

NOTICE OF FILING

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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: VID419/2021
File Title: THE AUSTRALIAN SALARIED MEDICAL OFFICERS' FEDERATION
& ANOR v WESTERN HEALTH
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 29/07/2021 3:49:39 PM AEST

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

Registrar

Important Information

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

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



Form 17
Rule 8.05(1)(a)

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

Western Health
Respondent

A THE PARTIES

A1 The Applicants and the Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by:
 - (a) the First Applicant, on behalf of all persons; and
 - (b) the Second Applicant, on her own behalf and on behalf of all persons,
who, during the period 30 July 2015 and 29 July 2021 (**Relevant Period**):
 - (c) were employed by Western Health;

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- (d) worked at one or more of the following services operated by Western Health:
- (i) Sunshine Hospital
176 Furlong Road
St Albans VIC 3021
 - (ii) Footscray Hospital
160 Gordon St
Footscray VIC 3011
 - (iii) Williamstown Hospital
Railway Crescent
Williamstown VIC 3016
 - (iv) Sunbury Day Hospital
7 Macedon Street
Sunbury VIC 3429
 - (v) Hazeldean Transition Care Program
211-215 Osborne Street
Williamstown VIC 3016
 - (vi) Drug Health Services
3-7 Eleanor Street
Footscray VIC 3011
- (e) were, when employed by Western Health, covered by the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013 (2013 Agreement)* until 6 August 2018, and from 7 August 2018, the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021 (2018 Agreement)* within the meaning of the *Fair Work Act 2009 (Cth) (FW Act)*;
- (f) were, when employed by Western Health, classified as a:
- (i) Hospital Medical Officer;

(ii) Medical Officer (but not a Medical Officer classified as Solely Administrative under the 2013 Agreement or the 2018 Agreement);

(iii) Registrar,

under the 2013 Agreement and/or the 2018 Agreement; and

(g) in the course of their employment by Western Health, worked hours in excess of their ordinary hours, or rostered hours (**unrostered overtime**); and

(h) 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 Joanne Peel, between 1 February 2016 and 4 November 2018, was employed by Western Health and classified from time to time as a Medical Officer (**MO**) and as a Registrar under the 2013 Agreement (until 6 August 2018), and under the 2018 Agreement (from 7 August 2018).

Particulars

The roles performed by Dr Peel from rotation to rotation are identified at paragraph 17 below.

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

A2 The Respondents

5. Western Health is and at all material times was:

- (a) a body corporate pursuant to s 65P and Schedule 5 of the *Health Services Act 1988* (Vic) and capable of suing and being sued;
- (b) a Health Service within the meaning of the 2013 Agreement and the 2018 Agreement;
- (c) a national system employer within the meaning of the FW Act;
- (d) between February 2016 and November 2018, the employer of Dr Peel.

B THE AGREEMENTS

B1 The 2013 Agreement

Application and coverage

6. The 2013 Agreement:

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

Doctor Responsibilities

7. Clause 14 of the 2013 Agreement provided, relevantly, that a Doctor covered by that Agreement:
 - (a) provided medical services, including the keeping and maintaining of adequate medical records for hospital patients (cl 14.1); and
 - (b) was required to devote their duty hours to the duties of their appointment (cl 14.2).

Hours of Work, Rostering, and Overtime

8. The 2013 Agreement provided:
 - (a) in clause 25.1.1, that, for full-time MOs, ordinary hours of work must be 38 hours per week or an average of 38 hours per week for up to 4 weeks; and
 - (b) in clause 25.1.3, that, for full-time Registrars, ordinary hours of work must be 38 hours per week plus 5 reasonable additional hours of training time, equalling 43 hours per week or an average of 43 hours per week for up to 4 weeks.
9. Clause 26.1.2 of the 2013 Agreement provided that rosters must include all working hours including theatre preparation, ward rounds, completing discharge summaries and (for Registrars only) Training Time as defined in clause 11.24.3.
10. Clauses 32.1 and 32.2 of the 2013 Agreement provided, relevantly:

32. OVERTIME

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

32.2 Entitlement

32.2.1 Overtime is payable for working:

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

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

B2 The 2018 Agreement

Application and coverage

11. The 2018 Agreement:

- (a) is an enterprise agreement within the meaning of Part 2-4 of the FW Act;
- (b) was approved by the FWC on 31 July 2018;
- (c) commenced operation on and from 7 August 2018 and continues to operate; and
- (d) pursuant to clause 4.1, covered:
 - (iv) Western Health;
 - (v) ASMOF;
 - (vi) employees of Western Health who were employed in the classifications set out in paragraph 1(f) above.

Doctor Responsibilities

12. Clause 23 of the 2018 Agreement provides, relevantly, that a Doctor covered by that Agreement:

- (a) provides medical services, including the keeping and maintaining of adequate medical records for health service patients (cl 23.1); and
- (b) is required to devote their duty hours to the duties of their appointment (cl 23.2).

Hours of Work, Rostering, and Overtime

13. The 2018 Agreement provides:

- (a) in clause 33.1(a), that, for Doctors other than Registrars, the ordinary hours of full-time work are 38 hours per week or an average of 38 hours per week over a period of up to 4 weeks;
- (b) in clause 33.1(b), that, for Registrars, the ordinary hours of full-time work will be 38 hours plus five reasonable additional hours of Training Time (as defined

at subclause 3.1(dd)) equaling 43 hours per week or an average of 43 hours per week over a period of up to four weeks.

14. Clause 35.1(b) of the 2018 Agreement provides that rosters must include all working hours including theatre preparation, ward rounds, completing discharge summaries and (for Registrars only) Training Time in accordance with subclause 34.5.
15. Clauses 36.1 and 36.2 of the 2018 Agreement provide, relevantly:

36 Overtime

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

36.2 Entitlement

- (a) Overtime is payable for working:
 - (i) rostered hours in excess of ordinary hours, pursuant to subclause 33.1; or
 - (ii) authorised hours in excess of rostered hours.
- (b) Notwithstanding the provisions of subclause 36.2(a) above, where a part-time Doctor is directed by the Health Service to work rostered hours in excess of their contract hours, overtime will be paid pursuant to this clause for all hours worked in excess of their contract hours. A Doctor who offers to work additional hours will be paid their ordinary rate of pay until their total weekly hours of work exceed the full time ordinary hours for their classification, as prescribed in clause 33 (Hours of Work).
- (c) The payment of overtime is one and one half (1½) times the Doctor's ordinary hourly rate of pay for the first two hours overtime in a week and then double the Doctor's ordinary hourly rate of pay for all additional overtime hours in that week.

C DUTIES AND RESPONSIBILITIES OF DR PEEL AND GROUP MEMBERS

16. During the Relevant Period, the duties and responsibilities of Dr Peel and Group Members when providing medical services included, from time to time:
 - (a) preparation for ward rounds (**ward round preparation**);
 - (b) undertaking ward rounds (**ward rounds**);
 - (c) receiving or handing over information about patients between medical staff at the start or end of a shift (**handover**);
 - (d) preparation for medical procedures (**medical procedures preparation**);

- (e) attending to medical emergencies or critical patient care (**medical emergency**);
- (f) completion of patient medical records, including discharge summaries, in a timely manner (**medical records**);
- (g) speaking with patients and patients' families and visitors about patients' treatment (**medical communication**);
- (h) admitting patients from emergency into another department (**patient admissions**); and
- (i) carrying out such other duties necessary for the provision of medical services by the Doctor (**other medical services**).

Particulars

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

D THE SECOND APPLICANT'S CLAIM

17. During the course of her employment by Western Health, Dr Peel was directed, relevantly, by Western Health:
- (a) between 1 February 2016 to 1 May 2016, to work in the Neurology Department at Sunshine and Footscray Hospitals, as a Medical Officer (Year 3);
 - (b) between 2 May and 29 May 2016, and between 13 June and 31 July 2016, to work in the Nephrology Department at Sunshine Hospital, as a Medical Officer (Year 3);
 - (c) between 7 November 2016 and 23 January 2017, to work in Aged Care at Sunshine Hospital, as a Medical Officer (Year 3) ;
 - (d) between 5 February 2017 and 7 May 2017, to work in General Medicine at Sunshine Hospital, as a Medical Officer (Year 3) and Registrar (Year 3);
 - (e) between 8 May 2017 and 28 May 2017, to work in Neurology at Sunshine Hospital, as a Registrar (Year 3);

- (f) between 29 May 2017 and 11 June 2017, to work in Infectious Diseases at Sunshine and Footscray Hospitals, as a Registrar (Year 3);
- (g) between 12 June 2017 and 25 June 2017, and between 31 July 2017 and 6 August 2017, to work in Oncology at Sunshine Hospital, as a Registrar (Year 3);
- (h) between 7 August 2017 and 5 November 2017, to work in Gastroenterology at Sunshine and Footscray Hospitals, as a Registrar (Year 3);
- (i) between 6 November 2017 and 26 November 2017, to work in Cardiology at Sunshine Hospital, as a Registrar (Year 3);
- (j) between 11 December 2017 and 4 February 2018, to work in Infectious Diseases at Footscray Hospital, as a Registrar (Year 3);
- (k) between 7 May 2018 and 13 May 2018, to work in Oncology at Sunshine Hospital, as a Registrar (Year 4);
- (l) between 14 May 2018 and 10 June 2018, to work in Respiratory at Footscray Hospital, as a Registrar (Year 4);
- (m) between 1 July 2018 and 4 November 2018, to work in General Medicine at Footscray Hospital, as a Registrar (Year 4).

D1 Neurology Sunshine / Footscray—1 February 2016 to 1 May 2016

- 18. Between 1 February 2016 to 1 May 2016, pursuant to the direction of Western Health pleaded in paragraph 17(a) above, Dr Peel worked in Neurology at Sunshine and Footscray Hospitals (**Neurology Sunshine / Footscray Rotation**).

Rosters

- 19. During the Neurology Sunshine / Footscray Rotation, Dr Peel was rostered on a rotating roster to work the following shifts:
 - (a) in roster 1, 8:00 am–5:00 pm Monday, Thursday and Friday, and 8:00 am–1:30 pm Tuesday and Wednesday;

- (b) in roster 2, 8:00 am–1:30 pm Monday and Thursday, and 8:00 am–5:00 pm Tuesday, Wednesday and Friday;
- (c) in roster 3, 8:00 am–5:00 pm Monday, Tuesday and Thursday, and 8:00 am–1:30 pm Wednesday and Friday;
- (d) in roster 4, 1:30 pm–8:30 pm Monday to Friday; and ;
- (e) around once every four weeks, 8:00 am–8:30 pm, Saturday and Sunday.

Particulars

Copies of Dr Peel’s rosters for this rotation and Dr Peel’s other rotations are in the possession of the solicitors for the Applicants and available for inspection on request.

Ward round preparation overtime

20. During the Neurology Sunshine / Footscray Rotation, Western Health directed Dr Peel to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

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

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg, consultants) from time to time during the Neurology Sunshine/Footscray Rotation.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation included the following:

- (1) identifying and reviewing information regarding new patients who had been admitted overnight, and updating the patient notes as necessary;
- (2) identifying and reviewing patient information to understand any medical issues that may have arisen overnight, and updating the patient notes as necessary;

- (3) ensuring the patient list was up to date;
- (4) identifying whether any patients were due to be discharged that day and putting in a discharge prescription;
- (5) reviewing new pathology test results.

21. During the Neurology Sunshine / Footscray Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Peel worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

The scheduled time for the start of ward rounds was 8:00 am, which was the start time of most of Dr Peel's shifts.

On days when Dr Peel was rostered to start at 8:00 am, she attended work about 10–15 minutes before then to do her ward round preparation.

Further particulars will be provided after discovery and before trial.

22. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the ward round preparation direction;
- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 20 above;
- (3) Dr Peel's usual rostered start time of 8:00am;
- (4) the commencement of ward rounds at 8:00 am;
- (5) other medical staff (including senior medical staff) observing Dr Peel working before the start of her shift preparing for ward rounds;

- (6) the fact that Dr Peel was prepared at the start of ward rounds conducted by the Consultants and Registrars on duty, and the trolley and patient notes had been updated.

23. By reason of the matters alleged in paragraphs 16(a), 18, 20 and 22 above, the ward round preparation overtime worked by Dr Peel 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 Peel included ward round preparation before the commencement of ward rounds;
- (2) Dr Peel’s usual rostered start time of 8:00 am;
- (3) the commencement of ward rounds at 8:00 am;
- (4) the ward round preparation direction;
- (5) the knowledge of Western Health, as set out in paragraphs 22(a) and 22(b) above; and
- (6) the failure by Western Health to direct Dr Peel not to perform the ward round preparation overtime, as set out in paragraph 22(c) above.

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

25. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the Neurology Sunshine / Footscray Rotation.

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

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

Handover overtime

28. During the Neurology Sunshine / Footscray Rotation, Western Health directed Dr Peel to conduct handover of patient information between medical staff at the end of each shift (**handover direction**).

Particulars

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg, consultants) from time to time during the Neurology Sunshine / Footscray Rotation.

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

- (1) the matters in paragraph 16(c) above;
- (2) the clinical requirement for a handover in order to ensure proper continuity of care and patient safety.

