

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 26/04/2021 10:32:58 PM AEST 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:	VID210/2021
File Title:	THE AUSTRALIAN SALARIED MEDICAL OFFICERS FEDERATION & ANOR v MONASH HEALTH & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 29/04/2021 9:03:52 AM AEST

A handwritten signature in blue ink, reading "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

Monash Health

First Respondent

Latrobe Regional Hospital

Second Respondent

A THE PARTIES

A1 The Applicants and the Group Members

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

- (a) the First Applicant, on behalf of all persons; and
 - (b) the Second Applicant, on his own behalf and on behalf of all persons,
- who, during the period 27 April 2015 and 26 April 2021 (**Relevant Period**):
- (c) were employed by Monash Health (**Monash**);

Filed on behalf of:	The Australian Salaried Medical Officers' Federation and Teak McPadden (the Applicants)		
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- (d) worked at one or more of the following services operated by Monash:
 - (i) Casey Hospital, at 62-70 Kangan Drive, Berwick;
 - (ii) Dandenong Hospital, at 135 David Street, Dandenong;
 - (iii) Kingston Centre, corner Warrigal Road and Heatherton Road, Cheltenham;
 - (iv) Monash Children's Hospital, at 246 Clayton Road, Clayton;
 - (v) Monash Medical Centre, at 246 Clayton Road, Clayton; and
 - (vi) Moorabbin Hospital, at 823-865 Centre Road, Bentleigh East;
- (e) and/or were employed by Latrobe Regional Hospital (**Latrobe**) and worked at the hospital at 10 Village Avenue, Traralgon (**Latrobe Hospital**);
- (f) were, when employed by either or both of Monash and Latrobe 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 Monash and Latrobe, classified as a:
 - (i) Hospital Medical Officer;
 - (ii) Medical Officer (but not a Medical Officer classified as Solely Administrative under the 2013 Agreement or the 2018 Agreement);
 - (iii) Registrar,

under the 2013 Agreement and/or the 2018 Agreement; and
- (h) in the course of their employment by either or both of Monash and Latrobe, 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 Teak McPadden:
 - (a) between 5 February 2018 and 3 July 2020, was employed by Monash and classified as a Hospital Medical Officer (**HMO**) (Year 2) under the 2013 Agreement (until 6 August 2018), and under the 2018 Agreement (from 7 August 2018) and from 2019 as a HMO (Year 3) under the 2018 Agreement; and
 - (b) between 16 April 2018 and 24 June 2018, was also employed by Latrobe and classified as an HMO Year 2 under the 2013 Agreement; and
 - (c) between 3 September 2018 and 11 November 2018, was also employed by Latrobe and classified as an HMO Year 2 under the 2018 Agreement.
4. As at the date of the commencement of this proceeding, there are seven or more persons who have claims against Monash, and claims against Latrobe, in respect of the matters set out in this Statement of Claim.

A2 The Respondents

5. Monash 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 February 2018 and 3 July 2020, the employer of Dr McPadden.
6. Latrobe 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 16 April 2018 and 24 June 2018, and 3 September 2018 and 11 November 2018, the employer of Dr McPadden.

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 clause 5.3, covered:
 - (i) Monash;
 - (ii) Latrobe;
 - (iii) ASMOF;

- (iv) employees of Monash and/or Latrobe who were employed in 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) Monash;
 - (ii) Latrobe;
 - (iii) ASMOF;
 - (iv) employees of Monash and/or Latrobe 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. Clause 33.1(a) of the 2018 Agreement provides 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.

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 MCPADDEN AND GROUP MEMBERS

17. During the Relevant Period, the duties and responsibilities of Dr McPadden 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**); and
- (g) 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 his employment by Monash, Dr McPadden was directed, relevantly:
- (a) by Monash and Latrobe, and pursuant to a secondment arrangement between those parties, between 16 April 2018 and 24 June 2018, to work in the Emergency Department at Latrobe Hospital;

Particulars

While on secondment, Dr McPadden entered into a contract of employment with Latrobe dated 7 March 2018. The secondment was arranged pursuant to a Memorandum of Understanding between Monash Health and Latrobe Regional Hospital, particulars of which will be provided after discovery.

- (b) by Monash and Latrobe, and pursuant to a secondment arrangement between those parties, between 3 September 2018 and 11 November 2018, to work in the Emergency Department at Latrobe Hospital;

Particulars

While on secondment, Dr McPadden entered into a contract of employment with Latrobe dated 27 August 2018. A copy of the contract is in the possession of the solicitors for the Second Applicant, and available for inspection on request. The Second Applicant otherwise refers to and repeats the particulars to paragraph 18(a) above.

- (c) by Monash, between 12 November 2018 and on or about 30 December 2018 to work in the Emergency Department at Dandenong Hospital; and

- (d) by Monash, between on or about 16 December 2019 and on or about 2 February 2020, to work at the Emergency Department at Dandenong Hospital.

Particulars

The directions to work in the rotation in subparagraphs (c) and (d) were in writing. Further particulars will be provided after discovery.

D1 First Latrobe Emergency Department rotation – 16 April 2018 to 24 June 2018

19. Between 16 April 2018 and 24 June 2018, pursuant to the direction of Monash and Latrobe set out in paragraph 18(a) above, Dr McPadden worked in the Emergency Department at Latrobe Hospital (**First Latrobe ED rotation**).

Rosters

20. During the First Latrobe ED rotation, Dr McPadden was rostered to work the following shifts:
- (a) morning shift, from 8.00am – 4.00pm;
 - (b) afternoon shift, from 3.30pm – 11.30pm; and
 - (c) night shift, from 11.00pm – 9.00am the following day.

Particulars

Copies of Dr McPadden's rosters for the First Latrobe ED rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

Medical records overtime

21. During the First Latrobe ED rotation, Latrobe directed Dr McPadden:
- (a) that patients in the Emergency Department could not be admitted as an in-patient to a ward or department within Latrobe Hospital, or transferred to another hospital, or discharged from the Emergency Department, unless and until the patient admission, transfer or discharge paperwork was complete; and
 - (b) to complete patient admission, transfer or discharge paperwork in a timely manner

(the **medical records direction**).

Particulars

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

Insofar as it was in writing, it was contained in:

1. 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. Admission, transfer and discharge paperwork each comprise "medical records" for patients:
 - a. *admission paperwork* included clinical notes recording the assessment, examination, provision diagnosis, and treatment plan, requests for outpatient medical records, prescriptions, investigation requests and results including pathology and radiology, the referral request, and the result of the referral request, and (if not prepared by the in-patient medical staff) a treatment plan;
 - b. *transfer paperwork* included each of the records above, save that a treatment plan was always included;
 - c. *discharge paperwork* included discharge summaries, clinical notes, requests for outpatient medical records, prescriptions, investigation requests and results including pathology and radiology, outpatient referrals, and an assessment and discharge plan which often included a scheduled follow-up appointment.

Insofar as it was oral, it was conveyed by senior nursing and medical staff in the Emergency Department:

2. during orientation on 16 April 2018, when Dr McPadden was shown how to use the online system for completing admission, transfer and discharge paperwork, he was told by the staff conducting orientation that doctors were expected to complete medical paperwork contemporaneously, and that it was to be completed within each shift; and
3. from time to time during the First Latrobe ED rotation.

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

4. the matters in subparagraphs (1) to (3) above; and
5. the fact that there was a practice in the Emergency Department at Latrobe Hospital whereby most, if not all, patients were to be discharged or transferred from the Emergency Department, or admitted as an in-patient, within four hours of triage of the patient;
6. the matters in paragraph 17(f) above.

22. During the First Latrobe ED rotation, in order to complete medical records in accordance with the medical records direction, Dr McPadden worked hours in excess of rostered hours (**medical records overtime**).

Particulars

During the First Latrobe ED rotation, for each patient under Dr McPadden's care, Dr McPadden would examine and treat the patient and complete the process of documenting his assessment and treatment of the patient. As the examination and treatment of the patient was a matter solely undertaken by Dr McPadden, only he could complete the medical records in respect of those tasks.

Following examination and treatment, Dr McPadden would either admit, transfer or discharge the patient, as follows:

1. *admission* was effected by Dr McPadden making a referral by telephone to the in-patient team. Where the referral was accepted over the telephone, Dr McPadden was required to complete the admission paperwork before the patient could be admitted;
2. *transfer* was effected by Dr McPadden telephoning the hospital the patient was to be transferred to, and requesting and arranging the transfer. Once the transfer was confirmed with the other hospital, transportation of the patient was arranged via either Ambulance Victoria, Ambulance Retrieval Victoria or Paediatric Infant Perinatal Emergency Retrieval. Transfer would not commence until the transfer paperwork was complete;
3. *discharge* was effected by Dr McPadden completing all discharge paperwork, which would be given to the patient prior to their discharge, and/or sending it electronically to their general practitioner.

