

## NOTICE OF FILING

### Details of Filing

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File Title: THE AUSTRALIAN SALARIED MEDICAL OFFICERS FEDERATION &  
ANOR v MONASH HEALTH & ORS  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

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.

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## Amended Reply

VID 210 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

**Monash Health**  
First Respondent

**Latrobe Regional Hospital**  
Second Respondent

**Bairnsdale Regional Health Service**  
Third Respondent

Save for any admissions, the Applicants join issue with the Amended Defence dated ~~22 June 2021~~ 23 December 2022, and otherwise reply as follows:

1A. As to the allegation in paragraph 1(c)(ia) of the Amended Defence, the Applicants admit that the 2022 Agreement applied, relevantly, between 9 November 2022 and 17 November 2022.

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Filed on behalf of:	The Australian Salaried Medical Officers' Federation and Teak McPadden <b>(the Applicants)</b>		
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## **Bairnsdale Regional Health Service**

1B. To the allegations in paragraph 3(aa)(ii) of the Amended Defence:

- (a) the Applicants admit that between 9 January 2017 and 14 January 2018, Dr McPadden was employed pursuant to a contract of employment dated 13 August 2016;
- (b) the Applicants admit that the contract contained the clause numbers identified in paragraph 3(aa)(ii)(A) to (F) of the Amended Defence;
- (c) the Applicants otherwise deny the allegations in paragraph 3(aa)(ii) of the Amended Defence.

## **Monash Health**

1C. To the allegations in paragraph 3(a)(iii) of the Amended Defence:

- (a) the Applicants admit that between 5 February 2018 and 3 February 2019, Dr McPadden was employed pursuant to a contract of employment dated 30 November 2017;
- (b) the Applicants admit that the contract contained the clause numbers identified in paragraph 3(a)(iii)(A) and (B) of the Amended Defence;
- (c) the Applicants otherwise deny the allegations in paragraph 3(a)(iii) of the Amended Defence.

1D. To the allegations in paragraph 3(a)(iv) of the Amended Defence:

- (a) the Applicants admit that between 4 February 2019 and 2 February 2020, Dr McPadden was employed pursuant to a contract of employment dated 7 January 2019;
- (b) the Applicants admit that the contract contained the clause numbers identified in paragraph 3(a)(iv)(A) and (B) of the Amended Defence;
- (c) the Applicants otherwise deny the allegations in paragraph 3(a)(iv) of the Amended Defence.

1E. To the allegations in paragraph 3(a)(v) of the Amended Defence:

- (a) the Applicants admit that between 3 February 2020 and 31 January 2021, Dr McPadden was employed pursuant to a contract of employment dated 12 January 2020;
- (b) the Applicants admit that the contract contained the clause numbers identified in paragraph 3(a)(v)(A), (B), (C), and (D) (insofar as (D) is a reference to clause 24), of the Amended Defence;
- (c) the Applicants otherwise deny the allegations in paragraph 3(a)(v) of the Amended Defence.

### **Latrobe Regional Hospital**

1F. To the allegations in paragraph 3(b)(ii) of the Amended Defence:

- (a) the Applicants admit that between 16 April 2018 and 24 June 2018, Dr McPadden was employed pursuant to a contract of employment dated 27 March 2018;
- (b) the Applicants admit that the contract contained the following terms:

“Duties of your position. You must perform the duties outlined in the attached position description. Latrobe Regional Hospital may vary these duties from time to time. In addition, you must perform other duties which you are capable of performing, as required by Latrobe Regional Hospital”.

“HOSPITAL POLICIES. Latrobe Regional Hospital has various policies which apply to your employment. You must familiarise yourself with these policies. In particular: Health and Safety Policy, Social Media Policy, Procurement Policy, Grievance/Discipline Policy, Smokefree Hospital Policy, Workplace Conduct Policy, Security – Access Card Protocol.

You are required to carry out your duties and responsibilities at all times in accordance with the terms and conditions set out in this offer, the Victorian Public Sector Employees Code of Conduct, and Latrobe Regional Hospitals policies and protocols as varied from time to time.”

- (c) the Applicants otherwise deny the allegations in paragraph 3(b)(ii) of the Amended Defence.