29. During the Neurology Sunshine / Footscray Rotation, in order to conduct handover, Dr Peel worked hours in excess of rostered hours (**handover overtime**).

Particulars

It was typical or frequent for the doctor to whom handover was to be given to be unavailable for handover before 5:00 pm, being the rostered end of many of Dr Peel's shifts.

Dr Peel performed handover overtime at the end of her shifts on most shifts rostered to finish at 5:00 pm, typically for around 5–10 minutes, though sometimes for up to 30 minutes if there were multiple patients to hand over, or complex cases.

Further particulars will be provided after discovery and before trial.

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the handover direction; and
- (2) the matters in the particulars to paragraph 29 above;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours giving handover;
- (4) senior medical staff directing Dr Peel, late in her rostered shift, to perform work which they knew or should be taken to have known could not be finished with enough time in rostered hours to do handovers; and
- (5) the fact that Dr Peel did not leave work until she had completed handover of her patients.

31. By reason of the matters alleged in paragraphs 16(c), 18, 28, and 30 above, the handover overtime worked by Dr Peel 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 Peel including conducting handover;
- (2) the giving of the handover direction;
- (3) the commencement and conduct of handover in the circumstances described in the particulars to paragraph 29 above;
- (4) the knowledge of Western Health, as set out in paragraphs 30(a) and 30(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform handover overtime as set out in paragraph 30(c) above.

32. In the premises, Dr Peel was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 29 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

33. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the handover overtime worked by her during the Neurology Sunshine / Footscray Rotation.

34. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
35. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Medical emergency overtime

36. During the Neurology Sunshine / Footscray Rotation, Western Health directed Dr Peel 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 conveyed by more senior medical staff (eg, consultants) from time to time during the Neurology Sunshine / Footscray Rotation.

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

- (1) the matters in paragraph 16(e) above;
- (2) the clinical requirement for Dr Peel to attend to medical emergencies in order to ensure proper patient care and safety;
- (3) the inefficiency (in an urgent situation) of briefing on-coming staff, or the unavailability of such staff (because they were in handover or not on ward);
- (4) the nature of work in Neurology being that patients occasionally suffered a clinical deterioration requiring medical staff urgently to attend to their care and stabilisation.

37. During the Neurology Sunshine / Footscray Rotation, in order to attend to medical emergencies, Dr Peel worked hours in excess of rostered hours (**medical emergency overtime**).

Particulars

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

Dr Peel performed medical emergency overtime after the end of a rostered shift at least twice per week, for around 20–30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

38. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the medical emergency direction; and
- (2) the matters in paragraph 37 above;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours dealing with medical emergencies;
- (4) the fact that Dr Peel did not leave work until she had treated and stabilised the patient suffering a medical emergency.

39. By reason of the matters alleged in paragraphs 16(e), 18, 36 and 38 above, the medical emergency overtime worked by Dr Peel 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 Peel included attending to medical emergencies;
- (2) the medical emergency direction;
- (3) the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 37 above;
- (4) the knowledge of Western Health, as set out in paragraphs 38(a) and 38(b) above; and

(5) the failure by Western Health to direct Dr Peel not to perform medical emergency overtime as set out in paragraph 38(c) above.

40. In the premises, Dr Peel was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 37 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
41. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical emergency overtime worked by her during the Neurology Sunshine / Footscray Rotation.
42. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
43. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Medical communication overtime

44. During the Neurology Sunshine / Footscray Rotation, Western Health directed Dr Peel to speak with patients and patients' families and visitors about patients' treatment (**medical communication direction**).

Particulars

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg, consultants) from time to time during the Neurology Sunshine / Footscray Rotation.

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

- (1) the matters in paragraph 16(g) above;
- (2) the clinical requirement for Dr Peel to communicate with patients and their families and visitors in order to keep them informed and get information from them, these being an important aspect of providing adequate healthcare.

45. During the Neurology Sunshine / Footscray Rotation, in order to perform medical communication, Dr Peel worked hours in excess of rostered hours (**medical communication overtime**).

Particulars

Visiting hours commenced at 5:00 pm, being Dr Peel's finishing time for many of her shifts.

So, when patients' families or visitors asked to speak with the patients' treating doctor, that ordinarily occurred after Dr Peel's rostered finishing time.

Dr Peel performed medical communication overtime after the end of a rostered shift around 2–3 times per week when she was rostered on rosters 1–3, for around 5–15 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the medical communication direction; and
- (2) the matters in the particulars to paragraph 45 above;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours speaking with patients' families and/or visitors;
- (4) the fact that Dr Peel did not leave work until she had finished the relevant medical communication.

47. By reason of the matters alleged in paragraphs 16(g), 18, 44, and 46 above, the medical communication overtime worked by Dr Peel 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 Peel included attending to medical communication;
- (2) the medical communication direction;
- (3) the knowledge of Western Health, as set out in paragraphs 46(a) and 46(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform medical communication overtime as set out in paragraph 46(c) above.

48. In the premises, Dr Peel was entitled to be paid overtime for the medical communication overtime that she worked, as set out in paragraph 45 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
49. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical communication overtime worked by her during the Neurology Sunshine / Footscray Rotation.
50. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
51. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Medical records overtime

52. During the Neurology Sunshine / Footscray Rotation, Western Health directed Dr Peel:
 - (a) to complete medical records for all patients in the Neurology department;
 - (b) to complete medical records in a timely manner;
 - (c) that the timely completion of medical records was necessary to ensure patient safety

(the **medical records direction**).

Particulars

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

- (1) Insofar as it was in writing, it was contained in:
 - (a) clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Day plans, pathology or imaging requests, referrals to other teams, discharge summaries, drug charts, and scripts are all "medical records" for patients;
 - (b) emails received by Dr Peel from time to time directing completion of medical records, usually in relation to discharge summaries;
 - (c) emails received by Dr Peel from time to time recording the number of discharge summaries that Dr Peel's team had concluded, in comparison with other teams;
- (2) Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Neurology Sunshine / Footscray Rotation.
- (3) Insofar as it is to be inferred, it is to be inferred from:
 - (a) particulars (1)–(2) above;
 - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
 - (c) the fact that there was a practice at both Sunshine and Footscray Hospitals that discharge summaries were sent to patients or their general practitioners within 48 hours after discharge.
- (4) the matters in paragraph 16(f) above.

53. During the Neurology Sunshine / Footscray Rotation, in order to complete medical records in accordance with the medical records direction, Dr Peel worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The medical records overtime was worked by Dr Peel after the conclusion of most of her rostered shifts, for around 30 minutes on average on each occasion.

Further particulars will be provided after discovery and before trial.

54. Western Health:

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

Particulars

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

- (1) the medical records direction;
- (2) directions from senior medical staff being given late in a rostered shift, being directions to complete medical records either that day or before the following day;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours completing medical records.

55. By reason of the matters alleged in paragraph 16(f), 18, 52, and 54 above, the medical records overtime worked by Dr Peel 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 Peel included the timely completion of medical records;
- (2) the medical records direction;
- (3) the knowledge of Western Health, as set out in paragraphs 54(a) and 54(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform medical records overtime as set out in paragraph 54(c) above.

56. In the premises, Dr Peel was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 53 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

57. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the Neurology Sunshine / Footscray Rotation.
58. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
59. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

D2 Nephrology Sunshine—2 May to 29 May 2016, and 13 June to 31 July 2016

60. Between 2 May and 29 May 2016, and 13 June and 31 July 2016, pursuant to the direction of Western Health set out in paragraph 17(b) above, Dr Peel worked:
 - (a) primarily in Nephrology at Sunshine Hospital;
 - (b) from time to time in Dialysis at Sunbury Hospital and in Nephrology at Footscray Hospital

(Nephrology Sunshine Rotation).

Rosters

61. During the Nephrology Sunshine Rotation, Dr Peel was rostered to work the following shifts:
 - (a) 8:00 am–5:00 pm shifts, Monday to Friday, with one short shift of 8:00 am–12:00 pm, and occasionally one long shift of 8:00 am–8:30 pm;
 - (b) occasionally, 8:00 am–12:00 pm, Saturday and Sunday;
 - (c) “Special Medicine Roster” shifts on Saturday and Sunday; and
 - (d) when she was rostered to work on “Special Medicine Roster” shifts, 8:00 am–4:00 pm Monday, Wednesday and Thursday, 8:00 am–1:00 pm Tuesday, and 8:00 am–5:00 pm Friday.

Particulars

Copies of Dr Peel's rosters for the Nephrology Sunshine Rotation are in the possession of the solicitors for the Applicants and available for inspection on request, with the exception of the "Special Medicine" roster, which they do not possess.

Ward round preparation overtime

62. During the Nephrology Sunshine Rotation, Western Health directed Dr Peel to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

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

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Nephrology Sunshine Rotation.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation included the following:

- (1) identifying and reviewing information regarding new patients who had been admitted overnight, and updating the patient notes as necessary;
- (2) identifying and reviewing patient information to understand any medical issues that may have arisen overnight, and updating the patient notes as necessary;
- (3) ensuring the patient list was up to date;
- (4) identifying whether any patients were due to be discharged that day and putting in a discharge prescription;
- (5) reviewing new pathology test results.

63. During the Nephrology Sunshine Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Peel worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

The scheduled time for the start of ward rounds was almost always 8:00 am, which was the start time of most of Dr Peel's shifts.

On days when Dr Peel was rostered to start at 8:00 am, she attended work about 10–15 minutes before then to do her ward round preparation.

Further particulars will be provided after discovery and before trial.

64. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the ward round preparation direction;
- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 62 above;
- (3) Dr Peel's usual rostered start time of 8:00 am;
- (4) the commencement of ward rounds at 8:00 am;
- (5) other medical staff (including senior medical staff) observing Dr Peel working before the start of her shift preparing for ward rounds;
- (6) the fact that Dr Peel was prepared at the start of ward rounds conducted by the Consultants and Registrars on duty, and the trolley and patient notes had been updated.

65. By reason of the matters alleged in paragraphs 16(a), 60, 62, and 64 above, the ward round preparation overtime worked by Dr Peel 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 Peel included ward round preparation before the commencement of ward rounds;
- (2) Dr Peel’s usual rostered start time of 8:00 am;
- (3) the commencement of ward rounds at 8:00 am;
- (4) the ward round preparation direction;
- (5) the knowledge of Western Health, as set out in paragraphs 64(a) and 64(b) above; and
- (6) the failure by Western Health to direct Dr Peel not to perform the ward round preparation overtime, as set out in paragraph 64(c) above.

66. In the premises, Dr Peel was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 63 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

67. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the Nephrology Sunshine Rotation.

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

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

Handover overtime

70. During the Nephrology Sunshine Rotation, Western Health directed Dr Peel to conduct handover of patient information between medical staff at the end of each shift (**handover direction**).

Particulars

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Nephrology Sunshine Rotation.

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

- (1) the matters in paragraph 16(c) above;
- (2) the clinical requirement for a handover in order to ensure proper continuity of care and patient safety.

71. During the Nephrology Sunshine Rotation, in order to conduct handover, Dr Peel worked hours in excess of rostered hours (**handover overtime**).

Particulars

It was typical or frequent for the doctor to whom handover was to be given to be unavailable for handover before 5:00 pm, being the rostered end of many of Dr Peel's shifts.

Dr Peel performed handover overtime at the end of almost all of her shifts rostered to finish at 5:00 pm, typically for around 5–15 minutes.

Further particulars will be provided after discovery and before trial.

72. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the handover direction; and
- (2) other medical staff (including senior medical staff) observing Dr Peel working after hours giving handover;
- (3) senior medical staff directing Dr Peel to perform work late in her rostered shift which they knew or should be

taken to have known could not be finished with enough time in rostered hours to do handovers; and

- (4) the fact that Dr Peel did not leave work until she had completed handover of her patients.

73. By reason of the matters alleged in paragraphs 16(c), 60, 70, and 72 above, the handover overtime worked by Dr Peel 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 Peel included the conducting of handover;
- (2) the handover direction;
- (3) the matters in the particulars to paragraph 71 above;
- (4) the knowledge of Western Health, as set out in paragraphs 72(a) and 72(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform handover overtime as set out in paragraph 72(c) above.

74. In the premises, Dr Peel was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 71 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

75. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the handover overtime worked by her during the Nephrology Sunshine Rotation.

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

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

Medical emergency overtime

78. During the Nephrology Sunshine Rotation, Western Health directed Dr Peel 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 conveyed by more senior medical staff (eg. consultants) from time to time during the Nephrology Sunshine Rotation.

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

- (1) the matters in paragraph 16(e) above;
- (2) the clinical requirement for Dr Peel to attend to medical emergencies in order to ensure proper patient care and safety;
- (3) the inefficiency (in an urgent situation) of briefing on-coming staff, or the unavailability of such staff (because they were in handover or not on ward);
- (4) the nature of work in the Nephrology department being that patients occasionally suffered a clinical deterioration requiring medical staff urgently to attend to their care and stabilisation.

79. During the Nephrology Sunshine Rotation, in order to attend to medical emergencies, Dr Peel worked hours in excess of rostered hours (**medical emergency overtime**).

Particulars

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

Dr Peel performed medical emergency overtime after the end of a rostered shift around twice per week, for around 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

80. Western Health:
- (a) knew that there was insufficient time during rostered hours to attend to medical emergencies in accordance with the medical emergency direction;
 - (b) knew that Dr Peel performed medical emergency overtime;

- (c) did not direct Dr Peel not to perform medical emergency overtime.