The medical records overtime was worked by Dr McPadden after the conclusion of his rostered shifts, approximately one or two days per week.

Further particulars will be provided after discovery and before trial.

23. Latrobe:

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

Particulars

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

1. the medical records direction;
 2. the fact that Dr McPadden completed admission, transfer and discharge paperwork for patients in the Emergency Department before they were moved out of the Emergency Department;
 3. during the First Latrobe ED rotation, senior medical staff on duty observed Dr McPadden working after hours completing medical records.
24. By reason of the matters alleged in paragraphs 17(f), 19, 21 and 23 above, the medical records overtime worked by Dr McPadden 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 McPadden included the timely completion of medical records;
 2. the conduct of Latrobe in giving the medical records direction, as set out in paragraph 21 above;
 3. the knowledge of Latrobe, as set out in paragraphs 23(a) and (b) above; and
 4. the failure by Latrobe to direct Dr McPadden not to perform medical records overtime as set out in paragraph 23(c) above.
25. In the premises, Dr McPadden was entitled to be paid overtime for the medical records overtime that he worked, as set out in paragraph 22 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
26. Latrobe did not pay Dr McPadden overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by him during the First Latrobe ED rotation.
27. By reason of the matters alleged above, Latrobe has contravened clause 32.2 of the 2013 Agreement.
28. By reason of the matters alleged in the above paragraph, Latrobe has contravened s 50 of the FW Act.

Handover

29. During the First Latrobe ED rotation, Latrobe directed Dr McPadden to conduct handover of patient information between medical staff at the end of each shift (**handover direction**).

Particulars

The handover direction is to be inferred from the matters in paragraph 17(c) above, and from the nature of handover, whereby the outgoing shift explained to the incoming shift each patient's condition, updated information, treatment plans, and tasks to be carried out.

30. During the First Latrobe ED rotation, in order to conduct handover, Dr McPadden worked hours in excess of rostered hours (**handover overtime**).

Particulars

During the First Latrobe ED rotation, handover commenced at the start of the incoming shift, which was approximately 30 minutes before the end of the outgoing shift for the change from day to afternoon shift, and afternoon to night shift.

All doctors working the outgoing and incoming shifts were required to be present before handover could take place. If there were one or more unstable patients in the Emergency Department to be handed over, then handover would be delayed until the attending doctor was able to stabilise the patient.

Dr McPadden performed handover overtime after the end of a rostered day or afternoon shift about once per fortnight.

Further particulars will be provided after discovery and before trial.

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

Particulars

The knowledge of Latrobe is to be inferred from:

1. the handover direction; and
2. the matters in the particulars to paragraph 30 above; and
3. the fact that Dr McPadden did not leave work until he had completed handover of his patients.

32. By reason of the matters alleged in paragraphs 17(c), 19, 29 and 31 above, the handover overtime worked by Dr McPadden 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 McPadden included conducting handover;
2. the conduct of Latrobe in giving the handover direction, as set out in paragraph 29 above;
3. the commencement and conduct of handover in the circumstances described in the particulars to paragraph 30 above;
4. the knowledge of Latrobe, as set out in paragraphs 31(a) and (b) above; and
5. the failure by Latrobe to direct Dr McPadden not to perform handover overtime as set out in paragraph 31(c) above.

33. In the premises, Dr McPadden was entitled to be paid overtime for the handover overtime that he worked, as set out in paragraph 30 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
34. Latrobe did not pay Dr McPadden overtime, in accordance with clause 32.2 of the 2013 Agreement, for the handover overtime worked by him during the First Latrobe ED rotation.
35. By reason of the matters alleged above, Latrobe has contravened clause 32.2 of the 2013 Agreement.
36. By reason of the matters alleged in the above paragraph, Latrobe has contravened s 50 of the FW Act.

Medical emergencies

37. During the First Latrobe ED rotation, Latrobe directed Dr McPadden to attend to medical emergencies (**medical emergency direction**).

Particulars

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

Insofar as it was oral, it was given by the supervising Registrar or Consultant to Dr McPadden to attend to a patient suffering a medical emergency.

Insofar as it is to be inferred, it is to be inferred from the matters in paragraph 17(e) above, and from the nature of the work in the emergency department, whereby patients could suffer a clinical deterioration that required medical staff to urgently attend to their care and stabilisation.

38. During the First Latrobe ED rotation, in order to attend to medical emergencies, Dr McPadden worked hours in excess of rostered hours (**medical emergency overtime**).

Particulars

During the First Latrobe ED rotation, patients would occasionally suffer a clinical deterioration which required Dr McPadden and other medical staff in the Emergency Department 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 McPadden to immediately attend to the patient until they had stabilised.

Dr McPadden performed medical emergency overtime after the end of a rostered shift about once per fortnight.

Further particulars will be provided after discovery and before trial.

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

Particulars

The knowledge of Latrobe is to be inferred from:

1. the medical emergency direction; and
2. the matters in paragraph 38 above; and
3. the fact that Dr McPadden did not leave work until he 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 McPadden 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 McPadden included attending to medical emergencies;
2. the conduct of Latrobe 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 Latrobe, as set out in paragraphs 39(a) and (b) above; and
5. the failure by Latrobe to direct Dr McPadden not to perform medical emergency overtime as set out in paragraph 39(c) above.

41. In the premises, Dr McPadden was entitled to be paid overtime for the medical emergency overtime that he worked, as set out in paragraph 38 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
42. Latrobe did not pay Dr McPadden overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical emergency overtime worked by him during the First Latrobe ED rotation.
43. By reason of the matters alleged above, Latrobe has contravened clause 32.2 of the 2013 Agreement.

44. By reason of the matters alleged in the above paragraph, Latrobe has contravened s 50 of the FW Act.

Other medical services

45. During the First Latrobe ED rotation, Latrobe directed Dr McPadden, at the end of his shift, to undertake specific tasks relating to patient care before he finished work on that day (**patient care direction**).

Particulars

The patient care direction was oral. It occurred during handover when a Registrar or Consultant in the incoming shift told Dr McPadden to undertake a specific task in relation to patient care before he finished work on that day. The specific tasks that Dr McPadden was directed to do included organising patient referrals and other forms of follow-up for patients who were to be discharged; completing admission, transfer, and discharge of patients; and responding to requests from an in-patient doctor to arrange investigations and interventions for an admitted patient.

46. During the First Latrobe ED rotation, in order to complete the patient care direction, Dr McPadden worked hours in excess of rostered hours (**patient care overtime**).

Particulars

The patient care direction was not made until the end of Dr McPadden's shift.

The patient care overtime was worked by Dr McPadden after the end of a rostered shift about once a week.

Further particulars will be provided after discovery and before trial.

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

Particulars

The knowledge of Latrobe is to be inferred from:

1. the patient care direction, which was an express, oral direction given by senior medical staff to Dr McPadden, and which included a direction to complete the particular task before Dr McPadden finished work on that day; and
 2. the timing of the patient care direction, which was given during handover, at, or very close to the end of, Dr McPadden's rostered shift;
 3. the person giving the patient care direction was aware of the matters in (2) above because handover took place towards the end of the outgoing shift, and at the start of the incoming shift;
 4. the fact that Dr McPadden attended to the patient care direction before he finished work on that day.
48. By reason of the matters alleged in paragraphs 17(g), 19, 45 and 47 above, the patient care overtime worked by Dr McPadden 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 McPadden included attending to patient care;
 2. the patient care direction;
 3. the knowledge of Latrobe, as set out in paragraphs 47(a) and (b) above;
 4. the failure by Latrobe to direct Dr McPadden not to perform patient care overtime as set out in paragraph 47(c) above.
49. In the premises, Dr McPadden was entitled to be paid overtime for the patient care overtime that he worked, as set out in paragraph 46 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
50. Latrobe did not pay Dr McPadden overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by him during the First Latrobe ED rotation.
51. By reason of the matters alleged above, Latrobe has contravened clause 32.2 of the 2013 Agreement.

52. By reason of the matters alleged in the above paragraph, Latrobe has contravened s 50 of the FW Act.

D2 Second Latrobe Emergency Department rotation – 3 September 2018 to 11 November 2018

53. Between 3 September 2018 and 11 November 2018, pursuant to the direction of Monash and Latrobe set out in paragraph 18(b) above, Dr McPadden worked in the Emergency Department at Latrobe Hospital (**Second Latrobe ED rotation**).

Rosters

54. During the Second Latrobe ED rotation, Dr McPadden was rostered to work the following shifts:
- (a) morning shift, from 8.00am – 4.00pm;
 - (b) afternoon shift, from 3.30pm – 11.30pm; and
 - (c) night shift, from 11.00pm – 8.30am the following day.

