

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: VID774/2021  
File Title: THE AUSTRALIAN SALARIED MEDICAL OFFICERS' FEDERATION  
& ANOR v BENDIGO HEALTH  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 3/05/2022 8:16:12 AM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 17

Rule 8.05(1)(a)

**Amended Statement of claim**

No. **774** of 2021

Federal Court of Australia

District Registry: Victoria

Division: Fair Work

**The Australian Salaried Medical Officers' Federation** and another named in the Schedule

Applicants

**Bendigo Health**

Respondent

**A THE PARTIES**

**A1 The Applicants and the Group Members**

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by:

- (a) the First Applicant, on behalf of all persons; and
- (b) the Second Applicant, on her own behalf and on behalf of all persons,

who, during the period 24 December 2015 and 23 December 2021 (**Relevant Period**):

- (c) were employed by Bendigo Health, or Bendigo Health Care Group (as it was formerly known)—together, **Bendigo Health**—and worked at Bendigo Health Hospital, at 100 Barnard Street, Bendigo (**Bendigo Hospital**); and

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Filed on behalf of:	The Australian Salaried Medical Officers' Federation and Catherine Gaggin ( <b>the Applicants</b> )		
Prepared by:	Andrew Grech		
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### Particulars

Until 22 October 2019, Bendigo Health was listed in Schedule 5 of the *Health Services Act 1988* (Vic) under its former name, “Bendigo Health Care Group.” At or around that time, the name of the entity changed from “Bendigo Health Care Group” to “Bendigo Health.”

- (d) were, when employed by Bendigo Health covered by the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013 (2013 Agreement)* until 6 August 2018, and from 7 August 2018, the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021 (2018 Agreement)* within the meaning of the *Fair Work Act 2009* (Cth) (**FW Act**); and
  - (e) were, when employed by Bendigo Health, classified as a:
    - (i) Hospital Medical Officer;
    - (ii) Medical Officer (but not a Medical Officer classified as Solely Administrative under the 2013 Agreement or the 2018 Agreement);
    - (iii) Registrar,under the 2013 Agreement and/or the 2018 Agreement; and
  - (f) in the course of their employment by Bendigo Health, worked hours in excess of their ordinary hours, or rostered hours (**unrostered overtime**); and
  - (g) were not paid for the unrostered overtime worked
- (Group Members).**

2. The First Applicant, the Australian Salaried Medical Officers’ Federation (**ASMOF**), is:
- (a) an organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cth);
  - (b) an employee organisation within the meaning of sub-paragraph (c) of Column 2 of Item 4 of the table in s 539, and s 540(6) of the FW Act;
  - (c) entitled to represent the industrial interests of persons including the Second Applicant and the Group Members.

3. The Second Applicant, Dr Catherine Gaggin:

- (a) between 6 January 2016 and 15 January 2017, was employed by Bendigo Health and classified as a Hospital Medical Officer (**HMO**) Year 1 (Intern) under the 2013 Agreement; and
- (b) between 6 February 2017 and 4 February 2018, was employed by Bendigo Health and classified as an HMO Year 2 under the 2013 Agreement; and
- (c) between 5 February 2018 and 3 February 2019, was employed by Bendigo Health and classified as a Registrar Year 1 under the 2013 Agreement; and
- (d) between 4 February 2019 and 2 February 2020, was employed by Bendigo Health and classified as a Registrar Year 2 under the 2018 Agreement; and
- (e) between 3 February 2020 and 31 January 2021, was employed by Bendigo Health and classified as a Registrar Year 3 under the 2018 Agreement.

**Particulars**

Copies of Dr Gaggin's contracts of employment are in the possession of the Applicants' solicitors and may be inspected on request.

4. At the date of the commencement of this proceeding, there are seven or more persons who have claims against Bendigo Health in respect of the matters set out in this Statement of Claim.

**A2 The Respondent**

5. Bendigo Health:

- (a) is and at all times material to this proceeding has been a body corporate pursuant to s 65P and Schedule 5 of the *Health Services Act 1988* (Vic) and capable of suing and being sued;
- (b) is and at all times material to this proceeding has been a Health Service within the meaning of the 2013 Agreement and the 2018 Agreement;
- (c) is and at all times material to this proceeding has been a national system employer within the meaning of the FW Act;

(d) was, between 6 January 2016 and 31 January 2021, the employer of Dr Gaggin.

## **B THE AGREEMENTS**

### **B1 The 2013 Agreement**

#### Application and coverage

6. The 2013 Agreement:

- (a) is an enterprise agreement within the meaning of Part 2-4 of the FW Act;
- (b) was approved by the Fair Work Commission (**FWC**) on 10 December 2013;
- (c) commenced operation on and from 17 December 2013 and continued to operate until 6 August 2018; and
- (d) pursuant to clause 5.3, covered:
  - (i) Bendigo Health;
  - (ii) ASMOF;
  - (iii) employees of Bendigo Health who were employed in the classifications set out in paragraph 1(e) above (**Doctors**).

#### Doctor Responsibilities

7. Clause 14 of the 2013 Agreement provided, relevantly, that a Doctor covered by that Agreement:

- (a) provided medical services, including the keeping and maintaining of adequate medical records for hospital patients (cl 14.1); and
- (b) was required to devote their duty hours to the duties of their appointment (cl 14.2).

#### Hours of Work, Rostering, and Overtime

8. The 2013 Agreement provided:

- (a) in clause 25.1.1 that, for full-time HMOs, ordinary hours of work must be 38 hours per week or an average of 38 hours per week for up to 4 weeks; and

- (b) in clause 25.1.3, that, for full-time Registrars, ordinary hours of work must be 38 hours per week plus five reasonable additional hours of training time, equalling 43 hours per week or an average of 43 hours per week for up to 4 weeks.
- 9. Clause 26.1.2 of the 2013 Agreement provided that rosters must include all working hours including theatre preparation, ward rounds, completing discharge summaries, and (for Registrars only) Training Time as defined in clause 11.24.3.
- 10. Clauses 32.1 and 32.2 of the 2013 Agreement provided, relevantly:

**32. OVERTIME**

**32.1** The provisions of this clause 32 are to be read in conjunction with clause 25 (Hours of Work).

**32.2 Entitlement**

32.2.1 Overtime is payable for working:

- (a) rostered hours in excess of ordinary hours, pursuant to sub clause 25.1;  
or
- (b) authorised hours in excess of rostered hours.

32.2.2 The payment of overtime is one and one half (1½) times the Doctor's ordinary hourly rate of pay for the first two (2) hours overtime in a week and then double the Doctor's ordinary hourly rate of pay for all additional overtime hours in that week.

**B2 The 2018 Agreement**

Application and coverage

- 11. The 2018 Agreement:
  - (a) is an enterprise agreement within the meaning of Part 2-4 of the FW Act;
  - (b) was approved by the FWC on 31 July 2018;
  - (c) commenced operation on and from 7 August 2018 and continues to operate; and
  - (d) pursuant to clause 4.1, covered:
    - (i) Bendigo Health
    - (ii) ASMOF;
    - (iii) Doctors.

### Doctor Responsibilities

12. Clause 23 of the 2018 Agreement provides, relevantly, that a Doctor covered by that Agreement:
- (a) provides medical services, including the keeping and maintaining of adequate medical records for health service patients (cl 23.1); and
  - (b) is required to devote their duty hours to the duties of their appointment (cl 23.2).

### Hours of Work, Rostering, and Overtime

13. The 2018 Agreement provides:
- (a) in clause 33.1(a) that, for Doctors other than Registrars, the ordinary hours of full-time work are 38 hours per week or an average of 38 hours per week over a period of up to 4 weeks; and
  - (b) in clause 33.1(b), that, for Registrars, the ordinary hours of full-time work will be 38 hours plus five reasonable additional hours of Training Time (as defined at subclause 3.1(dd)) equalling 43 hours per week or an average of 43 hours per week over a period of up to four weeks.
14. Clause 35.1(b) of the 2018 Agreement provides that rosters must include all working hours including theatre preparation, ward rounds, completing discharge summaries and (for Registrars only) Training Time in accordance with subclause 34.5.
15. Clauses 36.1 and 36.2 of the 2018 Agreement provide, relevantly:

**36 Overtime**

**36.1** The provisions of this clause 36 are to be read in conjunction with clause 33 (Hours of Work).

**36.2 Entitlement**

(a) Overtime is payable for working:

- (i) rostered hours in excess of ordinary hours, pursuant to subclause 33.1; or
- (ii) authorised hours in excess of rostered hours.

(b) Notwithstanding the provisions of subclause 36.2(a) above, where a part-time Doctor is directed by the Health Service to work rostered hours in excess of their contract hours, overtime will be paid pursuant to this clause for all hours worked in excess of their contract hours. A Doctor who offers to work additional hours will be paid their ordinary rate of pay until their total weekly hours of work exceed

the full time ordinary hours for their classification, as prescribed in clause 33 (Hours of Work).

- (c) The payment of overtime is one and one half (1½) times the Doctor's ordinary hourly rate of pay for the first two hours overtime in a week and then double the Doctor's ordinary hourly rate of pay for all additional overtime hours in that week.

## **C DUTIES AND RESPONSIBILITIES OF DR GAGGIN AND GROUP MEMBERS**

16. During the Relevant Period, the duties and responsibilities of Dr Gaggin and Group Members when providing medical services included, from time to time:

- (a) preparation for ward rounds (**ward round preparation**);
- (b) undertaking ward rounds (**ward rounds**);
- (c) receiving or handing over information about patients between medical staff at the start or end of a shift (**handover**);
- (d) preparation for medical procedures (**medical procedures preparation**);
- (e) attending to medical emergencies or critical patient care (**medical emergencies**);
- (f) completion of patient medical records, including discharge summaries, in a timely manner (**medical records**); and
- (g) providing medical care to patients in a clinic (**outpatient care**); and
- (h) carrying out such other duties necessary for the provision of medical services by the Doctor (**other medical services**).

### **Particulars**

The Applicants refer to clauses 14.1, 14.2 and 26.1.2 of the 2013 Agreement, and clauses 23.1, 23.2 and 35.1(b) of the 2018 Agreement.

## **D THE SECOND APPLICANT'S CLAIM**

17. During the course of her employment by Bendigo Health, Dr Gaggin was relevantly directed by Bendigo Health to work in the following departments of Bendigo Hospital between the following dates:

- (a) between 11 January 2016 and 20 March 2016, the Emergency Department.

- (b) between 21 March 2016 and 29 May 2016, the General Medicine Department.
- (c) between 15 August 2016 and 23 October 2016, the Emergency Department.
- (d) between 24 October 2016 and 15 January 2017, the General Surgery Department.
- (e) between 8 May 2017 and 6 August 2017, the Emergency Department.
- (f) between 5 February 2018 and 3 February 2019, the Emergency Department.
- (g) between 4 February 2019 and 2 February 2020, the Emergency Department.
- (h) between 3 February 2020 and 31 January 2021, the Emergency Department.

**D1 First Emergency Department Rotation – 11 January 2016 to 20 March 2016**

18. Between 11 January 2016 and 20 March 2016, pursuant to the direction of Bendigo Health set out in paragraph 17(a) above, Dr Gaggin worked in the Emergency Department at Bendigo Hospital (**First Emergency Department rotation**).

Rosters

19. During the First Emergency Department rotation, Dr Gaggin was rostered to work the following shifts, from time to time:
- (a) day shifts rostered from 7.00am to 4.30pm;
  - (b) day shifts rostered from 8.00am to 5.30pm;
  - (c) day shifts rostered from 10.00am to 7.30pm;
  - (d) evening shifts rostered from 2.00pm to 11.30pm;
  - (e) late shifts rostered from 4.00pm to 1.30am the following day; and
  - (f) night shifts rostered from 11.00pm to 8.30am the following day.

**Particulars**

Copies of Dr Gaggin's rosters for the First Emergency Department rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

Medical records overtime

20. During the First Emergency Department rotation, Bendigo Health directed Dr Gaggin:
- (a) to complete medical records for patients in the Emergency department; and
  - (b) to complete medical records in a timely manner; and
  - (c) that the timely completion of medical records was necessary to ensure patient safety
- (the **medical records direction**).

**Particulars**

The medical records direction was partly written, partly oral, and partly implied.

- (1) Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Discharge summaries, documenting patient histories, documenting patient examinations, patient plans, and patient letters each constitute "medical records" for patients;
  - (2) Insofar as it was oral, it was conveyed by more senior medical staff (including registrars) from time to time during the First Emergency Department rotation.
  - (3) Insofar as it was implied, it was implied by:
    - (a) the matters in subparagraphs (1) and (2) above;
    - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive
    - (c) the fact that there was a high turnover of patients in the Emergency Department and patients were likely to have been discharged in the time between the end of Dr Gaggin's shift and the commencement of her next rostered shift;
    - (d) the matters in paragraph 16(f) above.
21. During the First Emergency Department rotation, in order to complete medical records in accordance with the medical records direction, Dr Gaggin worked hours in excess of rostered hours (**medical records overtime**).

**Particulars**

The medical records overtime was worked by Dr Gaggin after the conclusion of all her rostered shifts for between 15 minutes and 3

hours, typically for around 1 hour on average per day, or 4–5 hours per week. There was more paperwork for evening and night shifts due to higher presentation during those shifts.

Further particulars will be provided after discovery and before trial.

22. Bendigo Health:

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

**Particulars**

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

- (1) other medical staff (including senior medical staff) observing Dr Gaggin leaving the hospital after her rostered finish time;
- (2) the medical records direction; and
- (3) Dr Gaggin's rostered hours.

23. By reason of the matters alleged in paragraphs 16(f), 18, 20 and 22 above, the medical records overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

**Particulars**

Authorisation is implied from the following matters:

- (1) the fact that the medical services provided by Dr Gaggin included the timely completion of medical records;
- (2) Dr Gaggin's rostered hours;
- (3) the medical records direction;
- (4) the knowledge of Bendigo Health, as set out in paragraphs 22(a) and 22(b) above; and
- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform medical records overtime as set out in paragraph 22(c) above.

24. In the premises, Dr Gaggin was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 21 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

25. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the First Emergency Department rotation.
26. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement.
27. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

#### Handover overtime

28. During the First Emergency Department rotation, Bendigo Health directed Dr Gaggin to conduct handover of patient information between medical staff at the end of day shifts and late shifts she worked at Bendigo Hospital (**handover direction**).

#### **Particulars**

The handover direction was partly oral, and partly implied.

- (1) Insofar as it was oral, it was conveyed in the following ways:
  - (a) by senior medical staff (consultants) at the beginning of the First Emergency Department rotation to perform handover to a consultant at the end of day shifts.
  - (b) by hospital administration and junior and senior medical staff in orientation at the beginning of the First Emergency Department rotation to perform handover to the morning team at the conclusion of night shifts, and handover to another intern at the conclusion of late shifts.
- (2) Insofar as it was implied, it was implied by:
  - (a) the matters in paragraph 16(c) above;
  - (b) the clinical requirement for a handover to ensure proper continuity of care and patient safety;
  - (c) the tasks necessary to conduct handover in the Emergency Department, which included locating the relevant doctor or doctors to receive the day shift handover, the night shift handover and the late shift handover, and explaining to that doctor or doctors each patient's condition.