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the medical emergency direction; and
- (2) the matters in paragraph 79 above;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours dealing with medical emergencies;
- (4) the fact that Dr Peel did not leave work until she had treated and stabilised the patient suffering a medical emergency.

81. By reason of the matters alleged in paragraphs 16(e), 60, 78, and 80 above, the medical emergency overtime worked by Dr Peel 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 Peel included attending to medical emergencies;
- (2) the medical emergency direction;
- (3) the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 79 above;
- (4) the knowledge of Western Health, as set out in paragraphs 80(a) and 80(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform medical emergency overtime as set out in paragraph 80(c) above.

82. In the premises, Dr Peel was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 79 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

83. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical emergency overtime worked by her during the Nephrology Sunshine Rotation.

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

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

Medical records overtime

86. During the Nephrology Sunshine Rotation, Western Health directed Dr Peel:

- (a) to complete medical records for all patients in the Nephrology department;
- (b) to complete medical records in a timely manner;
- (c) that the timely completion of medical records was necessary to ensure patient safety

(the **medical records direction**).

Particulars

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

- (1) Insofar as it was in writing, it was contained in:
 - (a) clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Day plans, pathology or imaging requests, referrals to other teams, discharge summaries, drug charts, and scripts are all "medical records" for patients;
 - (b) emails received by Dr Peel from time to time directing completion of medical records, usually in relation to discharge summaries;
 - (c) emails received by Dr Peel from time to time recording the number of discharge summaries that Dr Peel's team had concluded, in comparison with other teams;
- (2) Insofar as it was oral, it was conveyed by more senior medical staff (such as consultants) from time to time during the Nephrology Sunshine Rotation.
- (3) Insofar as it is to be inferred, it is to be inferred from:
 - (a) particulars (1)–(2) above;

- (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
 - (c) the fact that there was a practice at both Sunshine Hospital that discharge summaries were sent to patients or their general practitioners within 48 hours after discharge.
- (4) the matters in paragraph 16(f) above.

87. During the Nephrology Sunshine Rotation, in order to complete medical records in accordance with the medical records direction, Dr Peel worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The medical records overtime was worked by Dr Peel after the conclusion of almost all of her rostered shifts, for around 20 minutes on average on each occasion.

Further particulars will be provided after discovery and before trial.

88. Western Health:

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

Particulars

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

- (1) the medical records direction;
- (2) directions from senior medical staff being given late in a rostered shift, being directions to complete medical records either that day or before the following day;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours completing medical records.

89. By reason of the matters alleged in paragraph 16(f), 60, 86, and 88 above, the medical records overtime worked by Dr Peel 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 Peel included the timely completion of medical records;
- (2) the medical records direction;
- (3) the knowledge of Western Health, as set out in paragraphs 88(a) and 88(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform medical records overtime as set out in paragraph 88(c) above.

90. In the premises, Dr Peel was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 87 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

91. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the Nephrology Sunshine Rotation.

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

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

D3 Aged Care Sunshine—7 November 2016 to 23 January 2017

94. Between 7 November 2016 and 23 January 2017, pursuant to the direction of Western Health set out in paragraph 17(c) above, Dr Peel worked in Aged Care at Sunshine Hospital (**Aged Care Sunshine Rotation**).

Rosters

95. During the Aged Care Sunshine Rotation, Dr Peel was rostered to work over the following shifts:

- (a) 8:00 am–5:00 pm, Monday to Friday, with a rostered finish of 2:00 pm one day per week;
- (b) one weekend shift of 8:00 am–8:30 pm Saturday and 8:00 am–12:00 pm Sunday.

Ward round preparation overtime

96. During the Aged Care Sunshine Rotation, Western Health directed Dr Peel to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

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

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

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation included the following:

- (1) identifying and reviewing information regarding new patients who had been admitted overnight, and updating the patient notes as necessary;
- (2) identifying and reviewing patient information to understand any medical issues that may have arisen overnight, and updating the patient notes as necessary;
- (3) identifying whether any patients were due to be discharged that day and putting in a discharge prescription;
- (4) reviewing new pathology test results.

97. During the Aged Care Sunshine Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Peel worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

The scheduled time for the start of ward rounds was almost always 8:00 am, which was the start time of most of Dr Peel's shifts.

On days when Dr Peel was rostered to start at 8:00 am, she attended work about 10–15 minutes before then to do her ward round preparation.

Further particulars will be provided after discovery and before trial.

98. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the ward round preparation direction;
- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 96 above;
- (3) Dr Peel's usual rostered start time of 8:00 am;
- (4) the commencement of ward rounds at 8:00 am;
- (5) other medical staff (including senior medical staff) observing Dr Peel preparing for ward rounds prior to 8:00 am;
- (6) the fact that Dr Peel was able to discuss with consultants, at 8:00 am, the content of test results and clinical information that had come in overnight, which would only have been possible had she reviewed that information prior to 8:00 am.

99. By reason of the matters alleged in paragraphs 16(a), 94, 96, and 98 above, the ward round preparation overtime worked by Dr Peel 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 Peel included ward round preparation before the commencement of ward rounds;
- (2) Dr Peel's usual rostered start time of 8:00 am;
- (3) the commencement of ward rounds at 8:00 am;
- (4) the ward round preparation direction;
- (5) the knowledge of Western Health, as set out in paragraphs 98(a) and 98(b) above; and
- (6) the failure by Western Health to direct Dr Peel not to perform the ward round preparation overtime, as set out in paragraph 98(c) above.

100. In the premises, Dr Peel was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 97 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

101. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the Aged Care Sunshine Rotation.

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

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

Medical emergency overtime

104. During the Aged Care Sunshine Rotation, Western Health directed Dr Peel 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 conveyed by more senior medical staff (eg. consultants) from time to time during the Aged Care Sunshine Rotation.

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

- (1) the matters in paragraph 16(e) above;
- (2) the clinical requirement for Dr Peel to attend to medical emergencies in order to ensure proper patient care and safety;
- (3) the inefficiency (in an urgent situation) of briefing on-coming staff, or the unavailability of such staff (because they were in handover or not on ward);
- (4) the nature of work in the Aged Care department being that patients occasionally suffered a clinical deterioration requiring medical staff urgently to attend to their care and stabilisation.

105. During the Aged Care Sunshine Rotation, in order to attend to medical emergencies, Dr Peel worked hours in excess of rostered hours (**medical emergency overtime**).

Particulars

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

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

Further particulars will be provided after discovery and before trial.

106. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the medical emergency direction; and

- (2) the matters in paragraph 105 above;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours dealing with medical emergencies;
- (4) the fact that Dr Peel did not leave work until she had treated and stabilised the patient suffering a medical emergency.

107. By reason of the matters alleged in paragraphs 16(e), 94, 104, and 106 above, the medical emergency overtime worked by Dr Peel 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 Peel included attending to medical emergencies;
- (2) the medical emergency direction;
- (3) the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 105 above;
- (4) the knowledge of Western Health, as set out in paragraphs 106(a)–106(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform medical emergency overtime as set out in paragraph 106(c) above

108. In the premises, Dr Peel was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 105 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

109. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical emergency overtime worked by her during the Aged Care Sunshine Rotation.

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

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

Medical records overtime

112. During the Aged Care Sunshine Rotation, Western Health directed Dr Peel:
- (a) to complete medical records for all patients in the Aged Care department;
 - (b) to complete medical records in a timely manner;
 - (c) that the timely completion of medical records was necessary to ensure patient safety

(the **medical records direction**).

Particulars

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

- (1) Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Documentation of emergencies, records of communications with relatives, and test requests are all "medical records" for patients;
- (2) Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Aged Care Sunshine Rotation.
- (3) Insofar as it is to be inferred, it is to be inferred from:
 - (a) particulars (1)–(2) above;
 - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
- (4) the matters in paragraph 16(f) above.

113. During the Aged Care Sunshine Rotation, in order to complete medical records in accordance with the medical records direction, Dr Peel worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The medical records overtime was worked by Dr Peel after the conclusion of almost all of her rostered shifts, for around 5–10 minutes on average on each occasion.

Further particulars will be provided after discovery and before trial.

114. Western Health:

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

Particulars

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

- (1) the medical records direction;
- (2) directions from senior medical staff being given late in a rostered shift, being directions to complete medical records either that day or before the following day;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours completing medical records.

115. By reason of the matters alleged in paragraph 16(f), 94, 112, and 114 above, the medical records overtime worked by Dr Peel 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 Peel included the timely completion of medical records;
- (2) the medical records direction;
- (3) the knowledge of Western Health, as set out in paragraphs 114(a) and 114(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform medical records overtime as set out in paragraph 114(c) above.

116. In the premises, Dr Peel was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 113 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
117. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the Aged Care Sunshine Rotation.
118. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
119. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Handover overtime

120. During the Aged Care Sunshine Rotation, Western Health directed Dr Peel to conduct handover of patient information between medical staff at the end of each shift (**handover direction**).

Particulars

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Aged Care Sunshine Rotation.

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

- (1) the matters in paragraph 16(c) above;
- (2) the clinical requirement for a handover in order to ensure proper continuity of care and patient safety.

121. During the Aged Care Sunshine Rotation, in order to conduct handover, Dr Peel worked hours in excess of rostered hours (**handover overtime**).

Particulars

It was typical or frequent for the doctor to whom handover was to be given to be unavailable for handover before 5:00 pm, being the rostered end of most of Dr Peel's shifts.

Dr Peel performed handover overtime at the end of her shifts around four days per week, typically for around 5–15 minutes.

Further particulars will be provided after discovery and before trial.

122. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the handover direction;
- (2) other medical staff (including senior medical staff) observing Dr Peel working after hours giving handover;
- (3) senior medical staff directing Dr Peel to perform work late in her rostered shift which they knew or should be taken to have known could not be finished with enough time in rostered hours to do handovers; and
- (4) the fact that Dr Peel did not leave work until she had completed handover of her patients.

123. By reason of the matters alleged in paragraphs 16(c), 94, 120, and 122 above, the handover overtime worked by Dr Peel 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 Peel included the conducting of handover;
- (2) the handover direction;
- (3) the matters in the particulars to paragraph 121 above;
- (4) the knowledge of Western Health, as set out in paragraphs 122(a) and 122(b) above; and

- (5) the failure by Western Health to direct Dr Peel not to perform handover overtime as set out in paragraph 122(c) above.

124. In the premises, Dr Peel was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 121 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
125. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the handover overtime worked by her during the Aged Care Sunshine Rotation.
126. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
127. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Medical communication overtime

128. During the Aged Care Sunshine Rotation, Western Health directed Dr Peel to speak with patients and patients' families and visitors about patients' treatment (**medical communication direction**).

Particulars

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Aged Care Sunshine Rotation.

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

- (1) the matters in paragraph 16(g) above;
- (2) the clinical requirement for Dr Peel to communicate with patients and their families and visitors in order to keep them informed and get information from them, these being an important aspect of providing adequate healthcare.

129. During the Aged Care Sunshine Rotation, in order to perform medical communication, Dr Peel worked hours in excess of rostered hours (**medical communication overtime**).

Particulars

Visiting hours commenced at 5:00 pm, being Dr Peel's usual finishing time.

So, when patients' families or visitors asked to speak with the patients' treating doctor, that ordinarily occurred after Dr Peel's rostered finishing time.

Dr Peel performed medical communication overtime after the end of a rostered shift around 2–3 times per week, for around 5–15 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

130. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the medical communication direction; and
- (2) the matters in the particulars to paragraph 129 above;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours speaking with patients' families and/or visitors;
- (4) the fact that Dr Peel did not leave work until she had finished the relevant medical communication.

131. By reason of the matters alleged in paragraphs 16(g), 94, 128, and 130 above, the medical communication overtime worked by Dr Peel 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 Peel included attending to medical communication;

- (2) the medical communication direction;
- (3) the matters in the particulars to paragraph 129 above;
- (4) the knowledge of Western Health, as set out in paragraphs 130(a) and 130(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform medical communication overtime as set out in paragraph 130(c) above.

132. In the premises, Dr Peel was entitled to be paid overtime for the medical communication overtime that she worked, as set out in paragraph 129 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
133. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical communication overtime worked by her during the Aged Care Sunshine Rotation.
134. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
135. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Admissions overtime

136. During the Aged Care Sunshine Rotation, Western Health directed Dr Peel to perform patient admissions into the Aged Care department (**admissions direction**).

Particulars

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

Insofar as it was oral, it was in the form of the emergency registrar telephoning Dr Peel from time to time and informing her that a patient in emergency needed to be admitted into the Aged Care department.

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

Work associated with patient admissions included:

- (1) going to see the patient in emergency;

- (2) completing a full assessment of the patient;
- (3) looking at emergency department notes;
- (4) formulating a care plan for the patient;
- (5) ordering any tests required;
- (6) recording any necessary notes for the patient;
- (7) starting initial management of the patient;
- (8) speaking with the consultant about his or her advice;
- (9) informing the overnight registrar what was required for the patient.

137. During the Aged Care Sunshine Rotation, in order to perform patient admissions in accordance with the admissions direction, Dr Peel worked hours in excess of rostered hours (**admissions overtime**).