Particulars

Copies of Dr McPadden's rosters for the Second Latrobe ED rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

Medical records overtime

55. During the Second Latrobe ED rotation, Latrobe directed Dr McPadden:
- (a) that patients in the Emergency Department could not be admitted as an in-patient to a ward or department within Latrobe Hospital, or transferred to another hospital, or discharged from the Emergency Department, unless and until the patient admission, transfer or discharge paperwork was complete; and
 - (b) to complete patient admission, transfer or discharge paperwork in a timely manner

(the **medical records direction**).

Particulars

The medical records direction was partly written, partly oral, and is partly to be inferred. The Second Applicant refers to and repeats the particulars to paragraph 21 above, save that the reference to clause 14.1 of the 2013 Agreement should be a reference to clause 23.1 of the 2018 Agreement.

56. During the Second Latrobe ED rotation, in order to complete medical records in accordance with the medical records direction, Dr McPadden worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The Second Applicant refers to and repeats the particulars to paragraph 22 above, and says that the medical records overtime was worked by Dr McPadden after the conclusion of his rostered shifts, approximately one or two days per week.

Further particulars will be provided after discovery and before trial.

57. Latrobe:

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

Particulars

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

1. the medical records direction;
2. the fact that Dr McPadden completed admission, transfer and discharge paperwork for patients in the Emergency Department before they were moved out of the Emergency Department;
3. during the Second Latrobe ED rotation, senior medical staff on duty observed Dr McPadden working after hours completing medical records.

58. By reason of the matters alleged in paragraphs 17(f), 53, 55 and 57 above, the medical records overtime worked by Dr McPadden 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 McPadden included the timely completion of medical records;
 2. the conduct of Latrobe in giving the medical records direction, as set out in paragraph 55 above;
 3. the knowledge of Latrobe, as set out in paragraphs 57(a) and (b) above; and
 4. the failure by Latrobe to direct Dr McPadden not to perform medical records overtime as set out in paragraph 57(c) above.
59. In the premises, Dr McPadden was entitled to be paid overtime for the medical records overtime that he worked, as set out in paragraph 56 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
60. Latrobe did not pay Dr McPadden overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical records overtime worked by him during the Second Latrobe ED rotation.
61. By reason of the matters alleged above, Latrobe has contravened clause 36.2 of the 2018 Agreement.
62. By reason of the matters alleged in the above paragraph, Latrobe has contravened s 50 of the FW Act.

Handover

63. During the Second Latrobe ED rotation, Latrobe directed Dr McPadden to conduct handover of patient information between medical staff at the end of each shift (**handover direction**).

Particulars

The handover direction is to be inferred from the matters in paragraph 17(c) above, and from the nature of handover, whereby the outgoing shift explained to the incoming shift each patient’s

condition, updated information, treatment plans, and tasks to be carried out.

64. During the Second Latrobe ED rotation, in order to conduct handover, Dr McPadden worked hours in excess of rostered hours (**handover overtime**).

Particulars

During the Second Latrobe ED rotation, handover commenced at the commencement of the incoming shift, which was approximately 30 minutes before the end of the outgoing shift.

All doctors working the outgoing and incoming shifts were required to be present before handover could take place. If there were one or more unstable patients in the Emergency Department to be handed over, then handover would be delayed until the attending doctor was able to stabilise the patient.

Dr McPadden performed handover overtime after the end of a rostered shift about once per fortnight.

Further particulars will be provided after discovery and before trial.

65. Latrobe:

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

Particulars

The knowledge of Latrobe is to be inferred from:

1. the handover direction; and
2. the matters in the particulars to paragraph 64 above; and
3. the fact that Dr McPadden did not leave work until he had completed handover of his patients.

66. By reason of the matters alleged in paragraphs 17(c), 53, 63 and 65 above, the handover overtime worked by Dr McPadden 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 McPadden included conducting handover;
 2. the conduct of Latrobe in giving the handover direction, as set out in paragraph 63 above;
 3. the commencement and conduct of handover in the circumstances described in the particulars to paragraph 64 above;
 4. the knowledge of Latrobe, as set out in paragraphs 65(a) and (b) above; and
 5. the failure by Latrobe to direct Dr McPadden not to perform handover overtime as set out in paragraph 65(c) above.
67. In the premises, Dr McPadden was entitled to be paid overtime for the handover overtime that he worked, as set out in paragraph 64 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
68. Latrobe did not pay Dr McPadden overtime, in accordance with clause 36.2 of the 2018 Agreement, for the handover overtime worked by him during the Second Latrobe ED rotation.
69. By reason of the matters alleged above, Latrobe has contravened clause 36.2 of the 2018 Agreement.
70. By reason of the matters alleged in the above paragraph, Latrobe has contravened s 50 of the FW Act.

Medical emergencies

71. During the Second Latrobe ED rotation, Latrobe directed Dr McPadden to attend to medical emergencies (**medical emergency direction**).

Particulars

The Second Applicant refers to and repeats the particulars to paragraph 37 above.

72. During the Second Latrobe ED rotation, in order to attend to medical emergencies, Dr McPadden worked hours in excess of rostered hours (**medical emergency overtime**).

Particulars

During the Second Latrobe ED rotation, patients would occasionally suffer a clinical deterioration which required Dr McPadden and other medical staff in the Emergency Department 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 McPadden to immediately attend to the patient until they had stabilised.

Dr McPadden performed medical emergency overtime after the end of a rostered shift about once per fortnight.

Further particulars will be provided after discovery and before trial.

73. Latrobe:

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

Particulars

The knowledge of Latrobe is to be inferred from:

- 1. the medical emergency direction; and
- 2. the matters in paragraph 72 above; and
- 3. the fact that Dr McPadden did not leave work until he had treated and stabilised the patient suffering a medical emergency.

74. By reason of the matters alleged in paragraphs 17(e), 53, 71 and 73 above, the medical emergency overtime worked by Dr McPadden 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 McPadden included attending to medical emergencies;
 2. the conduct of Latrobe in giving the medical emergency direction, as set out in paragraph 71 above;
 3. the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 72 above;
 4. the knowledge of Latrobe, as set out in paragraphs 73(a) and (b) above; and
 5. the failure by Latrobe to direct Dr McPadden not to perform medical emergency overtime as set out in paragraph 73(c) above.
75. In the premises, Dr McPadden was entitled to be paid overtime for the medical emergency overtime that he worked, as set out in paragraph 72 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
76. Latrobe did not pay Dr McPadden overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical emergency overtime worked by him during the Second Latrobe ED rotation.
77. By reason of the matters alleged above, Latrobe has contravened clause 36.2 of the 2018 Agreement.
78. By reason of the matters alleged in the above paragraph, Latrobe has contravened s 50 of the FW Act.

Other medical services

79. During the Second Latrobe ED rotation, Latrobe directed Dr McPadden, at the end of his shift, to undertake specific tasks relating to patient care before he finished work on that day (**patient care direction**).

Particulars

The patient care direction was oral. It occurred during handover when a Registrar or Consultant in the incoming shift told Dr McPadden to undertake a specific task in relation to patient care before he finished work on that day. The specific tasks that Dr McPadden was directed to do included organising patient referrals and other forms of follow-up for patients who were to be discharged; completing admission, transfer, and discharge of patients; and responding to requests from an in-patient doctor to arrange investigations and interventions for an admitted patient.

80. During the Second Latrobe ED rotation, in order to complete the patient care direction, Dr McPadden worked hours in excess of rostered hours (**patient care overtime**).

Particulars

The patient care direction was not made until the end of Dr McPadden's shift.

The patient care overtime was worked by Dr McPadden after the end of a rostered shift about once a week.

Further particulars will be provided after discovery and before trial.

81. Latrobe:

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

Particulars

The knowledge of Latrobe is to be inferred from:

1. the patient care direction, which was an express, oral direction given by senior medical staff to Dr McPadden, and which included a direction to complete the particular task before Dr McPadden finished work on that day; and
2. the timing of the patient care direction, which was given during handover, at, or very close to the end of, Dr McPadden's rostered shift;
3. the person giving the patient care direction was aware of the matters in (2) above because handover took place towards the end of the outgoing shift, and at the start of the incoming shift;

4. the fact that Dr McPadden attended to the patient care direction before he finished work on that day.
82. By reason of the matters alleged in paragraphs 17(g), 53, 79 and 81 above, the patient care overtime worked by Dr McPadden 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 McPadden included attending to patient care;
 2. the patient care direction;
 3. the knowledge of Latrobe, as set out in paragraphs 81(a) and (b) above;
 4. the failure by Latrobe to direct Dr McPadden not to perform patient care overtime as set out in paragraph 81(c) above.
83. In the premises, Dr McPadden was entitled to be paid overtime for the patient care overtime that he worked, as set out in paragraph 80 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
84. Latrobe did not pay Dr McPadden overtime, in accordance with clause 36.2 of the 2018 Agreement, for the patient care overtime worked by him during the Second Latrobe ED rotation.
85. By reason of the matters alleged above, Latrobe has contravened clause 36.2 of the 2018 Agreement.
86. By reason of the matters alleged in the above paragraph, Latrobe has contravened s 50 of the FW Act.

