

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/12/2021 11:57:24 AM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Defence - Form 33 - Rule 16.32
File Number:	VID611/2021
File Title:	THE AUSTRALIAN SALARIED MEDICAL OFFICERS' FEDERATION & ANOR v EASTERN HEALTH & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 24/12/2021 11:57:28 AM 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 33
Rule 16.32

Defence

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

No. VID611/2021

The Australian Salaried Medical Officers' Federation

First applicant

Wendy Hodge

Second applicant

Eastern Health

First respondent

The Royal Women's Hospital

Second respondent

By way of defence to the statement of claim dated 22 October 2021 (**Statement of Claim**), the respondents say as follows:

Notes:

- A. Unless otherwise defined, capitalised terms have the meaning ascribed to them in the Statement of Claim.

A THE PARTIES

A1 The applicants and the Group Members

1. As to paragraph 1, the respondents:

- (a) admit that the first applicant and the second applicant purport to bring this claim pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth);
- (b) in relation to the second applicant (**Dr Hodge**):
 - (i) admit the allegations in sub-paragraphs (c) to (g);

Filed on behalf of: The respondents

Prepared by: Andrew Morrison

Law firm: Clayton Utz

Address for service:

Level 18
333 Collins Street
Melbourne VIC 3000
DX 38451 333 Collins VIC

Contact details:

Tel: (03) 9286 6000
Fax: (03) 9629 8488
Contact: Andrew Morrison
Email: amorrison@claytonutz.com
Ref: 637/17587/81013097.002

- (ii) do not admit the allegations in sub-paragraph (h) and (i);
- (c) in relation to the alleged Group Members:
 - (i) admit that there were persons with the characteristics alleged in sub-paragraphs (c) to (g) (**Doctors in Training**);
 - (ii) otherwise do not admit the allegations in paragraph 1.
- 2. The respondents admit paragraph 2.
- 3. As to paragraph 3:
 - (a) Eastern Health admits the allegations in sub-paragraph 3(a);
 - (b) the Royal Women's Hospital (**RWH**) admits the allegations in sub-paragraphs (3)(b).
- 4. As to paragraph 4, the respondents:
 - (a) deny that the Group Members have claims against them as pleaded in the Statement of Claim for the reasons set out below;
 - (b) otherwise do not know and therefore cannot admit the allegations in paragraph 4.

A2 The respondents

- 5. As to paragraph 5:
 - (a) Eastern Health admits the allegations in paragraph 5;
 - (b) RWH does not plead to paragraph 5 as it contains no allegation of material fact against it.
- 6. As to paragraph 6:
 - (a) RWH admits the allegations in paragraph 6;
 - (b) Eastern Health does not plead to paragraph 6 as it contains no allegation of material fact against it.

B THE AGREEMENTS

B1 The 2013 Agreement

Application and coverage

- 7. The respondents admit paragraph 7.

Doctor Responsibilities

8. The respondents admit paragraph 8.

Hours of Work, Rostering, and Overtime

9. The respondents admit paragraph 9.

10. The respondents admit paragraph 10.

11. As to paragraph 11, the respondents:

- (a) admit that the 2013 Agreement contains clauses 32.1, 32.2.1 and 32.2.2 as pleaded in the Statement of Claim;
- (b) say further that the 2013 Agreement also contains the following clauses:

32.2.3 *Overtime may be converted into carer's leave in accordance with sub clause 47.3.3.*

32.3 *Protocols – Authorised Un-rostered Overtime*

32.3.1 *A Protocol must exist in the Hospital whereby overtime that cannot be authorised in advance but has been worked will be paid if it meets appropriate, clearly defined criteria.*

32.3.2 *The protocols described in sub clause 32.3.1 will be structured on the following basis:*

- (a) *the Doctor has performed the overtime due to a demonstrable clinical need and that need could not have been met by some other means;*
- (b) *authorisation of the overtime could not reasonably have been made in advance of the Doctor performing the work;*
- (c) *the Doctor has claimed for retrospective authorisation of overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;*
- (d) *the Doctor has recorded the reason for working the overtime and the duties performed in a form capable of Hospital audit and review; and*
- (e) *the claim for overtime must be reviewed by a Senior Doctor authorised by the Hospital to do so within 14 days of the claim being submitted.*

B2 The 2018 Agreement

Application and coverage

12. The respondents admit paragraph 12.

Doctor Responsibilities

13. The respondents admit paragraph 13.

Hours of Work, Rostering, and Overtime

14. The respondents admit paragraph 14.

15. The respondents admit paragraph 15.

16. As to paragraph 16, the respondents:

(a) admit that the 2018 Agreement contains clauses 36.1, 36.2(a) to (c) as pleaded in the Statement of Claim;

(b) say further that the 2018 Agreement also contains the following clauses:

36.2(d) *Overtime may be converted into carer's leave in accordance with subclause 61.3(c).*

36.3 Protocols - Authorised Un-rostered Overtime

(a) *A Protocol must exist in the Health Service whereby overtime that cannot be authorised in advance but has been worked will be paid if it meets appropriate, clearly defined criteria.*

(b) *The protocols described in sub clause 36.3(a) will be structured on the following basis:*

(i) *the Doctor has performed the overtime due to a demonstrable clinical need and that need could not have been met by some other means;*

(ii) *authorisation of the overtime could not reasonably have been made in advance of the Doctor performing the work;*

(iii) *the Doctor has claimed for retrospective authorisation of overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;*

(iv) *the Doctor has recorded the reason for working the overtime and the duties performed in a form capable of Health Service audit and review; and*

(v) *the claim for overtime must be reviewed by a Senior Doctor authorised by the Health Service to do so within 14 days of the claim being submitted.*

C DUTIES AND RESPONSIBILITIES OF DR HODGE AND GROUP MEMBERS

17. As to paragraph 17:

(a) Eastern Health:

(i) admits that during the Relevant Period, Dr Hodge's duties and responsibilities when providing medical services included, from time to time:

- A. ward round preparation
- B. handover;
- C. medical emergency;
- D. medical records;
- E. patient admissions;
- F. surgical procedures;
- G. outpatient care; and
- H. other medical services;

(ii) otherwise deny the allegations in paragraph 17;

(b) RWH:

(i) admits that during the Relevant Period, Dr Hodge's duties and responsibilities when providing medical services included, from time to time:

- A. ward round preparation;
- B. medical emergencies;
- C. medical communications;
- D. admissions;
- E. medical records; and
- F. other medical services;

(ii) otherwise deny the allegations in paragraph 17.

D THE SECOND APPLICANT'S CLAIM

18. As to paragraph 18:

(a) Eastern Health:

(i) admits the allegations in sub-paragraphs (a) to (e);

(ii) as to sub-paragraph (a), says further that:

1) Epworth Eastern is a separate entity to Eastern Health;

2) Eastern Health directed Dr Hodge to work in the General Surgery department at Epworth Eastern in accordance with a secondment arrangement between Eastern Health and Epworth Eastern;

(iii) does not plead to sub-paragraphs (f) and (g) as they contain no allegation of material fact against it;

(b) RWH:

(i) admits the allegations in sub-paragraphs (f) and (g);

(ii) does not plead to sub-paragraphs (a) to (e) as they contain no allegation of material fact against it.

D1 Epworth General Surgery Rotation – 11 January 2016 to 20 March 2016

19. As to paragraph 19:

(a) Eastern Health:

(i) refers to sub-paragraph 18(a)(ii) above;

(ii) otherwise does not admit the allegations in paragraph 19;

(b) RWH does not plead to paragraph 19 as it contains no allegation of material fact against it.

Rosters

20. As to paragraph 20:

(a) Eastern Health:

(i) says that Epworth Eastern was responsible for preparation of rosters during the Epworth General Surgery Rotation;

(ii) otherwise does not admit the allegations in paragraph 20;

- (b) RWH does not plead to paragraph 20 as it contains no allegation of material fact against it.

Ward round preparation

21. As to paragraph 21:

(a) Eastern Health:

- (i) says that Epworth Eastern was responsible for directing Dr Hodge as to her duties and responsibilities during the Epworth General Surgery Rotation;
- (ii) otherwise does not admit the allegations in paragraph 21;

- (b) RWH does not plead to paragraph 21 as it contains no allegation of material fact against it.

22. As to paragraph 22:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 20 and 21 above;
- (ii) otherwise does not admit the allegations in paragraph 22;

- (b) RWH does not plead to paragraph 22 as it contains no allegation of material fact against it.

23. As to paragraph 23:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 20 and 21 above;
- (ii) otherwise does not admit the allegations in paragraph 23;

- (b) RWH does not plead to paragraph 23 as it contains no allegation of material fact against it.

24. As to paragraph 24:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 20 and 21 above;
- (ii) otherwise denies the allegations in paragraph 24;

- (b) RWH does not plead to paragraph 24 as it contains no allegation of material fact against it.

25. As to paragraph 25:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 20 and 21 above;
 - (ii) otherwise denies the allegations in paragraph 25;
 - (b) RWH does not plead to paragraph 25 as it contains no allegation of material fact against it.
26. As to paragraph 26:
- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 20 and 21 above;
 - (ii) otherwise denies the allegations in paragraph 26;
 - (b) RWH does not plead to paragraph 26 as it contains no allegation of material fact against it.
27. As to paragraph 27:
- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 20, 21 and 26 above; and
 - (ii) otherwise denies the allegations in paragraph 27;
 - (b) RWH does not plead to paragraph 27 as it contains no allegation of material fact against it.
28. As to paragraph 28:
- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 20, 21 and 26 above; and
 - (ii) otherwise denies the allegations in paragraph 28;
 - (b) RWH does not plead to paragraph 28 as it contains no allegation of material fact against it.

Admissions

29. As to paragraph 29:
- (a) Eastern Health:
 - (i) says that Epworth Eastern was responsible for directing Dr Hodge as to her duties and responsibilities during the Epworth General Surgery Rotation;
 - (ii) otherwise denies the allegations in paragraph 29;

- (b) RWH does not plead to paragraph 29 as it contains no allegation of material fact against it.

30. As to paragraph 30:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 20 and 29 above;
- (ii) otherwise denies the allegations in paragraph 30;

- (b) RWH does not plead to paragraph 30 as it contains no allegation of material fact against it.

31. As to paragraph 31:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 20 and 29 above; and
- (ii) otherwise denies the allegations in paragraph 31;

- (b) RWH does not plead to paragraph 31 as it contains no allegation of material fact against it.

32. As to paragraph 32:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 20 and 29 above;
- (ii) otherwise denies the allegations in paragraph 32;

- (b) RWH does not plead to paragraph 32 as it contains no allegation of material fact against it.

33. As to paragraph 33:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 20 and 29 above;
- (ii) otherwise denies the allegations in paragraph 33;

- (b) RWH does not plead to paragraph 33 as it contains no allegation of material fact against it.

34. As to paragraph 34:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 20 and 29 above;

- (ii) otherwise denies the allegations in paragraph 34;
 - (b) RWH does not plead to paragraph 34 as it contains no allegation of material fact against it.
35. As to paragraph 35:
- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 29 to 34 above; and
 - (ii) otherwise denies the allegations in paragraph 35;
 - (b) RWH does not plead to paragraph 35 as it contains no allegation of material fact against it.
36. As to paragraph 36:
- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 29 to 34 above; and
 - (ii) otherwise denies the allegations in paragraph 36;
 - (b) RWH does not plead to paragraph 36 as it contains no allegation of material fact against it.

Medical emergencies

37. As to paragraph 37:
- (a) Eastern Health:
 - (i) says that Epworth Eastern was responsible for directing Dr Hodge a to her duties and responsibilities during the Epworth General Surgery Rotation;
 - (ii) otherwise does not admit the allegations in paragraph 37 .
 - (b) RWH does not plead to paragraph 37 as it contains no allegation of material fact against it.
38. As to paragraph 38:
- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 20 and 38 above;
 - (ii) otherwise denies the allegations in paragraph 38;
 - (b) RWH does not plead to paragraph 38 as it contains no allegation of material fact against it.
39. As to paragraph 39:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 20 and 38 above; and
 - (ii) otherwise denies the allegations in paragraph 39;
- (b) RWH does not plead to paragraph 39 as it contains no allegation of material fact against it.

40. As to paragraph 40:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 20 and 39 above;
 - (ii) otherwise denies the allegations in paragraph 40;
- (b) RWH does not plead to paragraph 40 as it contains no allegation of material fact against it.

41. As to paragraph 41:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 20 and 38 above;
 - (ii) otherwise denies the allegations in paragraph 41;
- (b) RWH does not plead to paragraph 41 as it contains no allegation of material fact against it.

42. As to paragraph 42:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 20 and 38 above;
 - (ii) otherwise denies the allegations in paragraph 42;
- (b) RWH does not plead to paragraph 42 as it contains no allegation of material fact against it.

43. As to paragraph 43:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 37 to 42 above; and
 - (ii) otherwise denies the allegations in paragraph 43;
- (b) RWH does not plead to paragraph 43 as it contains no allegation of material fact against it.

44. As to paragraph 44:

(a) Eastern Health:

(i) refers to and repeats paragraphs 37 to 42 above; and

(ii) otherwise denies the allegations in paragraph 44;

(b) RWH does not plead to paragraph 44 as it contains no allegation of material fact against it.

Medical records

45. As to paragraph 45:

(a) Eastern Health:

(i) says that Epworth Eastern was responsible for directing Dr Hodge as to her duties and responsibilities during the Epworth General Surgery Rotation;

(ii) otherwise denies the allegations in paragraph 45;

(b) RWH does not plead to paragraph 45 as it contains no allegation of material fact against it.

46. As to paragraph 46:

(a) Eastern Health:

(i) refers to and repeats paragraphs 20 and 45 above;

(ii) otherwise denies the allegations in paragraph 46;

(b) RWH does not plead to paragraph 46 as it contains no allegation of material fact against it.

47. As to paragraph 47:

(a) Eastern Health:

(i) refers to and repeats paragraphs 20 and 45 above; and

(ii) otherwise denies the allegations in paragraph 47;

(b) RWH does not plead to paragraph 47 as it contains no allegation of material fact against it.

48. As to paragraph 48:

(a) Eastern Health:

(i) refers to and repeats paragraphs 20 and 45 above;

- (ii) otherwise denies the allegations in paragraph 48;
 - (b) RWH does not plead to paragraph 48 as it contains no allegation of material fact against it.
49. As to paragraph 49:
- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 20 and 45 above;
 - (ii) otherwise denies the allegations in paragraph 49;
 - (b) RWH does not plead to paragraph 49 as it contains no allegation of material fact against it.
50. As to paragraph 50:
- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 20 and 45 above;
 - (ii) otherwise denies the allegations in paragraph 50;
 - (b) RWH does not plead to paragraph 50 as it contains no allegation of material fact against it.
51. As to paragraph 51:
- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 45 to 50 above; and
 - (ii) otherwise denies the allegations in paragraph 51;
 - (b) RWH does not plead to paragraph 51 as it contains no allegation of material fact against it.
52. As to paragraph 52:
- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 45 to 50 above; and
 - (ii) otherwise denies the allegations in paragraph 52;
 - (b) RWH does not plead to paragraph 52 as it contains no allegation of material fact against it.

D2 Box Hill General Medicine Rotation – 21 March 2016 to June 2016

53. As to paragraph 53:

- (a) Eastern Health admits the allegations in paragraph 53;
- (b) RWH does not plead to paragraph 53 as it contains no allegation of material fact against it.

Rosters

54. As to paragraph 54:

- (a) Eastern Health admits that during the Box Hill General Medicine Rotation, Dr Hodge was rostered to work as pleaded, save that the half-day shifts were from 8.00am to 12.00pm;
- (b) RWH does not plead to paragraph 54 as it contains no allegation of material fact against it.

Medical emergencies

55. As to paragraph 55:

- (a) Eastern Health:
 - (i) admits that Dr Hodge's duties and responsibilities when providing medical services included attending medical emergencies;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Box Hill General Medicine Rotation roster factored in and allowed time for attending medical emergencies;
- (b) otherwise denies the allegations in paragraph 55;
- (c) RWH does not plead to paragraph 55 as it contains no allegation of material fact against it.

56. As to paragraph 56:

- (a) Eastern Health:
 - (i) says that there were occasions when Dr Hodge was present at Box Hill Hospital during the Box Hill General Medicine Rotation outside of her rostered hours;
 - (ii) says further that:
 - A. in accordance with cl. 32.3 of the 2013 Agreement, Eastern Health implemented a protocol for the authorisation of and remuneration for unrostered overtime (**Eastern Health Overtime Protocol**), being overtime in excess of rostered ordinary working hours that was required due to a demonstrable clinical need that could not have been met by some other means (**Unrostered Overtime**);

- B. any Doctor in Training who works Unrostered Overtime can submit a claim for authorisation and remuneration for that Unrostered Overtime;
- C. in accordance with the Eastern Health Overtime Protocol,
 - 1) Unrostered Overtime must only be performed where:
 - a) there is a demonstrable clinical need;
 - b) the clinical need could not have been met by some other means;
and
 - c) authorisation of the Unrostered Overtime could not reasonably have been made in advance of the Doctor in Training performing the work.
 - 2) the Doctor in Training must provide the reason for the Unrostered Overtime with sufficient patient identification details so as to allow Eastern Health to audit and review the claim.
 - 3) examples of what may be considered clinical need include:
 - a) ward calls for team patients prior to end of shift that requires an extended period of time to resolve;
 - b) Medical Emergency Team (**MET**) calls for a team patient (or if on MET call) prior to end of shift that require an extended period of time to resolve and which cannot be handed over;
 - c) completing ward or emergency department admissions that could not have reasonably been completed by another doctor;
 - d) consultant and registrar pre-organised clinics where the junior doctor is specifically required to attend because a colleague is on emergent leave;
 - e) assisting in theatre when the consultant specifically requires that junior doctor to remain, or if there is no other doctor available to attend;
 - f) at the specific request of a team consultant where this is clinically necessary.
 - 4) a Doctor in Training should hand over ongoing care to the rostered staff at the earliest opportunity to enable them to finish their shift.

Particulars

Eastern Health Overtime Protocol at page 1-2

- D. to be eligible for payment for Unrostered Overtime, the Doctor in Training must:
- 1) complete the Doctors in Training Unrostered Overtime Claim form and state:
 - a) the reason for the Unrostered Overtime together with the patient details;
 - b) the date the Unrostered Overtime was worked;
 - c) the time the Unrostered Overtime commenced; and
 - d) the time the Unrostered Overtime was completed (the time from when the doctor has completed their duties specific to the clinical need); and
 - 2) claim retrospective authorisation of the Unrostered Overtime on the first occasion possible after it was worked and on no occasion later than the completion of that pay fortnight;
 - 3) have the claim for Unrostered Overtime authorised by the Director/Head of Unit or their acting delegate;
 - 4) submit Doctors in Training Unrostered Overtime Claim form with the timesheet for the relevant period.

(Eastern Health Overtime Claim).

Particulars

Eastern Health Overtime Protocol at page 2

- E. on the proper construction of the Eastern Health Overtime Protocol, authorisation must be express, and not implied;
- F. Dr Hodge was aware of the Eastern Health Overtime Protocol and Eastern Health's approach to Unrostered Overtime;

Particulars

Further particulars will be provided following discovery and prior to trial.

- G. if Dr Hodge performed medical emergency overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;

- (iii) otherwise denies the allegations in paragraph 56;

- (b) RWH does not plead to paragraph 56 as it contains no allegation of material fact against it.

57. As to paragraph 57:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 55 and 56 above; and

- (ii) otherwise denies the allegations in paragraph 57;

- (b) RWH does not plead to paragraph 57 as it contains no allegation of material fact against it.

58. As to paragraph 58:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 55, 56 and 57 above;

- (ii) says that:

- A. whether Dr Hodge was authorised to work any alleged medical emergencies overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any medical emergencies overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
 - C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of medical emergencies overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 58;

(b) RWH does not plead to paragraph 58 as it contains no allegation of material fact against it.

59. As to paragraph 59:

(a) Eastern Health:

(i) refers to and repeats paragraphs 55 to 58 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked medical emergencies overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made an Eastern Health Overtime Claim for that medical emergencies overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged medical emergencies overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) Dr Hodge was in attendance at Box Hill Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 59;

(b) RWH does not plead to paragraph 59 as it contains no allegation of material fact against it.

60. As to paragraph 60:

(a) Eastern Health:

(i) says that if:

A. Dr Hodge had made an Eastern Health Overtime Claim; and

B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 60;

(b) RWH does not plead to paragraph 60 as it contains no allegation of material fact against it.

61. As to paragraph 61:

(a) Eastern Health:

(i) refers to and repeats paragraphs 55 to 60 above; and

(ii) otherwise denies the allegations in paragraph 61;

(b) RWH does not plead to paragraph 61 as it contains no allegation of material fact against it.

62. As to paragraph 61:

(a) Eastern Health:

(i) refers to and repeats paragraphs 55 to 60 above; and

(ii) otherwise denies the allegations in paragraph 61;

(b) RWH does not plead to paragraph 61 as it contains no allegation of material fact against it.

Other medical services

63. As to paragraph 63:

(a) Eastern Health:

(i) admits that Dr Hodge's duties and responsibilities when providing medical services included conducting specific tasks relating to patient care;

- (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Box Hill General Medicine Rotation roster factored in and allowed time for conducting specific tasks relating to patient care;
 - (iii) otherwise denies the allegations in paragraph 63;
 - (b) RWH does not plead to paragraph 63 as it contains no allegation of material fact against it.
64. As to paragraph 64:
- (a) Eastern Health:
 - (i) says that there were occasions when Dr Hodge was present at Box Hill Hospital during the Box Hill General Medicine Rotation outside of her rostered hours;
 - (ii) refers to and repeats sub-paragraphs 56(a)(ii)A to 56(a)(ii)F above;
 - (iii) says further that if Dr Hodge performed patient care overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 64;
 - (b) RWH does not plead to paragraph 64 as it contains no allegation of material fact against it.
65. As to paragraph 65:
- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 63 and 64 above; and
 - (ii) otherwise denies the allegations in paragraph 65;
 - (b) RWH does not plead to paragraph 65 as it contains no allegation of material fact against it.
66. As to paragraph 66:
- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 63, 64 and 65 above;
 - (ii) says that:
 - A. whether Dr Hodge was authorised to work any alleged patient care overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any patient care overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of patient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 66;

(b) RWH does not plead to paragraph 66 as it contains no allegation of material fact against it.

