

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 22/10/2021 10:28:41 AM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: VID611/2021  
File Title: THE AUSTRALIAN SALARIED MEDICAL OFFICERS' FEDERATION  
& ANOR v EASTERN HEALTH & ANOR  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 22/10/2021 11:13:39 AM AEDT

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

Registrar

### Important Information

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

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



Form 17  
Rule 8.05(1)(a)

## Statement of Claim

VID 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

**Eastern Health**  
First Respondent

**The Royal Women's Hospital**  
Second Respondent

### 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 23 October 2015 and 22 October 2021 (**Relevant Period**):

- (c) were employed by Eastern Health;

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Filed on behalf of:	The Australian Salaried Medical Officers' Federation and another ( <b>the Applicants</b> )		
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- (d) worked at one or more of the following services operated by Eastern Health:
- (i) Box Hill Hospital, 8 Arnold Street, Box Hill, Victoria, 3128;
  - (ii) Angliss Hospital, Albert Street, Upper Ferntree Gully, Victoria, 3156;
  - (iii) Healesville Hospital and Yarra Valley Health, 377 Maroondah Highway, Healesville, Victoria, 3777;
  - (iv) Maroondah Hospital, Davey Drive, Ringwood East, Victoria, 3135;
  - (v) Peter James Centre, corner Mahoneys Road and Burwood Highway, Burwood East, Victoria, 3151;
  - (vi) Turning Point Eastern Treatment Services, 110 Church Street, Richmond, Victoria, 3121;
  - (vii) Wantirna Health, 251 Mountain Highway, Wantirna, Victoria, 3152; and
  - (viii) Yarra Ranges Health, 25 Market Street, Lilydale, Victoria, 3140,
- (e) and/or were employed by The Royal Women's Hospital (**Royal Women's**) and worked at one or more of the following health services operated by Royal Women's:
- (i) Royal Women's Hospital, 20 Flemington Road, Parkville, Victoria, 3052; and
  - (ii) Sandringham Hospital, 193 Bluff Road, Sandringham, Victoria, 3191.
- (f) were, when employed by either or both of Eastern Health and Royal Women's 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**);

(g) were, when employed by either or both of Eastern Health and Royal Women's, 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 (**Doctors in Training**); and

(h) in the course of their employment by either or both of Eastern Health and Royal Women's, worked hours in excess of their ordinary hours, or rostered hours (**unrostered overtime**); and

(i) 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 Group Members.

3. The Second Applicant, Dr Wendy Hodge:
  - (a) between 5 January 2016 and around 5 August 2018, was employed by Eastern Health and classified under the 2013 Agreement as a:
    - (i) Hospital Medical Officer (**HMO**) Year 1 (Intern) between 5 January 2016 and 30 April 2017;
    - (ii) HMO Year 2, between 1 May 2017 and 29 April 2018;
    - (iii) HMO Year 3, between 30 April 2018 and 5 August 2018.
  - (b) between 4 February 2019 and 20 November 2020, was employed by Royal Women's and classified under the 2018 Agreement as a:
    - (i) HMO Year 3, between 4 February 2019 and 5 May 2019;
    - (ii) Medical Officer Year 1, between 6 May 2019 and 2 February 2020; and
    - (iii) Medical Officer Year 2, between 3 February 2020 and 20 November 2020.
4. As at the date of the commencement of this proceeding, there are seven or more persons who have claims against Eastern Health, and seven or more persons who have claims against Royal Women's, in respect of the matters set out in this Statement of Claim.

## **A2 The Respondents**

5. Eastern Health is and at all material times was:
  - (a) 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) a Health Service within the meaning of the 2013 Agreement and the 2018 Agreement;
  - (c) a national system employer within the meaning of the FW Act;
  - (d) between 5 January 2016 and 5 August 2018, the employer of Dr Hodge.

6. Royal Women's is and at all material times was:
- (a) 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) a Health Service within the meaning of the 2013 Agreement and the 2018 Agreement;
  - (c) a national system employer within the meaning of the FW Act;
  - (d) between 4 February 2019 to 20 November 2020, the employer of Dr Hodge.

## **B THE AGREEMENTS**

### **B1 The 2013 Agreement**

#### Application and coverage

7. 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 cl 5.3, covered:
    - (i) Eastern Health;
    - (ii) Royal Women's;
    - (iii) ASMOF;
    - (iv) employees of Eastern Health and/or Royal Women's who were employed in, *inter alia*, the classifications set out in paragraph 1(g) above (**Doctors**).

## Doctor Responsibilities

8. 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

9. Clause 25.1.1 of the 2013 Agreement provided 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.
10. 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.
11. 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

12. 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) Eastern Health;
  - (ii) Royal Women's;
  - (iii) ASMOF;
  - (iv) employees of Eastern Health and/or Royal Women's who were employed in the classifications set out in paragraph 1(g) above.

### Doctor Responsibilities

13. 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

14. 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;
  - (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.
15. 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.
16. 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 HODGE AND GROUP MEMBERS

17. During the Relevant Period, the duties and responsibilities of Dr Hodge 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 emergency**);
  - (f) completion of patient medical records, including discharge summaries, in a timely manner (**medical records**);
  - (g) speaking with patients and patients' families and visitors about patients' treatment (**medical communication**);
  - (h) admitting patients into a particular ward or department (**patient admissions**);
  - (i) undertaking surgical procedures (**surgical procedures**);
  - (j) providing medical care to patients in a clinic (**outpatient care**); and
  - (k) 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**

18. During the course of her employment by Eastern Health and Royal Women's, Dr Hodge was directed relevantly:
- (a) by Eastern Health, between 11 January 2016 and 20 March 2016, to work in the General Surgery department at the Epworth Eastern Hospital at 1 Arnold Street, Box Hill (**Epworth Eastern**);
  - (b) by Eastern Health, between around 21 March 2016 and around June 2016, to work in the General Medicine Department at Box Hill Hospital;
  - (c) by Eastern Health, between around February 2017 and around April 2017, to work in the General Medicine and High Dependency Unit at Angliss Hospital;
  - (d) by Eastern Health, between 7 August 2017 and 5 November 2017, to work in the Obstetrics and Gynaecology Department at Angliss Hospital;
  - (e) by Eastern Health, between 5 February 2018 and 5 August 2018, to work in the Obstetrics and Gynaecology Department at Angliss Hospital;
  - (f) by Royal Women's, between 6 May 2019 and 4 August 2019, to work in the Obstetrics and Gynaecology Department of Royal Women's;
  - (g) by Royal Women's, between 3 February 2020 and 18 November 2020 to work in the Obstetrics and Gynaecology Department of Royal Women's.

### **D2 Epworth General Surgery Rotation – 11 January 2016 to 20 March 2016**

19. Between 11 January 2016 to 20 March 2016, pursuant to the direction of Eastern Health pleaded in paragraph 18(a) above, Dr Hodge worked in the General Surgery department at Epworth Eastern (**Epworth General Surgery Rotation**).

#### **Particulars**

The direction was in writing. It was contained in the roster prepared by Eastern Health and provided to Dr Hodge, which stated

that Dr Hodge was to work in the General Surgery department at Epworth Eastern on the days and at the times stated in paragraph 20 below.

### Rosters

20. During the Epworth General Surgery Rotation, Dr Hodge was rostered to work the following shifts:
- (a) day shifts, from 7.00am to 4.30pm or 5.00pm (3 days per week) at Epworth Eastern; and
  - (b) half day shifts, from 7.00am to 11.30am (2 days per week) at Epworth Eastern.

### **Particulars**

Copies of Dr Hodge's rosters for the Epworth General Surgery Rotation are in the possession of the solicitors of the Applicants, and are available for inspection on request.

### Ward round preparation overtime

21. During the Epworth General Surgery Rotation, Eastern Health directed Dr Hodge to undertake ward round preparation before the commencement of ward rounds at Epworth Eastern (**ward round preparation direction**).

### **Particulars**

The ward round preparation direction was partly written and is partly to be inferred.

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 is to be inferred, it is inferred from the matters in paragraph 17(a) above, and from the tasks necessary to complete ward round preparation, which included ensuring pathology had been requested, reviewing patient results and new clinical information that had come in overnight, checking and updating the

patient list as necessary, and speaking with nurses about overnight patient updates.

22. During the Epworth General Surgery Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Hodge worked hours in excess of rostered hours (**ward round preparation overtime**).

### **Particulars**

Ward rounds commenced at 7.00am in the General Surgery Department at Epworth Eastern. Dr Hodge's shifts at Epworth Eastern commenced at 7.00am.

On the days when she worked at the Epworth Eastern, Dr Hodge attended work about 30 minutes before the start of each rostered shift to undertake ward round preparation, 5 days per week.

Further particulars will be provided after discovery and before trial.

23. Eastern 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 Hodge performed ward round preparation overtime; and
  - (c) did not direct Dr Hodge not to perform ward round preparation overtime.

### **Particulars**

The knowledge of Eastern 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 21 above;
3. Dr Hodge's rostered start time of 7.00am;
4. the commencement of ward rounds at 7.00am in the circumstances set out in the particulars to paragraph 22 above;
5. the fact that during her work at Epworth Eastern, Dr Hodge was supervised by senior medical practitioners employed by Eastern

Health, who observed her preparing for ward rounds before the start of her shift;

6. the fact that Dr Hodge was prepared for ward rounds conducted by Consultants.

24. By reason of the matters alleged in paragraphs 17(a), 19, 21 and 23 above, the ward round preparation overtime worked by Dr Hodge 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 Hodge included ward round preparation before the commencement of ward rounds;
2. Dr Hodge’s rostered start time of 7.00am;
3. the commencement of ward rounds at 7.00am in the circumstances set out in the particulars to paragraph 22 above;
4. the conduct of Eastern Health in giving the ward round preparation direction as set out in paragraph 21 above;
5. the knowledge of Eastern Health, as set out in paragraphs 23(a) and (b) above; and
6. the failure by Eastern Health to direct Dr Hodge not to perform the ward round preparation overtime, as set out in paragraph 23(c) above.

25. In the premises, Dr Hodge was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 22 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
26. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the Epworth General Surgery Rotation.
27. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.

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

#### Admissions overtime

29. During the Epworth General Surgery Rotation, Eastern Health directed Dr Hodge to perform patient admissions into the General Surgery department at Epworth Eastern (**admissions direction**).

#### **Particulars**

The admissions direction was partly oral, and is partly to be inferred.

Insofar as it was oral, it was in the form of a Registrar or Consultant directing Dr Hodge to admit a patient who was arriving that day, for surgery the following day.

Insofar as it is to be inferred, the inference arises from the expectation that Dr Hodge would do the work that was required in order to admit patients into the General Surgery department, as part of the medical services performed by Dr Hodge in that department.

The tasks performed by Dr Hodge in admitting a patient included:

1. taking a thorough history from the patient;
2. documenting any patient medication and charting any medication required by the patient;
3. examining the patient;
4. writing a patient care plan for the patient's overnight care.

30. During the Epworth General Surgery Rotation, in order to perform patient admissions in accordance with the admissions direction, Dr Hodge worked hours in excess of rostered hours (**admissions overtime**).

#### **Particulars**

It was necessary for Dr Hodge to undertake admissions overtime when the patient to be admitted arrived, or was anticipated to arrive, towards the end or shortly after the end of Dr Hodge's rostered shift, and there were no other doctors available to undertake the admission.

Dr Hodge performed admissions overtime around two or three times per week, for at least 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

31. Eastern Health:
- (a) knew that there was insufficient time during rostered hours to complete patient admissions in accordance with the admissions direction; and
  - (b) knew that Dr Hodge performed admissions overtime; and
  - (c) did not direct Dr Hodge not to perform admissions overtime.

#### **Particulars**

The knowledge of Eastern Health is to be inferred from:

- 1. the admissions direction;
- 2. the tasks necessary to complete patient admissions, including those matters in the particulars to paragraph 29 above;
- 3. the circumstances set out in the particulars to paragraph 30 above;
- 4. the fact that during her work at Epworth Eastern, Dr Hodge was supervised by senior medical practitioners employed by Eastern Health, who observed Dr Hodge undertaking patient admissions after the conclusion of her rostered shift.

32. By reason of the matters alleged in paragraphs 17(h), 19, 29 and 31 above, the admissions overtime worked by Dr Hodge 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 Hodge included patient admissions;
- 2. the conduct of Eastern Health in giving the admissions direction, as set out in paragraph 29 above;

3. the circumstances set out in the particulars to paragraph 30 above;
  4. the knowledge of Eastern Health, as set out in paragraphs 31(a) and (b) above;
  5. the failure by Eastern Health to direct Dr Hodge not to perform the admissions overtime, as set out in paragraph 31(c) above.
33. In the premises, Dr Hodge was entitled to be paid overtime for the admissions overtime that she worked, as set out in paragraph 30 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
34. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the admissions overtime worked by her during the Epworth General Surgery Rotation.
35. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
36. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

#### Medical emergency overtime

37. During the Epworth General Surgery Rotation, Eastern Health directed Dr Hodge to attend to medical emergencies at Epworth Eastern (**medical emergency direction**).

#### **Particulars**

The medical emergency direction was partly oral and is partly to be inferred.

Insofar as it was oral, it was conveyed from time to time by a Registrar or Consultant who would direct Dr Hodge to, before going home at the end of her rostered shift, attend to a particular patient who required urgent care.

Insofar as it is to be inferred, it is to be inferred from:

1. the matters in paragraph 17(e) above;
2. the clinical requirement for Dr Hodge to attend to medical emergencies to ensure proper patient care;

3. the unavailability of other doctors to attend to the patient, or the inefficiency in an urgent situation of briefing in-coming staff;
4. the nature of the work in the General Surgery department, being that patients occasionally suffered a clinical deterioration requiring urgent medical attention, such as increased abdominal pain; bleeding; low blood sugar for fasting patients; issues with intravenous access; or hypertensive or dehydrated patients;
5. the fact that Dr Hodge attended to medical emergencies that arose at the end of her shift, and attended to the matter until the patient was stabilised.

38. During the Epworth General Surgery Rotation, in order to attend to medical emergencies, Dr Hodge worked hours in excess of rostered hours (**medical emergency overtime**).

#### **Particulars**

Dr Hodge attended to medical emergencies that arose at the end of her shifts at Epworth Eastern, and attended to the matter until the patient was stabilised.

At Epworth Eastern, Dr Hodge performed medical emergency overtime after the end of a rostered shift around two to three times per week, for between 30 and 60 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

39. Eastern 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 Hodge performed medical emergency overtime;
  - (c) did not direct Dr Hodge not to perform medical emergency overtime.

#### **Particulars**

The knowledge of Eastern Health is to be inferred from:

1. the medical emergency direction; and

2. the circumstances set out in the particulars to paragraph 38 above;
  3. the fact that senior medical staff at Epworth Eastern observed Dr Hodge working after hours attending to medical emergencies;
  4. the fact that from time to time, when attending to medical emergencies after hours at Epworth Eastern, Dr Hodge sought and received directions and advice from her supervisors over the telephone regarding patient treatment, which occurred outside of her rostered hours;
  5. the fact that Dr Hodge did not leave work until she had treated and stabilised the patient suffering a medical emergency.
40. By reason of the matters alleged in paragraphs 17(e), 19, 37 and 39 above, the medical emergency overtime worked by Dr Hodge 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 Hodge included attending to medical emergencies;
  2. the conduct of Eastern Health in giving the medical emergency direction, as set out in paragraph 37 above;
  3. the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 38 above;
  4. the knowledge of Eastern Health, as set out in paragraphs 39(a) and 39(b) above; and
  5. the failure by Eastern Health to direct Dr Hodge not to perform medical emergency overtime as set out in paragraph 39(c) above.
41. In the premises, Dr Hodge was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 38 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

42. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical emergency overtime worked by her during the Epworth and General Surgery Rotation.
43. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
44. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

#### Medical records overtime

45. During the Epworth General Surgery Rotation, Eastern Health directed Dr Hodge:
  - (a) to complete medical records for patients in the General Surgery department of Epworth Eastern;
  - (b) to complete medical records in a timely manner;
  - (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 is partly to be inferred.

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. Medical records include discharge summaries, operation reports, and medical certificates;
2. insofar as it was oral, it was conveyed by senior medical staff working in patient recovery, or by the Consultants and Registrars on duty, who directed Dr Hodge to complete the particular paperwork before the patient could be discharged that day;
3. insofar as it is to be inferred, it is to be inferred from:
  - (a) the matters in paragraph 17(f) above;

- (b) the matters in subparagraphs (1) and (2) above; and
- (c) the clinical requirement to complete medical records for proper patient care.

46. During the Epworth General Surgery Rotation, in order to complete medical records in accordance with the medical records direction, Dr Hodge worked hours in excess of rostered hours (**medical records overtime**).

#### **Particulars**

From time to time, surgery at Epworth Eastern would run over time. In order for the patient to be discharged that day, it was necessary to complete their discharge paperwork as described in subparagraph (2) of the particulars to paragraph 45 above.

Dr Hodge performed medical records overtime after the conclusion of her rostered shifts at Epworth Eastern, around once a week, for about 30 minutes on each occasion.

47. Eastern Health:

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

#### **Particulars**

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

1. the medical records direction;
2. the patient notes system recorded a date and time stamp indicating when and by whom a particular record had been completed and entered into the system;
3. senior medical staff observed Dr Hodge working after hours to complete medical records.

48. By reason of the matters alleged in paragraphs 17(f), 19, 45 and 47 above, the medical records overtime worked by Dr Hodge 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 Hodge included the timely completion of medical records;
  2. the conduct of Eastern Health in giving the medical records direction, as set out in paragraph 45 above;
  3. the knowledge of Eastern Health, as set out in paragraphs 47(a) and 47(b) above;
  4. the failure of Eastern Health to direct Dr Hodge not to perform medical records overtime as set out in paragraph 47(c) above.
49. In the premises, Dr Hodge was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 46 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
50. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the Epworth General Surgery Rotation.
51. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
52. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.
- D3 Box Hill General Medicine Rotation – 21 March 2016 to June 2016**
53. Between 21 March 2016 to around June 2016, pursuant to the direction of Eastern Health pleaded in paragraph 18(b) above, Dr Hodge worked in the General Medicine Department at Box Hill Hospital (**Box Hill General Medicine Rotation**).