Further particulars will be provided after discovery and before trial.

29. During the First Emergency Department rotation, in order to conduct handover, Dr Gaggin worked hours in excess of rostered hours (**handover overtime**).

**Particulars**

Dr Gaggin performed handover overtime:

- (1) at the end of every day shift finishing at 4.30pm, 5.30pm or 7.30pm for approximately 30 minutes on each occasion;
- (2) at the end of every late shift finishing at 1.30am for approximately 30 to 60 minutes on each occasion.

Often, consultants were not immediately available to receive the handover from Dr Gaggin at the end of day shifts.

Often, Dr Gaggin had difficulty locating a doctor to receive handover at the end of late shifts.

Further particulars will be provided after discovery and before trial.

30. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to undertake handover in accordance with the handover direction; and
- (b) knew that Dr Gaggin performed handover overtime; and
- (c) did not direct Dr Gaggin not to perform handover overtime.

**Particulars**

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

- (1) the handover direction;
- (2) Dr Gaggin's rostered finish times;
- (3) Other staff receiving handover from Dr Gaggin outside of Dr Gaggin's rostered hours;
- (4) other medical staff (including senior medical staff) observing Dr Gaggin leaving the hospital after her rostered finish time on day and night shifts.

31. By reason of the matters alleged in paragraphs 16(c), 18, 28 and 30 above, the handover overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

**Particulars**

Authorisation is implied from the following matters:

- (1) part of the medical services provided by Dr Gaggin included conducting handover;
  - (2) the handover direction;
  - (3) Dr Gaggin's rostered finish times;
  - (4) the knowledge of Bendigo Health, as set out in paragraphs 30(a) and 30(b) above; and
  - (5) the failure by Bendigo Health to direct Dr Gaggin not to perform handover overtime as set out in paragraph 30(c) above.
32. In the premises, Dr Gaggin was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 29 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
33. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the handover overtime worked by her during the First Emergency Department rotation.
34. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement.
35. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

#### Other medical services overtime

36. During the First Emergency Department rotation, Bendigo Health directed Dr Gaggin, at the end of her shifts, to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

#### **Particulars**

The tasks the subject of the direction were core aspects of Dr Gaggin's role and were necessary for the provision of adequate medical care, including:

- (1) referring patients to other departments;
- (2) preparing patients for their care over the night shift by, for example, putting a cast on a patient or arranging a drip for a patient; and
- (3) performing tasks that she was instructed to perform during handover, for example communication to GPs and the inpatient team, imaging reports, and responding to the

results of an imaging report and chasing up pathology and responding to the results of the pathology.

The patient care direction was partly oral and partly implied.

- (1) Insofar as it was oral, it was conveyed to Dr Gaggin from time to time by senior medical staff, including Registrars or Consultants.
- (2) Insofar as it was implied, it was implied by:
  - (a) the inefficiency of Dr Gaggin handing over the task of referral of a patient to another doctor given Dr Gaggin's knowledge of the patient;
  - (b) in the case of preparing patients for night shift, the number of staff rostered on the night shift being less than the staff rostered on the day shift;
  - (c) the matters in paragraph 16(h) above.

37. During the First Emergency Department rotation, in order to complete the patient care direction, Dr Gaggin worked hours in excess of rostered hours (**patient care overtime**).

#### **Particulars**

At the end of day shifts, Dr Gaggin worked overtime:

- (1) referring patients to other departments 1–2 times per week, for 10–20 minutes on each occasion;
- (2) performing tasks that she was instructed to perform during handover, around 1–2 times per week for around 10–20 minutes on each occasion.

At the end of evening shifts, Dr Gaggin worked overtime preparing patients for night shift at the end of every shift, for around 10–30 minutes on each occasion.

At the end of night shifts, Dr Gaggin worked overtime:

- (1) referring patients to other departments 1–2 times per week, for 10–30 minutes on each occasion;
- (2) performing tasks that she was instructed to perform during handover, at the end of every shift for around 10–60 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

38. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to attend to the patient care direction;
- (b) knew that Dr Gaggin performed patient care overtime; and

- (c) did not direct Dr Gaggin not to perform patient care overtime.

**Particulars**

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

- (1) the patient care direction;
- (2) other medical staff (including senior medical staff) observing Dr Gaggin carrying out the patient care direction after her rostered shift.

39. By reason of the matters alleged in paragraphs 16(h), 18, 36 and 38 above, the patient care overtime worked by Dr Gaggin constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement.

**Particulars**

Authorisation is implied from the following matters:

- (1) the fact that part of the medical services provided by Dr Gaggin included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 38(a) and 38(b) above; and
- (4) the failure by Bendigo Health to direct Dr Gaggin not to perform patient care overtime, as set out in paragraph 38(c) above.

40. In the premises, Dr Gaggin was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 37 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
41. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the First Emergency Department rotation.
42. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement.
43. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

**D2 General Medicine Rotation – 21 March 2016 to 29 May 2016**

44. Between 21 March 2016 and 29 May 2016, pursuant to the direction of Bendigo Health set out in paragraph 17(b) above, Dr Gaggin worked in the General Medicine Department at Bendigo Hospital (**General Medicine rotation**).

Rosters

45. During the General Medicine rotation, Dr Gaggin was rostered to work in the Acute Team and the Ward Team comprising of the following shifts:
- (a) Acute Team: day shifts, from 8.00am to 7.00pm and extended shifts, from 10.30am to 9.30pm.
  - (b) Ward Team:
    - (i) Tuesday and Thursday from 8.00am to 4.30pm, Monday and Wednesday from 8.00am to 5.30pm, Friday from 8.00am to 12.00pm (**Week 1**); or
    - (ii) Tuesday and Friday from 8.00am to 4.30pm, Monday and Wednesday from 8.00am to 5.30pm, Thursday from 8.00am to 12.00pm (**Week 2**).

**Particulars**

Dr Gaggin worked in the Acute Team for the first six weeks of the General Medicine rotation, and in the Ward Team for the remaining four weeks.

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

Ward round preparation overtime

46. During the General Medicine rotation, Bendigo Health directed Dr Gaggin to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

**Particulars**

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

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

Ward round preparation involved the creation of medical records for patients.

Insofar as it was oral, it was constituted by a direction from a Registrar or Registrars (whose names Dr Gaggin does not now recall) directing her, on her first day, that ward rounds started at the rostered start time and that she had to arrive early to prepare for them in order to start on time.

Insofar as it was implied, it was implied by the matters in paragraph 16(a) above, and from the tasks necessary to complete ward round preparation in the General Medicine department which included reviewing patient lists from throughout the hospital and generating a patient list for the ward round, printing the ward list, collecting paper files in preparation for note taking during the ward round, reviewing patient information and reviewing new admissions.

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

#### **Particulars**

Ward rounds were scheduled to commence at 8.00am, and Dr Gaggin performed ward round preparation on this basis, although sometimes ward rounds did not start until after 8.00am.

Dr Gaggin performed ward round preparation overtime before the start of each rostered day shift when she was rostered to the Acute Team and before the start of all day shifts when she was rostered to the Ward Team, on each occasion for between 15 and 30 minutes.

In the Acute Team, she performed between 45 minutes and 1.5 hours of ward round preparation overtime per week. In the Ward Team, it was 1.5 to 2.5 hours per week.

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

#### **Particulars**

The knowledge of Bendigo Health is to be inferred from:

- (1) the ward round preparation direction;

- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 46 above;
- (3) Dr Gaggin's rostered start times, and the time of the commencement of ward rounds;
- (4) the fact that Dr Gaggin was ready for ward rounds at 8.00am, which could only have been because she prepared prior to 8.00am.

49. By reason of the matters alleged in paragraphs 16(a), 44, 46, and 48 above, the ward round preparation overtime worked by Dr Gaggin in the General Medicine rotation constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that the medical services provided by Dr Gaggin included ward round preparation before the commencement of ward rounds;
- (2) Dr Gaggin's rostered start times, and the time of the commencement of ward rounds;
- (3) the ward round preparation direction;
- (4) the knowledge of Bendigo Health, as set out in paragraphs 48(a) and 48(b) above; and
- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform the ward round preparation overtime, as set out in paragraph 48(c) above.

50. In the premises, Dr Gaggin was entitled to be paid overtime for the ward round preparation overtime that she worked, as set out in paragraph 47 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

51. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the General Medicine rotation.

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

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

Medical records overtime

54. During the General Medicine rotation, Bendigo Health directed Dr Gaggin:
- (a) to complete medical records for patients in the General Medicine department; and
  - (b) to complete medical records in a timely manner; and
  - (c) that the timely completion of medical records was necessary to ensure patient safety
- (the **medical records direction**).

**Particulars**

The medical records direction was partly written, partly oral, and partly implied.

- (1) Insofar as it was in writing, it was:
    - (a) contained in clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Discharge summaries, patient notes, referrals, drug charts, and antibiotics approvals each constitute "medical records" for patients;
    - (b) contained in emails from admin staff noting the number of outstanding discharge summaries.
  - (2) Insofar as it was oral, it was conveyed by more senior medical staff (including Consultants) and medical administration staff members from time to time during the General Medicine rotation.
  - (3) Insofar as it was implied, it was implied by:
    - (a) the matters in subparagraphs (1) and (2) above;
    - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
    - (c) the matters in paragraph 16(f) above.
55. During the General Medicine rotation, in order to complete medical records in accordance with the medical records direction, Dr Gaggin worked hours in excess of rostered hours (**medical records overtime**).

**Particulars**

The medical records overtime was worked by Dr Gaggin after rostered day shifts in the Acute Team, and after rostered day shifts

in the Ward Team, approximately four out of five days per week for between 30 and 60 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

56. Bendigo Health:

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

#### **Particulars**

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

- (1) during the General Medicine rotation, other medical staff (including senior medical staff) observing Dr Gaggin working or leaving the hospital after her rostered finish time;
- (2) the medical records direction; and
- (3) Dr Gaggin's rostered hours.

57. By reason of the matters alleged in paragraphs 16(f), 44, 54 and 56 above, the medical records overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

#### **Particulars**

Authorisation is implied from the following matters:

- (1) the medical services provided by Dr Gaggin included the timely completion of medical records;
- (2) Dr Gaggin's rostered hours;
- (3) the medical records direction;
- (4) the knowledge of Bendigo Health, as set out in paragraphs 56(a) and 56(b) above; and
- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform medical records overtime as set out in paragraph 56(c) above.

58. In the premises, Dr Gaggin was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 55 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
59. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the General Medicine rotation.
60. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement.
61. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

#### Outpatient care overtime

62. During the General Medicine rotation, Bendigo Health directed Dr Gaggin to provide medical care to outpatients who had appointments in the outpatient clinic before she finished work on particular days (**outpatient care direction**).

#### **Particulars**

The outpatient care direction was partly oral and partly implied.

Insofar as it was oral, the direction was given from time to time by a Consultant in the General Medicine Department, who told Dr Gaggin to attend the outpatient clinic.

Insofar as it was implied, it was implied by the following:

- (1) the matters in paragraph 16(g) above;
  - (2) the fact that there were patients in attendance at the clinic having been referred from the hospital, a GP or a specialist, who needed to be seen;
  - (3) the fact that reviewing patients in a timely manner is necessary for proper patient care and was a core responsibility for Dr Gaggin during this rotation.
63. During the General Medicine rotation, in order to provide medical care in accordance with the outpatient care direction, Dr Gaggin worked hours in excess of rostered hours (**outpatient care overtime**).

### **Particulars**

- (1) Outpatient clinics were scheduled about once per week. Sometimes that day fell on a full-day rostered shift for Dr Gaggin, and sometimes on a half-day rostered shift.
- (2) On half-day rostered shifts (*i.e.*, when she was rostered to finish at 12:00 pm), Dr Gaggin worked through to the end of the day and then often further overtime as well, because the clinic ran late.
- (3) On full-day rostered shifts (*i.e.*, when she was rostered to finish at 4:30 pm), Dr Gaggin worked overtime because the clinic ran late.
- (4) The outpatients clinic ran late including because:
  - (a) it was often overbooked and understaffed.
  - (b) the work was time-consuming in that the practice of the outpatients clinic was for an intern to review a patient alone, formulate a plan for the patient, seek advice and approval of that plan from a Consultant, and return to the patient to inform them of their management plan.
- (5) On days when outpatients clinic fell onto a half-day rostered shift, Dr Gaggin worked around 4–5 hours of outpatient care overtime on each occasion.
- (6) On days when outpatients clinic fell onto a full-day rostered shift, Dr Gaggin worked around 30–60 minutes of outpatient care overtime on each occasion.

64. Bendigo Health:

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

### **Particulars**

The knowledge of Bendigo Health is to be inferred from:

- (1) the outpatient care direction;
- (2) the circumstances set out in the particulars to paragraph 63;
- (3) other medical staff observing Dr Gaggin working after her rostered hours in the outpatient clinic.

65. By reason of the matters alleged in paragraphs 16(g), 44, 62, and 64, the outpatient care overtime worked by Dr Gaggin constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) part of the medical services provided by Dr Gaggin included providing medical care in clinic appointments;
  - (2) the outpatient care direction;
  - (3) the circumstances set out in the particulars to paragraph 63;
  - (4) the knowledge of Bendigo Health, as set out in paragraphs 64(a) and 64(b);
  - (5) the failure by Bendigo Health to direct Dr Gaggin not to perform outpatient care work as set out in paragraph 64(c) above.
66. In the premises, Dr Gaggin was entitled to be paid overtime for the outpatient care overtime that she worked, as set out in paragraph 63 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
67. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the outpatient care overtime worked by her during the General Medicine rotation.
68. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement.
69. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

### Other medical services overtime

70. During the General Medicine rotation, Bendigo Health directed Dr Gaggin, at the end of her shifts, to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

### **Particulars**

The tasks the subject of the direction were core aspects of Dr Gaggin’s role and were necessary for the provision of adequate medical care, including:

- (1) calling speciality teams;
- (2) making referrals;
- (3) ordering bloods;
- (4) inserting cannulas;
- (5) conducting fluid reviews.

The patient care direction was partly oral and partly implied.

- (1) Insofar as it was oral, it was conveyed to Dr Gaggin from time to time by senior medical staff, including Registrars or Consultants.
- (2) Insofar as it was implied, it was implied by:
  - (a) the inefficiency of Dr Gaggin handing over the task of referral of a patient to another doctor given Dr Gaggin's knowledge of the patient;
  - (b) the time-sensitivity or clinical importance of at least some of the tasks;
  - (c) the fact that the relevant tasks could not be completed within Dr Gaggin's rostered hours because of the workload in the General Medicine department;
  - (d) the matters in paragraph 16(h) above.

71. During the General Medicine rotation, in order to complete the patient care direction, Dr Gaggin worked hours in excess of rostered hours (**patient care overtime**).

