possession of the solicitors for the Applicants and are available for inspection on request.

Ward round preparation overtime

103. During the Neurosurgery rotation, Alfred Health directed Dr Lisik to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

**Particulars**

The ward round preparation direction was partly written, partly oral and is partly to be implied.

Insofar as it was in writing, it was contained in clause 14.1 of the 2013 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 was oral, it was conveyed to Dr Lisik by more senior medical staff (including registrars) from time to time during the Neurosurgery rotation.

Insofar as it is to be implied, it is implied from the matters in paragraph 17(a) above, the fact that ward rounds commenced at 7:00am and needed to be finished prior to the consultants and registrars commencing surgeries at 8:00am, and from the fact that the tasks necessary to complete ward round preparation included the following:

- (1) reviewing pathology and imaging results from overnight;
- (2) receiving handover from the night team;
- (3) ordering tests;
- (4) arranging patient consent forms for surgeries scheduled that day; and
- (5) preparing patient lists in preparation for ward rounds.

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

### **Particulars**

In the Neurosurgery rotation, ward rounds started at 7:00am. Ward rounds had to be finished by 8:00am as that is the time when the consultants and registrars commenced surgery each day.

On each occasion that Dr Lisik was rostered to commence work at 7:00am, Dr Lisik attended work between 15 – 20 minutes early to prepare for ward rounds.

Further particulars will be provided after discovery and before trial.

105. Alfred Health:
- (a) knew that there was insufficient time to prepare for ward rounds in accordance with the ward round preparation direction;
  - (b) knew that Dr Lisik performed ward round preparation overtime; and
  - (c) did not direct Dr Lisik not to perform ward round preparation overtime.

### **Particulars**

The knowledge of Alfred Health is to be inferred from:

- (1) the ward round preparation direction;
- (2) the tasks necessary to complete ward round preparation including those matters listed in paragraph 103 above;
- (3) the matters in the particulars to paragraph 104 above;
- (4) other medical staff (including senior medical staff) observing Dr Lisik working before the start of his shift preparing for ward rounds;
- (5) the fact that Dr Lisik was prepared for ward rounds conducted by the senior medical staff on duty before 8:00am; and
- (6) the fact that Dr Lisik's attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Dr Lisik using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

106. By reason of the matters alleged in paragraphs 17(a), 101, 103 and 105 above, the ward round preparation overtime worked by Dr Lisik constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) part of the medical services provided by Dr Lisik included ward round preparation before the commencement of ward rounds;
- (2) Dr Lisik being rostered to begin day shifts at 7:00am;
- (3) the commencement of ward rounds at 7:00am in order to enable the consultants and registrars on duty to commence surgery at 8:00am;
- (4) the knowledge of Alfred Health, as set out in paragraph 105(a) and 105(b) above; and
- (5) the failure of Alfred Health to direct Dr Lisik not to perform the ward round preparation overtime, as set out in paragraph 105(c) above.

107. In the premises, Dr Lisik was entitled to be paid overtime for the ward round preparation overtime that he worked, as set out in paragraph 104 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

108. Alfred Health did not pay Dr Lisik overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by him during the Neurosurgery rotation.
109. By reason of the matters alleged above, Alfred Health has contravened clause 32.2 of the 2013 Agreement.
110. By reason of the matters alleged in the above paragraph, Alfred Health has contravened s 50 of the FW Act.

#### Ward round overtime

111. During the Neurosurgery rotation, Alfred Health directed Dr Lisik to undertake paper ward rounds outside of rostered hours at the end of Dr Lisik's shift (**ward round direction**).

#### **Particulars**

The ward round direction was partly written, partly oral and is partly to be implied.

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

- (1) clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Ward rounds involved the creation of medical records for patients; and
- (2) in relation to paper ward rounds, text messages from registrars.

Insofar as it was oral, it was conveyed to Dr Lisik by more senior medical staff (including registrars) from time to time during the Neurosurgery rotation.

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

- (1) the matters in paragraph 17(b) above;
- (2) the need to ensure continuity of patient care, including by ensuring during paper rounds that patient notes were up to date.

112. During the Neurosurgery rotation, in order to undertake ward rounds in accordance with the ward round direction, Dr Lisik worked hours in excess of rostered hours (**ward round overtime**).

### **Particulars**

Paper ward rounds started at or near the end of shift. They often started later than scheduled due to the consultant or registrar's schedules running late.

On each occasion that paper ward rounds ran over the end of the shift, Dr Lisik worked on average 20–30 minutes each occasion, 2–3 times per week.

Further particulars will be provided after discovery and before trial.

#### 113. Alfred Health:

- (a) knew that there was insufficient time to attend paper ward rounds in accordance with the ward round direction.
- (b) knew that Dr Lisik performed ward round overtime; and
- (c) did not direct Dr Lisik not to perform ward round overtime.

### **Particulars**

The knowledge of Alfred Health is to be inferred from:

- (1) the ward round direction;
- (2) the matters set out in the particulars to paragraph 112 above;
- (3) other medical staff (including senior medical staff) observing Dr Lisik attending paper ward rounds after the end of his rostered shifts; and
- (4) the fact that Dr Lisik's attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Dr Lisik using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

114. By reason of the matters alleged in paragraphs 17(b), 101, 111 and 113 above, the ward round overtime worked by Dr Lisik constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) part of the medical services provided by Dr Lisik included attending paper ward rounds;

- (2) the conduct of Alfred Health in giving the direction to attend paper ward rounds, as set out in paragraph 111 above;
  - (3) the knowledge of Alfred Health, as set out in paragraph 113(b) and 113(b) above; and
  - (4) the failure of Alfred Health to direct Dr Lisik not to perform the ward round preparation overtime, as set out in paragraph 113(c) above.
115. In the premises, Dr Lisik was entitled to be paid overtime for the ward round overtime that he worked, as set out in paragraph 112 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
116. Alfred Health did not pay Dr Lisik overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round overtime worked by him during the Neurosurgery rotation.
117. By reason of the matters alleged above, Alfred Health has contravened clause 32.2 of the 2013 Agreement.
118. By reason of the matters alleged in the above paragraph, Alfred Health has contravened s 50 of the FW Act.