## Rosters

54. During the Box Hill General Medicine Rotation, Dr Hodge was rostered to work a regular roster comprising the following shifts (all times are approximate):
- (a) day shifts, from 8.00am to 5.00pm;
  - (b) evening 'cover' shifts from 2.00pm to 8.00pm;
  - (c) half-day shifts from 8.00am to 1.00pm; and
  - (d) weekend 'cover' shifts from 8.00am to 10.00pm.

### **Particulars**

The Second Applicant has requested from Eastern Health copies of her rosters during the Box Hill General Medicine Rotation. Further particulars will be provided (if necessary) upon receipt of the rosters.

## Medical emergency overtime

55. During the Box Hill General Medicine Rotation, Eastern Health directed Dr Hodge to attend to medical emergencies (**medical emergency direction**).

### **Particulars**

The medical emergency direction is to be inferred from the following:

1. the matters in paragraph 17(e) above;
2. from time to time during the Box Hill General Medicine Rotation, Dr Hodge was alerted to a medical emergency by the deployment of the staff assistance button next to a patient's bed; by a Medical Emergency Team call (**MET call**) page sent to Dr Hodge's team; and by a 'code blue' alert (being an alert for an unconscious or arresting patient, or an alert for someone who has not been admitted who requires urgent care) page sent to Dr Hodge's team to attend;
3. the clinical requirement for Dr Hodge to attend to medical emergencies in order to ensure proper patient care and safety;

4. the nature of work in General Medicine being that patients occasionally suffered a clinical deterioration requiring medical staff urgently to attend to their care and stabilisation.

56. During the Box Hill General Medicine Rotation, in order to attend to medical emergencies, Dr Hodge worked hours in excess of rostered hours (**medical emergency overtime**).

#### **Particulars**

Dr Hodge attended to medical emergencies that arose at the end of her shift, and did not leave until the patient was stabilised.

If Dr Hodge was the first doctor to arrive at the emergency, she undertook initial steps to stabilise the patient, and then contacted a Registrar or Consultant to ask the Registrar or Consultant to attend. Following their arrival, the Consultant or Registrar took over the care of the patient and directed Dr Hodge to undertake further tasks to assist the effort to stabilise the patient, such as inserting a cannula, sending blood samples to pathology for testing, requesting medications, and documenting the emergency.

Dr Hodge performed medical emergency overtime after the end of a rostered shift around twice per week, for around one hour on each occasion.

Further particulars will be provided after discovery and before trial.

57. Eastern 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 Hodge performed medical emergency overtime;
  - (c) did not direct Dr Hodge not to perform medical emergency overtime.

#### **Particulars**

The knowledge of Eastern Health is to be inferred from:

1. the medical emergency direction; and
2. the circumstances set out in the particulars to paragraph 56 above;

3. the fact that other medical staff (including senior medical staff) observed Dr Hodge working after hours dealing with medical emergencies;
4. the fact that Dr Hodge attended to medical emergencies under the supervision of a Consultant or Registrar, including following the conclusion of her rostered shift;
5. the fact that Dr Hodge did not leave work until she had treated and stabilised the patient suffering a medical emergency.

58. By reason of the matters alleged in paragraphs 17(e), 53, 55 and 57 above, the medical emergency overtime worked by Dr Hodge 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 Hodge included attending to medical emergencies;
2. the conduct of Eastern Health in giving the medical emergency direction, as set out in paragraph 55 above;
3. the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 56 above;
4. the knowledge of Eastern Health, as set out in paragraphs 57(a) and (b); and
5. the failure by Eastern Health to direct Dr Hodge not to perform medical emergency overtime as set out in paragraph 57(c) above.

59. In the premises, Dr Hodge was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 56 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

60. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical emergency overtime worked by her during the Box Hill General Medicine Rotation.

61. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
62. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

Other medical services overtime

63. During the Box Hill General Medicine Rotation, Eastern Health directed Dr Hodge to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

**Particulars**

The patient care direction was partly oral and partly to be inferred.

Insofar as it was oral, it was conveyed during ward rounds to Dr Hodge. Ward rounds in the General Medicine department often lasted several hours. During the course of the ward round, Dr Hodge was directed by a Registrar or Consultant to undertake and complete various tasks relating to patient care, such as ordering imaging or pathology tests, engaging in consultations with other medical teams, updating patient records, and preparing patients for discharge.

Insofar as it is to be inferred, it is inferred from:

1. the matters in paragraph 17(k) above;
2. the inefficiency of Dr Hodge handing over such tasks to another doctor given Dr Hodge's knowledge of the patient and because these tasks formed part of Dr Hodge's standard daily workload.

64. During the General Medicine Box Hill Rotation, in order to complete the patient care direction, Dr Hodge worked hours in excess of rostered hours (**patient care overtime**).

**Particulars**

From time to time, due to other complex or high priority issues arising during her shift, Dr Hodge was unable to complete the tasks directed to her during a ward round during her shift. On those occasions, the completion of the patient care direction required Dr Hodge to work after her rostered shift ended.

Dr Hodge performed patient care overtime after the end of almost all of her rostered shifts ending at 5.00pm or 1.00pm, for approximately 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

65. Eastern Health:

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

#### **Particulars**

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

1. the patient care direction, which was an express, oral direction given by senior medical staff to Dr Hodge, and which included a direction to complete the particular task before Dr Hodge finished work on that day;
2. the patient care direction was given during ward rounds, when Dr Hodge was reviewing patients with senior medical staff;
3. other medical staff (including senior medical staff) observing Dr Hodge carrying out the patient care direction after her rostered shift;
4. the fact that Dr Hodge attended to the patient care direction before she finished work on that day.

66. By reasons of the matters alleged in paragraphs 17(k), 53, 63, and 65 above, the patient care overtime worked by Dr Hodge 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 Hodge included attending to patient care;

2. the conduct of Eastern Health in giving the patient care direction, as set out in paragraph 63 above;
  3. the knowledge of Eastern Health, as set out in paragraphs 65(a) and (b) above;
  4. the failure by Eastern Health to direct Dr Hodge not to perform patient care overtime as set out in paragraph 65(c) above.
67. In the premises, Dr Hodge was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 64 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
68. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the General Medicine Box Hill Rotation.
69. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
70. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

**D4 General Medicine and High Dependency Unit, Angliss Hospital – February 2017 to April 2017**

71. Between February 2017 and April 2017, pursuant to the direction of Eastern Health set out at paragraph 18(d) above, Dr Hodge worked in the General Medicine and High Dependency Unit at Angliss Hospital (**Angliss General Medicine Rotation**).

Rosters

72. During the Angliss General Medicine Rotation, Dr Hodge was rostered to work on a regular roster of the following shifts:
- (a) day shifts from on or about 8.00am to on or about 5.00pm;
  - (b) evening ‘cover’ shifts from on or about 2.00pm to on or about 10.00pm;

- (c) weekend 'cover' shifts from on or about 8.00am to on or about 10.00pm.

### **Particulars**

The Second Applicant has requested from Eastern Health copies of her rosters during the Angliss General Medicine Rotation. Further particulars will be provided (if necessary) upon receipt of the rosters.

### Ward round preparation overtime

73. During the Angliss General Medicine Rotation, Eastern Health directed Dr Hodge 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 is partly to be inferred.

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 is to be inferred, it is inferred from the matters in paragraph 17(a) above, and from the tasks necessary to complete ward round preparation, which included reviewing patient results and new clinical information that had come in overnight, checking and updating the patient list as necessary, and speaking with nurses about overnight patient updates.

74. During the Angliss General Medicine Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Hodge worked hours in excess of rostered hours (**ward round preparation overtime**).

### **Particulars**

During the Angliss General Medicine Rotation, all clinicians whose rostered shift commenced at 8.00am were required to attend a department-wide handover meeting at 8.00am. Ward rounds commenced immediately after handover, which was generally around 30 minutes after the start of the handover meeting.

On days when Dr Hodge was rostered to start at 8.00am, she attended work about 15 minutes before the start of her shift in order to undertake preparation for ward rounds.

Further particulars will be provided after discovery and before trial.

75. Eastern 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 Hodge performed ward round preparation overtime; and
- (c) did not direct Dr Hodge not to perform ward round preparation overtime.

### **Particulars**

The knowledge of Eastern 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 73 above;
3. Dr Hodge's usual rostered start time of 8.00am;
4. the commencement of ward rounds shortly after 8.00am in the circumstances set out in the particulars to paragraph 74 above;
5. other medical staff (including senior medical staff) observing Dr Hodge working before the start of her shift preparing for ward rounds;
6. the fact that Dr Hodge was prepared for ward rounds conducted by the Consultants and Registrars on duty immediately after the handover meeting at 8.00am, which required Dr Hodge to be aware of matters including test results and clinical information that had come in overnight, and therefore could only have been possible had she reviewed that information prior to 8.00am.

76. By reason of the matters alleged in paragraphs 17(a), 71, 73, and 75 above, the ward round preparation overtime worked by Dr Hodge 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 Hodge included ward round preparation before the commencement of ward rounds;
2. Dr Hodge's usual rostered start time of 8.00am;
3. the commencement of ward rounds shortly after 8.00am in the circumstances set out in the particulars to paragraph 74 above;
4. the ward round preparation direction;
5. the knowledge of Eastern Health, as set out in paragraphs 75(a) and 75(b) above; and
6. the failure by Eastern Health to direct Dr Hodge not to perform the ward round preparation overtime, as set out in paragraph 75(c) above.

77. In the premises, Dr Hodge was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 74 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
78. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the Angliss General Medicine Rotation.
79. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
80. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

### Medical emergency overtime

81. During the Angliss General Medicine Rotation, Eastern Health directed Dr Hodge to attend to medical emergencies (**medical emergency direction**).

### Particulars

The medical emergency direction is to be inferred from:

1. the matters in paragraph 17(e) above;
2. from time to time during the Angliss General Medicine Rotation, Dr Hodge was alerted to a medical emergency by the deployment of the staff assistance button next to a patient's bed; by a MET call and page sent to Dr Hodge's team; and by a 'code blue' and page sent to Dr Hodge's team to attend;
3. the clinical requirement for Dr Hodge to attend to medical emergencies in order to ensure proper patient care and safety;
4. the nature of work in General Medicine being that patients occasionally suffered a clinical deterioration requiring medical staff urgently to attend to their care and stabilisation.

82. During the Angliss General Medicine Rotation, in order to attend to medical emergencies, Dr Hodge worked hours in excess of rostered hours (**medical emergency overtime**).

### Particulars

Dr Hodge attended to medical emergencies that arose at the end of her shift, and did not leave until the patient was stabilised.

If Dr Hodge was the first doctor to arrive at the emergency, she undertook initial steps to stabilise the patient, and then contacted a Registrar or Consultant to ask the Registrar or Consultant to attend. Following their arrival, the Consultant or Registrar took over the care of the patient and directed Dr Hodge to undertake further tasks to assist the effort to stabilise the patient, such as inserting a cannula, sending blood samples to pathology for testing, requesting medications, and documenting the emergency.

Dr Hodge performed medical emergency overtime after the end of a rostered shift around twice per week, for around an hour on each occasion.

Further particulars will be provided after discovery and before trial.

83. Eastern 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 Hodge performed medical emergency overtime;
- (c) did not direct Dr Hodge not to perform medical emergency overtime.

### **Particulars**

The knowledge of Eastern Health is to be inferred from:

1. the medical emergency direction; and
  2. the circumstances set out in the particulars to paragraph 81 above;
  3. the fact that other medical staff (including senior medical staff) observed Dr Hodge working after hours dealing with medical emergencies;
  4. the fact that Dr Hodge attended to medical emergencies under the supervision of a Consultant or Registrar, including following the conclusion of her rostered shift;
  5. the fact that Dr Hodge did not leave work until she had treated and stabilised the patient suffering a medical emergency.
84. By reason of the matters alleged in paragraphs 17(e), 71, 81 and 83 above, the medical emergency overtime worked by Dr Hodge 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 Hodge included attending to medical emergencies;
2. the conduct of Eastern Health in giving the medical emergency direction, as set out in paragraph 81 above;
3. the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 83 above;
4. the knowledge of Eastern Health, as set out in paragraphs 83(a) and 83(b) above; and
5. the failure by Eastern Health to direct Dr Hodge not to perform medical emergency overtime as set out in paragraph 83(c) above.

85. In the premises, Dr Hodge was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 82 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
86. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical emergency overtime worked by her during the Angliss General Medicine Rotation.
87. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
88. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

#### Other medical services overtime

89. During the Angliss General Medicine Rotation, Eastern Health directed Dr Hodge to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

#### **Particulars**

The patient care direction was partly oral and partly to be inferred.

Insofar as it was oral, it was conveyed to Dr Hodge by senior medical staff, including Registrars or Consultants, to undertake and complete various tasks relating to patient care, such as ordering imaging or pathology tests, engaging in consultations with other medical teams, updating patient records, and preparing patients for discharge. Dr Hodge was directed to ensure these tasks were completed before she left work for the day.

Insofar as it is to be inferred, it is inferred from:

1. the matters in paragraph 17(k) above;
2. the inefficiency of Dr Hodge handing over such tasks to another doctor given Dr Hodge's knowledge of the patient and because these tasks formed part of Dr Hodge's standard daily workload.

90. During the Angliss General Medicine Rotation, in order to complete the patient care direction, Dr Hodge worked hours in excess of rostered hours (**patient care overtime**).

### **Particulars**

The patient care direction was made in the circumstances set out in paragraph 89 above. Attendance to and completion of the patient care direction required Dr Hodge to work after her rostered shift ended.

From time to time, due to other complex or high priority issues arising during her shift, Dr Hodge was unable to complete the tasks directed to her during a ward round during her shift. On those occasions, the completion of the patient care direction required Dr Hodge to work after her rostered shift ended.

Dr Hodge performed patient care overtime after the end of almost all of her rostered shifts ending at 5.00pm or 1.00pm, for approximately 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

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

### **Particulars**

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

1. the patient care direction, which was an express, oral direction given by senior medical staff to Dr Hodge, and which included a direction to complete the particular task before Dr Hodge finished work on that day;
2. other medical staff (including senior medical staff) observing Dr Hodge carrying out the patient care direction after her rostered shift;
3. the fact that Dr Hodge attended to the patient care direction before she finished work on that day.

92. By reasons of the matters alleged in paragraphs 17(k), 71, 89, and 91 above, the patient care overtime worked by Dr Hodge 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 Hodge included attending to patient care;
  2. the conduct of Eastern Health in giving the patient care direction, as set out in paragraph 89 above;
  3. the knowledge of Eastern Health, as set out in paragraphs 91(a) and (b) above;
  4. the failure by Eastern Health to direct Dr Hodge not to perform patient care overtime as set out in paragraph 91(c) above.
93. In the premises, Dr Hodge was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 90 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
94. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the Angliss General Medicine Rotation.
95. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
96. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

### **D5 Obstetrics and Gynaecology, Angliss Hospital – 7 August 2017 to 5 November 2017**

97. Between 7 August 2017 to 5 November 2017, pursuant to the direction of Eastern Health set out in paragraph 18(e) above, Dr Hodge worked in Obstetrics and Gynaecology at Angliss Hospital (**First Angliss Obstetrics and Gynaecology Rotation**).

## Rosters

98. During the First Angliss Obstetrics and Gynaecology Angliss Rotation, Dr Hodge was rostered to work on a six-week rotating roster of the following shifts:
- (a) for one week of the six-week period, a week of night shifts from 8:30pm to 8.30am, following which Dr Hodge was not rostered for a week;
  - (b) for the remainder of the six-week period, a combination of:
    - (i) regular day shifts from 8.00am to 5.00pm;
    - (ii) long day shifts from 8.00am to 9.00pm;
  - (c) the shifts in subparagraph (b) above were allocated between three main areas of work within the Obstetrics and Gynaecology department, being ward work, the Early Pregnancy Clinic, and the birth suite.

### **Particulars**

Copies of Dr Hodge's rosters for the First Angliss Obstetrics and Gynaecology Rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

## Medical emergency overtime

99. During the First Angliss Obstetrics and Gynaecology Rotation, Eastern Health directed Dr Hodge to attend to medical emergencies (**medical emergency direction**).

### **Particulars**

The medical emergency direction is to be inferred from the following:

1. the matters in paragraph 17(e) above;
2. from time to time during the First Angliss Obstetrics and Gynaecology Rotation, Dr Hodge was alerted to a medical emergency by a message from nursing or midwifery staff to clinicians within the Obstetrics and Gynaecology department, or by a MET call; 'code pink' (urgent care required for mothers);

- 'code blue'; or 'neonatal code blue' (urgent care required where an infant was not breathing);
3. the clinical requirement for Dr Hodge to attend to medical emergencies in order to ensure proper patient care and safety;
  4. the inefficiency (in an urgent situation) of briefing on-coming staff, particularly in circumstances where Dr Hodge was the first person available to treat the patient suffering a medical emergency;
  5. the nature of work in Obstetrics and Gynaecology being that patients occasionally suffered a clinical deterioration requiring medical staff urgently to attend to their care and stabilisation.
100. During the First Obstetrics and Gynaecology Angliss Rotation, in order to attend to medical emergencies, Dr Hodge worked hours in excess of rostered hours (**medical emergency overtime**).

### **Particulars**

Dr Hodge attended to medical emergencies that arose at the end of her shift, and did not leave until the patient was stabilised.

If Dr Hodge was the first doctor to arrive at the emergency, she undertook initial steps to stabilise the patient, such as performing chest compressions on a newborn with breathing difficulties, until the paediatric and MET team arrived.

On other occasions, Dr Hodge attended the emergency with a Registrar, and followed the direction of the Registrar in attending to the patient. On occasions where a Registrar or Consultant did not attend the emergency, Dr Hodge would notify the Registrar or Consultant by telephone and receive directions as to the proper treatment for the patient.