D3 Emergency Department, Dandenong Hospital – 12 November 2018 to on or about 30 December 2018

87. Between 12 November 2018 and on or about 30 December 2018, pursuant to the direction of Monash set out in paragraph 18(c) above, Dr McPadden worked in the Emergency Department at Dandenong Hospital (**First Dandenong ED rotation**).

Rosters

88. During the First Dandenong ED rotation, Dr McPadden was rostered to work over the following shifts:

- (a) day shift, from 8.00am to 5.30pm;
- (b) afternoon shift, from 2.30pm to midnight;
- (c) night shift, from 11.00pm to 8.30am.

Particulars

Copies of Dr McPadden's rosters for the First Dandenong ED rotation are in the possession of the solicitors for the Applicants and available for inspection on request.

Medical records overtime

89. During the First Dandenong ED rotation, Monash directed Dr McPadden:

- (a) that patients in the Emergency Department could not be admitted as an in-patient to a ward or department within Dandenong Hospital, or transferred to another hospital, or discharged from the Emergency Department, unless and until the patient admission, transfer or discharge paperwork was complete; and
 - (b) to complete patient admission, transfer or discharge paperwork in a timely manner
- (the **medical records direction**).

Particulars

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

Insofar as it was in writing, it was contained in:

1. 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. Admission, transfer and discharge paperwork each comprise "medical records" for patients. The Second Applicant refers to and repeats subparagraphs 1(a)–(c) of the particulars to paragraph 21 above.

Insofar as it was oral, it was conveyed by senior nursing and medical staff in the Emergency Department:

2. during orientation for the Dandenong Hospital Emergency Department, when Dr McPadden was also shown how to use the online system known as ‘Symphony’ for completing admission, transfer and discharge paperwork; and
3. from time to time during the First Dandenong ED rotation.

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

4. the matters in subparagraphs (1) to (3) above; and
 5. the fact that there was a practice in the Emergency Department at Dandenong Hospital whereby most, if not all, patients were to be discharged or transferred from the Emergency Department, or admitted as an in-patient, within four hours of triage of the patient;
 6. the matters in paragraph 17(f) above.
90. During the First Dandenong ED rotation, in order to complete medical records in accordance with the medical records direction, Dr McPadden worked hours in excess of rostered hours (**medical records overtime**).

Particulars

During the First Dandenong ED rotation, for each patient under Dr McPadden’s care, Dr McPadden would examine and treat the patient and complete the process of documenting his assessment and treatment of the patient. As the examination and treatment of the patient was a matter solely undertaken by Dr McPadden, only he could complete the medical records in respect of those tasks.

Following examination and treatment, Dr McPadden would either admit, transfer or discharge the patient, as follows:

1. *admission* was effected by Dr McPadden making a referral by telephone to the in-patient Registrar. If the in-patient Registrar agreed to admit the patient, Dr McPadden was required to complete the admission paperwork before the patient could be admitted;
2. *transfer* was effected by Dr McPadden telephoning the hospital the patient was to be transferred to, and requesting and arranging the transfer. Once the transfer was confirmed with the other hospital, transportation of the patient was arranged via either Ambulance Victoria, Ambulance Retrieval Victoria, or Paediatric Infant Perinatal Emergency Retrieval. Transfer would not commence until the transfer paperwork was complete;

3. *discharge* was effected by Dr McPadden completing all discharge paperwork, which would be given to the patient prior to their discharge, and/or sending it electronically to their general practitioner.

The medical records overtime was worked by Dr McPadden approximately every second shift after the conclusion of his rostered shifts.

Further particulars will be provided after discovery and before trial.

91. Monash:

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

Particulars

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

1. the medical records direction;
2. the fact that Dr McPadden completed admission, transfer and discharge paperwork for patients in the Emergency Department before they were moved out of the Emergency Department;
3. during the First Dandenong ED rotation, senior medical staff on duty observed Dr McPadden working after hours completing medical records.

92. By reason of the matters alleged in paragraphs 17(f), 87, 89 and 91 above, the medical records overtime worked by Dr McPadden 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 McPadden included the timely completion of medical records;
2. the conduct of Monash in giving the medical records direction, as set out in paragraph 89 above;
3. the knowledge of Monash, as set out in paragraphs 91(a) and (b) above; and

4. the failure by Monash to direct Dr McPadden not to perform medical records overtime as set out in paragraph 91(c) above.

93. In the premises, Dr McPadden was entitled to be paid overtime for the medical records overtime that he worked, as set out in paragraph 90 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
94. Monash did not pay Dr McPadden overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical records overtime worked by him during the First Dandenong ED rotation.
95. By reason of the matters alleged above, Monash has contravened clause 36.2 of the 2018 Agreement.
96. By reason of the matters alleged in the above paragraph, Monash has contravened s 50 of the FW Act.

Handover

97. During the First Dandenong ED rotation, Monash directed Dr McPadden to conduct handover of patient information between medical staff at the end of each shift (**handover direction**).

Particulars

The handover direction is to be inferred from the matters in paragraph 17(c) above, and from the nature of handover, whereby the outgoing shift explained to the incoming shift each patient's condition, updated information, treatment plans, and tasks to be carried out.

98. During the First Dandenong ED rotation, in order to conduct handover, Dr McPadden worked hours in excess of rostered hours (**handover overtime**).

Particulars

During the First Dandenong ED rotation, handover took place in the following way:

All shifts

1. patients in the Emergency Department were organised into three 'streams': acute, fast track, and short stay unit patients.

Patients could move between streams (eg, acute into short stay);

2. each stream was headed by a separate Consultant or senior Registrar, except during night shift, when there was a single Consultant or senior Registrar responsible for all patients;
3. there were anywhere between 40 and 80 patients on the handover list for all shifts;
4. all Doctors working the outgoing shift, including the Consultants or senior Registrars, and the Consultant or senior Registrar for the incoming shift, were required to be present before each handover could take place;
5. if there were one or more unstable patients in the Emergency Department to be handed over, then handover would be delayed until the attending Doctor was able to stabilise the patient;

Day and afternoon shifts

6. Doctors were allocated to work in one of four teams corresponding with the patient streams: acute (x 2 teams), fast track, and short stay unit. Doctors could also be allocated to work in a 'float stream', whereby they would work across all patient streams;
7. there were separate handovers for each patient stream;
8. the first handover (which was usually for short stay patients) commenced approximately 60 minutes before the end of the outgoing day or afternoon shift, followed by fast track handover, and then acute handover commencing approximately 30 minutes before the end of the outgoing shift;
9. when handing over from the day to the afternoon shift, Dr McPadden was usually required to conduct handovers to the heads of three incoming teams (short stay, fast track and one acute team), unless he was working in the 'float stream', in which case he would often conduct four handovers to the heads of four incoming teams (short stay, fast track, and both acute teams);
10. when handing over from the afternoon to the night shift, Dr McPadden was usually required to conduct handovers for all three patient streams (short stay, fast track and acute) to the incoming Consultant or senior Registrar;

Night to day shift

11. Doctors working the night shift were allocated to work in a single team covering all three patient streams;
12. when handing over from night to day shift, the night shift conducted three handovers, one for the head of each of the incoming patient streams (as set out in (2) above);

13. handover from the night to the day shift typically commenced with short stay handover approximately 60 minutes before the end of the outgoing night shift, followed by fast track handover, and then acute handover commencing approximately 30 minutes before the end of the outgoing night shift;
14. when working night shift, Dr McPadden attended between one and three handovers, depending on the patients he had seen on his shift;

Dr McPadden performed handover overtime after the end of a rostered shift about once per fortnight, and most frequently when he was rostered to work an afternoon shift or a float shift.

Further particulars will be provided after discovery and before trial.

99. Monash:

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

Particulars

The knowledge of Monash is to be inferred from:

1. the handover direction; and
2. the matters in the particulars to paragraph 98 above; and
3. the fact that Dr McPadden did not leave work until he had completed handover of his patients.

100. By reason of the matters alleged in paragraphs 17(c), 87, 97 and 99 above, the handover overtime worked by Dr McPadden 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 McPadden included conducting handover;
2. the conduct of Monash in giving the handover direction, as set out in paragraph 97 above;

3. the commencement and conduct of handover in the circumstances described in the particulars to paragraph 98 above;
4. the knowledge of Monash, as set out in paragraphs 99(a) and (b) above; and
5. the failure by Monash to direct Dr McPadden not to perform handover overtime as set out in paragraph 99(c) above.