### **Particulars**

The patient care direction was made during the morning ward round on Ward Team shifts.

Dr Gaggin performed patient care at the conclusion of shifts around three times per week, and on each occasion for approximately 30 to 60 minutes.

Further particulars will be provided after discovery and before trial.

72. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to attend to the patient care direction;
- (b) knew that Dr Gaggin performed patient care overtime; and
- (c) did not direct Dr Gaggin not to perform patient care overtime.

### **Particulars**

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

- (1) the patient care direction;
- (2) other medical staff (interns and residents) observing Dr Gaggin carrying out the patient care direction to make referrals after her rostered shift; and
- (3) the insufficiency of time available to Dr Gaggin to do the tasks the subject of the patient care direction during rostered hours.

73. By reason of the matters alleged in paragraphs 16(h), 44, 70 and 72 above, the patient care overtime worked by Dr Gaggin constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that part of the medical services provided by Dr Gaggin included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 72(a) and 72(b) above; and
- (4) the failure by Bendigo Health to direct Dr Gaggin not to perform patient care overtime as set out in paragraph 72(c) above.

74. In the premises, Dr Gaggin was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 71 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
75. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the General Medicine rotation.
76. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement.
77. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

Handover overtime

78. During the General Medicine rotation, Bendigo Health directed Dr Gaggin to conduct
- (a) handover of patient information to another intern at the end of Acute Team shifts she worked at Bendigo Hospital; and
  - (b) handover to patient information to a registrar on the night team at the end of Acute Team shifts finishing at 9:00 pm,
- (together, **handover direction**).

**Particulars**

The handover direction was partly oral, and partly implied.

- (1) Insofar as it was oral, it was:
  - (a) conveyed in Dr Gaggin's original orientation in the Emergency Department so far as in that orientation it was stated that handover was important for continuity of patient care;
  - (b) conveyed by the Registrar in the General Medicine rotation on Dr Gaggin's first day in the rotation, the Registrar instructing Dr Gaggin to make sure she handed over to the evening cover intern;
  - (c) conveyed by other medical staff (including Dr Gaggin's supervisors) from time to time during the rotation;
- (2) Insofar as it was implied, it was implied by:
  - (a) the matters in paragraph 16(c) above;
  - (b) the clinical requirement for a handover to ensure proper continuity of care and patient safety.

Further particulars will be provided after discovery and before trial.

79. During the General Medicine rotation, in order to conduct handover, Dr Gaggin worked hours in excess of rostered hours (**handover overtime**).

**Particulars**

Dr Gaggin performed handover overtime at the end of every Acute Team day shift in handing over to another intern for approximately 30 to 60 minutes on each occasion.

Dr Gaggin performed handover overtime at the end of every Acute Team extended day shift in handing over to a registrar for approximately 30 to 60 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

80. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to undertake handover in accordance with the handover direction; and
- (b) knew that Dr Gaggin performed handover overtime; and
- (c) did not direct Dr Gaggin not to perform handover overtime.

#### **Particulars**

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

- (1) the handover direction;
- (2) Dr Gaggin's rostered finish times;
- (3) other medical staff receiving handover from Dr Gaggin outside of Dr Gaggin's rostered hours; and
- (4) other medical staff (including senior medical staff) observing Dr Gaggin performing overtime after her rostered finish time.

81. By reason of the matters alleged in paragraphs 16(c), 18, 78 and 80 above, the handover overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

#### **Particulars**

Authorisation is implied from the following matters:

- (1) part of the medical services provided by Dr Gaggin included conducting handover;
- (2) the handover direction;
- (3) Dr Gaggin's rostered finish times;
- (4) the knowledge of Bendigo Health, as set out in paragraphs 80(a) and 80(b) above; and
- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform handover overtime as set out in paragraph 80(c) above.

82. In the premises, Dr Gaggin was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 79 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
83. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the handover overtime worked by her during the General Medicine rotation.
84. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement.
85. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

### **D3 Second Emergency Department Rotation – 15 August 2016 to 23 October 2016**

86. Between 15 August 2016 and 23 October 2016, pursuant to the direction of Bendigo Health set out in paragraph 17(c) above, Dr Gaggin worked in the Emergency Department at Bendigo Hospital (**Second Emergency Department rotation**).

#### Rosters

87. During the Second Emergency Department rotation, Dr Gaggin was rostered to work the following shifts, from time to time:
  - (a) day shifts rostered from 7.00am to 4.30pm;
  - (b) day shifts rostered from 8.00am to 5.30pm;
  - (c) day shifts rostered from 10.00am to 7.30pm;
  - (d) evening shifts rostered from 2.00pm to 11.30pm;
  - (e) late shifts rostered from 4.00pm to 1.30am the following day; and
  - (f) night shifts rostered from 11.00pm to 8.30am the following day.

#### **Particulars**

Copies of Dr Gaggin's rosters for the Second Emergency Department rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

Medical records overtime

88. During the Second Emergency Department rotation, Bendigo Health directed Dr Gaggin:
- (a) to complete medical records for patients in the Emergency department; and
  - (b) to complete medical records in a timely manner; and
  - (c) that the timely completion of medical records was necessary to ensure patient safety
- (the **medical records direction**).

**Particulars**

The medical records direction was partly written, partly oral, and partly implied.

- (1) Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Discharge summaries, documenting patient histories, documenting patient examinations, patient plans, and patient letters each constitute "medical records" for patients;
  - (2) Insofar as it was oral, it was conveyed by more senior medical staff (including registrars) from time to time during the Second Emergency Department rotation.
  - (3) Insofar as it was implied, it was implied by:
    - (a) the matters in subparagraphs (1) and (2) above;
    - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive
    - (c) the fact that there was a high turnover of patients in the Emergency Department and patients were likely to have been discharged in the time between the end of Dr Gaggin's shift and the commencement of her next rostered shift;
    - (d) the matters in paragraph 16(f) above.
89. During the Second Emergency Department rotation, in order to complete medical records in accordance with the medical records direction, Dr Gaggin worked hours in excess of rostered hours (**medical records overtime**).

**Particulars**

The medical records overtime was worked by Dr Gaggin after the conclusion of all her rostered shifts for between 15 minutes and 3

hours, typically for around 1 hour on average per day, or 4–5 hours per week. There was more paperwork for evening and night shifts due to higher presentation during those shifts.

Further particulars will be provided after discovery and before trial.

90. Bendigo Health:

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

#### **Particulars**

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

- (1) other medical staff (including senior medical staff) observing Dr Gaggin leaving the hospital after her rostered finish time;
- (2) directions from senior medical staff, being directions to complete medical records for patients that Dr Gaggin had reviewed;
- (3) the medical records direction; and
- (4) Dr Gaggin's rostered hours.

91. By reason of the matters alleged in paragraphs 16(f), 87, 88 and 90 above, the medical records overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

#### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that the medical services provided by Dr Gaggin included the timely completion of medical records;
- (2) Dr Gaggin's rostered hours;
- (3) the medical records direction;
- (4) the knowledge of Bendigo Health, as set out in paragraphs 90(a) and 90(b) above; and
- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform medical records overtime as set out in paragraph 90(c) above.

92. In the premises, Dr Gaggin was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 89 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
93. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the First Emergency Department rotation.
94. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement.
95. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

#### Handover overtime

96. During the Second Emergency Department rotation, Bendigo Health directed Dr Gaggin to conduct handover of patient information between medical staff at the end of day shifts and late shifts she worked at Bendigo Hospital (**handover direction**).

#### **Particulars**

The handover direction was partly oral, and partly implied.

- (1) Insofar as it was oral, it was conveyed in the following ways:
  - (a) by senior medical staff (consultants) at the beginning of the Second Emergency Department rotation to perform handover to a consultant at the end of day shifts.
  - (b) by hospital administration in orientation at the beginning of the ~~Second Emergency Department rotation~~ First Emergency Department rotation to perform handover to the morning team at the conclusion of night shifts.
  - (c) by hospital administration in orientation at the beginning of the ~~Second Emergency Department rotation~~ First Emergency Department rotation to perform handover to another intern at the conclusion of late shifts.
- (2) Insofar as it was implied, it was implied by:
  - (a) the matters in paragraph 16(c) above;
  - (b) the clinical requirement for a handover to ensure proper continuity of care and patient safety; and

- (c) the tasks necessary to conduct handover in the Emergency Department, which included locating the relevant doctor or doctors to receive the handover and explaining to that doctor or doctors each patient's condition.

Further particulars will be provided after discovery and before trial.

97. During the Second Emergency Department rotation, in order to conduct handover, Dr Gaggin worked hours in excess of rostered hours (**handover overtime**).

#### **Particulars**

Dr Gaggin performed handover overtime:

- (1) at the end of every day shift finishing at 4.30pm, 5.30pm or 7.30pm for approximately 30 minutes on each occasion; and
- (2) at the end of every late shift finishing at 1.30am for approximately 30 to 60 minutes on each occasion;

Often, consultants were not immediately available to receive the handover from Dr Gaggin at the end of day shifts.

Often, Dr Gaggin had difficulty locating a doctor to receive handover at the end of late shifts.

Further particulars will be provided after discovery and before trial.

98. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to undertake handover in accordance with the handover direction; and
- (b) knew that Dr Gaggin performed handover overtime; and
- (c) did not direct Dr Gaggin not to perform handover overtime.

#### **Particulars**

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

- (1) the handover direction;
- (2) Dr Gaggin's rostered finish times;
- (3) Other staff receiving handover from Dr Gaggin outside of Dr Gaggin's rostered hours; and
- (4) other medical staff (including senior medical staff) observing Dr Gaggin leaving the hospital after her rostered finish time on day and night shifts.

99. By reason of the matters alleged in paragraphs 16(c), 86, 96 and 98 above, the handover overtime worked by Dr Gaggin constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement.

#### **Particulars**

Authorisation is implied from the following matters:

- (1) part of the medical services provided by Dr Gaggin included conducting handover;
  - (2) the handover direction;
  - (3) Dr Gaggin’s rostered finish times;
  - (4) the knowledge of Bendigo Health, as set out in paragraphs 98(a) and 98(b) above; and
  - (5) the failure by Bendigo Health to direct Dr Gaggin not to perform handover overtime as set out in paragraph 98(c) above.
100. In the premises, Dr Gaggin was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 97 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
101. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the handover overtime worked by her during the Second Emergency Department rotation.
102. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement.
103. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

#### Other medical services overtime

104. During the Second Emergency Department rotation, Bendigo Health directed Dr Gaggin, at the end of her shifts, to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

#### **Particulars**

The tasks the subject of the direction were core aspects of Dr Gaggin’s role and were necessary for the provision of adequate medical care, including:

- (1) referring patients to other departments;
- (2) preparing patients for their care over the night shift by, for example, putting a cast on a patient or arranging a drip for a patient; and
- (3) performing tasks that she was instructed to perform during handover, for example communication to GPs and the inpatient team, imaging reports, and responding to the results of an imaging report and chasing up pathology and responding to the results of the pathology.

The patient care direction was partly oral and partly implied.

- (1) Insofar as it was oral, it was conveyed to Dr Gaggin from time to time by senior medical staff, including Registrars or Consultants.
- (2) Insofar as it was implied, it was implied by:
  - (a) the inefficiency of Dr Gaggin handing over the task of referral of a patient to another doctor given Dr Gaggin's knowledge of the patient;
  - (b) in the case of preparing patients for night shift, the number of staff rostered on the night shift being less than the staff rostered on the day shift;
  - (c) the matters in paragraph 16(h) above.

105. During the Second Emergency Department rotation, in order to complete the patient care direction, Dr Gaggin worked hours in excess of rostered hours (**patient care overtime**).

### **Particulars**

At the end of day shifts, Dr Gaggin worked overtime:

- (1) referring patients to other departments 1–2 times per week, for 10–20 minutes on each occasion;
- (2) performing tasks that she was instructed to perform during handover, around 1–2 times per week for around 10–20 minutes on each occasion.

At the end of evening shifts, Dr Gaggin worked overtime preparing patients for night shift at the end of every shift, for around 10–30 minutes on each occasion.

At the end of night shifts, Dr Gaggin worked overtime:

- (1) referring patients to other departments 1–2 times per week, for 10–30 minutes on each occasion;
- (2) performing tasks that she was instructed to perform during handover, at the end of every shift for around 10–60 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

106. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to attend to the patient care direction;
- (b) knew that Dr Gaggin performed patient care overtime; and
- (c) did not direct Dr Gaggin not to perform patient care overtime.

#### **Particulars**

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

- (1) the patient care direction;
- (2) other medical staff (including senior medical staff) observing Dr Gaggin carrying out the patient care direction after her rostered shift.

107. By reason of the matters alleged in paragraphs 16(h), 86, 104 and 106 above, the patient care overtime worked by Dr Gaggin constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement.

#### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that part of the medical services provided by Dr Gaggin included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 106(a) and 106(b) above; and
- (4) the failure by Bendigo Health to direct Dr Gaggin not to perform patient care overtime as set out in paragraph 106(c) above.

108. In the premises, Dr Gaggin was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 105 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
109. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the Second Emergency Department rotation.
110. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement.

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

**D4 General Surgery Rotation – 24 October 2016 to 15 January 2017**

112. Between 24 October 2016 and 15 January 2017, pursuant to the direction of Bendigo Health set out in paragraph 17(d) above, Dr Gaggin worked in the General Surgery Department at Bendigo Hospital (**General Surgery rotation**).

Rosters

113. During the General Surgery rotation, Dr Gaggin was rostered to work the following shifts, from time to time:

- (a) day shifts from 7.00am to 6.00pm;
- (b) extended shifts from 7.00am to 9.00pm;
- (c) evening shifts from 4.30pm to 9.00pm;
- (d) cover shifts from 8.30pm to 8.00am the following day on Friday and 8.00pm to 8.00am the following day on Saturday.

**Particulars**

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

Ward round preparation overtime

114. During the General Surgery rotation, Bendigo Health directed Dr Gaggin to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

**Particulars**

The ward round preparation direction was partly written and partly implied.

Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement, which provided that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Ward round preparation involved the creation of medical records for patients.

Insofar as it was implied, it was implied by the matters in paragraph 16(a) above, and from the tasks necessary to complete ward round preparation in the General Surgery department which included reviewing the hospital computer system for the patients in the General Surgery ward and putting these into a list, printing the patient list, and reviewing blood and other test results that had come in overnight.

115. During the General Surgery rotation, in order to undertake ward round preparation in accordance with the ward round preparation, Dr Gaggin worked hours in excess of rostered hours (**ward round preparation overtime**).

#### **Particulars**

All clinicians whose rostered shift commenced at 7.00am were required to attend the department ward round at 7.00am.

Dr Gaggin performed ward round preparation overtime before the start of each rostered day shift and extended shift, which started at 7.00am, on each occasion for about 15 to 20 minutes.