67. As to paragraph 67:

(a) Eastern Health:

(i) refers to and repeats paragraphs 63 to 66 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked patient care overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made an Eastern Health Overtime Claim for that patient care overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged patient overtime, then it ought be concluded that either:

- 1) Dr Hodge did not work such overtime;
- 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr Hodge was in attendance at the Box Hill Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 67;

(b) RWH does not plead to paragraph 67 as it contains no allegation of material fact against it.

68. As to paragraph 68:

(a) Eastern Health:

(i) says that if:

A. Dr Hodge had made an Eastern Health Overtime Claim; and

B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 68;

(b) RWH does not plead to paragraph 68 as it contains no allegation of material fact against it.

69. As to paragraph 69:

(a) Eastern Health:

(i) refers to and repeats paragraphs 63 to 68 above; and

(ii) otherwise denies the allegations in paragraph 69;

(b) RWH does not plead to paragraph 69 as it contains no allegation of material fact against it.

70. As to paragraph 70:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 63 to 68 above; and
 - (ii) otherwise denies the allegations in paragraph 70;
- (b) RWH does not plead to paragraph 70 as it contains no allegation of material fact against it.

D3 General Medicine and High Dependency Unit, Angliss Hospital – February 2017 to April 2017

71. As to paragraph 71:

- (a) Eastern Health admits the allegations in paragraph 71;
- (b) RWH does not plead to paragraph 71 as it contains no allegation of material fact against it.

Rosters

72. As to paragraph 72:

- (a) Eastern Health:
 - (i) admits that during the Angliss General Surgery Rotation, Dr Hodge was rostered to work as pleaded;
 - (ii) says further that, in accordance with cl. 26.1.2 of the 2013 Agreement, as pleaded in paragraph 10 above, the Angliss General Medicine Rotation roster factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 17(a) of the Defence;
- (b) RWH does not plead to paragraph 72 as it contains no allegation of material fact against it.

Ward round preparation

73. As to paragraph 73:

- (a) Eastern Health:
 - (i) admits that Dr Hodges's duties and responsibilities when providing medical services included undertaking ward round preparation;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Angliss General Medicine Rotation roster factored in and allowed time to undertake ward round preparation;
 - (iii) otherwise denies the allegations in paragraph 73;

- (b) RWH does not plead to paragraph 73 as it contains no allegation of material fact against it.

74. As to paragraph 74:

- (a) Eastern Health:

- (i) says that there were occasions when Dr Hodge was present at Angliss Hospital during the Angliss General Medicine Rotation outside of her rostered hours;
- (ii) refers to and repeats sub-paragraphs 56(a)(ii)A to 56(a)(ii)F above;
- (iii) says further that if Dr Hodge performed ward preparation overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;
- (iv) otherwise denies the allegations in paragraph 74;

- (b) RWH does not plead to paragraph 74 as it contains no allegation of material fact against it.

75. As to paragraph 75:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 73 and 74 above; and
- (ii) otherwise denies the allegations in paragraph 75;

- (b) RWH does not plead to paragraph 75 as it contains no allegation of material fact against it.

76. As to paragraph 76:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 73, 74 and 75 above;
- (ii) says that:

- A. whether Dr Hodge was authorised to work any alleged ward round preparation overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any ward round preparation overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after

the overtime was worked and on no occasion later than the completion of that pay fortnight;

- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 76;

- (b) RWH does not plead to paragraph 76 as it contains no allegation of material fact against it.

77. As to paragraph 77:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 73 to 76 above;

- (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked ward preparation overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made an Eastern Health Overtime Claim for that ward round preparation overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;

- 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr Hodge was in attendance at the Angliss Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 77;

(b) RWH does not plead to paragraph 77 as it contains no allegation of material fact against it.

78. As to paragraph 78:

(a) Eastern Health:

(i) says that if:

A. Dr Hodge had made an Eastern Health Overtime Claim; and

B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 78;

(b) RWH does not plead to paragraph 78 as it contains no allegation of material fact against it.

79. As to paragraph 79:

(a) Eastern Health:

(i) refers to and repeats paragraphs 73 to 78 above; and

(ii) otherwise denies the allegations in paragraph 79;

(b) RWH does not plead to paragraph 79 as it contains no allegation of material fact against it.

80. As to paragraph 80:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 73 to 78 above; and
 - (ii) otherwise denies the allegations in paragraph 80;
- (b) RWH does not plead to paragraph 80 as it contains no allegation of material fact against it.

Medical emergencies

81. As to paragraph 81:

- (a) Eastern Health:
 - (i) admits that Dr Hodge's duties and responsibilities when providing medical services included attending medical emergencies;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Box Hill General Medicine Rotation roster factored in and allowed time for attending medical emergencies;
 - (iii) otherwise denies the allegations in paragraph 81;
- (b)
- (c) RWH does not plead to paragraph 81 as it contains no allegation of material fact against it.

82. As to paragraph 82:

- (a) Eastern Health:
 - (i) says that there were occasions when Dr Hodge was present at Angliss Hospital during the Angliss General Medicine Rotation outside of her rostered hours;
 - (ii) refers to and repeats sub-paragraphs 56(a)(ii)A to 56(a)(ii)F above;
 - (iii) says further that if Dr Hodge performed medical emergency overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 82;
- (b) RWH does not plead to paragraph 82 as it contains no allegation of material fact against it.

83. As to paragraph 83:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 81 and 82 above; and

(ii) otherwise denies the allegations in paragraph 83;

(b) RWH does not plead to paragraph 83 as it contains no allegation of material fact against it.

84. As to paragraph 84:

(a) Eastern Health:

(i) refers to and repeats paragraphs 81, 82 and 83 above;

(ii) says that:

- A. whether Dr Hodge was authorised to work any alleged medical emergencies overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any medical emergencies overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of medical emergency overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 84;

(b) RWH does not plead to paragraph 84 as it contains no allegation of material fact against it.

85. As to paragraph 85:

(a) Eastern Health:

(i) refers to and repeats paragraphs 81 to 84 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked medical emergency overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made an Eastern Health Overtime Claim for that medical emergency overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) Dr Hodge was in attendance at the Epworth Eastern Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 85;

(b) RWH does not plead to paragraph 85 as it contains no allegation of material fact against it.

86. As to paragraph 86:

(a) Eastern Health:

(i) says that if:

A. Dr Hodge had made an Eastern Health Overtime Claim; and

B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 86;

(b) RWH does not plead to paragraph 86 as it contains no allegation of material fact against it.

87. As to paragraph 87:

(a) Eastern Health:

(i) refers to and repeats paragraphs 81 to 86 above; and

(ii) otherwise denies the allegations in paragraph 87;

(b) RWH does not plead to paragraph 87 as it contains no allegation of material fact against it.

88. As to paragraph 88:

(a) Eastern Health:

(i) refers to and repeats paragraphs 81 to 86 above; and

(ii) otherwise denies the allegations in paragraph 88;

(b) RWH does not plead to paragraph 88 as it contains no allegation of material fact against it.

Other medical services

89. As to paragraph 89:

(a) Eastern Health:

(i) admits that Dr Hodge's duties and responsibilities when providing medical services included undertaking specific tasks relating to patient care;

(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Angliss General Medicine Rotation roster factored in and allowed time for undertaking specific tasks relating to patient care;

(iii) otherwise denies the allegations in paragraph 89;

(b) RWH does not plead to paragraph 89 as it contains no allegation of material fact against it.

90. As to paragraph 90:

(a) Eastern Health:

- (i) says that there were occasions when Dr Hodge was present at Angliss Hospital during the Angliss General Medicine Rotation outside of her rostered hours;
- (ii) refers to and repeats sub-paragraphs 56(a)(ii)A to 56(a)(ii)F above;
- (iii) says further that if Dr Hodge performed patient care overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;
- (iv) otherwise denies the allegations in paragraph 90;

(b) RWH does not plead to paragraph 90 as it contains no allegation of material fact against it.

91. As to paragraph 91:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 89 and 90 above; and
- (ii) otherwise denies the allegations in paragraph 91;

(b) RWH does not plead to paragraph 91 as it contains no allegation of material fact against it.

92. As to paragraph 92:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 89, 90 and 91 above;
- (ii) says that:

- A. whether Dr Hodge was authorised to work any alleged patient care overtime (including whether Dr Hodge worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any patient care overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;

- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of patient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 92;

- (b) RWH does not plead to paragraph 92 as it contains no allegation of material fact against it.

93. As to paragraph 93:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 89 to 92 above;

- (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked patient care overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made an Eastern Health Overtime Claim for that patient care overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged patient care overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

- 3) Dr Hodge was in attendance at the Eastern Health Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 93;

(b) RWH does not plead to paragraph 93 as it contains no allegation of material fact against it.

94. As to paragraph 94:

(a) Eastern Health:

(i) says that if:

A. Dr Hodge had made an Eastern Health Overtime Claim; and

B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 94;

(b) RWH does not plead to paragraph 94 as it contains no allegation of material fact against it.

95. As to paragraph 95:

(a) Eastern Health:

(i) refers to and repeats paragraphs 89 to 94 above; and

(ii) otherwise denies the allegations in paragraph 95;

(b) RWH does not plead to paragraph 95 as it contains no allegation of material fact against it.

96. As to paragraph 96:

(a) Eastern Health:

(i) refers to and repeats paragraphs 89 to 94 above; and

(ii) otherwise denies the allegations in paragraph 96;

- (b) RWH does not plead to paragraph 96 as it contains no allegation of material fact against it.

D4 Obstetrics and Gynaecology, Angliss Hospital - 7 August 2017 to 5 November 2017

97. As to paragraph 97:

- (a) Eastern Health admits the allegations therein;
- (b) RWH does not plead to paragraph 97 as it contains no allegation of material fact against it.

Rosters

98. As to paragraph 98:

- (a) Eastern Health:
 - (i) admits that during the First Angliss Obstetrics and Gynaecology Rotation, Dr Hodge was rostered to work as pleaded;
 - (ii) says further that, in accordance with cl. 26.1.2 of the 2013 Agreement, as pleaded in paragraph 10 above, the First Angliss Obstetrics and Gynaecology Rotation rosters factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 17(a) of the Defence;
- (b) RWH does not plead to paragraph 98 as it contains no allegation of material fact against it.

Medical emergencies

99. As to paragraph 99:

- (a) Eastern Health:
 - (i) admits that Dr Hodge's duties and responsibilities when providing medical services included attending medical emergencies;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Box Hill General Medicine Rotation roster factored in and allowed time for attending medical emergencies;
 - (iii) otherwise denies the allegations in paragraph 55;
- (b) RWH does not plead to paragraph 99 as it contains no allegation of material fact against it.

100. As to paragraph 100:

(a) Eastern Health:

- (i) says that there were occasions when Dr Hodge was present at Angliss Hospital during the First Angliss Obstetrics and Gynaecology Rotation outside of her rostered hours;
- (ii) refers to and repeats sub-paragraphs 56(a)(ii)A to 56(a)(ii)F above;
- (iii) says further that if Dr Hodge performed medical emergency overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;
- (iv) otherwise denies the allegations in paragraph 100;

(b) RWH does not plead to paragraph 100 as it contains no allegation of material fact against it.

101. As to paragraph 101:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 99 and 100 above; and
- (ii) otherwise denies the allegations in paragraph 101;

(b) RWH does not plead to paragraph 101 as it contains no allegation of material fact against it.

102. As to paragraph 102:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 99, 100 and 101 above;
- (ii) says that:
 - A. whether Dr Hodge was authorised to work any alleged medical emergencies overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any medical emergencies overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
 - C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of medical emergency overtime worked (including of the demonstrable

clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 102;

(b) RWH does not plead to paragraph 102 as it contains no allegation of material fact against it.

103. As to paragraph 103:

(a) Eastern Health:

(i) refers to and repeats paragraphs 99 to 102 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked medical emergency overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made an Eastern Health Overtime Claim for that medical emergency overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) Dr Hodge was in attendance at the Angliss Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 103;

(b) RWH does not plead to paragraph 103 as it contains no allegation of material fact against it.

104. As to paragraph 104:

(a) Eastern Health:

(i) says that if:

A. Dr Hodge had made an Eastern Health Overtime Claim; and

B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 104;

(b) RWH does not plead to paragraph 104 as it contains no allegation of material fact against it.

105. As to paragraph 105:

(a) Eastern Health:

(i) refers to and repeats paragraphs 99 to 104 above; and

(ii) otherwise denies the allegations in paragraph 105;

(b) RWH does not plead to paragraph 105 as it contains no allegation of material fact against it.

106. As to paragraph 106:

(a) Eastern Health:

(i) refers to and repeats paragraphs 99 to 104 above; and

(ii) otherwise denies the allegations in paragraph 106;

(b) RWH does not plead to paragraph 106 as it contains no allegation of material fact against it.

Surgical procedures

107. As to paragraph 107:

- (a) Eastern Health:
 - (i) admits that Dr Hodge's duties and responsibilities when providing medical services included undertaking surgical procedures;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the First Angliss Obstetrics and Gynaecology Rotation roster factored in and allowed time for undertaking surgical procedures;
 - (iii) otherwise denies the allegations in paragraph 107;
- (b) RWH does not plead to paragraph 107 as it contains no allegation of material fact against it.

108. As to paragraph 108:

- (a) Eastern Health:
 - (i) says that there were occasions when Dr Hodge was present at Angliss Hospital during the First Angliss Obstetrics and Gynaecology Rotation outside of her rostered hours;
 - (ii) refers to and repeats sub-paragraphs 56(a)(ii)A to 56(a)(ii)F above;
 - (iii) says further that if Dr Hodge performed surgical procedures overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 108;
- (b) RWH does not plead to paragraph 108 as it contains no allegation of material fact against it.

109. As to paragraph 109:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 107 and 108 above; and
 - (ii) otherwise denies the allegations in paragraph 109;
- (b) RWH does not plead to paragraph 109 as it contains no allegation of material fact against it.

110. As to paragraph 110:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 107, 108 and 109 above;

(ii) says that:

- A. whether Dr Hodge was authorised to work any alleged surgical procedures overtime (including whether Dr Hodge worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any surgical procedures overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of surgical procedures overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 110;

(b) RWH does not plead to paragraph 110 as it contains no allegation of material fact against it.

111. As to paragraph 111:

(a) Eastern Health:

(i) refers to and repeats paragraphs 107 to 110 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked surgical procedures overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;

3) made an Eastern Health Overtime Claim for that surgical procedures overtime; and

4) was subsequently not paid;

C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged surgical procedures overtime, then it ought be concluded that either:

1) Dr Hodge did not work such overtime;

2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) Dr Hodge was in attendance at Angliss Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 111;

(b) RWH does not plead to paragraph 111 as it contains no allegation of material fact against it.

112. As to paragraph 112:

(a) Eastern Health:

(i) says that if:

A. Dr Hodge had made an Eastern Health Overtime Claim; and

B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 112;

(b) RWH does not plead to paragraph 112 as it contains no allegation of material fact against it.

113. As to paragraph 113:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 107 to 112 above; and
- (ii) otherwise denies the allegations in paragraph 113;

(b) RWH does not plead to paragraph 113 as it contains no allegation of material fact against it.

114. As to paragraph 114:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 107 to 112 above; and
- (ii) otherwise denies the allegations in paragraph 114;

(b) RWH does not plead to paragraph 114 as it contains no allegation of material fact against it.

Outpatient care

115. As to paragraph 115:

(a) Eastern Health:

- (i) admits that Dr Hodge's duties and responsibilities when providing medical services included providing medical care to patients in a clinic;
- (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the First Angliss Obstetrics and Gynaecology Rotation roster factored in and allowed time for providing medical care to patients in a clinic;
- (iii) otherwise denies the allegations in paragraph 115;

(b) RWH does not plead to paragraph 115 as it contains no allegation of material fact against it.

116. As to paragraph 116:

(a) Eastern Health:

- (i) says that there were occasions when Dr Hodge was present at Angliss Hospital during the First Angliss Obstetrics and Gynaecology Rotation outside of her rostered hours;
- (ii) refers to and repeats sub-paragraphs 56(a)(ii)A to 56(a)(ii)F above;
- (iii) says further that if Dr Hodge performed outpatient care overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;

(iv) otherwise denies the allegations in paragraph 116;

(b) RWH does not plead to paragraph 116 as it contains no allegation of material fact against it.

117. As to paragraph 117:

(a) Eastern Health:

(i) refers to and repeats paragraphs 115 and 116 above; and

(ii) otherwise denies the allegations in paragraph 117;

(b) RWH does not plead to paragraph 117 as it contains no allegation of material fact against it.

118. As to paragraph 118:

(a) Eastern Health:

(i) refers to and repeats paragraphs 115, 116 and 117 above;

(ii) says that:

- A. whether Dr Hodge was authorised to work any alleged outpatient care overtime (including whether Dr Hodge worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any outpatient care overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of outpatient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 118;

(b) RWH does not plead to paragraph 118 as it contains no allegation of material fact against it.

119. As to paragraph 119:

(a) Eastern Health:

(i) refers to and repeats paragraphs 115 to 118 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked outpatient care overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made an Eastern Health Overtime Claim for that outpatient care overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged outpatient care overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) Dr Hodge was in attendance at Angliss Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 119;

(b) RWH does not plead to paragraph 119 as it contains no allegation of material fact against it.

120. As to paragraph 120:

(a) Eastern Health:

(i) says that if:

A. Dr Hodge had made an Eastern Health Overtime Claim; and

B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 120;

(b) RWH does not plead to paragraph 120 as it contains no allegation of material fact against it.

121. As to paragraph 121:

(a) Eastern Health:

(i) refers to and repeats paragraphs 115 to 120 above; and

(ii) otherwise denies the allegations in paragraph 121;

(b) RWH does not plead to paragraph 121 as it contains no allegation of material fact against it.

122. As to paragraph 122:

(a) Eastern Health:

(i) refers to and repeats paragraphs 115 to 120 above; and

(ii) otherwise denies the allegations in paragraph 122;

(b) RWH does not plead to paragraph 122 as it contains no allegation of material fact against it.

Admissions

123. As to paragraph 123:

(a) Eastern Health:

(i) admits that Dr Hodge's duties and responsibilities when providing medical services included performing patient admissions;

(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the First Angliss Obstetrics and Gynaecology Rotation roster factored in and allowed time for performing patient admissions;

(iii) otherwise denies the allegations in paragraph 123;

(b) RWH does not plead to paragraph 123 as it contains no allegation of material fact against it.

124. As to paragraph 124:

(a) Eastern Health:

(i) says that there were occasions when Dr Hodge was present at Angliss Hospital during the First Angliss Obstetrics and Gynaecology Rotation outside of her rostered hours;

(ii) refers to and repeats sub-paragraphs 56(a)(ii)A to 56(a)(ii)F above;

(iii) says further that if Dr Hodge performed admissions overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;

(iv) otherwise denies the allegations in paragraph 124;

(b) RWH does not plead to paragraph 124 as it contains no allegation of material fact against it.

125. As to paragraph 125:

(a) Eastern Health:

(i) refers to and repeats paragraphs 123 and 124 above; and

(ii) otherwise denies the allegations in paragraph 125;

(b) RWH does not plead to paragraph 125 as it contains no allegation of material fact against it.

126. As to paragraph 126:

(a) Eastern Health:

(i) refers to and repeats paragraphs 123, 124 and 125 above;

(ii) says that:

A. whether Dr Hodge was authorised to work any alleged admissions overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any admissions overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of handover overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 126;

(b) RWH does not plead to paragraph 126 as it contains no allegation of material fact against it.

127. As to paragraph 127:

(a) Eastern Health:

(i) refers to and repeats paragraphs 123 to 126 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked admissions overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made an Eastern Health Overtime Claim for that admissions overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged admissions overtime, then it ought be concluded that either:

- 1) Dr Hodge did not work such overtime;
- 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr Hodge was in attendance at Angliss Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 127;

(b) RWH does not plead to paragraph 127 as it contains no allegation of material fact against it.

128. As to paragraph 128:

(a) Eastern Health:

(i) says that if:

A. Dr Hodge had made an Eastern Health Overtime Claim; and

B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 128;

(b) RWH does not plead to paragraph 128 as it contains no allegation of material fact against it.

129. As to paragraph 129:

(a) Eastern Health:

(i) refers to and repeats paragraphs 123 to 128 above; and

(ii) otherwise denies the allegations in paragraph 129;

(b) RWH does not plead to paragraph 129 as it contains no allegation of material fact against it.

130. As to paragraph 130:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 123 to 128 above; and
- (ii) otherwise denies the allegations in paragraph 130;

(b) RWH does not plead to paragraph 130 as it contains no allegation of material fact against it.

Handover

131. As to paragraph 131:

(a) Eastern Health:

- (i) admits that Dr Hodge's duties and responsibilities when providing medical services included conducting the handover of patient information between medical staff at the start or end of a shift;
- (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the First Angliss Obstetrics and Gynaecology Rotation roster factored in and allowed time for conducting the handover of patient information;
- (iii) otherwise denies the allegations in paragraph 131;

(b) RWH does not plead to paragraph 131 as it contains no allegation of material fact against it.

132. As to paragraph 132:

(a) Eastern Health:

- (i) says that there were occasions when Dr Hodge was present at Angliss Hospital during the First Angliss Obstetrics and Gynaecology Rotation outside of her rostered hours;
- (ii) refers to and repeats sub-paragraphs 56(a)(ii)A to 56(a)(ii)F above;
- (iii) says further that if Dr Hodge performed handover overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;
- (iv) otherwise denies the allegations in paragraph 132;

(b) RWH does not plead to paragraph 132 as it contains no allegation of material fact against it.

133. As to paragraph 133:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 131 and 132 above; and

(ii) otherwise denies the allegations in paragraph 133;

(b) RWH does not plead to paragraph 133 as it contains no allegation of material fact against it.

134. As to paragraph 134:

(a) Eastern Health:

(i) refers to and repeats paragraphs 131, 132 and 133 above;

(ii) says that:

- A. whether Dr Hodge was authorised to work any alleged handover overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any handover overtime for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of handover overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 134;

(b) RWH does not plead to paragraph 134 as it contains no allegation of material fact against it.