101. In the premises, Dr McPadden was entitled to be paid overtime for the handover overtime that he worked, as set out in paragraph 98 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
102. Monash did not pay Dr McPadden overtime, in accordance with clause 36.2 of the 2018 Agreement, for the handover overtime worked by him during the First Dandenong ED rotation.
103. By reason of the matters alleged above, Monash has contravened clause 36.2 of the 2018 Agreement.
104. By reason of the matters alleged in the above paragraph, Monash has contravened s 50 of the FW Act.

Medical emergencies

105. During the First Dandenong ED rotation, Monash directed Dr McPadden to attend to medical emergencies (**medical emergency direction**).

Particulars

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

Insofar as it was oral, it was given by the supervising Registrar or Consultant to Dr McPadden to attend to a patient suffering a medical emergency.

Insofar as it is to be inferred, it is to be inferred from the matters in paragraph 17(e) above, and from the nature of the work in the emergency department, whereby patients could suffer a clinical deterioration that required medical staff to urgently attend to their care and stabilisation.

106. During the First Dandenong ED rotation, in order to attend to medical emergencies, Dr McPadden worked hours in excess of rostered hours (**medical emergency overtime**).

Particulars

During the First Dandenong ED rotation, patients would occasionally suffer a clinical deterioration which required Dr McPadden and other medical staff in the Emergency Department 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 McPadden to immediately attend to the patient until they had stabilised.

Dr McPadden performed medical emergency overtime after the end of a rostered shift about once or twice a month.

Further particulars will be provided after discovery and before trial.

107. Monash:

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

Particulars

The knowledge of Monash is to be inferred from:

1. the medical emergency direction; and
2. the matters in paragraph 106 above; and
3. the fact that Dr McPadden did not leave work until he had treated and stabilised the patient suffering a medical emergency.

108. By reason of the matters alleged in paragraphs 17(e), 87, 105 and 107 above, the medical emergency overtime worked by Dr McPadden 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 McPadden included attending to medical emergencies;
2. the conduct of Monash in giving the medical emergency direction, as set out in paragraph 105 above;

3. the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 106 above;
4. the knowledge of Monash, as set out in paragraphs 107(a) and (b) above; and
5. the failure by Monash to direct Dr McPadden not to perform medical emergency overtime as set out in paragraph 107(c) above.

109. In the premises, Dr McPadden was entitled to be paid overtime for the medical emergency overtime that he worked, as set out in paragraph 106 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
110. Monash did not pay Dr McPadden overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical emergency overtime worked by him during the First Dandenong ED rotation.
111. By reason of the matters alleged above, Monash has contravened clause 36.2 of the 2018 Agreement.
112. By reason of the matters alleged in the above paragraph, Monash has contravened s 50 of the FW Act.

Other medical services

113. During the First Dandenong ED rotation, Monash directed Dr McPadden, at the end of his shift, to undertake specific tasks relating to patient care before he finished work (**patient care direction**).

Particulars

The patient care direction was oral. It occurred during handover when a Registrar or Consultant in the incoming shift told Dr McPadden to undertake a specific task in relation to patient care before he finished work on that day. The specific tasks that Dr McPadden was directed to do included organising imaging and pathology, patient referrals, prescribing medication, discharging a patient home, and organising outpatient follow-up appointments.

114. During the First Dandenong ED rotation, in order to complete the patient care direction, Dr McPadden worked hours in excess of rostered hours (**patient care overtime**).

Particulars

The patient care direction was not made until the end of Dr McPadden's shift.

The patient care overtime was worked by Dr McPadden after the end of a rostered shift, about twice a week.

Further particulars will be provided after discovery and before trial.

115. Monash:

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

Particulars

The knowledge of Monash 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 McPadden, and which included a direction to complete the particular task before Dr McPadden finished work on that day;
2. the timing of the patient care direction, which was given during handover, at, or very close to the end of, Dr McPadden's rostered shift;
3. the person or persons giving the patient care direction were aware of the matters in (2) above because handover took place towards the end of the outgoing shift, and at the start of the incoming shift;
4. the fact that Dr McPadden attended to the patient care direction before he finished work on that day.

116. By reason of the matters alleged in paragraphs 17(g), 87, 113 and 115 above, the patient care overtime worked by Dr McPadden 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 patient care direction;

2. the knowledge of Monash, as set out in paragraphs 115(a) and (b) above;
3. the failure by Monash to direct Dr McPadden not to perform patient care overtime as set out in paragraph 115(c) above.

117. In the premises, Dr McPadden was entitled to be paid overtime for the patient care overtime that he worked, as set out in paragraph 114 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.

118. Monash did not pay Dr McPadden overtime, in accordance with clause 36.2 of the 2018 Agreement, for the patient care overtime worked by him during the First Dandenong ED rotation.

119. By reason of the matters alleged above, Monash has contravened clause 36.2 of the 2018 Agreement.

120. By reason of the matters alleged in the above paragraph, Monash has contravened s 50 of the FW Act.

D4 Emergency Department, Dandenong Hospital – on or about 16 December 2019 to on or about 2 February 2020

121. Between on or about 16 December 2019 and on or about 2 February 2020, pursuant to the direction of Monash set out in paragraph 18(d) above, Dr McPadden worked in the Emergency Department at Dandenong Hospital (**Second Dandenong ED rotation**).

Rosters

122. During the Second Dandenong ED rotation, Dr McPadden was rostered to work over the following shifts:

- (a) day shift, from 8.00am to 5.30pm;
- (b) afternoon shift, from 2.30pm to midnight;
- (c) night shift, from 11.00pm to 8.30am.

Medical records overtime

123. During the Second Dandenong ED rotation, Monash directed Dr McPadden:

- (a) that patients in the Emergency Department could not be admitted as an in-patient to a ward or department within Dandenong Hospital, or transferred to another hospital, or discharged from the Emergency Department, unless and until the patient admission, transfer or discharge paperwork was complete; and
 - (b) to complete patient admission, transfer or discharge paperwork in a timely manner
- (the **medical records direction**).

Particulars

The medical records direction was partly written, partly oral, and is partly to be inferred. The Second Applicant refers to and repeats the particulars to paragraph 89 above.

124. During the Second Dandenong ED rotation, in order to complete medical records in accordance with the medical records direction, Dr McPadden worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The Second Applicant refers to and repeats the particulars to paragraph 90 above, and says that the medical records overtime was worked by Dr McPadden approximately every second shift after the conclusion of his rostered shifts.

Further particulars will be provided after discovery and before trial.

125. Monash:

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

Particulars

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

1. the medical records direction;
2. the fact that Dr McPadden completed admission, transfer and discharge paperwork for patients in the Emergency Department before they were moved out of the Emergency Department;
3. during the Second Dandenong ED rotation, senior medical staff on duty observed Dr McPadden working after hours completing medical records.

126. By reason of the matters alleged in paragraphs 17(f), 121, 123 and 125 above, the medical records overtime worked by Dr McPadden 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 McPadden included the timely completion of medical records;
2. the conduct of Monash in giving the medical records direction, as set out in paragraph 123 above;
3. the knowledge of Monash, as set out in paragraphs 125(a) and (b) above; and
4. the failure by Monash to direct Dr McPadden not to perform medical records overtime as set out in paragraph 125(c) above.

127. In the premises, Dr McPadden was entitled to be paid overtime for the medical records overtime that he worked, as set out in paragraph 124 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
128. Monash did not pay Dr McPadden overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical records overtime worked by him during the Second Dandenong ED rotation.
129. By reason of the matters alleged above, Monash has contravened clause 36.2 of the 2018 Agreement.
130. By reason of the matters alleged in the above paragraph, Monash has contravened s 50 of the FW Act.

Handover

131. During the Second Dandenong ED rotation, Monash directed Dr McPadden to conduct handover of patient information between medical staff at the end of each shift (**handover direction**).

Particulars

The handover direction is to be inferred from the matters in paragraph 17(c) above, and from the nature of handover, whereby the outgoing shift explained to the incoming shift each patient's condition, updated information, treatment plans, and tasks to be carried out.

132. During the Second Dandenong ED rotation, in order to conduct handover, Dr McPadden worked hours in excess of rostered hours (**handover overtime**).