Dr Hodge performed medical emergency overtime after the end of a rostered shift once to twice per week, for around 30 to 60 minutes on each occasion. Dr Hodge performed medical emergency overtime on all shift types.

Further particulars will be provided after discovery and before trial.

101. Eastern 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 Hodge performed medical emergency overtime;
- (c) did not direct Dr Hodge not to perform medical emergency overtime.

### **Particulars**

The knowledge of Eastern Health is to be inferred from:

- 1. the medical emergency direction;
- 2. the circumstances set out in the particulars to paragraph 100 above;
- 3. the fact that medical staff (including senior medical staff) observed Dr Hodge working after hours dealing with medical emergencies;
- 4. the fact that, from time to time, Dr Hodge attended to medical emergencies under the supervision of a Consultant or Registrar, including after hours;
- 5. the fact that, from time to time, Dr Hodge telephoned a Consultant or Registrar for advice about the approach to take to treating patients suffering an emergency, including after hours;
- 6. the fact that Dr Hodge did not leave work until she had treated and stabilised the patient suffering a medical emergency.

102. By reason of the matters alleged in paragraphs 17(e), 97, 99 and 101 above, the medical emergency overtime worked by Dr Hodge 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 Hodge included attending to medical emergencies;
- 2. the conduct of Eastern Health in giving the medical emergency direction, as set out in paragraph 99 above;

3. the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 100 above;
  4. the knowledge of Eastern Health, as set out in paragraphs 101(a) and 101(b) above; and
  5. the failure by Eastern Health to direct Dr Hodge not to perform medical emergency overtime as set out in paragraph 101(c) above.
103. In the premises, Dr Hodge was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 100 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
104. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical emergency overtime worked by her during the First Angliss Obstetrics and Gynaecology Rotation.
105. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
106. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

#### Surgical procedures overtime

107. During the First Angliss Obstetrics and Gynaecology Rotation, Eastern Health directed Dr Hodge, at the end of her shift, to complete surgical procedures before she finished work on that day (**surgical procedures direction**).

#### **Particulars**

The surgical procedures direction is to be inferred from the following:

1. from time to time, most frequently when Dr Hodge was working in the birth suite, it was necessary to take a patient to theatre for emergency surgery, such as a vacuum delivery or caesarean section;

2. Dr Hodge attended theatre with the patient and assisted the Registrar or Consultant with the surgery;
3. the nature of the work, which included:
  - (a) finishing surgical procedures that had been commenced prior to the end of Dr Hodge's shift;
  - (b) adequately document the procedure; and
  - (c) ensuring the patient was stabilised so that she could be transferred to the recovery area and then returned to the ward.

108. During the First Angliss Obstetrics and Gynaecology Rotation, in order to complete surgical procedures in accordance with the surgical procedures direction, Dr Hodge worked hours in excess of rostered hours (**surgical procedures overtime**).

### **Particulars**

During the First Angliss Obstetrics and Gynaecology Rotation, Dr Hodge was directed to assist with surgical procedures that started before her rostered finishing time but continued beyond the finishing time.

Surgical procedures overtime occurred in circumstances where a patient was experiencing complications while she was in labour, such as if she had significant bleeding, which required the birth to be transferred to a surgical theatre.

The surgical procedures overtime was worked by Dr Hodge approximately once per fortnight, for about 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

109. Eastern Health:
- (a) knew that there was insufficient time during rostered hours to complete surgical procedures in accordance with the surgical procedures direction; and
  - (b) knew that Dr Hodge performed surgical procedures overtime; and
  - (c) did not direct Dr Hodge not to perform surgical procedures overtime.

### **Particulars**

The knowledge of Eastern Health is to be inferred from:

1. the surgical procedures direction;
2. the circumstances set out in the particulars to paragraph 108 above;
3. the fact that Consultants and Registrars continued and completed surgical procedures with Dr Hodge, including after her rostered finish time;
4. the fact that Dr Hodge did not leave work until the surgical procedure had been concluded, the patient stabilised and corresponding medical records completed.

110. By reason of the matters alleged in paragraphs 17(i), 97, 107 and 109 above, the surgical procedures overtime worked by Dr Hodge 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 Hodge included undertaking surgical procedures;
2. the conduct of Eastern Health in giving the surgical procedures direction as set out in paragraph 107 above;
3. the circumstances in which surgical procedures were undertaken in the First Angliss Obstetrics and Gynaecology Rotation as set out in paragraph 108 above;
4. the knowledge of Eastern Health, as set out in paragraphs 109(a) and (b) above; and
5. the failure by Eastern Health to direct Dr Hodge not to perform surgical procedures overtime as set out in paragraph 109(c) above.

111. In the premises, Dr Hodge was entitled to be paid overtime for the surgical procedures overtime that she worked, as set out in paragraph 108 above, at the rates set out in clause 32.2.2. of the 2013 Agreement.

112. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the surgical procedures overtime worked by her during the First Angliss Obstetrics and Gynaecology Rotation.
113. By reason of the matters alleged above, Eastern health has contravened clause 32.2 of the 2013 Agreement.
114. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

#### Outpatient care overtime

115. During the First Angliss Obstetrics and Gynaecology Rotation, Eastern Health directed Dr Hodge to provide medical care to outpatients who had appointments in or were referred to the Early Pregnancy Clinic before she finished work on that day (**outpatient care direction**).

#### **Particulars**

The outpatient care direction was partly oral and is partly to be inferred.

Insofar as was is oral, the direction was given from time to time by a Registrar or Consultant in the Emergency Department, who called Dr Hodge when she was rostered to work in the Early Pregnancy Clinic, to request that Dr Hodge see a patient who had presented to Emergency, and was assessed as being suitable for the type of medical services provided by the clinic.

Insofar as it is to be inferred, it is to be inferred from the following:

1. the matters in paragraph 17(j) above;
2. outpatients attending the Early Pregnancy Clinic were either scheduled in advance following a referral from a patient's general practitioner or the Emergency Department, or referred that day from the Emergency Department to be seen that day (as set out above);
3. women attending the Early Pregnancy Clinic frequently had complex and complicated pregnancies and situations, and required a significant amount of time in their appointment;

4. Dr Hodge, when assigned to work in the Clinic, was the only clinician available to attend to the appointments and patients;
5. the expectation that Dr Hodge would do the work required of her to provide medical care to patients in the Early Pregnancy Clinic, which formed part of the medical services provided by doctors in the Obstetrics and Gynaecology department.

116. During the First Angliss Obstetrics and Gynaecology Rotation and when rostered to work in the Early Pregnancy Clinic, in order to undertake clinic appointments in accordance with the outpatient care direction, Dr Hodge worked hours in excess of rostered hours (**outpatient care overtime**).

### **Particulars**

The practice of the Early Pregnancy Clinic was that there was to be a maximum of 6 appointments per day, each with an allocation of 30 minutes. However, on occasion the clinic would be overbooked, or the patient load would be increased at late notice by referrals from the Emergency Department. Patients with appointments in the Early Pregnancy Clinic often had complex needs, causing appointments to frequently run longer than 30 minutes.

The outpatient care overtime was worked by Dr Hodge at the end of her shift, at least once per week during the weeks she was rostered to work in the Clinic, for about 30 minutes to 1 hour on each occasion.

Further particulars will be provided after discovery and before trial.

117. Eastern Health:

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

### **Particulars**

The knowledge of Eastern Health is to be inferred from:

1. the outpatient care direction;
2. the circumstances set out in the particulars to paragraph 116 above;
3. the fact that from time to time Dr Hodge spoke to a Registrar within the Obstetrics and Gynaecology department when she was performing outpatient care overtime for advice about particular issues, and/or when asked by the Registrar as to her whereabouts;
4. other medical staff observing Dr Hodge working after hours dealing with clinic appointments;
5. the fact that Dr Hodge did not leave work until she had completed all of the clinic appointments.

118. By reason of the matters alleged in paragraphs 17(j), 97, 115, and 117 above, the outpatient care overtime worked by Dr Hodge 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 Hodge included providing medical care to outpatients;
2. the conduct of Eastern Health in giving the outpatient care direction, as set out in paragraph 115 above;
3. the circumstances set out in the particulars to paragraph 116 above;
4. the knowledge of Eastern Health, as set out in paragraphs 117(a) and (b) above;
5. the failure by Eastern Health to direct Dr Hodge not to perform clinic appointments as set out in paragraph 117(c) above.

119. In the premises, Dr Hodge was entitled to be paid overtime for the outpatient care overtime that she worked, as set out in paragraph 116 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

120. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the outpatient care overtime worked by her during the First Angliss Obstetrics and Gynaecology Rotation.

121. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
122. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

### Admissions overtime

123. During the First Angliss Obstetrics and Gynaecology Angliss Rotation, Eastern Health directed Dr Hodge to perform patient admissions into the Obstetrics and Gynaecology department (**admissions direction**).

### **Particulars**

The admissions direction was partly oral, and partly to be inferred.

Insofar as it was oral, it was conveyed by a Registrar or Consultant in the Emergency Department telephoning Dr Hodge to inform her that there was a patient in Emergency who needed to be admitted to the Obstetrics and Gynaecology department. Following Dr Hodge receiving that direction, she attended to the admission under the supervision of a Registrar, who provided further directions about the tasks necessary for the admission of the patient.

Insofar as it is to be inferred, it is to be inferred from the matters in paragraph 17(h) above; and the tasks necessary to admit a patient, which included:

1. taking a thorough history from the patient;
2. taking instructions about why the patient had attended emergency;
3. examining the patient's presentation;
4. investigating any results of pathology or imaging tests the patient had undergone;
5. writing up medications;
6. discussing the patient's status with a Registrar or Consultant;
7. writing an admission note for the patient and their ongoing treatment plan;
8. organising any further tests required;
9. making arrangements for any surgical procedures required.

124. During the First Angliss Obstetrics and Gynaecology Rotation, in order to perform patient admissions in accordance with the admissions direction, Dr Hodge worked hours in excess of rostered hours (**admissions overtime**).

#### **Particulars**

Each patient admission took between 30 to 90 minutes.

If Dr Hodge received an admissions direction anytime earlier than 15 minutes before her shift was rostered to end, then she performed that admission. When Dr Hodge received the direction within the last hour of her shift, this frequently resulted in her performing overtime.

Dr Hodge performed admissions overtime around once per week, for around 30 minutes to an hour on each occasion.

Further particulars will be provided after discovery and before trial.

125. Eastern Health:
- (a) knew that there was insufficient time during rostered hours to complete patient admissions in accordance with the admissions direction; and
  - (b) knew that Dr Hodge performed admissions overtime; and
  - (c) did not direct Dr Hodge not to perform admissions overtime.

#### **Particulars**

The knowledge of Eastern Health is to be inferred from:

1. the admissions direction;
2. the tasks necessary to complete patient admissions, including those matters in the particulars to paragraph 123 above;
3. the circumstances set out in the particulars to paragraph 124 above;
4. the fact that Dr Hodge attended to patient admissions under the supervision of a Registrar, including after hours.
5. other medical staff (including senior medical staff) observing Dr Hodge undertaking patient admissions after hours.

126. By reason of the matters alleged in paragraphs 17(h), 97, 123, and 125 above, the admissions overtime worked by Dr Hodge 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 Hodge included patient admissions;
2. the conduct of Eastern Health in giving the admissions direction, as set out in paragraph 123 above;
3. the circumstances set out in the particulars to paragraph 124 above;
4. the knowledge of Eastern Health, as set out in paragraphs 125(a) and (b) above;
6. the failure by Eastern Health to direct Dr Hodge not to perform the admissions overtime, as set out in paragraph 125(c) above.

127. In the premises, Dr Hodge was entitled to be paid overtime for the admissions overtime that she worked, as set out in paragraph 124 at the rates set out in clause 32.2.2 of the 2013 Agreement.

128. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the admissions overtime worked by her during the First Angliss Obstetrics and Gynaecology Rotation.

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

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

### Handover overtime

131. During the First Angliss Obstetrics and Gynaecology Rotation, Eastern Health directed Dr Hodge to conduct handover of patient information between medical staff at the end of certain shifts (**handover direction**).

### Particulars

The handover direction was partly oral, and is partly to be inferred.

Insofar as it was oral, it was conveyed by senior medical staff (Registrars and Consultants) from time to time during the Angliss Obstetrics and Gynaecology Rotation. The direction was a request by senior medical staff in the incoming shift to be informed by the outgoing shift as to status of the patients in the department.

Insofar as it is to be inferred, it is to be inferred from:

1. the matters in paragraph 17(c) above;
2. the necessity for a handover to ensure proper continuity of care and patient safety.

Further particulars will be provided after discovery and before trial.

132. During the First Angliss Obstetrics and Gynaecology Rotation, in order to conduct handover, Dr Hodge worked hours in excess of rostered hours (**handover overtime**).

### Particulars

Dr Hodge performed handover overtime at the end of a rostered shift finishing at 5.00pm or 9.00pm approximately once per week, for around 30 minutes on each occasion.

It was typical or frequent for the doctor to whom handover was to be given to be unavailable for handover, including because they were in theatre, before Dr Hodge's shift was rostered to finish at 5.00pm or 9.00pm.

Further, from time to time Dr Hodge was unavailable to commence handover at the scheduled time, including because she was performing an admission or in theatre, causing her to be unable to complete handover before her rostered finish time.

Further particulars will be provided after discovery and before trial.

133. Eastern Health:
- (a) knew that there was insufficient time during rostered hours to undertake handover in accordance with the handover direction;
  - (b) knew that Dr Hodge performed handover overtime;

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

### **Particulars**

The knowledge of Eastern Health is to be inferred from:

1. the handover direction; and
  2. the circumstances set out in the particulars to paragraph 132 above;
  3. other medical staff (including senior medical staff) observing Dr Hodge working after hours conducting handover; and
  4. the fact that Dr Hodge did not leave work until she had completed handover of her patients.
134. By reason of the matters alleged in paragraphs 17(c), 97, 131, and 133 above, the handover overtime worked by Dr Hodge 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 Hodge included conducting handover;
  2. the conduct of Eastern Health in giving the handover direction, as set out in paragraph 131 above;
  3. the commencement and conduct of handover in the circumstances described in the particulars to paragraph 132 above;
  4. the knowledge of Eastern Health, as set out in paragraphs 133(a) and 133(b) above; and
  5. the failure by Eastern Health to direct Dr Hodge not to perform handover overtime as set out in paragraph 133(c) above.
135. In the premises, Dr Hodge was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 132 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

136. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the handover overtime worked by her during the First Angliss Obstetrics and Gynaecology Rotation.
137. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
138. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

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

139. Between 5 February 2018 and 5 August 2018, pursuant to the direction of Eastern Health set out in paragraph 18(e) above, Dr Hodge worked in Obstetrics and Gynaecology at Angliss Hospital (**Second Angliss Obstetrics and Gynaecology Rotation**).

Rosters

140. During the Second Angliss Obstetrics and Gynaecology Rotation, Dr Hodge was rostered to work on a six-week rotating roster of the following shifts:
  - (a) for one week of the six-week period, a week of night shifts from 8:30pm to 8.30am, following which Dr Hodge was not rostered for a week;
  - (b) for the remainder of the six-week period, a combination of:
    - (i) regular day shifts from 8.00am to 5.00pm;
    - (ii) long day shifts from 8.00am to 9.00pm;
  - (c) the shifts in subparagraph (b) above were allocated between three main areas of work within the Obstetrics and Gynaecology department, being ward work, the Early Pregnancy Clinic, and the birth suite.

### **Particulars**

Copies of Dr Hodge's rosters for the Second Angliss Obstetrics and Gynaecology Rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

#### Medical emergency overtime

141. During the Second Angliss Obstetrics and Gynaecology Rotation, Eastern Health directed Dr Hodge to attend to medical emergencies (**medical emergency direction**).

### **Particulars**

The medical emergency direction is to be inferred from:

1. the matters in paragraph 17(e) above;
  2. from time to time during the Second Angliss Obstetrics and Gynaecology Rotation, Dr Hodge was alerted to a medical emergency by a message from nursing or midwifery staff to clinicians within the Obstetrics and Gynaecology department, or by a MET call; 'code pink' (urgent care required for mothers); 'code blue'; or 'neonatal code blue' (urgent care required where an infant was not breathing);
  3. the clinical requirement for Dr Hodge to attend to medical emergencies in order to ensure proper patient care and safety;
  4. the inefficiency (in an urgent situation) of briefing on-coming staff, particularly in circumstances where Dr Hodge was the first person available to treat the patient suffering a medical emergency;
  5. the nature of work in Obstetrics and Gynaecology being that patients occasionally suffered a clinical deterioration requiring medical staff urgently to attend to their care and stabilisation.
142. During the Second Angliss Obstetrics and Gynaecology Rotation, in order to attend to medical emergencies, Dr Hodge worked hours in excess of rostered hours (**medical emergency overtime**).

### **Particulars**

Dr Hodge attended to medical emergencies that arose at the end of her shift, and did not leave until the patient was stabilised.

If Dr Hodge was the first doctor to arrive at the emergency, she undertook initial steps to stabilise the patient, such as performing chest compressions on a newborn with breathing difficulties, until the paediatric and MET team arrived.

On other occasions, Dr Hodge attended the emergency with a Registrar, and followed the direction of the Registrar in attending to the patient. On occasions where a Registrar or Consultant did not attend the emergency, Dr Hodge would notify the Registrar or Consultant by telephone and receive directions as to the proper treatment for the patient.

Further particulars will be provided after discovery and before trial.

143. Eastern 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 Hodge performed medical emergency overtime;
- (c) did not direct Dr Hodge not to perform medical emergency overtime.

**Particulars**

The knowledge of Eastern Health is to be inferred from:

1. the medical emergency direction;
2. the circumstances set out in the particulars to paragraph 142 above;
3. the fact that medical staff (including senior medical staff) observed Dr Hodge working after hours dealing with medical emergencies;
4. the fact that, from time to time, Dr Hodge attended to medical emergencies under the supervision of a Consultant or Registrar, including after hours;
5. the fact that, from time to time, Dr Hodge telephoned a Consultant or Registrar for advice about the approach to take to treating patients suffering an emergency, including after hours;
6. the fact that Dr Hodge did not leave work until she had treated and stabilised the patient suffering a medical emergency.