135. As to paragraph 135:

(a) Eastern Health:

(i) refers to and repeats paragraphs 131 to 134 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;

B. Dr Hodge has not provided particulars of any occasions on which she allegedly:

- 1) worked handover overtime;
- 2) sought and received either advance or retrospective authorisation for such overtime;
- 3) made an Eastern Health Overtime Claim for that handover overtime; and
- 4) was subsequently not paid;

C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:

- 1) Dr Hodge did not work such overtime;
- 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr Hodge was in attendance at Angliss Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 135;

(b) RWH does not plead to paragraph 135 as it contains no allegation of material fact against it.

136. As to paragraph 136:

(a) Eastern Health:

(i) says that if:

A. Dr Hodge had made an Eastern Health Overtime Claim; and

B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 136;

(b) RWH does not plead to paragraph 136 as it contains no allegation of material fact against it.

137. As to paragraph 137:

(a) Eastern Health:

(i) refers to and repeats paragraphs 131 to 136 above; and

(ii) otherwise denies the allegations in paragraph 137;

(b) RWH does not plead to paragraph 137 as it contains no allegation of material fact against it.

138. As to paragraph 138:

(a) Eastern Health:

(i) refers to and repeats paragraphs 131 to 136 above; and

(ii) otherwise denies the allegations in paragraph 138;

(b) RWH does not plead to paragraph 138 as it contains no allegation of material fact against it.

D5 Obstetrics and Gynaecology (Second Rotation), Angliss Hospital - 5 February 2018 to 5 August 2018

139. As to paragraph 139:

(a) Eastern Health admits the allegations therein;

(b) RWH does not plead to paragraph 139 as it contains no allegation of material fact against it.

Rosters

140. As to paragraph 140:

(a) Eastern Health:

(i) admits that during the Second Angliss Obstetrics and Gynaecology Rotation, Dr Hodge was rostered to work as pleaded;

(ii) says further that, in accordance with cl. 26.1.2 of the 2013 Agreement, as pleaded in paragraph 10 above, the Second Angliss Obstetrics and Gynaecology Rotation roster factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 17(a) of the Defence;

- (b) RWH does not plead to paragraph 140 as it contains no allegation of material fact against it.

Medical emergencies

141. As to paragraph 141:

- (a) Eastern Health:
 - (i) admits that Dr Hodge's duties and responsibilities when providing medical services included attending medical emergencies;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Second Angliss Obstetrics and Gynaecology Rotation roster factored in and allowed time for attending medical emergencies;
 - (iii) otherwise denies the allegations in paragraph 55;

- (b) RWH does not plead to paragraph 141 as it contains no allegation of material fact against it.

142. As to paragraph 142:

- (a) Eastern Health:
 - (i) says that there were occasions when Dr Hodge was present at Angliss Hospital during the Second Angliss Obstetrics and Gynaecology Rotation outside of her rostered hours;
 - (ii) refers to and repeats sub-paragraphs 56(a)(ii)A to 56(a)(ii)F above;
 - (iii) says further that if Dr Hodge performed medical emergency overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 142;

- (b) RWH does not plead to paragraph 142 as it contains no allegation of material fact against it.

143. As to paragraph 143:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 141 and 142 above; and
 - (ii) otherwise denies the allegations in paragraph 143;
- (b) RWH does not plead to paragraph 143 as it contains no allegation of material fact against it.

144. As to paragraph 144:

(a) Eastern Health:

(i) refers to and repeats paragraphs 141, 142 and 143 above;

(ii) says that:

- A. whether Dr Hodge was authorised to work any alleged medical emergencies overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any medical emergencies overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
 - C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of medical emergency overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;
- (iii) otherwise denies the allegations in paragraph 144;

(b) RWH does not plead to paragraph 144 as it contains no allegation of material fact against it.

145. As to paragraph 145:

(a) Eastern Health:

(i) refers to and repeats paragraphs 141 to 144 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:

- 1) worked medical emergency overtime;
- 2) sought and received either advance or retrospective authorisation for such overtime;
- 3) made an Eastern Health Overtime Claim for that medical emergency overtime; and
- 4) was subsequently not paid;

C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:

- 1) Dr Hodge did not work such overtime;
- 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr Hodge was in attendance at the Angliss Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 145;

(b) RWH does not plead to paragraph 145 as it contains no allegation of material fact against it.

146. As to paragraph 146:

(a) Eastern Health:

(i) says that if:

A. Dr Hodge had made an Eastern Health Overtime Claim; and

B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 146;

- (b) RWH does not plead to paragraph 146 as it contains no allegation of material fact against it.

147. As to paragraph 147:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 141 to 146 above; and
- (ii) otherwise denies the allegations in paragraph 147;

- (b) RWH does not plead to paragraph 147 as it contains no allegation of material fact against it.

148. As to paragraph 148:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 141 to 146 above; and
- (ii) otherwise denies the allegations in paragraph 148;

- (b) RWH does not plead to paragraph 148 as it contains no allegation of material fact against it.

Surgical procedures

149. As to paragraph 149:

- (a) Eastern Health:

- (i) admits that Dr Hodge's duties and responsibilities when providing medical services included undertaking surgical procedures;
- (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Second Angliss Obstetrics and Gynaecology Rotation roster factored in and allowed time for undertaking surgical procedures;
- (iii) otherwise denies the allegations in paragraph 149;

- (b) RWH does not plead to paragraph 149 as it contains no allegation of material fact against it.

150. As to paragraph 150:

- (a) Eastern Health:

- (i) says that there were occasions when Dr Hodge was present at Angliss Hospital during the Second Angliss Obstetrics and Gynaecology Rotation outside of her rostered hours;

- (ii) refers to and repeats sub-paragraphs 56(a)(ii)A to 56(a)(ii)F above;
 - (iii) says further that if Dr Hodge performed surgical procedures overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 150;
- (b) RWH does not plead to paragraph 150 as it contains no allegation of material fact against it.

151. As to paragraph 151:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 149 and 150 above; and
 - (ii) otherwise denies the allegations in paragraph 151;
- (b) RWH does not plead to paragraph 151 as it contains no allegation of material fact against it.

152. As to paragraph 152:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 149, 150 and 151 above;
 - (ii) says that:
 - A. whether Dr Hodge was authorised to work any alleged surgical procedures overtime (including whether Dr Hodge worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any surgical procedures overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
 - C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of surgical procedures overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 152;

(b) RWH does not plead to paragraph 152 as it contains no allegation of material fact against it.

153. As to paragraph 153:

(a) Eastern Health:

(i) refers to and repeats paragraphs 149 to 152 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked surgical procedures overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made an Eastern Health Overtime Claim for that surgical procedures overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged surgical procedures overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) Dr Hodge was in attendance at Angliss Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 153;

- (b) RWH does not plead to paragraph 153 as it contains no allegation of material fact against it.

154. As to paragraph 154:

- (a) Eastern Health:

- (i) says that if:

- A. Dr Hodge had made an Eastern Health Overtime Claim; and

- B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

- Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

- (ii) otherwise denies the allegations in paragraph 154;

- (b) RWH does not plead to paragraph 154 as it contains no allegation of material fact against it.

155. As to paragraph 155:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 149 to 154 above; and

- (ii) otherwise denies the allegations in paragraph 155;

- (b) RWH does not plead to paragraph 155 as it contains no allegation of material fact against it.

156. As to paragraph 156:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 149 to 154 above; and

- (ii) otherwise denies the allegations in paragraph 156;

- (b) RWH does not plead to paragraph 156 as it contains no allegation of material fact against it.

Outpatient care

157. As to paragraph 157:

- (a) Eastern Health:

- (i) admits that Dr Hodge's duties and responsibilities when providing medical services included providing medical care to patients in a clinic;

(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Second Angliss Obstetrics and Gynaecology Rotation roster factored in and allowed time for providing medical care to patients in a clinic;

(iii) otherwise denies the allegations in paragraph 157;

(b) RWH does not plead to paragraph 157 as it contains no allegation of material fact against it.

158. As to paragraph 158:

(a) Eastern Health:

(i) says that there were occasions when Dr Hodge was present at Angliss Hospital during the Second Angliss Obstetrics and Gynaecology Rotation outside of her rostered hours;

(ii) refers to and repeats sub-paragraphs 56(a)(ii)A to 56(a)(ii)F above;

(iii) says further that if Dr Hodge performed outpatient care overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;

(iv) otherwise denies the allegations in paragraph 158;

(b) RWH does not plead to paragraph 158 as it contains no allegation of material fact against it.

159. As to paragraph 159:

(a) Eastern Health:

(i) refers to and repeats paragraphs 157 and 158 above; and

(ii) otherwise denies the allegations in paragraph 159;

(b) RWH does not plead to paragraph 159 as it contains no allegation of material fact against it.

160. As to paragraph 160:

(a) Eastern Health:

(i) refers to and repeats paragraphs 157, 158 and 159 above;

(ii) says that:

A. whether Dr Hodge was authorised to work any alleged outpatient care overtime (including whether Dr Hodge worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any outpatient care overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of outpatient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 160;

(b) RWH does not plead to paragraph 160 as it contains no allegation of material fact against it.

161. As to paragraph 161:

(a) Eastern Health:

(i) refers to and repeats paragraphs 157 to 160 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked outpatient care overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made an Eastern Health Overtime Claim for that outpatient care overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged outpatient care overtime, then it ought be concluded that either:

- 1) Dr Hodge did not work such overtime;
- 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr Hodge was in attendance at Angliss Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 161;

(b) RWH does not plead to paragraph 161 as it contains no allegation of material fact against it.

162. As to paragraph 162:

(a) Eastern Health:

(i) says that if:

A. Dr Hodge had made an Eastern Health Overtime Claim; and

B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 162;

(b) RWH does not plead to paragraph 162 as it contains no allegation of material fact against it.

163. As to paragraph 163:

(a) Eastern Health:

(i) refers to and repeats paragraphs 157 to 162 above; and

(ii) otherwise denies the allegations in paragraph 163;

(b) RWH does not plead to paragraph 163 as it contains no allegation of material fact against it.

164. As to paragraph 164:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 157 to 162 above; and
- (ii) otherwise denies the allegations in paragraph 164;

(b) RWH does not plead to paragraph 164 as it contains no allegation of material fact against it.

Admissions

165. As to paragraph 165:

(a) Eastern Health:

- (i) admits that Dr Hodge's duties and responsibilities when providing medical services included patient admissions;
- (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Second Angliss Obstetrics and Gynaecology Rotation roster factored in and allowed time for patient admissions;
- (iii) otherwise denies the allegations in paragraph 165;

(b) RWH does not plead to paragraph 165 as it contains no allegation of material fact against it.

166. As to paragraph 166:

(a) Eastern Health:

- (i) says that there were occasions when Dr Hodge was present at Angliss Hospital during the Second Angliss Obstetrics and Gynaecology Rotation outside of her rostered hours;
- (ii) refers to and repeats sub-paragraphs 56(a)(ii)A to 56(a)(ii)F above;
- (iii) says further that if Dr Hodge performed admissions overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;
- (iv) otherwise denies the allegations in paragraph 166;

(b) RWH does not plead to paragraph 166 as it contains no allegation of material fact against it.

167. As to paragraph 167:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 165 and 166 above; and

(ii) otherwise denies the allegations in paragraph 167;

(b) RWH does not plead to paragraph 167 as it contains no allegation of material fact against it.

168. As to paragraph 168:

(a) Eastern Health:

(i) refers to and repeats paragraphs 165, 166 and 167 above;

(ii) says that:

- A. whether Dr Hodge was authorised to work any alleged admissions overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any admissions overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of admissions overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 168;

(b) RWH does not plead to paragraph 168 as it contains no allegation of material fact against it.

169. As to paragraph 169:

(a) Eastern Health:

(i) refers to and repeats paragraphs 165 to 168 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked admissions overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made an Eastern Health Overtime Claim for that admissions overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged admissions overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) Dr Hodge was in attendance at Angliss Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 169;

(b) RWH does not plead to paragraph 169 as it contains no allegation of material fact against it.

170. As to paragraph 170:

(a) Eastern Health:

(i) says that if:

A. Dr Hodge had made an Eastern Health Overtime Claim; and

B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 170;

(b) RWH does not plead to paragraph 170 as it contains no allegation of material fact against it.

171. As to paragraph 171:

(a) Eastern Health:

(i) refers to and repeats paragraphs 165 to 170 above; and

(ii) otherwise denies the allegations in paragraph 171;

(b) RWH does not plead to paragraph 171 as it contains no allegation of material fact against it.

172. As to paragraph 172:

(a) Eastern Health:

(i) refers to and repeats paragraphs 165 to 170 above; and

(ii) otherwise denies the allegations in paragraph 172;

(b) RWH does not plead to paragraph 172 as it contains no allegation of material fact against it.

Handover

173. As to paragraph 173:

(a) Eastern Health:

(i) admits that Dr Hodge's duties and responsibilities when providing medical services included conducting the handover of patient information between medical staff at the start or end of a shift;

(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the Second Angliss Obstetrics and Gynaecology Rotation roster factored in and allowed time for conducting the handover of patient information;

(iii) otherwise denies the allegations in paragraph 173;

(b) RWH does not plead to paragraph 173 as it contains no allegation of material fact against it.

174. As to paragraph 174:

(a) Eastern Health:

- (i) says that there were occasions when Dr Hodge was present at Angliss Hospital during the Second Angliss Obstetrics and Gynaecology Rotation outside of her rostered hours;
- (ii) refers to and repeats sub-paragraphs 56(a)(ii)A to 56(a)(ii)F above;
- (iii) says further that if Dr Hodge performed admissions overtime as pleaded in the Statement of Claim, she was able to submit an Eastern Health Overtime Claim;
- (iv) otherwise denies the allegations in paragraph 174;

(b) RWH does not plead to paragraph 174 as it contains no allegation of material fact against it.

175. As to paragraph 175:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 173 and 174 above; and
- (ii) otherwise denies the allegations in paragraph 175;

(b) RWH does not plead to paragraph 175 as it contains no allegation of material fact against it.

176. As to paragraph 176:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 173, 174 and 175 above;
- (ii) says that:
 - A. whether Dr Hodge was authorised to work any alleged handover overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, Dr Hodge was required to either seek authorisation for any handover overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;

- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of handover overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 176;

- (b) RWH does not plead to paragraph 176 as it contains no allegation of material fact against it.

177. As to paragraph 177:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 173 to 176 above;

- (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked handover overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made an Eastern Health Overtime Claim for that handover overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make an Eastern Health Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

- 3) Dr Hodge was in attendance at Angliss Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 177;

(b) RWH does not plead to paragraph 177 as it contains no allegation of material fact against it.

178. As to paragraph 178:

(a) Eastern Health:

(i) says that if:

A. Dr Hodge had made an Eastern Health Overtime Claim; and

B. the Eastern Health Overtime Claim satisfied the criteria set out in the Eastern Health Overtime Protocol,

Eastern Health would have considered and processed the Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 178;

(b) RWH does not plead to paragraph 178 as it contains no allegation of material fact against it.

179. As to paragraph 179:

(a) Eastern Health:

(i) refers to and repeats paragraphs 173 to 178 above; and

(ii) otherwise denies the allegations in paragraph 179;

(b) RWH does not plead to paragraph 179 as it contains no allegation of material fact against it.

180. As to paragraph 180:

(a) Eastern Health:

(i) refers to and repeats paragraphs 173 to 178 above; and

(ii) otherwise denies the allegations in paragraph 180;

- (b) RWH does not plead to paragraph 180 as it contains no allegation of material fact against it.

D6 Royal Women's Hospital Obstetrics and Gynaecology Rotation – 6 May 2019 to 4 August 2019

181. As to paragraph 181:

- (a) RWH admits the allegations in paragraph 181;
- (b) Eastern Health does not plead to paragraph 181 as it contains no allegation of material fact against it.

Rosters

182. As to paragraph 182:

- (a) RWH:
 - (i) admits that during the First Royal Women's Obstetrics and Gynaecology Rotation, Dr Hodge was rostered to work as pleaded;
 - (ii) says further that, in accordance with cl. 35.1(b) of the 2018 Agreement, as pleaded in paragraph 15 above, the First Royal Women's Obstetrics and Gynaecology Rotation roster factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 17(b) of the Defence;
- (b) Eastern Health does not plead to paragraph 182 as it contains no allegation of material fact against it.

Ward round preparation

183. As to paragraph 183:

- (a) RWH:
 - (i) admits that Dr Hodges's duties and responsibilities when providing medical services included ward round preparation;
 - (ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the First Royal Women's Obstetrics and Gynaecology Rotation roster factored in and allowed time for ward round preparation;
 - (iii) otherwise denies the allegations in paragraph 183;
- (b) Eastern Health does not plead to paragraph 183 as it contains no allegation of material fact against it.

184. As to paragraph 184:

(a) RWH:

- (i) says that there were occasions when Dr Hodge was present at RWH during the First Royal Women's Obstetrics and Gynaecology Rotation outside of her rostered hours;
- (ii) says further that:
 - A. in accordance with cl. 36.3 of the 2018 Agreement, RWH implemented a protocol for the authorisation of and remuneration for unrostered overtime (**RWH Overtime Protocol**), being overtime in excess of rostered ordinary working hours that was required due to a demonstrable clinical need that could not be met by some other means and was essential to patient care (**Unrostered Overtime**);
 - B. any Doctor in Training who works Unrostered Overtime can submit a claim for authorisation and remuneration for that Unrostered Overtime on the Unrostered Hours Substantiation Sheet (**RWH Overtime Claim**);
 - C. in accordance with the RWH Overtime Protocol:
 - 1) authorisation to work Unrostered Overtime must be approved by the Head of Unit prior to its commencement; or
 - 2) authorisation must be completed in the current fortnight;
 - 3) an RWH Overtime Claim must be accompanied by the Doctor in Training's timesheet by 2pm Thursday on the last Thursday of the pay period;
 - D. on the proper construction of the RWH Overtime Protocol, authorisation must be express, and not implied;
 - E. Dr Hodge was aware of the RWH Overtime Protocol and RWH's approach to Unrostered Overtime;

Particulars

- 1) Medical Workforce Orientation program, 2019
- 2)

- 3) The Unrostered Hours Substantiation Sheet was available on the Intranet and from the MWU

F. if Dr Hodge performed ward round preparation overtime as pleaded in the Statement of Claim, she was able to submit a RWH Overtime Claim;

(iii) says further that if Dr Hodge performed ward preparation overtime as pleaded in the Statement of Claim, she was able to submit a RWH Overtime Claim;

(iv) otherwise denies the allegations in paragraph 184;

(b) Eastern Health does not plead to paragraph 184 as it contains no allegation of material fact against it.

185. As to paragraph 185:

(a) RWH:

(i) refers to and repeats paragraphs 183 and 184 above; and

(ii) otherwise denies the allegations in paragraph 185;

(b) Eastern Health does not plead to paragraph 185 as it contains no allegation of material fact against it.

186. As to paragraph 186:

(a) RWH:

(i) refers to and repeats paragraphs 183, 184 and 185 above;

(ii) says that:

A. whether Dr Hodge was authorised to work any alleged ward round preparation overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

B. further or alternatively, pursuant to the RWH Overtime Protocol, Dr Hodge was required to either seek authorisation for any ward round preparation overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;

- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 186;

- (b) Eastern Health does not plead to paragraph 186 as it contains no allegation of material fact against it.

187. As to paragraph 187:

- (a) RWH:

- (i) refers to and repeats paragraphs 183 to 186 above;

- (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked ward preparation overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made a RWH Overtime Claim for that ward round preparation overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make a RWH Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

- 3) Dr Hodge was in attendance at the RWH for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 187;

(b) RWH does not plead to paragraph 187 as it contains no allegation of material fact against it.

188. As to paragraph 188:

(a) RWH:

(i) says that if:

A. Dr Hodge had made a RWH Overtime Claim; and

B. the RWH Overtime Claim satisfied the criteria set out in the RWH Overtime Protocol,

RWH would have considered and processed the RWH Overtime Claim in accordance with the RWH Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 188;

(b) Eastern Health does not plead to paragraph 188 as it contains no allegation of material fact against it.

189. As to paragraph 189:

(a) RWH:

(i) refers to and repeats paragraphs 183 to 188 above; and

(ii) otherwise denies the allegations in paragraph 189;

(b) Eastern Health does not plead to paragraph 189 as it contains no allegation of material fact against it.

190. As to paragraph 190:

(a) RWH:

(i) refers to and repeats paragraphs 183 to 188 above; and

- (ii) otherwise denies the allegations in paragraph 190;
- (b) Eastern Health does not plead to paragraph 190 as it contains no allegation of material fact against it.

Medical emergencies

191. As to paragraph 191:

- (a) RWH:
 - (i) admits that Dr Hodge's duties and responsibilities when providing medical services included attending medical emergencies;
 - (ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the First Royal Women's Obstetrics and Gynaecology Rotation roster factored in and allowed time for attending medical emergencies;
 - (iii) otherwise denies the allegations in paragraph 191;
- (b) Eastern Health does not plead to paragraph 191 as it contains no allegation of material fact against it.

192. As to paragraph 192:

- (a) RWH:
 - (i) says that there were occasions when Dr Hodge was present at RWH during the First Royal Women's Obstetrics and Gynaecology Rotation outside of her rostered hours;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)A to 184(a)(ii)E above;
 - (iii) says further that if Dr Hodge performed medical emergency overtime as pleaded in the Statement of Claim, she was able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 192;
- (b) Eastern Health does not plead to paragraph 192 as it contains no allegation of material fact against it.

193. As to paragraph 193:

- (a) RWH:
 - (i) refers to and repeats paragraphs 191 and 192 above; and

(ii) otherwise denies the allegations in paragraph 193;

(b) Eastern Health does not plead to paragraph 193 as it contains no allegation of material fact against it.

194. As to paragraph 194:

(a) RWH:

(i) refers to and repeats paragraphs 191, 192 and 193 above;

(ii) says that:

- A. whether Dr Hodge was authorised to work any alleged medical emergencies overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the RWH Overtime Protocol, Dr Hodge was required to either seek authorisation for any medical emergencies overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of medical emergency overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 194;

(b) Eastern Health does not plead to paragraph 194 as it contains no allegation of material fact against it.

195. As to paragraph 195:

(a) RWH:

(i) refers to and repeats paragraphs 191 to 194 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked medical emergency overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made a RWH Overtime Claim for that medical emergency overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make a RWH Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) Dr Hodge was in attendance at the RWH for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 195;

- (b) Eastern Health does not plead to paragraph 195 as it contains no allegation of material fact against it.