Particulars

During the First Dandenong ED rotation, handover took place in the following way:

All shifts

1. patients in the Emergency Department were organised into three 'streams': acute, fast track, and short stay unit patients. Patients could move between streams (eg, acute into short stay);
2. each stream was headed by a separate Consultant or senior Registrar, except during night shift, when there was a single Consultant or senior Registrar responsible for all patients;
3. there were anywhere between 40 and 80 patients on the handover list for all shifts;
4. all Doctors working the outgoing shift, including the Consultants or senior Registrars, and the Consultant or senior Registrar for the incoming shift, were required to be present before each handover could take place;
5. if there were one or more unstable patients in the Emergency Department to be handed over, then handover would be delayed until the attending Doctor was able to stabilise the patient;

Day and afternoon shifts

6. Doctors were allocated to work in one of four teams corresponding with the patient streams: acute (x 2 teams), fast track, and short stay unit. Doctors could also be allocated to work in a 'float stream', whereby they would work across all patient streams;

7. there were separate handovers for each patient stream;
8. the first handover (which was usually for short stay patients) commenced approximately 60 minutes before the end of the outgoing day or afternoon shift, followed by fast track handover, and then acute handover commencing approximately 30 minutes before the end of the outgoing shift;
9. when handing over from the day to the afternoon shift, Dr McPadden was usually required to conduct handovers to the heads of three incoming teams (short stay, fast track and one acute team), unless he was working in the 'float stream', in which case he would often conduct four handovers to the heads of four incoming teams (short stay, fast track, and both acute teams);
10. when handing over from the afternoon to the night shift, Dr McPadden was usually required to conduct handovers for all three patient streams (short stay, fast track and acute) to the incoming Consultant or senior Registrar;

Night to day shift

11. Doctors working the night shift were allocated to work in a single team covering all three patient streams;
12. when handing over from night to day shift, the night shift conducted three handovers, one for the head of each of the incoming patient streams (as set out in (2) above);
13. handover from the night to the day shift typically commenced with short stay handover approximately 60 minutes before the end of the outgoing night shift, followed by fast track handover, and then acute handover commencing approximately 30 minutes before the end of the outgoing night shift;
14. when working night shift, Dr McPadden attended between one and three handovers, depending on the patients he had seen on his shift;

Dr McPadden performed handover overtime after the end of a rostered shift about once per fortnight, and most frequently when he was rostered to work an afternoon shift or a float shift.

Further particulars will be provided after discovery and before trial.

133. Monash:

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

Particulars

The knowledge of Monash is to be inferred from:

1. the handover direction; and
2. the matters in the particulars to paragraph 132 above; and
3. the fact that Dr McPadden did not leave work until he had completed handover of his patients.

134. By reason of the matters alleged in paragraphs 17(c), 121, 131 and 133 above, the handover overtime worked by Dr McPadden 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 McPadden included conducting handover;
2. the conduct of Monash 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 Monash, as set out in paragraphs 133(a) and (b) above; and
5. the failure by Monash to direct Dr McPadden not to perform handover overtime as set out in paragraph 133(c) above.

135. In the premises, Dr McPadden was entitled to be paid overtime for the handover overtime that he worked, as set out in paragraph 132 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
136. Monash did not pay Dr McPadden overtime, in accordance with clause 36.2 of the 2018 Agreement, for the handover overtime worked by him during the Second Dandenong ED rotation.
137. By reason of the matters alleged above, Monash has contravened clause 36.2 of the 2018 Agreement.
138. By reason of the matters alleged in the above paragraph, Monash has contravened s 50 of the FW Act.

Medical emergencies

139. During the Second Dandenong ED rotation, Monash directed Dr McPadden to attend to medical emergencies (**medical emergency direction**).

Particulars

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

Insofar as it was oral, it was given by the supervising Registrar or Consultant to Dr McPadden to attend to a patient suffering a medical emergency.

Insofar as it is to be inferred, it is to be inferred from the matters in paragraph 17(e) above, and from the nature of the work in the emergency department, whereby patients could suffer a clinical deterioration that required medical staff to urgently attend to their care and stabilisation.

140. During the Second Dandenong ED rotation, in order to attend to medical emergencies, Dr McPadden worked hours in excess of rostered hours (**medical emergency overtime**).

Particulars

During the Second Dandenong ED rotation, patients would occasionally suffer a clinical deterioration which required Dr McPadden and other medical staff in the Emergency Department 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 McPadden to immediately attend to the patient until they had stabilised.

Dr McPadden performed medical emergency overtime after the end of a rostered shift about once or twice a month.

Further particulars will be provided after discovery and before trial.

141. Monash:

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

Particulars

The knowledge of Monash is to be inferred from:

1. the medical emergency direction; and
2. the matters in paragraph 140 above; and
3. the fact that Dr McPadden did not leave work until he had treated and stabilised the patient suffering a medical emergency.

142. By reason of the matters alleged in paragraphs 17(e), 121, 139 and 141 above, the handover overtime worked by Dr McPadden 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 McPadden included attending to medical emergencies;
2. the conduct of Monash in giving the medical emergency direction, as set out in paragraph 139 above;
3. the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 140 above;
4. the knowledge of Monash, as set out in paragraphs 141(a) and (b) above; and
5. the failure by Monash to direct Dr McPadden not to perform medical emergency overtime as set out in paragraph 141(c) above.

143. In the premises, Dr McPadden was entitled to be paid overtime for the medical emergency overtime that he worked, as set out in paragraph 140 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.

144. Monash did not pay Dr McPadden overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical emergency overtime worked by him during the Second Dandenong ED rotation.

145. By reason of the matters alleged above, Monash has contravened clause 36.2 of the 2018 Agreement.

146. By reason of the matters alleged in the above paragraph, Monash has contravened s 50 of the FW Act.

Other medical services

147. During the Second Dandenong ED rotation, Monash directed Dr McPadden, at the end of his shift, to undertake specific tasks relating to patient care before he finished work (**patient care direction**).

Particulars

The patient care direction was oral. It occurred during handover when a Registrar or Consultant in the incoming shift told Dr McPadden to undertake a specific task in relation to patient care before he finished work on that day. The specific tasks that Dr McPadden was directed to do included organising imaging and pathology, patient referrals, prescribing medication, discharging a patient home, and organising outpatient follow-up appointments.

148. During the Second Dandenong ED rotation, in order to complete the patient care direction, Dr McPadden worked hours in excess of rostered hours (**patient care overtime**).

Particulars

The patient care direction was not made until the end of Dr McPadden's shift.

The patient care overtime was worked by Dr McPadden after the end of a rostered shift, about twice a week.

Further particulars will be provided after discovery and before trial.

149. Monash:

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

Particulars

The knowledge of Monash 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 McPadden, and which included a direction to complete the particular task before Dr McPadden finished work on that day;
2. the timing of the patient care direction, which was given during handover, at, or very close to the end of, Dr McPadden's rostered shift;
3. the person giving the patient care direction was aware of the matters in (2) above because handover took place towards the end of the outgoing shift, and at the start of the incoming shift;
4. the fact that Dr McPadden attended to the patient care direction before he finished work on that day.

150. By reason of the matters alleged in paragraphs 17(g), 121, 147 and 149 above, the patient care overtime worked by Dr McPadden 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 patient care direction;
2. the knowledge of Monash, as set out in paragraphs 149(a) and (b) above;
3. the failure by Monash to direct Dr McPadden not to perform patient care overtime as set out in paragraph 149(c) above.

151. In the premises, Dr McPadden was entitled to be paid overtime for the patient care overtime that he worked, as set out in paragraph 148 above, at the rates set out in clause 36.2(c) of the 2018 Agreement.
152. Monash did not pay Dr McPadden overtime, in accordance with clause 36.2 of the 2018 Agreement, for the patient care overtime worked by him during the Second Dandenong ED rotation.
153. By reason of the matters alleged above, Monash has contravened clause 36.2 of the 2018 Agreement.

154. By reason of the matters alleged in the above paragraph, Monash has contravened s 50 of the FW Act.

D5 Loss

155. Dr McPadden has suffered loss by reason of the contraventions of:

(a) Latrobe; and

(b) Monash,

of s 50 of the FW Act.

Particulars

Particulars will be provided after discovery and before trial.

E GROUP MEMBERS' CLAIMS AGAINST MONASH HEALTH

156. Each Group Member, in the course of their employment by Monash during the Relevant Period:

(a) worked in one or more of the services operated by Monash 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

157. Some or all Group Members, in the course of their employment by Monash 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 Monash as set out in paragraph 1(d) above.

158. Each Group Member subject to the direction in paragraph 157 above worked overtime in excess of rostered hours to prepare for ward rounds, in accordance with that direction.

159. In respect of each Group Member in paragraph 158 above, Monash:

- (a) knew that there was insufficient time during rostered hours to prepare for ward rounds, in accordance with the direction in paragraph 157 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 Monash is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 157 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.