#### Other medical services overtime

119. During the Neurosurgery rotation, Alfred Health directed Dr Lisik to attend to various tasks, including reviewing patients, checking pathology and other test results and reviewing patient notes, arising from the paper ward round (**other medical services direction**).

#### **Particulars**

The other medical services direction was partly written, partly oral and is partly to be implied.

Insofar as it was in writing it was contained in clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Reviewing patients, checking pathology and other test results and reviewing patient notes involves the creation of medical records for patients.

Insofar as it was oral, it was conveyed to Dr Lisik by more senior medical staff (including registrars) on duty at the relevant time.

Insofar as it was inferred, is to be implied from the matters in paragraph 17(j) above.

120. During the Neurosurgery rotation, in order to complete the tasks associated with paper ward rounds in accordance with the other medical services direction, Dr Lisik worked hours in excess of rostered hours (**other medical services overtime**).

#### **Particulars**

The other medical services overtime was worked by Dr Lisik after paper ward rounds approximately two days per week for between 10 – 15 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

121. Alfred Health:
- (a) knew that there was insufficient time to attend to the tasks arising from the paper ward rounds in accordance with the other medical services direction.
  - (b) knew that Dr Lisik performed other medical services overtime; and
  - (c) did not direct Dr Lisik not to perform other medical services overtime.

#### **Particulars**

The knowledge of Alfred Health is to be inferred from:

- (1) the other medical services direction;
- (2) other medical staff (including senior medical staff) observing Dr Lisik working after the end of Dr Lisik's rostered shifts attending to tasks arising from paper ward rounds; and
- (3) the fact that Dr Lisik's attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Dr Lisik using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

122. By reason of the matters alleged in paragraphs 17(j), 101, 119 and 121 above, the other medical services overtime worked by Dr Lisik constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

## Particulars

Authorisation is implied from the following matters:

- (1) part of the medical services provided by Dr Lisik included preparing for and attending paper ward rounds;
- (2) the conduct of Alfred Health in giving the other medical services direction, as described in paragraph 119 above;
- (3) the knowledge of Alfred Health, as set out in paragraph 121(a) and 121(b) above; and
- (4) the failure of Alfred Health to direct Dr Lisik not to perform the other medical services overtime, as set out in paragraph 121(c) above.

123. In the premises, Dr Lisik was entitled to be paid overtime for the other medical services overtime that he worked, as set out in paragraph 120 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

124. Alfred Health did not pay Dr Lisik overtime, in accordance with clause 32.2 of the 2013 Agreement, for the other medical services overtime worked by him during the Neurosurgery rotation.

125. By reason of the matters alleged above, Alfred Health has contravened clause 32.2 of the 2013 Agreement.

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

### Medical records overtime

127. During the Neurosurgery rotation, Alfred Health directed Dr Lisik:

- (a) to complete discharge summaries for patients in the Neurosurgery department;
- (b) to complete discharge summaries in a timely manner; and
- (c) that the timely completion of discharge summaries was necessary to ensure patient safety

(the **medical records direction**)

### **Particulars**

The medical records direction was partly written and partly to be implied.

Insofar as is it was in writing, it was contained in clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Discharge summaries comprise "medical records" for patients.

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

- (1) the matters in paragraph 17(d) above; and
- (2) that fact that discharge summaries form an important part of patient care and effect continuity of the patient's care after they leave hospital.

128. During the Neurosurgery rotation, in order to complete discharge summaries in accordance with the medical records direction, Dr Lisik worked hours in excess of rostered hours (**medical records overtime**).

### **Particulars**

Medical records overtime was worked by Dr Lisik after the end of his rostered shifts approximately two days per week for approximately 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

129. Alfred Health:

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

### **Particulars**

The knowledge of Alfred Health is to be inferred from:

- (1) the medical records direction;
- (2) the importance to patient care of completing discharge summaries in a timely manner;
- (3) the fact of other, higher-priority work, consuming available time during rostered hours;

- (4) other medical staff (including senior medical staff) observing Dr Lisik completing medical records after the end of Dr Lisik's rostered shifts; and
- (5) the fact that Dr Lisik's attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Dr Lisik using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

130. By reason of the matters alleged in paragraphs 17(d), 101, 127 and 129 above, the medical records overtime worked by Dr Lisik constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) part of the medical services provided by Dr Lisik included completing medical records;
- (2) the medical records direction;
- (3) the knowledge of Alfred Health, as set out in paragraph 129(a) and 129(b) above; and
- (4) the failure of Alfred Health to direct Dr Lisik not to perform medical records overtime, as set out in paragraph 129(c) above.

131. In the premises, Dr Lisik was entitled to be paid overtime for the medical records overtime that he worked, as set out in paragraph 128 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

132. Alfred Health did not pay Dr Lisik overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by him during the Neurosurgery rotation.

133. By reason of the matters alleged above, Alfred Health has contravened clause 32.2 of the 2013 Agreement.

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

### **D7 Loss**

135. Dr Lisik has suffered loss by reason of the contraventions of:

(a) St Vincent's; and

(b) Alfred Health;

of s 50 of the FW Act.

### **Particulars**

Particulars will be provided after discovery and before trial.

## **E GROUP MEMBERS' CLAIMS AGAINST ST VINCENT'S**

136. Each Group Member, in the course of their employment by St Vincent's in the Relevant Period:

(a) worked at St Vincent's Hospital; 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**

137. Some or all Group Members, in the course of their employment by St Vincent's during the Relevant Period, were subject to a direction from St Vincent's to undertake ward round preparation 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 17(a) above, where ward rounds were conducted in a particular ward or department of St Vincent's Hospital.