1G. To the allegations in paragraph 3(b)(iii) of the Amended Defence:

- (a) the Applicants admit that between 3 September 2018 and 11 November 2018, Dr McPadden was employed pursuant to a contract of employment dated 27 August 2018;

- (b) the Applicants admit that the contract contained the following terms:

“Duties of your position. You must perform all duties as directed by Latrobe Regional Hospital. Latrobe Regional Hospital may vary your duties from time to time. In addition, you must perform other duties which you are capable of performing, as required by Latrobe Regional Hospital”.

“HOSPITAL POLICIES. Latrobe Regional Hospital has various policies which apply to your employment. You must familiarise yourself with these policies. In particular: Health and Safety Policy, Social Media Policy, Procurement Policy, Grievance/Discipline Policy, Smokefree Hospital Policy, Workplace Conduct Policy, Security – Access Card Protocol.

You are required to carry out your duties and responsibilities at all times in accordance with the terms and conditions set out in this offer, the Victorian Public Sector Employees Code of Conduct, and Latrobe Regional Hospitals policies and protocols as varied from time to time.”

- (c) the Applicants otherwise deny the allegations in paragraph 3(b)(iii) of the Amended Defence.

### **DA1 to DA2 Claims against Bairnsdale Regional Health Service**

1H. The Applicants do not know, and so cannot admit, the allegations in the Amended Defence at:

- (a) paragraph 18B(a)(i) to (iv);

- (b) paragraph 18V(a)(i) to (v).

1I. The Applicants admit the allegation in the Amended Defence at paragraph 18B(vi).

1J. The Applicants admit the allegation in the Amended Defence at paragraph 18V(vii).

**D1 to D2 Claims against Latrobe Regional Hospital**

1K. The Applicants do not know, and so cannot admit, the allegations in the Amended Defence at paragraph 20(a)(ii)(A).

1L. The Applicants admit the allegations in the Amended Defence at paragraph 20(a)(ii)(B).

1M. To the allegations in paragraph 37(a) and 71(a)(i) of the Amended Defence the applicants join issue and say that the position description for the position of ‘Hospital Medical Officer Emergency Department’, which was attached to Dr McPadden’s contracts of employment referred to in paragraphs 3(b)(ii)(A) and 3(b)(iii)(B) of the Amended Defence, contained the following:

“7 Duties/Responsibilities

*Clinical*

- Perform a rapid initial assessment of patients to determine if urgent intervention is required
- Complete a directed comprehensive patient history, and perform a thorough directed physical examination of a patient presenting to the ED
- Establish probable and differential diagnoses for patients presenting to the ED
- Order relevant investigations and accurately interpret their results
- Prioritize [sic] treatment of multiple patients presenting simultaneously according to urgency
- Initiate appropriate immediate management, including pain relief and interventions for patient comfort and safety
- Formulate a management plan for patients while in Emergency
- Determine which patients and types of conditions require hospital admission under appropriate specialty units versus those which may best be managed within outpatient or community settings, including Hospital in the Home and other health facilities
- Design a discharge plan containing clearly identified and attainable goals and addressing strategies for maintaining optimal health
- Report to the Emergency Physician on duty for advice on assessment and management.

1N. The Applicants do not know, and so cannot admit, the allegations in the Amended Defence at paragraph 54(a)(ii)(A).

1O. The Applicants admit the allegations in the Amended Defence at paragraph 54(a)(ii)(B).

### **D3 to D4 Claims against Monash Health**

1P. The Applicants do not know, and so cannot admit, the allegations in the Amended Defence at:

(a) paragraph 88(a)(ii)(A);

(b) paragraph 122(a)(ii)(A).

### **Claims against all Respondents**

1. To the allegations in Parts DA1, D and E of the Amended Defence regarding any overtime policy of the Respondents (as defined in paragraphs 18F(a)(i) (Bairnsdale), 24(a)(i) (Latrobe), and 90(a)(i) (Monash))~~‘Overtime Protocol’~~, the Applicants join issue and say that:

~~(a) — clause 36.3(a) of the 2018 Agreement and clause 32.3.1 of the 2013 Agreement provide that the Respondents must have a protocol “whereby overtime that cannot be authorised in advance but has been worked will be paid if it meets appropriate, clearly defined criteria” (Overtime Protocol);~~

~~(b) — any such Overtime Protocol can only apply to the circumstances in clause 36.3(a) of the 2018 Agreement and clause 32.3.1 of the 2013 Agreement, namely to overtime “that cannot be authorised in advance”;~~

~~(c) — where the claims made by the Second Applicant and Group Members in the Statement of Claim are claims for overtime that has been authorised in advance, the Overtime Protocol cannot apply to those claims;~~

