

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application Starting a Representative Proceeding under Part IVA
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File Number: VID210/2021
File Title: THE AUSTRALIAN SALARIED MEDICAL OFFICERS FEDERATION &
ANOR v MONASH HEALTH & ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



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.

The date of the filing of the document is determined pursuant to the Court's Rules.



Amended Originating application starting a representative proceeding
under Part IVA of the Federal Court of Australia Act 1976
(amendments made on 17 November 2022 pursuant to order 2 of the Hon.
Justice M Bromberg's Order dated 11 November 2022)

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

To the Respondents

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

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

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

Time and date for hearing:

Place: Federal Court of Australia

Filed on behalf of:	The Australian Salaried Medical Officers' Federation and Teak McPadden (the Applicants)		
Prepared by:	Andrew Grech		
Law firm:	Gordon Legal		
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Date:

305 William Street
Melbourne, Victoria, 300
~~May 2021~~

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



Details of claim

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

Against the First Respondent

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

Against the Second Respondent

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



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

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

Against the Third Respondent:

- 14A. A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) that the Third Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay Group Members overtime as required by clause 32.2 of the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013*.
- 14B. A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) that the Third Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay Group Members overtime as required by clause 36.2 of the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021*.
- 14C. An order pursuant to s 545 of the *Fair Work Act 2009* (Cth) that the Third Respondent pay compensation to Group Members for the loss suffered by each of them because of the contraventions described in paragraphs 14A and 14B above.
- 14D. An order pursuant to s 547 of the *Fair Work Act 2009* (Cth) for interest on any amount ordered to be paid to Group Members under paragraph 14C above.
- 14E. An order pursuant to s 546(1) of the *Fair Work Act 2009* (Cth) that the Third Respondent pay pecuniary penalties for each contravention of the *Fair Work Act 2009* (Cth) described above.



14F. An order pursuant to s 546(3) of the *Fair Work Act 2009* (Cth) that any penalty ordered by the Court pursuant to s 546(1) be paid to the First Applicant.

14G. Any other orders as the Court considers appropriate.

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

Against the First Respondent:

15. A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) that the First Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay the Second Applicant overtime as required by clause 36.2 of the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021*.
16. An order pursuant to s 545 of the *Fair Work Act 2009* (Cth) that the First Respondent pay compensation to the Second Applicant for the loss suffered by him because of the contraventions described in paragraph 15 above.
17. An order pursuant to s 547 of the *Fair Work Act 2009* (Cth) for interest on any amount ordered to be paid to the Second Applicant under paragraph 16 above.
18. An order pursuant to s 546(1) of the *Fair Work Act 2009* (Cth) that the First Respondent pay pecuniary penalties for each contravention of the *Fair Work Act 2009* (Cth) described above.
19. An order pursuant to s 546(3) of the *Fair Work Act 2009* (Cth) that any penalty ordered by the Court pursuant to s 546(1) be paid to the First Applicant.
20. Any other orders as the Court considers appropriate.

Against the Second Respondent:

21. A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) that the Second Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay the Second Applicant overtime as required by clause 32.2 of the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013* and clause 36.2 of the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021*.
22. An order pursuant to s 545 of the *Fair Work Act 2009* (Cth) that the Second Respondent pay compensation to the Second Applicant for the loss suffered by him because of the contraventions described in paragraph 21 above.



23. An order pursuant to s 547 of the *Fair Work Act 2009* (Cth) for interest on any amount ordered to be paid to the Second Applicant under paragraph 22 above.
24. An order pursuant to s 546(1) of the *Fair Work Act 2009* (Cth) that the Second Respondent pay pecuniary penalties for each contravention of the *Fair Work Act 2009* (Cth) described above.
25. An order pursuant to s 546(3) of the *Fair Work Act 2009* (Cth) that any penalty ordered by the Court pursuant to s 546(1) be paid to the First Applicant.
26. Any other orders as the Court considers appropriate.

Against the Third Respondent:

- 26A. A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) that the Third Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay the Second Applicant overtime as required by clause 32.2 of the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013*.
- 26B. An order pursuant to s 545 of the *Fair Work Act 2009* (Cth) that the Third Respondent pay compensation to the Second Applicant for the loss suffered by him because of the contraventions described in paragraph 26A above.
- 26C. An order pursuant to s 547 of the *Fair Work Act 2009* (Cth) for interest on any amount ordered to be paid to the Second Applicant under paragraph 26B above.
- 26D. An order pursuant to s 546(1) of the *Fair Work Act 2009* (Cth) that the Third Respondent pay pecuniary penalties for each contravention of the *Fair Work Act 2009* (Cth) described above.
- 26E. An order pursuant to s 546(3) of the *Fair Work Act 2009* (Cth) that any penalty ordered by the Court pursuant to s 546(1) be paid to the First Applicant.
- 26F. Any other orders as the Court considers appropriate.