138. Each Group Member subject to the direction in paragraph 137 above worked hours in excess of rostered hours to prepare for ward rounds, in accordance with that direction.

139. In respect of each Group Member in paragraph 138 above, St Vincent's:

- (a) knew that there was insufficient time during rostered hours to prepare for ward rounds, in accordance with the direction in paragraph 137 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 St Vincent's is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 137 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;
- (5) that Group Members had completed ward round preparation when ward rounds commenced each morning; and
- (6) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

140. St Vincent's 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 138 above worked by them.

141. 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 St Vincent's in giving the direction set out in paragraph 137 above;
- (3) the knowledge of St Vincent's, as set out in paragraphs 139(a) and (b) above; and
- (4) the failure by St Vincent's to direct Group Members not to perform the overtime set out in paragraph 138 above, as set out in paragraph 139(c) above.

142. In the premises, Group Members were entitled to be paid overtime for the ward round preparation overtime they worked as set out in paragraph 138 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

143. By reason of the matters alleged in paragraphs 140 and 142 above, St Vincent's has contravened:

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

144. By reason of the matters in the paragraph above, St Vincent's has contravened s 50 of the FW Act.

## **E2 Ward round overtime**

145. Some or all Group Members, in the course of their employment by St Vincent's during the Relevant Period, were subject to a direction to attend 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 Group Member to undertake a ward

round commencing at or immediately before or after a Group Member'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 17(b) above, where ward rounds were undertaken in a particular ward or department of St Vincent's Hospital.

146. Each Group Member subject to the direction in paragraph 145 above worked overtime in excess of rostered hours to prepare for ward rounds, in accordance with that direction.
147. In respect of each Group Member in paragraph 146 above, St Vincent's:
- (a) knew that there was insufficient time during rostered hours to undertake ward rounds, in accordance with the direction in paragraph 145 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 St Vincent's is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 145 above;
  - (2) the tasks necessary to undertake ward rounds;
  - (3) the rostered hours for each ward where ward rounds were undertaken; and
  - (4) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).
148. St Vincent's 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 146 above worked by them.

149. 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 St Vincent’s in giving the direction set out in paragraph 145 above;
- (3) the knowledge of St Vincent’s, as set out in paragraph 147(a) and 160(b) above; and
- (4) the failure by St Vincent’s to direct Group Members not to perform the overtime set out in paragraph 146 above, as set out in paragraph 147(c) above.

150. In the premises, Group Members were entitled to be paid overtime for the ward round overtime they worked as set out in paragraph 146 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

151. By reason of the matters alleged in paragraphs 148 and 150 above, St Vincent’s has contravened:

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

152. By reason of the matters in the paragraph above, St Vincent’s has contravened s 50 of the FW Act.

### **E3 Handover overtime**

153. Some or all Group Members, in the course of their employment by St Vincent’s 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 Group Member to conduct a handover commencing at or immediately before or after a Group Member'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 17(c) above, where handover was conducted in a particular ward or department of St Vincent's Hospital.

154. Each Group Member subject to the direction in paragraph 153 above worked overtime in excess of rostered hours to conduct handover, in accordance with that direction
155. In respect of each Group Member in paragraph 154 above, St Vincent's:
- (a) knew that there was insufficient time during rostered hours to conduct handover, in accordance with the direction in paragraph 153 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 St Vincent's is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 153 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;
  - (4) the tasks necessary to conduct handover; and
  - (5) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).
156. St Vincent's 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 154 above worked by them.

157. 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 St Vincent’s in giving the direction set out in paragraph 153 above;
- (3) the knowledge of St Vincent’s, as set out in paragraph 155(a) and (b) above; and
- (4) the failure by St Vincent’s to direct Group Members not to perform the overtime set out in paragraph 154 above, as set out in paragraph 155(c) above.

158. In the premises, Group Members were entitled to be paid overtime for the handover overtime they worked as set out in paragraph 154 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

159. By reason of the matters alleged in paragraphs 156 and 158 above, St Vincent’s has contravened:

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

160. By reason of the matters in the paragraph above, St Vincent’s has contravened s 50 of the FW Act.

#### **E4 Medical records overtime**

161. Some or all Group Members, in the course of their employment by St Vincent's 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 17(d) above, where medical records were completed in a particular ward or department of St Vincent's Hospital.

162. Each Group Member subject to the direction in paragraph 161 above worked overtime in excess of rostered hours to complete medical records, in accordance with that direction.
163. In respect of each Group Member in paragraph 162 above, St Vincent's:
- (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the direction in paragraph 161 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 St Vincent's is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 161 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;
- (3) the rostered hours for each ward or department where medical records were required to be completed; and

- (4) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

164. St Vincent's 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 162 above worked by them.

165. The medical records overtime worked by the 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 St Vincent's in giving the direction in paragraph 161 above;
- (3) the knowledge of St Vincent's, as set out in paragraphs 163(a) and (b) above; and
- (4) the failure by St Vincent's to direct Group Members not to perform the overtime set out in paragraph 162 above, as set out in paragraph 163(c) above.

166. In the premises, Group Members were entitled to be paid overtime for the medical records overtime they worked, as set out in paragraph 162 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

167. By reason of the matters alleged in paragraphs 164 and 166 above, Western Health has contravened:

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

168. By reason of the matters in the paragraph above, St Vincent's has contravened s 50 of the FW Act.

#### **E5 Outpatient care overtime**

169. Some or all Group Members, in the course of their employment by St Vincent's during the Relevant Period, were subject to a direction to provide medical services outside of rostered hours to outpatients who had appointments or were referred to a clinic.