Particulars

- (1) A patient admission typically took one hour per patient.
- (2) If Dr Peel received an admissions direction after 4:00 pm but before 5:00 pm, the typical end of her rostered shift, then she performed the admission, which involved her working overtime.
- (3) Dr Peel performed admissions overtime around once or twice per week, typically for 45–60 minutes on each occasion.
- (4) Further particulars will be provided after discovery and before trial.

138. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the admissions direction;

- (2) the tasks necessary to complete patient admissions, including those matters in the particulars to paragraph 136 above;
- (3) the particulars to paragraph 137 above;
- (4) other medical staff (including senior medical staff) observing Dr Peel undertaking patient admissions after 5:00 pm.

139. By reason of the matters alleged in paragraphs 16(h), 94, 136, and 138 above, the admissions overtime worked by Dr Peel 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 Peel included patient admissions;
- (2) the admissions direction;
- (3) the particulars to paragraph 137 above;
- (4) the knowledge of Western Health, as set out in paragraphs 138(a) and 138(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform the admissions overtime, as set out in paragraph 138(c) above.

140. In the premises, Dr Peel was entitled to be paid overtime for the admissions overtime that she worked as set out in paragraph 137 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

141. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the admissions overtime worked by her during the Aged Care Sunshine Rotation.

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

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

Other medical services overtime

144. During the Aged Care Sunshine Rotation, Western Health directed Dr Peel, at the end of her shift, to undertake specific tasks relating to patient care before she finished work on that day (**patient care directions**).

Particulars

The patient care directions were sometimes oral and sometimes to be inferred.

Insofar as they were oral, they were constituted by directions by consultants, usually toward the end of a rostered shift (but sometimes before the start of a rostered shift), that Dr Peel undertake a specific task in relation to patient care before she finish work (or start work) that day. The specific tasks that Dr Peel was directed to do were to order pathology tests and / or inquire into the progress of a previous request.

Insofar they are to be inferred, they are to be inferred from the fact that it was a clinical and practical requirement for proper continuity of care and patient safety that Dr Peel perform a particular task before finishing work (or starting work, whereupon she would be diverted by higher priority work).

145. During the Aged Care Sunshine Rotation, in order to complete patient care directions, Dr Peel worked hours in excess of rostered hours (**patient care overtime**).

Particulars

Patient care directions, when made orally, were not made until the end or near to the end, or before the start, of Dr Peel's shift.

Patient care overtime was worked by Dr Peel after the end of a rostered shift, or occasionally before the start of her next rostered shift, two to three times per week for 15–30 minutes on average.

Further particulars will be provided after discovery and before trial.

146. Western Health:
- (a) knew that there was insufficient time during rostered hours to attend to the patient care direction;
 - (b) knew that Dr Peel performed patient care overtime; and

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the patient care direction, which was an express, oral direction given by senior medical staff to Dr Peel, and which included a direction to complete the particular task before Dr Peel finished work or started work on that day;
- (2) the timing of the patient care direction, which was given close to the end of Dr Peel's rostered shift, or before the start of a rostered shift;
- (3) other medical staff (including senior medical staff) observing Dr Peel carrying out the patient care direction before or after her rostered shift;
- (4) the fact that Dr Peel attended to the patient care direction before she finished work on that day, or before the start of her rostered shift.

147. By reason of the matters alleged in paragraphs 16(i), 94, 144, and 146 above, the patient care overtime worked by Dr Peel 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 Peel included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Western Health, as set out in paragraphs 146(a) and 146(b) above;
- (4) the failure by Western Health to direct Dr Peel not to perform patient care overtime as set out in paragraph 146(c) above.

148. In the premises, Dr Peel was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 145 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

149. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the Aged Care Sunshine Rotation.

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

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

D4 General Medicine Sunshine—5 February 2017 to 7 May 2017

152. Between 5 February 2017 and 7 May 2017, pursuant to the direction of Western Health set out in paragraph 17(d) above, Dr Peel worked in General Medicine at Sunshine Hospital (**General Medicine Sunshine Rotation**).

Rosters

153. During the General Medicine Sunshine Rotation, Dr Peel was rostered to work over the following shifts:

(a) for the first eight weeks, 8:00 pm to 8:30 am, Monday to Friday, on a week on, week off basis;

(b) for the remainder of the rotation, on the following rotating roster:

(i) in roster 1, 8:00 am–5:00 pm Monday, Tuesday and Friday, 8:00 am–1:00 pm Wednesday, and 8:00 am–8:30 pm Thursday;

(ii) in roster 2, 8:00 am–5:00 pm Monday and Tuesday, 8:00 am–1:00 pm Wednesday, 8:00 am–8:30 pm Thursday and Friday, and 8:00 am–12:00 pm Saturday.

Ward rounds overtime

154. During the General Medicine Sunshine Rotation, Western Health directed Dr Peel to undertake ward rounds outside of rostered hours, at the end of night shift (**ward rounds direction**).

Particulars

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the General Medicine Sunshine Rotation.

Night shift doctors were rostered to finish at 8:30 am, and day shift doctors to start at 8:00 am. The cross-over period was used for night doctors to present and hand over patients to day doctors.

From time to time, consultants directed Dr Peel to remain at work after 8:30 am to perform morning ward rounds with them. Some allowed Dr Peel to go home after her patients had been seen; others required Dr Peel to remain at work for the duration of ward rounds.

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

- (1) the matters in paragraph 16(b) above;
- (2) the clinical requirement for a handover in order to ensure proper continuity of care and patient safety.

155. During the General Medicine Sunshine Rotation, in order to perform the ward rounds direction, Dr Peel worked hours in excess of rostered hours (**ward rounds overtime**).

Particulars

Dr Peel performed ward rounds overtime around after most night shifts, for between 30 and 90 minutes each occasion, or around one hour on average each such shift.

Further particulars will be provided after discovery and before trial.

156. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the ward rounds direction;

- (2) other medical staff (including senior medical staff) observing Dr Peel working after hours performing ward rounds;
- (3) the fact that Dr Peel did not leave work until after morning ward rounds concerning her patients, or the totality of morning ward rounds.

157. By reason of the matters alleged in paragraphs 16(b), 152, 154, and 156 above the ward rounds overtime worked by Dr Peel 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 Peel including the performance of ward rounds;
- (2) the ward rounds direction;
- (3) the commencement and conduct of ward rounds in the circumstances described in the particulars to paragraph 155 above
- (4) the knowledge of Western Health, as set out in paragraphs 156(a) and 156(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform ward rounds overtime as set out in paragraph 156(c) above.

158. In the premises, Dr Peel was entitled to be paid overtime for the ward rounds overtime that she worked, as set out in paragraph 155 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

159. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward rounds overtime worked by her during the General Medicine Sunshine Rotation.

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

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

Ward round preparation overtime

162. During the General Medicine Sunshine Rotation, Western Health directed Dr Peel to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

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

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

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation included the following:

- (1) getting and reviewing the list of patients from the intern;
- (2) discussing urgent tasks with the intern;
- (3) identifying and flagging patients who were due to be discharged that day;
- (4) reviewing investigation results that had come in overnight.

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

Particulars

The scheduled time for the start of ward rounds was almost always 8:30 am. The start time of most of Dr Peel's day shifts was 8:00 am. The time between 8:00 am and 8:30 am was spent in handover meetings. In order to be prepared for ward rounds at 8:30 am, Dr Peel had to spend time doing ward round preparation before the start of her shift at 8:00 am.

On days when Dr Peel was rostered to start at 8:00 am, she attended work about 10–15 minutes before then to do her ward round preparation.

Further particulars will be provided after discovery and before trial.

164. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the ward round preparation direction;
- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 162 above;
- (3) Dr Peel's usual rostered start time of 8.00am;
- (4) the commencement of ward rounds at 8:30 am;
- (5) other medical staff (including senior medical staff) observing Dr Peel preparing for ward rounds prior to 8:00 am;
- (6) the fact that Dr Peel was able to discuss with consultants, at 8:30 am, the content of test results and clinical information that had come in overnight, which would only have been possible had she reviewed that information prior to 8:00 am.

165. By reason of the matters alleged in paragraphs 16(a), 152, 162, and 164 above, the ward round preparation overtime worked by Dr Peel 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 Peel included ward round preparation before the commencement of ward rounds;
- (2) the ward round preparation direction;
- (3) the matters set out in the particulars to paragraph 163 above;
- (4) the knowledge of Western Health, as set out in paragraphs 164(a) and 164(b) above; and

- (5) the failure by Western Health to direct Dr Peel not to perform the ward round preparation overtime, as set out in paragraph 164(c) above.

166. In the premises, Dr Peel was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 163 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
167. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the General Medicine Sunshine Rotation.
168. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
169. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Admissions overtime

170. During the General Medicine Sunshine Rotation, Western Health directed Dr Peel to perform patient admissions (**admissions direction**).

Particulars

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

Insofar as it was oral, it was in the form of express instructions to Dr Peel from time to time by more senior medical staff (such as consultants) to admit a patient into the department.

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

There were three General Medicine teams, A, B, and C, one of which was always “on take.” The team that was “on take” was required to admit patients from the emergency department into the unit.

Each team was “on take” around twice per week.

Work associated with patient admissions, on the day that a team was “on take,” included:

- (1) going to see the patient in emergency;

- (2) completing a full assessment of the patient;
- (3) looking at emergency department notes;
- (4) formulating a care plan for the patient;
- (5) ordering any tests required;
- (6) recording any necessary notes for the patient;
- (7) starting initial management of the patient;
- (8) speaking with the consultant about his or her advice;
- (9) informing the overnight registrar what was required for the patient.

Work associated with patient admissions, the day after a team was “on take,” included completing a round of all new patients with a consultant.

171. During the General Medicine Sunshine Rotation, in order to perform patient admissions in accordance with the admissions direction, Dr Peel worked hours in excess of rostered hours (**admissions overtime**).

Particulars

On days that Dr Peel’s team was “on take” (being around twice per week), Dr Peel performed admissions overtime at the end of her shift for around one hour on each occasion.

On days that Dr Peel’s team was “post-take” (being once or twice per week), Dr Peel performed admissions overtime for around one hour on each occasion.

Further particulars will be provided after discovery and before trial.

172. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the admissions direction;

- (2) the tasks necessary to complete patient admissions, including those matters in the particulars to paragraph 170 above;
- (3) the particulars to paragraph 171 above;
- (4) other medical staff (including senior medical staff) observing Dr Peel undertaking patient admissions after 5:00 pm.

173. By reason of the matters alleged in paragraphs 16(h), 152, 170, and 172 above the admissions overtime worked by Dr Peel 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 Peel included patient admissions;
- (2) the admissions direction;
- (3) the particulars to paragraph 171 above;
- (4) the knowledge of Western Health, as set out in paragraphs 172(a) and 172(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform the admissions overtime, as set out in paragraph 172(c) above.

174. In the premises, Dr Peel was entitled to be paid overtime for the admissions overtime that she worked as set out in paragraph 171 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

175. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the admissions worked by her during the General Medicine Sunshine Rotation.

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

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

Medical records overtime

178. During the General Medicine Sunshine Rotation, Western Health directed Dr Peel:
- (a) to complete medical records for all patients in the General Medicine department;
 - (b) to complete medical records in a timely manner;
 - (c) that the timely completion of medical records was necessary to ensure patient safety

(the **medical records direction**).

Particulars

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

- (1) Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Notes from ward rounds, documentation of emergencies, records of communications with relatives, and test requests are all "medical records" for patients;
- (2) Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the General Medicine Sunshine Rotation.
- (3) Insofar as it is to be inferred, it is to be inferred from:
 - (a) particulars (1)–(2) above;
 - (b) the clinical requirement to complete medical records for proper patient care, especially if time sensitive;
- (4) the matters in paragraph 16(f) above.

179. During the General Medicine Sunshine Rotation, in order to complete medical records in accordance with the medical records direction, Dr Peel worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The medical records overtime was worked by Dr Peel after the conclusion of almost all of her rostered shifts, for around 5–10 minutes on average on each occasion.

Further particulars will be provided after discovery and before trial.

180. Western Health:

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

Particulars

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

- (1) the medical records direction;
- (2) directions from senior medical staff being given late in a rostered shift, being directions to complete medical records either that day or before the following day;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours completing medical records.

181. By reason of the matters alleged in paragraph 16(f), 152, 178, and 180 above the medical records overtime worked by Dr Peel 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 Peel included the timely completion of medical records;
- (2) the medical records direction.
- (3) the knowledge of Western Health, as set out in paragraphs 180(a) and 180(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform medical records overtime as set out in paragraph 180(c) above.

182. In the premises, Dr Peel was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 179 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
183. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the General Medicine Sunshine Rotation.
184. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
185. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Medical emergency overtime

186. During the General Medicine Sunshine Rotation, Western Health directed Dr Peel 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 conveyed by more senior medical staff (eg. consultants) from time to time during the General Medicine Sunshine Rotation.

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

- (1) the matters in paragraph 16(e) above;
- (2) the clinical requirement for Dr Peel to attend to medical emergencies in order to ensure proper patient care and safety;
- (3) the inefficiency (in an urgent situation) of briefing on-coming staff, or the unavailability of such staff (because they were in handover or not on ward);
- (4) the nature of work in General Medicine being that patients occasionally suffered a clinical deterioration requiring medical staff urgently to attend to their care and stabilisation.