196. As to paragraph 196:

(a) RWH:

(i) says that if:

- A. Dr Hodge had made a RWH Overtime Claim; and
- B. the RWH Overtime Claim satisfied the criteria set out in the RWH Overtime Protocol,

RWH would have considered and processed the RWH Overtime Claim in accordance with the RWH Overtime Protocol;

- (ii) otherwise denies the allegations in paragraph 196;
- (b) Eastern Health does not plead to paragraph 196 as it contains no allegation of material fact against it.

197. As to paragraph 197:

- (a) RWH:
 - (i) refers to and repeats paragraphs 191 to 196 above; and
 - (ii) otherwise denies the allegations in paragraph 197;
- (b) Eastern Health does not plead to paragraph 197 as it contains no allegation of material fact against it.

198. As to paragraph 198:

- (a) RWH:
 - (i) refers to and repeats paragraphs 191 to 196 above; and
 - (ii) otherwise denies the allegations in paragraph 198;
- (b) Eastern Health does not plead to paragraph 198 as it contains no allegation of material fact against it.

Medical communication

199. As to paragraph 199:

- (a) RWH:
 - (i) admits that Dr Hodges's duties and responsibilities when providing medical services included speaking with patients and patients' families and visitors about patients' treatment;
 - (ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the First Royal Women's Obstetrics and Gynaecology Rotation roster factored in and allowed time for speaking with patients and patients' families and visitors about patients' treatment;
 - (iii) otherwise denies the allegations in paragraph 199;

- (b) Eastern Health does not plead to paragraph 199 as it contains no allegation of material fact against it.

200. As to paragraph 200:

- (a) RWH:
 - (i) says that there were occasions when Dr Hodge was present at RWH during the First Royal Women's Obstetrics and Gynaecology Rotation outside of her rostered hours;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)A to 184(a)(ii)E above;
 - (iii) says further that if Dr Hodge performed medical communication overtime as pleaded in the Statement of Claim, she was able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 200;
- (b) Eastern Health does not plead to paragraph 200 as it contains no allegation of material fact against it.

201. As to paragraph 201:

- (a) RWH:
 - (i) refers to and repeats paragraphs 199 and 200 above; and
 - (ii) otherwise denies the allegations in paragraph 201;
- (b) Eastern Health does not plead to paragraph 201 as it contains no allegation of material fact against it.

202. As to paragraph 202:

- (a) RWH:
 - (i) refers to and repeats paragraphs 199, 200 and 201 above;
 - (ii) says that:
 - A. whether Dr Hodge was authorised to work any alleged medical communication overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the RWH Overtime Protocol, Dr Hodge was required to either seek authorisation for any medical communication overtime in

advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;

- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of medical communication overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 202;

- (b) Eastern Health does not plead to paragraph 202 as it contains no allegation of material fact against it.

203. As to paragraph 203:

- (a) RWH:

- (i) refers to and repeats paragraphs 199 to 202 above;

- (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make a RWH Overtime Claim in relation to the overtime purportedly worked;

- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:

- 1) worked medical communication overtime;
- 2) sought and received either advance or retrospective authorisation for such overtime;
- 3) made a RWH Overtime Claim for that medical communication overtime; and
- 4) was subsequently not paid;

- C. if Dr Hodge did not make a RWH Overtime Claim in respect of the alleged medical communication overtime, then it ought be concluded that either:

- 1) Dr Hodge did not work such overtime;

- 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr Hodge was in attendance at the RWH for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 203;

(b) Eastern Health does not plead to paragraph 203 as it contains no allegation of material fact against it.

204. As to paragraph 204:

(a) RWH:

(i) says that if:

A. Dr Hodge had made a RWH Overtime Claim; and

B. the RWH Overtime Claim satisfied the criteria set out in the RWH Overtime Protocol,

RWH would have considered and processed the RWH Overtime Claim in accordance with the RWH Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 204;

(b) Eastern Health does not plead to paragraph 204 as it contains no allegation of material fact against it.

205. As to paragraph 205:

(a) RWH:

(i) refers to and repeats paragraphs 199 to 204 above; and

(ii) otherwise denies the allegations in paragraph 205;

(b) Eastern Health does not plead to paragraph 205 as it contains no allegation of material fact against it.

206. As to paragraph 206:

- (a) RWH:
 - (i) refers to and repeats paragraphs 199 to 204 above; and
 - (ii) otherwise denies the allegations in paragraph 206;
- (b) Eastern Health does not plead to paragraph 206 as it contains no allegation of material fact against it.

Admissions

207. As to paragraph 207:

- (a) RWH:
 - (i) admits that Dr Hodges's duties and responsibilities when providing medical services included admitting patients into the Obstetrics and Gynaecology department;
 - (ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the First Royal Women's Obstetrics and Gynaecology Rotation roster factored in and allowed time for admitting patients into the Obstetrics and Gynaecology department;
 - (iii) otherwise denies the allegations in paragraph 207;
- (b) Eastern Health does not plead to paragraph 207 as it contains no allegation of material fact against it.

208. As to paragraph 208:

- (a) RWH:
 - (i) says that there were occasions when Dr Hodge was present at RWH during the First Royal Women's Obstetrics and Gynaecology Rotation outside of her rostered hours;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)A to 184(a)(ii)E above;
 - (iii) says further that if Dr Hodge performed admissions overtime as pleaded in the Statement of Claim, she was able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 208;
- (b) Eastern Health does not plead to paragraph 208 as it contains no allegation of material fact against it.

209. As to paragraph 209:

- (a) RWH:
 - (i) refers to and repeats paragraphs 207 and 208 above; and
 - (ii) otherwise denies the allegations in paragraph 209;
- (b) Eastern Health does not plead to paragraph 209 as it contains no allegation of material fact against it.

210. As to paragraph 210:

- (a) RWH:
 - (i) refers to and repeats paragraphs 207, 208 and 209 above;
 - (ii) says that:
 - A. whether Dr Hodge was authorised to work any alleged admissions overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the RWH Overtime Protocol, Dr Hodge was required to either seek authorisation for any admissions overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
 - C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of admissions overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;
 - (iii) otherwise denies the allegations in paragraph 210;
- (b) Eastern Health does not plead to paragraph 210 as it contains no allegation of material fact against it.

211. As to paragraph 211:

- (a) RWH:
 - (i) refers to and repeats paragraphs 207 to 210 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked admissions overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made a RWH Overtime Claim for that admissions overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make a RWH Overtime Claim in respect of the alleged admissions overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) Dr Hodge was in attendance at the RWH for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 211;

- (b) Eastern Health does not plead to paragraph 211 as it contains no allegation of material fact against it.

212. As to paragraph 212:

(a) RWH:

(i) says that if:

- A. Dr Hodge had made a RWH Overtime Claim; and

- B. the RWH Overtime Claim satisfied the criteria set out in the RWH Overtime Protocol,

RWH would have considered and processed the RWH Overtime Claim in accordance with the RWH Overtime Protocol;

- (ii) otherwise denies the allegations in paragraph 212;
- (b) Eastern Health does not plead to paragraph 212 as it contains no allegation of material fact against it.

213. As to paragraph 213:

- (a) RWH:
 - (i) refers to and repeats paragraphs 207 to 212 above; and
 - (ii) otherwise denies the allegations in paragraph 213;
- (b) Eastern Health does not plead to paragraph 213 as it contains no allegation of material fact against it.

214. As to paragraph 214:

- (a) RWH:
 - (i) refers to and repeats paragraphs 207 to 212 above; and
 - (ii) otherwise denies the allegations in paragraph 214;
- (b) Eastern Health does not plead to paragraph 214 as it contains no allegation of material fact against it.

Medical records

215. As to paragraph 215:

- (a) RWH:
 - (i) admits that Dr Hodges's duties and responsibilities when providing medical services included completing medical records in a timely manner;
 - (ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the First Royal Women's Obstetrics and Gynaecology Rotation roster factored in and allowed time for completing medical records in a timely manner;
 - (iii) otherwise denies the allegations in paragraph 215;

- (b) Eastern Health does not plead to paragraph 215 as it contains no allegation of material fact against it.

216. As to paragraph 216:

- (a) RWH:
 - (i) says that there were occasions when Dr Hodge was present at RWH during the First Royal Women's Obstetrics and Gynaecology Rotation outside of her rostered hours;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)A to 184(a)(ii)E above;
 - (iii) says further that if Dr Hodge performed medical records overtime as pleaded in the Statement of Claim, she was able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 216;
- (b) Eastern Health does not plead to paragraph 216 as it contains no allegation of material fact against it.

217. As to paragraph 217:

- (a) RWH:
 - (i) refers to and repeats paragraphs 215 and 216 above; and
 - (ii) otherwise denies the allegations in paragraph 217;
- (b) Eastern Health does not plead to paragraph 217 as it contains no allegation of material fact against it.

218. As to paragraph 218:

- (a) RWH:
 - (i) refers to and repeats paragraphs 215, 216 and 217 above;
 - (ii) says that:
 - A. whether Dr Hodge was authorised to work any alleged medical records overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the RWH Overtime Protocol, Dr Hodge was required to either seek authorisation for any medical records overtime in

advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;

- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 218;

- (b) Eastern Health does not plead to paragraph 218 as it contains no allegation of material fact against it.

219. As to paragraph 219:

- (a) RWH:

- (i) refers to and repeats paragraphs 215 to 218 above;

- (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked medical records overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made a RWH Overtime Claim for that medical records overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make a RWH Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;

- 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr Hodge was in attendance at the RWH for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 219;

(b) Eastern Health does not plead to paragraph 219 as it contains no allegation of material fact against it.

220. As to paragraph 220:

(a) RWH:

(i) says that if:

A. Dr Hodge had made a RWH Overtime Claim; and

B. the RWH Overtime Claim satisfied the criteria set out in the RWH Overtime Protocol,

RWH would have considered and processed the RWH Overtime Claim in accordance with the RWH Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 220;

(b) Eastern Health does not plead to paragraph 220 as it contains no allegation of material fact against it.

221. As to paragraph 221:

(a) RWH:

(i) refers to and repeats paragraphs 215 to 220 above; and

(ii) otherwise denies the allegations in paragraph 221;

(b) Eastern Health does not plead to paragraph 221 as it contains no allegation of material fact against it.

222. As to paragraph 222:

- (a) RWH:
 - (i) refers to and repeats paragraphs 215 to 220 above; and
 - (ii) otherwise denies the allegations in paragraph 222;
- (b) Eastern Health does not plead to paragraph 222 as it contains no allegation of material fact against it.

Other medical services

223. As to paragraph 223:

- (a) RWH:
 - (i) admits that Dr Hodges's duties and responsibilities when providing medical services included undertaking specific tasks relating to patient care;
 - (ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the First Royal Women's Obstetrics and Gynaecology Rotation roster factored in and allowed time for undertaking specific tasks relating to patient care;
 - (iii) otherwise denies the allegations in paragraph 223;
- (b) Eastern Health does not plead to paragraph 223 as it contains no allegation of material fact against it.

224. As to paragraph 224:

- (a) RWH:
 - (i) says that there were occasions when Dr Hodge was present at RWH during the First Royal Women's Obstetrics and Gynaecology Rotation outside of her rostered hours;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)A to 184(a)(ii)E above;
 - (iii) says further that if Dr Hodge performed patient care overtime as pleaded in the Statement of Claim, she was able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 224;
- (b) Eastern Health does not plead to paragraph 224 as it contains no allegation of material fact against it.

225. As to paragraph 225:

- (a) RWH:
 - (i) refers to and repeats paragraphs 223 and 224 above; and
 - (ii) otherwise denies the allegations in paragraph 225;
- (b) Eastern Health does not plead to paragraph 225 as it contains no allegation of material fact against it.

226. As to paragraph 226:

- (a) RWH:
 - (i) refers to and repeats paragraphs 223, 224 and 225 above;
 - (ii) says that:
 - A. whether Dr Hodge was authorised to work any alleged patient care overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the RWH Overtime Protocol, Dr Hodge was required to either seek authorisation for any patient care overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
 - C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of patient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;
 - (iii) otherwise denies the allegations in paragraph 226;
- (b) Eastern Health does not plead to paragraph 226 as it contains no allegation of material fact against it.

227. As to paragraph 227:

- (a) RWH:
 - (i) refers to and repeats paragraphs 223 to 226 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked patient care overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made a RWH Overtime Claim for that patient care overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make a RWH Overtime Claim in respect of the alleged patient care overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) Dr Hodge was in attendance at the RWH for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 227;

- (b) Eastern Health does not plead to paragraph 227 as it contains no allegation of material fact against it.

228. As to paragraph 228:

(a) RWH:

(i) says that if:

- A. Dr Hodge had made a RWH Overtime Claim; and

- B. the RWH Overtime Claim satisfied the criteria set out in the RWH Overtime Protocol,

RWH would have considered and processed the RWH Overtime Claim in accordance with the RWH Overtime Protocol;

- (ii) otherwise denies the allegations in paragraph 228;
- (b) Eastern Health does not plead to paragraph 228 as it contains no allegation of material fact against it.

229. As to paragraph 229:

- (a) RWH:
 - (i) refers to and repeats paragraphs 223 to 226 above; and
 - (ii) otherwise denies the allegations in paragraph 229;
- (b) Eastern Health does not plead to paragraph 229 as it contains no allegation of material fact against it.

230. As to paragraph 230:

- (a) RWH:
 - (i) refers to and repeats paragraphs 223 to 226 above; and
 - (ii) otherwise denies the allegations in paragraph 230;
- (b) Eastern Health does not plead to paragraph 230 as it contains no allegation of material fact against it.

D7 Second Royal Women's Hospital Obstetrics and Gynaecology Rotation – 3 February 2020 to 18 November 2020

231. As to paragraph 231:

- (a) RWH admits the allegations in paragraph 231;
- (b) Eastern Health does not plead to paragraph 231 as it contains no allegation of material fact against it.

Rosters

232. As to paragraph 232:

- (a) RWH:
 - (i) admits that during the Second Royal Women's Obstetrics and Gynaecology Rotation, Dr Hodge was rostered to work as pleaded;
 - (ii) says further that, in accordance with cl. 35.1(b) of the 2018 Agreement, as pleaded in paragraph 15 above, the Second Royal Women's Obstetrics and Gynaecology Rotation roster factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 17(b) of the Defence;
- (b) Eastern Health does not plead to paragraph 232 as it contains no allegation of material fact against it.

233. As to paragraph 233:

- (a) RWH admits that during the Second Royal Women's Obstetrics and Gynaecology Rotation, Dr Hodge was rostered to work as pleaded;
- (b) Eastern Health does not plead to paragraph 233 as it contains no allegation of material fact against it.

Ward round preparation

234. As to paragraph 234:

- (a) RWH:
 - (i) admits that Dr Hodges's duties and responsibilities when providing medical services included preparing for ward rounds;
 - (ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second Royal Women's Obstetrics and Gynaecology Rotation roster factored in and allowed time for preparing for ward rounds;
 - (iii) otherwise denies the allegations in paragraph 234;
- (b) Eastern Health does not plead to paragraph 234 as it contains no allegation of material fact against it.

235. As to paragraph 235:

- (a) RWH:
 - (i) says that there were occasions when Dr Hodge was present at RWH during the Second Royal Women's Obstetrics and Gynaecology Rotation outside of her rostered hours;

- (ii) refers to and repeats sub-paragraphs 184(a)(ii)A to 184(a)(ii)E above;
- (iii) says further that if Dr Hodge performed ward preparation overtime as pleaded in the Statement of Claim, she was able to submit a RWH Overtime Claim;
- (iv) otherwise denies the allegations in paragraph 235;
- (b) Eastern Health does not plead to paragraph 235 as it contains no allegation of material fact against it.

236. As to paragraph 236:

- (a) RWH:
 - (i) refers to and repeats paragraphs 234 and 235 above; and
 - (ii) otherwise denies the allegations in paragraph 236;
- (b) Eastern Health does not plead to paragraph 236 as it contains no allegation of material fact against it.

237. As to paragraph 237:

- (a) RWH:
 - (i) refers to and repeats paragraphs 234, 235 and 236 above;
 - (ii) says that:
 - A. whether Dr Hodge was authorised to work any alleged ward round preparation overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the RWH Overtime Protocol, Dr Hodge was required to either seek authorisation for any ward round preparation overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
 - C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by RWH) for

retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 237;

(b) Easter Health does not plead to paragraph 237 as it contains no allegation of material fact against it.

238. As to paragraph 238:

(a) RWH:

(i) refers to and repeats paragraphs 234 to 237 above;

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make a RWH Overtime Claim in relation to the overtime purportedly worked;

B. Dr Hodge has not provided particulars of any occasions on which she allegedly:

1) worked ward preparation overtime;

2) sought and received either advance or retrospective authorisation for such overtime;

3) made a RWH Overtime Claim for that ward round preparation overtime; and

4) was subsequently not paid;

C. if Dr Hodge did not make a RWH Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:

1) Dr Hodge did not work such overtime;

2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) Dr Hodge was in attendance at the RWH for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

- D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

- (iii) otherwise denies the allegations in paragraph 238;

- (b) RWH does not plead to paragraph 238 as it contains no allegation of material fact against it.

239. As to paragraph 239:

- (a) RWH:

- (i) says that if:

- A. Dr Hodge had made a RWH Overtime Claim; and

- B. the RWH Overtime Claim satisfied the criteria set out in the RWH Overtime Protocol,

RWH would have considered and processed the RWH Overtime Claim in accordance with the RWH Overtime Protocol;

- (ii) otherwise denies the allegations in paragraph 239;

- (b) Eastern Health does not plead to paragraph 239 as it contains no allegation of material fact against it.

240. As to paragraph 240:

- (a) RWH:

- (i) refers to and repeats paragraphs 234 to 239 above; and

- (ii) otherwise denies the allegations in paragraph 240;

- (b) Eastern Health does not plead to paragraph 240 as it contains no allegation of material fact against it.

241. As to paragraph 241:

- (a) RWH:

- (i) refers to and repeats paragraphs 234 to 239 above; and

- (ii) otherwise denies the allegations in paragraph 241;

- (b) Eastern Health does not plead to paragraph 241 as it contains no allegation of material fact against it.

Medical emergencies

242. As to paragraph 242:

- (a) RWH:
 - (i) admits that Dr Hodge's duties and responsibilities when providing medical services included attending medical emergencies;
 - (ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second Royal Women's Obstetrics and Gynaecology Rotation roster factored in and allowed time for attending medical emergencies;
 - (iii) otherwise denies the allegations in paragraph 191;
- (b) Eastern Health does not plead to paragraph 242 as it contains no allegation of material fact against it.

243. As to paragraph 243:

- (a) RWH:
 - (i) says that there were occasions when Dr Hodge was present at RWH during the Second Royal Women's Obstetrics and Gynaecology Rotation outside of her rostered hours;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)A to 184(a)(ii)E above;
 - (iii) says further that if Dr Hodge performed medical emergency overtime as pleaded in the Statement of Claim, she was able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 243;
- (b) Eastern Health does not plead to paragraph 243 as it contains no allegation of material fact against it.

244. As to paragraph 244:

- (a) RWH:
 - (i) refers to and repeats paragraphs 242 and 243 above; and

(ii) otherwise denies the allegations in paragraph 244;

(b) Eastern Health does not plead to paragraph 244 as it contains no allegation of material fact against it.

245. As to paragraph 245:

(a) RWH:

(i) refers to and repeats paragraphs 242, 243 and 244 above;

(ii) says that:

- A. whether Dr Hodge was authorised to work any alleged medical emergencies overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the RWH Overtime Protocol, Dr Hodge was required to either seek authorisation for any medical emergencies overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of medical emergency overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 245;

(b) Eastern Health does not plead to paragraph 245 as it contains no allegation of material fact against it.

246. As to paragraph 246:

(a) RWH:

(i) refers to and repeats paragraphs 242 to 245 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked medical emergency overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made a RWH Overtime Claim for that medical emergency overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make a RWH Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) Dr Hodge was in attendance at the RWH for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 246;

- (b) Eastern Health does not plead to paragraph 246 as it contains no allegation of material fact against it.

247. As to paragraph 247:

(a) RWH:

(i) says that if:

- A. Dr Hodge had made a RWH Overtime Claim; and
- B. the RWH Overtime Claim satisfied the criteria set out in the RWH Overtime Protocol,

RWH would have considered and processed the RWH Overtime Claim in accordance with the RWH Overtime Protocol;

- (ii) otherwise denies the allegations in paragraph 247;
- (b) Eastern Health does not plead to paragraph 247 as it contains no allegation of material fact against it.

248. As to paragraph 248:

- (a) RWH:
 - (i) refers to and repeats paragraphs 242 to 247 above; and
 - (ii) otherwise denies the allegations in paragraph 248;
- (b) Eastern Health does not plead to paragraph 248 as it contains no allegation of material fact against it.

249. As to paragraph 249:

- (a) RWH:
 - (i) refers to and repeats paragraphs 242 to 247 above; and
 - (ii) otherwise denies the allegations in paragraph 249;
- (b) Eastern Health does not plead to paragraph 249 as it contains no allegation of material fact against it.

Medical communication

250. As to paragraph 250:

- (a) RWH:
 - (i) admits that Dr Hodges's duties and responsibilities when providing medical services included speaking with patients and patients' families and visitors about patients' treatment;
 - (ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second Royal Women's Obstetrics and Gynaecology Rotation roster factored in and allowed time for speaking with patients and patients' families and visitors about patients' treatment;
 - (iii) otherwise denies the allegations in paragraph 250;

- (b) Eastern Health does not plead to paragraph 250 as it contains no allegation of material fact against it.

251. As to paragraph 251:

- (a) RWH:
 - (i) says that there were occasions when Dr Hodge was present at RWH during the Second Royal Women's Obstetrics and Gynaecology Rotation outside of her rostered hours;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)A to 184(a)(ii)E above;
 - (iii) says further that if Dr Hodge performed medical communication overtime as pleaded in the Statement of Claim, she was able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 251;
- (b) Eastern Health does not plead to paragraph 251 as it contains no allegation of material fact against it.

252. As to paragraph 252:

- (a) RWH:
 - (i) refers to and repeats paragraphs 250 and 251 above; and
 - (ii) otherwise denies the allegations in paragraph 252;
- (b) Eastern Health does not plead to paragraph 252 as it contains no allegation of material fact against it.