Questions Common to Claims of Group Members

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

Duties of Group Members

1. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, the preparation for ward rounds before the commencement of ward rounds.
2. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, the performance of ward rounds.
3. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, receiving or handing over information about patients between medical staff at the start or end of a shift.
4. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, the preparation of patients for medical procedures.
5. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, attending to medical emergencies or critical patient care.
6. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, the completion of patient medical records, including discharge summaries, in a timely manner.
7. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, carrying out such other duties necessary for the provision of medical services by the Doctor.

Authorisation

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



Training Enterprise Agreement 2018–2021, is capable of being implied by the conduct of the First Respondent, ~~and~~ the Second Respondent and the Third Respondent.

Ward round preparation

10. If the answer to common questions (1), (8) and (9) above is yes, whether authorisation to work overtime in excess of rostered hours by preparing for ward rounds before the commencement of ward rounds can be implied from some or all of:
- (a) the work performed by Group Members included ward round preparation before the commencement of ward rounds;
 - (b) a direction given by ~~either or both~~ any or all of the First Respondent, ~~and~~ the Second Respondent and the Third Respondent to Group Members to prepare for ward rounds before the commencement of ward rounds;
 - (c) the knowledge of ~~either or both~~ any or all of the First Respondent, ~~and~~ the Second Respondent and the Third Respondent that there was insufficient time during rostered hours to prepare for ward rounds, in accordance with the direction in (b) above;
 - (d) the knowledge of ~~either or both~~ any or all of the First Respondent, ~~and~~ the Second Respondent and the Third Respondent that Group Members worked overtime to prepare for ward rounds;
 - (e) the failure by ~~either or both~~ any or all of the First Respondent, ~~and~~ the Second Respondent and the Third Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

Ward rounds

11. If the answer to common questions (2), (8) and (9) above is yes, whether authorisation to work overtime in excess of rostered hours by undertaking ward rounds in excess of rostered hours can be implied from some or all of:
- (a) the work performed by Group Members included undertaking ward rounds;
 - (b) a direction given by ~~either or both~~ any or all of the First Respondent, ~~and~~ the Second Respondent and the Third Respondent to Group Members to undertake ward rounds outside of rostered hours;



- (c) the knowledge of ~~either or both~~ any or all of the First Respondent, ~~and the Second Respondent~~ and the Third Respondent that there was insufficient time during rostered hours to undertake ward rounds in accordance with the direction in (b) above;
- (d) the knowledge of ~~either or both~~ any or all of the First Respondent, ~~and the Second Respondent~~ and the Third Respondent that Group Members worked overtime to undertake ward rounds;
- (e) the failure by ~~either or both~~ any or all of the First Respondent, ~~and the Second Respondent~~ and the Third Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

Handover

12. If the answer to common questions (3), (8) and (9) above is yes, whether authorisation to work overtime in excess of rostered hours by conducting handover outside of rostered hours can be implied from some or all of:
- (a) the work performed by Group Members included conducting handover;
 - (b) a direction given by ~~either or both~~ any or all of the First Respondent, ~~and the Second Respondent~~ and the Third Respondent to Group Members to conduct handover outside of rostered hours;
 - (c) the knowledge of ~~either or both~~ any or all of the First Respondent, ~~and the Second Respondent~~ and the Third Respondent that there was insufficient time during rostered hours to conduct handover in accordance with the direction in (b) above;
 - (d) the knowledge of ~~either or both~~ any or all of the First Respondent, ~~and the Second Respondent~~ and the Third Respondent that Group Members worked overtime to undertake ~~ward rounds~~ handover;
 - (e) the failure by ~~either or both~~ any or all of the First Respondent, ~~and the Second Respondent~~ and the Third Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.



Medical procedures preparation

13. If the answer to common questions (4), (8) and (9) above is yes, whether authorisation to work overtime in excess of rostered hours by preparing for medical procedures outside of rostered hours can be implied from some or all of:
- (a) the work performed by Group Members included preparing for medical procedures;
 - (b) a direction given by ~~either or both~~ any or all of the First Respondent, ~~and~~ the Second Respondent and the Third Respondent to Group Members to prepare for medical procedures outside of rostered hours;
 - (c) the knowledge of ~~either or both~~ any or all of the First Respondent, ~~and~~ the Second Respondent and the Third Respondent that there was insufficient time during rostered hours to prepare for medical procedures in accordance with the direction in (b) above;
 - (d) the knowledge of ~~either or both~~ any or all of the First Respondent, ~~and~~ the Second Respondent and the Third Respondent that Group Members worked overtime to prepare for medical procedures;
 - (e) the failure by ~~either or both~~ any or all of the First Respondent, ~~and~~ the Second Respondent and the Third Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