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

Particulars

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

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

Further particulars will be provided after discovery and before trial.

188. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the medical emergency direction;
- (2) the matters in paragraph 187 above;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours dealing with medical emergencies;
- (4) the fact that Dr Peel did not leave work until she had treated and stabilised the patient suffering a medical emergency.

189. By reason of the matters alleged in paragraphs 16(e), 152, 186, and 188 above, the medical emergency overtime worked by Dr Peel 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 Peel included attending to medical emergencies;
- (2) the medical emergency direction;
- (3) the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 187 above
- (4) the knowledge of Western Health, as set out in paragraphs 188(a) and 188(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform medical emergency overtime as set out in paragraph 188(c) above.

190. In the premises, Dr Peel was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 187 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
191. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical emergency overtime worked by her during the General Medicine Sunshine Rotation.
192. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
193. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

D5 Neurology Sunshine—8 May 2017 to 28 May 2017

194. Between 8 May 2017 and 28 May 2017, pursuant to the direction of Western Health set out in paragraph 17(e) above, Dr Peel worked in Neurology at Sunshine Hospital (**Neurology Sunshine Rotation**).

Rosters

195. During the Neurology Sunshine Rotation, Dr Peel was rostered to work 8:00 am to 5:00 pm, Monday to Friday, with one short shift ending at 3:00 pm.

Ward round preparation overtime

196. During the Neurology Sunshine Rotation, Western Health directed Dr Peel to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

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

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Neurology Sunshine Rotation.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation included reviewing patient results and new clinical information that had come in overnight.

197. During the Neurology Sunshine Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Peel worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

The scheduled time for the start of ward rounds was 8:00 am, which was the start time of most of Dr Peel's shifts.

On days when Dr Peel was rostered to start at 8:00 am, she attended work about 10–15 minutes before then to do her ward round preparation.

Further particulars will be provided after discovery and before trial.

198. Western Health:
- (a) knew that there was insufficient time during rostered hours to undertake ward round preparation in accordance with the ward round preparation direction; and
 - (b) knew that Dr Peel performed ward round preparation overtime; and

- (c) did not direct Dr Peel not to perform ward round preparation overtime.

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the ward round preparation direction;
- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 196 above;
- (3) Dr Peel's usual rostered start time of 8:00am;
- (4) the commencement of ward rounds at 8:00 am;
- (5) other medical staff (including senior medical staff) observing Dr Peel working before the start of her shift preparing for ward rounds;
- (6) the fact that Dr Peel was able to discuss with consultants, at 8:00 am, the content of test results and clinical information that had come in overnight, which would only have been possible had she reviewed that information prior to 8:00 am.

199. By reason of the matters alleged in paragraphs 16(a), 194, 196, and 198 above, the ward round preparation overtime worked by Dr Peel 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 Peel included ward round preparation before the commencement of ward rounds;
- (2) Dr Peel's usual rostered start time of 8:00 am;
- (3) the commencement of ward rounds at 8:00 am;
- (4) the ward round preparation direction;
- (5) the knowledge of Western Health, as set out in paragraphs 198(a) and 198(b) above; and
- (6) the failure by Western Health to direct Dr Peel not to perform the ward round preparation overtime, as set out in paragraph 198(c) above.

200. In the premises, Dr Peel was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 197 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.

201. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the Neurology Sunshine Rotation.
202. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
203. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Handover overtime

204. During the Neurology Sunshine Rotation, Western Health directed Dr Peel to conduct handover of patient information between medical staff at the end of each shift (**handover direction**).

Particulars

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Neurology Sunshine Rotation.

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

- (1) the matters in paragraph 16(c) above;
- (2) the clinical requirement for a handover in order to ensure proper continuity of care and patient safety.

205. During the Neurology Sunshine Rotation, in order to conduct handover, Dr Peel worked hours in excess of rostered hours (**handover overtime**).

Particulars

It was typical or frequent for the doctor to whom handover was to be given to be unavailable for handover before 5:00 pm, being the rostered end of most of Dr Peel's shifts.

Dr Peel performed handover overtime at the end of her shifts around four days per week, typically for around 5–10 minutes.

Further particulars will be provided after discovery and before trial.

206. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the handover direction; and
- (2) the matters in the particulars to paragraph 205 above;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours giving handover;
- (4) senior medical staff directing Dr Peel to perform work late in her rostered shift which they knew or should be taken to have known could not be finished with enough time in rostered hours to do handovers; and
- (5) the fact that Dr Peel did not leave work until she had completed handover of her patients.

207. By reason of the matters alleged in paragraphs 16(c), 194, 204, and 206 above, the handover overtime worked by Dr Peel 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 Peel including the conducting of handover;
- (2) the handover direction;
- (3) the commencement and conduct of handover in the circumstances described in the particulars to paragraph 205 above;
- (4) the knowledge of Western Health, as set out in paragraphs 206(a) and 206(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform handover overtime as set out in paragraph 206(c) above.

208. In the premises, Dr Peel was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 205 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
209. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the handover overtime worked by her during the Neurology Sunshine Rotation.
210. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
211. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Medical emergency overtime

212. During the Neurology Sunshine Rotation, Western Health directed Dr Peel 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 conveyed by more senior medical staff (eg. consultants) from time to time during the Neurology Sunshine Rotation.

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

- (1) the matters in paragraph 16(e) above;
- (2) the clinical requirement for Dr Peel to attend to medical emergencies in order to ensure proper patient care and safety;
- (3) the inefficiency (in an urgent situation) of briefing on-coming staff, or the unavailability of such staff (because they were in handover or not on ward);
- (4) the nature of work in Neurology being that patients occasionally suffered a clinical deterioration requiring medical staff urgently to attend to their care and stabilisation.

213. During the Neurology Sunshine Rotation, in order to attend to medical emergencies, Dr Peel worked hours in excess of rostered hours (**medical emergency overtime**).

Particulars

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

Dr Peel performed medical emergency overtime after the end of a rostered shift at two or three times per week, for around 20–30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

214. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the medical emergency direction; and
- (2) the matters in paragraph 213 above;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours dealing with medical emergencies;
- (4) the fact that Dr Peel did not leave work until she had treated and stabilised the patient suffering a medical emergency.

215. By reason of the matters alleged in paragraphs 16(e), 194, 212 and 214 above, the medical emergency overtime worked by Dr Peel 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 Peel included attending to medical emergencies;

- (2) the medical emergency direction;
- (3) the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 213 above;
- (4) the knowledge of Western Health, as set out in paragraphs 214(a) and 214(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform medical emergency overtime as set out in paragraph 214(c) above.

216. In the premises, Dr Peel was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 213 above, at the rates set out in clause 32.2.2 of the 2013 Agreement.
217. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical emergency overtime worked by her during the Neurology Sunshine Rotation.
218. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
219. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Medical communication overtime

220. During the Neurology Sunshine Rotation, Western Health directed Dr Peel to speak with patients and patients' families and visitors about patients' treatment (**medical communication direction**).

Particulars

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Neurology Sunshine Rotation.

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

- (1) the matters in paragraph 16(g) above;
- (2) the clinical requirement for Dr Peel to communicate with patients and their families and visitors in order to keep

them informed and get information from them, these being an important aspect of providing adequate healthcare;

221. During the Neurology Sunshine Rotation, in order to perform medical communication, Dr Peel worked hours in excess of rostered hours (**medical communication overtime**).

Particulars

Visiting hours commenced at 5:00 pm, being Dr Peel's usual finishing time.

So, when patients' families or visitors asked to speak with the patients' treating doctor, that ordinarily occurred after Dr Peel's rostered finishing time.

Dr Peel performed medical communication overtime after the end of a rostered shift around 2–3 times per week, for around 5–15 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

222. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the medical communication direction; and
- (2) the matters in the particulars to paragraph 221 above;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours speaking with patients' families and/or visitors;
- (4) the fact that Dr Peel did not leave work until she had finished the relevant medical communication.

223. By reason of the matters alleged in paragraphs 16(g), 194, 220, and 222 above, the medical communication overtime worked by Dr Peel 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 Peel included attending to medical communication;
- (2) the medical communication direction;
- (3) the knowledge of Western Health, as set out in paragraphs 222(a) and 222(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform medical communication overtime as set out in paragraph 222(c) above

224. In the premises, Dr Peel was entitled to be paid overtime for the medical communication overtime that she worked, as set out in paragraph 221 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
225. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical communication overtime worked by her during the Neurology Sunshine Rotation.
226. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
227. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Medical records overtime

228. During the Neurology Sunshine Rotation, Western Health directed Dr Peel:
- (a) to complete medical records for all patients in the Neurology department;
 - (b) to complete medical records in a timely manner;
 - (c) that the timely completion of medical records was necessary to ensure patient safety

(the **medical records direction**).

Particulars

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

- (1) Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Documentation of emergencies, records of communications with relatives, and test requests are all "medical records" for patients;
- (2) Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Neurology Sunshine Rotation.
- (3) Insofar as it is to be inferred, it is to be inferred from:
 - (a) particulars (1)–(2) above;
 - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
- (4) the matters in paragraph 16(f) above.

229. During the Neurology Sunshine Rotation, in order to complete medical records in accordance with the medical records direction, Dr Peel worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The medical records overtime was worked by Dr Peel after the conclusion of almost all of her rostered shifts, for around 5–10 minutes on average on each occasion.

Further particulars will be provided after discovery and before trial.

230. Western Health:

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

Particulars

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

- (1) the medical records direction;
- (2) directions from senior medical staff being given late in a rostered shift, being directions to complete medical records either that day or before the following day;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours completing medical records.

231. By reason of the matters alleged in paragraph 16(f), 194, 228, and 230 above, the medical records overtime worked by Dr Peel 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 Peel included the timely completion of medical records;
- (2) the medical records direction;
- (3) the knowledge of Western Health, as set out in paragraphs 230(a) and 230(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform medical records overtime as set out in paragraph 230(c) above.

232. In the premises, Dr Peel was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 229 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

233. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the Neurology Sunshine Rotation.

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

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

Admissions overtime

236. During the Neurology Sunshine Rotation, Western Health directed Dr Peel to perform patient admissions into the Neurology department (**admissions direction**).

Particulars

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

Insofar as it was oral, it was in the form of express instructions by more senior medical staff (such as senior registrars and consultants) to Dr Peel from time to time to admit a patient into the department.

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

Work associated with patient admissions included:

- (1) going to see the patient in emergency;
- (2) completing a full assessment of the patient;
- (3) looking at emergency department notes;
- (4) formulating a care plan for the patient;
- (5) ordering any tests required;
- (6) recording any necessary notes for the patient;
- (7) starting initial management of the patient;
- (8) speaking with the consultant about his or her advice;
- (9) informing the overnight registrar what was required for the patient.

237. During the Neurology Sunshine Rotation, in order to perform patient admissions in accordance with the admissions direction, Dr Peel worked hours in excess of rostered hours (**admissions overtime**).

Particulars

- (1) A patient admission typically took one hour per patient.
- (2) If Dr Peel received an admissions direction after 4:00 pm but before 5:00 pm, the typical end of her rostered shift, then she performed the admission, which involved her working overtime.

- (3) Dr Peel performed admissions overtime around once per week, typically for around 30 minutes each occasion.
- (4) Further particulars will be provided after discovery and before trial.

238. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the admissions direction;
- (2) the tasks necessary to complete patient admissions, including those matters in the particulars to paragraph 236 above;
- (3) the particulars to paragraph 237 above;
- (4) other medical staff (including senior medical staff) observing Dr Peel undertaking patient admissions after 5:00 pm.

239. By reason of the matters alleged in paragraphs 16(h), 194, 236, and 238 above, the admissions overtime worked by Dr Peel 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 Peel included patient admissions;
- (2) the admissions direction;
- (3) the particulars to paragraph 237 above;
- (4) the knowledge of Western Health, as set out in paragraphs 238(a) and 238(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform the admissions overtime, as set out in paragraph 238(c) above.

240. In the premises, Dr Peel was entitled to be paid overtime for the admissions overtime that she worked as set out in paragraph 237 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
241. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the admissions overtime worked by her during the Neurology Sunshine Rotation.
242. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
243. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

D6 Infectious Diseases Sunshine / Footscray—29 May 2017 and 11 June 2017

244. Between 29 May 2017 and 11 June 2017, pursuant to the direction of Western Health set out in paragraph 17(f) above, Dr Peel worked in Infectious Diseases at Sunshine and Footscray Hospitals (**Infectious Diseases Sunshine / Footscray Rotation**).

Rosters

245. During the Infectious Diseases Sunshine / Footscray Rotation, Dr Peel was rostered to work:
- (a) 8:00 am–5:00 pm, four days per week, and 8:00 am–12:00 pm on the fifth day;
 - (b) weekend shifts from time to time the hours of which Dr Peel cannot recall.

Other medical services overtime

246. During the Infectious Diseases Sunshine / Footscray Rotation, Western Health directed Dr Peel, at the end of her shift or before her next shift, to undertake specific tasks relating to patient care (**patient care direction**).