#### **Particulars**

Directions were sometimes oral and in any event are to be implied.

Oral directions were given, from time to time, by a Group Member's supervisor requesting that they attend to an outpatient in a clinic.

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

- (1) the matters in paragraph 17(e) above; and
- (2) the expectation that Group Members would provide medical services to outpatients in a clinic, as part of the medical services performed by those Group Members in that ward or department

170. Each Group Member subject to the direction in paragraph 169 above worked overtime in excess of rostered hours to provide medical services to outpatients, accordance with that direction.

171. In respect of each Group Member in paragraph 170 above, St Vincent's:

- (a) knew that there was insufficient time during rostered hours to attend to patients in outpatient clinics in accordance with the direction in paragraph 169 above;
- (b) knew that Group Members worked overtime to provide medical care to outpatients in clinics;
- (c) did not direct Group Members not to perform outpatient care overtime.

### **Particulars**

The knowledge of St Vincent's is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 169 above;
- (2) the patient load in outpatient clinics;
- (3) the tasks required for the provision of care to outpatients in a clinic;
- (4) the rostered hours for each outpatient clinic where Group Members were rostered to work; and
- (5) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

172. St Vincent's 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 outpatient care overtime in paragraph 170 above worked by them.

173. The outpatient care 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 Group Members was the provision of medical services which included providing care to patients in clinics;
- (2) the conduct of St Vincent's in giving the direction set out in paragraph 169 above;
- (3) the knowledge of St Vincent's, as set out in paragraphs 171(a) and 171(b) above; and

- (4) the failure by St Vincent's to direct Group Members not to perform the overtime set out in paragraph 170 above, as set out in paragraph 171(c) above.

174. In the premises, Group Members were entitled to be paid overtime for the outpatient care overtime that they worked as set out in paragraph 170 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

175. By reason of the matters alleged in paragraphs 172 and 174 above, St Vincent's has contravened:

- (a) clause 32.2 of the 2013 Agreement; and
- (b) clause 26.2 of the 2018 Agreement.

176. By reason of the matters in the above paragraph, St Vincent's has contravened s 50 of the FW Act.

## **E6 Medical emergencies overtime**

177. Some or all Group Members, in the course of their employment by St Vincent's during the Relevant Period, were subject to a direction to attend to medical emergencies outside of rostered hours.

### **Particulars**

The directions were sometimes oral, and in any event are to be implied.

Oral directions were given from time to time by a Group Member's supervisor directing the Group Member to attend to medical emergencies commencing before a Group Member's rostered start time, or after a Group Member's rostered finish time, which necessitated working outside rostered hours.

Insofar as it was implied, it was implied by the matters in paragraph 17(j) above, at a particular ward or department of St Vincent's Hospital.

178. Each Group Member subject to the direction in paragraph 177 above, worked overtime in excess of rostered hours to attend to medical emergencies, in accordance with that direction.

179. In respect of each Group Member in paragraph 178 above, St Vincent's:

- (a) knew that there was insufficient time during rostered hours to attend medical emergencies, in accordance with the direction in paragraph 177 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 St Vincent's is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 201 above;
- (2) the tasks necessary to attend to medical emergencies;
- (3) the rostered hours for each ward or department where other medical services were required to be performed; and
- (4) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

180. St Vincent's 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 178 above worked by them.

181. 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 Group Member was the provision of medical services which included attending to medical emergencies;
- (2) the conduct of St Vincent's in giving the direction set out in paragraph 201 above;
- (3) the knowledge of St Vincent's as set out in paragraphs 203(a) and 203(b) above; and
- (4) the failure by St Vincent's to direct Group Members not to perform the overtime set out in paragraph 196 above, as set out in paragraph 203(c) above.

182. In the premises, Group Members were entitled to be paid overtime for the medical emergency overtime they worked as set out in paragraph 178 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

183. By reason of the matters alleged in paragraphs 180 and 182 above, St Vincent's has contravened:

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

184. By reason of the matters in the paragraph above, St Vincent's has contravened s 50 of the FW Act.

## **E7 Medical procedures preparation overtime**

185. Some or all Group Members, in the course of their employment with St Vincent's during the Relevant Period, were subject to a direction to prepare for medical procedures outside of rostered hours.

### **Particulars**

The directions were sometimes oral and in any event are to be implied.

Oral directions were given by a Group Member's supervisor directing the Group Member to prepare for medical procedures which commenced at or before a Group Member's rostered start time, or after a Group Member's rostered finish time, which necessitated working outside rostered hours.

Insofar as it was implied, it was implied by the matters in paragraph 17(g) above, at a particular ward or department of St Vincent's Hospital.

186. Each Group Member subject to the direction in paragraph 185 above, worked overtime in excess of rostered hours to prepare for medical procedures in accordance with that direction.
187. In respect of each Group Member in paragraph 186 above, St Vincent's:
- (a) knew that there was insufficient time during rostered hours to prepare for medical procedures in accordance with the direction in paragraph 185 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 St Vincent's is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 185 above;
- (2) the tasks necessary to prepare for medical procedures;
- (3) the rostered hours for each ward or department where other medical services were required to be performed; and
- (4) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

188. St Vincent's 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 186 above worked by them.
189. 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 Group Member was the provision of medical services which included preparing for medical procedures;
- (2) the conduct of St Vincent's in giving the direction set out in paragraph 185 above;
- (3) the knowledge of St Vincent's as set out in paragraphs 203(a) and 203(b) above; and
- (4) the failure by St Vincent's to direct Group Members not to perform the overtime set out in paragraph 186 above, as set out in paragraph 187(c) above.

190. In the premises, Group Members were entitled to be paid overtime for the medical procedures preparation overtime they worked as set out in paragraph 186 above, at the rates set out in clause 32.2.2 of the 2013 Agreement, and clause 36.32(c) of the 2018 Agreement.