144. By reason of the matters alleged in paragraphs 17(e), 139, 141, and 143 above, the medical emergency overtime worked by Dr Hodge 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 Hodge included attending to medical emergencies;
  2. the conduct of Eastern Health in giving the medical emergency direction, as set out in paragraph 141 above;
  3. the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 142 above;
  4. the knowledge of Eastern Health, as set out in paragraphs 143(a) and 143(b) above; and
  5. the failure by Eastern Health to direct Dr Hodge not to perform medical emergency overtime as set out in paragraph 143(c) above.
145. In the premises, Dr Hodge was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 142 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
146. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical emergency overtime worked by her during the Second Angliss Obstetrics and Gynaecology Rotation.
147. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
148. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

## Surgical procedures overtime

149. During the Second Angliss Obstetrics and Gynaecology Rotation, Eastern Health directed Dr Hodge, at the end of her shift, to complete surgical procedures before she finished work on that day (**surgical procedures direction**).

### **Particulars**

The surgical procedures direction is to be inferred from the following:

1. from time to time, most frequently when Dr Hodge was working in the birth suite, it was necessary to take a patient to theatre for emergency surgery, such as a vacuum delivery or caesarean section;
  2. Dr Hodge attended theatre with the patient and assisted the Registrar or Consultant with the surgery;
  3. the nature of the work, which included:
    - (a) finishing surgical procedures that had been commenced prior to the end of Dr Hodge's shift;
    - (b) adequately document the procedure; and
    - (c) ensuring the patient was stabilised so that she could be transferred to the recovery area and then returned to the ward.
150. During the Second Angliss Obstetrics and Gynaecology Rotation, in order to complete surgical procedures in accordance with the surgical procedures direction, Dr Hodge worked hours in excess of rostered hours (**surgical procedures overtime**).

### **Particulars**

During the Second Angliss Obstetrics and Gynaecology Rotation, Dr Hodge was directed to assist with surgical procedures that started before her rostered finishing time but continued beyond the finishing time.

Surgical procedures overtime occurred in circumstances where a patient was experiencing complications while she was in labour, such as she had significant bleeding, which required the birth to be transferred to a surgical theatre.

The surgical procedures overtime was worked by Dr Hodge approximately once per fortnight, for about 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

151. Eastern Health:

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

#### **Particulars**

The knowledge of Eastern Health is to be inferred from:

1. the surgical procedures direction;
2. the circumstances set out in the particulars to paragraph 150 above;
3. the fact that Consultants and Registrars continued and completed surgical procedures with Dr Hodge, including after her rostered finish time;
4. the fact that Dr Hodge did not leave work until the surgical procedure had been concluded, the patient stabilised and corresponding medical records completed.

152. By reason of the matters alleged in paragraphs 17(i), 139, 149, and 151 above, the surgical procedures overtime worked by Dr Hodge 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 Hodge included undertaking surgical procedures;
2. the conduct of Eastern Health in giving the surgical procedures direction as set out in paragraph 149 above;

3. the circumstances in which surgical procedures were undertaken in the Second Angliss Obstetrics and Gynaecology Rotation as set out in paragraph 150 above;
  4. the knowledge of Eastern Health, as set out in paragraphs 151(a) and (b) above; and
  5. the failure by Eastern Health to direct Dr Hodge not to perform surgical procedures overtime as set out in paragraph 151(c) above.
153. In the premises, Dr Hodge was entitled to be paid overtime for the surgical procedures overtime that she worked, as set out in paragraph 150 above, at the rates set out in clause 32.2.2. of the 2013 Agreement.
154. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the surgical procedures overtime worked by her during the Second Angliss Obstetrics and Gynaecology Rotation.
155. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
156. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

#### Outpatient care overtime

157. During the Second Angliss Obstetrics and Gynaecology Rotation, Eastern Health directed Dr Hodge to provide medical care to outpatients who had appointments in or were referred to the Early Pregnancy Clinic before she finished work on that day (**outpatient care direction**).

#### **Particulars**

The outpatient care direction was partly oral and is partly to be inferred.

Insofar as it was oral, the direction was given, from time to time, by a Registrar or Consultant in the Emergency Department who called Dr Hodge when she was rostered to work in the Early Pregnancy Clinic, to request that Dr Hodge see a patient who had

presented to Emergency, and was assessed as being suitable for the type of medical services provided by the clinic.

Insofar as it is to be inferred, it is to be inferred from the following:

1. the matters in paragraph 17(j) above;
2. outpatients attending the Early Pregnancy Clinic were either scheduled in advance following a referral from a patient's general practitioner or the Emergency Department, or referred that day from the Emergency Department to be seen that day (as set out above);
3. women attending the Early Pregnancy Clinic frequently had complex and complicated pregnancies and situations, and required a significant amount of time in their appointment;
4. Dr Hodge, when assigned to work in the Clinic, was the only clinician available to attend to the appointments and patients;
5. the expectation that Dr Hodge would do the work required of her to provide medical care to patients in the Early Pregnancy Clinic, which formed part of the medical services provided by doctors in the Obstetrics and Gynaecology department.

158. During the Second Angliss Obstetrics and Gynaecology Rotation, in order to undertake clinic appointments in accordance with the outpatient care direction, Dr Hodge worked hours in excess of rostered hours (**outpatients care overtime**).

### **Particulars**

The practice of the Early Pregnancy Clinic was that there was to be a maximum of 6 appointments per day, each with an allocation of 30 minutes. However, on occasion the clinic would be overbooked or the patient load would be increased at late notice by referrals from the Emergency Department. Patients with appointments in the Early Pregnancy Clinic often had complex needs, causing appointments to frequently run longer than 30 minutes.

The outpatient care overtime was worked by Dr Hodge at the end of her shift, at least once per week during the weeks she was rostered to work in the Clinic, for about 30 minutes to 1 hour on each occasion.

Further particulars will be provided after discovery and before trial.

159. Eastern Health:

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

### **Particulars**

The knowledge of Eastern Health is to be inferred from:

1. the outpatient care direction;
2. the circumstances set out in the particulars to paragraph 159 above;
3. the fact that from time to time Dr Hodge spoke to a Registrar within the Obstetrics and Gynaecology department when she was performing outpatient care overtime for advice about particular issues, and/or when asked by the Registrar as to her whereabouts;
4. other medical staff observing Dr Hodge working after hours dealing with clinic appointments;
5. the fact that Dr Hodge did not leave work until she had completed all of the clinic appointments.

160. By reason of the matters alleged in paragraphs 17(k), 139, 157, and 159 above, the outpatient care overtime worked by Dr Hodge constituted “authorised hours” within the meaning of clause 32.2.1(b) of the 2013 Agreement.

### **Particulars**

Authorisation is implied from the following:

1. part of the medical services provided by Dr Hodge included providing medical care to outpatients;
2. the conduct of Eastern Health in giving the outpatient care direction, as set out in paragraph 157 above;
3. the circumstances set out in the particulars to paragraph 158 above;

4. the knowledge of Eastern Health, as set out in paragraphs 159(a) and (b) above;
  5. the failure by Eastern Health to direct Dr Hodge not to perform clinic appointments as set out in paragraph 159(c) above.
161. In the premises, Dr Hodge was entitled to be paid overtime for the outpatient care overtime that she worked, as set out in paragraph 158 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
162. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the outpatient care overtime worked by her during the Second Angliss Obstetrics and Gynaecology Rotation.
163. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
164. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

#### Admissions overtime

165. During the Second Angliss Obstetrics and Gynaecology Rotation, Eastern Health directed Dr Hodge to perform patient admissions into the Obstetrics and Gynaecology department (**admissions direction**).

#### **Particulars**

The admissions direction was partly oral, and partly to be inferred.

Insofar as it was oral, it was conveyed by a Registrar or Consultant in the Emergency Department telephoning Dr Hodge to inform her that there was a patient in Emergency who needed to be admitted to the Obstetrics and Gynaecology department. Following Dr Hodge receiving that direction, she attended to the admission under the supervision of a Registrar, who provided further directions about the tasks necessary for the admission of the patient.

Insofar as it is to be inferred, it is to be inferred from the matters referred to in paragraph 17(h) above; and the tasks necessary to admit a patient, which included:

1. taking a thorough history from the patient;
2. taking instructions about why the patient had attended emergency;
3. examining the patient's presentation;
4. investigating any results of pathology or imaging tests the patient had undergone;
5. writing up medications;
6. discussing the patient's status with a Registrar or Consultant;
7. writing an admission note for the patient and their ongoing treatment plan;
8. organising any further tests required;
9. making arrangements for any surgical procedures required.

166. During the Second Angliss Obstetrics and Gynaecology Rotation, in order to perform patient admissions in accordance with the admissions direction, Dr Hodge worked hours in excess of rostered hours (**admissions overtime**).

#### **Particulars**

Each patient admission took between 30 to 90 minutes.

If Dr Hodge received an admissions direction anytime earlier than 15 minutes before her shift was rostered to end, then she performed that admission. When Dr Hodge received the direction within the last hour of her shift, this frequently resulted in her performing overtime.

Dr Hodge performed admissions overtime around once per week, for around 30 minutes to an hour on each occasion.

Further particulars will be provided after discovery and before trial.

167. Eastern Health:

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

### **Particulars**

The knowledge of Eastern Health is to be inferred from:

1. the admissions direction;
  2. the tasks necessary to complete patient admissions, including those matters in the particulars to paragraph 165 above;
  3. the circumstances set out in the particulars to paragraph 166 above;
  4. the fact that Dr Hodge attended to patient admissions under the supervision of a Registrar, including after hours.
  5. other medical staff (including senior medical staff) observing Dr Hodge undertaking patient admissions after hours.
168. By reason of the matters alleged in paragraphs 17(h), 139, 165, and 167 above, the admissions overtime worked by Dr Hodge 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 Hodge included patient admissions;
  2. the conduct of Eastern Health in giving the admissions direction, as set out in paragraph 165 above;
  3. the circumstances set out in the particulars to paragraph 166 above;
  4. the knowledge of Eastern Health, as set out in paragraphs 167(a) and (b) above;
  5. The failure by Eastern Health to direct Dr Hodge not to perform the admissions overtime, as set out in paragraph 167(c) above.
169. In the premises, Dr Hodge was entitled to be paid overtime for the admissions overtime that she worked, as set out in paragraph 166 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
170. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the admissions overtime worked by her during the Second Obstetrics and Gynaecology Angliss Rotation.

171. By reason of the matters alleged above, Eastern Health has contravened clause 32.2 of the 2013 Agreement.
172. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

### Handover overtime

173. During the Second Angliss Obstetrics and Gynaecology Rotation, Eastern Health directed Dr Hodge to conduct handover of patient information between medical staff at the end of certain shifts (**handover direction**).

#### **Particulars**

The handover direction was partly oral, and is partly to be inferred.

Insofar as it was oral, it was conveyed by senior medical staff (Registrars and Consultants) from time to time during the Second Angliss Obstetrics and Gynaecology Rotation. The direction was a request by senior medical staff in the incoming shift to be informed by the outgoing shift as to status of the patients in the department.

Insofar as it is to be inferred, it is to be inferred from:

1. the matters in paragraph 17(c) above;
2. the necessity of a handover to ensure proper continuity of care and patient safety.

Further particulars will be provided after discovery and before trial.

174. During the Second Angliss Obstetrics and Gynaecology Rotation, in order to conduct handover, Dr Hodge worked hours in excess of rostered hours (**handover overtime**).

#### **Particulars**

Dr Hodge performed handover overtime at the end of a rostered shift finishing at 5.00pm or 9.00pm approximately once per week, for around 30 minutes on each occasion.

It was typical or frequent for the doctor to whom handover was to be given to be unavailable for handover, including because

they were in theatre, before Dr Hodge's shift was rostered to finish at 5.00pm or 9.00pm.

From time to time Dr Hodge was unavailable to commence handover at the scheduled time, including because she was performing an admission or in theatre, causing her to be unable to complete handover before her rostered finish time.

Further particulars will be provided after discovery and before trial.

175. Eastern Health:

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

### **Particulars**

The knowledge of Eastern Health is to be inferred from:

1. the handover direction;
2. the circumstances set out in the particulars to paragraph 174 above;
3. other medical staff (including senior medical staff) observing Dr Hodge working after hours conducting handover;
4. senior medical staff directing Dr Hodge, late in her rostered shift, to perform work, such as patient admissions, which they knew or should be taken to have known could not be finished with enough time in rostered hours to do handovers; and
5. the fact that Dr Hodge did not leave work until she had completed handover of her patients.

176. By reason of the matters alleged in paragraphs 17(c), 139, 173, and 175 above, the handover overtime worked by Dr Hodge 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 Hodge including conducting handover;
2. the conduct of Eastern Health in giving the handover direction, as set out in paragraph 173 above;
3. the commencement and conduct of handover in the circumstances described in the particulars to paragraph 174 above
4. the knowledge of Eastern Health, as set out in paragraphs 175(a) and (b); and
5. the failure by Eastern Health to direct Dr Hodge not to perform handover overtime as set out in paragraph 133(c) above.

177. In the premises, Dr Hodge was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 174 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

178. Eastern Health did not pay Dr Hodge overtime, in accordance with clause 32.2 of the 2013 Agreement, for the handover overtime worked by her during the Second Angliss Obstetrics and Gynaecology Rotation.

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

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

### **D7 Royal Women's Hospital Obstetrics and Gynaecology Rotation – 6 May 2019 to 4 August 2019**

181. Between 6 May 2019 and 4 August 2019, pursuant to the direction of Royal Women's pleaded in paragraph 18(g) above, Dr Hodge worked in the ward division of the Obstetrics and Gynaecology department at Royal Women's (**First Royal Women's Obstetrics and Gynaecology Rotation**).

### Particulars

During the period of her employment at Royal Women's, Dr Hodge was employed in the Obstetrics and Gynaecology department. Within that department, Dr Hodge worked a weekend shift rotation (from 18 March 2019 to 5 May 2019); a ward rotation (as described above); a night rotation (from 5 August 2019 to 3 November 2019); and a 'red team' (mixed duties) rotation (from 4 November 2019 to 29 December 2019).

### Rosters

182. During the First Royal Women's Obstetrics and Gynaecology Rotation, Dr Hodge worked a roster comprising the following shifts:

- (a) 8.00am to 5.00pm, usually two or three times per week;
- (b) 8.00am to 1.00pm, usually once per week; and
- (c) 8.00am to 10.00pm, usually once per week.

### Particulars

Copies of Dr Hodge's rosters for the First Royal Women's Obstetrics and Gynaecology Rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

### Ward round preparation overtime

183. During the First Royal Women's Obstetrics and Gynaecology Rotation, Royal Women's directed Dr Hodge 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 is partly to be inferred.

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.

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

Insofar as it is to be inferred, it is inferred from the matters in paragraph 17(a) above, and from the fact that the tasks necessary to complete ward round preparation included reviewing patient results and new clinical information that had come in overnight, checking and updating the patient list as necessary, checking ultrasounds, and preparing ward round notes.

184. During the First Royal Women's Obstetrics and Gynaecology Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Hodge worked hours in excess of rostered hours (**ward round preparation overtime**).

#### **Particulars**

All clinicians working in the wards of the Obstetrics and Gynaecology department of the Royal Women's whose rostered shift commenced at 8.00am were required to attend a department-wide handover meeting at 8.00am. Ward rounds commenced immediately after the handover meeting, which usually ran for around 30 minutes.

On days when Dr Hodge was rostered to start at 8.00am, she attended work about 30 minutes before the start of her rostered shift to undertake ward round preparation.

Further particulars will be provided after discovery and before trial.

185. Royal Women's:
- (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 Hodge performed ward round preparation overtime; and
  - (c) did not direct Dr Hodge not to perform ward round preparation overtime.

#### **Particulars**

The knowledge of Royal Women's 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 183 above;
3. Dr Hodge's rostered start time of 8.00am;
4. the commencement of ward rounds shortly after 8:00 am in the circumstances set out in the particulars to paragraph 184 above;
5. other medical staff (including senior medical staff) observing Dr Hodge working before the start of her shift preparing for ward rounds;
6. the fact that Dr Hodge was prepared for ward rounds conducted by the Consultants and or Registrars on duty, including being able to provide information regarding recent patient updates, which required being across the content of test results and clinical information that had come in overnight, and therefore could only have been possible had she reviewed that information prior to 8.00am.

186. By reason of the matters alleged in paragraphs 17(a), 181, 183, and 185 above, the ward round preparation overtime worked by Dr Hodge 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 medical services provided by Dr Hodge included ward round preparation before the commencement of ward rounds;
2. Dr Hodge's rostered start time of 8.00am;
3. the commencement of ward rounds shortly after 8.00am in the circumstances set out in the particulars to paragraph 184 above;
4. the conduct of Royal Women's in giving the ward round preparation direction, as set out in paragraph 183 above;
5. the knowledge of Royal Women's, as set out in paragraphs 185(a) and 185(b) above; and
6. the failure of Royal Women's to direct Dr Hodge not to perform the ward round preparation overtime, as set out in paragraph 185(c) above.

187. In the premises, Dr Hodge was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 184 above at the rates set out in clause 36.2(c) of the 2018 Agreement.
188. Royal Women's did not pay Dr Hodge overtime, in accordance with clause 36.2(c) of the 2018 Agreement, for the ward round preparation overtime worked by her during the First Royal Women's Obstetrics and Gynaecology Rotation.
189. By reason of the matters alleged above, Royal Women's has contravened clause 36.2 of the 2018 Agreement.
190. By reason of the matters alleged in the above paragraph, Royal Women's has contravened s 50 of the FW Act.

#### Medical emergencies overtime

191. During the First Royal Women's Obstetrics and Gynaecology Rotation, Royal Women's directed Dr Hodge to attend to medical emergencies (**medical emergency direction**).