Particulars

The tasks included:

- (1) requiring Dr Peel to review patients from other units within the hospital to assess them, give an opinion, and develop a plan for care (**patient review**);
- (2) arranging investigations;
- (3) arranging discharges and discharge scripts;
- (4) communicating with other teams if a specialised opinion was needed in relation to a particular patient.

The patient care directions were sometimes oral and sometimes to be inferred.

Insofar as they were oral, they were constituted by directions by consultants, usually given toward the end of a rostered shift (but sometimes before the start of a rostered shift), that Dr Peel undertake a specific task in relation to patient care before she finish work (or start work) that day.

Insofar they are to be inferred, they are to be inferred from:

- (1) the matters in paragraph 16(i) above;
- (2) the clinical requirement for Dr Peel to attend to such tasks to ensure proper patient care and safety;
- (3) the inappropriateness of Dr Peel handing over such tasks to another doctor given Dr Peel's knowledge of the patient and tasks forming part of Dr Peel's standard daily workload (rather than an urgent task the handing over of which would be appropriate and expected).
- (4) the fact that it was a clinical requirement for proper continuity of care and patient safety that Dr Peel perform a particular task before finishing work (or starting work, whereupon she would be diverted by higher priority work).

247. During the Infectious Diseases Sunshine / Footscray Rotation, in order to complete patient care directions, Dr Peel worked hours in excess of rostered hours (**patient care overtime**).

Particulars

Patient care directions were often made at or near to the end of Dr Peel's shift, and required overtime work after the end of a rostered shift. Other times, patient care directions were such as to require Dr Peel to commence work prior to the start of her rostered shift because of carry-over from the previous day.

There was nobody to hand the work over to, so if (as was the case) Dr Peel could not finish the patient review work together with her other work in her rostered hours, the only

options were working after rostered hours or working before rostered hours.

Dr Peel performed patient care overtime involving patient review after the end of nearly every rostered shift, for around 15–30 minutes on each occasion.

Patient care overtime involving tasks other than patient review was worked by Dr Peel after the end of a rostered shift two–three times a week, for around an hour each time, and around once a week before the start of a rostered shift, again for an hour each time.

Further particulars will be provided after discovery and before trial.

248. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the patient care direction, which was an express, oral direction given by senior medical staff to Dr Peel, and which included a direction to complete the particular task before Dr Peel finished work on that day;
- (2) the timing of the patient care direction, which was given during close to the end of Dr Peel’s rostered shift, or before the start of a rostered shift;
- (3) the quantity of work assigned to Dr Peel and the unavailability of any other doctor to whom Dr Peel might have handed over the work;
- (4) other medical staff (including senior medical staff) observing Dr Peel carrying out the patient care direction before or after her rostered shift;
- (5) the fact that Dr Peel attended to the patient care direction before she finished work on that day, or before the start of her rostered shift.

249. By reason of the matters alleged in paragraphs 16(i), 244, 246, and 248 above, the patient care overtime worked by Dr Peel 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 Peel included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Western Health, as set out in paragraphs 248(a) and 248(b) above;
- (4) the failure by Western Health to direct Dr Peel not to perform patient care overtime as set out in paragraph 248(c) above.

250. In the premises, Dr Peel was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 247 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

251. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the Infectious Diseases Sunshine / Footscray Rotation.

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

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

Ward round preparation overtime

254. During the Infectious Diseases Sunshine / Footscray Rotation, Western Health directed Dr Peel to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

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

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Infectious Diseases Sunshine / Footscray Rotation.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation included reviewing patient results and new clinical information that had come in overnight, checking and updating the patient list as necessary, and checking the progress of patients overnight.

255. During the Infectious Diseases Sunshine / Footscray Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Peel worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

The scheduled time for the start of ward rounds was 8:00 am, which was the start time of most of Dr Peel's shifts.

On days when Dr Peel was rostered to start at 8:00 am, she attended work about 10–15 minutes before then to do her ward round preparation.

Further particulars will be provided after discovery and before trial.

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the ward round preparation direction;

- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 254 above;
- (3) Dr Peel's usual rostered start time of 8.00am;
- (4) the commencement of ward rounds at 8:00 am;
- (5) other medical staff (including senior medical staff) observing Dr Peel working before the start of her shift preparing for ward rounds;
- (6) the fact that Dr Peel was able to discuss with consultants, at 8:00 am, the content of test results and clinical information that had come in overnight, which would only have been possible had she reviewed that information prior to 8:00 am.

257. By reason of the matters alleged in paragraphs 16(a), 244, 254, and 256 above, the ward round preparation overtime worked by Dr Peel 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 Peel included ward round preparation before the commencement of ward rounds;
- (2) Dr Peel's usual rostered start time of 8:00 am;
- (3) the commencement of ward rounds at 8:00 am;
- (4) the ward round preparation direction;
- (5) the knowledge of Western Health, as set out in paragraphs 256(a) and 256(b) above; and
- (6) the failure by Western Health to direct Dr Peel not to perform the ward round preparation overtime, as set out in paragraph 256(c) above.

258. In the premises, Dr Peel was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 255 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

259. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the Infectious Diseases Sunshine / Footscray Rotation.

260. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
261. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Admissions overtime

262. During the Infectious Diseases Sunshine / Footscray Rotation, Western Health directed Dr Peel to perform patient admissions into the Infectious Diseases department (**admissions direction**).

Particulars

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

Insofar as it was oral, it was in the form of express instructions to Dr Peel from time to time to admit a patient into the department.

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

Work associated with patient admissions included:

- (1) going to see the patient in emergency;
- (2) completing a full assessment of the patient;
- (3) looking at emergency department notes;
- (4) formulating a care plan for the patient;
- (5) ordering any tests required;
- (6) recording any necessary notes for the patient;
- (7) starting initial management of the patient;
- (8) speaking with the consultant about his or her advice;
- (9) informing the overnight registrar what was required for the patient.

263. During the Infectious Diseases Sunshine / Footscray Rotation, in order to perform patient admissions in accordance with the admissions direction, Dr Peel worked hours in excess of rostered hours (**admissions overtime**).

Particulars

- (1) A patient admission typically took one hour per patient.
- (2) If Dr Peel received an admissions direction after 4:00 pm but before 5:00 pm, the typical end of her rostered shift, then she performed the admission, which involved her working overtime.
- (3) Dr Peel performed admissions overtime around once or twice per week, typically for 30 minutes on each occasion.
- (4) Further particulars will be provided after discovery and before trial.

264. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the admissions direction;
- (2) the tasks necessary to complete patient admissions, including those matters in the particulars to paragraph 262 above;
- (3) the particulars to paragraph 263 above;
- (4) other medical staff (including senior medical staff) observing Dr Peel undertaking patient admissions after 5:00 pm.

265. By reason of the matters alleged in paragraphs 16(h), 244, 262, and 264 above, the admissions overtime worked by Dr Peel 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 Peel included patient admissions;

- (2) the admissions direction;
- (3) the particulars to paragraph 263 above;
- (4) the knowledge of Western Health, as set out in paragraphs 264(a) and 264(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform the admissions overtime, as set out in paragraph 264(c) above.

266. In the premises, Dr Peel was entitled to be paid overtime for the admissions overtime that she worked as set out in paragraph 263 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
267. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the admissions overtime worked by her during the Infectious Diseases Sunshine / Footscray Rotation.
268. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
269. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Handover overtime

270. During the Infectious Diseases Sunshine / Footscray Rotation, Western Health directed Dr Peel 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:

- (1) the matters in paragraph 16(c) above;
 - (2) the clinical requirement for a handover in order to ensure proper continuity of care and patient safety.
271. During the Infectious Diseases Sunshine / Footscray Rotation, in order to conduct handover, Dr Peel worked hours in excess of rostered hours (**handover overtime**).

Particulars

It was typical or frequent for the doctor to whom handover was to be given to be unavailable for handover before 5:00 pm, being the rostered end of most of Dr Peel's shifts.

There was no Registrar rostered to work in the Infectious Diseases Unit after 5:00 pm, and so Dr Peel had to hand over to the General Medical Registrar. It was difficult to get hold of the General Medical Registrar, and sometimes Dr Peel was unable to do so until after the end of her rostered shift.

Dr Peel performed handover overtime at the end of her shifts around one or two days per week, typically for around 20 minutes.

Further particulars will be provided after discovery and before trial.

272. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the handover direction; and
- (2) the matters in the particulars to paragraph 271 above;
- (3) the fact that Dr Peel did not leave work until she had completed handover of her patients.

273. By reason of the matters alleged in paragraphs 16(c), 244, 270, and 272 above, the handover overtime worked by Dr Peel 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 Peel including the conducting of handover;

- (2) the handover direction;
- (3) the matters in the particulars to paragraph 271 above;
- (4) the knowledge of Western Health, as set out in paragraphs 272(a) and 272(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform handover overtime as set out in paragraph 272(c) above.

274. In the premises, Dr Peel was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 271 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
275. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the handover overtime worked by her during the Infectious Diseases Sunshine / Footscray Rotation.
276. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
277. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

D7 Oncology Sunshine—12 June 2017 and 25 June 2017, and between 31 July 2017 and 6 August 2017

278. Between 12 June 2017 and 25 June 2017, and between 31 July 2017 and 6 August 2017, pursuant to the direction of Western Health set out in paragraph 17(g) above, Dr Peel worked in Oncology at Sunshine Hospital (**Oncology Sunshine Rotation**).

Rosters

279. During the Oncology Sunshine Rotation, Dr Peel was rostered to work 8:00 am–5:00 pm, Monday to Friday, with one short shift of 8:00 am–2:00 pm.

Ward round preparation overtime

280. During the Oncology Sunshine Rotation, Western Health directed Dr Peel to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

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

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Oncology Sunshine Rotation.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation included reviewing patient results and new clinical information that had come in overnight.

281. During the Oncology Sunshine Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Peel worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

The scheduled time for the start of ward rounds was 8:00 am, which was the start time of most of Dr Peel's shifts.

On days when Dr Peel was rostered to start at 8:00 am, she attended work about 10–15 minutes before then to do her ward round preparation.

Further particulars will be provided after discovery and before trial.

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the ward round preparation direction;

- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 280 above;
- (3) Dr Peel's usual rostered start time of 8.00am;
- (4) the commencement of ward rounds at 8:00 am;
- (5) other medical staff (including senior medical staff) observing Dr Peel working before the start of her shift preparing for ward rounds;
- (6) the fact that Dr Peel was able to discuss with consultants, at 8:00 am, the content of test results and clinical information that had come in overnight, which would only have been possible had she reviewed that information prior to 8:00 am.

283. By reason of the matters alleged in paragraphs 16(a), 278, 280, and 282 above, the ward round preparation overtime worked by Dr Peel 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 Peel included ward round preparation before the commencement of ward rounds;
- (2) Dr Peel's usual rostered start time of 8:00 am;
- (3) the commencement of ward rounds at 8:00 am;
- (4) the ward round preparation direction;
- (5) the knowledge of Western Health, as set out in paragraphs 282(a) and 282(b) above; and
- (6) the failure by Western Health to direct Dr Peel not to perform the ward round preparation overtime, as set out in paragraph 282(c) above.

284. In the premises, Dr Peel was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 281 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

285. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the Oncology Sunshine Rotation.

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

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

Other medical services overtime

288. During the Oncology Sunshine Rotation, Western Health directed Dr Peel, at the end of her shift or before her next shift, to undertake specific tasks relating to patient care (**patient care direction**).

Particulars

The tasks included:

- (1) order pathology tests and / or inquire into the progress of a previous request;
- (2) arranging investigations;
- (3) arranging discharges and discharge scripts;
- (4) communicating with other teams if a specialised opinion was needed in relation to a particular patient;
- (5) returning to the ward to review unwell patients; and
- (6) awaiting urgent test results.

The patient care directions were sometimes oral and sometimes to be inferred.

Insofar as they were oral, they were constituted by directions by consultants, usually toward the end of a rostered shift (but sometimes before the start of a rostered shift), that Dr Peel undertake a specific task in relation to patient care before she finish work (or start work) that day. The specific tasks that Dr Peel was directed to do order pathology tests and / or inquire into the progress of a previous request.

Insofar they are to be inferred, they are to be inferred from:

- (1) the matters in paragraph 16(i) above;
- (2) the clinical requirement for Dr Peel to attend to such tasks to ensure proper patient care and safety;
- (3) the inappropriateness of Dr Peel handing over such tasks to another doctor given Dr Peel's knowledge of the patient and tasks forming part of Dr Peel's standard daily

workload (rather than an urgent task the handing-over of which would be appropriate and expected).

- (4) the fact that it was a clinical requirement for proper continuity of care and patient safety that Dr Peel perform a particular task before finishing work (or starting work, whereupon she would be diverted by higher-priority work).

289. During the Oncology Sunshine Rotation, in order to complete patient care directions, Dr Peel worked hours in excess of rostered hours (**patient care overtime**).

Particulars

Patient care directions, when made orally, were not made until the end or near to the end, or before the start, of Dr Peel's shift.

Patient care overtime was worked by Dr Peel after the end of a rostered shift, or occasionally before the start of her next rostered shift, two to three times per week for 15–30 minutes on average.

Further particulars will be provided after discovery and before trial.

290. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the patient care direction, which was an express, oral direction given by senior medical staff to Dr Peel, and which included a direction to complete the particular task before Dr Peel finished work on that day;
- (2) the timing of the patient care direction, which was given during close to the end of Dr Peel's rostered shift, or before the start of a rostered shift;
- (3) other medical staff (including senior medical staff) observing Dr Peel carrying out the patient care direction before or after her rostered shift;

- (4) the fact that Dr Peel attended to the patient care direction before she finished work on that day, or before the start of her rostered shift.

291. By reason of the matters alleged in paragraphs 16(i), 278, 288, and 290 above, the patient care overtime worked by Dr Peel 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 Peel included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Western Health, as set out in paragraphs 290(a) and 290(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform patient care overtime as set out in paragraph 290(c) above.

292. In the premises, Dr Peel was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 289 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

293. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the Oncology Sunshine Rotation.

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

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

D8 Gastroenterology Sunshine / Footscray—7 August 2017 and 5 November 2017

296. Between 7 August 2017 and 5 November 2017, pursuant to the direction of Western Health set out in paragraph 17(h) above, Dr Peel worked in Gastroenterology at Sunshine and Footscray Hospitals (**Gastroenterology Sunshine / Footscray Rotation**).

Rosters

297. During the Gastroenterology Sunshine / Footscray Rotation, Dr Peel was rostered to work over the following shifts:
- (a) for the first five weeks, 8:00 am–5:00 pm, Monday to Friday, with one short shift ending at 12:00 pm;
 - (b) for the next eight weeks, alternating between:
 - (i) 8:00 am–12:00 pm Monday, Wednesday, and Friday and 8:00 am–8:30 pm Tuesday and Thursday;
 - (ii) 8:00 am–8:30 pm Monday, Wednesday, and Friday and 8:00 am–12:00 pm Tuesday.

Ward round preparation overtime

298. During the Gastroenterology Sunshine / Footscray Rotation, Western Health directed Dr Peel to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

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

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Oncology Sunshine Rotation.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation included reviewing patient results and new clinical information that had come in overnight.

299. During the Gastroenterology Sunshine / Footscray Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Peel worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

The scheduled time for the start of ward rounds was 8:00 am, which was the start time of Dr Peel's shifts.

On days when Dr Peel was rostered to start at 8:00 am, she attended work about 10–15 minutes before then to do her ward round preparation.

Further particulars will be provided after discovery and before trial.

300. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the ward round preparation direction;
- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 298 above;
- (3) Dr Peel's usual rostered start time of 8.00am;
- (4) the commencement of ward rounds at 8:00 am;
- (5) other medical staff (including senior medical staff) observing Dr Peel working before the start of her shift preparing for ward rounds;
- (6) the fact that Dr Peel was able to discuss with consultants, at 8:00 am, the content of test results and clinical information that had come in overnight, which would only have been possible had she reviewed that information prior to 8:00 am.

301. By reason of the matters alleged in paragraphs 16(a), 296, 298, and 300 above, the ward round preparation overtime worked by Dr Peel 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 Peel included ward round preparation before the commencement of ward rounds;
- (2) Dr Peel's usual rostered start time of 8:00 am;
- (3) the commencement of ward rounds at 8:00 am;
- (4) the ward round preparation direction;
- (5) the knowledge of Western Health, as set out in paragraphs 300(a) and 300(b) above; and
- (6) the failure by Western Health to direct Dr Peel not to perform the ward round preparation overtime, as set out in paragraph 300(c) above.

302. In the premises, Dr Peel was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 299 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

303. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the Gastroenterology Sunshine / Footscray Rotation.

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

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

Other medical services overtime

306. During the Gastroenterology Sunshine / Footscray Rotation, Western Health directed Dr Peel, at the end of her shift, to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

Particulars

The tasks included:

- (1) arranging investigations;

- (2) arranging discharges and discharge scripts;
- (3) communicating with other teams if specialised opinions were needed for particular patients;
- (4) returning to the ward to review unwell patients;
- (5) awaiting urgent test results; and
- (6) arranging ascitic drains.

The patient care direction is to be inferred from:

- (1) the matters in paragraph 16(i) above;
- (2) the clinical requirement for Dr Peel to attend to such tasks to ensure proper patient care and safety;
- (3) the inappropriateness of Dr Peel handing over such tasks to another doctor given Dr Peel's knowledge of the patient and tasks forming part of Dr Peel's standard daily workload (rather than an urgent task the handing-over of which would be appropriate and expected).

307. During the Gastroenterology Sunshine / Footscray Rotation, in order to discharge the patient care direction, Dr Peel worked hours in excess of rostered hours (**patient care overtime**).

Particulars

Dr Peel performed patient care overtime after the end of nearly every rostered shift, for around 10–20 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

308. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the patient care direction; and
- (2) other medical staff (including senior medical staff) observing Dr Peel carrying out the patient care direction before or after her rostered shift;
- (3) the fact that Dr Peel did not leave work until she had discharged the patient care direction.

309. By reason of the matters alleged in paragraphs 16(i), 296, 306, and 308 above, the patient care overtime worked by Dr Peel 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 Peel included attending to ward rounds tasks;
- (2) the patient care direction;
- (3) the knowledge of Western Health, as set out in paragraphs 308(a) and 308(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform patient care overtime as set out in paragraph 308(c) above.

310. In the premises, Dr Peel was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 307 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

311. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the Gastroenterology Sunshine / Footscray Rotation.

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

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

Medical records overtime

314. During the Gastroenterology Sunshine / Footscray Rotation, Western Health directed Dr Peel:

- (a) to complete medical records for all patients in the Gastroenterology department;
- (b) to complete medical records in a timely manner;
- (c) that the timely completion of medical records was necessary to ensure patient safety

(the **medical records direction**).

Particulars

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

- (1) Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Documentation of emergencies, records of communications with relatives, and test requests are all "medical records" for patients;
- (2) Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Gastroenterology Sunshine / Footscray Rotation.
- (3) Insofar as it is to be inferred, it is to be inferred from:
 - (a) particulars (1)–(2) above;
 - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
- (4) the matters in paragraph 16(f) above.

315. During the Gastroenterology Sunshine / Footscray Rotation, in order to complete medical records in accordance with the medical records direction, Dr Peel worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The medical records overtime was worked by Dr Peel after the conclusion of almost all of her rostered shifts, for around 5–10 minutes on average on each occasion.

Further particulars will be provided after discovery and before trial.

316. Western Health:

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

Particulars

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

- (1) the medical records direction;
- (2) directions from senior medical staff being given late in a rostered shift, being directions to complete medical records either that day or before the following day;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours completing medical records.

317. By reason of the matters alleged in paragraph 16(f), 296, 314, and 316 above, the medical records overtime worked by Dr Peel 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 Peel included the timely completion of medical records;
- (2) the medical records direction;
- (3) the knowledge of Western Health, as set out in paragraphs 316(a) and 316(b) above; and

- (4) the failure by Western Health to direct Dr Peel not to perform medical records overtime as set out in paragraph 316(c) above.

318. In the premises, Dr Peel was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 315 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
319. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the Gastroenterology Sunshine / Footscray Rotation.
320. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
321. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

D9 Cardiology Sunshine—6 November 2017 and 26 November 2017

322. Between 6 November 2017 and 26 November 2017, pursuant to the direction of Western Health set out in paragraph 17(i) above, Dr Peel worked in Cardiology at Sunshine Hospital (**Cardiology Sunshine Rotation**).

Rosters

323. During the Cardiology Sunshine Rotation, Dr Peel was rostered to work over the following shifts:
- (a) in the first week, 8:00 am–1:00 pm on Monday, Wednesday, Saturday and Sunday, and 8:00 am–5:00 pm on Tuesday, Thursday, and Friday;
- (b) in the second week, 8:00 am–1:00 pm on Tuesday and Thursday, and 8:00 am to 5:00 pm on Monday, Wednesday, and Friday;
- (c) in the third week, 12:00 pm–8:30 pm on Monday, and 12:30 pm–8:30 pm on Tuesday–Friday.

Ward round preparation overtime

324. During the Cardiology Sunshine Rotation, Western Health directed Dr Peel to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

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

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Oncology Sunshine Rotation.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation included reviewing patient results and new clinical information that had come in overnight.

325. During the Cardiology Sunshine Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Peel worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

The scheduled time for the start of ward rounds was 8:00 am, which was the start time of most of Dr Peel's shifts.

On days when Dr Peel was rostered to start at 8:00 am, she attended work about 10–15 minutes before then to do her ward round preparation.

Further particulars will be provided after discovery and before trial.

326. Western Health:
- (a) knew that there was insufficient time during rostered hours to undertake ward round preparation in accordance with the ward round preparation direction; and
 - (b) knew that Dr Peel performed ward round preparation overtime; and

- (c) did not direct Dr Peel not to perform ward round preparation overtime.

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the ward round preparation direction;
- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 324 above.
- (3) Dr Peel's usual rostered start time of 8.00am;
- (4) the commencement of ward rounds at 8:00 am;
- (5) other medical staff (including senior medical staff) observing Dr Peel working before the start of her shift preparing for ward rounds;
- (6) the fact that Dr Peel was able to discuss with consultants, at 8:00 am, the content of test results and clinical information that had come in overnight, which would only have been possible had she reviewed that information prior to 8:00 am.

327. By reason of the matters alleged in paragraphs 16(a), 322, 324, and 326 above, the ward round preparation overtime worked by Dr Peel 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 Peel included ward round preparation before the commencement of ward rounds;
- (2) Dr Peel's usual rostered start time of 8:00 am;
- (3) the commencement of ward rounds at 8:00 am;
- (4) the ward round preparation direction;
- (5) the knowledge of Western Health, as set out in paragraphs 326(a) and 326(b) above; and
- (6) the failure by Western Health to direct Dr Peel not to perform the ward round preparation overtime, as set out in paragraph 326(c) above.

328. In the premises, Dr Peel was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 325 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

329. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the Cardiology Sunshine Rotation.
330. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
331. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Other medical services overtime

332. During the Cardiology Sunshine Rotation, Western Health directed Dr Peel, at the end of her shift or before her next shift, to undertake specific tasks relating to patient care (**patient care direction**).

Particulars

The tasks included:

- (1) ordering pathology tests and / or inquire into the progress of a previous request;
- (2) completing medical records
- (3) returning to the ward to review unwell patients; and
- (4) awaiting urgent test results.

The patient care directions were sometimes oral and sometimes to be inferred.

Insofar as they were oral, they were constituted by directions by consultants, usually toward the end of a rostered shift (but sometimes before the start of a rostered shift), that Dr Peel undertake a specific task in relation to patient care before she finish work (or start work) that day. The specific tasks that Dr Peel was directed to do included ordering pathology tests and / or inquiring into the progress of a previous request.

Insofar as they are to be inferred, they are to be inferred from:

- (1) the matters in paragraph 16(i) above;
- (2) the clinical requirement for Dr Peel to attend to such tasks to ensure proper patient care and safety;
- (3) the inappropriateness of Dr Peel handing over such tasks to another doctor given Dr Peel's knowledge of the patient and tasks forming part of Dr Peel's standard daily

workload (rather than an urgent task the handing-over of which would be appropriate and expected).

- (4) the fact that it was a clinical requirement for proper continuity of care and patient safety that Dr Peel perform a particular task before finishing work (or starting work, whereupon she would be diverted by higher-priority work).

333. During the Cardiology Sunshine Rotation, in order to complete patient care directions, Dr Peel worked hours in excess of rostered hours (**patient care overtime**).

Particulars

Patient care directions, when made orally, were not made until the end or near to the end, or before the start, of Dr Peel's shift.

Patient care overtime was worked by Dr Peel after the end of a rostered shift, or occasionally before the start of her next rostered shift, nearly each rostered shift, for 15 minutes on average.

Further particulars will be provided after discovery and before trial.

334. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the patient care direction, which was an express, oral direction given by senior medical staff to Dr Peel, and which included a direction to complete the particular task before Dr Peel finished work on that day;
- (2) the timing of the patient care direction, which was given during close to the end of Dr Peel's rostered shift, or before the start of a rostered shift;

- (3) other medical staff (including senior medical staff) observing Dr Peel carrying out the patient care direction before or after her rostered shift;
- (4) the fact that Dr Peel attended to the patient care direction before she finished work on that day, or before the start of her rostered shift.

335. By reason of the matters alleged in paragraphs 16(i), 322, 332, and 334 above, the patient care overtime worked by Dr Peel 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 Peel included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Western Health, as set out in paragraphs 334(a) and 334(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform patient care overtime as set out in paragraph 334(c) above.

336. In the premises, Dr Peel was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 333 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

337. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the Cardiology Sunshine Rotation.

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

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

D10 Infectious Diseases Footscray—11 December 2017 and 4 February 2018

340. Between 11 December 2017 and 4 February 2018, pursuant to the direction of Western Health set out in paragraph 17(j) above, Dr Peel worked in Infectious Diseases at Footscray Hospital (**Infectious Diseases Footscray Rotation**).

Rosters

341. During the Infectious Diseases Footscray Rotation, Dr Peel was rostered to work over the following shifts:

- (a) 8:00 am–5:00 pm, four days per week, and 8:00 am–12:00 pm on the fifth day;
- (b) weekend shifts from time to time the hours of which Dr Peel cannot recall.