253. As to paragraph 253:

- (a) RWH:
 - (i) refers to and repeats paragraphs 250, 251 and 252 above;
 - (ii) says that:
 - A. whether Dr Hodge was authorised to work any alleged medical communication overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- B. further or alternatively, pursuant to the RWH Overtime Protocol, Dr Hodge was required to either seek authorisation for any medical communication overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of medical communication overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 253;

- (b) Eastern Health does not plead to paragraph 253 as it contains no allegation of material fact against it.

254. As to paragraph 254:

(a) RWH:

(i) refers to and repeats paragraphs 250 to 253 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked medical communication overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made a RWH Overtime Claim for that medical communication overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make a RWH Overtime Claim in respect of the alleged medical communication overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;

- 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr Hodge was in attendance at the RWH for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs (C)(1) and (C)(2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 254;

(b) Eastern Health does not plead to paragraph 254 as it contains no allegation of material fact against it.

255. As to paragraph 255:

(a) RWH:

(i) says that if:

A. Dr Hodge had made a RWH Overtime Claim; and

B. the RWH Overtime Claim satisfied the criteria set out in the RWH Overtime Protocol,

RWH would have considered and processed the RWH Overtime Claim in accordance with the RWH Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 255;

(b) Eastern Health does not plead to paragraph 255 as it contains no allegation of material fact against it.

256. As to paragraph 256:

(a) RWH:

(i) refers to and repeats paragraphs 250 to 255 above; and

(ii) otherwise denies the allegations in paragraph 256;

(b) Eastern Health does not plead to paragraph 256 as it contains no allegation of material fact against it.

257. As to paragraph 257:

- (a) RWH:
 - (i) refers to and repeats paragraphs 250 to 255 above; and
 - (ii) otherwise denies the allegations in paragraph 257;
- (b) Eastern Health does not plead to paragraph 257 as it contains no allegation of material fact against it.

Admissions

258. As to paragraph 258:

- (a) RWH:
 - (i) admits that Dr Hodges's duties and responsibilities when providing medical services included admitting patients into the Obstetrics and Gynaecology department;
 - (ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second Royal Women's Obstetrics and Gynaecology Rotation roster factored in and allowed time for admitting patients into the Obstetrics and Gynaecology department;
 - (iii) otherwise denies the allegations in paragraph 258;
- (b) Eastern Health does not plead to paragraph 258 as it contains no allegation of material fact against it.

259. As to paragraph 259:

- (a) RWH:
 - (i) says that there were occasions when Dr Hodge was present at RWH during the Second Royal Women's Obstetrics and Gynaecology Rotation outside of her rostered hours;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)A to 184(a)(ii)E above;
 - (iii) says further that if Dr Hodge performed admissions overtime as pleaded in the Statement of Claim, she was able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 259;
- (b) Eastern Health does not plead to paragraph 259 as it contains no allegation of material fact against it.

260. As to paragraph 260:

- (a) RWH:
 - (i) refers to and repeats paragraphs 258 and 259 above; and
 - (ii) otherwise denies the allegations in paragraph 260;
- (b) Eastern Health does not plead to paragraph 260 as it contains no allegation of material fact against it.

261. As to paragraph 261:

- (a) RWH:
 - (i) refers to and repeats paragraphs 258, 259 and 260 above;
 - (ii) says that:
 - A. whether Dr Hodge was authorised to work any alleged admissions overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the RWH Overtime Protocol, Dr Hodge was required to either seek authorisation for any admissions overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
 - C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of admissions overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;
 - (iii) otherwise denies the allegations in paragraph 261;
- (b) Eastern Health does not plead to paragraph 261 as it contains no allegation of material fact against it.

262. As to paragraph 262:

- (a) RWH:

- (i) refers to and repeats paragraphs 258 to 261 above;
- (ii) says further that:
 - A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make a RWH Overtime Claim in relation to the overtime purportedly worked;
 - B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked admissions overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made a RWH Overtime Claim for that admissions overtime; and
 - 4) was subsequently not paid;
 - C. if Dr Hodge did not make a RWH Overtime Claim in respect of the alleged admissions overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) Dr Hodge was in attendance at the RWH for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
 - D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;
- (iii) otherwise denies the allegations in paragraph 262;
- (b) Eastern Health does not plead to paragraph 262 as it contains no allegation of material fact against it.

263. As to paragraph 263:

- (a) RWH:
 - (i) says that if:

A. Dr Hodge had made a RWH Overtime Claim; and

B. the RWH Overtime Claim satisfied the criteria set out in the RWH Overtime Protocol,

RWH would have considered and processed the RWH Overtime Claim in accordance with the RWH Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 263;

(b) Eastern Health does not plead to paragraph 263 as it contains no allegation of material fact against it.

264. As to paragraph 264:

(a) RWH:

(i) refers to and repeats paragraphs 258 to 263 above; and

(ii) otherwise denies the allegations in paragraph 264;

(b) Eastern Health does not plead to paragraph 264 as it contains no allegation of material fact against it.

265. As to paragraph 265:

(a) RWH:

(i) refers to and repeats paragraphs 258 to 263 above; and

(ii) otherwise denies the allegations in paragraph 265;

(b) Eastern Health does not plead to paragraph 265 as it contains no allegation of material fact against it.

Medical records

266. As to paragraph 266:

(a) RWH:

(i) admits that Dr Hodges's duties and responsibilities when providing medical services included completing medical records in a timely manner;

(ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second Royal Women's Obstetrics and Gynaecology Rotation roster factored in and allowed time for the completion of medical records in a timely manner;

(iii) otherwise denies the allegations in paragraph 266;

(b) Eastern Health does not plead to paragraph 266 as it contains no allegation of material fact against it.

267. As to paragraph 267:

(a) RWH:

(i) says that there were occasions when Dr Hodge was present at RWH during the Second Royal Women's Obstetrics and Gynaecology Rotation outside of her rostered hours;

(ii) refers to and repeats sub-paragraphs 184(a)(ii)A to 184(a)(ii)E above;

(iii) says further that if Dr Hodge performed medical records overtime as pleaded in the Statement of Claim, she was able to submit a RWH Overtime Claim;

(iv) otherwise denies the allegations in paragraph 267;

(b) Eastern Health does not plead to paragraph 267 as it contains no allegation of material fact against it.

268. As to paragraph 268:

(a) RWH:

(i) refers to and repeats paragraphs 266 and 267 above; and

(ii) otherwise denies the allegations in paragraph 268;

(b) Eastern Health does not plead to paragraph 268 as it contains no allegation of material fact against it.

269. As to paragraph 269:

(a) RWH:

(i) refers to and repeats paragraphs 266, 267 and 268 above;

(ii) says that:

A. whether Dr Hodge was authorised to work any alleged medical records overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- B. further or alternatively, pursuant to the RWH Overtime Protocol, Dr Hodge was required to either seek authorisation for any medical records overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
- C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 269;

- (b) Eastern Health does not plead to paragraph 269 as it contains no allegation of material fact against it.

270. As to paragraph 270:

(a) RWH:

(i) refers to and repeats paragraphs 266 to 269 above;

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked medical records overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made a RWH Overtime Claim for that medical records overtime; and
 - 4) was subsequently not paid;
- C. if Dr Hodge did not make a RWH Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;

- 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) Dr Hodge was in attendance at the RWH for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;

(iii) otherwise denies the allegations in paragraph 270;

(b) Eastern Health does not plead to paragraph 270 as it contains no allegation of material fact against it.

271. As to paragraph 271:

(a) RWH:

(i) says that if:

A. Dr Hodge had made a RWH Overtime Claim; and

B. the RWH Overtime Claim satisfied the criteria set out in the RWH Overtime Protocol,

RWH would have considered and processed the RWH Overtime Claim in accordance with the RWH Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 271;

(b) Eastern Health does not plead to paragraph 271 as it contains no allegation of material fact against it.

272. As to paragraph 272:

(a) RWH:

(i) refers to and repeats paragraphs 266 to 271 above; and

(ii) otherwise denies the allegations in paragraph 272;

(b) Eastern Health does not plead to paragraph 272 as it contains no allegation of material fact against it.

273. As to paragraph 273:

- (a) RWH:
 - (i) refers to and repeats paragraphs 266 to 271 above; and
 - (ii) otherwise denies the allegations in paragraph 272;
- (b) Eastern Health does not plead to paragraph 272 as it contains no allegation of material fact against it.

Other medical services

274. As to paragraph 274:

- (a) RWH:
 - (i) admits that Dr Hodges's duties and responsibilities when providing medical services included undertaking specific tasks relating to patient care;
 - (ii) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second Royal Women's Obstetrics and Gynaecology Rotation roster factored in and allowed time for undertaking specific tasks relating to patient care;
 - (iii) otherwise denies the allegations in paragraph 274;
- (b) Eastern Health does not plead to paragraph 274 as it contains no allegation of material fact against it.

275. As to paragraph 275:

- (a) RWH:
 - (i) says that there were occasions when Dr Hodge was present at RWH during the Second Royal Women's Obstetrics and Gynaecology Rotation outside of her rostered hours;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)A to 184(a)(ii)E above;
 - (iii) says further that if Dr Hodge performed patient care overtime as pleaded in the Statement of Claim, she was able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 275;
- (b) Eastern Health does not plead to paragraph 275 as it contains no allegation of material fact against it.

276. As to paragraph 276:

- (a) RWH:
 - (i) refers to and repeats paragraphs 274 and 275 above; and
 - (ii) otherwise denies the allegations in paragraph 276;
- (b) Eastern Health does not plead to paragraph 276 as it contains no allegation of material fact against it.

277. As to paragraph 277:

- (a) RWH:
 - (i) refers to and repeats paragraphs 274, 275 and 276 above;
 - (ii) says that:
 - A. whether Dr Hodge was authorised to work any alleged patient care overtime (including whether Dr Hodge worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the RWH Overtime Protocol, Dr Hodge was required to either seek authorisation for any patient care overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
 - C. Dr Hodge has not provided particulars of the circumstances of each alleged occasion of patient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to her for such overtime, nor provided particulars of the claims made by her (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;
 - (iii) otherwise denies the allegations in paragraph 277;
- (b) Eastern Health does not plead to paragraph 277 as it contains no allegation of material fact against it.

278. As to paragraph 278:

- (a) RWH:

- (i) refers to and repeats paragraphs 274 to 277 above;
- (ii) says further that:
 - A. payment for Unrostered Overtime is subject to the condition that Dr Hodge make a RWH Overtime Claim in relation to the overtime purportedly worked;
 - B. Dr Hodge has not provided particulars of any occasions on which she allegedly:
 - 1) worked patient care overtime;
 - 2) sought and received either advance or retrospective authorisation for such overtime;
 - 3) made a RWH Overtime Claim for that patient care overtime; and
 - 4) was subsequently not paid;
 - C. if Dr Hodge did not make a RWH Overtime Claim in respect of the alleged patient care overtime, then it ought be concluded that either:
 - 1) Dr Hodge did not work such overtime;
 - 2) Dr Hodge was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) Dr Hodge was in attendance at the RWH for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
 - D. further or alternatively, Dr Hodge is estopped from asserting the contrary of the matters in subparagraphs C.1) and C.2) above for the reasons in paragraphs 475 to 486 below;
- (iii) otherwise denies the allegations in paragraph 278;
- (b) Eastern Health does not plead to paragraph 278 as it contains no allegation of material fact against it.

279. As to paragraph 279:

- (a) RWH:
 - (i) says that if:

A. Dr Hodge had made a RWH Overtime Claim; and

B. the RWH Overtime Claim satisfied the criteria set out in the RWH Overtime Protocol,

RWH would have considered and processed the RWH Overtime Claim in accordance with the RWH Overtime Protocol;

(ii) otherwise denies the allegations in paragraph 279;

(b) Eastern Health does not plead to paragraph 279 as it contains no allegation of material fact against it.

280. As to paragraph 280:

(a) RWH:

(i) refers to and repeats paragraphs 274 to 279 above; and

(ii) otherwise denies the allegations in paragraph 280;

(b) Eastern Health does not plead to paragraph 280 as it contains no allegation of material fact against it.

281. As to paragraph 281:

(a) RWH:

(i) refers to and repeats paragraphs 274 to 279 above; and

(ii) otherwise denies the allegations in paragraph 281;

(b) Eastern Health does not plead to paragraph 281 as it contains no allegation of material fact against it.

D8 Loss and damage

282. As to paragraph 282, the respondents deny the allegations for the reasons pleaded above.

E GROUP MEMBERS' CLAIMS AGAINST EASTERN HEALTH

283. As to paragraph 283:

(a) Eastern Health:

(i) admits that, in the course of their employment during the Relevant Period, Doctors in Training:

- A. worked in one or more of the services operated by Eastern Health as set out in paragraph 1(d) of the Statement of Claim; and
- B. were rostered to work 38 ordinary hours per week, or an average of 38 hours per week for up to 4 weeks;
- (ii) otherwise denies the allegations in paragraph 283;
- (b) RWH does not plead to paragraph 283 as it contains no allegation of material fact against it.

E1 Ward round preparation overtime

284. As to paragraph 284:

- (a) Eastern Health:
 - (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included ward round preparation;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the performance of ward round preparation; and
 - (iii) otherwise denies the allegations in paragraph 284;
- (b) RWH does not plead to paragraph 284 as it contains no allegation of material fact against it.

285. As to paragraph 285:

- (a) Eastern Health:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Eastern Health implemented the Eastern Health Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 56(a)(ii)B to 56(a)(ii)E above;
 - (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the Eastern Health Overtime Protocol and Eastern Health's approach to Unrostered Overtime;
 - B. if Doctors in Training performed Unrostered Overtime, they were able to submit an Eastern Health Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 285;
- (b) RWH does not plead to paragraph 285 as it contains no allegation of material fact against it.

286. As to paragraph 286:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 284 and 285 above;
 - (ii) otherwise denies the allegations in paragraph 286;
- (b) RWH does not plead to paragraph 286 as it contains no allegation of material fact against it.

287. As to paragraph 287:

- (a) Eastern Health:
 - (i) refers to and repeats paragraph 285 above; and
 - (ii) otherwise denies the allegations in paragraph 287;
- (b) RWH does not plead to paragraph 287 as it contains no allegation of material fact against it.

288. As to paragraph 288:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 284 and 285 above;
 - (ii) says that:
 - A. whether a Doctor in Training was authorised to work any alleged ward round preparation overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, the Doctor in Training was required to either seek authorisation for any ward round preparation overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
 - C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by Eastern

Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 288;

(b) RWH does not plead to paragraph 288 as it contains no allegation of material fact against it.

289. As to paragraph 289:

(a) Eastern Health:

(i) refers to and repeats paragraphs 285 to 288 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make an Eastern Health Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:

1) the Group Member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 289;

(b) RWH does not plead to paragraph 289 as it contains no allegation of material fact against it.

290. As to paragraph 290:

(a) Eastern Health:

(i) refers to and repeats paragraphs 284 to 289 above; and

(ii) otherwise denies the allegations in paragraph 290;

(b) RWH does not plead to paragraph 290 as it contains no allegation of material fact against it.

291. As to paragraph 291:

(a) Eastern Health:

(i) refers to and repeats paragraphs 284 to 289 above; and

(ii) otherwise denies the allegations in paragraph 291;

(b) RWH does not plead to paragraph 291 as it contains no allegation of material fact against it.

E2 Ward round overtime

292. As to paragraph 292:

(a) Eastern Health:

(i) admits that the duties and responsibilities of Doctors in Training when providing medical services included undertaking ward rounds;

(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the undertaking of ward rounds; and

(iii) otherwise denies the allegations in paragraph 292;

(b) RWH does not plead to paragraph 292 as it contains no allegation of material fact against it.

293. As to paragraph 293:

(a) Eastern Health:

(i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Eastern Health implemented the Eastern Health Overtime Protocol;

(ii) refers to and repeats sub-paragraphs 56(a)(ii)B to 56(a)(ii)E above;

(iii) says further that:

A. Doctors in Training were, or ought to have been, aware of the Eastern Health Overtime Protocol and Eastern Health's approach to Unrostered Overtime;

B. if Doctors in Training performed Unrostered Overtime, they were able to submit an Eastern Health Overtime Claim;

(iv) otherwise denies the allegations in paragraph 293;

(b) RWH does not plead to paragraph 293 as it contains no allegation of material fact against it.

294. As to paragraph 294:

(a) Eastern Health:

(i) refers to and repeats paragraphs 292 and 293 above;

(ii) otherwise denies the allegations in paragraph 294;

(b) RWH does not plead to paragraph 294 as it contains no allegation of material fact against it.

295. As to paragraph 295:

(a) Eastern Health:

(i) refers to and repeats paragraph 293 above; and

(ii) otherwise denies the allegations in paragraph 295;

(b) RWH does not plead to paragraph 295 as it contains no allegation of material fact against it.

296. As to paragraph 296:

(a) Eastern Health:

(i) refers to and repeats paragraphs 292 and 293 above;

(ii) says that:

- A. whether a Doctor in Training was authorised to work any alleged ward round overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, the Doctor in Training was required to either seek authorisation for any ward round overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of ward round overtime worked (including of the demonstrable

clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 296;

(b) RWH does not plead to paragraph 296 as it contains no allegation of material fact against it.

297. As to paragraph 297:

(a) Eastern Health:

(i) refers to and repeats paragraphs 293 to 296 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make an Eastern Health Overtime Claim in respect of the alleged ward round overtime, then it ought be concluded that either:

1) the Group Member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 297;

(b) RWH does not plead to paragraph 297 as it contains no allegation of material fact against it.

298. As to paragraph 298:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 292 to 297 above; and
- (ii) otherwise denies the allegations in paragraph 298;
- (b) RWH does not plead to paragraph 298 as it contains no allegation of material fact against it.

299. As to paragraph 299:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 292 to 297 above; and
 - (ii) otherwise denies the allegations in paragraph 299;
- (b) RWH does not plead to paragraph 299 as it contains no allegation of material fact against it.

E3 Handover overtime

300. As to paragraph 300:

- (a) Eastern Health:
 - (i) admits that a Doctors in Training's duties and responsibilities when providing medical services included conducting handover;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the conducting of handover; and
 - (iii) otherwise denies the allegations in paragraph 300;
- (b) RWH does not plead to paragraph 300 as it contains no allegation of material fact against it.

301. As to paragraph 301:

- (a) Eastern Health:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Eastern Health implemented the Eastern Health Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 56(a)(ii)B to 56(a)(ii)E above;
 - (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the Eastern Health Overtime Protocol and Eastern Health's approach to Unrostered Overtime;

B. if Doctors in Training performed Unrostered Overtime, they were able to submit an Eastern Health Overtime Claim;

(iv) otherwise denies the allegations in paragraph 301;

(b) RWH does not plead to paragraph 301 as it contains no allegation of material fact against it.

302. As to paragraph 302:

(a) Eastern Health:

(i) refers to and repeats paragraphs 300 and 301 above;

(ii) otherwise denies the allegations in paragraph 302;

(b) RWH does not plead to paragraph 302 as it contains no allegation of material fact against it.

303. As to paragraph 303:

(a) Eastern Health:

(i) refers to and repeats paragraph 301 above; and

(ii) otherwise denies the allegations in paragraph 303;

(b) RWH does not plead to paragraph 303 as it contains no allegation of material fact against it.

304. As to paragraph 304:

(a) Eastern Health:

(i) refers to and repeats paragraphs 300 and 301 above;

(ii) says that:

A. whether a Doctor in Training was authorised to work any alleged ward round handover overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, the Doctor in Training was required to either seek authorisation for any handover overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;

- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of handover overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 304;

- (b) RWH does not plead to paragraph 304 as it contains no allegation of material fact against it.

305. As to paragraph 305:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 300 to 304 above; and

- (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make an Eastern Health Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:
 - 1) the Group Member did not work such overtime;
 - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

- (iii) otherwise denies the allegations in paragraph 305;

- (b) RWH does not plead to paragraph 305 as it contains no allegation of material fact against it.

306. As to paragraph 306:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 300 to 305 above; and
- (ii) otherwise denies the allegations in paragraph 306;

(b) RWH does not plead to paragraph 306 as it contains no allegation of material fact against it.

307. As to paragraph 307:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 300 to 305 above; and
- (ii) otherwise denies the allegations in paragraph 307;

(b) RWH does not plead to paragraph 307 as it contains no allegation of material fact against it.

E4 Medical procedures preparation overtime

308. As to paragraph 308:

(a) Eastern Health:

- (i) admits that the duties and responsibilities of Doctors in Training when providing medical services included medical procedures preparation;
- (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the performance of medical procedures preparation; and
- (iii) otherwise denies the allegations in paragraph 308;

(b) RWH does not plead to paragraph 308 as it contains no allegation of material fact against it.

309. As to paragraph 309:

(a) Eastern Health:

- (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Eastern Health implemented the Eastern Health Overtime Protocol;
- (ii) refers to and repeats sub-paragraphs 56(a)(ii)B to 56(a)(ii)E above;
- (iii) says further that:

- A. Doctors in Training were, or ought to have been, aware of the Eastern Health Overtime Protocol and Eastern Health's approach to Unrostered Overtime;
- B. if Doctors in Training performed Unrostered Overtime, they were able to submit an Eastern Health Overtime Claim;

(iv) otherwise denies the allegations in paragraph 309;

(b) RWH does not plead to paragraph 309 as it contains no allegation of material fact against it.

310. As to paragraph 310:

(a) Eastern Health:

(i) refers to and repeats paragraphs 308 and 309 above;

(ii) otherwise denies the allegations in paragraph 310;

(b) RWH does not plead to paragraph 310 as it contains no allegation of material fact against it.

311. As to paragraph 311:

(a) Eastern Health:

(i) refers to and repeats paragraph 309 above; and

(ii) otherwise denies the allegations in paragraph 311;

(b) RWH does not plead to paragraph 311 as it contains no allegation of material fact against it.

312. As to paragraph 312:

(a) Eastern Health:

(i) refers to and repeats paragraphs 308 and 309 above;

(ii) says that:

- A. whether a Doctor in Training was authorised to work any alleged medical procedures preparation overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, the Doctor in Training was required to either seek authorisation for any medical procedures preparation overtime in advance of working the overtime, or

alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;

- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical procedures preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 312;

- (b) RWH does not plead to paragraph 312 as it contains no allegation of material fact against it.