#### **Particulars**

The medical emergency direction is to be inferred from:

1. the matters in paragraph 17(e) above;
2. from time to time during the First Royal Women's Obstetrics and Gynaecology Rotation, Dr Hodge was alerted to a medical emergency by a message from nursing or midwifery staff to clinicians within the Obstetrics and Gynaecology department to review a patient suffering, for example, from hypertension, reduced foetal movement, abnormal cardiotocography, or vaginal bleeding;
3. the clinical requirement for Dr Hodge to attend to medical emergencies in order to ensure proper patient care and safety;
4. the inefficiency (in an urgent situation) of briefing on-coming staff, particularly in circumstances where Dr Hodge was the first person available to treat the patient suffering a medical emergency;
5. the nature of work in Obstetrics and Gynaecology being that patients occasionally suffered a clinical deterioration requiring

medical staff urgently to attend to their care and stabilisation and that delays in responding to obstetrics emergencies could have serious consequences.

192. During the First Royal Women's Obstetrics and Gynaecology Rotation, in order to attend to medical emergencies, Dr Hodge worked hours in excess of rostered hours (**medical emergency overtime**).

#### **Particulars**

Patients would occasionally suffer a clinical deterioration which required Dr Hodge to attend to and stabilise the patient. From time to time, these events occurred close to or at the end of a rostered shift. It was necessary, for the safety of the patient, for Dr Hodge to immediately attend to the patient until the patient had stabilised.

Dr Hodge performed medical emergency overtime after the end of a rostered shift two to three times per week, for around 30 to 60 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

193. Royal Women's
- (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 Hodge performed medical emergency overtime;
  - (c) did not direct Dr Hodge not to perform medical emergency overtime.

#### **Particulars**

The knowledge of Royal Women's is to be inferred from:

1. the medical emergency direction;
2. the circumstances set out in the particulars to paragraph 192 above;
3. other medical staff (including senior medical staff) observing Dr Hodge working after hours dealing with medical emergencies;

4. the fact that Dr Hodge would on occasion telephoned Registrars and Consultants for advice about the approach to take to treating patients suffering an emergency, including after hours;
5. the fact that Dr Hodge attended to medical emergencies with Registrars and Consultants, including after the end of her rostered shift;
6. the fact that Dr Hodge did not leave work until she had treated and stabilised the patient suffering a medical emergency.

194. By reason of the matters alleged in paragraphs 17(e), 181, 191 and 193 above, the medical emergency overtime worked by Dr Hodge 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. part of the medical services provided by Dr Hodge 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 192 above;
4. the knowledge of Royal Women’s, as set out in paragraphs 193(a) and 193(b) above; and
5. the failure by Royal Women’s to direct Dr Hodge not to perform medical emergency overtime as set out in paragraph 193(c) above.

195. In the premises, Dr Hodge was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 192, at the rates set out in clause 36.2(c) of the 2018 Agreement.

196. Royal Women’s did not pay Dr Hodge overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical emergency overtime worked by her during the First Royal Women’s Obstetrics and Gynaecology Rotation.

197. By reason of the matters alleged above, Royal Women’s has contravened clause 36.2 of the 2018 Agreement.

198. By reason of the matters alleged in the above paragraph, Royal Women's has contravened s 50 of the FW Act.

Medical communication overtime

199. During the First Royal Women's Obstetrics and Gynaecology Rotation, Royal Women's directed Dr Hodge to speak with patients and their families and visitors about patient treatment (**medical communication direction**).

**Particulars**

The medical communication direction is to be inferred from:

1. the matters in paragraph 17(g) above;
  2. the requirement for Dr Hodge to communicate with patients and their families and visitors in order to keep them informed about the patient's treatment and care plans or to obtain information from them relevant to the patient's care.
200. During the First Royal Women's Obstetrics and Gynaecology Rotation, in order to perform medical communication, Dr Hodge worked hours in excess of rostered hours (**medical communication overtime**).

**Particulars**

From time to time the families or visitors of Dr Hodge's patients would attend the Royal Women's Hospital at, close to, or after the rostered finishing time of Dr Hodge's shift and ask to speak to the treating doctor of the patient they were visiting. Dr Hodge would speak to family members and visitors in these circumstances. Further, patients' family members often sought assistance with planning for a patient's long stay in hospital. As the doctor involved in the patient's care, it was necessary for Dr Hodge to have these communications.

Dr Hodge's conversations with family members and visitors involved discussing results and treatment plans, which Dr Hodge would then document.

In circumstances where these conversations took place close to or at the end of Dr Hodge's rostered shifts, she was required to work beyond the rostered finishing time of her shift.

Dr Hodge performed medical communication overtime after the end of a rostered shift around once per week, for around 30 minutes to one hour on each occasion.

201. Royal Women's:

- (a) knew that the medical communication direction could not be performed during rostered hours;
- (b) knew that Dr Hodge performed medical communication overtime;
- (c) did not direct Dr Hodge not to perform medical communication overtime.

#### **Particulars**

The knowledge of Royal Women's is to be inferred from:

- 1. the medical communication direction; and
- 2. the circumstances set out in the particulars to paragraph 200 above;
- 3. the fact that other medical staff (including senior medical staff) attended with Dr Hodge after hours to speak with patients' families and/or visitors;
- 4. the fact that Dr Hodge did not leave work until she had finished the relevant medical communication.

202. By reason of the matters alleged in 17(g), 181, 199, and 201 above, the medical communication overtime worked by Dr Hodge 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. part of the medical services provided by Dr Hodge included attending to medical communication;
- 2. the conduct of Royal Women's in giving the medical communication direction, as set out in paragraph 199 above;
- 3. the knowledge of Royal Women's, as set out in paragraphs 201(a) and 201(b) above; and

4. the failure by Royal Women's to direct Dr Hodge not to perform medical communication overtime as set out in paragraph 201(c) above.

203. In the premises, Dr Hodge was entitled to be paid overtime for the medical communication overtime that she worked, as set out in paragraph 200 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
204. Royal Women's did not pay Dr Hodge overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical communication overtime worked by her during the First Royal Women's Obstetrics and Gynaecology Rotation.
205. By reason of the matters alleged above, Royal Women's has contravened clause 36.2 of the 2018 Agreement.
206. By reason of the matters alleged in the above paragraph, Royal Women's has contravened s 50 of the FW Act.

#### Admissions overtime

207. During the First Royal Women's Obstetrics and Gynaecology Rotation, Royal Women's directed Dr Hodge to perform patient admissions into the Obstetrics and Gynaecology department (**admissions direction**).

#### **Particulars**

The admissions direction was partly oral, and partly to be inferred.

Insofar as it was oral, it was conveyed by a Registrar in the Emergency Department or the Pregnancy Daycare Centre who telephoned the Obstetrics and Gynaecology department and requested that a patient that had presented to their department be admitted into Obstetrics and Gynaecology. Ordinarily, the first call was made to a Consultant in the Obstetrics or Gynaecology department, who set up a plan for the admission of the patient. Subsequently the Registrar from Emergency or Pregnancy Daycare called Dr Hodge to request that she attend to the admission.

Insofar as it is to be inferred, it is to be inferred from the matters in paragraph 17(h) above; and the tasks necessary to admit a patient, which included:

1. taking a thorough history from the patient;
2. taking instructions about why the patient had attended emergency or the Pregnancy Daycare Centre;
3. examining the patient;
4. investigating any results of pathology or imaging tests the patient had undergone;
5. writing up medications;
6. writing an admission note for the patient and their ongoing treatment plan;
7. organising any further tests required;
8. making arrangements for any surgical procedures required.

208. During the First Royal Women's Obstetrics and Gynaecology Rotation, in order to perform patient admissions in accordance with the admissions direction, Dr Hodge worked hours in excess of rostered hours (**admissions overtime**).

### **Particulars**

Each admission took approximately 30 minutes to 90 minutes;

If Dr Hodge received an admissions direction after 4.30pm but before 5.00pm, when her shift was rostered to end, then she performed that admission, which often involved working overtime. It was necessary for Dr Hodge to perform the admission herself in order to the patient to avoid having to wait an unknown amount of time to be admitted, as from 5.00pm there was only one resident on duty who was required to cover 4 wards, and had a substantial workload as a result.

Dr Hodge performed admissions overtime around once per week, typically for about 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

209. Royal Women's:

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

### **Particulars**

The knowledge of Royal Women's is to be inferred from:

- 1. the admissions direction, including the tasks necessary to complete patient admissions, and the fact that Dr Hodge was required to discuss the patient being admitted with a Registrar, as set out in the particulars to paragraph 207 above;
- 2. the circumstances set out in the particulars to paragraph 208 above;
- 3. other medical staff (including senior medical staff) observing Dr Hodge undertaking patient admissions after hours.

210. By reason of the matters alleged in paragraphs 17(h), 181, 207, and 209 above, the admissions overtime worked by Dr Hodge 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 medical services provided by Dr Hodge included patient admissions;
- 2. the conduct of Royal Women's in giving the admissions direction, as set out in paragraph 207 above;
- 3. the knowledge of Royal Women's, as set out in paragraphs 209(a) and 209(b) above;
- 4. the failure by Royal Women's to direct Dr Hodge not to perform the admissions overtime, as set out in paragraph 209(c) above.

211. In the premises, Dr Hodge was entitled to be paid overtime for the admissions overtime that she worked, as set out in paragraph 208 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
212. Royal Women's did not pay Dr Hodge overtime, in accordance with clause 36.2 of the 2018 Agreement, for the admissions overtime worked by her during the First Royal Women's Obstetrics and Gynaecology Rotation.
213. By reason of the matters alleged above, Royal Women's has contravened clause 36.2 of the 2018 Agreement.
214. By reason of the matters alleged in the above paragraph, Royal Women's has contravened s 50 of the FW Act.

#### Medical records overtime

215. During the First Royal Women's Obstetrics and Gynaecology Rotation, Royal Women's directed Dr Hodge:
- (a) to complete medical records for patients in the Obstetrics and Gynaecology department;
  - (b) to complete medical records in a timely manner;
  - (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 is partly to be inferred.

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.
2. Insofar as it was oral, from time to time during the First Royal Women's Obstetrics and Gynaecology Rotation, Dr Hodge was

directed by the Consultants and Registrars to ensure that the patient notes were updated before the end of the day, so that the notes could be used for the ward round the following day (along with any updated information from overnight).

3. Insofar as it is to be inferred, it is to be inferred from:
  - (a) the matters in subparagraphs (1)–(2) above;
  - (b) the matters in paragraph 17(f) above
  - (c) the clinical requirement to complete medical records for proper patient care.

216. During the First Royal Women’s Obstetrics and Gynaecology Rotation, in order to complete medical records in accordance with the medical records direction, Dr Hodge worked hours in excess of rostered hours (**medical records overtime**).

### **Particulars**

During the First Royal Women’s Obstetrics and Gynaecology Rotation, Dr Hodge and one other resident, plus two Registrars, were responsible for patients in 28 antenatal beds, approximately 6 beds in the High Dependency Unit, and variable numbers of unwell postnatal patients. Dr Hodge was also required to provide care to obstetrics and gynaecology patients admitted to the ICU, critical care unit (CCU) and other wards at the Royal Melbourne Hospital.

The patient load was such that there was insufficient time during rostered hours to complete medical records in a timely manner.

Dr Hodge performed medical records overtime after the conclusion of almost all of her rostered shifts, for approximately 2 – 3 hours per week.

217. Royal Women’s:
  - (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the medical records direction;
  - (b) knew that Dr Hodge performed medical records overtime;
  - (c) did not direct Dr Hodge not to perform medical records overtime.

### **Particulars**

The knowledge of Royal Women's is to be inferred from the following matters:

1. the medical records direction;
2. the patient notes recorded a date and time stamp indicating when and by whom a particular record had been completed;
3. the fact that senior medical staff including Registrars observed Dr Hodge completing medical records after hours.

218. By reason of the matters alleged in paragraph, 17(f), 181, 215, and 217 above, the medical records overtime worked by Dr Hodge 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 medical services provided by Dr Hodge included the timely completion of medical records;
2. the conduct of Royal Women's in giving the medical records direction, as set out in paragraph 215 above;
3. the knowledge of Royal Women's, as set out in paragraphs 217(a) and 217(b) above; and
4. the failure by Royal Women's to direct Dr Hodge not to perform medical records overtime as set out in paragraphs in 217(c) above.

219. In the premises, Dr Hodge was entitled to be paid overtime for the medical records that she worked, as set out in paragraph 175 above at the rates set out in clause 36.2(c) of the 2018 Agreement.

220. Royal Women's did not pay Dr Hodge overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical records overtime worked by her during the First Royal Women's Obstetrics and Gynaecology Rotation.

221. By reason of the matters alleged above, Royal Women's has contravened clause 36.2 of the 2018 Agreement.

222. By reason of the matters alleged in the above paragraph, Royal Women's has contravened s 50 of the FW Act.

#### Other medical services

223. During the First Royal Women's Obstetrics and Gynaecology Rotation, Royal Women's directed Dr Hodge to undertake specific tasks relating to patient care before she finished work that day (**patient care direction**).

#### **Particulars**

The patient care direction was partly oral, and is partly to be inferred.

Insofar as it was oral, it was conveyed to Dr Hodge by the Registrar and Consultants directing Dr Hodge, sometimes late in her rostered shift, to undertake and complete various tasks relating to patient care before finishing work on that day. The tasks included booking follow-up appointments for patients who were being discharged, referring patients to other teams, consulting with medical colleagues regarding pregnant women who were patients in the Royal Melbourne Hospital or admitted to the ICU; and speaking with patient's family members and social workers to develop plans for patient care.

Insofar as it was to be inferred, it is inferred from:

1. the matters in paragraph 17(k) above;
  2. the inefficiency of Dr Hodge handing over such tasks to another doctor given Dr Hodge's knowledge of the patient.
224. During the First Royal Women's Obstetrics and Gynaecology Rotation, in order to complete the patient care direction, Dr Hodge worked hours in excess of rostered hours (**patient care overtime**).

#### **Particulars**

The patient care direction included a direction that the relevant task be completed before Dr Hodge finished work that day. When the patient care direction was made late in Dr Hodge's rostered shift, it was necessary in order to complete the task for Dr Hodge to work after her rostered shift ended.

The patient care overtime was worked by Dr Hodge after the conclusion of almost all of her rostered shifts, for approximately one hour per week.

Further particulars will be provided after discovery and before trial.

225. Royal Women's:

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

#### **Particulars**

The knowledge of Royal Women's is to be inferred from:

1. the patient care direction, which was an express, oral direction given by senior medical staff to Dr Hodge, sometimes late in Dr Hodge's shift, and which included a direction to complete the particular task before Dr Hodge finished work on that day;
2. the fact that senior medical staff observed Dr Hodge carrying out the patient care direction after the conclusion of her rostered shift;
3. the fact that Dr Hodge attended to the patient care direction before she finished work on that day.

226. By reason of the matters alleged in paragraphs 17(k), 181, 223, and 225 above, the patient care overtime worked by Dr Hodge 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 medical services provided by Dr Hodge included attending to patient care;
2. the conduct of Royal Women's in giving the patient care direction, as set out in paragraph 223 above;

3. the knowledge of Royal Women's, as set out in paragraphs 225(a) and (b) above.
  4. the failure by Royal Women's to direct Dr Hodge not to perform patient care overtime as set out in paragraph 225(c) above.
227. In the premises, Dr Hodge was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 224 above at the rates set out in clause 36.2(c) of the 2018 Agreement.
228. Royal Women's did not pay Dr Hodge overtime, in accordance with clause 36.2 of the 2018 Agreement, for the patient care overtime worked by her during the First Royal Women's Obstetrics and Gynaecology Rotation.
229. By reason of the matters alleged above, Royal Women's has contravened clause 36.2 of the 2018 Agreement.
230. By reason of the matters alleged in the above paragraph, Royal Women's has contravened s 50 of the FW Act.

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

231. Between 3 February 2020 and 18 November 2020, pursuant to the direction of Royal Women's pleaded in paragraph 18(g) above, Dr Hodge worked in the Obstetrics and Gynaecology department at Royal Women's Hospital (**Second Royal Women's Obstetrics and Gynaecology Rotation**).

Rosters

232. From around April 2020, Royal Women's implemented a special roster in response to the COVID-19 pandemic. The special roster involved Dr Hodge rotating regularly between the different divisions of the Obstetrics and Gynaecology department.

**Particulars**

The different divisions of the Obstetrics and Gynaecology department were Obstetrics wards (discharge clinics, postnatal

wards, and breastfeeding service), birth centre, antenatal clinics, receiving Gynaecology, Obstetrics wards (antenatal and complex postnatal wards), emergency care and pregnancy day care.

233. During the Second Royal Women's Obstetrics and Gynaecology Rotation, and while working the special roster referred to above, Dr Hodge was directed to work in the Obstetrics wards (antenatal and postnatal wards) (**the ward**) of the Obstetrics Department, on 23 occasions throughout the rotation, on the following shifts:

- (a) 8.00am to 5.00pm;
- (b) 8.00am to 1.00pm;
- (c) 1.00pm to 5.00pm; and
- (d) 5.00pm to 9.00pm.

#### **Particulars**

Copies of Dr Hodge's rosters for the Second Royal Women's Obstetrics and Gynaecology Rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

#### Ward round preparation overtime

234. During the Second Royal Women's Obstetrics and Gynaecology Rotation, when rostered to work in the ward, Royal Women's directed Dr Hodge 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 is partly to be inferred.

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

Insofar as it is to be inferred, it is inferred from the matters in paragraph 17(a) above, and from the fact that the tasks necessary to complete ward round preparation included reviewing patient results and new clinical information that had come in overnight, checking and updating the patient list as necessary, checking ultrasounds, and preparing ward round notes.

235. During the Second Royal Women's Obstetrics and Gynaecology Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Hodge worked hours in excess of rostered hours (**ward round preparation overtime**).

### **Particulars**

All clinicians working in the wards of the Obstetrics and Gynaecology department of the Royal Women's Hospital whose rostered shift commenced at 8.00am were required to attend a department-wide handover meeting at 8.00am pre COVID. At the onset of the pandemic, the ward team would be called by the night team with updates between 7.45 and 8.30am. Ward rounds commenced at 8.00am during the pandemic.