160. Monash 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 158 above worked by them.

161. 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 Monash in giving the direction set out in paragraph 157 above;
3. the knowledge of Monash, as set out in paragraphs 159(a) and (b) above; and
4. the failure by Monash to direct Group Members not to perform the overtime set out in paragraph 158 above, as set out in paragraph 159(c) above.

162. In the premises, Group Members were entitled to be paid overtime for the ward round preparation overtime they worked as set out in paragraph 158 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

163. By reason of the matters alleged in paragraphs 160 and 162 above, Monash has contravened:

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

164. By reason of the matters in the paragraph above, Monash has contravened s 50 of the FW Act.

E2 Ward round overtime

165. Some or all Group Members, in the course of their employment by Monash 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 Monash as set out in paragraph 1(d) above.

166. Each Group Member subject to the direction in paragraph 165 above worked overtime in excess of rostered hours to undertake ward rounds, in accordance with that direction.
167. In respect of each Group Member in paragraph 166 above, Monash:
- (a) knew that there was insufficient time during rostered hours to undertake ward rounds, in accordance with the direction in paragraph 165 above;
 - (b) knew that Group Members worked overtime to undertake ward rounds;
 - (c) did not direct Group Members not to undertake ward round overtime.

Particulars

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

1. the direction pleaded in paragraph 165 above;
2. the tasks necessary to undertake ward rounds; and
3. the rostered hours for each ward where ward rounds were undertaken.

168. Monash did not pay Group Members overtime:

- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
 - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the ward round overtime in paragraph 166 above worked by them.

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

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

Particulars

Authorisation is implied from the following matters:

1. the work performed by the Group Member was the provision of medical services which included undertaking ward rounds;
2. the conduct of Monash in giving the direction set out in paragraph 165 above;
3. the knowledge of Monash, as set out in paragraphs 167(a) and (b) above; and
4. the failure by Monash to direct Group Members not to perform the overtime set out in paragraph 166 above, as set out in paragraph 167(c) above.

170. In the premises, Group Members were entitled to be paid overtime for the ward round overtime they worked as set out in paragraph 166 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

171. By reason of the matters alleged in paragraphs 168 and 170 above, Monash has contravened:

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

172. By reason of the matters in the paragraph above, Monash has contravened s 50 of the FW Act.

E3 Handover overtime

173. Some or all Group Members, in the course of their employment by Monash 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 Monash as set out in paragraph 1(d) above.

174. Each Group Member subject to the direction in paragraph 173 above worked overtime in excess of rostered hours to conduct handover, in accordance with that direction.

175. In respect of each Group Member in paragraph 174 above, Monash:

- (a) knew that there was insufficient time during rostered hours to conduct handover, in accordance with the direction in paragraph 173 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 Monash is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 173 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.

176. Monash 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 174 above worked by them.

177. 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 Monash in giving the direction set out in paragraph 173 above;
3. the knowledge of Monash, as set out in paragraphs 175(a) and (b) above; and
4. the failure by Monash to direct Group Members not to perform the overtime set out in paragraph 174 above, as set out in paragraph 175(c) above.

178. In the premises, Group Members were entitled to be paid overtime for the handover overtime they worked as set out in paragraph 174 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

179. By reason of the matters alleged in paragraphs 176 and 178 above, Monash has contravened:

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

- (b) clause 36.2 of the 2018 Agreement.

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

E4 Medical procedures preparation overtime

181. Some or all Group Members, in the course of their employment by Monash 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 Monash as set out in paragraph 1(d) above.

182. Each Group Member subject to the direction in paragraph 181 above worked overtime in excess of rostered hours to prepare for medical procedures, in accordance with that direction.

183. In respect of each Group Member in paragraph 182 above, Monash:

- (a) knew that there was insufficient time during rostered hours to prepare for medical procedures in accordance with the direction in paragraph 181 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 Monash is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 181 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.

184. Monash 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 182 above worked by them.

185. 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 Monash in giving the direction set out in paragraph 181 above;
3. the knowledge of Monash, as set out in paragraphs 183(a) and (b) above; and
4. the failure by Monash to direct Group Members not to perform the overtime set out in paragraph 182 above, as set out in paragraph 183(c) above.

186. In the premises, Group Members were entitled to be paid overtime for the medical procedures preparation overtime they worked as set out in paragraph 182 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

187. By reason of the matters alleged in paragraphs 184 and 186 above, Monash has contravened:

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

188. By reason of the matters in the paragraph above, Monash has contravened s 50 of the FW Act.

E5 Medical emergency overtime

189. Some or all Group Members, in the course of their employment by Monash 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 given by a Group Member's supervisor directing the Group Member to attend to medical emergencies 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(e) above, where patients were treated in a particular ward or department of a service operated by Monash as set out in paragraph 1(d) above.

190. Each Group Member subject to the direction in paragraph 189 above worked overtime in excess of rostered hours to attend to medical emergencies, in accordance with that direction.

191. In respect of each Group Member in paragraph 190 above, Monash:

- (a) knew that there was insufficient time during rostered hours to attend to medical emergencies, in accordance with the direction in paragraph 189 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 Monash is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 189 above;
2. the tasks necessary to attend to medical emergencies;
3. the rostered hours for each ward or department where medical emergencies occurred.

192. Monash 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 190 above worked by them.

193. 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 Monash in giving the direction set out in paragraph 189 above;
3. the knowledge of Monash, as set out in paragraphs 191(a) and (b) above; and
4. the failure by Monash to direct Group Members not to perform the overtime set out in paragraph 190 above, as set out in paragraph 191(c) above.

194. In the premises, Group Members were entitled to be paid overtime for the medical emergency overtime they worked as set out in paragraph 190 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

195. By reason of the matters alleged in paragraphs 192 and 194 above, Monash has contravened:

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

196. By reason of the matters in the paragraph above, Monash has contravened s 50 of the FW Act.

E6 Medical records overtime

197. Further, some or all Group Members, in the course of their employment by Monash 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 Monash as set out in paragraph 1(d) above.

198. Each Group Member subject to the direction in paragraph 197 above worked overtime in excess of rostered hours to complete medical records, in accordance with that direction.

199. In respect of each Group Member in paragraph 198 above, Monash:

- (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the direction in paragraph 197 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 Monash is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 197 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.

200. Monash 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 198 worked by them.

201. 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 Monash in giving the direction in paragraph 197 above;
3. the knowledge of Monash, as set out in paragraphs 199(a) and (b) above; and
4. the failure by Monash to direct Group Members not to perform the overtime set out in paragraph 198 above, as set out in paragraph 199(c) above.

202. In the premises, Group Members were entitled to be paid overtime for the medical records overtime they worked, as set out in paragraph 198 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

203. By reason of the matters alleged in paragraphs 200 and 202 above, Monash has contravened:

(a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

204. By reason of the matters in the paragraph above, Monash has contravened s 50 of the FW Act.

E7 Other medical services overtime

205. Some or all Group Members, in the course of their employment by Monash 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 (f) 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(g) above, at a particular ward or department of a service operated by Monash as set out in paragraph 1(d) above.

206. Each Group Member subject to the direction in paragraph 205 above worked overtime in excess of rostered hours to provide other medical services, in accordance with that direction.

207. In respect of each Group Member in paragraph 206 above, Monash:

(a) knew that there was insufficient time during rostered hours to provide other medical services in accordance with the direction in paragraph 205 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 Monash is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 205 above; and
2. the rostered hours for each ward or department where medical services were provided.

208. Monash 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 206 above worked by them.

209. 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 Monash in giving the direction set out in paragraph 205 above;
3. the knowledge of Monash, as set out in paragraphs 207(a) and (b) above; and
4. the failure by Monash to direct Group Members not to perform the overtime set out in paragraph 206 above, as set out in paragraph 265(c) above.

210. In the premises, Group Members were entitled to be paid overtime for providing other medical services as set out in paragraph 206 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

211. By reason of the matters alleged in paragraphs 208 and 210 above, Monash has contravened:

(a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

212. By reason of the matters in the paragraph above, Monash has contravened s 50 of the FW Act.

E8 Loss and damage

213. Some or all Group Members suffered loss by reason of Monash's contraventions of s 50 of the FW Act.

F GROUP MEMBERS' CLAIMS AGAINST LATROBE REGIONAL HOSPITAL

214. Each Group Member, in the course of their employment by Latrobe during the Relevant Period:

(a) worked at the Latrobe Hospital; 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

215. Some or all Group Members, in the course of their employment by Latrobe 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 Latrobe Hospital.

216. Each Group Member subject to the direction in paragraph 215 above worked overtime in excess of rostered hours to prepare for ward rounds, in accordance with that direction.

217. In respect of each Group Member in paragraph 216 above, Latrobe:

- (a) knew that there was insufficient time during rostered hours to prepare for ward rounds, in accordance with the direction in paragraph 215 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 Latrobe is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 215 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.