191. By reason of the matters alleged in paragraphs 188 and 190 above, St Vincent's has contravened:

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

192. By reason of the matters alleged in the paragraph above, St Vincent's has contravened s 50 of the FW Act.

### **E8 Surgical procedures overtime**

193. Some or all Group Members, in the course of their employment by St Vincent's Health during the Relevant Period, were subject to a direction to complete surgical procedures outside of rostered hours.

### **Particulars**

Directions were sometimes oral and in any event are to be implied.

Oral directions were given by a Group Member's supervisor directing the Group Member assist with and complete surgical procedures after a Group Member's rostered finish time, which necessitated working outside rostered hours.

Insofar as it was implied, it was implied by the matters in paragraph 17(h) above, at a particular ward or department of St Vincent's Hospital.

194. Each Group Member subject to the direction in paragraph 193 above, worked overtime in excess of rostered hours to complete surgical procedures, in accordance with that direction.
195. In respect of each Group Member in paragraph 194 above, St Vincent's:
- (a) knew there was insufficient time during rostered hours to complete surgical procedures in accordance with the surgical procedures direction; and
  - (b) knew that Group Members performed surgical procedures overtime; and
  - (c) did not direct Group Members not to perform surgical procedures overtime.

### **Particulars**

The knowledge of St Vincent's is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 201 above; and
  - (2) the necessity of completing a surgical procedure once it had begun;
  - (3) the rostered hours for each ward or department where surgical procedures were performed; and
  - (4) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).
196. St Vincent's did not pay Group Member's 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 surgical procedures overtime in paragraph 194 above worked by them.

197. The surgical procedures 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 Group Member was the provision of medical services, which included completing surgical procedures;
- (2) the conduct of St Vincent’s in giving the direction set out in paragraph 193 above;
- (3) the knowledge of St Vincent’s as set out in paragraphs 203(a) and 203(b) above; and
- (4) the failure by St Vincent’s to direct Group Members not to perform the overtime set out in paragraph 194 above, as set out in paragraph 195(c) above.

198. In the premises, Group Members were entitled to be paid overtime for the surgical procedures overtime they worked, as set out in paragraph 194 above, at the rates set out in clause 32.2.2. of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

199. By reason of the matters alleged in paragraphs 196 and 198 above, St Vincent’s has contravened clause 32.2 of the 2013 Agreement and clause 36.2 of the 2018 Agreement.

200. By reason of the matters alleged in the above paragraph, St Vincent’s has contravened s 50 of the FW Act.

### **E10 Other medical services overtime**

201. Some or all Group Members, in the course of their employment by St Vincent’s during the Relevant Period, were subject to a direction to provide medical services (other than the medical services set out in paragraph 17(a) to (i) above) (**other medical services**) outside of rostered hours.

### **Particulars**

Directions were sometimes oral and in any event are to be implied.

Oral directions were given by a Group Member's supervisor directing the Group Member to provide other medical services commencing at or immediately before or after a Group Member'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 17(j) above, at a particular ward or department of St Vincent's Hospital.

202. Each Group Member subject to the direction in paragraph 201 above worked overtime in excess of rostered hours to provide other medical services in accordance with that direction.
203. In respect of each Group Member in paragraph 202 above, St Vincent's:
- (a) knew that there was insufficient time during rostered hours to provide other medical services in accordance with the direction in paragraph 201 above; and
  - (b) knew that Group Members worked overtime to provide other medical services; and
  - (c) did not direct Group Members not to perform other medical services overtime.

### **Particulars**

The knowledge of St Vincent's is to be implied from at least the following matters:

- (1) the direction pleaded in paragraph 201 above;
  - (2) the rostered hours for each ward or department where other medical services were required to be performed; and
  - (3) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).
204. St Vincent's 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 202 worked by them.

205. The other medical services overtime worked by the 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 Group Member was the provision of medical services;

(2) the conduct of St Vincent’s in giving the direction set out in paragraph 201 above;

(3) the knowledge of St Vincent’s as set out in paragraphs 203(a) and 203(b) above; and

(4) the failure by St Vincent’s to direct Group Members not to perform the overtime set out in paragraph 196 above, as set out in paragraph 203(c) above.

206. In the premises, Group Members were entitled to be paid overtime for the other medical services overtime they worked, as set out in paragraph 202 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2© of the 2018 Agreement.

207. By reason of the matters alleged in paragraphs 204 and 206 above, St Vincent’s has contravened:

(a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

208. By reason of the matters in the paragraph above, St Vincent’s has contravened s 50 of the FW Act.

**E7 Loss and damage**

209. Some or all Group Members suffered loss by reason of St Vincent's contraventions of s 50 of the FW Act.

**F GROUP MEMBERS' CLAIMS AGAINST ALFRED HEALTH**

210. Each Group Member, in the course of their employment by Alfred Health during the Relevant Period:

- (a) worked at one or more of the services operated by Alfred 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.

**F1 Ward round preparation overtime**

211. Some or all Group Members, in the course of their employment by Alfred 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 17(a) above, where ward rounds were conducted in a particular ward or department of a service operated by Alfred Health as set out in paragraph 1(d) above.

212. Each Group Member subject to the direction in paragraph 211 above worked hours in excess of rostered hours to prepare for ward rounds, in accordance with that direction.
213. In respect of each Group Member in paragraph 212 above, Alfred Health:

- (a) knew that there was insufficient time during rostered hours to prepare for ward rounds, in accordance with the direction in paragraph 211 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 Alfred Health is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 211 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;
- (5) that Group Members had completed ward round preparation when ward rounds commenced each morning; and
- (6) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

214. Alfred 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 212 above worked by them.

215. 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 Alfred Health in giving the direction set out in paragraph 211 above;
- (3) the knowledge of Alfred Health, as set out in paragraphs 213(a) and 213(b) above; and
- (4) the failure by Alfred Health to direct Group Members not to perform the overtime set out in paragraph 212 above, as set out in paragraph 213(c) above.

