

OPT OUT NOTICE

FEDERAL COURT OF AUSTRALIA

‘Doctors in Training’ (Unrostered Unpaid Overtime) Class Action (VID 419/2021)

1. **Why is this notice important?**

On 29 July 2021, the Australian Salaried Medical Officers Federation of Victoria (ASMOF) and a doctor (together, ‘**the Applicants**’) commenced a class action in the Federal Court of Australia against Western Health (**the Respondent**). The class action is brought by the Applicants on their own behalf and on behalf of other Doctors in Training (**DIT**) who it is alleged have worked unrostered and unpaid overtime while employed by Western Health during the period 30 July 2015 to 29 July 2021.

The Federal Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the action. You have been identified as a potential group member.

You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything that you do not understand you should seek legal advice.

2. **What is a class action?**

A class action, also known as a ‘representative proceeding’, is an action that is brought by one or more persons (“**Applicant(s)**”) on his or her own behalf and on behalf of a class of people (“**group members**”) against another person (“**Respondent**”) where the Applicants and the group members have similar claims against the Respondent.

Group members in a class action are not individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicants are responsible for the legal costs.

Group members are bound by the outcome in the class action, unless they have opted out of the proceedings. A binding result can happen in two ways being either a *judgment* following a trial, or a *settlement* at any time. If there is a judgment or a settlement of a class action, group members will not be able to pursue the same claims and may not be able to pursue similar or related claims against the Respondent in other legal proceedings. Group members should note that:

- (a) In a *judgment* following trial, the Court will decide various factual and legal issues in respect of the claims made by the Applicants and group members. Unless those decisions are successfully appealed, they bind the Applicants, group members and the Respondent. Importantly, if there are other proceedings between a group member and the Respondent, it may be that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with factual or legal issue decided in the class action.
- (b) In a *settlement* of a class action, where the settlement provides for compensation to group members it may extinguish *all* rights to compensation which a group member might have against the Respondent which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against the Respondent which are based on your individual circumstances or otherwise additional to the claims that are described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see below).

3. What is this class action?

This class action is brought by the Applicants on their own behalf and on behalf of all persons who are “group members” as defined in the proceeding.

The Applicants allege in the statement of claim in this proceeding that since 30 July 2015, group members have, in the course of their employment with the Respondent, worked hours in excess of their ordinary hours or rostered hours and were not paid for those unrostered overtime hours.

The Applicants allege that the Respondent’s failure to pay group members for their unrostered overtime hours is a breach of their obligations under the applicable enterprise agreements which include the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013 (2013 Agreement)* applicable up to 6 August 2018, and from 7 August 2018 the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021 (2018 Agreement)*.

As a result of this breach, the Applicants allege that the Respondent has breached section 50 of the *Fair Work Act 2009 (Cth) (FW Act)*.

4. What does ‘opt out’ mean?

The Applicants in a class action do not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member.

However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is found below in the section headed “How can you opt out of the proceeding.”

5. Are you a group member?

You are a group member if, during the period between 30 July 2015 and 29 July 2021, you:

- (a) were employed by Western Health; and
- (b) worked at one or more of the following services operated by Western Health:
 - a. Sunshine Hospital, at 176 Furlong Road, St Alban;
 - b. Footscray Hospital, at 160 Gordon St, Footscray;
 - c. Williamstown Hospital, Railway Crescent, Williamstown;
 - d. Sunbury Day Hospital, 7 Macedon Street, Sunbury;
 - e. Hazeldean Transition Care Program, 211-215 Osborne Street, Williamstown;
 - f. Drug Health Services, 3-7 Eleanor Street, Footscray; and
- (c) were, when employed by Western Health, classified as one or more of the following classifications under the 2013 Agreement and/or 2018 Agreement:
 - a. Hospital Medical Officer;
 - b. Medical Officer (but not a Medical Officer classified as Solely Administrative under the 2013 Agreement or the 2018 Agreement);
 - c. Registrar; and
- (d) worked un-rostered overtime for which you have not been paid.

6. Will you be liable for legal costs if you remain a group member?

You will not become liable for any legal costs simply by remaining a group member for the determination of the common questions. However, if a successful outcome is achieved, the Court may make orders requiring group members to contribute to legal costs incurred on behalf of the Applicants who have brought the class action.

7. What will happen if you choose to remain a group member?

Unless you choose to opt out of the class action, you will be bound by any settlement or judgment made in the class action. If the class action is successful, you will be entitled to share in the benefit of any order, judgment or settlement made in favour of the Applicants and group members. You may be required to satisfy certain conditions before your entitlement arises.

If the action is unsuccessful, you will not be able to pursue the same claims and may not be able to pursue related claims against Western Health in other legal proceedings.

8. What group members need to do:

(a) How to remain a group member?

If you wish to remain a group member there is nothing you need to do at the present time. The Applicants will continue to bring the proceeding on your behalf up to the point where the Court determined those questions that are common to the claims of the Applicants and group members. However, you are invited to register as a group member with the Applicants' lawyers Gordon Legal. You can register at: <https://doctorsclassaction.com.au>. When you register, Gordon Legal will provide you with up to date information about the progress of the class action.

(b) How to opt out?

If you do not wish to remain a group member, you must opt out of the class action. If you opt out you will not be bound by, or entitled to share in, the benefit of any order, judgment or settlement in the class action, but you will be at liberty to bring your own claim against the Respondent, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the Respondent, you should seek your own legal advice about your claim and the applicable time limit prior to opting out.

If you wish to opt out of the class action, you must do so by completing a "Notice of opting out by group member" in the form shown below (Form 21 of the Court's approved forms), then returning it to the Registrar of the Federal Court of Australia at the address on the form.

IMPORTANT: the Notice must reach the Registrar by no later than 4:00pm on 18 October 2021 otherwise your opt out will not be effective.

Each group member that wishes to opt out should fill out a separate form.

9. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the application, the statement of claim and the defence(s), may be obtained by:

- (a) Downloading them from <https://gordonlegal.com.au>, or www.asmof.org.au, or www.amavic.com.au;
- (b) Inspecting them between 9am and 5pm at one of the offices of Gordon Legal, contact details for which are available from <https://gordonlegal.com.au> or by calling (03) 9603 3000;
- (c) By contacting a District Registry of the Federal Court (contact details are available at www.fedcourt.gov.au) and paying the appropriate inspection fee; or
- (d) Where appropriate arrangements have been made with the Court, inspecting them on the Federal Court website at www.fedcourt.gov.au

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Gordon Legal on (03) 9603 3000 or email doctors@gordonlegal.com.au or seek your own legal advice. You should not delay in making your decision.

Form 21
Rule 9.34

Opt out notice

No. VID 419 of 2021

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

The Australian Salaried Medical Officers' Federation and another
Applicants

Western Health
Respondent

To: The Registrar
Federal Court of Australia
Victoria District Registry
305 William Street
MELBOURNE VIC 3000

[Name of group member], a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [Name of group member] is opting out of the representative proceeding.

Date: [eg 19 June 20..]

Signed by [Name]
[Insert capacity eg group member / Lawyer
for the group member]

Filed on behalf of (name & role of party) _____
Prepared by (name of person/lawyer) _____
Law firm (if applicable) _____
Tel _____ Fax _____
Email _____
Address for service
(include state and postcode) _____