218. Latrobe 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 216 above worked by them.

219. 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 Latrobe in giving the direction set out in paragraph 215 above;
3. the knowledge of Latrobe, as set out in paragraphs 217(a) and (b) above; and
4. the failure by Latrobe to direct Group Members not to perform the overtime set out in paragraph 216 above, as set out in paragraph 217(c) above.

220. In the premises, Group Members were entitled to be paid overtime for the ward round preparation overtime they worked as set out in paragraph 216 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

221. By reason of the matters alleged in paragraphs 218 and 220 above, Latrobe has contravened:

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

222. By reason of the matters in the paragraph above, Latrobe has contravened s 50 of the FW Act.

F2 Ward round overtime

223. Some or all Group Members, in the course of their employment by Latrobe 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 Latrobe Hospital.

224. Each Group Member subject to the direction in paragraph 223 above worked overtime in excess of rostered hours to undertake ward rounds, in accordance with that direction.

225. In respect of each Group Member in paragraph 224 above, Latrobe:

- (a) knew that there was insufficient time during rostered hours to undertake ward rounds, in accordance with the direction in paragraph 223 above;
- (b) knew that Group Members worked overtime to undertake ward rounds;
- (c) did not direct Group Members not to undertake ward round overtime.

Particulars

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

1. the direction pleaded in paragraph 223 above;
2. the tasks necessary to undertake ward rounds; and
3. the rostered hours for each ward where ward rounds were undertaken.

226. Latrobe did not pay Group Members overtime:

- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
 - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the ward round overtime in paragraph 224 above worked by them.

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

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

Particulars

Authorisation is implied from the following matters:

1. the work performed by the Group Member was the provision of medical services which included undertaking ward rounds;
2. the conduct of Latrobe in giving the direction set out in paragraph 223 above;
3. the knowledge of Latrobe, as set out in paragraphs 225(a) and (b) above; and
4. the failure by Latrobe to direct Group Members not to perform the overtime set out in paragraph 224 above, as set out in paragraph 225(c) above.

228. In the premises, Group Members were entitled to be paid overtime for the ward round overtime they worked as set out in paragraph 224 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

229. By reason of the matters alleged in paragraphs 226 and 228 above, Latrobe has contravened:

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

230. By reason of the matters in the paragraph above, Latrobe has contravened s 50 of the FW Act.

F3 Handover overtime

231. Some or all Group Members, in the course of their employment by Latrobe 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 Latrobe Hospital.

232. Each Group Member subject to the direction in paragraph 231 above worked overtime in excess of rostered hours to conduct handover, in accordance with that direction.

233. In respect of each Group Member in paragraph 232 above, Latrobe:

- (a) knew that there was insufficient time during rostered hours to conduct handover, in accordance with the direction in paragraph 231 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 Latrobe is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 231 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.

234. Latrobe 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 232 above worked by them.

235. 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 Latrobe in giving the direction set out in paragraph 231 above;
3. the knowledge of Latrobe, as set out in paragraphs 233(a) and (b) above; and
4. the failure by Latrobe to direct Group Members not to perform the overtime set out in paragraph 232 above, as set out in paragraph 233(c) above.

236. In the premises, Group Members were entitled to be paid overtime for the handover overtime they worked as set out in paragraph 232 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

237. By reason of the matters alleged in paragraphs 234 and 236 above, Latrobe has contravened:

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

238. By reason of the matters in the paragraph above, Latrobe has contravened s 50 of the FW Act.

F4 Medical procedures preparation overtime

239. Some or all Group Members, in the course of their employment by Latrobe 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 Latrobe Hospital.

240. Each Group Member subject to the direction in paragraph 239 above worked overtime in excess of rostered hours to prepare for medical procedures, in accordance with that direction.

241. In respect of each Group Member in paragraph 240 above, Latrobe:

- (a) knew that there was insufficient time during rostered hours to prepare for medical procedures in accordance with the direction in paragraph 239 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 Latrobe is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 239 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.

242. Latrobe 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 240 above worked by them.

243. 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 Latrobe in giving the direction set out in paragraph 239 above;
3. the knowledge of Latrobe, as set out in paragraphs 241(a) and (b) above; and
4. the failure by Latrobe to direct Group Members not to perform the overtime set out in paragraph 240 above, as set out in paragraph 241(c) above.

244. In the premises, Group Members were entitled to be paid overtime for the medical procedures preparation overtime they worked as set out in paragraph 240 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

245. By reason of the matters alleged in paragraphs 242 and 244 above, Latrobe has contravened:

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

246. By reason of the matters in the paragraph above, Latrobe has contravened s 50 of the FW Act.

F5 Medical emergency overtime

247. Some or all Group Members, in the course of their employment by Latrobe 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 given by a Group Member's supervisor directing the Group Member to attend to medical emergencies 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(e) above, where patients were treated in a particular ward or department of Latrobe Hospital.

248. Each Group Member subject to the direction in paragraph 247 above worked overtime in excess of rostered hours to attend to medical emergencies, in accordance with that direction.

249. In respect of each Group Member in paragraph 248 above, Latrobe:

- (a) knew that there was insufficient time during rostered hours to attend to medical emergencies, in accordance with the direction in paragraph 247 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 Latrobe is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 247 above;
2. the tasks necessary to attend to medical emergencies;
3. the rostered hours for each ward or department where medical emergencies occurred.

250. Latrobe 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 248 above worked by them.

251. 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 Latrobe in giving the direction set out in paragraph 247 above;
3. the knowledge of Latrobe, as set out in paragraphs 249(a) and (b) above; and
4. the failure by Latrobe to direct Group Members not to perform the overtime set out in paragraph 248 above, as set out in paragraph 249(c) above.

252. In the premises, Group Members were entitled to be paid overtime for the medical emergency overtime they worked as set out in paragraph 248 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

253. By reason of the matters alleged in paragraphs 250 and 252 above, Latrobe has contravened:

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

254. By reason of the matters in the paragraph above, Latrobe has contravened s 50 of the FW Act.

F6 Medical records overtime

255. Further, some or all Group Members, in the course of their employment by Latrobe 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 Latrobe Hospital.

256. Each Group Member subject to the direction in paragraph 255 above worked overtime in excess of rostered hours to complete medical records, in accordance with that direction.

257. In respect of each Group Member in paragraph 256 above, Latrobe:

- (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the direction in paragraph 255 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 Latrobe is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 255 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.

258. Latrobe 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 256 worked by them.

259. 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 Latrobe in giving the direction in paragraph 255 above;
3. the knowledge of Latrobe, as set out in paragraphs 257(a) and (b) above; and
4. the failure by Latrobe to direct Group Members not to perform the overtime set out in paragraph 256 above, as set out in paragraph 257(c) above.

260. In the premises, Group Members were entitled to be paid overtime for the medical records overtime they worked, as set out in paragraph 256 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

261. By reason of the matters alleged in paragraphs 258 and 260 above, Latrobe has contravened:

(a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

262. By reason of the matters in the paragraph above, Latrobe has contravened s 50 of the FW Act.

F7 Other medical services overtime

263. Some or all Group Members, in the course of their employment by Latrobe 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 (f) 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(g) above, at a particular ward or department of Latrobe Hospital.

264. Each Group Member subject to the direction in paragraph 263 above worked overtime in excess of rostered hours to provide other medical services, in accordance with that direction.

265. In respect of each Group Member in paragraph 264 above, Latrobe:

(a) knew that there was insufficient time during rostered hours to provide other medical services in accordance with the direction in paragraph 263 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 Latrobe is to be inferred from at least the following matters:

1. the direction pleaded in paragraph 263 above; and
2. the rostered hours for each ward or department where medical services were provided.

266. Latrobe 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 264 above worked by them.

267. 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 Latrobe in giving the direction set out in paragraph 263 above;
3. the knowledge of Latrobe, as set out in paragraphs 265(a) and (b) above; and
4. the failure by Latrobe to direct Group Members not to perform the overtime set out in paragraph 264 above, as set out in paragraph 265(c) above.

268. In the premises, Group Members were entitled to be paid overtime for providing other medical services as set out in paragraph 264 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

269. By reason of the matters alleged in paragraphs 266 and 268 above, Latrobe has contravened:

(a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

270. By reason of the matters in the paragraph above, Latrobe has contravened s 50 of the FW Act.

F8 Loss and damage

271. Some or all Group Members suffered loss by reason of Latrobe's contraventions of s 50 of the FW Act.

AND THE APPLICANTS CLAIM

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

Date: 26 April 2021



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

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

Certificate of lawyer

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

Date: 26 April 2021



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: **Teak McPadden**

First Respondent: **Monash Health**

Second Respondent: **Latrobe Regional Hospital**

Date: 26 April 2021