216. In the premises, Group Members were entitled to be paid overtime for the ward round preparation overtime they worked as set out in paragraph 212 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

217. By reason of the matters alleged in paragraphs 214 and 216 above, Alfred Health has contravened:

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

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

## **F2 Ward round overtime**

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

### **Particulars**

Directions were sometimes oral and in any event are to be implied.

Oral directions were given by a Group Member's supervisor directing the Group Member to undertake a ward round commencing at or immediately before or after a Group Member'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 17(b) above, where ward rounds were undertaken in a particular ward or department of a service operated by Alfred Health as set out in paragraph 1(d) above.

220. Each Group Member subject to the direction in paragraph 219 above worked overtime in excess of rostered hours to undertake ward rounds, in accordance with that direction.

221. In respect of each Group Member in paragraph 220 above, Alfred Health:

- (a) knew that there was insufficient time during rostered hours to undertake ward rounds, in accordance with the direction in paragraph 219 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 Alfred Health is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 219 above;
- (2) the tasks necessary to undertake ward rounds;
- (3) the rostered hours for each ward where ward rounds were undertaken; and
- (4) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

222. Alfred 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 220 above worked by them.

223. 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 Alfred Health in giving the direction set out in paragraph 219 above;
  - (3) the knowledge of Alfred Health, as set out in paragraphs 221(a) and 221(b) above; and
  - (4) the failure by Alfred Health to direct Group Members not to perform the overtime set out in paragraph 220 above, as set out in paragraph 221(c) above.
224. In the premises, Group Members were entitled to be paid overtime for the ward round overtime they worked as set out in paragraph 220 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.
225. By reason of the matters alleged in paragraphs 222 and 224 above, Alfred Health has contravened:
- (a) clause 32.2 of the 2013 Agreement; and
  - (b) clause 36.2 of the 2018 Agreement.
226. By reason of the matters in the paragraph above, Alfred Health has contravened s 50 of the FW Act.

### **F3 Handover overtime**

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

### **Particulars**

Directions were sometimes oral and in any event are to be implied.

Oral directions were given by a Group Member's supervisor directing the Group Member to conduct a handover commencing at or immediately before or after a Group Member'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 17(c) above, where handover was conducted in a particular ward or department of a service operated by Alfred Health as set out in paragraph 1(d) above.

228. Each Group Member subject to the direction in paragraph 227 above worked overtime in excess of rostered hours to conduct handover, in accordance with that direction
229. In respect of each Group Member in paragraph 228 above, Alfred Health:
- (a) knew that there was insufficient time during rostered hours to conduct handover, in accordance with the direction in paragraph 227 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 Alfred Health is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 227 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;
  - (4) the tasks necessary to conduct handover; and
  - (5) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).
230. Alfred 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 228 above worked by them.

231. 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 Alfred Health in giving the direction set out in paragraph 227 above;

(3) the knowledge of Alfred Health, as set out in paragraph 229(a) and 229(b) above; and

(4) the failure by Alfred Health to direct Group Members not to perform the overtime set out in paragraph 228 above, as set out in paragraph 229(c) above.

232. In the premises, Group Members were entitled to be paid overtime for the handover overtime they worked as set out in paragraph 228 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

233. By reason of the matters alleged in paragraphs 230 and 232 above, Alfred Health has contravened:

(a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

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

#### **F4 Medical records overtime**

235. Some or all Group Members, in the course of their employment by Alfred 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 17(d) above, where medical records were completed in a particular ward or department of a service operated by Alfred Health as set out in paragraph 1(d) above.

236. Each Group Member subject to the direction in paragraph 235 above worked overtime in excess of rostered hours to complete medical records, in accordance with that direction.
237. In respect of each Group Member in paragraph 236 above, Alfred Health:
- (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the direction in paragraph 235 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 Alfred Health is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 235 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;
- (3) the rostered hours for each ward or department where medical records were required to be completed; and

- (4) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

238. Alfred 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 236 worked by them.

239. The medical records overtime worked by the 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 Alfred Health in giving the direction in paragraph 235 above;
- (3) the knowledge of Alfred Health, as set out in paragraphs 237(a) and 237(b) above; and
- (4) the failure by Alfred Health to direct Group Members not to perform the overtime set out in paragraph 236 above, as set out in paragraph 237(c) above.

240. In the premises, Group Members were entitled to be paid overtime for the medical records overtime they worked, as set out in paragraph 236 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

241. By reason of the matters set out in paragraph 238 and 240 above, Alfred Health has contravened:

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

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

#### **F5 Outpatient care overtime**

243. Some or all Group Members, in the course of their employment by Alfred Health during the Relevant Period, were subject to a direction provide medical services outside of rostered hours to outpatients who had appointments or were referred to a clinic.

#### **Particulars**

The outpatient care direction was partly oral and is partly to be implied.

Insofar as it was oral, the direction was given, from time to time, by a Group Member's supervisor requesting that they attend to an outpatient in a clinic.

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

- (1) the matters in paragraph 17(e) above; and
- (2) the expectation that Group Members would provide medical services to outpatients in a clinic, as part of the medical services performed by those group members in that ward or department.

244. Each Group Member subject to the direction in paragraph 243 above worked overtime in excess of rostered hours to provide medical services to outpatients, in accordance with that direction.

245. In respect of each Group Member in paragraph 244 above, Alfred Health:

- (a) knew that there was insufficient time during rostered hours to attend to outpatients in clinics in accordance with the direction in paragraph 243 above;
- (b) knew that Group Members worked overtime to provide medical care to patients outpatients in clinics;
- (c) did not direct Group Members not to perform outpatient care overtime.