On days when Dr Hodge was rostered to work in the ward and start at 8.00am, she attended work about 30 minutes before the start of her rostered shift to undertake ward round preparation.

Further particulars will be provided after discovery and before trial.

236. Royal Women's:
- (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 Hodge performed ward round preparation overtime; and
  - (c) did not direct Dr Hodge not to perform ward round preparation overtime.

### **Particulars**

The knowledge of Royal Women's 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 234 above;
3. Dr Hodge's rostered start time of 8.00am;
4. the commencement of ward rounds shortly after 8.00am in the circumstances set out in the particulars to paragraph 235 above;
5. other medical staff (including senior medical staff) observing Dr Hodge working before the start of her shift preparing for ward rounds;
6. the fact that Dr Hodge was prepared for ward rounds conducted by the Consultants and or Registrars on duty, including being able to provide information regarding recent patient updates, which required being across the content of test results and clinical information that had come in overnight, and therefore could only have been possible had she reviewed that information prior to 8,00am.

237. By reason of the matters alleged in paragraphs 17(a), 231, 234, and 236 above, the ward round preparation overtime worked by Dr Hodge 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 medical services provided by Dr Hodge included ward round preparation before the commencement of ward rounds;
2. Dr Hodge's rostered start time of 8.00am;
3. the commencement of ward rounds shortly after 8.00am in the circumstances set out in the particulars to paragraph 235 above;
4. the ward round preparation direction;
5. the knowledge of Royal Women's, as set out in paragraphs 236(a) and 236(b) above; and
6. the failure by Royal Women's to direct Dr Hodge not to perform the ward round preparation overtime, as set out in paragraph 236(c) above.

238. In the premises, Dr Hodge was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 235 above at the rates set out in clause 36.2(c) of the 2018 Agreement.

239. Royal Women's did not pay Dr Hodge overtime, in accordance with clause 36.2(c) of the 2018 Agreement, for the ward round preparation overtime worked by her during the Second Royal Women's Obstetrics and Gynaecology Rotation.
240. By reason of the matters alleged above, Royal Women's has contravened clause 36.2 of the 2018 Agreement.
241. By reason of the matters alleged in the above paragraph, Royal Women's has contravened s 50 of the FW Act.

#### Medical emergencies overtime

242. During the Second Royal Women's Obstetrics and Gynaecology Rotation, when rostered to work in the ward, Royal Women's directed Dr Hodge to attend to medical emergencies (**medical emergency direction**).

#### **Particulars**

The medical emergency direction is to be inferred from:

1. the matters in paragraph 17(e) above;
2. from time to time during the Second Royal Women's Obstetrics and Gynaecology Rotation, Dr Hodge was alerted to a medical emergency by a message from nursing or midwifery staff to clinicians within the Obstetrics and Gynaecology department to review a patient suffering, for example, from hypertension, reduced foetal movement, abnormal cardiotocography, or vaginal bleeding;
3. the clinical requirement for Dr Hodge to attend to medical emergencies in order to ensure proper patient care and safety;
4. the inefficiency (in an urgent situation) of briefing on-coming staff, particularly in circumstances where Dr Hodge was the first person available to treat the patient suffering a medical emergency;
5. the nature of work in Obstetrics and Gynaecology being that patients occasionally suffered a clinical deterioration requiring medical staff urgently to attend to their care and stabilisation and that delays in responding to obstetrics emergencies could have serious consequences.

243. During the Second Royal Women's Obstetrics and Gynaecology Rotation, in order to attend to medical emergencies, Dr Hodge worked hours in excess of rostered hours (**medical emergency overtime**).

#### **Particulars**

Patients would occasionally suffer a clinical deterioration which required Dr Hodge to attend to and stabilise the patient. From time to time, these events occurred close to or at the end of a rostered shift. It was necessary, for the safety of the patient, for Dr Hodge to immediately attend to the patient until the patient had stabilised.

Dr Hodge performed medical emergency overtime after the end of a rostered shift on the ward on several occasions, for around 30 to 60 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

244. Royal Women's:

- (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 Hodge performed medical emergency overtime;
- (c) did not direct Dr Hodge not to perform medical emergency overtime.

#### **Particulars**

The knowledge of Royal Women's is to be inferred from:

1. the medical emergency direction;
2. the circumstances set out in the particulars to paragraph 243 above;
3. other medical staff (including senior medical staff) observing Dr Hodge working after hours dealing with medical emergencies;
4. the fact that Dr Hodge telephoned Registrars and Consultants for advice about the approach to take to treating patients suffering an emergency, including after hours;

5. the fact that Dr Hodge attended to medical emergencies with Registrars and Consultants, including after the end of her rostered shift;
6. the fact that Dr Hodge did not leave work until she had treated and stabilised the patient suffering a medical emergency.

245. By reason of the matters alleged in paragraphs 17(e), 231, 242 and 244 above, the medical emergency overtime worked by Dr Hodge 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. part of the medical services provided by Dr Hodge 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 243 above;
4. the knowledge of Royal Women’s, as set out in paragraphs 244(a) and 244(b) above; and
5. the failure by Royal Women’s to direct Dr Hodge not to perform medical emergency overtime as set out in paragraph 244(c) above.

246. In the premises, Dr Hodge was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 243 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.

247. Royal Women’s did not pay Dr Hodge overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical emergency overtime worked by her during the Second Royal Women’s Obstetrics and Gynaecology Rotation.

248. By reason of the matters alleged above, Royal Women’s has contravened clause 36.2 of the 2018 Agreement.

249. By reason of the matters alleged in the above paragraph, Royal Women’s has contravened s 50 of the FW Act.

### Medical communication overtime

250. During the Second Royal Women's Obstetrics and Gynaecology Rotation, when rostered to work in the ward, Royal Women's directed Dr Hodge to speak with patients and their families and visitors about patient treatment (**medical communication direction**).

#### **Particulars**

The medical communication direction is to be inferred from:

1. the matters in paragraph 17(g) above;
2. the requirement for Dr Hodge to communicate with patients and their families and visitors in order to keep them informed about the patient's treatment and care plans or to obtain information from them relevant to the patient's care.

251. During the Second Royal Women's Obstetrics and Gynaecology Rotation, in order to perform medical communication, Dr Hodge worked hours in excess of rostered hours (**medical communication overtime**).

#### **Particulars**

From time to time the families or visitors of Dr Hodge's patients would attend the Royal Women's Hospital at, close to, or after the rostered finishing time of Dr Hodge's shift and ask to speak to the treating doctor of the patient they were visiting. Dr Hodge would speak to family members and visitors in these circumstances, including via telephone as necessary. Further, patients' family members often sought assistance with planning for a patient's long stay in hospital. As the doctor involved in the patient's care, it was necessary for Dr Hodge to have these communications.

Dr Hodge's conversations with family members and visitors involved discussing results and treatment plans, which Dr Hodge would then document.

In circumstances where these conversations took place close to or at the end of Dr Hodge's rostered shifts, she was required to work beyond the rostered finishing time of her shift.

Dr Hodge performed medical communication overtime after the end of a rostered shift on the ward on several occasions, for around 30 minutes to one hour on each occasion.

252. Royal Women's:

- (a) knew that the medical communication direction could not be performed during rostered hours;
- (b) knew that Dr Hodge performed medical communication overtime;
- (c) did not direct Dr Hodge not to perform medical communication overtime.

### **Particulars**

The knowledge of Royal Women's is to be inferred from:

- 1. the medical communication direction; and
- 2. the circumstances set out in the particulars to paragraph 251 above;
- 3. the fact that other medical staff (including senior medical staff) attended with Dr Hodge after hours to speak with patients' families and/or visitors;
- 4. the fact that Dr Hodge did not leave work until she had finished the relevant medical communication.

253. By reason of the matters alleged in 17(g), 231, 250, and 252 above, the medical communication overtime worked by Dr Hodge 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. part of the medical services provided by Dr Hodge included attending to medical communication;
- 2. the conduct of Royal Women's in giving the medical communication direction, as set out at paragraph 250 above;
- 3. the knowledge of Royal Women's, as set out in paragraphs 252(a) and 252(b) above; and
- 4. the failure by Royal Women's to direct Dr Hodge not to perform medical communication overtime as set out in paragraph 252(c) above.

254. In the premises, Dr Hodge was entitled to be paid overtime for the medical communication overtime that she worked, as set out in paragraph 251, at the rates set out in clause 36.2(c) of the 2018 Agreement.
255. Royal Women's did not pay Dr Hodge overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical communication overtime worked by her during the Second Royal Women's Obstetrics and Gynaecology Rotation.
256. By reason of the matters alleged above, Royal Women's has contravened clause 36.2 of the 2018 Agreement.
257. By reason of the matters alleged in the above paragraph, Royal Women's has contravened s 50 of the FW Act.

#### Admissions overtime

258. During the Second Royal Women's Obstetrics and Gynaecology Rotation, when rostered to work in the ward, Royal Women's directed Dr Hodge to perform patient admissions into the Obstetrics and Gynaecology department (**admissions direction**).

#### **Particulars**

The admissions direction was partly oral, and partly to be inferred.

Insofar as it was oral, it was conveyed by a Registrar in the Emergency Department or the Pregnancy Day Care centre who telephoned the Obstetrics and Gynaecology department and requested that a patient that had presented to their department be admitted into Obstetrics and Gynaecology. Ordinarily, the first call was made to a Consultant in the Obstetrics or Gynaecology department, who set up a plan for the admission of the patient. Subsequently the Registrar from Emergency or Pregnancy Day-care called Dr Hodge to request that she attend to the admission.

Insofar as it is to be inferred, it is to be inferred from the matters in paragraph 17(h) above; and the tasks necessary to admit a patient, which included:

1. taking a thorough history from the patient;

2. taking instructions about why the patient had attended emergency or the Pregnancy Daycare Centre;
3. examining the patient's presentation;
4. investigating any results of pathology or imaging tests the patient had undergone;
5. writing up medications;
6. writing an admission note for the patient and their ongoing treatment plan;
7. organising any further tests required;
8. making arrangements for any surgical procedures required.

259. During the Second Royal Women's Obstetrics and Gynaecology Rotation, in order to perform patient admissions in accordance with the admissions direction, Dr Hodge worked hours in excess of rostered hours (**admissions overtime**).

#### **Particulars**

Each admission took approximately 30 to 90 minutes.

If Dr Hodge received an admissions direction after 4.30pm but before 5.00pm, when her shift was rostered to end, then she performed that admission, which often involved working overtime. It was necessary for Dr Hodge to perform the admission herself in order to the patient to avoid having to wait an unknown amount of time to be admitted, as from 5.00pm there was only one resident on duty who was required to cover 4 wards, and had a substantial workload as a result.

Dr Hodge performed admissions overtime on several occasions on the ward, typically for about 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

260. Royal Women's:

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

- (c) did not direct Dr Hodge not to perform admissions overtime.

### **Particulars**

The knowledge of Royal Women's is to be inferred from:

1. the admissions direction, including the tasks necessary to complete patient admissions, and the fact that Dr Hodge was required to discuss the patient being admitted with a Registrar, as set out in the particulars to paragraph 258 above;
2. the circumstances set out in the particulars to paragraph 259 above;
3. other medical staff (including senior medical staff) observing Dr Hodge undertaking patient admissions after hours.

261. By reason of the matters alleged in paragraphs 17(h), 231, 258, and 260 above, the admissions overtime worked by Dr Hodge 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 medical services provided by Dr Hodge included patient admissions;
2. the conduct of the Royal Women's in giving the admissions direction, as set out in paragraph 258 above;
3. the knowledge of Royal Women's, as set out in paragraphs 260(a) and 260(b) above;
4. the failure by Royal Women's to direct Dr Hodge not to perform the admissions overtime, as set out in paragraph 260(c) above.

262. In the premises, Dr Hodge was entitled to be paid overtime for the admissions 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. Royal Women's did not pay Dr Hodge overtime, in accordance with clause 36.2 of the 2018 Agreement, for the admissions overtime worked by her during the Second Royal Women's Obstetrics and Gynaecology Rotation.

264. By reason of the matters alleged above, Royal Women's has contravened clause 36.2 of the 2018 Agreement.
265. By reason of the matters alleged in the above paragraph, Royal Women's has contravened s 50 of the FW Act.

#### Medical records overtime

266. During the Second Royal Women's Obstetrics and Gynaecology Royal Women's, when rostered to work in the ward, Royal Women's directed Dr Hodge:
- (a) to complete medical records for patients in the Obstetrics and Gynaecology department;
  - (b) to complete medical records in a timely manner;
  - (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 is partly to be inferred.

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.
2. Insofar as it was oral, from time to time during the Second Royal Women's Obstetrics and Gynaecology Rotation, Dr Hodge was directed by the Consultants and Registrars to ensure that the patient notes were updated before the end of the day, so that the notes could be used for the ward round the following day (along with any updated information from overnight).
3. Insofar as it is to be inferred, it is to be inferred from:
  - (a) the matters in subparagraphs (1)–(2) above;
  - (b) the matters in paragraph 17(f) above;
  - (c) the clinical requirement to complete medical records for proper patient care.

267. During the Second Royal Women's Obstetrics and Gynaecology Rotation, in order to complete medical records in accordance with the medical records direction, Dr Hodge worked hours in excess of rostered hours (**medical records overtime**).

#### **Particulars**

During the Second Royal Women's Obstetrics and Gynaecology Rotation, Dr Hodge and one other resident, plus one Registrar, were responsible for patients in 28 antenatal beds, 6 in the High Dependency Unit, variable numbers of unwell postnatal patients and any obstetrics or gynaecology patients at CCU, ICU or other wards at the Royal Melbourne Hospital. Additionally, from time to time Dr Hodge was required provide care to postnatal patients who were located on a ward downstairs from the antenatal beds. The patient load was such that there was insufficient time during rostered hours to complete medical records in a timely manner.

Dr Hodge performed medical records overtime after the conclusion of almost all of her rostered shifts on the ward that concluded at 1.00pm and 5.00pm, for approximately 2 – 3 hours per week.

268. Royal Women's:
- (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the medical records direction;
  - (b) knew that Dr Hodge performed medical records overtime;
  - (c) did not direct Dr Hodge not to perform medical records overtime.

#### **Particulars**

The knowledge of Royal Women's is to be inferred from the following matters:

1. the medical records direction;
2. the patient notes recorded a date and time stamp indicating when and by whom a particular record had been completed;
3. the fact that senior medical staff including Registrars observed Dr Hodge completing medical records after hours.

269. By reason of the matters alleged in paragraphs 17(f), 231, 266, and 268 above, the medical records overtime worked by Dr Hodge 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 medical services provided by Dr Hodge included the timely completion of medical records;
2. the conduct of Royal Women’s in giving the medical records direction as set out in paragraph 266 above;
3. the knowledge of Royal Women’s, as set out in paragraphs 268(a) and 268(b) above; and
4. the failure by Royal Women’s to direct Dr Hodge not to perform medical records overtime as set out in paragraphs in 268(c) above.

270. In the premises, Dr Hodge was entitled to be paid overtime for the medical records 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. Royal Women’s did not pay Dr Hodge overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical records overtime worked by her during the Second Royal Women’s Obstetrics and Gynaecology Rotation.

272. By reason of the matters alleged above, Royal Women’s has contravened clause 36.2 of the 2018 Agreement.

273. By reason of the matters alleged in the above paragraph, Royal Women’s has contravened s 50 of the FW Act.

### Other medical services

274. During the Second Royal Women’s Obstetrics and Gynaecology Rotation, when rostered to work in the ward, Royal Women’s directed Dr Hodge, to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

### **Particulars**

The patient care direction was partly oral, and is partly to be inferred.

Insofar as it was oral, it was conveyed to Dr Hodge by the Registrar and Consultants directing Dr Hodge, sometimes late in her rostered shift, to undertake and complete various tasks relating to patient care before finishing work on that day. The tasks included booking follow-up appointments for patients who were being discharged, referring patients to other teams, consulting with medical colleagues regarding pregnant women who were patients in the Royal Melbourne Hospital or admitted to the ICU; and speaking with patient's family members and social workers to develop plans for patient care.

Insofar as it was to be inferred, it is inferred from:

1. the matters in paragraph 17(k) above;
2. the inefficiency of Dr Hodge handing over such tasks to another doctor given Dr Hodge's knowledge of the patient.

275. During the Second Royal Women's Obstetrics and Gynaecology Rotation, in order to complete the patient care direction, Dr Hodge worked hours in excess of rostered hours (**patient care overtime**).

### **Particulars**

The patient care direction included a direction that the relevant task be completed before Dr Hodge finished work that day. When the patient care direction was made late in Dr Hodge's rostered shift, it was necessary in order to complete the task for Dr Hodge to work after her rostered shift ended.

The patient care overtime was worked by Dr Hodge after the conclusion of almost all of her rostered shifts, for approximately one hour per week.

Further particulars will be provided after discovery and before trial.

276. Royal Women's:
- (a) knew that there was insufficient time during rostered hours to attend to the patient care direction;

- (b) knew that Dr Hodge performed patient care overtime; and
- (c) did not direct Dr Hodge not to perform patient care overtime.

### **Particulars**

The knowledge of Royal Women's is to be inferred from the following matters:

1. the patient care direction, which was an express, oral direction given by senior medical staff to Dr Hodge, and which included a direction to complete the particular task before Dr Hodge finished work on that day;
2. the patient care direction was given during ward rounds, when Dr Hodge was reviewing patients with senior medical staff;
3. other medical staff (including senior medical staff) observing Dr Hodge carrying out the patient care direction after her rostered shift;
4. the fact that Dr Hodge attended to the patient care direction before she finished work on that day.

277. By reason of the matters alleged in paragraphs 17(k), 231, 274, and 276 above, the patient care overtime worked by Dr Hodge 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. part of the medical services provided by Dr Hodge included attending to patient care;
2. the patient care direction;
3. the knowledge of Royal Women's, as set out in paragraphs 276(a) and 276(b) above;
4. the failure by Royal Women's to direct Dr Hodge not to perform patient care overtime as set out in paragraph 276(c) above.