313. As to paragraph 313:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 308 to 312 above; and

- (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make an Eastern Health Overtime Claim in respect of the alleged medical procedures preparation overtime, then it ought be concluded that either:
 - 1) the Group Member did not work such overtime;
 - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 313;

(b) RWH does not plead to paragraph 313 as it contains no allegation of material fact against it.

314. As to paragraph 314:

(a) Eastern Health:

(i) refers to and repeats paragraphs 308 to 313 above; and

(ii) otherwise denies the allegations in paragraph 314;

(b) RWH does not plead to paragraph 314 as it contains no allegation of material fact against it.

315. As to paragraph 315:

(a) Eastern Health:

(i) refers to and repeats paragraphs 308 to 313 above; and

(ii) otherwise denies the allegations in paragraph 315;

(b) RWH does not plead to paragraph 315 as it contains no allegation of material fact against it.

E5 Medical emergency overtime

316. As to paragraph 316:

(a) Eastern Health:

(i) admits that Doctors in Training duties and responsibilities when providing medical services included attending medical emergencies;

(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for attending medical emergencies;

(iii) otherwise denies the allegations in paragraph 316;

(b) RWH does not plead to paragraph 316 as it contains no allegation of material fact against it.

317. As to paragraph 317:

(a) Eastern Health:

(i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Eastern Health implemented the Eastern Health Overtime Protocol;

(ii) refers to and repeats sub-paragraphs 56(a)(ii)B to 56(a)(ii)E above;

(iii) says further that:

A. Doctors in Training were, or ought to have been, aware of the Eastern Health Overtime Protocol and Eastern Health's approach to Unrostered Overtime;

B. if Doctors in Training performed Unrostered Overtime, they were able to submit an Eastern Health Overtime Claim;

(iv) otherwise denies the allegations in paragraph 317;

(b) RWH does not plead to paragraph 317 as it contains no allegation of material fact against it.

318. As to paragraph 318:

(a) Eastern Health:

(i) refers to and repeats paragraphs 316 and 317 above;

(ii) otherwise denies the allegations in paragraph 318;

(b) RWH does not plead to paragraph 318 as it contains no allegation of material fact against it.

319. As to paragraph 319:

(a) Eastern Health:

(i) refers to and repeats paragraph 317 above; and

(ii) otherwise denies the allegations in paragraph 319;

(b) RWH does not plead to paragraph 319 as it contains no allegation of material fact against it.

320. As to paragraph 320:

(a) Eastern Health:

(i) refers to and repeats paragraphs 316 and 317 above;

(ii) says that:

A. whether a Doctor in Training was authorised to work any alleged medical emergency overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, the Doctor in Training was required to either seek authorisation for any medical emergency overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical emergency overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 320;

(b) RWH does not plead to paragraph 320 as it contains no allegation of material fact against it.

321. As to paragraph 321:

(a) Eastern Health:

(i) refers to and repeats paragraphs 317 to 320 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make an Eastern Health Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:
 - 1) the Group Member did not work such overtime;
 - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

- C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

- (iii) otherwise denies the allegations in paragraph 321;

- (b) RWH does not plead to paragraph 321 as it contains no allegation of material fact against it.

322. As to paragraph 322:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 316 to 321 above; and

- (ii) otherwise denies the allegations in paragraph 322;

- (b) RWH does not plead to paragraph 322 as it contains no allegation of material fact against it.

323. As to paragraph 323:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 316 to 321 above; and

- (ii) otherwise denies the allegations in paragraph 323;

- (b) RWH does not plead to paragraph 323 as it contains no allegation of material fact against it.

E6 Medical records overtime

324. As to paragraph 324:

- (a) Eastern Health:

- (i) admits that the duties and responsibilities of Doctors in Training when providing medical services included completing medical records;

- (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the completion of medical records; and

- (iii) otherwise denies the allegations in paragraph 324;

- (b) RWH does not plead to paragraph 324 as it contains no allegation of material fact against it.

325. As to paragraph 325:

(a) Eastern Health:

- (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Eastern Health implemented the Eastern Health Overtime Protocol;
- (ii) refers to and repeats sub-paragraphs 56(a)(ii)B to 56(a)(ii)E above;
- (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the Eastern Health Overtime Protocol and Eastern Health's approach to Unrostered Overtime;
 - B. if Doctors in Training performed Unrostered Overtime, they were able to submit an Eastern Health Overtime Claim;
- (iv) otherwise denies the allegations in paragraph 325;

(b) RWH does not plead to paragraph 325 as it contains no allegation of material fact against it.

326. As to paragraph 326:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 324 and 325 above;
- (ii) otherwise denies the allegations in paragraph 326;

(b) RWH does not plead to paragraph 326 as it contains no allegation of material fact against it.

327. As to paragraph 327:

(a) Eastern Health:

- (i) refers to and repeats paragraph 325 above; and
- (ii) otherwise denies the allegations in paragraph 327;

(b) RWH does not plead to paragraph 327 as it contains no allegation of material fact against it.

328. As to paragraph 328:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 324 and 325 above;
- (ii) says that:

- A. whether a Doctor in Training was authorised to work any alleged medical records overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, the Doctor in Training was required to either seek authorisation for any medical records overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 328;

(b) RWH does not plead to paragraph 328 as it contains no allegation of material fact against it.

329. As to paragraph 329:

(a) Eastern Health:

(i) refers to and repeats paragraphs 325 to 328 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make an Eastern Health Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
 - 1) the Group Member did not work such overtime;
 - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

- 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

- (iii) otherwise denies the allegations in paragraph 329;

- (b) RWH does not plead to paragraph 329 as it contains no allegation of material fact against it.

330. As to paragraph 330:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 324 to 329 above; and

- (ii) otherwise denies the allegations in paragraph 330;

- (b) RWH does not plead to paragraph 330 as it contains no allegation of material fact against it.

331. As to paragraph 331:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 324 to 329 above; and

- (ii) otherwise denies the allegations in paragraph 331;

- (b) RWH does not plead to paragraph 331 as it contains no allegation of material fact against it.

E7 Admissions overtime

332. As to paragraph 332:

- (a) Eastern Health:

- (i) admits that the duties and responsibilities of Doctors in Training when providing medical services included admitting patients into a particular ward or department;

- (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time to admit patients into a particular ward or department; and

- (iii) otherwise denies the allegations in paragraph 332;

- (b) RWH does not plead to paragraph 332 as it contains no allegation of material fact against it.

333. As to paragraph 333:

- (a) Eastern Health:

- (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Eastern Health implemented the Eastern Health Overtime Protocol;
- (ii) refers to and repeats sub-paragraphs 56(a)(ii)B to 56(a)(ii)E above;
- (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the Eastern Health Overtime Protocol and Eastern Health's approach to Unrostered Overtime;
 - B. if Doctors in Training performed Unrostered Overtime, they were able to submit an Eastern Health Overtime Claim;
- (iv) otherwise denies the allegations in paragraph 333;

- (b) RWH does not plead to paragraph 333 as it contains no allegation of material fact against it.

334. As to paragraph 334:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 332 and 333 above;
- (ii) otherwise denies the allegations in paragraph 334;

- (b) RWH does not plead to paragraph 334 as it contains no allegation of material fact against it.

335. As to paragraph 335:

- (a) Eastern Health:

- (i) refers to and repeats paragraph 333 above; and
- (ii) otherwise denies the allegations in paragraph 335;

- (b) RWH does not plead to paragraph 335 as it contains no allegation of material fact against it.

336. As to paragraph 336:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 332 and 333 above;

(ii) says that:

- A. whether a Doctor in Training was authorised to work any alleged admissions overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, the Doctor in Training was required to either seek authorisation for any admissions overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of admissions overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 336;

(b) RWH does not plead to paragraph 336 as it contains no allegation of material fact against it.

337. As to paragraph 337:

(a) Eastern Health:

(i) refers to and repeats paragraphs 333 to 336 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make an Eastern Health Overtime Claim in respect of the alleged admissions overtime, then it ought be concluded that either:
 - 1) the Group Member did not work such overtime;

- 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 337;

(b) RWH does not plead to paragraph 337 as it contains no allegation of material fact against it.

338. As to paragraph 338:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 332 to 337 above; and
- (ii) otherwise denies the allegations in paragraph 338;

(b) RWH does not plead to paragraph 338 as it contains no allegation of material fact against it.

339. As to paragraph 339:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 332 to 337 above; and
- (ii) otherwise denies the allegations in paragraph 339;

(b) RWH does not plead to paragraph 339 as it contains no allegation of material fact against it.

E8 Medical communication overtime

340. As to paragraph 340:

(a) Eastern Health:

- (i) admits that the duties and responsibilities of Doctors in Training when providing medical services included speaking with patients and patients' families and visitors about patients' treatment;

(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time to speak with patients and patients' families and visitors about patients' treatment; and

(iii) otherwise denies the allegations in paragraph 340;

(b) RWH does not plead to paragraph 340 as it contains no allegation of material fact against it.

341. As to paragraph 341:

(a) Eastern Health:

(i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Eastern Health implemented the Eastern Health Overtime Protocol;

(ii) refers to and repeats sub-paragraphs 56(a)(ii)B to 56(a)(ii)E above;

(iii) says further that:

A. Doctors in Training were, or ought to have been, aware of the Eastern Health Overtime Protocol and Eastern Health's approach to Unrostered Overtime;

B. if Doctors in Training performed Unrostered Overtime, they were able to submit an Eastern Health Overtime Claim;

(iv) otherwise denies the allegations in paragraph 341;

(b) RWH does not plead to paragraph 341 as it contains no allegation of material fact against it.

342. As to paragraph 342:

(a) Eastern Health:

(i) refers to and repeats paragraphs 340 and 341 above;

(ii) otherwise denies the allegations in paragraph 342;

(b) RWH does not plead to paragraph 342 as it contains no allegation of material fact against it.

343. As to paragraph 343:

(a) Eastern Health:

(i) refers to and repeats paragraph 341 above; and

(ii) otherwise denies the allegations in paragraph 343;

- (b) RWH does not plead to paragraph 343 as it contains no allegation of material fact against it.

344. As to paragraph 344:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 340 and 341 above;

- (ii) says that:

- A. whether a Doctor in Training was authorised to work any alleged medical communication overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, the Doctor in Training was required to either seek authorisation for any medical communication overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
 - C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical communication overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 344;

- (b) RWH does not plead to paragraph 344 as it contains no allegation of material fact against it.

345. As to paragraph 345:

- (a) Eastern Health:

- (i) refers to and repeats paragraphs 341 to 344 above; and

- (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make an Eastern Health Overtime Claim in respect of the alleged medical communication overtime, then it ought be concluded that either:

- 1) the Group Member did not work such overtime;
- 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 345;

(b) RWH does not plead to paragraph 345 as it contains no allegation of material fact against it.

346. As to paragraph 346:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 340 to 345 above; and
- (ii) otherwise denies the allegations in paragraph 346;

(b) RWH does not plead to paragraph 346 as it contains no allegation of material fact against it.

347. As to paragraph 347:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 340 to 345 above; and
- (ii) otherwise denies the allegations in paragraph 347;

(b) RWH does not plead to paragraph 347 as it contains no allegation of material fact against it.

E9 Surgical procedures overtime

348. As to paragraph 348:

- (a) Eastern Health:
 - (i) admits that the duties and responsibilities of Doctors in Training when providing medical services included undertaking surgical procedures;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time to undertake surgical procedures; and
 - (iii) otherwise denies the allegations in paragraph 348;
- (b) RWH does not plead to paragraph 348 as it contains no allegation of material fact against it.

349. As to paragraph 349:

- (a) Eastern Health:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Eastern Health implemented the Eastern Health Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 56(a)(ii)B to 56(a)(ii)E above;
 - (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the Eastern Health Overtime Protocol and Eastern Health's approach to Unrostered Overtime;
 - B. if Doctors in Training performed Unrostered Overtime, they were able to submit an Eastern Health Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 349;
- (b) RWH does not plead to paragraph 349 as it contains no allegation of material fact against it.

350. As to paragraph 350:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 348 and 349 above;
 - (ii) otherwise denies the allegations in paragraph 350;
- (b) RWH does not plead to paragraph 350 as it contains no allegation of material fact against it.

351. As to paragraph 351:

- (a) Eastern Health:
 - (i) refers to and repeats paragraph 349 above; and
 - (ii) otherwise denies the allegations in paragraph 351;
- (b) RWH does not plead to paragraph 351 as it contains no allegation of material fact against it.

352. As to paragraph 352:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 348 and 349 above;
 - (ii) says that:
 - A. whether a Doctor in Training was authorised to work any alleged surgical procedures overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, the Doctor in Training was required to either seek authorisation for any surgical procedures overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
 - C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of surgical procedures overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;
 - (iii) otherwise denies the allegations in paragraph 352;
- (b) RWH does not plead to paragraph 352 as it contains no allegation of material fact against it.

353. As to paragraph 353:

- (a) Eastern Health:

(i) refers to and repeats paragraphs 349 to 352 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make an Eastern Health Overtime Claim in respect of the alleged surgical procedures overtime, then it ought be concluded that either:

1) the Group Member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 353;

(b) RWH does not plead to paragraph 353 as it contains no allegation of material fact against it.

354. As to paragraph 354:

(a) Eastern Health:

(i) refers to and repeats paragraphs 348 to 353 above; and

(ii) otherwise denies the allegations in paragraph 354;

(b) RWH does not plead to paragraph 354 as it contains no allegation of material fact against it.

355. As to paragraph 355:

(a) Eastern Health:

(i) refers to and repeats paragraphs 348 to 353 above; and

(ii) otherwise denies the allegations in paragraph 355;

(b) RWH does not plead to paragraph 355 as it contains no allegation of material fact against it.

E10 Outpatient care overtime

356. As to paragraph 356:

(a) Eastern Health:

(i) admits that the duties and responsibilities of Doctors in Training when providing medical services included providing medical care to patients in a clinic;

(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time to provide medical care to patients in a clinic; and

(iii) otherwise denies the allegations in paragraph 356;

(b) RWH does not plead to paragraph 356 as it contains no allegation of material fact against it.

357. As to paragraph 357:

(a) Eastern Health:

(i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Eastern Health implemented the Eastern Health Overtime Protocol;

(ii) refers to and repeats sub-paragraphs 56(a)(ii)B to 56(a)(ii)E above;

(iii) says further that:

A. Doctors in Training were, or ought to have been, aware of the Eastern Health Overtime Protocol and Eastern Health's approach to Unrostered Overtime;

B. if Doctors in Training performed Unrostered Overtime, they were able to submit an Eastern Health Overtime Claim;

(iv) otherwise denies the allegations in paragraph 357;

(b) RWH does not plead to paragraph 357 as it contains no allegation of material fact against it.

358. As to paragraph 358:

(a) Eastern Health:

(i) refers to and repeats paragraphs 356 and 357 above;

(ii) otherwise denies the allegations in paragraph 358;

(b) RWH does not plead to paragraph 358 as it contains no allegation of material fact against it.

359. As to paragraph 359:

(a) Eastern Health:

(i) refers to and repeats paragraph 357 above; and

(ii) otherwise denies the allegations in paragraph 359;

(b) RWH does not plead to paragraph 359 as it contains no allegation of material fact against it.

360. As to paragraph 360:

(a) Eastern Health:

(i) refers to and repeats paragraphs 356 and 357 above;

(ii) says that:

A. whether a Doctor in Training was authorised to work any alleged outpatient care overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, the Doctor in Training was required to either seek authorisation for any outpatient care overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;

C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of outpatient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 360;

(b) RWH does not plead to paragraph 360 as it contains no allegation of material fact against it.

361. As to paragraph 361:

(a) Eastern Health:

(i) refers to and repeats paragraphs 357 to 360 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make an Eastern Health Overtime Claim in respect of the alleged outpatient care overtime, then it ought be concluded that either:

1) the Group Member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 361;

(b) RWH does not plead to paragraph 361 as it contains no allegation of material fact against it.

362. As to paragraph 362:

(a) Eastern Health:

(i) refers to and repeats paragraphs 356 to 361 above; and

(ii) otherwise denies the allegations in paragraph 362;

(b) RWH does not plead to paragraph 362 as it contains no allegation of material fact against it.

363. As to paragraph 363:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 356 to 361 above; and
 - (ii) otherwise denies the allegations in paragraph 363;
- (b) RWH does not plead to paragraph 363 as it contains no allegation of material fact against it.

E11 Other medical services overtime

364. As to paragraph 364:

- (a) Eastern Health:
 - (i) admits that the duties and responsibilities of Doctors in Training when providing medical services included carrying out such other duties necessary for the provision of medical services by the Doctor in Training;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time to carry out such other duties necessary for the provision of medical services by the Doctor in Training; and
 - (iii) otherwise denies the allegations in paragraph 364;
- (b) RWH does not plead to paragraph 364 as it contains no allegation of material fact against it.

365. As to paragraph 365:

- (a) Eastern Health:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Eastern Health implemented the Eastern Health Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 56(a)(ii)B to 56(a)(ii)E above;
 - (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the Eastern Health Overtime Protocol and Eastern Health's approach to Unrostered Overtime;
 - B. if Doctors in Training performed Unrostered Overtime, they were able to submit an Eastern Health Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 365;
- (b) RWH does not plead to paragraph 365 as it contains no allegation of material fact against it.

366. As to paragraph 366:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 364 and 365 above;
- (ii) otherwise denies the allegations in paragraph 366;

(b) RWH does not plead to paragraph 366 as it contains no allegation of material fact against it.

367. As to paragraph 367:

(a) Eastern Health:

- (i) refers to and repeats paragraph 365 above; and
- (ii) otherwise denies the allegations in paragraph 367;

(b) RWH does not plead to paragraph 367 as it contains no allegation of material fact against it.

368. As to paragraph 368:

(a) Eastern Health:

- (i) refers to and repeats paragraphs 364 and 365 above;
- (ii) says that:

- A. whether a Doctor in Training was authorised to work any alleged other medical services overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the Eastern Health Overtime Protocol, the Doctor in Training was required to either seek authorisation for any other medical services overtime in advance of working the overtime, or alternatively to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of other medical services overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by Eastern Health) for retrospective authorisation of such overtime, and Eastern Health cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 368;

(b) RWH does not plead to paragraph 368 as it contains no allegation of material fact against it.

369. As to paragraph 369:

(a) Eastern Health:

(i) refers to and repeats paragraphs 365 to 368 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make an Eastern Health Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make an Eastern Health Overtime Claim in respect of the alleged medical services overtime, then it ought be concluded that either:
 - 1) the Group member did not work such overtime;
 - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 369;

(b) RWH does not plead to paragraph 369 as it contains no allegation of material fact against it.

370. As to paragraph 370:

(a) Eastern Health:

(i) refers to and repeats paragraphs 364 to 369 above; and

(ii) otherwise denies the allegations in paragraph 370;

(b) RWH does not plead to paragraph 370 as it contains no allegation of material fact against it.

371. As to paragraph 371:

- (a) Eastern Health:
 - (i) refers to and repeats paragraphs 364 to 369 above; and
 - (ii) otherwise denies the allegations in paragraph 371;
- (b) RWH does not plead to paragraph 371 as it contains no allegation of material fact against it.

E12 Loss and damage

372. As to paragraph 372:

- (a) Eastern Health denies the allegations in paragraph 372 for the reasons pleaded herein;
- (b) RWH does not plead to paragraph 372 as it contains no allegation of material fact against it.

F GROUP MEMBERS' CLAIMS AGAINST ROYAL WOMEN'S HOSPITAL

373. As to paragraph 373:

- (a) RWH:
 - (i) admits that, in the course of their employment during the Relevant Period, Doctors in Training:
 - A. worked in one or more of the services operated by RWH as set out in paragraph 1(e) of the Statement of Claim; and
 - B. were rostered to work 38 ordinary hours per week, or an average of 38 hours per week for up to 4 weeks;
 - (ii) otherwise denies the allegations in paragraph 373;
- (b) Eastern Health does not plead to paragraph 373 as it contains no allegation of material fact against it.

E1 Ward round preparation overtime

374. As to paragraph 374:

- (a) RWH:
 - (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included ward round preparation;

- (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the performance of ward round preparation; and
- (iii) otherwise denies the allegations in paragraph 374;
- (b) Eastern Health does not plead to paragraph 374 as it contains no allegation of material fact against it.

375. As to paragraph 375:

- (a) RWH:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, RWH implemented the RWH Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)B to 184(a)(ii)D above;
 - (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the RWH Overtime Protocol and RWH's approach to Unrostered Overtime;
 - B. if Doctors in Training performed Unrostered Overtime, they were able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 375;
- (b) Eastern Health does not plead to paragraph 375 as it contains no allegation of material fact against it.

376. As to paragraph 376:

- (a) RWH:
 - (i) refers to and repeats paragraphs 374 and 375 above;
 - (ii) otherwise denies the allegations in paragraph 376;
- (b) Eastern Health does not plead to paragraph 376 as it contains no allegation of material fact against it.

377. As to paragraph 377:

- (a) RWH:
 - (i) refers to and repeats paragraph 375 above; and

(ii) otherwise denies the allegations in paragraph 377;

(b) Eastern Health does not plead to paragraph 377 as it contains no allegation of material fact against it.

378. As to paragraph 378:

(a) RWH:

(i) refers to and repeats paragraphs 374 and 375 above;

(ii) says that:

- A. whether a Doctor in Training was authorised to work any alleged ward round preparation overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the RWH Overtime Protocol, the Doctor in Training was required to either seek authorisation for any ward round preparation overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 378;

(b) Eastern Health does not plead to paragraph 378 as it contains no allegation of material fact against it.

379. As to paragraph 379:

(a) RWH:

(i) refers to and repeats paragraphs 375 to 378 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make a RWH Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:
 - 1) the Group Member did not work such overtime;
 - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 379;

- (b) Eastern Health does not plead to paragraph 379 as it contains no allegation of material fact against it.

380. As to paragraph 380:

- (a) RWH:
 - (i) refers to and repeats paragraphs 374 to 379 above; and
 - (ii) otherwise denies the allegations in paragraph 380;
- (b) Eastern Health does not plead to paragraph 380 as it contains no allegation of material fact against it.

381. As to paragraph 381:

- (a) RWH:
 - (i) refers to and repeats paragraphs 374 to 379 above; and
 - (ii) otherwise denies the allegations in paragraph 381;

- (b) Eastern Health does not plead to paragraph 381 as it contains no allegation of material fact against it.