## Particulars

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

- (1) the direction pleaded in paragraph 243 above;
- (2) the patient load in outpatient clinics;
- (3) the tasks required for the provision of care to outpatients in a clinic;
- (4) the rostered hours for each outpatient clinic where Group Members were rostered to work; and
- (5) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

246. Alfred 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 outpatient care overtime in paragraph 244 above worked by them.

247. The outpatient care 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 Group Members was the provision of medical services which included providing care to outpatients in clinics;
- (2) the conduct of Alfred Health in giving the direction set out in paragraph 243 above;
- (3) the knowledge of Alfred Health, as set out in paragraphs 245(a) and 245(b) above; and

- (4) the failure by Alfred Health to direct Group Members not to perform the overtime set out in paragraph 244 above, as set out in paragraph 245(c) above.

248. In the premises, Group Members were entitled to be paid overtime for the outpatient clinic overtime that they worked as set out in paragraph 244 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

249. By reason of the matters alleged in paragraphs 246 and 248 above, Alfred Health has contravened:

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

- (b) clause 26.2 of the 2018 Agreement.

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

#### **F6 Medical emergencies overtime**

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

#### **Particulars**

Directions were sometimes oral and in any event are to be implied.

Oral directions were conveyed from time to time by a Group Member's supervisor directing the Group Member to attend to medical emergencies commencing before a Group Member's rostered start time, or after a Group Member's rostered finish time, which necessitated working outside rostered hours.

Insofar as it was implied, it was implied by the matters in paragraph 17(j) above, at a particular ward or department of a service operated by Alfred Health as set out in paragraph 1(d) above.

252. Each Group Member subject to the direction in paragraph 251 above, worked overtime in excess of rostered hours to attend to medical emergencies, in accordance with that direction.

253. In respect of each Group Member in paragraph 252 above, Alfred Health:

- (a) knew that there was insufficient time during rostered hours to attend medical emergencies, in accordance with the direction in paragraph 251 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 Alfred Health is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 251 above;
- (2) the tasks necessary to attend to medical emergencies;
- (3) the rostered hours for each ward or department where medical emergencies occurred; and
- (4) the fact that Group Members’ attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

254. Alfred 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 252 above worked by them.

255. 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 Group Member was the provision of medical services which included attending to medical emergencies;

- (2) the conduct of Alfred Health in giving the direction set out in paragraph 251 above;
- (3) the knowledge of Alfred Health as set out in paragraphs 203(a) and 253(b) above; and
- (4) the failure by Alfred Health to direct Group Members not to perform the overtime set out in paragraph 252 above, as set out in paragraph 253(c) above.

256. In the premises, Group Members were entitled to be paid overtime for the medical emergency overtime they worked as set out in paragraph 252 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

257. By reason of the matters alleged in paragraphs 254 and 255 above, Alfred Health has contravened:

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

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

#### **F7 Medical procedures preparation overtime**

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

#### **Particulars**

Directions were sometimes oral and in any event are to be implied.

Oral directions were given by a Group Member's supervisor directing the Group Member to prepare for medical procedures which commenced at before a Group Member's rostered start time, or after a Group Member's rostered finish time, which necessitated working outside rostered hours.

Insofar as it was implied, it was implied by the matters in paragraph 17(j) above, at a particular ward or department of a service operated by Alfred Health as set out in paragraph 1(d) above.

260. Each Group Member subject to the direction in paragraph 259 above, worked overtime in excess of rostered hours to prepare for medical procedures in accordance with that direction.
261. In respect of each Group Member in paragraph 260 above, Alfred Health:
- (a) knew that there was insufficient time during rostered hours to prepare for medical procedures in accordance with the direction in paragraph 259 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 Alfred Health is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 259 above;
- (2) the tasks necessary to prepare for medical procedures;  
and
- (3) the rostered hours for each ward or department where other medical services were required to be performed.

262. Alfred 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 260 above worked by them.
263. 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 Group Member was the provision of medical services which included preparing for medical procedures;
- (2) the conduct of Alfred Health in giving the direction set out in paragraph 259 above;
- (3) the knowledge of Alfred Health as set out in paragraphs 261(a) and 261(b) above; and
- (4) the failure by Alfred Health to direct Group Members not to perform the overtime set out in paragraph 260 above, as set out in paragraph 261(c) above.

264. In the premises, Group Members were entitled to be paid overtime for the medical procedures preparation overtime they worked as set out in paragraph 260 above, at the rates set out in clause 32.2.2 of the 2013 Agreement, and clause 36.32(c) of the 2018 Agreement.

265. By reason of the matters alleged in paragraphs 262 and 264 above, Alfred Health has contravened:

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

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

### **F8 Surgical procedures overtime**

267. Some or all Group Members, in the course of their employment by Alfred Health during the Relevant Period, were subject to a direction to complete surgical procedures outside of rostered hours.

### **Particulars**

Directions were sometimes oral and in any event are to be implied.

Oral directions were given by a Group Member's supervisor directing the Group Member assist with and complete surgical

procedures after a Group Member's rostered finish time, which necessitated working outside rostered hours.

Insofar as it was implied, it was implied by the matters in paragraph 17(j) above, at a particular ward or department of a service operated by Alfred Health as set out in paragraph 1(d) above.

268. Each Group Member subject to the direction in paragraph 267 above, worked overtime in excess of rostered hours to complete surgical procedures, in accordance with that direction.
269. In respect of each Group Member in paragraph 268 above, Alfred Health:
- (a) knew there was insufficient time during rostered hours to complete surgical procedures in accordance with the surgical procedures direction; and
  - (b) knew that Group Members performed surgical procedures overtime; and
  - (c) did not direct Group Members not to perform surgical procedures overtime.