116. Bendigo Health:

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

#### **Particulars**

The knowledge of Bendigo Health is to be inferred from:

- (1) the ward round preparation direction;
- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 115 above;
- (3) Dr Gaggin's rostered start time of 7.00am on day shifts and extended shifts;
- (4) the commencement of ward rounds at 7.00am in the circumstances set out in the particulars to paragraph 115 above;
- (5) the schedule of the General Surgery department where ward rounds were required to be finished before theatre commenced;

- (6) the fact that Dr Gaggin was ready for ward rounds at 7.00am, which could only have been because prepared prior to 7.00am.

117. By reason of the matters alleged in paragraphs 16(a), 112, 114 and 116 above, the ward round preparation overtime worked by Dr Gaggin in the General Surgery rotation constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the medical services provided by Dr Gaggin included ward round preparation before the commencement of ward rounds;
- (2) Dr Gaggin’s rostered start time of 7.00am on day shifts and extended shifts;
- (3) the commencement of ward rounds at 7.00am in the circumstances set out in the particulars to paragraph 115 above;
- (4) the ward round preparation direction;
- (5) the knowledge of Bendigo Health, as set out in paragraphs 116(a) and 116(b) above; and
- (6) the failure by Bendigo Health to direct Dr Gaggin not to perform the ward round preparation overtime, as set out in paragraph 116(c) above.

118. In the premises, Dr Gaggin was entitled to be paid overtime for the ward round preparation overtime that she worked, as set out in paragraph 115 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

119. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the General Surgery rotation.

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

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

Handover overtime

122. During the General Surgery rotation, Bendigo Health directed Dr Gaggin to conduct handover of patient information to a cover intern and to a registrar at the end of day shifts she worked at Bendigo Hospital (**handover direction**).

**Particulars**

The handover direction was implied by:

- (1) the matters in paragraph 16(c) above;
- (2) the clinical requirement for a handover to ensure proper continuity of care and patient safety;
- (3) the tasks necessary to conduct handover in the General Surgery department, which included two handovers (which sometimes, but not always, could take place at once):
  - (a) to the cover intern, who was rostered to work from 4.30pm to 9.00pm;
  - (b) to the General Surgery Registrarand explaining each patient's condition, any outstanding admissions, unwell patients, bloods and other results to follow up and patients who may deteriorate overnight;
- (4) Dr Gaggin's rostered hours.

Further particulars will be provided after discovery and before trial.

123. During the General Surgery rotation, in order to conduct handover, Dr Gaggin worked hours in excess of rostered hours (**handover overtime**).

**Particulars**

Dr Gaggin performed handover overtime at the end of every day shift finishing at 6.00pm for approximately 10 to 15 minutes on each occasion.

Dr Gaggin often had difficulty locating the intern or the Registrar to receive handover at the end of day shifts.

Further particulars will be provided after discovery and before trial.

124. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to undertake handover in accordance with the handover direction; and
- (b) knew that Dr Gaggin performed handover overtime; and

- (c) did not direct Dr Gaggin not to perform handover overtime.

**Particulars**

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

- (1) the handover direction; and
- (2) the circumstances set out in the particulars to paragraph 123 above; and
- (3) Dr Gaggin's rostered finish time on day shift of 6.00pm;
- (4) other medical staff (being at least those to whom Dr Gaggin was handing over) seeing Dr Gaggin working out of rostered hours; and
- (5) directions from senior medical staff in orientation to the rotation, being directions to conduct handover at the end of day shifts.

125. By reason of the matters alleged in paragraphs 16(c), 112, 122 and 124 above, the handover overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

**Particulars**

Authorisation is implied from the following matters:

- (1) the fact that part of the medical services provided by Dr Gaggin included conducting handover;
- (2) the handover direction;
- (3) Dr Gaggin's rostered finish times;
- (4) the knowledge of Bendigo Health, as set out in paragraphs 124(a) and 124(b) above; and
- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform handover overtime as set out in paragraph 124(c) above.

126. In the premises, Dr Gaggin was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 123 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
127. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the handover overtime worked by her during the General Surgery rotation.

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

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

#### Medical records overtime

130. During the General Surgery rotation, Bendigo Health directed Dr Gaggin:

- (a) to complete medical records for patients in the General Surgery department; and
- (b) to complete medical records in a timely manner; and
- (c) that the timely completion of medical records was necessary to ensure patient safety (the **medical records direction**).

#### **Particulars**

The medical records direction was partly written, partly oral, and partly implied.

- (1) Insofar as it was in writing, it was contained in:
  - (a) clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Patient notes, discharge summaries, creating patient notes, referrals, drug charts, paperwork for patient transfers, and antibiotics approvals each constitute "medical records" for patients;
  - (b) emails from admin staff outlining the number of outstanding discharge summaries;
- (2) Insofar as it was oral, it was conveyed by other medical staff (including nurses and registrars) from time to time during the General Surgery rotation.
- (3) Insofar as it was implied, it was implied by:
  - (a) the matters in subparagraphs (1) and (2) above;
  - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
  - (c) the fact that patients were transferred from the General Surgery department to other hospitals, often on short notice and required paperwork to be completed in order to be transferred;

(d) the matters in paragraph 16(f) above.

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

#### **Particulars**

The medical records overtime was worked by Dr Gaggin after the conclusion of all her rostered shifts for 15 minutes.

Further particulars will be provided after discovery and before trial.

132. Bendigo Health:

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

#### **Particulars**

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

- (1) the medical records direction; and
- (2) Dr Gaggin's rostered hours.

133. By reason of the matters alleged in paragraphs 16(f), 112, 130 and 132 above, the medical records overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

#### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that the medical services provided by Dr Gaggin included the timely completion of medical records;
- (2) Dr Gaggin's rostered hours;
- (3) the medical records direction;
- (4) the knowledge of Bendigo Health, as set out in paragraphs 132(a) and 132(b) above; and
- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform medical records overtime as set out in paragraph 132(c) above.

134. In the premises, Dr Gaggin was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 131 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
135. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the General Surgery rotation.
136. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement.
137. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

#### Medical emergency overtime

138. During the General Surgery rotation, Bendigo Health directed Dr Gaggin to attend to medical emergencies (**medical emergency direction**).

#### **Particulars**

The medical emergency direction was partly written, partly oral, and partly implied.

In so far as it was written, it was constituted by messages to Dr Gaggin's pager notifying her of a medical emergency.

In so far as it was oral it was constituted by overhead announcements, notifying hospital staff of a medical emergency.

In so far as it is to be implied, it is implied by:

- (1) the matters in paragraph 16(e) above;
- (2) The nature of the medical emergencies as requiring urgent medical care, critical to patient safety and to Dr Gaggin's role as a doctor;
- (3) The direction to Dr Gaggin in her orientation, being that doctors were to respond to all emergency notifications.

139. During the General Surgery rotation, in order to attend to medical emergencies, Dr Gaggin worked hours in excess of her rostered hours (**medical emergency overtime**).

#### **Particulars**

The General Surgery department had about 70 patients on the ward. Dr Gaggin responded to any emergency announcement in respect of any patient. Dr Gaggin responded to medical emergencies by:

- (1) arriving at the patient and reviewing;
- (2) intervening if required;
- (3) escalating the patient's care to a relevant person (usually a registrar or the ICU team), or awaiting review of the patient by that person;
- (4) completing medical records in regard to the emergency.

Between one and three times per week, on average, Dr Gaggin responded to a medical emergency occurring toward the end of her rostered shift. On each such occasion, she worked around 30 minutes of overtime.

Further particulars will be provided after discovery before trial.

140. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to attend to medical emergencies in accordance with the medical emergency direction;
- (b) knew that Dr Gaggin performed medical emergency overtime;
- (c) did not direct Dr Gaggin not to perform medical emergency overtime.

**Particulars**

The knowledge of Bendigo Health is to be inferred from:

- (1) the medical emergency direction;
- (2) the circumstances set out in the particulars to paragraph 139 above;
- (3) other medical staff (including Registrars) observing Dr Gaggin working after hours dealing with medical emergencies;
- (4) the fact that Dr Gaggin would on occasion escalate the patient's care to other medical staff, including registrars or the ICU team by phone or wait for those medical staff to arrive at the medical emergency; and
- (5) the fact that Dr Gaggin attended to medical emergencies with Registrars, including after the end of her rostered shift.

141. By reason of the matters alleged in paragraphs 16(e), 112, 138 and 140 above, the medical emergency overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

**Particulars**

Authorisation is implied from the following matters:

- (1) the fact that the medical services provided by Dr Gaggin included attending to medical emergencies;
  - (2) the medical emergency direction;
  - (3) the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 139 above;
  - (4) the knowledge of Bendigo Health, as set out in paragraphs 140(a) and 140(b) above; and
  - (5) the failure by Bendigo Health to direct Dr Gaggin not to perform medical emergency overtime as set out in paragraph 140(c) above.
142. In the premises, Dr Gaggin was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 139 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
143. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical emergency overtime worked by her during the General Surgery rotation.
144. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement.
145. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

#### Other medical services overtime

146. During the General Surgery rotation, Bendigo Health directed Dr Gaggin, at the end of her shifts, to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

#### **Particulars**

The tasks the subject of the direction were core aspects of Dr Gaggin's role and were necessary for the provision of adequate medical care, including:

- (1) reviewing patients after giving them medication;
- (2) checking whether patients required drips;
- (3) making referrals;
- (4) re-charting medications;
- (5) completing pain management reviews.

The patient care direction was partly written, partly oral, and partly implied.

- (1) Insofar as it was written, it was in the form of text messages from registrars;
- (2) Insofar as it was oral, it was conveyed by senior medical staff, including registrars or consultants:
  - (a) toward the end of Dr Gaggin's rostered hours; and/or
  - (b) during the morning ward round,that Dr Gaggin was to perform particular tasks relating to patient care before she left work for the day.
- (3) Insofar as it was implied, it was implied by:
  - (a) the inefficiency of Dr Gaggin handing over these tasks to another doctor the care was urgent for the patient to receive care without delay;
  - (b) the fact that the tasks requested to be completed could not be completed within Dr Gaggin's rostered hours because of the workload in the General Surgery department;
  - (c) the matters in paragraph 16(h) above.

147. During the General Surgery rotation, in order to complete the patient care direction, Dr Gaggin worked hours in excess of rostered hours (**patient care overtime**).

#### **Particulars**

Dr Gaggin performed patient care overtime at the conclusion of day shifts and extended shifts, on each occasion for approximately 30 to 60 minutes.

Further particulars will be provided after discovery and before trial.

148. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to attend to the patient care direction;
- (b) knew that Dr Gaggin performed patient care overtime; and
- (c) did not direct Dr Gaggin not to perform patient care overtime.

#### **Particulars**

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

- (1) the patient care direction;

(2) Dr Gaggin's rostered hours.

149. By reason of the matters alleged in paragraphs 16(h), 112, 146 and 148 above, the patient care overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that part of the medical services provided by Dr Gaggin included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 148(a) and 148(b) above; and
- (4) the failure by Bendigo Health to direct Dr Gaggin not to perform patient care overtime as set out in paragraph 148(c) above.

150. In the premises, Dr Gaggin was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 147 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

151. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the General Surgery rotation.

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

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

### **D5 Third Emergency Department rotation – 8 May 2017 to 6 August 2017**

154. Between 8 May 2017 and 6 August 2017, pursuant to the direction of Bendigo Health set out in paragraph 17(e) above, Dr Gaggin worked in the Emergency Department at Bendigo Hospital (**Third Emergency Department rotation**).

### Rosters

155. During the Third Emergency Department rotation, Dr Gaggin was rostered to work the following shifts, from time to time:

- (a) day shifts rostered from 7.00am to 4.30pm;
- (b) day shifts rostered from 8.00am to 5.30pm;
- (c) day shifts rostered from 10.00am to 7.30pm;
- (d) evening shifts rostered from 2.00pm to 11.30pm;
- (e) late shifts rostered from 4.00pm to 1.30am the following day;
- (f) late shifts rostered from 6.00pm to 1.30am the following day;
- (g) late shifts rostered from 6.00pm to 2.00am the following day; and
- (h) night shifts rostered from 11.00pm to 8.30am the following day.

### **Particulars**

Copies of Dr Gaggin's rosters for the Third Emergency Department rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

### Handover overtime

156. During the Third Emergency Department rotation, Bendigo Health directed Dr Gaggin to conduct handover of patient information:

- (a) at the end of day shifts, to a consultant; and
- (b) at the end of late shifts, to the registrar in charge.

**(handover direction).**

### **Particulars**

The handover direction was partly oral, and partly implied.

- (1) Insofar as it was oral, it was conveyed at the beginning of the First Emergency Department rotation as set out in the particulars to paragraph 28 above.
- (2) Insofar as it was implied, it was implied by:
  - (a) the matters in paragraph 16(c) above;
  - (b) the clinical requirement for a handover to ensure proper continuity of care and patient safety;

- (c) the tasks necessary to conduct handover in the Emergency Department, which included locating the relevant doctor or doctors to receive the handover and explaining to that doctor or doctors each patient's condition.

Further particulars will be provided after discovery and before trial.

157. During the Third Emergency Department rotation, in order to conduct handover, Dr Gaggin worked hours in excess of rostered hours (**handover overtime**).

#### **Particulars**

Dr Gaggin performed handover overtime:

- (1) at the end of every day shift finishing at 4.30pm, 5.30pm or 7.30pm for approximately 30 minutes on each occasion; and
- (2) at the end of every late shift finishing at 1.30am for approximately 30 to 60 minutes on each occasion.

Often, consultants were not readily available to receive handover from Dr Gaggin at the end of day shifts.

It was typical or frequent for Dr Gaggin to have difficulty locating a doctor to receive handover at the end of late shifts.

Further particulars will be provided after discovery and before trial.

158. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to undertake handover in accordance with the handover direction; and
- (b) knew that Dr Gaggin performed handover overtime; and
- (c) did not direct Dr Gaggin not to perform handover overtime.

#### **Particulars**

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

- (1) the handover direction;
- (2) Dr Gaggin's rostered finish times; and
- (3) other medical staff seeing Dr Gaggin performing handover outside of her rostered hours, in the sense that they were the staff receiving the handover from Dr Gaggin.

159. By reason of the matters alleged in paragraphs 16(c), 154, 156 and 158 above, the handover overtime worked by Dr Gaggin constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that part of the medical services provided by Dr Gaggin included conducting handover;
  - (2) the handover direction;
  - (3) the knowledge of Bendigo Health, as set out in paragraphs 158(a) and 158(b) above; and
  - (4) the failure by Bendigo Health to direct Dr Gaggin not to perform handover overtime as set out in paragraph 158(c) above.
160. In the premises, Dr Gaggin was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 157 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
161. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the handover overtime worked by her during the Third Emergency Department rotation.
162. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement.
163. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

### Medical records overtime

164. During the Third Emergency Department rotation, Bendigo Health directed Dr Gaggin:
- (a) to complete medical records for patients in the Emergency department; and
  - (b) to complete medical records in a timely manner; and
  - (c) that the timely completion of medical records was necessary to ensure patient safety (the **medical records direction**).

### Particulars

The medical records direction was partly written, partly oral, and partly implied.