F2 Ward round overtime

382. As to paragraph 382:

- (a) RWH:
 - (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included undertaking ward rounds;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for undertaking ward rounds; and
 - (iii) otherwise denies the allegations in paragraph 382;
- (b) Eastern Health does not plead to paragraph 382 as it contains no allegation of material fact against it.

383. As to paragraph 383:

- (a) RWH:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, RWH implemented the RWH Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)B to 184(a)(ii)D above;
 - (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the RWH Overtime Protocol and RWH's approach to Unrostered Overtime;
 - B. if Doctors in Training performed Unrostered Overtime, they were able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 383;
- (b) Eastern Health does not plead to paragraph 383 as it contains no allegation of material fact against it.

384. As to paragraph 384:

- (a) RWH:

- (i) refers to and repeats paragraphs 382 and 383 above;
- (ii) otherwise denies the allegations in paragraph 384;
- (b) Eastern Health does not plead to paragraph 384 as it contains no allegation of material fact against it.

385. As to paragraph 385:

- (a) RWH:
 - (i) refers to and repeats paragraph 383 above; and
 - (ii) otherwise denies the allegations in paragraph 385;
- (b) Eastern Health does not plead to paragraph 385 as it contains no allegation of material fact against it.

386. As to paragraph 386:

- (a) RWH:
 - (i) refers to and repeats paragraphs 382 and 383 above;
 - (ii) says that:
 - A. whether a Doctor in Training was authorised to work any alleged ward round overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the RWH Overtime Protocol, the Doctor in Training was required to either seek authorisation for any ward round overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
 - C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of ward round overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;
 - (iii) otherwise denies the allegations in paragraph 386;

- (b) Eastern Health does not plead to paragraph 386 as it contains no allegation of material fact against it.

387. As to paragraph 387:

- (a) RWH:
 - (i) refers to and repeats paragraphs 383 to 386 above; and
 - (ii) says further that:
 - A. payment for Unrostered Overtime is subject to the condition that a Group Member make a RWH Overtime Claim in relation to the overtime purportedly worked;
 - B. if a Group Member did not make a RWH Overtime Claim in respect of the alleged ward round overtime, then it ought be concluded that either:
 - 1) the Group Member did not work such overtime;
 - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
 - C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;
 - (iii) otherwise denies the allegations in paragraph 387;
- (b) Eastern Health does not plead to paragraph 387 as it contains no allegation of material fact against it.

388. As to paragraph 388:

- (a) RWH:
 - (i) refers to and repeats paragraphs 382 to 387 above; and
 - (ii) otherwise denies the allegations in paragraph 388;

- (b) Eastern Health does not plead to paragraph 388 as it contains no allegation of material fact against it.

389. As to paragraph 389:

- (a) RWH:
 - (i) refers to and repeats paragraphs 382 to 387 above; and
 - (ii) otherwise denies the allegations in paragraph 389;
- (b) Eastern Health does not plead to paragraph 389 as it contains no allegation of material fact against it.

F3 Handover overtime

390. As to paragraph 390:

- (a) RWH:
 - (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included conducting handover of patient information;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for conducting the handover of patient information; and
 - (iii) otherwise denies the allegations in paragraph 390;
- (b) Eastern Health does not plead to paragraph 390 as it contains no allegation of material fact against it.

391. As to paragraph 391:

- (a) RWH:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, RWH implemented the RWH Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)B to 184(a)(ii)D above;
 - (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the RWH Overtime Protocol and RWH's approach to Unrostered Overtime;

B. if Doctors in Training performed Unrostered Overtime, they were able to submit a RWH Overtime Claim;

(iv) otherwise denies the allegations in paragraph 391;

(b) Eastern Health does not plead to paragraph 391 as it contains no allegation of material fact against it.

392. As to paragraph 392:

(a) RWH:

(i) refers to and repeats paragraphs 390 and 391 above;

(ii) otherwise denies the allegations in paragraph 392;

(b) Eastern Health does not plead to paragraph 392 as it contains no allegation of material fact against it.

393. As to paragraph 393:

(a) RWH:

(i) refers to and repeats paragraph 391 above; and

(ii) otherwise denies the allegations in paragraph 393;

(b) Eastern Health does not plead to paragraph 393 as it contains no allegation of material fact against it.

394. As to paragraph 394:

(a) RWH:

(i) refers to and repeats paragraphs 390 and 391 above;

(ii) says that:

A. whether a Doctor in Training was authorised to work any alleged handover overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

B. further or alternatively, pursuant to the RWH Overtime Protocol, the Doctor in Training was required to either seek authorisation for any handover overtime in advance of working the overtime, or alternatively to have any such overtime

authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;

- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of handover overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 394;

- (b) Eastern Health does not plead to paragraph 394 as it contains no allegation of material fact against it.

395. As to paragraph 395:

(a) RWH:

(i) refers to and repeats paragraphs 391 to 394 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make a RWH Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:
 - 1) the Group Member did not work such overtime;
 - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 395;

(b) Eastern Health does not plead to paragraph 395 as it contains no allegation of material fact against it.

396. As to paragraph 396:

(a) RWH:

(i) refers to and repeats paragraphs 390 to 395 above; and

(ii) otherwise denies the allegations in paragraph 396;

(b) Eastern Health does not plead to paragraph 396 as it contains no allegation of material fact against it.

397. As to paragraph 397:

(a) RWH:

(i) refers to and repeats paragraphs 390 to 395 above; and

(ii) otherwise denies the allegations in paragraph 397;

(b) Eastern Health does not plead to paragraph 397 as it contains no allegation of material fact against it.

F4 Medical procedures preparation overtime

398. As to paragraph 398:

(a) RWH:

(i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included preparing for medical procedures;

(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for preparing for medical procedures; and

(iii) otherwise denies the allegations in paragraph 398;

(b) Eastern Health does not plead to paragraph 398 as it contains no allegation of material fact against it.

399. As to paragraph 399:

- (a) RWH:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, RWH implemented the RWH Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)B to 184(a)(ii)D above;
 - (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the RWH Overtime Protocol and RWH's approach to Unrostered Overtime;
 - B. if Doctors in Training performed Unrostered Overtime, they were able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 399;
- (b) Eastern Health does not plead to paragraph 399 as it contains no allegation of material fact against it.

400. As to paragraph 400:

- (a) RWH:
 - (i) refers to and repeats paragraphs 398 and 399 above;
 - (ii) otherwise denies the allegations in paragraph 400;
- (b) Eastern Health does not plead to paragraph 400 as it contains no allegation of material fact against it.

401. As to paragraph 401:

- (a) RWH:
 - (i) refers to and repeats paragraph 399 above; and
 - (ii) otherwise denies the allegations in paragraph 401;
- (b) Eastern Health does not plead to paragraph 401 as it contains no allegation of material fact against it.

402. As to paragraph 402:

- (a) RWH:
 - (i) refers to and repeats paragraphs 398 and 399 above;

(ii) says that:

- A. whether a Doctor in Training was authorised to work any alleged medical procedures preparation overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the RWH Overtime Protocol, the Doctor in Training was required to either seek authorisation for any medical procedures preparation overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical procedures preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 402;

- (b) Eastern Health does not plead to paragraph 402 as it contains no allegation of material fact against it.

403. As to paragraph 403:

(a) RWH:

- (i) refers to and repeats paragraphs 399 to 402 above; and
- (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make a RWH Overtime Claim in respect of the alleged medical procedures preparation overtime, then it ought be concluded that either:
 - 1) the Group Member did not work such overtime;

- 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 403;

(b) Eastern Health does not plead to paragraph 403 as it contains no allegation of material fact against it.

404. As to paragraph 404:

(a) RWH:

(i) refers to and repeats paragraphs 398 to 403 above; and

(ii) otherwise denies the allegations in paragraph 404;

(b) Eastern Health does not plead to paragraph 404 as it contains no allegation of material fact against it.

405. As to paragraph 405:

(a) RWH:

(i) refers to and repeats paragraphs 398 to 403 above; and

(ii) otherwise denies the allegations in paragraph 405;

(b) Eastern Health does not plead to paragraph 405 as it contains no allegation of material fact against it.

F5 Medical emergency overtime

406. As to paragraph 406:

(a) RWH:

- (i) admits that Doctors in Training duties and responsibilities when providing medical services included attending medical emergencies;
- (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for attending medical emergencies;
- (iii) otherwise denies the allegations in paragraph 406;
- (b) Eastern Health does not plead to paragraph 406 as it contains no allegation of material fact against it.

407. As to paragraph 407:

- (a) RWH:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, RWH implemented the RWH Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)B to 184(a)(ii)D above;
 - (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the RWH Overtime Protocol and RWH's approach to Unrostered Overtime;
 - B. if Doctors in Training performed Unrostered Overtime, they were able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 407;
- (b) Eastern Health does not plead to paragraph 407 as it contains no allegation of material fact against it.

408. As to paragraph 408:

- (a) RWH:
 - (i) refers to and repeats paragraphs 406 and 407 above;
 - (ii) otherwise denies the allegations in paragraph 408;
- (b) Eastern Health does not plead to paragraph 408 as it contains no allegation of material fact against it.

409. As to paragraph 409:

- (a) RWH:
 - (i) refers to and repeats paragraph 407 above; and
 - (ii) otherwise denies the allegations in paragraph 409;
- (b) Eastern Health does not plead to paragraph 409 as it contains no allegation of material fact against it.

410. As to paragraph 410:

- (a) RWH:
 - (i) refers to and repeats paragraphs 406 and 407 above;
 - (ii) says that:
 - A. whether a Doctor in Training was authorised to work any alleged medical emergency overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the RWH Overtime Protocol, the Doctor in Training was required to either seek authorisation for any medical emergency overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
 - C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical emergency overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;
 - (iii) otherwise denies the allegations in paragraph 410;
- (b) Eastern Health does not plead to paragraph 410 as it contains no allegation of material fact against it.

411. As to paragraph 411:

(a) RWH:

(i) refers to and repeats paragraphs 407 to 410 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make a RWH Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:
 - 1) the Group Member did not work such overtime;
 - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 411;

(b) Eastern Health does not plead to paragraph 411 as it contains no allegation of material fact against it.

412. As to paragraph 412:

(a) RWH:

(i) refers to and repeats paragraphs 406 to 411 above; and

(ii) otherwise denies the allegations in paragraph 412;

(b) Eastern Health does not plead to paragraph 412 as it contains no allegation of material fact against it.

413. As to paragraph 413:

(a) RWH:

- (i) refers to and repeats paragraphs 406 to 411 above; and
 - (ii) otherwise denies the allegations in paragraph 413;
- (b) Eastern Health does not plead to paragraph 413 as it contains no allegation of material fact against it.

F6 Medical records overtime

414. As to paragraph 414:

- (a) RWH:
 - (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included completion of medical records in a timely manner;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the completion of medical records in a timely manner; and
 - (iii) otherwise denies the allegations in paragraph 414;
- (b) Eastern Health does not plead to paragraph 414 as it contains no allegation of material fact against it.

415. As to paragraph 415:

- (a) RWH:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, RWH implemented the RWH Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)B to 184(a)(ii)D above;
 - (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the RWH Overtime Protocol and RWH's approach to Unrostered Overtime;
 - B. if Doctors in Training performed Unrostered Overtime, they were able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 415;
- (b) Eastern Health does not plead to paragraph 415 as it contains no allegation of material fact against it.

416. As to paragraph 416:

- (a) RWH:
 - (i) refers to and repeats paragraphs 414 and 415 above;
 - (ii) otherwise denies the allegations in paragraph 416;
- (b) Eastern Health does not plead to paragraph 416 as it contains no allegation of material fact against it.

417. As to paragraph 417:

- (a) RWH:
 - (i) refers to and repeats paragraph 415 above; and
 - (ii) otherwise denies the allegations in paragraph 417;
- (b) Eastern Health does not plead to paragraph 417 as it contains no allegation of material fact against it.

418. As to paragraph 418:

- (a) RWH:
 - (i) refers to and repeats paragraphs 414 and 415 above;
 - (ii) says that:
 - A. whether a Doctor in Training was authorised to work any alleged medical records overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the RWH Overtime Protocol, the Doctor in Training was required to either seek authorisation for any medical records overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
 - C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor

provided particulars of the claims made by them (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 418;

(b) Eastern Health does not plead to paragraph 418 as it contains no allegation of material fact against it.

419. As to paragraph 419:

(a) RWH:

(i) refers to and repeats paragraphs 415 to 418 above; and

(ii) says further that:

A. payment for Unrostered Overtime is subject to the condition that a Group Member make a RWH Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a RWH Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:

1) the Group Member did not work such overtime;

2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 419;

(b) Eastern Health does not plead to paragraph 419 as it contains no allegation of material fact against it.

420. As to paragraph 420:

(a) RWH:

- (i) refers to and repeats paragraphs 414 to 419 above; and
 - (ii) otherwise denies the allegations in paragraph 420;
- (b) Eastern Health does not plead to paragraph 420 as it contains no allegation of material fact against it.

421. As to paragraph 421:

- (a) RWH:
 - (i) refers to and repeats paragraphs 414 to 419 above; and
 - (ii) otherwise denies the allegations in paragraph 421;
- (b) Eastern Health does not plead to paragraph 421 as it contains no allegation of material fact against it.

F7 Admissions overtime

422. As to paragraph 422:

- (a) RWH:
 - (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included admitting patients into a particular ward or department;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the admission of patients into a particular ward or department; and
 - (iii) otherwise denies the allegations in paragraph 422;
- (b) Eastern Health does not plead to paragraph 422 as it contains no allegation of material fact against it.

423. As to paragraph 423:

- (a) RWH:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, RWH implemented the RWH Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)B to 184(a)(ii)D above;
 - (iii) says further that:

- A. Doctors in Training were, or ought to have been, aware of the RWH Overtime Protocol and RWH's approach to Unrostered Overtime;
- B. if Doctors in Training performed Unrostered Overtime, they were able to submit a RWH Overtime Claim;

(iv) otherwise denies the allegations in paragraph 423;

- (b) Eastern Health does not plead to paragraph 423 as it contains no allegation of material fact against it.

424. As to paragraph 424:

(a) RWH:

(i) refers to and repeats paragraphs 422 and 423 above;

(ii) otherwise denies the allegations in paragraph 424;

- (b) Eastern Health does not plead to paragraph 424 as it contains no allegation of material fact against it.

425. As to paragraph 425:

(a) RWH:

(i) refers to and repeats paragraph 423 above; and

(ii) otherwise denies the allegations in paragraph 425;

- (b) Eastern Health does not plead to paragraph 425 as it contains no allegation of material fact against it.

426. As to paragraph 426:

(a) RWH:

(i) refers to and repeats paragraphs 422 and 423 above;

(ii) says that:

- A. whether a Doctor in Training was authorised to work any alleged admissions overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- B. further or alternatively, pursuant to the RWH Overtime Protocol, the Doctor in Training was required to either seek authorisation for any admissions overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of admissions overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 426;

- (b) Eastern Health does not plead to paragraph 426 as it contains no allegation of material fact against it.

427. As to paragraph 427:

(a) RWH:

(i) refers to and repeats paragraphs 423 to 426 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make a RWH Overtime Claim in respect of the alleged admissions overtime, then it ought be concluded that either:
 - 1) the Group Member did not work such overtime;
 - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

- C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

- (iii) otherwise denies the allegations in paragraph 427;

- (b) Eastern Health does not plead to paragraph 427 as it contains no allegation of material fact against it.

428. As to paragraph 428:

- (a) RWH:

- (i) refers to and repeats paragraphs 422 to 427 above; and

- (ii) otherwise denies the allegations in paragraph 428;

- (b) Eastern Health does not plead to paragraph 428 as it contains no allegation of material fact against it.

429. As to paragraph 429:

- (a) RWH:

- (i) refers to and repeats paragraphs 422 to 427 above; and

- (ii) otherwise denies the allegations in paragraph 429;

- (b) Eastern Health does not plead to paragraph 429 as it contains no allegation of material fact against it.

F8 Medical communication overtime

430. As to paragraph 430:

- (a) RWH:

- (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included speaking with patients and patients' families and visitors about patients' treatment;

- (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for speaking with patients and patients' families and visitors about patients' treatment; and

- (iii) otherwise denies the allegations in paragraph 430;

- (b) Eastern Health does not plead to paragraph 430 as it contains no allegation of material fact against it.

431. As to paragraph 431:

- (a) RWH:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, RWH implemented the RWH Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)B to 184(a)(ii)D above;
 - (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the RWH Overtime Protocol and RWH's approach to Unrostered Overtime;
 - B. if Doctors in Training performed Unrostered Overtime, they were able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 431;
- (b) Eastern Health does not plead to paragraph 431 as it contains no allegation of material fact against it.

432. As to paragraph 432:

- (a) RWH:
 - (i) refers to and repeats paragraphs 430 and 431 above;
 - (ii) otherwise denies the allegations in paragraph 432;
- (b) Eastern Health does not plead to paragraph 432 as it contains no allegation of material fact against it.

433. As to paragraph 433:

- (a) RWH:
 - (i) refers to and repeats paragraph 431 above; and
 - (ii) otherwise denies the allegations in paragraph 433;
- (b) Eastern Health does not plead to paragraph 433 as it contains no allegation of material fact against it.

434. As to paragraph 434:

(a) RWH:

(i) refers to and repeats paragraphs 430 and 431 above;

(ii) says that:

- A. whether a Doctor in Training was authorised to work any alleged medical communication overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the RWH Overtime Protocol, the Doctor in Training was required to either seek authorisation for any medical communication overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical communication overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 434;

(b) Eastern Health does not plead to paragraph 434 as it contains no allegation of material fact against it.

435. As to paragraph 435:

(a) RWH:

(i) refers to and repeats paragraphs 431 to 434 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make a RWH Overtime Claim in relation to the overtime purportedly worked;

B. if a Group Member did not make a RWH Overtime Claim in respect of the alleged medical communication overtime, then it ought be concluded that either:

- 1) the Group member did not work such overtime;
- 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs B.1) and B.2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 435;

(b) Eastern Health does not plead to paragraph 435 as it contains no allegation of material fact against it.

436. As to paragraph 436:

(a) RWH:

(i) refers to and repeats paragraphs 430 to 435 above; and

(ii) otherwise denies the allegations in paragraph 436;

(b) Eastern Health does not plead to paragraph 436 as it contains no allegation of material fact against it.

437. As to paragraph 437:

(a) RWH:

(i) refers to and repeats paragraphs 430 to 435 above; and

(ii) otherwise denies the allegations in paragraph 437;

(b) Eastern Health does not plead to paragraph 437 as it contains no allegation of material fact against it.

F9 Surgical procedures overtime

438. As to paragraph 438:

- (a) RWH:
 - (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included performing surgical procedures;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for performing surgical procedures; and
 - (iii) otherwise denies the allegations in paragraph 438;
- (b) Eastern Health does not plead to paragraph 438 as it contains no allegation of material fact against it.

439. As to paragraph 439:

- (a) RWH:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, RWH implemented the RWH Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)B to 184(a)(ii)D above;
 - (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the RWH Overtime Protocol and RWH's approach to Unrostered Overtime;
 - B. if Doctors in Training performed Unrostered Overtime, they were able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 439;
- (b) Eastern Health does not plead to paragraph 439 as it contains no allegation of material fact against it.

440. As to paragraph 440:

- (a) RWH:
 - (i) refers to and repeats paragraphs 438 and 439 above;
 - (ii) otherwise denies the allegations in paragraph 440;

- (b) Eastern Health does not plead to paragraph 440 as it contains no allegation of material fact against it.

441. As to paragraph 441:

- (a) RWH:
 - (i) refers to and repeats paragraph 439 above; and
 - (ii) otherwise denies the allegations in paragraph 441;
- (b) Eastern Health does not plead to paragraph 441 as it contains no allegation of material fact against it.

442. As to paragraph 442:

- (a) RWH:
 - (i) refers to and repeats paragraphs 438 and 439 above;
 - (ii) says that:
 - A. whether a Doctor in Training was authorised to work any alleged surgical procedures overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - B. further or alternatively, pursuant to the RWH Overtime Protocol, the Doctor in Training was required to either seek authorisation for any surgical procedures overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
 - C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of surgical procedures overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;
 - (iii) otherwise denies the allegations in paragraph 442;

- (b) Eastern Health does not plead to paragraph 442 as it contains no allegation of material fact against it.

443. As to paragraph 443:

- (a) RWH:
 - (i) refers to and repeats paragraphs 439 to 442 above; and
 - (ii) says further that:
 - A. payment for Unrostered Overtime is subject to the condition that a Group Member make a RWH Overtime Claim in relation to the overtime purportedly worked;
 - B. if a Group Member did not make a RWH Overtime Claim in respect of the alleged surgical procedures overtime, then it ought be concluded that either:
 - 1) the Group member did not work such overtime;
 - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
 - C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 463 to 474 below;
 - (iii) otherwise denies the allegations in paragraph 443;
- (b) Eastern Health does not plead to paragraph 443 as it contains no allegation of material fact against it.

444. As to paragraph 444:

- (a) RWH:
 - (i) refers to and repeats paragraphs 438 to 443 above; and
 - (ii) otherwise denies the allegations in paragraph 444;

- (b) Eastern Health does not plead to paragraph 444 as it contains no allegation of material fact against it.

445. As to paragraph 445:

- (a) RWH:
 - (i) refers to and repeats paragraphs 438 to 443 above; and
 - (ii) otherwise denies the allegations in paragraph 445;
- (b) Eastern Health does not plead to paragraph 445 as it contains no allegation of material fact against it.

F10 Outpatient care overtime

446. As to paragraph 446:

- (a) RWH:
 - (i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included providing medical care to patients in a clinic;
 - (ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for providing care to patients in a clinic; and
 - (iii) otherwise denies the allegations in paragraph 446;
- (b) Eastern Health does not plead to paragraph 446 as it contains no allegation of material fact against it.

447. As to paragraph 447:

- (a) RWH:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, RWH implemented the RWH Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)B to 184(a)(ii)D above;
 - (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the RWH Overtime Protocol and RWH's approach to Unrostered Overtime;

B. if Doctors in Training performed Unrostered Overtime, they were able to submit a RWH Overtime Claim;

(iv) otherwise denies the allegations in paragraph 447;

(b) Eastern Health does not plead to paragraph 447 as it contains no allegation of material fact against it.