### **Particulars**

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

- (1) the direction pleaded in paragraph 267 above; and
- (2) the necessity of completing a surgical procedure once it had begun;
- (3) the rostered hours for each ward or department where surgical procedures were performed; and
- (4) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

270. Alfred 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 surgical procedures overtime in paragraph 268 above worked by them.

271. The surgical procedures 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 Group Member was the provision of medical services, which included completing surgical procedures;
- (2) the conduct of Alfred Health in giving the direction set out in paragraph 267 above;
- (3) the knowledge of Alfred Health as set out in paragraphs 203(a) and 269(b) above; and
- (4) the failure by Alfred Health to direct Group Members not to perform the overtime set out in paragraph 268 above, as set out in paragraph 269(c) above.

272. In the premises, Group Members were entitled to be paid overtime for the surgical procedures overtime they worked, as set out in paragraph 268 above, at the rates set out in clause 32.2.2. of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

273. By reason of the matters alleged in paragraphs 270 and 272 above, St Vincent’s has contravened clause 32.2 of the 2013 Agreement and clause 36.2 of the 2018 Agreement.

274. By reason of the matters alleged in the above paragraph, St Vincent’s has contravened s 50 of the FW Act.

### **F9 Admissions overtime**

275. Some or all Group Members, in the course of their employment by Alfred Health during the Relevant Period, were subject to a direction to perform patient admissions into the ward or department where the Group Member was working, outside of rostered hours.

### **Particulars**

Directions were sometimes oral and in any event are to be implied.

Oral directions were in the form of a senior medical practitioner directing the Group Member to admit a patient to the ward or department where the Group Member was working.

Insofar as it was implied, it was implied by the matters in paragraph 17(j) above, at a particular ward or department of a service operated by Alfred Health as set out in paragraph 1(d) above.

276. Each Group Member subject to the direction in paragraph 275 above worked overtime in excess of rostered hours to admit patients, in accordance with that direction.
277. In respect of each Group Member in paragraph 276 above, Alfred Health:
- (a) knew that there was insufficient time during rostered hours to admit patients in accordance with the direction in paragraph 275 above; and
  - (b) knew that Group Members worked overtime to admit patients; and
  - (c) did not direct Group Members not to work overtime admitting patients.

### **Particulars**

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

- (1) the direction pleaded in paragraph 275 above;
- (2) the tasks necessary to complete patient admissions;
- (3) the rostered hours for each ward or department where patients were admitted; and
- (4) the fact that Group Members' attendance at the hospital was on at least some occasions recorded electronically by logs that were created as a result of Group Members using a swipe card to enter areas of the facility (*e.g.*, the bike shed or a building).

278. Alfred 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 admissions overtime in paragraph 276 worked by them.

279. The admissions 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 Group Member was the provision of medical services which included patient admissions;
- (2) the conduct of Alfred Health in giving the direction set out in paragraph 275 above;
- (3) the knowledge of Alfred Health as set out in paragraphs 285(a) and 277(b) above; and
- (4) the failure by Alfred Health to direct Group Members not to perform the overtime set out in paragraph 276 above, as set out in paragraph 277(c) above.

280. In the premises, Group Members were entitled to be paid overtime for the admissions overtime they worked, as set out in paragraph 276 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

281. By reason of the matters alleged in paragraphs 278 and 280 above, Alfred Health has contravened:

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

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

### **F10 Other medical services overtime**

283. Some or all Group Members, in the course of their employment by Alfred Health during the Relevant Period, were subject to a direction to provide medical services (other than the medical services set out in paragraph 17(a) to (i) above) (**other medical services**) outside of rostered hours.

### **Particulars**

Directions were sometimes oral and in any event are to be implied.

Oral directions were given by a Group Member's supervisor directing the Group Member to provide other medical services commencing at or immediately before or after a Group Member'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 17(j) above, at a particular ward or department of a service operated by Alfred Health as set out in paragraph 1(d) above.

284. Each Group Member subject to the direction in paragraph 283 above worked overtime in excess of rostered hours to provide other medical services in accordance with that direction.
285. In respect of each Group Member in paragraph 284 above, Alfred Health:
- (a) knew that there was insufficient time during rostered hours to provide other medical services in accordance with the direction in paragraph 283 above;
  - (b) knew that Group Members worked overtime to provide other medical services; and
  - (c) did not direct Group Members not to perform other medical services overtime.

### **Particulars**

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

- (1) the direction pleaded in paragraph 283 above; and
- (2) the rostered hours for each ward or department where other medical services were required to be performed.

286. Alfred 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 284 worked by them.

287. The other medical services overtime worked by the 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 Group Member was the provision of medical services;
- (2) the conduct of Alfred Health in giving the direction set out in paragraph 283 above;
- (3) the knowledge of Alfred Health as set out in paragraphs 285(a) and 285(b) above; and
- (4) the failure by Alfred Health to direct Group Members not to perform the overtime set out in paragraph 284 above, as set out in paragraph 285(c) above.

288. In the premises, Group Members were entitled to be paid overtime for the other medical services overtime they worked, as set out in paragraph 284 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

289. By reason of the matters alleged in paragraph 286 and 288 above, Alfred Health has contravened:

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

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

### **F7 Loss and damage**

291. Some or all Group Members suffered loss by reason of Alfred 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: ~~26 November~~ 21 December 2021



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Signed by Andrew Grech  
Lawyer for the Applicants

This pleading was prepared by Gordon Legal and settled by Jim Hartley 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: ~~26 November~~ 21 December 2021



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Signed by Andrew Grech  
Lawyer for the Applicants

## Schedule

VID 700 of 2021

Federal Court of Australia

District Registry: Victoria

Division: Fair Work

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

Second Applicant: **James Lisik**

First Respondent: **St Vincent's ~~Health~~ Hospital (Melbourne) Limited (ACN 052 110 755)**

Second Respondent: **Alfred Health**

Date: ~~26 November~~ 21 December 2021