- (1) Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Discharge summaries, documenting patient histories, documenting patient examinations, patient plans, and patient letters each constitute "medical records" for patients;
- (2) Insofar as it was oral, it was conveyed by more senior medical staff (including registrars) from time to time during the Third Emergency Department rotation.
- (3) Insofar as it was implied, it was implied by:
  - (a) the matters in subparagraphs (1) and (2) above;
  - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive
  - (c) the fact that there was a high turnover of patients in the Emergency Department and patients were likely to have been discharged in the time between the end of Dr Gaggin's shift and the commencement of her next rostered shift;
  - (d) the matters in paragraph 16(f) above.

165. During the Third Emergency Department rotation, in order to complete medical records in accordance with the medical records direction, Dr Gaggin worked hours in excess of rostered hours (**medical records overtime**).

### Particulars

The medical records overtime was worked by Dr Gaggin after the conclusion of all her rostered shifts for between 15 minutes and 3 hours, typically for around 1 hour on average per day, or 4–5 hours per week. There was more paperwork for evening and night shifts due to higher presentation during those shifts.

Further particulars will be provided after discovery and before trial.

166. Bendigo Health:

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

### **Particulars**

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

- (1) other medical staff (including senior medical staff) observing Dr Gaggin leaving the hospital after her rostered finish time;
- (2) the medical records direction; and
- (3) Dr Gaggin's rostered hours.

167. By reason of the matters alleged in paragraphs 16(f), 154, 164 and 166 above, the medical records overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that the medical services provided by Dr Gaggin included the timely completion of medical records;
- (2) Dr Gaggin's rostered hours;
- (3) the medical records direction;
- (4) the knowledge of Bendigo Health, as set out in paragraphs 166(a) and 166(b) above; and
- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform medical records overtime as set out in paragraph 166(c) above.

168. In the premises, Dr Gaggin was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 165 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

169. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the Third Emergency Department rotation.

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

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

Medical emergency overtime

172. During the Third Emergency Department rotation, Bendigo Health directed Dr Gaggin to attend to medical emergencies (**medical emergency direction**).

**Particulars**

The medical emergency direction was partly oral and partly implied.

In so far as it was oral it was constituted by overhead announcements of a "code blue," notifying hospital staff of a medical emergency.

In so far as it was implied, it was implied by:

- (1) the matters in paragraph 16(e) above;
- (2) the nature of the medical emergencies as requiring urgent medical care, critical to patient safety and to Dr Gaggin's role as a doctor;
- (3) the direction to Dr Gaggin in her orientation, being that doctors were to respond to all "code blue" notifications.

173. During the Third Emergency Department rotation, in order to attend to medical emergencies, Dr Gaggin worked hours in excess of her rostered hours (**medical emergency overtime**).

**Particulars**

Dr Gaggin responded to any "code blue" emergency announcement in respect of any patient. From time to time, these emergencies occurred close to or at the end of a rostered shift, requiring Dr Gaggin to work after the end of her rostered shift until the patient was stabilised, or resuscitation ended.

Dr Gaggin performed medical emergency overtime after the end of a rostered shift once per fortnight, for around 15 minutes to 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

174. Bendigo Health:
- (a) knew that there was insufficient time during rostered hours to attend to medical emergencies in accordance with the medical emergency direction;
  - (b) knew that Dr Gaggin performed medical emergency overtime;
  - (c) did not direct Dr Gaggin not to perform medical emergency overtime.

### **Particulars**

The knowledge of Bendigo Health is to be inferred from:

- (1) the medical emergency direction;
- (2) the circumstances set out in the particulars to paragraph 173 above;
- (3) the fact that Dr Gaggin attended to medical emergencies with Registrars, including after the end of her rostered shift.

175. By reason of the matters alleged in paragraphs 16(e), 155, 172 and 174 above, the medical emergency overtime worked by Dr Gaggin constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied by the following matters:

- (1) the fact that the medical services provided by Dr Gaggin included attending to medical emergencies;
- (2) the medical emergency direction;
- (3) the circumstances in which medical emergencies occurred from time to time, as described in the particulars to paragraph 173 above;
- (4) the knowledge of Bendigo Health, as set out in paragraphs 174(a) and 174(b) above; and
- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform medical emergency overtime as set out in paragraph 174(c) above.

176. In the premises, Dr Gaggin was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 173 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

177. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical emergency overtime worked by her during the Third Emergency Department rotation.

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

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

Other medical services overtime

180. During the Third Emergency Department rotation, Bendigo Health directed Dr Gaggin, at the end of her shifts, to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

**Particulars**

The tasks the subject of the direction were core aspects of Dr Gaggin's role and were necessary for the provision of adequate medical care, including:

- (1) referring patients to other departments;
- (2) performing tasks that she was instructed to perform during handover, for example communication to GPs and the inpatient team, imaging reports, and responding to the results of an imaging report and chasing up pathology and responding to the results of the pathology.

The patient care direction was partly oral and partly implied.

- (1) Insofar as it was oral, it was conveyed to Dr Gaggin during handover by senior medical staff, including Registrars or Consultants.
- (2) Insofar as it was implied, it was implied by:
  - (a) the inefficiency of Dr Gaggin handing over tasks to another doctor given Dr Gaggin's knowledge of the patient;
  - (b) the matters in paragraph 16(h) above.

181. During the Third Emergency Department rotation, in order to complete the patient care direction, Dr Gaggin worked hours in excess of rostered hours (**patient care overtime**).

**Particulars**

At the end of day shifts, Dr Gaggin worked overtime:

- (1) referring patients to other departments around 1–2 times per week, for around 5–15 minutes on each occasion;
- (2) performing tasks that she was instructed to perform during handover, around every second day shift for around 5-30 minutes on each occasion.

At the end of night shifts, Dr Gaggin worked overtime:

- (1) referring patients to other departments around 2 out of every 3 night shifts, for around 5–20 minutes on each occasion;
- (2) performing tasks that she was instructed to perform during handover, around 3 out of every 4 night shifts, for around 10–30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

182. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to attend to the patient care direction;
- (b) knew that Dr Gaggin performed patient care overtime; and
- (c) did not direct Dr Gaggin not to perform patient care overtime.

#### **Particulars**

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

- (1) the patient care direction; and
- (2) other medical staff (including senior medical staff) observing Dr Gaggin carrying out the tasks the subject of the patient care direction.

183. By reason of the matters alleged in paragraphs 16(h), 154, 180 and 182 above, the patient care overtime worked by Dr Gaggin constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement.

#### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that part of the medical services provided by Dr Gaggin included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 182(a) and 182(b) above; and
- (4) the failure by Bendigo Health to direct Dr Gaggin not to perform patient care overtime as set out in paragraph 182(c) above.

184. In the premises, Dr Gaggin was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 181 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

185. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the Third Emergency Department rotation.

186. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement.
187. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

**D6 Fourth Emergency Department rotation – 5 February 2018 to 3 February 2019**

188. Between 5 February 2018 and 3 February 2019, pursuant to the direction of Bendigo Health set out in paragraph 17(f) above, Dr Gaggin worked in the Emergency Department at Bendigo Hospital (**Fourth Emergency Department rotation**).

Rosters

189. During the Fourth Emergency Department rotation, Dr Gaggin was rostered to work the following shifts, from time to time:
- (a) day shifts rostered from 8.00am to 5.30pm;
  - (b) day shifts rostered from 10.00am to 7.30pm;
  - (c) evening shifts rostered from 2.00pm to 11.30pm; and
  - (d) night shifts rostered from 11.00pm to 8.30am the following day.

**Particulars**

Copies of Dr Gaggin's rosters for the Fourth Emergency Department rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

Handover overtime

190. During the Fourth Emergency Department rotation, Bendigo Health directed Dr Gaggin to conduct handover of patient information to a consultant at the end of day shifts (**handover direction**).

**Particulars**

The handover direction was partly oral, and partly implied.

- (1) Insofar as it was oral, it was conveyed at the beginning of the First Emergency Department rotation as set out in the particulars to paragraph 28 above.

- (2) Insofar as it was implied, it was implied by:
  - (a) the matters in paragraph 16(c) above;
  - (b) the clinical requirement for a handover to ensure proper continuity of care and patient safety;
  - (c) the tasks necessary to conduct handover in the Emergency Department, which included locating the relevant doctor or doctors to receive the handover and explaining to that doctor or doctors each patient's condition.

191. During the Fourth Emergency Department rotation, in order to conduct handover, Dr Gaggin worked hours in excess of rostered hours (**handover overtime**).

#### **Particulars**

Dr Gaggin performed handover overtime after day shifts finishing at 5.30pm or 7.30pm once a week.

Further particulars will be provided after discovery and before trial.

192. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to undertake handover in accordance with the handover direction; and
- (b) knew that Dr Gaggin performed handover overtime; and
- (c) did not direct Dr Gaggin not to perform handover overtime.

#### **Particulars**

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

- (1) the handover direction;
- (2) Dr Gaggin's rostered finish times; and
- (3) Other medical staff seeing Dr Gaggin performing handover outside of her rostered hours, in the sense that they were the staff receiving the handover from Dr Gaggin.

193. By reason of the matters alleged in paragraphs 16(c), 188, 190 and 192 above, the handover overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement and clause 36.2(a)(ii) of the 2018 Agreement.

#### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that part of the medical services provided by Dr Gaggin included conducting handover;
  - (2) the handover direction;
  - (3) the knowledge of Bendigo Health, as set out in paragraphs 192(a) and 192(b) above; and
  - (4) the failure by Bendigo Health to direct Dr Gaggin not to perform handover overtime as set out in paragraph 192(c) above.
194. In the premises, Dr Gaggin was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 191 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.
195. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, or clause 36.2 of the 2018 Agreement, for the handover overtime worked by her during the Fourth Emergency Department rotation.
196. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement and clause 36.2 of the 2018 Agreement.
197. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

#### Medical records overtime

198. During the Fourth Emergency Department rotation, Bendigo Health directed Dr Gaggin:
- (a) to complete medical records for patients in the Emergency department; and
  - (b) to complete medical records in a timely manner; and
  - (c) that the timely completion of medical records was necessary to ensure patient safety (the **medical records direction**).

#### **Particulars**

The medical records direction was partly written, partly oral, and partly implied.

- (1) Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement and clause 23.1 of the 2018 Agreement, which provided and provides that a Doctor's duties include "the keeping and maintaining of adequate

medical records” for patients. Discharge summaries, documenting patient histories, documenting patient examinations, patient plans, and patient letters each constitute “medical records” for patients;

- (2) Insofar as it was oral, it was conveyed by more senior medical staff (including registrars) from time to time during the Fourth Emergency Department rotation.
- (3) Insofar as it was implied, it was implied by:
  - (a) the matters in subparagraphs (1) and (2) above;
  - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
  - (c) the fact that there was a high turnover of patients in the Emergency Department and patients were likely to have been discharged in the time between the end of Dr Gaggin’s shift and the commencement of her next rostered shift;
  - (d) directions from consultants to Dr Gaggin to see patients rather than complete medical records during rostered hours, requiring her to complete medical records after rostered hours instead;
  - (e) the matters in paragraph 16(f) above.

199. During the Fourth Emergency Department rotation, in order to complete medical records in accordance with the medical records direction, Dr Gaggin worked hours in excess of rostered hours (**medical records overtime**).

### **Particulars**

The medical records overtime was worked by Dr Gaggin after the conclusion of all her rostered shifts for between 30 minutes and 3 hours, typically for around 1 hour on average per day, or 4–5 hours per week. There was more paperwork for evening and night shifts due to higher presentation during those shifts.

Further particulars will be provided after discovery and before trial.

200. Bendigo Health:

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

### **Particulars**

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

- (1) other medical staff (including senior medical staff) observing Dr Gaggin leaving the hospital after her rostered finish time;
- (2) the medical records direction; and
- (3) Dr Gaggin's rostered hours.

201. By reason of the matters alleged in paragraphs 16(f), 188, 198 and 200 above, the medical records overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 32.2.1(b) of the 2013 Agreement and clause 36.2(a)(ii) of the 2018 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that the medical services provided by Dr Gaggin included the timely completion of medical records;
- (2) Dr Gaggin's rostered hours;
- (3) the medical records direction;
- (4) the knowledge of Bendigo Health, as set out in paragraphs 200(a) and 200(b) above; and
- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform medical records overtime as set out in paragraph 200(c) above.

202. In the premises, Dr Gaggin was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 199 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

203. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, or clause 36.2 of the 2018 Agreement, for the medical records overtime worked by her during the Fourth Emergency Department rotation.

204. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement and clause 36.2 of the 2018 Agreement.

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

Medical emergencies overtime

206. During the Fourth Emergency Department rotation, Bendigo Health directed Dr Gaggin to attend to medical emergencies (**medical emergency direction**).

**Particulars**

The medical emergency direction was partly oral and partly implied.

In so far as it was oral it was constituted by overhead announcements of a "code blue," notifying hospital staff of a medical emergency.

In so far as it was implied, it was implied by:

- (1) the matters in paragraph 16(e) above;
- (2) The nature of the medical emergencies as requiring urgent medical care, critical to patient safety and to Dr Gaggin's role as a doctor;
- (3) The direction to Dr Gaggin in her orientation, being that doctors were to respond to all "code blue" notifications.

207. During the Fourth Emergency Department rotation, in order to attend to medical emergencies, Dr Gaggin worked hours in excess of her rostered hours (**medical emergency overtime**).

**Particulars**

Dr Gaggin responded to any "code blue" emergency announcement in respect of any patient. From time to time, these emergencies occurred close to or at the end of a rostered shift, requiring Dr Gaggin to work after the end of her rostered shift until the patient was stabilised, or resuscitation ended.

Dr Gaggin performed medical emergency overtime after the end of a rostered shift once per fortnight, for around 30–60 minutes on each occasion.

Further particulars will be provided after discovery before trial.

208. Bendigo Health:
- (a) knew that there was insufficient time during rostered hours to attend to medical emergencies in accordance with the medical emergency direction;
  - (b) knew that Dr Gaggin performed medical emergency overtime;
  - (c) did not direct Dr Gaggin not to perform medical emergency overtime.

### **Particulars**

The knowledge of Bendigo Health is to be inferred from:

- (1) the medical emergency direction;
- (2) the circumstances set out in the particulars to paragraph 207 above; and
- (3) the fact that Dr Gaggin attended to medical emergencies with Registrars, including after the end of her rostered shift.

209. By reason of the matters alleged in paragraphs 16(e), 188, 206 and 208 above, the medical emergency overtime worked by Dr Gaggin constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement and clause 36.2(a)(ii) of the 2018 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that the medical services provided by Dr Gaggin included attending to medical emergencies;
- (2) the medical emergency direction;
- (3) the circumstances in which medical emergencies occurred from time to time, as described in the particulars to paragraph 207 above;
- (4) the knowledge of Bendigo Health, as set out in paragraphs 208(a) and 208(b) above; and
- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform medical emergency overtime as set out in paragraph 208(c) above.

210. In the premises, Dr Gaggin was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 207 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

211. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, or clause 36.2 of the 2018 Agreement, for the medical emergency overtime worked by her during the Fourth Emergency Department rotation.

212. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement and clause 36.2 of the 2018 Agreement.

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

Other medical services overtime

214. During the Fourth Emergency Department rotation, Bendigo Health directed Dr Gaggin, at the end of day shifts and night shifts, to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

**Particulars**

The tasks the subject of the direction were core aspects of Dr Gaggin's role and were necessary for the provision of adequate medical care, including:

- (1) referring patients to other departments;
- (2) performing tasks that she was instructed to perform during handover, for example communication to GPs and the inpatient team, imaging reports, responding to the results of an imaging report and chasing up pathology and responding to the results of the pathology.

The patient care direction was partly oral and partly implied.

- (1) Insofar as it was oral, it was conveyed to Dr Gaggin during handover by senior medical staff, including Registrars or Consultants.
- (2) Insofar as it was implied, it was implied by:
  - (a) the inefficiency of Dr Gaggin handing over tasks to another doctor given Dr Gaggin's knowledge of the patient;
  - (b) the matters in paragraph 16(h) above.

215. During the Fourth Emergency Department rotation, in order to complete the patient care direction, Dr Gaggin worked hours in excess of rostered hours (**patient care overtime**).

**Particulars**

At the end of day shifts, Dr Gaggin worked overtime:

- (1) referring patients to other departments around 1–2 times per week, for around 5–15 minutes on each occasion;
- (2) performing tasks that she was instructed to perform during handover, around every second day shift for around 5-30 minutes on each occasion.

At the end of night shifts, Dr Gaggin worked overtime:

- (1) referring patients to other departments around 2 out of every 3 night shifts, for around 5–20 minutes on each occasion;
- (2) performing tasks that she was instructed to perform during handover, around 3 out of every 4 night shifts, for around 10–30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

216. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to attend to the patient care direction;
- (b) knew that Dr Gaggin performed patient care overtime; and
- (c) did not direct Dr Gaggin not to perform patient care overtime.

#### **Particulars**

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

- (1) the patient care direction; and
- (2) other medical staff (including senior medical staff) observing Dr Gaggin carrying out the tasks the subject of the patient care direction.

217. By reason of the matters alleged in paragraphs 16(h), 188, 214 and 216 above, the patient care overtime worked by Dr Gaggin constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement and clause 36.2(a)(ii) of the 2018 Agreement.

#### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that part of the medical services provided by Dr Gaggin included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 216(a) and 216(b) above; and
- (4) the failure by Bendigo Health to direct Dr Gaggin not to perform patient care overtime as set out in paragraph 216(c) above.

218. In the premises, Dr Gaggin was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 215 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

219. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 32.2 of the 2013 Agreement, or clause 36.2 of the 2018 Agreement, for the patient care overtime worked by her during the Fourth Emergency Department rotation.

220. By reason of the matters alleged above, Bendigo Health has contravened clause 32.2 of the 2013 Agreement and clause 36.2 of the 2018 Agreement.

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

**D7 Fifth Emergency Department rotation – 4 February 2019 to 2 February 2020**

222. Between 4 February 2019 and 2 February 2020, pursuant to the direction of Bendigo Health set out in paragraph 17(g) above, Dr Gaggin worked in the Emergency Department at Bendigo Hospital (**Fifth Emergency Department rotation**).

Rosters

223. During the Fifth Emergency Department rotation, Dr Gaggin was rostered to work the following shifts, from time to time:

- (a) day shifts rostered from 8.00am to 5.30pm;
- (b) day shifts rostered from 10.00am to 5.30pm;
- (c) day shifts rostered from 10.00am to 7.30pm;
- (d) evening shifts rostered from 2.00pm to 11.30pm; and
- (e) night shifts rostered from 11.00pm to 8.30am the following day.

**Particulars**

Copies of Dr Gaggin's rosters for the Fifth Emergency Department rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

Handover overtime

224. During the Fifth Emergency Department rotation, Bendigo Health directed Dr Gaggin to conduct handover of patient information to a consultant at the end of day shifts (**handover direction**).

**Particulars**

The handover direction was partly oral, and partly implied.

- (1) Insofar as it was oral, it was conveyed at the beginning of the First Emergency Department rotation as set out in the particulars to paragraph 28 above.
- (2) Insofar as it was implied, it was implied by:
  - (a) the matters in paragraph 16(c) above;
  - (b) the clinical requirement for a handover to ensure proper continuity of care and patient safety;
  - (c) the tasks necessary to conduct handover in the Emergency Department, which included locating the relevant doctor or doctors to receive the handover and explaining to that doctor or doctors each patient's condition.

225. During the Fifth Emergency Department rotation, in order to conduct handover, Dr Gaggin worked hours in excess of rostered hours (**handover overtime**).

#### **Particulars**

Dr Gaggin performed handover overtime after day shifts finishing at 5.30pm or 7.30pm once a week.

Further particulars will be provided after discovery and before trial.

226. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to undertake handover in accordance with the handover direction; and
- (b) knew that Dr Gaggin performed handover overtime; and
- (c) did not direct Dr Gaggin not to perform handover overtime.

#### **Particulars**

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

- (1) the handover direction;
- (2) Dr Gaggin's rostered finish times; and
- (3) Other medical staff seeing Dr Gaggin performing handover outside of her rostered hours, in the sense that they were the staff receiving the handover from Dr Gaggin.

227. By reason of the matters alleged in paragraphs 16(c), 222, 224 and 226 above, the handover overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that part of the medical services provided by Dr Gaggin included conducting handover;
- (2) the handover direction;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 226(a) and 226(b) above; and
- (4) the failure by Bendigo Health to direct Dr Gaggin not to perform handover overtime as set out in paragraph 226(c) above.

228. In the premises, Dr Gaggin was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 225 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.

229. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 36.2(c) of the 2018 Agreement, for the handover overtime worked by her during the Fifth Emergency Department rotation.

230. By reason of the matters alleged above, Bendigo Health has contravened clause 36.2(c) of the 2018 Agreement.

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

### Medical records overtime

232. During the Fifth Emergency Department rotation, Bendigo Health directed Dr Gaggin:

- (a) to complete medical records for patients in the Emergency department; and
  - (b) to complete medical records in a timely manner; and
  - (c) that the timely completion of medical records was necessary to ensure patient safety
- (the **medical records direction**).

### **Particulars**

The medical records direction was partly written, partly oral, and partly implied.

- (1) Insofar as it was in writing, it was contained in clause 23.1 of the 2018 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Discharge summaries, documenting patient histories, documenting patient examinations, patient plans, and patient letters each constitute "medical records" for patients;
- (2) Insofar as it was oral, it was conveyed by more senior medical staff (including registrars) from time to time during the Fifth Emergency Department rotation.
- (3) Insofar as it was implied, it was implied by:
  - (a) the matters in subparagraphs (1) and (2) above;
  - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
  - (c) the fact that there was a high turnover of patients in the Emergency Department and patients were likely to have been discharged in the time between the end of Dr Gaggin's shift and the commencement of her next rostered shift;
  - (d) directions from consultants to Dr Gaggin to see patients rather than complete medical records during rostered hours, requiring her to complete medical records after rostered hours instead;
  - (e) the matters in paragraph 16(f) above.

233. During the Fifth Emergency Department rotation, in order to complete medical records in accordance with the medical records direction, Dr Gaggin worked hours in excess of rostered hours (**medical records overtime**).

#### **Particulars**

The medical records overtime was worked by Dr Gaggin after the conclusion of all her rostered shifts for between 30 minutes and 3 hours, typically for around 1 hour on average per day, or 4–5 hours per week. There was more paperwork for evening and night shifts due to higher presentation during those shifts.

Further particulars will be provided after discovery and before trial.

234. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the medical records direction; and
- (b) knew that Dr Gaggin performed medical records overtime; and

- (c) did not direct Dr Gaggin not to perform medical records overtime.

**Particulars**

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

- (1) other medical staff (including senior medical staff) observing Dr Gaggin leaving the hospital after her rostered finish time;
- (2) the medical records direction; and
- (3) Dr Gaggin's rostered hours.

235. By reason of the matters alleged in paragraphs 16(f), 222, 232 and 234 above, the medical records overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

**Particulars**

Authorisation is implied from the following matters:

- (1) the fact that the medical services provided by Dr Gaggin included the timely completion of medical records;
- (2) Dr Gaggin's rostered hours;
- (3) the medical records direction;
- (4) the knowledge of Bendigo Health, as set out in paragraphs 234(a) and 234(b) above; and
- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform medical records overtime as set out in paragraph 234(c) above.

236. In the premises, Dr Gaggin was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 233 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.

237. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 36.2(c) of the 2018 Agreement, for the medical records overtime worked by her during the Fifth Emergency Department rotation.

238. By reason of the matters alleged above, Bendigo Health has contravened clause 36.2(c) of the 2018 Agreement.

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

Medical emergency overtime

240. During the Fifth Emergency Department rotation, Bendigo Health directed Dr Gaggin to attend to medical emergencies (**medical emergency direction**).

**Particulars**

The medical emergency direction was partly oral and partly implied.

In so far as it was oral it was constituted by overhead announcements of a “code blue,” notifying hospital staff of a medical emergency.

In so far as it was implied, it was implied by:

- (1) the matters in paragraph 16(e) above;
- (2) The nature of the medical emergencies as requiring urgent medical care, critical to patient safety and to Dr Gaggin’s role as a doctor;
- (3) The direction to Dr Gaggin in her orientation, being that doctors were to respond to all “code blue” notifications.

241. During the Fifth Emergency Department rotation, in order to attend to medical emergencies, Dr Gaggin worked hours in excess of her rostered hours (**medical emergency overtime**).

**Particulars**

Dr Gaggin responded to any “code blue” emergency announcement in respect of any patient. From time to time, these emergencies occurred close to or at the end of a rostered shift, requiring Dr Gaggin to work after the end of her rostered shift until the patient was stabilised, or resuscitation ended.

Dr Gaggin performed medical emergency overtime after the end of a rostered shift once per fortnight, for around 30–60 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

242. Bendigo Health:
- (a) knew that there was insufficient time during rostered hours to attend to medical emergencies in accordance with the medical emergency direction;
  - (b) knew that Dr Gaggin performed medical emergency overtime;
  - (c) did not direct Dr Gaggin not to perform medical emergency overtime.

### **Particulars**

The knowledge of Bendigo Health is to be inferred from:

- (1) the medical emergency direction;
- (2) the circumstances set out in the particulars to paragraph 241 above; and
- (3) the fact that Dr Gaggin attended to medical emergencies with Registrars, including after the end of her rostered shift.

243. By reason of the matters alleged in paragraphs 16(e), 222, 240 and 242 above, the medical emergency overtime worked by Dr Gaggin constituted “authorised hours” within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that the medical services provided by Dr Gaggin included the attending to medical emergencies;
- (2) the medical emergency direction;
- (3) the circumstances in which medical emergencies occurred from time to time, as described in the particulars to paragraph 241 above;
- (4) the knowledge of Bendigo Health, as set out in paragraphs 242(a) and 242(b) above; and
- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform medical emergency overtime as set out in paragraph 242(c) above.

244. In the premises, Dr Gaggin was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 241 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.

245. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 36.2(c) of the 2018 Agreement, for the medical emergency overtime worked by her during the Fifth Emergency Department rotation.

246. By reason of the matters alleged above, Bendigo Health has contravened clause 36.2(c) of the 2018 Agreement.

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

Other medical services overtime

248. During the Fifth Emergency Department rotation, Bendigo Health directed Dr Gaggin, at the end of day shifts and night shifts, to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

**Particulars**

The tasks the subject of the direction were core aspects of Dr Gaggin's role and were necessary for the provision of adequate medical care, including:

- (1) referring patients to other departments;
- (2) performing tasks that she was instructed to perform during handover, for example communication to GPs and the inpatient team, imaging reports, and responding to the results of an imaging report, and chasing up pathology and responding to the results of the pathology.

The patient care direction was partly oral and partly implied.

- (1) Insofar as it was oral, it was conveyed to Dr Gaggin during handover by senior medical staff, including Registrars or Consultants.
- (2) Insofar as it was implied, it was implied by:
  - (a) the inefficiency of Dr Gaggin handing over tasks to another doctor given Dr Gaggin's knowledge of the patient;
  - (b) the matters in paragraph 16(h) above.

249. During the Fifth Emergency Department rotation, in order to complete the patient care direction, Dr Gaggin worked hours in excess of rostered hours (**patient care overtime**).

**Particulars**

At the end of day shifts, Dr Gaggin worked overtime:

- (1) referring patients to other departments around 1–2 times per week, for around 5–15 minutes on each occasion;
- (2) performing tasks that she was instructed to perform during handover, around every second day shift for around 5-30 minutes on each occasion.

At the end of night shifts, Dr Gaggin worked overtime:

- (1) referring patients to other departments around 2 out of every 3 night shifts, for around 5–20 minutes on each occasion;
- (2) performing tasks that she was instructed to perform during handover, around 3 out of every 4 night shifts, for around 10–30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

250. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to attend to the patient care direction;
- (b) knew that Dr Gaggin performed patient care overtime; and
- (c) did not direct Dr Gaggin not to perform patient care overtime.

#### **Particulars**

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

- (1) the patient care direction; and
- (2) other medical staff (including senior medical staff) observing Dr Gaggin carrying out the tasks the subject of the patient care direction.

251. By reason of the matters alleged in paragraphs 16(h), 222, 248 and 250 above, the patient care overtime worked by Dr Gaggin constituted “authorised hours” within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

#### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that part of the medical services provided by Dr Gaggin included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 250(a) and 250(b) above; and
- (4) the failure by Bendigo Health to direct Dr Gaggin not to perform patient care overtime as set out in paragraph 250(c) above.

252. In the premises, Dr Gaggin was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 249 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.

253. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 36.2(c) of the 2018 Agreement, for the patient care overtime worked by her during the Fourth Emergency Department rotation.

254. By reason of the matters alleged above, Bendigo Health has contravened clause 36.2(c) of the 2018 Agreement.

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

**D8 Sixth Emergency Department rotation – 3 February 2020 to 31 January 2021**

256. Between ~~4 February 2019 and 2 February 2020~~ 3 February 2020 and 31 January 2021, pursuant to the direction of Bendigo Health set out in paragraph 17(g) above, Dr Gaggin worked in the Emergency Department at Bendigo Hospital (**Sixth Emergency Department rotation**).

Rosters

257. During the Sixth Emergency Department rotation, Dr Gaggin was rostered to work the following shifts, from time to time:

- (a) day shifts rostered from 8.00am to 5.30pm;
- (b) ~~day shifts rostered from 10.00am to 5.30pm~~ evening shifts rostered from 2:00pm to 11:30pm;
- (c) ~~day shifts rostered from 10.00am to 7.30pm~~ late shifts, rostered from 4:00pm to 1:30am; and
- (d) ~~evening shifts rostered from 2.00pm to 11.30pm; and~~ night shifts, rostered from 11:00pm to 8:30am.
- (e) ~~night shifts rostered from 11.00pm to 8.30am the following day.~~

**Particulars**

Copies of Dr Gaggin's rosters for the Sixth Emergency Department rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

Handover overtime

258. During the Sixth Emergency Department rotation, Bendigo Health directed Dr Gaggin to conduct handover of patient information:

- (a) at the end of day shifts, to a consultant; and
  - (b) at the end of late shifts, to the Emergency Department Registrar in charge.
- (handover direction).**

### **Particulars**

The handover direction was partly oral, and partly implied.