Medical emergencies

14. If the answer to common questions (5), (8) and (9) above is yes, whether authorisation to work overtime in excess of rostered hours by attending to medical emergencies outside of rostered hours can be implied from some or all of:
- (a) the work performed by Group Members included attending to medical emergencies;
 - (b) a direction given by ~~either or both~~ any or all of the First Respondent, ~~and~~ the Second Respondent and the Third Respondent to Group Members to attend to medical emergencies outside of rostered hours;
 - (c) the knowledge of ~~either or both~~ any or all of the First Respondent, ~~and~~ the Second Respondent and the Third Respondent that there was insufficient time during rostered hours to attend to medical emergencies in accordance with the direction in (b) above;



- (d) the knowledge of ~~either or both~~ any or all of the First Respondent, ~~and the Second Respondent~~ and the Third Respondent that Group Members worked overtime to attend to medical emergencies;
- (e) the failure by ~~either or both~~ any or all of the First Respondent, ~~and the Second Respondent~~ and the Third Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

Medical records

15. If the answer to common questions (6), (8) and (9) above is yes, whether authorisation to work overtime in excess of rostered hours by completing medical records in a timely manner can be implied from some or all of:
- (a) the work performed by Group Members included completing medical records in a timely manner;
 - (b) a direction given by ~~either or both~~ any or all of the First Respondent, ~~and the Second Respondent~~ and the Third Respondent to Group Members to complete medical records in a timely manner;
 - (c) the knowledge of ~~either or both~~ any or all of the First Respondent, ~~and the Second Respondent~~ and the Third Respondent that there was insufficient time during rostered hours to complete medical records in a timely manner in accordance with the direction in (b) above;
 - (d) the knowledge of ~~either or both~~ any or all of the First Respondent, ~~and the Second Respondent~~ and the Third Respondent that Group Members worked overtime to complete medical records;
 - (e) the failure by ~~either or both~~ any or all of the First Respondent, ~~and the Second Respondent~~ and the Third Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

Other medical services

16. If the answer to common questions (7), (8) and (9) above is yes, whether authorisation to work overtime in excess of rostered hours by providing medical services (other than the



medical services identified in common questions (1) to (6) above) (**other medical services**) outside of rostered hours can be implied from some or all of:

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

Representative action

1. The Applicants bring this application as representative parties under Part IVA of the *Federal Court of Australia Act 1976* (Cth).
2. The group members to whom this proceeding relates are persons who, ~~during the period 27 April 2015 and 26 April 2021:~~
 - (a) were employed by the First Respondent (**Monash**) during the period 27 April 2015 and 26 April 2021; and
 - (b) worked at one or more of the following services operated by Monash:
 - (i) Casey Hospital, at 62-70 Kangan Drive, Berwick;
 - (ii) Dandenong Hospital, at 135 David Street, Dandenong;
 - (iii) Kingston Centre, corner Warrigal Road and Heatherton Road, Cheltenham;
 - (iv) Monash Children's Hospital, at 246 Clayton Road, Clayton;



- (v) Monash Medical Centre, at 246 Clayton Road, Clayton; and
 - (vi) Moorabbin Hospital, at 823-865 Centre Road, Bentleigh East;
- (c) and/or were employed by the Second Respondent, Latrobe Regional Hospital (**Latrobe**) during the period 27 April 2015 and 26 April 2021 and worked at the hospital at 10 Village Avenue, Traralgon;
- (cc) and/or were employed by the Third Respondent, Bairnsdale Regional Health Service (**Bairnsdale**) during the period 18 November 2016 and 17 November 2022 and worked at the hospital at 122 Day Street, Bairnsdale;
- (d) were, when employed by ~~either or both~~ any or all of Monash, ~~and~~ Latrobe and Bairnsdale 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); and
- (e) were, when employed by ~~either or both~~ any or all of Monash, ~~and~~ Latrobe and Bairnsdale, 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
- (b) in the course of their employment by ~~either or both~~ any or all of Monash, ~~and~~ Latrobe and Bairnsdale, worked hours in excess of their ordinary hours, or rostered hours (**unrostered overtime**); and
- (c) were not paid for the unrostered overtime hours worked.
3. As at the date of commencement of this proceeding, there are seven or more persons who have claims against the First Respondent, and claims against the Second Respondent, and

**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**

Date: ~~26 April 2021~~ 17 November 2022