278. In the premises, Dr Hodge was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 275 at the rates set out in clause 36.2(c) of the 2018 Agreement.

279. Royal Women's did not pay Dr Hodge overtime, in accordance with clause 36.2 of the 2018 Agreement, for the patient care overtime worked by her during the Second Royal Women's Obstetrics and Gynaecology Rotation.
280. By reason of the matters alleged above, Royal Women's has contravened clause 36.2 of the 2018 Agreement.
281. By reason of the matters alleged in the above paragraph, Royal Women's has contravened s 50 of the FW Act.

**D7 Loss and damage**

282. Dr Hodge has suffered loss by reason of the contraventions of:
- (a) Eastern Health; and
  - (b) Royal Women's,
- of s 50 of the FW Act.

**Particulars**

Particulars will be provided after discovery and before trial.

**E GROUP MEMBERS' CLAIMS AGAINST EASTERN HEALTH**

283. Each Group Member, in the course of their employment by Eastern Health during the Relevant Period:
- (a) worked in one or more of the services operated by Eastern Health as set out in paragraph 1(d) 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**

284. Some or all Group Members, in the course of their employment by Eastern Health during the Relevant Period, were subject to a direction to prepare for ward rounds 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 17(a) above, where ward rounds were conducted in a particular ward or department of a service operated by Eastern Health as set out in paragraph 1(d) above.

285. Each Group Member subject to the direction in paragraph 284 above worked overtime in excess of rostered hours to prepare for ward rounds, in accordance with that direction.
286. In respect of each Group Member in paragraph 285 above, Eastern Health:
- (a) knew that there was insufficient time during rostered hours to prepare for ward rounds, in accordance with the direction in paragraph 284 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 Eastern Health is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 284 above;
2. the tasks necessary to complete ward round preparation including, but not 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.

287. Eastern 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 285 above worked by them.

288. 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 Eastern Health in giving the direction set out in paragraph 284 above;
3. the knowledge of Eastern Health, as set out in paragraphs 286(a) and 286(b) above; and
4. the failure by Eastern Health to direct Group Members not to perform the ward round preparation overtime, as set out in paragraph 286(c) above.

289. In the premises, Group Members were entitled to be paid overtime for the ward round preparation overtime they worked as set out in paragraph 285 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.
290. By reason of the matters alleged in paragraphs 286 and 288 above, Eastern Health has contravened:
- (a) clause 32.2 of the 2013 Agreement; and
  - (b) clause 36.2 of the 2018 Agreement.
291. By reason of the matters in the paragraph above, Eastern Health has contravened s 50 of the FW Act.

**E2 Ward rounds overtime**

292. Some or all Group Members, in the course of their employment by Eastern 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 rounds 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 17(b) above, where ward rounds were undertaken in a particular ward or department of a service operated by Eastern Health as set out in paragraph 1(d) above.

293. Each Group Member subject to the direction in paragraph 292 above worked overtime in excess of rostered hours to undertake ward rounds, in accordance with that direction.
294. In respect of each Group Member in paragraph 293 above, Eastern Health:

- (a) knew that there was insufficient time during rostered hours to undertake ward rounds, in accordance with the direction in paragraph 292 above;
- (b) knew that Group Members worked overtime to undertake ward rounds;
- (c) did not direct Group Members not to undertake ward rounds overtime.

### **Particulars**

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

1. the direction pleaded in paragraph 292 above;
2. the tasks necessary to undertake ward rounds; and
3. the rostered hours for each ward where ward rounds were undertaken.

295. Eastern 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 rounds overtime in paragraph 293 above worked by them.

296. The ward rounds 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 Eastern Health in giving the direction set out in paragraph 292 above;

3. the knowledge of Eastern Health, as set out in paragraphs 294(a) and 294(b) above; and
  4. the failure by Eastern Health to direct Group Members not to perform ward rounds overtime, as set out in paragraph 294(c) above.
297. In the premises, Group Members were entitled to be paid overtime for the ward rounds 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, Eastern 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, Eastern Health has contravened s 50 of the FW Act.

### **E3 Handover overtime**

300. Some or all Group Members, in the course of their employment by Eastern 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 17(c), where handover was conducted in a particular ward or department of a service operated by Eastern Health as set out in paragraph 1(d) above.

301. Each Group Member subject to the direction in paragraph 300 above worked overtime in excess of rostered hours to conduct handover, in accordance with that direction.
302. In respect of each Group Member in paragraph 301 above, Eastern Health:
- (a) knew that there was insufficient time during rostered hours to conduct handover, in accordance with the direction in paragraph 300 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 Eastern Health is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 300 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.

303. Eastern 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 301 above worked by them.
304. 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 Eastern Health in giving the direction set out in paragraph 300 above;
3. the knowledge of Eastern Health, as set out in paragraphs 302(a) and 302(b) above; and
4. the failure by Eastern Health to direct Group Members not to perform handover overtime, as set out in paragraph 302(c) above.

305. In the premises, Group Members were entitled to be paid overtime for the handover 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, Eastern 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, Eastern Health has contravened s 50 of the FW Act.

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

308. Some or all Group Members, in the course of their employment by Eastern Health during the Relevant Period, were subject to a direction to prepare for medical procedures 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 prepare for medical

procedures which commenced 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 17(d) above, where medical procedures were performed in a particular ward or department of a service operated by Eastern Health as set out in paragraph 1(d) above.

309. Each Group Member subject to the direction in paragraph 308 above worked overtime in excess of rostered hours to prepare for medical procedures, in accordance with that direction.
310. In respect of each Group Member in paragraph 309 above, Eastern Health:
- (a) knew that there was insufficient time during rostered hours to prepare for medical procedures in accordance with the direction in paragraph 308 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 Eastern Health is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 308 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.

311. Eastern 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 309 above worked by them.

312. 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 Eastern Health in giving the direction set out in paragraph 308 above;
  3. the knowledge of Eastern Health, as set out in paragraphs 310(a) and 310(b) above; and
  4. the failure by Eastern Health to direct Group Members not to perform medical procedures preparation overtime, as set out in paragraph 310(c) above.
313. In the premises, Group Members were entitled to be paid overtime for the medical procedures preparation 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, Eastern 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, Eastern Health has contravened s 50 of the FW Act.

## **E5 Medical emergency overtime**

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

### **Particulars**

The direction was partly oral and partly implied.

Insofar as it was oral, it was conveyed from time to time by a Group Member's supervisor directing the Group Member to attend to medical emergencies commencing at or immediately 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 it was implied, it was implied by the matters in paragraph 17(e) above, where patients were treated in a particular ward or department of a service operated by Eastern Health as set out in paragraph 1(d) above.

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

### **Particulars**

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

1. the direction pleaded in paragraph 316 above;
2. the tasks necessary to attend to medical emergencies; and

3. the rostered hours for each ward or department where medical emergencies occurred.

319. Eastern 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 317 above worked by them.
320. 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 Eastern Health in giving the direction set out in paragraph 317 above;
  3. the knowledge of Eastern Health, as set out in paragraph 318(a) and (b) above; and
  4. the failure by Eastern Health to direct Group Members not to perform medical emergency overtime, as set out in paragraph 318(c) above.
321. In the premises, Group Members were entitled to be paid overtime for the medical emergency overtime they worked as set out in paragraph 318 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, Eastern 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, Eastern Health has contravened s 50 of the FW Act.

#### **E6 Medical records overtime**

324. Further, some or all Group Members, in the course of their employment by Eastern 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 17(f) above, where medical records were completed in a particular ward or department of a service operated by Eastern Health as set out in paragraph 1(d) above.

325. Each Group Member subject to the direction in paragraph 324 above worked overtime in excess of rostered hours to complete medical records, in accordance with that direction.

326. In respect of each Group Member in paragraph 325 above, Eastern Health:

- (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the direction in paragraph 324 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 Eastern Health is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 324 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.

327. Eastern 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 325 worked by them.

328. 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 Eastern Health in giving the direction in paragraph 324 above;
3. the knowledge of Eastern Health, as set out in paragraphs 326(a) and 326(b) above; and

4. the failure by Eastern Health to direct Group Members not to perform medical records overtime, as set out in paragraph 326(c) above.

329. In the premises, Group Members were entitled to be paid overtime for the medical records 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, Eastern 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, Eastern Health has contravened s 50 of the FW Act.

#### **E7 Admissions overtime**

332. Further, some or all Group Members, in the course of their employment by Eastern Health during the Relevant Period, were subject to a direction to perform patient admissions into the ward or department where the Group Member was working, outside of rostered hours.

#### **Particulars**

The direction was partly oral, and is partly to be inferred.

Insofar as it was oral, it was in the form of a senior medical practitioner directing a Group Member to admit a patient to the ward or department where the Group Member was working.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 17(h) above, and as a result of the expectation that Group Members would do the work that was required in order to admit patients, as part of the medical services performed by those Group Members in that ward or department.

The tasks performed by Group Members in admitting a patient included:

1. taking a thorough history from the patient;

2. documenting any patient medication, and charting any medication required by the patient;
  3. examining the patient; and
  4. writing a care plan for the patient.
333. Each Group Member subject to the direction in paragraph 332 above worked overtime in excess of rostered hours to admit patients, in accordance with that direction.
334. In respect of each Group Member in paragraph 333 above, Eastern Health:
  - (a) knew that there was insufficient time during rostered hours to admit patients in accordance with the direction in paragraph 332 above; and
  - (b) knew that Group Members worked overtime to admit patients; and
  - (c) did not direct Group Members not to work overtime admitting patients.

### **Particulars**

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

1. the direction pleaded in paragraph 332 above;
  2. the tasks necessary to complete patient admissions, including those matters in the particulars to paragraph 332 above; and
  3. the rostered hours for each ward or department where patients were admitted.
335. Eastern 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 admissions overtime in paragraph 333 above worked by them.
336. The admissions 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 patient admissions;
2. the conduct of Eastern Health in giving the direction in paragraph 332 above;
3. the knowledge of Eastern Health, as set out in paragraphs 334(a) and 334(b) above; and
4. the failure by Eastern Health to direct Group Members not to perform admissions overtime, as set out in paragraph 334(c) above.

337. In the premises, Group Members were entitled to be paid overtime for the admissions 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, Eastern 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, Eastern Health has contravened s 50 of the FW Act.

### **E8 Medical communication overtime**

340. Some or all Group Members, in the course of their employment by Eastern Health during the Relevant Period, were subject to a direction to speak with patients and their families and visitors about patient treatment, outside of rostered hours.

### **Particulars**

The direction was partly oral and partly to be inferred.

Insofar as it was oral, it was conveyed to Group Members by their supervisors from time to time.

Insofar as it is to be inferred, it is inferred from:

1. the matters in paragraph 17(g) above; and
2. the requirement for Group Members to communicate with patients and their families and visitors in order to keep them informed about the patient's treatment and care plans or to obtain information from them relevant to the patient's care.

341. Each Group Member subject to the direction in paragraph 340 above worked overtime in excess of rostered hours to communicate with patients and their families and visitors, in accordance with that direction.

342. In respect of each Group Member in paragraph 341 above, Eastern Health:

- (a) knew that there was insufficient time during rostered hours for Group Members to communicate with patients and their families and visitors in accordance with the direction in paragraph 340 above; and
- (b) knew that Group Members worked overtime to communicate with patients and their families and visitors; and
- (c) did not direct Group Members not to work overtime communicating with patients and their families and visitors.

### **Particulars**

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

1. the direction pleaded in paragraph 340 above;
2. the rostered hours for each ward or department in which Group Members were required to be communicate with patients, their families and visitors; and

3. the rostered hours for each ward or department where medical communication with patients and their families and visitors was required.

343. Eastern 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 communication overtime in paragraph 341 above worked by them.
344. The medical communication 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 communication with patients, their families and visitors;
  2. the conduct of Eastern Health in giving the direction in paragraph 340 above;
  3. the knowledge of Eastern Health, as set out in paragraphs 342(a) and 342(b) above; and
  4. the failure by Eastern Health to direct Group Members not to perform medical communication overtime, as set out in paragraph 342(c) above.
345. In the premises, Group Members were entitled to be paid overtime for the medical communication 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, Eastern 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, Eastern Health has contravened s 50 of the FW Act.

### **E9 Surgical procedures overtime**

348. Some or all Group Members, in the course of their employment by Eastern Health during the Relevant Period, were subject to a direction to complete surgical procedures.

#### **Particulars**

The direction was partly oral and is partly to be inferred.

Insofar as it was oral, it was given by a Group Member's supervisor directing that a Group Member assist with and complete surgical procedures.

Insofar as it is to be inferred, it is inferred from:

1. the matters in paragraph 17(i) above; and
2. the nature of work at Eastern Health, which included finishing surgical procedures that had been commenced prior to the end of a Doctor's shift, adequately documenting the procedure, and ensuring the patient was stabilised.

349. Each Group Member subject to the direction in paragraph 348 above worked overtime in excess of rostered hours to complete surgical procedures, in accordance with that direction.

350. In respect of each Group Member in paragraph 349 above, Eastern Health:

(a) knew that there was insufficient time during rostered hours to complete surgical procedures in accordance with the surgical procedures direction; and

(b) knew that Group Members performed surgical procedures overtime; and

- (c) did not direct Group Members not to perform surgical procedures overtime.

### **Particulars**

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

1. the direction pleaded in paragraph 348 above;
2. the necessity of completing a surgical procedure once it had begun; and
3. the rostered hours for each ward or department where surgical procedures were performed.

351. Eastern 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 surgical procedures overtime in paragraph 349 above worked by them.

352. The surgical procedures 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 Group Members was the provision of medical services, which included completing surgical procedures;
2. the conduct of Eastern Health in giving the surgical procedures direction as set out in paragraph 348 above;
3. The knowledge of Eastern Health, as set out in paragraphs 350(a) and 350(b) above; and

4. The failure by Eastern Health to direct Group Members not to perform surgical procedures overtime, as set out in paragraph 350(c) above.

353. In the premises, Group Members were entitled to be paid overtime for the surgical procedures overtime they worked, 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, Eastern Health has contravened clause 32.2 of the 2013 Agreement and clause 36.2 of the 2018 Agreement.
355. By reason of the matters alleged in the above paragraph, Eastern Health has contravened s 50 of the FW Act.

#### **E10 Outpatient care overtime**

356. Some or all Group Members, in the course of their employment by Eastern 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**

The outpatient care direction was partly oral and is partly to be inferred.

Insofar as it was oral, the direction was given from time to time by a Group Member's supervisor requesting that they attend to an outpatient in a clinic.

Insofar as it is to be inferred, it is to be inferred from 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.

357. Each Group Member subject to the direction in paragraph 356 above worked overtime in excess of rostered hours to provide medical services to outpatients, in accordance with that direction.

358. In respect of each Group Member in paragraph 357 above, Eastern 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 357 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 Eastern Health is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 356 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.

359. Eastern 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 357 above worked by them.
360. 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. the work performed by Group Members was the provision of medical services which included providing care to outpatients in clinics;
2. The conduct of Eastern Health in giving the direction in paragraph 356 above;
3. The knowledge of Eastern Health, as set out in paragraphs 358(a) and 358(b) above; and
4. The failure by Eastern Health to direct Group Members not to perform outpatient care overtime, as set out in paragraph 358(c) above.

361. In the premises, Group Members were entitled to be paid overtime for the outpatient care overtime they worked, as set out in paragraph 357 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

362. By reason of the matters alleged in paragraphs 359 and 361 above, Eastern Health has contravened:

(a) Clause 32.2 of the 2013 Agreement; and

(b) Clause 36.2 of the 2018 Agreement.

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

### **E11 Other medical services overtime**

364. Some or all Group Members, in the course of their employment by Eastern Health during the Relevant Period, were subject to a direction to provide medical services (other than the medical services set out in paragraph 17(a) to 17(j) above) (**other medical services**), 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 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 it was implied, it was implied by the matters in paragraph 17(k) above, at a particular ward or department of a service operated by Eastern Health as set out in paragraph 1(d) above.

365. Each Group Member subject to the direction in paragraph 364 above worked overtime in excess of rostered hours to provide other medical services, in accordance with that direction.
366. In respect of each Group Member in paragraph 365 above, Eastern Health:
- (a) knew that there was insufficient time during rostered hours to provide other medical services in accordance with the direction in paragraph 364 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 Eastern Health is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 364 above; and
2. the rostered hours for each ward or department where medical services were provided.

367. Eastern 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 365 above worked by them.

368. 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 Eastern Health in giving the direction set out in paragraph 364 above;
3. the knowledge of Eastern Health, as set out in paragraphs 366(a) and 366(b) above; and
4. the failure by Eastern Health to direct Group Members not to perform other medical services overtime, as set out in paragraph 366(c) above.

369. In the premises, Group Members were entitled to be paid overtime for providing other medical services as set out in paragraph 365 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

370. By reason of the matters alleged in paragraphs 367 and 369 above, Eastern Health has contravened:

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

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

### **E12 Loss and damage**

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

**F GROUP MEMBERS' CLAIMS AGAINST ROYAL WOMEN'S**

373. Each Group Member, in the course of their employment by Royal Women's during the Relevant Period:

- (a) worked in one or more of the services operated by Royal Women's as set out in paragraph 1(e) 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.

**F1 Ward round preparation overtime**

374. Some or all Group Members, in the course of their employment by Royal Women's during the Relevant Period, were subject to a direction to prepare for ward rounds 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 17(a) above, where ward rounds were conducted in a particular ward or department of a service operated by Royal Women's as set out in paragraph 1(e) above.

375. Each Group Member subject to the direction in paragraph 374 above worked overtime in excess of rostered hours to prepare for ward rounds, in accordance with that direction.

376. In respect of each Group Member in paragraph 375 above, Royal Women's:

- (a) knew that there was insufficient time during rostered hours to prepare for ward rounds, in accordance with the direction in paragraph 374 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 Royal Women's is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 374 above;
2. the tasks necessary to complete ward round preparation including, but not 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.