- (1) Insofar as it was oral, it was conveyed at the beginning of the First Emergency Department rotation as set out in the particulars to paragraph 28 above.
- (2) Insofar as it was implied, it was implied by:
  - (a) the matters in paragraph 16(c) above;
  - (b) the clinical requirement for a handover to ensure proper continuity of care and patient safety;
  - (c) the tasks necessary to conduct handover in the Emergency Department, which included locating the relevant doctor or doctors to receive the handover and explaining to that doctor or doctors each patient's condition.

Further particulars will be provided after discovery and before trial.

259. During the Sixth Emergency Department rotation, in order to conduct handover, Dr Gaggin worked hours in excess of rostered hours (**handover overtime**).

### **Particulars**

Dr Gaggin performed handover overtime:

- (1) at the end of a day shift about once per week, for approximately 30 minutes on each occasion; and
- (2) at the end of every late shift finishing at 1.30am for approximately 30 minutes on each occasion.

It was typical or frequent for Dr Gaggin to have difficulty locating a doctor to receive handover at the end of late shifts.

Further particulars will be provided after discovery and before trial.

260. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to undertake handover in accordance with the handover direction; and
- (b) knew that Dr Gaggin performed handover overtime; and

- (c) did not direct Dr Gaggin not to perform handover overtime.

**Particulars**

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

- (1) the handover direction;
- (2) Dr Gaggin's rostered finish times; and
- (3) Other medical staff seeing Dr Gaggin performing handover outside of her rostered hours, in the sense that they were the staff receiving the handover from Dr Gaggin.

261. By reason of the matters alleged in paragraphs 16(c), 256, 258 and 260 above, the handover overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

**Particulars**

Authorisation is implied from the following matters:

- (1) the fact that part of the medical services provided by Dr Gaggin included conducting handover;
- (2) the handover direction;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 260(a) and 260(b) above; and
- (4) the failure by Bendigo Health to direct Dr Gaggin not to perform handover overtime as set out in paragraph 260(c) above.

262. In the premises, Dr Gaggin was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 259 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
263. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 36.2(c) of the 2018 Agreement, for the handover overtime worked by her during the Third Emergency Department rotation.
264. By reason of the matters alleged above, Bendigo Health has contravened clause 36.2(c) of the 2018 Agreement.
265. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

Medical records overtime

266. During the Sixth Emergency Department rotation, Bendigo Health directed Dr Gaggin:
- (a) to complete medical records for patients in the Emergency department; and
  - (b) to complete medical records in a timely manner; and
  - (c) that the timely completion of medical records was necessary to ensure patient safety
- (the **medical records direction**).

**Particulars**

The medical records direction was partly written, partly oral, and partly implied.

- (1) Insofar as it was in writing, it was contained in clause 23.1 of the 2018 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Discharge summaries, documenting patient histories, documenting patient examinations, patient plans, and patient letters each constitute "medical records" for patients;
  - (2) Insofar as it was oral, it was conveyed by more senior medical staff (including registrars) from time to time during the Sixth Emergency Department rotation.
  - (3) Insofar as it was implied, it was implied by:
    - (a) the matters in subparagraphs (1) and (2) above;
    - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
    - (c) the fact that there was a high turnover of patients in the Emergency Department and patients were likely to have been discharged in the time between the end of Dr Gaggin's shift and the commencement of her next rostered shift;
    - (d) a direction from consultants to Dr Gaggin to see patients rather than complete medical records during rostered hours, requiring her to complete medical records after rostered hours instead;
    - (e) the matters in paragraph 16(f) above.
267. During the Sixth Emergency Department rotation, in order to complete medical records in accordance with the medical records direction, Dr Gaggin worked hours in excess of rostered hours (**medical records overtime**).

### **Particulars**

During part of the Sixth Emergency Department rotation, COVID-19 lockdowns applied, during which times there were fewer presentations at the Emergency Department.

In non-lockdown weeks, Dr Gaggin worked medical records overtime after the conclusion of all her rostered shifts for between 30 minutes and 3 hours, typically for around 1 hour on average per day, or 4–5 hours per week. There was more paperwork for evening and night shifts due to higher presentation during those shifts.

In lockdown weeks, Dr Gaggin worked between 30 and 60 minutes of overtime at the conclusion of all of her rostered shifts.

Further particulars will be provided after discovery and before trial.

268. Bendigo Health:

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

### **Particulars**

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

- (1) other medical staff (including senior medical staff) observing Dr Gaggin leaving the hospital after her rostered finish time;
- (2) the medical records direction; and
- (3) Dr Gaggin's rostered hours.

269. By reason of the matters alleged in paragraphs 16(f), 256, 266 and 268 above, the medical records overtime worked by Dr Gaggin constituted "authorised hours" within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that the medical services provided by Dr Gaggin included the timely completion of medical records;
- (2) Dr Gaggin's rostered hours;
- (3) the medical records direction;

- (4) the knowledge of Bendigo Health, as set out in paragraphs 268(a) and 268(b) above; and
- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform medical records overtime as set out in paragraph 268(c) above.

270. In the premises, Dr Gaggin was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 267 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
271. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 36.2(c) of the 2018 Agreement, for the medical records overtime worked by her during the Sixth Emergency Department rotation.
272. By reason of the matters alleged above, Bendigo Health has contravened clause 36.2(c) of the 2018 Agreement.
273. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

#### Medical emergency overtime

274. During the Sixth Emergency Department rotation, Bendigo Health directed Dr Gaggin to attend to medical emergencies (**medical emergency direction**).

#### **Particulars**

The medical emergency direction was partly oral and partly implied.

In so far as it was oral it was constituted by overhead announcements of a “code blue,” notifying hospital staff of a medical emergency.

In so far as it was implied, it was implied by:

- (1) the matters in paragraph 16(e) above;
- (2) The nature of the medical emergencies as requiring urgent medical care, critical to patient safety and to Dr Gaggin’s role as a doctor;
- (3) The direction to Dr Gaggin in her orientation, being that doctors were to respond to all “code blue” notifications.

275. During the Sixth Emergency Department rotation, in order to attend to medical emergencies, Dr Gaggin worked hours in excess of her rostered hours (**medical emergency overtime**).

### **Particulars**

Dr Gaggin responded to any “code blue” emergency announcement in respect of any patient. From time to time, these emergencies occurred close to or at the end of a rostered shift, requiring Dr Gaggin to work after the end of her rostered shift until the patient was stabilised, or resuscitation ended.

Dr Gaggin performed medical emergency overtime after the end of a rostered shift once per fortnight, for around 30–60 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

276. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to attend to medical emergencies in accordance with the medical emergency direction;
- (b) knew that Dr Gaggin performed medical emergency overtime;
- (c) did not direct Dr Gaggin not to perform medical emergency overtime.

### **Particulars**

The knowledge of Bendigo Health is to be inferred from:

- (1) the medical emergency direction;
- (2) the circumstances set out in the particulars to paragraph 275 above; and
- (3) the fact that Dr Gaggin attended to medical emergencies with Registrars, including after the end of her rostered shift.

277. By reason of the matters alleged in paragraphs 16(e), 256, 274 and 276 above, the medical emergency overtime worked by Dr Gaggin constituted “authorised hours” within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that the medical services provided by Dr Gaggin included the attending to medical emergencies;
- (2) the medical emergency direction;
- (3) the circumstances in which medical emergencies occurred from time to time, as described in the particulars to paragraph 275 above;
- (4) the knowledge of Bendigo Health, as set out in paragraphs 276(a) and 276(b) above; and

- (5) the failure by Bendigo Health to direct Dr Gaggin not to perform medical emergency overtime as set out in paragraph 276(c) above.
278. In the premises, Dr Gaggin was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 275 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
  279. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 36.2(c) of the 2018 Agreement, for the medical emergency overtime worked by her during the Sixth Emergency Department rotation.
  280. By reason of the matters alleged above, Bendigo Health has contravened clause 36.2(c) of the 2018 Agreement.
  281. By reason of the matters alleged in the above paragraph, Bendigo Health has contravened s 50 of the FW Act.

#### Other medical services overtime

282. During the Sixth Emergency Department rotation, Bendigo Health directed Dr Gaggin, at the end of day shifts and night shifts, to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

#### **Particulars**

The tasks the subject of the direction were core aspects of Dr Gaggin's role and were necessary for the provision of adequate medical care, including:

- (1) referring patients to other departments;
- (2) performing tasks that she was instructed to perform during handover, for example communication to GPs and the inpatient team, imaging reports, and responding to the results of an imaging report, and chasing up pathology and responding to the results of the pathology.

The patient care direction was partly oral and partly implied.

- (1) Insofar as it was oral, it was conveyed to Dr Gaggin during handover by senior medical staff, including Registrars or Consultants.
- (2) Insofar as it was implied, it was implied by:
  - (a) the inefficiency of Dr Gaggin handing over tasks to another doctor given Dr Gaggin's knowledge of the patient;

(b) the matters in paragraph 16(h) above.

283. During the Sixth Emergency Department rotation, in order to complete the patient care direction, Dr Gaggin worked hours in excess of rostered hours (**patient care overtime**).

#### **Particulars**

During part of the Sixth Emergency Department rotation, COVID-19 lockdowns applied, during which times there were fewer presentations at the Emergency Department.

In non-lockdown weeks, Dr Gaggin performed patient care overtime making patient referrals at the conclusion of day and night shifts, one to two times per week, and on each occasion for up to 30 minutes. In lockdown weeks, it was around 15 minutes on each occasion.

In non-lockdown weeks, Dr Gaggin performed patient care overtime in relation to other tasks arising out of handover at the end of every night shift, and for around 30 to 90 minutes on each occasion. In lockdown weeks, Dr Gaggin only performed this kind of overtime once or twice per week, for around 15 to 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

284. Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to attend to the patient care direction;
- (b) knew that Dr Gaggin performed patient care overtime; and
- (c) did not direct Dr Gaggin not to perform patient care overtime.

#### **Particulars**

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

- (1) the patient care direction; and
- (2) other medical staff (including senior medical staff) observing Dr Gaggin carrying out the tasks the subject of the patient care direction.

285. By reason of the matters alleged in paragraphs 16(h), 256, 282 and 284 above, the patient care overtime worked by Dr Gaggin constituted “authorised hours” within the meaning of clause 36.2(a)(ii) of the 2018 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the fact that part of the medical services provided by Dr Gaggin included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 284(a) and 284(b) above; and
- (4) the failure by Bendigo Health to direct Dr Gaggin not to perform patient care overtime as set out in paragraph 284(c) above.

286. In the premises, Dr Gaggin was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 283 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.

287. Bendigo Health did not pay Dr Gaggin overtime, in accordance with clause 36.2(c) of the 2018 Agreement, for the patient care overtime worked by her during the Sixth Emergency Department rotation.

288. By reason of the matters alleged above, Bendigo Health has contravened clause 36.2(c) of the 2018 Agreement.

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

### **D9 Loss**

290. Dr Gaggin has suffered loss by reason of Bendigo Health's contraventions of the FW Act.

### **Particulars**

Further particulars will be provided after discovery and before trial.

### **E GROUP MEMBERS' CLAIMS AGAINST BENDIGO HEALTH**

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

- (a) worked in the service operated by Bendigo Health set out in paragraph 1(c) above; and

- (b) was rostered to work 38 ordinary hours per week, or an average of 38 hours per week for up to 4 weeks.

**E1 Ward round preparation overtime**

292. Some or all Group Members, in the course of their employment by Bendigo Health during the Relevant Period, were subject to a direction from Bendigo Health to undertake ward round preparation before the commencement of ward rounds.

**Particulars**

The direction was partly written and partly implied.

Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement and clause 23.1 of the 2018 Agreement, which provided that a Doctor's duties included the keeping and maintaining of adequate medical records for patients. Ward round preparation involved the creation of medical records for patients.

Insofar as it was implied, it was implied by the matters in paragraph 16(a) above, where ward rounds were conducted in a particular ward or department of a service operated by Bendigo Health.

293. Each Group Member subject to the direction in paragraph 292 above worked hours in excess of rostered hours to prepare for ward rounds, in accordance with that direction.
294. In respect of each Group Member in paragraph 293 above, Bendigo Health:
- (a) knew that there was insufficient time during rostered hours to prepare for ward rounds, in accordance with the direction in paragraph 292 above;
  - (b) knew that Group Members worked overtime to prepare for ward rounds;
  - (c) did not direct Group Members not to perform ward round preparation overtime.

**Particulars**

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

- (1) the direction pleaded in paragraph 292 above;
- (2) the tasks necessary to complete ward round preparation including, but not being limited to, the need to review patient records prepared by overnight staff including admissions, pathology test results, and notes prepared by clinicians;
- (3) the rostered hours for each ward where ward rounds were conducted;

- (4) the time for the commencement of ward rounds in each ward; and
- (5) that Group Members had completed ward round preparation when ward rounds commenced each morning.

295. Bendigo Health did not pay Group Members overtime:

- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
  - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the ward round preparation overtime in paragraph 293 above worked by them.

296. The ward round preparation overtime worked by Group Members constituted “authorised hours” within the meaning of:

- (a) clause 32.2.1(b) of the 2013 Agreement; and
- (b) clause 36.2(a)(ii) of the 2018 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the work performed by the Group Member was the provision of medical services which included preparation for ward rounds before the commencement of ward rounds;
- (2) the conduct of Bendigo Health in giving the direction set out in paragraph 292 above;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 294(a) and 294(b) above; and
- (4) the failure by Bendigo Health to direct Group Members not to perform the ward round preparation overtime as set out in paragraph 294(c) above.

297. In the premises, Group Members were entitled to be paid overtime for the ward round preparation overtime they worked as set out in paragraph 293 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

298. By reason of the matters alleged in paragraphs 295 and 297 above, Bendigo Health has contravened:

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

(b) clause 36.2 of the 2018 Agreement.

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

## **E2 Ward rounds overtime**

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

### **Particulars**

The direction was partly oral and partly implied.

Insofar as it was oral, it was given by a Group Member's supervisor directing the Group Member to undertake a ward round commencing at or immediately before or after a Group Member's rostered start or finish time, which necessitated working outside rostered hours.

Insofar as it was implied, it was implied by the matters in paragraph 16(b) above, where ward rounds were undertaken in a particular ward or department of a service operated by Bendigo Health.

301. Each Group Member subject to the direction in paragraph 300 above worked overtime in excess of rostered hours to undertake ward rounds, in accordance with that direction.