448. As to paragraph 448:

(a) RWH:

(i) refers to and repeats paragraphs 446 and 447 above;

(ii) otherwise denies the allegations in paragraph 448;

(b) Eastern Health does not plead to paragraph 448 as it contains no allegation of material fact against it.

449. As to paragraph 449:

(a) RWH:

(i) refers to and repeats paragraph 447 above; and

(ii) otherwise denies the allegations in paragraph 449;

(b) Eastern Health does not plead to paragraph 449 as it contains no allegation of material fact against it.

450. As to paragraph 450:

(a) RWH:

(i) refers to and repeats paragraphs 446 and 447 above;

(ii) says that:

A. whether a Doctor in Training was authorised to work any alleged outpatient care overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

B. further or alternatively, pursuant to the RWH Overtime Protocol, the Doctor in Training was required to either seek authorisation for any outpatient care overtime in advance of working the overtime, or alternatively to have any such

overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;

- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of outpatient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

- (iii) otherwise denies the allegations in paragraph 450;

- (b) Eastern Health does not plead to paragraph 450 as it contains no allegation of material fact against it.

451. As to paragraph 451:

- (a) RWH:

- (i) refers to and repeats paragraphs 447 to 450 above; and

- (ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make a RWH Overtime Claim in respect of the alleged outpatient care overtime, then it ought be concluded that either:
 - 1) the Group member did not work such overtime;
 - 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 451;

(b) Eastern Health does not plead to paragraph 451 as it contains no allegation of material fact against it.

452. As to paragraph 452:

(a) RWH:

(i) refers to and repeats paragraphs 446 to 451 above; and

(ii) otherwise denies the allegations in paragraph 452;

(b) Eastern Health does not plead to paragraph 452 as it contains no allegation of material fact against it.

453. As to paragraph 453:

(a) RWH:

(i) refers to and repeats paragraphs 446 to 451 above; and

(ii) otherwise denies the allegations in paragraph 453;

(b) Eastern Health does not plead to paragraph 453 as it contains no allegation of material fact against it.

F11 Other medical services overtime

454. As to paragraph 454:

(a) RWH:

(i) admits that the duties and responsibilities of a Doctor in Training when providing medical services included carrying out such other duties necessary for the provision of medical services by the Doctor in Training;

(ii) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for carrying out such other duties necessary for the provision of medical services by the Doctor in Training; and

(iii) otherwise denies the allegations in paragraph 454;

(b) Eastern Health does not plead to paragraph 454 as it contains no allegation of material fact against it.

455. As to paragraph 455:

- (a) RWH:
 - (i) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, RWH implemented the RWH Overtime Protocol;
 - (ii) refers to and repeats sub-paragraphs 184(a)(ii)B to 184(a)(ii)D above;
 - (iii) says further that:
 - A. Doctors in Training were, or ought to have been, aware of the RWH Overtime Protocol and RWH's approach to Unrostered Overtime;
 - B. if Doctors in Training performed Unrostered Overtime, they were able to submit a RWH Overtime Claim;
 - (iv) otherwise denies the allegations in paragraph 455;
- (b) Eastern Health does not plead to paragraph 455 as it contains no allegation of material fact against it.

456. As to paragraph 456:

- (a) RWH:
 - (i) refers to and repeats paragraphs 454 and 455 above;
 - (ii) otherwise denies the allegations in paragraph 456;
- (b) Eastern Health does not plead to paragraph 456 as it contains no allegation of material fact against it.

457. As to paragraph 457:

- (a) RWH:
 - (i) refers to and repeats paragraph 455 above; and
 - (ii) otherwise denies the allegations in paragraph 457;
- (b) Eastern Health does not plead to paragraph 457 as it contains no allegation of material fact against it.

458. As to paragraph 458:

- (a) RWH:
 - (i) refers to and repeats paragraphs 454 and 455 above;

(ii) says that:

- A. whether a Doctor in Training was authorised to work any alleged other medical services overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- B. further or alternatively, pursuant to the RWH Overtime Protocol, the Doctor in Training was required to either seek authorisation for any other medical services overtime in advance of working the overtime, or alternatively to have any such overtime authorised and verified by appropriate senior staff at the time of the overtime being completed and claimed within the pay period the overtime was worked;
- C. no Doctor in Training has provided particulars of the circumstances of any alleged occasion of other medical services overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to them for such overtime, nor provided particulars of the claims made by them (and approved by RWH) for retrospective authorisation of such overtime, and RWH cannot properly plead without those particulars;

(iii) otherwise denies the allegations in paragraph 458;

- (b) Eastern Health does not plead to paragraph 458 as it contains no allegation of material fact against it.

459. As to paragraph 459:

(a) RWH:

(i) refers to and repeats paragraphs 455 to 458 above; and

(ii) says further that:

- A. payment for Unrostered Overtime is subject to the condition that a Group Member make a RWH Overtime Claim in relation to the overtime purportedly worked;
- B. if a Group Member did not make a RWH Overtime Claim in respect of the alleged other medical services overtime, then it ought be concluded that either:
 - 1) the Group Member did not work such overtime;

- 2) the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- 3) the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

C. further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (B)(1) and (B)(2) above for the reasons in paragraphs 463 to 474 below;

(iii) otherwise denies the allegations in paragraph 459;

(b) Eastern Health does not plead to paragraph 459 as it contains no allegation of material fact against it.

460. As to paragraph 460:

(a) RWH:

(i) refers to and repeats paragraphs 454 to 459 above; and

(ii) otherwise denies the allegations in paragraph 460;

(b) Eastern Health does not plead to paragraph 460 as it contains no allegation of material fact against it.

461. As to paragraph 461:

(a) RWH:

(i) refers to and repeats paragraphs 454 to 459 above; and

(ii) otherwise denies the allegations in paragraph 461;

(b) Eastern Health does not plead to paragraph 461 as it contains no allegation of material fact against it.

F12 Loss and damage

462. As to paragraph 462:

(a) RWH denies the allegations in paragraph 462 for the reasons pleaded herein;

- (b) Eastern Health does not plead to paragraph 462 as it contains no allegation of material fact against it.

G ESTOPPEL BY CONDUCT

G1 Claim against Eastern Health

Background to the estoppel

463. Pursuant to the terms of their employment contracts, Dr Hodge and the Group Members were:

- (a) informed that their conditions of employment were governed by:
 - (i) the 2013 Agreement or the 2018 Agreement;
 - (ii) their individual contracts of employment;
- (b) obliged to abide by all Eastern Health's Code of Conduct, and applicable legislation, by-laws, regulations, and privacy and confidentiality policies.

464. Pursuant to the Eastern Health Overtime Protocol, Dr Hodge and Group Members were required to:

- (a) complete the Doctors in Training Unrostered Overtime Claim form and state:
 - (i) the reason for the unrostered overtime together with the patient details;
 - (ii) the date the unrostered overtime was worked;
 - (iii) the time the unrostered overtime commenced; and
 - (iv) the time the unrostered overtime was completed (the time from when the doctor has completed their duties specific to the clinical need); and
- (b) claim retrospective authorisation of overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
- (c) have the claim for Unrostered Overtime authorised by the Director/Head of Unit or their acting delegate; and
- (d) submit the Unrostered Overtime Claim Form with the timesheet for the relevant period.

465. Dr Hodge and Group Members who commenced employment with Eastern Health at the beginning of their first clinical year as a medical officer, in the position of intern, participated in orientation during which they were informed of the procedure to claim Unrostered Overtime.

466. From time to time throughout the Relevant Period, Dr Hodge and Group Members submitted claims for Unrostered Overtime which were approved and for which they were paid (**Claimed Unrostered Overtime**).

Particulars

Further particulars will be provided after discovery and prior to trial.

467. By reason of paragraphs 463 to 466 above, Dr Hodge and Group Members were:
- (a) aware of their ordinary hours of work;
 - (b) aware of the requirement to either to either seek authorisation for any Unrostered Overtime in advance of working the overtime or, alternatively, to make a claim for retrospective authorisation of such overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;
 - (c) aware of the requirement to submit an Eastern Health Overtime Claim and the process for doing so; and
 - (d) capable of complying those requirements.

Operation of the estoppel

468. In the circumstances set out in paragraphs 463 to 467 above, to the extent that Dr Hodge and the Group Members:

- (a) attended or remained at work outside their ordinary hours of work other than for rostered overtime or authorised Unrostered Overtime, having not obtained advance authorisation in accordance with the Eastern Health Overtime Protocol; or
- (b) did not submit an Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol;

then, by that conduct, Dr Hodge and the Group Members induced Eastern Health to assume, and Eastern Health did assume:

- (c) that they were not, or were not required to be, in attendance at a hospital to carry out functions that they had been called upon to perform on behalf of Eastern Health during any such time;
- (d) further or alternatively, that any attendance at an Eastern Health facility during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntarily.

469. Dr Hodge and the Group Members did not correct any mistake in the assumptions set out in sub-paragraph 468(c) and, further or alternatively, sub-paragraph 468(d) above (**unapproved or unclaimed time assumptions**), despite being under a duty to do so:
- (a) by reason of their contractual obligations set out in paragraph 463 above;
 - (b) further or alternatively, because, by reason of the matters in paragraphs 463 to 467 above:
 - (i) Dr Hodge and Group Members knew, or should reasonably have known, that the respondent would be induced by the acts or omissions referred to in sub-paragraphs 468(a) or 468(b) above to make the unapproved or unclaimed overtime assumptions; and
 - (ii) a reasonable person would have expected Dr Hodge and Group Members to correct any mistake in those assumptions by submitting an Eastern Health Overtime Claim in accordance with the Eastern Health Overtime Protocol.
470. In the circumstances set out in paragraph 8 above, to the extent that Dr Hodge or Group Members engaged in the conduct in sub-paragraphs 468(a) or 468(b) above, it amounted to a representation by Dr Hodge and Group Members as to the matters in sub-paragraph 468(c) and, further or alternatively, sub-paragraph 468(d) above (**unapproved or unclaimed overtime representations**).
471. Eastern Health acted in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions, in that Eastern Health, by reason of the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions:
- (a) was not aware of, and did not investigate contemporaneously, any assertion that Dr Hodge or Group Members had purportedly attended at work outside their ordinary hours of work other than during the periods of Rostered Overtime and claimed Unrostered Overtime;
 - (b) did not make any payment to Dr Hodge or Group Members in relation to any purported attendance at work outside their ordinary hours of work other during the periods of Rostered Overtime and claimed Unrostered Overtime; and
 - (c) did not take steps that were available to Eastern Health to reduce any such time being worked by Dr Hodge and Group Members.

Particulars

The steps that would have been available to the respondent included:

- 1) changing roster arrangements to reduce the possibility of Unrostered Overtime arising;

- 2) changing models of care and making operational changes in the delivery of health services, such as changing theatre scheduling arrangements, to address the causes of Unrostered Overtime, based on the information provided by Dr Hodge and Group Members;
- 3) employing or rostering more doctors;
- 4) reallocating responsibility for some activities or functions to more senior doctors or other personnel;
- 5) issuing directions in relation to working or not working Unrostered Overtime or performing or not performing particular activities;
- 6) planning, forecasting or budgeting for the Unrostered Overtime to ensure that the respondent could meet any liability for Unrostered Overtime.

472. To the extent that Dr Hodge or Group Members engaged in the conduct in sub-paragraphs 468(a) and 468(b) above, it was reasonable for Eastern Health to regard that conduct as amounting to the unapproved and unclaimed time representations, to make the unapproved or unclaimed overtime assumptions, and to rely on those assumptions as set out paragraph 471 above, in circumstances in which Dr Hodge and Group Members:

- (a) were obliged to comply with the Eastern Health Overtime Protocol in relation to obtaining authorisation for Unrostered Overtime and submitting claims for Unrostered Overtime, as set out in paragraphs 463 to 464(a) above;
- (b) were informed of those obligations by Eastern Health as set out in paragraph 463 and 465 above;
- (c) were capable of complying with those obligations as set out in paragraphs 465 and 466 above; and
- (d) were on notice that Eastern Health's reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

Particulars

Dr Hodge and the Group Members were on notice including because:

- 1) they were not paid in relation to any purported attendance at work outside their ordinary hours of work other than during the periods of Rostered Overtime and claimed Unrostered Overtime;
- 2) their day-to-day work was autonomous, such that they could not reasonably expect the senior staff with authority to approve or require

Unrostered Overtime on behalf of Eastern Health to have known they were working outside their ordinary hours unless they submitted a claim or otherwise brought that work to Eastern Health's attention.

473. Eastern Health would suffer detriment if Dr Hodge and Group Members were permitted to assert to the contrary of any of the unapproved or unclaimed overtime assumptions, to the extent that any of those assumptions is incorrect (which is not admitted), being that:

- (a) Eastern Health would be required to make further payments to Dr Hodge and Group Members in relation to Unrostered Overtime;
- (b) further or alternatively, Eastern Health has lost the opportunity to avoid all or some of the Unrostered Overtime by taking the steps referred to in sub-paragraph 471(c) above,

which they did not take in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

474. By reason of paragraphs 468 to 473 above, Dr Hodge and Group Members are estopped from asserting:

- (a) that they were, or were required to be, in attendance at an Eastern Health facility to carry out functions that they had been called upon to perform on behalf of Eastern Health during any such time;
- (b) further or alternatively, that any attendance at an Eastern Health facility during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntarily.

G2 Claim against RWH

Background to the estoppel

475. Pursuant to the terms of their employment contracts, Dr Hodge and the Group Members were informed that their conditions of employment were governed by:

- (a) the 2013 Agreement or the 2018 Agreement;
- (b) their individual contracts of employment;
- (c) subject to the appropriate by-laws of the RWH and to any of its relevant policies and procedures, which apply from time to time;

476. Pursuant to the RWH Overtime Protocol:

- (a) Dr Hodge and Group Members were required to ensure any Unrostered Overtime was authorised by an Authorising Officer, if possible, in advance of them working the overtime;

- (b) where an Authorising Officer was unavailable and Dr Hodge or Group Members was not able to get pre-approval for the unrostered overtime, the most senior medical member on duty was to be advised so they could in turn report the overtime worked to the relevant department and medical workforce unit;
 - (c) if not pre-approved, unrostered overtime must have been authorised by and verified by appropriate senior staff at the time of the unrostered overtime being completed; authorised by a manager with timesheet delegation and countersigned by the appropriate Divisional or Executive Director;
 - (d) any RWH Overtime Claim must have been made in a timely manner and within the pay period the overtime was worked;
 - (e) if the procedure set out above was followed, Dr Hodge and Group Members were paid for Unrostered Overtime if that time was pre-approved by an Authorising Officer or where the work was conducted for 'demonstrable clinical need' and no other rostered medical staff were practically available to perform the work;
477. Dr Hodge and Group Members who commenced employment with RWH at the beginning of their first clinical year as a medical officer, in the position of intern, received orientation during which they were informed of:
- (a) the RWH Overtime Claim;
 - (b) their ordinary hours of work (and directed to the 2013 Agreement or the 2018 Agreement on the intranet);
 - (c) the requirement to make a claim for Unrostered Overtime;
 - (d) the requirements of any claim for Unrostered Overtime;
 - (e) the requirement for a claim for Unrostered Overtime to be submitted in the pay fortnight in which the Unrostered Overtime was worked but no later than the subsequent pay fortnight;
 - (f) the process for claiming Unrostered Overtime.

Particulars

In relation to Dr Hodge:

A. Medical Workforce Orientation program

Particulars in relation to Group Members will be provided after the Group Members are known.

478. From time to time throughout the Relevant Period, Dr Hodge and Group Members submitted claims for Unrostered Overtime which were approved and for which they were paid (**Claimed Unrostered Overtime**).

Particulars

In relation to Dr Hodge, see the particulars of sub-paragraphs **Error! Reference source not found.**.

Particulars in relation to Group Members will be provided after the Group Members are known.

479. By reason of paragraphs 463 to 466 above, Dr Hodge and Group Members were:

- (a) aware of their ordinary hours of work;
- (b) aware of the requirement to either:
 - (i) obtain authorisation in advance for Unrostered Overtime from the Head of Unit; or
 - (ii) obtain retrospective authorisation for Unrostered Overtime in the current fortnight;
- (c) aware of the requirement to submit a RWH Overtime Claim and the process for doing so; and
- (d) capable of complying those requirements.

Operation of the estoppel

480. In the circumstances set out in paragraphs 463 to 467 above, to the extent that Dr Hodge and the Group Members:

- (a) attended or remained at work outside their ordinary hours of work other than for rostered overtime or authorised Unrostered Overtime, having not obtained advance authorisation in accordance with the RWH Overtime Protocol; or
- (b) did not submit a RWH Overtime Claim in accordance with the RWH Overtime Protocol;

then, by that conduct, Dr Hodge and the Group Members induced RWH to assume, and RWH did assume:

- (c) that they were not, or were not required to be, in attendance at a hospital to carry out functions that they had been called upon to perform on behalf of RWH during any such time;

- (d) further or alternatively, that any attendance at RWH Hospital during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntarily.
481. Dr Hodge and the Group Members did not correct any mistake in the assumptions set out in sub-paragraph 468(c) and, further or alternatively, sub-paragraph 468(d) above (**unapproved or unclaimed time assumptions**), despite being under a duty to do so:
- (a) by reason of their contractual obligations set out in paragraphs 463 above;
 - (b) further or alternatively, because, by reason of the matters in paragraphs 463 to 467 above:
 - (i) Dr Hodge and Group Members knew, or should reasonably have known, that the respondent would be induced by the acts or omissions referred to in sub-paragraphs 468(a) or 468(b) above to make the unapproved or unclaimed overtime assumptions; and
 - (ii) a reasonable person would have expected Dr Hodge and Group Members to correct any mistake in those assumptions by submitting a RWH Overtime Claim in accordance with the RWH Overtime Protocol.
482. In the circumstances set out in paragraph 469 above, to the extent that Dr Hodge or Group Members engaged in the conduct in sub-paragraphs 468(a) or 468(b) above, it amounted to a representation by Dr Hodge and Group Members as to the matters in sub-paragraph 468(c) and, further or alternatively, sub-paragraph 468(d) above (**unapproved or unclaimed overtime representations**).
483. RWH acted in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions, in that RWH, by reason of the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions:
- (a) was not aware of, and did not investigate contemporaneously, any assertion that Dr Hodge or Group Members had purportedly attended at work outside their ordinary hours of work other than during the periods of Rostered Overtime and claimed Unrostered Overtime;
 - (b) did not make any payment to Dr Hodge or Group Members in relation to any purported attendance at work outside their ordinary hours of work other during the periods of Rostered Overtime and claimed Unrostered Overtime; and
 - (c) did not take steps that were available to RWH to reduce any such time being worked by Dr Hodge and Group Members.

Particulars

The steps that would have been available to the respondent included:

- 1) changing roster arrangements to reduce the possibility of Unrostered Overtime arising;
- 2) changing models of care and making operational changes in the delivery of health services, such as changing theatre scheduling arrangements, to address the causes of Unrostered Overtime, based on the information provided by Dr Hodge and Group Members;
- 3) employing or rostering more doctors;
- 4) offering additional training to Doctors in Training;
- 5) reallocating responsibility for some activities or functions to more senior doctors or other personnel;
- 6) issuing directions in relation to working or not working Unrostered Overtime or performing or not performing particular activities;
- 7) planning, forecasting or budgeting for the Unrostered Overtime to ensure that the respondent could meet any liability for Unrostered Overtime.

484. To the extent that Dr Hodge or Group Members engaged in the conduct in sub-paragraphs 468(a) and 468(b) above, it was reasonable for RWH to regard that conduct as amounting to the unapproved and unclaimed time representations, to make the unapproved or unclaimed overtime assumptions, and to rely on those assumptions as set out paragraph 471 above, in circumstances in which Dr Hodge and Group Members:

- (a) were obliged to comply with the RWH Overtime Protocol in relation to obtaining authorisation for Unrostered Overtime and submitting claims for Unrostered Overtime, as set out in paragraphs 463 to 464(a) above;
- (b) were informed of those obligations by RWH as set out in paragraph 463 and **Error! Reference source not found.** above;
- (c) were capable of complying with those obligations as set out in paragraphs 477 and 466 above; and
- (d) were on notice of RWH's reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

Particulars

Dr Hodge and the Group Members were on notice including because:

- 1) they were not paid in relation to any purported attendance at work outside their ordinary hours of work other than during the periods of Rostered Overtime and claimed Unrostered Overtime;
- 2) their day-to-day work was autonomous, such that they could not reasonably expect the senior staff with authority to approve or require Unrostered Overtime on behalf of RWH to have known they were working outside their ordinary hours unless they submitted a claim or otherwise brought that work to RWH's attention.

485. RWH would suffer detriment if Dr Hodge and Group Members were permitted to assert to the contrary of any of the unapproved or unclaimed overtime assumptions, to the extent that any of those assumptions is incorrect (which is not admitted), being that:

- (a) RWH would be required to make further payments to Dr Hodge and Group Members in relation to Unrostered Overtime;
- (b) further or alternatively, RWH has lost the opportunity to avoid all or some of the Unrostered Overtime by taking the steps referred to in sub-paragraph 471(c) above,

which they did not take in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

486. By reason of paragraphs 468 to 473 above, Dr Hodge and Group Members are estopped from asserting:

- (a) that they were, or were required to be, in attendance at RWH to carry out functions that they had been called upon to perform on behalf of RWH during any such time;
- (b) further or alternatively, that any attendance at RWH during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntarily.

Date: 24 December 2021



.....
Signed by Andrew Morrison
Lawyer for the respondents

This pleading was prepared by Andrew Morrison and Emma Mawson, Lawyers for the respondents and settled by Frank Parry QC and Helen Tiplady, Counsel for the respondents.

Certificate of lawyer

I Andrew Morrison certify to the Court that, in relation to the defence filed on behalf of the respondents, the factual and legal material available to me at present provides a proper basis for:

1. each allegation in the pleading; and
2. each denial in the pleading; and
3. each non admission in the pleading.

Date: 24 December 2021



.....
Signed by Andrew Morrison
Lawyer for the respondents

Schedule of Parties

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

No. VID611/2021

Applicants

First Applicant: The Australian Salaried Medical Officers' Federation
Second Applicant: Wendy Hodge

Respondents

First Respondent: Eastern Health
Second Respondent: Royal Women's Hospital