377. Royal Women's 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 285 above worked by them.

378. 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 Royal Women's in giving the direction set out in paragraph 374 above;
3. the knowledge of Royal Women's, as set out in paragraphs 376(a) and 376(b) above; and
4. the failure by Royal Women's to direct Group Members not to perform ward round preparation overtime, as set out in paragraph 376(c) above.

379. In the premises, Group Members were entitled to be paid overtime for the ward round preparation overtime they worked as set out in paragraph 375 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

380. By reason of the matters alleged in paragraphs 377 and 379 above, Royal Women's has contravened:

(a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

381. By reason of the matters in the paragraph above, Royal Women's has contravened s 50 of the FW Act.

## **F2 Ward round overtime**

382. Some or all Group Members, in the course of their employment by Royal Women's 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 17(b) above, where ward rounds were undertaken in a particular ward or department of a service operated by Royal Women's as set out in paragraph 1(e) above.

383. Each Group Member subject to the direction in paragraph 382 above worked overtime in excess of rostered hours to undertake ward rounds, in accordance with that direction.
384. In respect of each Group Member in paragraph 383 above, Royal Women's:
- (a) knew that there was insufficient time during rostered hours to undertake ward rounds, in accordance with the direction in paragraph 382 above;
  - (b) knew that Group Members worked overtime to undertake ward rounds;
  - (c) did not direct Group Members not to undertake ward rounds overtime.

#### **Particulars**

The knowledge of Royal Women's is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 382 above;
2. the tasks necessary to undertake ward rounds; and
3. the rostered hours for each ward where ward rounds were undertaken.

385. Royal Women's 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 rounds overtime in paragraph 383 above worked by them.
386. The ward rounds 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 Royal Women's in giving the direction set out in paragraph 382 above;
3. the knowledge of Royal Women's, as set out in paragraphs 384(a) and 384(b) above; and
4. the failure by Royal Women's to direct Group Members not to perform ward rounds overtime, as set out in paragraph 384(c) above.

387. In the premises, Group Members were entitled to be paid overtime for the ward rounds overtime they worked as set out in paragraph 383 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

388. By reason of the matters alleged in paragraphs 385 and 387 above, Royal Women's has contravened:

(a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

389. By reason of the matters in the paragraph above, Royal Women's has contravened s 50 of the FW Act.

### **F3 Handover overtime**

390. Some or all Group Members, in the course of their employment by Royal Women's 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 17(c) above, where handover was conducted in a particular ward or department of a service operated by Royal Women's as set out in paragraph 1(e) above.

391. Each Group Member subject to the direction in paragraph 390 above worked overtime in excess of rostered hours to conduct handover, in accordance with that direction.
392. In respect of each Group Member in paragraph 391 above, Royal Women's:
- (a) knew that there was insufficient time during rostered hours to conduct handover, in accordance with the direction in paragraph 390 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 Royal Women's is to be inferred from at least the following matters:

- 1. the direction pleaded in paragraph 390 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.
393. Royal Women's 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 391 above worked by them.

394. 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 Royal Women’s in giving the direction set out in paragraph 390 above;
3. the knowledge of Royal Women’s, as set out in paragraphs 392(a) and 392(b) above; and
4. the failure by Royal Women’s to direct Group Members not to perform handover overtime, as set out in paragraph 392(c) above.

395. In the premises, Group Members were entitled to be paid overtime for the handover overtime they worked as set out in paragraph 391 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

396. By reason of the matters alleged in paragraphs 393 and 395 above, Royal Women’s has contravened:

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

397. By reason of the matters in the paragraph above, Royal Women’s has contravened s 50 of the FW Act.

#### **F4 Medical procedures preparation overtime**

398. Some or all Group Members, in the course of their employment by Royal Women's during the Relevant Period, were subject to a direction to prepare for medical procedures 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 prepare for medical procedures which commenced 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 17(d) above, where medical procedures were performed in a particular ward or department of a service operated by Royal Women's as set out in paragraph 1(e) above.

399. Each Group Member subject to the direction in paragraph 398 above worked overtime in excess of rostered hours to prepare for medical procedures, in accordance with that direction.
400. In respect of each Group Member in paragraph 399 above, Royal Women's:
- (a) knew that there was insufficient time during rostered hours to prepare for medical procedures in accordance with the direction in paragraph 398 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 Royal Women's is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 398 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.

401. Royal Women's 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 309 above worked by them.

402. 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 Royal Women's in giving the direction set out in paragraph 398 above;
3. the knowledge of Royal Women's, as set out in paragraphs 400(a) and 400(b) above; and
4. the failure by Royal Women's to direct Group Members not to perform medical procedures preparation overtime, as set out in paragraph 400(c) above.

403. In the premises, Group Members were entitled to be paid overtime for the medical procedures preparation overtime they worked as set out in paragraph 399 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

404. By reason of the matters alleged in paragraphs 401 and 403 above, Royal Women's has contravened:

(a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

405. By reason of the matters in the paragraph above, Royal Women's has contravened s 50 of the FW Act.

#### **F5 Medical emergency overtime**

406. Some or all Group Members, in the course of their employment by Royal Women's during the Relevant Period, were subject to a direction to attend to medical emergencies outside of rostered hours.

#### **Particulars**

The direction was partly oral and partly implied.

Insofar as it was oral, it was conveyed from time to time by a Group Member's supervisor directing the Group Member to attend to medical emergencies commencing at or immediately 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 it was implied, it was implied by the matters in paragraph 17(e) above, where patients were treated in a particular ward or department of a service operated by Royal Women's as set out in paragraph 1(e) above.

407. Each Group Member subject to the direction in paragraph 406 above worked overtime in excess of rostered hours to attend to medical emergencies, in accordance with that direction.

408. In respect of each Group Member in paragraph 407 above, Royal Women's:

(a) knew that there was insufficient time during rostered hours to attend to medical emergencies, in accordance with the direction in paragraph 406 above;

- (b) knew that Group Members worked overtime to attend to medical emergencies;
- (c) did not direct Group Members not to conduct medical emergency overtime.

### **Particulars**

The knowledge of Royal Women's is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 406 above;
2. the tasks necessary to attend to medical emergencies; and
3. the rostered hours for each ward or department where medical emergencies occurred.

409. Royal Women's 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 407 above worked by them.

410. 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 Royal Women's in giving the direction set out in paragraph 406 above;
3. the knowledge of Royal Women's, as set out in paragraphs 408(a) and 408(b) above; and

4. the failure by Royal Women's to direct Group Members not to perform medical emergency overtime, as set out in paragraph 408(c) above.

411. In the premises, Group Members were entitled to be paid overtime for the medical emergency overtime they worked as set out in paragraph 407 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.
412. By reason of the matters alleged in paragraphs 409 and 411 above, Royal Women's has contravened:
  - (a) clause 32.2 of the 2013 Agreement; and
  - (b) clause 36.2 of the 2018 Agreement.
413. By reason of the matters in the paragraph above, Royal Women's has contravened s 50 of the FW Act.

#### **F6 Medical records overtime**

414. Further, some or all Group Members, in the course of their employment by Royal Women's 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 17(f) above, where medical records were completed in a particular ward or department of a service operated by Royal Women's as set out in paragraph 1(e) above.

415. Each Group Member subject to the direction in paragraph 414 above worked overtime in excess of rostered hours to complete medical records, in accordance with that direction.

416. In respect of each Group Member in paragraph 415 above, Royal Women's:
- (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the direction in paragraph 414 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 Royal Women's is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 414 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.

417. Royal Women's 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 415 worked by them.
418. 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 Royal Women's in giving the direction in paragraph 414 above;
3. the knowledge of Royal Women's, as set out in paragraphs 416(a) and 416(b) above; and
4. the failure by Royal Women's to direct Group Members not to perform medical records overtime, as set out in paragraph 416(c) above.

419. In the premises, Group Members were entitled to be paid overtime for the medical records overtime they worked, as set out in paragraph 415 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

420. By reason of the matters alleged in paragraphs 417 and 419 above, Royal Women's has contravened:

(a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

421. By reason of the matters in the paragraph above, Royal Women's has contravened s 50 of the FW Act.

### **F7 Admissions overtime**

422. Further, some or all Group Members, in the course of their employment by Royal Women's during the Relevant Period, were subject to a direction to perform patient admissions into the ward or department where the Group Member was working, outside of rostered hours.

## Particulars

The direction was partly oral, and is partly to be inferred.

Insofar as it was oral, it was in the form of a senior medical practitioner directing a Group Member to admit a patient to the ward or department where the Group Member was working.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 17(h) above, and as a result of the expectation that Group Members would do the work that was required in order to admit patients, as part of the medical services performed by those Group Members in that ward or department.

The tasks performed by Group Members in admitting a patient included:

1. taking a thorough history from the patient;
2. documenting any patient medication, and charting any medication required by the patient;
3. examining the patient; and
4. writing a care plan for the patient.

423. Each Group Member subject to the direction in paragraph 422 above, worked overtime in excess of rostered hours to admit patients, in accordance with that direction.

424. In respect of each Group Member in paragraph 423 above, Royal Women's:

- (a) knew that there was insufficient time during rostered hours to admit patients in accordance with the direction in paragraph 332 above; and
- (b) knew that Group Members worked overtime to admit patients; and
- (c) did not direct Group Members not to work overtime admitting patients.

### **Particulars**

The knowledge of Royal Women's is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 422 above;
2. the tasks necessary to complete patient admissions including those matters in the particulars to paragraph 422 above; and
3. the rostered hours for each ward or department where patients were admitted.

425. Royal Women's 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 admission overtime in paragraph 423 above worked by them.
426. The admission 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 patient admissions;
  2. the conduct of Royal Women's in giving the direction in paragraph 422 above;
  3. the knowledge of Royal Women's, as set out in paragraphs 424(a) and (b) above; and
  4. the failure by Royal Women's to direct Group Members not to perform admissions overtime, as set out in paragraph 424(c).
427. In the premises, Group Members were entitled to be paid overtime for the admission 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.
428. By reason of the matters alleged in paragraphs 425 and 337 above, Royal Women's has contravened:
- (a) clause 32.2 of the 2013 Agreement; and
  - (b) clause 36.2 of the 2018 Agreement.

429. By reason of the matters in the paragraph above, Royal Women's has contravened s 50 of the FW Act.

**F8 Medical communication overtime**

430. Some or all Group Members, in the course of their employment by Royal Women's during the Relevant Period, were subject to a direction to speak with patients and their families and visitors about patient treatment, outside of rostered hours.

**Particulars**

The direction was partly oral and partly to be inferred.

Insofar as it was oral, it was conveyed to Group Members by their supervisors from time to time.

Insofar as it is to be inferred, it is inferred from:

1. the matters in paragraph 17(g) above; and
2. the requirement for Group Members to communicate with patients and their families and visitors in order to keep them informed about the patient's treatment and care plans or to obtain information from them, relevant to the patient's care.

431. Each Group Member subject to the direction in paragraph 430 above, worked overtime in excess of rostered hours to communicate with patients and their families and visitors, in accordance with that direction.

432. In respect of each Group Member in paragraph 341 above, Royal Women's:

- (a) knew that there was insufficient time during rostered hours for Group Members to communicate with patients and their families and visitors in accordance with the direction in paragraph 340 above; and
- (b) knew that Group Members worked overtime to communicate with patients and their families and visitors; and
- (c) did not direct Group Members not to work overtime communicating with patients and their families and visitors.

### **Particulars**

The knowledge of Royal Women's is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 340 above;
2. the rostered hours for each ward or department in which Group Members were required to communicate with patients and their families and visitors; and
3. the rostered hours for each ward or department where medical communication with patients and their families and visitors was required.

433. Royal Women's 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 communication overtime in paragraph 341 above worked by them.

434. The medical communication 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 communication with patients, their families and visitors;
2. the conduct of Royal Women's in giving the direction in paragraph 340 above;
3. the knowledge of Royal Women's, as set out in paragraphs 432(a) and (b) above; and

4. the failure by Royal Women's to direct Group Members not to perform medical communication overtime, as set out in paragraph 342(c) above.
435. In the premises, Group Members were entitled to be paid overtime for the medical communication 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.
436. By reason of the matters alleged in paragraphs 433 and 345 above, Royal Women's has contravened:
- (a) clause 32.2 of the 2013 Agreement; and
  - (b) clause 36.2 of the 2018 Agreement.
437. By reason of the matters in the paragraph above, Royal Women's has contravened s 50 of the FW Act.

#### **F9 Surgical procedures overtime**

438. Some or all Group Members, in the course of their employment by Royal Women's during the Relevant Period, were subject to a direction to complete surgical procedures outside of rostered hours.

#### **Particulars**

The direction was partly oral and is partly to be inferred.

Insofar as it was oral, it was given by a Group Member's supervisor directing that a Group Member assist with and complete surgical procedures.

Insofar as it is to be inferred, it is inferred from:

1. the matters in paragraph 17(i) above; and
2. the nature of work at Royal Women's Hospital, which included finishing surgical procedures that had been commenced prior to the end of a Doctor's shift, adequately documenting the procedure, and ensuring the patient was stabilised.

439. Each Group Member subject to the direction in paragraph 438 above worked overtime in excess of rostered hours to complete surgical procedures, in accordance with that direction.
440. In respect of each Group Member subject to the direction in paragraph 439 above, Royal Women's:
- (a) knew that there was insufficient time during rostered hours to complete surgical procedures in accordance with the surgical procedures direction; and
  - (b) knew that Group Members performed surgical procedures overtime; and
  - (c) did not direct Group Members not to perform surgical procedures overtime.

### **Particulars**

The knowledge of Royal Women's is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 348 above;
2. the necessity of completing a surgical procedure once it had begun; and
3. the rostered hours for each ward or department where surgical procedures were performed.

441. Royal Women's 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 surgical procedures overtime in paragraph 439 above worked by them.
442. The surgical procedures 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 Group Members was the provision of medical services which included completing surgical procedures;
2. the conduct of Royal Women's in giving the surgical procedures direction as set out in paragraph 438 above;
3. the knowledge of Royal Women's, as set out in paragraphs 440(a) and 440(b) above; and
4. the failure by Royal Women's to direct Group Members not to perform surgical procedures overtime, as set out in paragraph 440(c) above.

443. In the premises, Group Members were entitled to be paid overtime for the surgical procedures overtime they worked, as set out in paragraph 439 above, at the rates set out in clause 32.2.2. of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

444. By reason of the matters alleged in paragraphs 441 and 443 above, Royal Women's has contravened clause 32.2 of the 2013 Agreement and clause 36.2 of the 2018 Agreement.

445. By reason of the matters alleged in the above paragraph, Royal Women's has contravened s 50 of the FW Act.

### **F10 Outpatient care overtime**

446. Some or all Group Members, in the course of their employment by Royal Women's 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

The outpatient care direction was partly oral and is partly to be inferred.

Insofar as it was oral, the direction was given, from time to time, by a Group Member's supervisor requesting that they attend to an outpatient in a clinic.

Insofar as it is to be inferred, it is to be inferred from 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.

447. Each Group Member subject to the direction in paragraph 446 above worked overtime in excess of rostered hours to provide medical services to outpatients, in accordance with that direction.
448. In respect of each Group Member in paragraph 447 above, Royal Women's:
- (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 332 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 Royal Women's is to be inferred from at least the following matters:

- 1. the direction pleaded in paragraph 446 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.
449. Royal Women's 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 333 above worked by them.

450. 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. the work performed by Group Members was the provision of medical services which included providing care to outpatients in clinics;
2. The conduct of Royal Women’s in giving the direction in paragraph 446 above;
3. the knowledge of Royal Women’s, as set out in paragraphs 448(a) and 448(b) above; and
4. the failure by Royal Women’s to direct Group Members not to perform outpatient care overtime, as set out in paragraph 448(c) above.

451. In the premises, Group Members were entitled to be paid overtime for the outpatient care overtime they worked, as set out in paragraph 447 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

452. By reason of the matters alleged in paragraphs 449 and 451 above, Royal Women’s has contravened:

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

453. By reason of the matters in the paragraph above, Royal Women’s has contravened s 50 of the FW Act.

**F11 Other medical services overtime**

454. Some or all Group Members, in the course of their employment by Royal Women's during the Relevant Period, were subject to a direction to provide medical services (other than the medical services set out in paragraph 17(a) to 17(j) above) (**other medical services**) 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 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 it was implied, it was implied by the matters in paragraph 17(k) above, at a particular ward or department of a service operated by Royal Women's as set out in paragraph 1(e) above.

455. Each Group Member subject to the direction in paragraph 364 above worked overtime in excess of rostered hours to provide other medical services, in accordance with that direction.
456. In respect of each Group Member in paragraph 365 above, Royal Women's:
- (a) knew that there was insufficient time during rostered hours to provide other medical services in accordance with the direction in paragraph 364 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 Royal Women's is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 364 above; and

2. the rostered hours for each ward or department where medical services were provided.

457. Royal Women's 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 365 above worked by them.

458. 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 Royal Women's in giving the direction set out in paragraph 364 above;
3. the knowledge of Royal Women's, as set out in paragraphs 456(a) and 456(b) above; and
4. the failure by Royal Women's to direct Group Members not to perform other medical services overtime, as set out in paragraph 366(c) above.

459. In the premises, Group Members were entitled to be paid overtime for providing other medical services as set out in paragraph 365 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

460. By reason of the matters alleged in paragraphs 457 and 369 above, Royal Women's has contravened:

(a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

461. By reason of the matters in the paragraph above, Royal Women's has contravened s 50 of the FW Act.

**F12 Loss and damage**

462. Some or all Group Members suffered loss by reason of Royal Women's contraventions of s 50 of the FW Act.

**AND THE APPLICANTS CLAIM**

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

Date: 22 October 2021



.....  
Signed by Andrew Grech  
Lawyer for the Applicants

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

## 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: 22 October 2021



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Signed by Andrew Grech  
Lawyer for the Applicants

## Schedule

VID of 2021

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

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

Second Applicant: **Wendy Hodge**

First Respondent: **Eastern Health**

Second Respondent: **The Royal Women's Hospital**

Date: 22 October 2021