302. In respect of each Group Member in paragraph 301 above, Bendigo Health:

- (a) knew that there was insufficient time during rostered hours to undertake ward rounds, in accordance with the direction in paragraph 300 above;
- (b) knew that Group Members worked overtime to undertake ward rounds;
- (c) did not direct Group Members not to undertake ward round overtime.

### **Particulars**

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

- (1) the direction pleaded in paragraph 300 above;
- (2) the tasks necessary to undertake ward rounds; and
- (3) the rostered hours for each ward where ward rounds were undertaken.

303. Bendigo Health did not pay Group Members overtime:
- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
  - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the ward round overtime in paragraph 301 above worked by them.
304. The ward round overtime worked by Group Members constituted “authorised hours” within the meaning of:
- (a) clause 32.2.1(b) of the 2013 Agreement; and
  - (b) clause 36.2(a)(ii) of the 2018 Agreement.

#### **Particulars**

Authorisation is implied from the following matters:

- (1) the work performed by the Group Member was the provision of medical services which included undertaking ward rounds;
  - (2) the conduct of Bendigo Health in giving the direction set out in paragraph 300 above;
  - (3) the knowledge of Bendigo Health, as set out in paragraphs 302(a) and 302(b) above; and
  - (4) the failure by Bendigo Health to direct Group Members not to perform the ward rounds overtime, as set out in paragraph 302(c) above.
305. In the premises, Group Members were entitled to be paid overtime for the ward round overtime they worked as set out in paragraph 301 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.
306. By reason of the matters alleged in paragraphs 303 and 305 above, Bendigo Health has contravened:
- (a) clause 32.2 of the 2013 Agreement; and
  - (b) clause 36.2 of the 2018 Agreement.
307. By reason of the matters in the paragraph above, Bendigo Health has contravened s 50 of the FW Act.

**E3 Handover overtime**

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

**Particulars**

The direction was partly oral and partly implied.

Insofar as it was oral, it was given by a Group Member's supervisor directing the Group Member to conduct a handover commencing at or immediately before or after a Group Member's rostered start or finish time, which necessitated working outside rostered hours.

Insofar as it was implied, it was implied by the matters in paragraph 16(c) above, where handover was conducted in a particular ward or department of a service operated by Bendigo Health.

309. Each Group Member subject to the direction in paragraph 308 above worked overtime in excess of rostered hours to conduct handover, in accordance with that direction.
310. In respect of each Group Member in paragraph 309 above, Bendigo Health:
- (a) knew that there was insufficient time during rostered hours to conduct handover, in accordance with the direction in paragraph 308 above;
  - (b) knew that Group Members worked overtime to conduct handover;
  - (c) did not direct Group Members not to conduct handover overtime.

**Particulars**

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

- (1) the direction pleaded in paragraph 308 above;
- (2) the rostered hours for each ward or department where handover was conducted;
- (3) the time for the commencement of handover in each ward or department; and
- (4) the tasks necessary to conduct handover.

311. Bendigo Health did not pay Group Members overtime:
- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and

(b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,

for the handover overtime in paragraph 309 above worked by them.

312. The handover overtime worked by Group Members constituted “authorised hours” within the meaning of:

(a) clause 32.2.1(b) of the 2013 Agreement; and

(b) clause 36.2(a)(ii) of the 2018 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

(1) the work performed by the Group Member was the provision of medical services which included conducting handover;

(2) the conduct of Bendigo Health in giving the direction set out in paragraph 308 above;

(3) the knowledge of Bendigo Health, as set out in paragraphs 310(a) and 310(b) above; and

(4) the failure by Bendigo Health to direct Group Members not to perform the handover overtime as set out in paragraph 310(c) above.

313. In the premises, Group Members were entitled to be paid overtime for the handover overtime they worked as set out in paragraph 309 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

314. By reason of the matters alleged in paragraphs 311 and 313 above, Bendigo Health has contravened:

(a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

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

### **E4 Medical procedures preparation overtime**

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

### **Particulars**

Directions were sometimes oral and in any event were implied.

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

Insofar as they were implied, they were implied by the matters in paragraph 16(d) above, where medical procedures were performed in a particular ward or department of a service operated by Bendigo Health as set out in paragraph 1(c) above.

317. Each Group Member subject to the direction in paragraph 316 above worked overtime in excess of rostered hours to prepare for medical procedures, in accordance with that direction.
318. In respect of each Group Member in paragraph 317 above, Bendigo Health:
- (a) knew that there was insufficient time during rostered hours to prepare for medical procedures in accordance with the direction in paragraph 316 above;
  - (b) knew that Group Members worked overtime to prepare for medical procedures;
  - (c) did not direct Group Members not to conduct medical procedures preparation overtime.

### **Particulars**

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

- (1) the direction pleaded in paragraph 316 above;
- (2) the tasks necessary to prepare for medical procedures; and
- (3) the rostered hours for each ward or department where medical procedures were performed.

319. Bendigo Health did not pay Group Members overtime:
- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
  - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the medical procedures preparation overtime in paragraph 317 above worked by them.

320. The medical procedures preparation overtime worked by Group Members constituted “authorised hours” within the meaning of:

- (a) clause 32.2.1(b) of the 2013 Agreement; and
- (b) clause 36.2(a)(ii) of the 2018 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the work performed by the Group Member was the provision of medical services which included preparing for medical procedures;
- (2) the conduct of Bendigo Health in giving the direction set out in paragraph 316 above;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 318(a) and 318(b) above; and
- (4) the failure by Bendigo Health to direct Group Members not to perform the medical procedures preparation overtime, as set out in paragraph 318(c) above.

321. In the premises, Group Members were entitled to be paid overtime for the medical procedures preparation overtime they worked as set out in paragraph 317 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

322. By reason of the matters alleged in paragraphs 319 and 321 above, Bendigo Health has contravened:

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

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

### **E5 Medical emergency overtime**

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

### **Particulars**

Directions were sometimes oral and in any event were implied.

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

Insofar as they were implied, they were implied by the matters in paragraph 16(e) above, where patients were treated in a particular ward or department of a service operated by Bendigo Health as set out in paragraph 1(c) above.

325. Each Group Member subject to the direction in paragraph 324 above worked overtime in excess of rostered hours to attend to medical emergencies, in accordance with that direction.
326. In respect of each Group Member in paragraph 325 above, Bendigo Health:
- (a) knew that there was insufficient time during rostered hours to attend to medical emergencies, in accordance with the direction in paragraph 324 above;
  - (b) knew that Group Members worked overtime to attend to medical emergencies; and
  - (c) did not direct Group Members not to conduct medical emergency overtime.

### **Particulars**

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

- (1) the direction pleaded in paragraph 324 above;
- (2) the tasks necessary to attend to medical emergencies; and
- (3) the rostered hours for each ward or department where medical emergencies occurred.

327. Bendigo Health did not pay Group Members overtime:
- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
  - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the medical emergency overtime in paragraph 325 above worked by them.

328. The medical emergency overtime worked by Group Members constituted “authorised hours” within the meaning of:

- (a) clause 32.2.1(b) of the 2013 Agreement; and
- (b) clause 36.2(a)(ii) of the 2018 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the work performed by the Group Member was the provision of medical services which included attending to medical emergencies;
- (2) the conduct of Bendigo Health in giving the direction set out in paragraph 324 above;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 326(a) and 326(b) above; and
- (4) the failure by Bendigo Health to direct Group Members not to perform the medical emergency overtime, as set out in paragraph 326(c) above.

329. In the premises, Group Members were entitled to be paid overtime for the medical emergency overtime they worked as set out in paragraph 325 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

330. By reason of the matters alleged in paragraphs 327 and 329 above, Bendigo Health has contravened:

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

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

### **E6 Medical records overtime**

332. Further, some or all Group Members, in the course of their employment by Bendigo Health during the Relevant Period, were subject to a direction to complete medical records in a timely manner.

### **Particulars**

The direction was partly written and partly implied.

Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement and clause 23.1 of the 2018 Agreement, which provided that a Doctor's duties included the keeping and maintaining of adequate medical records for patients.

Insofar as it was implied, it was implied by the matters in paragraph 16(f) above, where medical records were completed in a particular ward or department of a service operated by Bendigo Health as set out in paragraph 1(c) above.

333. Each Group Member subject to the direction in paragraph 332 above worked overtime in excess of rostered hours to complete medical records, in accordance with that direction.
334. In respect of each Group Member in paragraph 333 above, Bendigo Health:
- (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the direction in paragraph 332 above; and
  - (b) knew that Group Members worked overtime to complete medical records; and
  - (c) did not direct Group Members not to perform medical records overtime.

### **Particulars**

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

- (1) the direction pleaded in paragraph 332 above;
  - (2) the volume of patient medical records required to be completed in a timely manner, which included discharge summaries, outpatient referrals, prescriptions, requests for external hospital medical records, clinical notes and investigation requests; and
  - (3) the rostered hours for each ward or department where medical records were required to be completed.
335. Bendigo Health did not pay Group Members overtime:
- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
  - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the medical records overtime in paragraph 333 worked by them.

336. The medical records overtime worked by Group Members constituted “authorised hours” within the meaning of:
- (a) clause 32.2.1(b) of the 2013 Agreement; and
  - (b) clause 36.2(a)(ii) of the 2018 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) that the work performed by Group Members was the provision of medical services which included the completion of medical records in a timely manner;
  - (2) the conduct of Bendigo Health in giving the direction in paragraph 332 above;
  - (3) the knowledge of Bendigo Health, as set out in paragraphs 334(a) and 334(b) above; and
  - (4) the failure by Bendigo Health to direct Group Members not to perform the medical records overtime, as set out in paragraph 334(c) above.
337. In the premises, Group Members were entitled to be paid overtime for the medical records overtime they worked, as set out in paragraph 333 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.
338. By reason of the matters alleged in paragraphs 335 and 337 above, Bendigo Health has contravened:
- (a) clause 32.2 of the 2013 Agreement; and
  - (b) clause 36.2 of the 2018 Agreement.
339. By reason of the matters in the paragraph above, Bendigo Health has contravened s 50 of the FW Act.

### **E7 Outpatient care overtime**

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

### **Particulars**

Directions were sometimes oral and in any event were implied.

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

Insofar as they were implied, they were implied by the expectation that Group Members would provide medical services to outpatients in a clinic, as part of the medical services performed by those Group Members in that ward or department.

341. Each Group Member subject to the direction in paragraph 340 above worked overtime in excess of rostered hours to provide medical services to outpatients, in accordance with that direction.
342. In respect of each Group Member in paragraph 341 above, Bendigo Health:
- (a) knew that there was insufficient time during rostered hours to provide medical care to outpatients in clinics in accordance with the direction in paragraph 340 above; and
  - (b) knew that Group Members worked overtime to provide medical care to outpatients in clinics; and
  - (c) did not direct Group Members not to work overtime providing medical care to outpatients in clinics.

### **Particulars**

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

- (1) The direction pleaded in paragraph 340 above;
  - (2) the tasks necessary for the provision of care to outpatients in clinics; and
  - (3) the rostered hours for each ward or department where outpatient services were provided.
343. Bendigo Health did not pay Group Members overtime:
- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
  - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,

for the outpatient care overtime in paragraph 341 above worked by them.

344. The outpatient care overtime worked by Group Members constituted “authorised hours” within the meaning of:

- (a) clause 32.2.1(b) of the 2013 Agreement; and
- (b) clause 36.2(a)(ii) of the 2018 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) that the work performed by Group Members was the provision of medical services which included providing care to outpatients in clinics;
- (2) the conduct of Bendigo Health in giving the direction in paragraph 340 above;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 342(a) and 342(b) above; and
- (4) the failure by Bendigo Health to direct Group Members not to perform outpatient care overtime, as set out in paragraph 342(c) above

345. In the premises, Group Members were entitled to be paid overtime for the outpatient care overtime they worked, as set out in paragraph 341 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

346. By reason of the matters alleged in paragraphs 343 and 345 above, Bendigo Health has contravened:

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

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

### **E8 Other medical services overtime**

348. Some or all Group Members, in the course of their employment by Bendigo Health during the Relevant Period, were subject to a direction to provide medical services (other than the

medical services set out in paragraph 16(a) to (g) above) (**other medical services**) outside of rostered hours.

### **Particulars**

Directions were sometimes oral and in any event were implied.

Oral directions were given by a Group Member's supervisor directing the Group Member to provide other medical services commencing at or immediately before or after a Group Member's rostered start or finish time, which necessitated working outside rostered hours.

Insofar as they were implied, they were implied by the matters in paragraph 16(h) above, at a particular ward or department of a service operated by Bendigo Health as set out in paragraph 1(c) above.

349. Each Group Member subject to the direction in paragraph 348 above worked overtime in excess of rostered hours to provide other medical services, in accordance with that direction.
350. In respect of each Group Member in paragraph 349 above, Bendigo Health:
- (a) knew that there was insufficient time during rostered hours to provide other medical services in accordance with the direction in paragraph 348 above;
  - (b) knew that Group Members worked overtime to provide other medical services;
  - (c) did not direct Group Members not to provide other medical services overtime.

### **Particulars**

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

- (1) the direction pleaded in paragraph 348 above; and
  - (2) the rostered hours for each ward or department where medical services were provided.
351. Bendigo Health did not pay Group Members overtime:
- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
  - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,

for the other medical services overtime in paragraph 349 above worked by them.

352. The other medical services overtime worked by Group Members constituted “authorised hours” within the meaning of:

- (a) clause 32.2.1(b) of the 2013 Agreement; and
- (b) clause 36.2(a)(ii) of the 2018 Agreement.

### **Particulars**

Authorisation is implied from the following matters:

- (1) the work performed by the Group Member was the provision of medical services;
- (2) the conduct of Bendigo Health in giving the direction set out in paragraph 348 above;
- (3) the knowledge of Bendigo Health, as set out in paragraphs 350(a) and 350(b) above; and
- (4) the failure by Bendigo Health to direct Group Members not to perform the other medical services overtime, as set out in paragraph 350(c).

353. In the premises, Group Members were entitled to be paid overtime for providing other medical services as set out in paragraph 349 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

354. By reason of the matters alleged in paragraphs 351 and 353 above, Bendigo Health has contravened:

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

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

### **E9 Loss and damage**

356. Some or all Group Members suffered loss by reason of Bendigo Health’s contraventions of s 50 of the FW Act.

**AND THE APPLICANTS CLAIM**

The Applicants claim on their own behalf and on behalf of the Group Members the relief set out in the Originating Application.

Date: ~~23 December 2021~~ 28 April 2022



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Signed by Andrew Grech

Lawyer for the Applicants

This pleading was prepared by Andrew Grech of Gordon Legal and settled by Jim Hartley of counsel

**Certificate of lawyer**

I Andrew Grech certify to the Court that, in relation to the statement of claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~23 December 2021~~ 28 April 2022



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Signed by Andrew Grech

Lawyer for the Applicants

**Schedule**

VID **774** of 2021

Federal Court of Australia

District Registry: Victoria

Division: Fair Work

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

Second Applicant: **Catherine Gaggin**

Respondent: **Bendigo Health**

Date: ~~23 December 2021~~ 28 April 2022