~~(d) further and alternatively to paragraph 1(c) above, clause 36.3 of the 2018 Agreement and clause 32.3.1 of the 2013 Agreement do not, on their proper construction, impose any obligation on the Second Applicant or any Group Member;~~

- (e) ~~further or alternatively to paragraphs 1(b) and 1(c) above,~~ clause 36.3 of the 2018 Agreement and clause 32.3.1 of the 2013 Agreement do not, on their proper construction, exhaustively provide the ways in which unrostered overtime can be authorised by a Health Service including the Respondents;
  - (f) to the extent there is any conflict between the terms of the 2013 Agreement and the 2018 Agreement, and the terms of ~~an Overtime Protocol~~ any overtime policy of the Respondents concerning an employee's entitlement to be paid for working authorised hours in excess of rostered hours, the terms of the 2013 Agreement and the 2018 Agreement prevail ~~and the Overtime Protocol is of no effect;~~
  - (g) to the extent there is any conflict between the terms of the 2013 Agreement and the 2018 Agreement, and the terms of any employment contract between the Second Applicant and Group Members, and the Respondents, concerning an employee's entitlement to be paid for working authorised hours in excess of rostered hours, the terms of the 2013 Agreement and the 2018 Agreement prevail;
  - (h) to the extent there is any conflict between the terms of the 2013 Agreement and the 2018 Agreement, and the terms of any direction or advice given to the Second Applicant and Group Members by the Respondents, concerning an employee's entitlement to be paid for working authorised hours in excess of rostered hours, the terms of the 2013 Agreement and the 2018 Agreement prevail.
2. To the allegations in paragraphs 37(a), 71(a)(i), 105(a)(i), 139(a)(i), 189(a)(i), and 247(a)(i) of the Amended Defence, the Applicants say that 'Doctors in Training' includes persons employed by the Respondents and classified as a Hospital Medical Officer, Medical Officer, and Registrar under the 2013 Agreement and 2018 Agreement, as alleged in paragraph 1 of the Statement of Claim.
3. To the whole of the allegations in Part G of the Amended Defence (Estoppel by Conduct), the Applicants refer to and repeat paragraph 1 above and say further that:
- (a) as pleaded in the Amended Statement of Claim, the Respondents directed the Second Applicant and Group Members to perform the work pleaded, knew that

the Second Applicant and Group Members could not perform that work during rostered hours, knew that the Second Applicant and Group Members worked overtime to perform that work, and did not direct them not to do such overtime, and as a result:

- (i) the Respondents cannot have made the assumption pleaded in paragraphs 278, ~~and 291~~ and 304 of the Amended Defence;
- (ii) the conduct of the Second Applicant and Group Members cannot have amounted to a representation as pleaded at paragraphs 278A, 280, 291A, ~~and 292~~ 293, 305 and 307 of the Amended Defence;
- (iii) the Respondents cannot have acted in reliance on any such assumption or representation, as pleaded at paragraphs 281, ~~and 294~~ and 308 of the Amended Defence, or in any event any such reliance cannot have been reasonable, as pleaded at paragraphs 283, ~~and 295~~ and 309 of the Amended Defence;
- (iv) the Respondents' failure to take steps as pleaded at paragraphs 281(c) and 283(b), and 294(c) ~~and 296(b),~~ 308(c) and 310(b) cannot be explained by any such assumption or representation.

(b) in any event, estoppel is unavailable as a matter of law to defeat a claim of contravention of section 50 of the FW Act.

4. Further, as to the allegations in paragraphs 283, ~~and 296,~~ and 310 the Applicants say that the Respondents have had the benefit of the work performed during unrostered overtime by the Second Applicant and Group Members.

Date: ~~6 July 2021~~ 17 February 2023



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Signed by Andrew Grech  
Lawyer for the Applicants

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

## Certificate of lawyer

I, Andrew Grech, certify to the Court that, in relation to the Reply 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: ~~6 July 2021~~ 17 February 2023



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Signed by Andrew Grech  
Lawyer for the Applicants

## Schedule

VID 210 of 2021

Federal Court of Australia

District Registry: Victoria

Division: Fair Work

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

Second Applicant: **Teak McPadden**

First Respondent: **Monash Health**

Second Respondent: **Latrobe Regional Hospital**

Third Respondent: **Bairnsdale Regional Health Service**