Other medical services overtime

342. During the Infectious Diseases Footscray Rotation, Western Health directed Dr Peel, at the end of her shift or before her next shift, to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

Particulars

The patient care directions were sometimes oral and sometimes to be inferred and were that Dr Peel review patients from other units within the hospital to assess them, give an opinion, and develop a plan for care (**patient review work**).

Insofar as they were oral, they were constituted by directions by consultants, usually toward the end of a rostered shift (but sometimes before the start of a rostered shift), that Dr Peel undertake a specific task in relation to patient care before she finish work (or start work) that day. The specific tasks that Dr Peel was directed to do order pathology tests and / or inquire into the progress of a previous request.

Insofar as they are to be inferred, they are to be inferred from the fact that it was a clinical requirement for proper continuity of care and patient safety that Dr Peel perform a particular task before finishing work (or starting work, whereupon she would be diverted by higher priority work).

343. During the Infectious Diseases Footscray Rotation, in order to complete patient care directions, Dr Peel worked hours in excess of rostered hours (**patient care overtime**).

Particulars

Patient care directions were often made at or near to the end of Dr Peel's shift, and required overtime work after the end of a rostered shift. Other times, patient care directions were such as to require Dr Peel to commence work prior to the start of her rostered shift because of carry over from the previous day.

There was nobody to hand the work over to, so if (as was the case) Dr Peel could not finish the patient review work with her other work in her rostered hours, the only options were working after rostered hours or working before rostered hours.

Patient care overtime was worked by Dr Peel after the end of a rostered shift two–three times a week, for around an hour each time, and around once a week before the start of a rostered shift, again for an hour each time.

Further particulars will be provided after discovery and before trial.

344. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the patient care direction, which was an express, oral direction given by senior medical staff to Dr Peel, and which included a direction to complete the particular task before Dr Peel finished work on that day;
- (2) the timing of the patient care direction, which was given during close to the end of Dr Peel's rostered shift, or before the start of a rostered shift;
- (3) the quantity of work assigned to Dr Peel and the unavailability of any other doctor to whom Dr Peel might have handed over the work;
- (4) other medical staff (including senior medical staff) observing Dr Peel carrying out the patient care direction before or after her rostered shift;

- (5) the fact that Dr Peel attended to the patient care direction before she finished work on that day, or before the start of her rostered shift.

345. By reason of the matters alleged in paragraphs 16(i), 340, 342, and 344 above, the patient care overtime worked by Dr Peel 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 Peel included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Western Health, as set out in paragraphs 344(a) and 344(b) above
- (4) the failure by Western Health to direct Dr Peel not to perform patient care overtime as set out in paragraph 344(c) above.

346. In the premises, Dr Peel was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 343 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

347. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the Infectious Diseases Footscray Rotation.

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

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

Ward round preparation overtime

350. During the Infectious Diseases Footscray Rotation, Western Health directed Dr Peel to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

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

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Infectious Diseases Footscray Rotation.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation included reviewing patient results and new clinical information that had come in overnight, checking and updating the patient list as necessary, and checking the progress of patients overnight.

351. During the Infectious Diseases Footscray Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Peel worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

The scheduled time for the start of ward rounds was 8:00 am, which was the start time of most of Dr Peel's shifts.

On days when Dr Peel was rostered to start at 8:00 am, she attended work about 10–15 minutes before then to do her ward round preparation.

Further particulars will be provided after discovery and before trial.

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the ward round preparation direction;
- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 350 above;
- (3) Dr Peel's usual rostered start time of 8:00 am;
- (4) the commencement of ward rounds at 8:00 am;
- (5) other medical staff (including senior medical staff) observing Dr Peel working before the start of her shift preparing for ward rounds;
- (6) the fact that Dr Peel was able to discuss with consultants, at 8:00 am, the content of test results and clinical information that had come in overnight, which would only have been possible had she reviewed that information prior to 8:00 am.

353. By reason of the matters alleged in paragraphs 16(a), 340, 350, and 352 above, the ward round preparation overtime worked by Dr Peel 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 Peel included ward round preparation before the commencement of ward rounds;
- (2) Dr Peel's usual rostered start time of 8:00 am;
- (3) the commencement of ward rounds at 8:00 am;
- (4) the ward round preparation direction;
- (5) the knowledge of Western Health, as set out in paragraphs 352(a) and 352(b) above; and
- (6) the failure by Western Health to direct Dr Peel not to perform the ward round preparation overtime, as set out in paragraph 352(c) above.

354. In the premises, Dr Peel was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 351 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

355. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the Infectious Diseases Footscray Rotation.
356. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
357. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Admissions overtime

358. During the Infectious Diseases Footscray Rotation, Western Health directed Dr Peel to perform patient admissions into the Infectious Diseases department (**admissions direction**).

Particulars

Admissions directions were made orally from time to time, for example in the form of the emergency Registrar telephoning Dr Peel and informing her that a patient in emergency needed to come into the Infection Diseases department.

Work associated with patient admissions included:

- (1) going to see the patient in emergency;
 - (2) completing a full assessment of the patient;
 - (3) looking at emergency department notes;
 - (4) formulating a care plan for the patient;
 - (5) ordering any tests required;
 - (6) recording any necessary notes for the patient;
 - (7) starting initial management of the patient;
 - (8) speaking with the consultant about his or her advice;
 - (9) informing the overnight registrar what was required for the patient.
359. During the Infectious Diseases Footscray Rotation, in order to perform patient admissions in accordance with the admissions direction, Dr Peel worked hours in excess of rostered hours (**admissions overtime**).

Particulars

- (1) A patient admission typically took one hour per patient.
- (2) If Dr Peel received an admissions direction after 4:00 pm but before 5:00 pm, the typical end of her rostered shift, then she performed the admission, which involved her working overtime.
- (3) Dr Peel performed admissions overtime around once or twice per week, typically for 30–60 minutes on each occasion.
- (4) Further particulars will be provided after discovery and before trial.

360. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the admissions direction;
- (2) the tasks necessary to complete patient admissions, including those matters in the particulars to paragraph 358 above;
- (3) the particulars to paragraph 359 above;
- (4) other medical staff (including senior medical staff) observing Dr Peel undertaking patient admissions after 5:00 pm.

361. By reason of the matters alleged in paragraphs 16(h), 340, 358, and 360 above, the admissions overtime worked by Dr Peel 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 Peel included patient admissions;

- (2) the admissions direction;
- (3) the particulars to paragraph 359 above;
- (4) the knowledge of Western Health, as set out in paragraphs 360(a) and 360(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform the admissions overtime, as set out in paragraph 360(c) above.

362. In the premises, Dr Peel was entitled to be paid overtime for the admissions overtime that she worked as set out in paragraph 359 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
363. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the admissions overtime worked by her during the Infectious Diseases Footscray Rotation.
364. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
365. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Handover overtime

366. During the Infectious Diseases Footscray Rotation, Western Health directed Dr Peel 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:

- (1) the matters in paragraph 16(c) above;
 - (2) the clinical requirement, in some infectious diseases patients, for a handover in order to ensure proper continuity of care and patient safety.
367. During the Infectious Diseases Footscray Rotation, in order to conduct handover, Dr Peel worked hours in excess of rostered hours (**handover overtime**).

Particulars

It was typical or frequent for the doctor to whom handover was to be given to be unavailable for handover before 5:00 pm, being the rostered end of most of Dr Peel's shifts.

There was no Registrar rostered to work in the Infectious Diseases Unit after 5:00 pm. So, Dr Peel had to hand over to the General Medical Registrar. It was difficult to get hold of the General Medical Registrar, and sometimes Dr Peel was unable to do so until after the end of her rostered shift.

Dr Peel performed handover overtime at the end of her shifts around one or two days per week, typically for around 20 minutes.

Further particulars will be provided after discovery and before trial.

368. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the handover direction; and
- (2) the matters in the particulars to paragraph 271 above;
- (3) the fact that Dr Peel did not leave work until she had completed handover of her patients.

369. By reason of the matters alleged in paragraphs 16(c), 340, 366, and 368 above, the handover overtime worked by Dr Peel 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 Peel included the conducting of handover;
- (2) the handover direction;

- (3) the matters in the particulars to paragraph 271 above;
- (4) the knowledge of Western Health, as set out in paragraphs 368(a) and 368(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform handover overtime as set out in paragraph 368(c) above.

370. In the premises, Dr Peel was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 367 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

371. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the handover overtime worked by her during the Infectious Diseases Footscray Rotation.

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

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

Medical records overtime

374. During the Infectious Diseases Footscray Rotation, Western Health directed Dr Peel:

- (a) to complete medical records for all patients in the Infectious Diseases department;
- (b) to complete medical records in a timely manner;
- (c) that the timely completion of medical records was necessary to ensure patient safety

(the **medical records direction**).

Particulars

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

- (1) Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement, which provides that

a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Documentation of emergencies, records of communications with relatives, and test requests are all "medical records" for patients;

- (2) Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Infectious Diseases Footscray Rotation.
- (3) Insofar as it is to be inferred, it is to be inferred from:
 - (a) particulars (1)–(2) above;
 - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
- (4) the matters in paragraph 16(f) above.

375. During the Infectious Diseases Footscray Rotation, in order to complete medical records in accordance with the medical records direction, Dr Peel worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The medical records overtime was worked by Dr Peel after the conclusion of almost all of her rostered shifts, for around 5–10 minutes on average on each occasion.

Further particulars will be provided after discovery and before trial.

376. Western Health:

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

Particulars

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

- (1) the medical records direction;

- (2) directions from senior medical staff being given late in a rostered shift, being directions to complete medical records either that day or before the following day;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours completing medical records.

377. By reason of the matters alleged in paragraphs 16(f), 340, 374, and 376 above, the medical records overtime worked by Dr Peel 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 Peel included the timely completion of medical records;
- (2) the medical records direction;
- (3) the knowledge of Western Health, as set out in paragraphs 376(a) and 376(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform medical records overtime as set out in paragraph 376(c) above.

378. In the premises, Dr Peel was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 375 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

379. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the Infectious Diseases Footscray Rotation.

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

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

Medical emergency overtime

382. During the Infectious Diseases Footscray Rotation, Western Health directed Dr Peel 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 conveyed by more senior medical staff (eg. consultants) from time to time during the Infectious Diseases Footscray Rotation.

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

- (1) the matters in paragraph 16(e) above;
- (2) the clinical requirement for Dr Peel to attend to medical emergencies in order to ensure proper patient care and safety;
- (3) the inefficiency (in an urgent situation) of briefing on-coming staff, or the unavailability of such staff (because they were in handover or not on ward);
- (4) the nature of work in Infectious Diseases being that patients occasionally suffered a clinical deterioration requiring medical staff urgently to attend to their care and stabilisation.

383. During the Infectious Diseases Footscray Rotation, in order to attend to medical emergencies, Dr Peel worked hours in excess of rostered hours (**medical emergency overtime**).

Particulars

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

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

Further particulars will be provided after discovery and before trial.

384. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the medical emergency direction;
- (2) the matters in paragraph 383 above;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours dealing with medical emergencies;
- (4) the fact that Dr Peel did not leave work until she had treated and stabilised the patient suffering a medical emergency.

385. By reason of the matters alleged in paragraphs 16(e), 340, 380, and 382 above, the medical emergency overtime worked by Dr Peel 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 Peel included attending to medical emergencies;
- (2) the medical emergency direction;
- (3) the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 383 above.
- (4) the knowledge of Western Health, as set out in paragraphs 384(a) and 384(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform medical emergency overtime as set out in paragraph 384(c) above.

386. In the premises, Dr Peel was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 383 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

387. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical emergency overtime worked by her during the Infectious Diseases Footscray Rotation.
388. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
389. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

D11 Oncology Sunshine (Second Rotation)—7 May 2018 and 13 May 2018

390. Between 7 May 2018 and 13 May 2018, pursuant to the direction of Western Health set out in paragraph 17(k) above, Dr Peel worked in Oncology at Sunshine Hospital (**Oncology Sunshine Second Rotation**).

Rosters

391. During the Oncology Sunshine Second Rotation, Dr Peel was rostered to work 8:00 am–5:00 pm, Monday to Friday, with one short shift of 8:00 am–2:00 pm.

Ward round preparation overtime

392. During the Oncology Sunshine Second Rotation, Western Health directed Dr Peel to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

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

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

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation included reviewing patient results and new clinical information that had come in overnight.

393. During the Oncology Sunshine Second Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Peel worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

The scheduled time for the start of ward rounds was almost always 8:30 am. 8:00 am was the start time of most of Dr Peel's day shifts. The time between 8:00 am and 8:30 am was spent in handover meetings. In order, therefore, to be prepared for ward rounds at 8:30 am Dr Peel had to spend time doing ward round preparation before the start of her shift at 8:00 am.

On days when Dr Peel was rostered to start at 8:00 am, she attended work about 10–15 minutes before then to do her ward round preparation.

Further particulars will be provided after discovery and before trial.

394. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the ward round preparation direction;
- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 392 above;
- (3) Dr Peel's usual rostered start time of 8:00 am;
- (4) the commencement of ward rounds at 8:00 am;
- (5) other medical staff (including senior medical staff) observing Dr Peel preparing for ward rounds prior to 8:00 am;
- (6) the fact that Dr Peel was able to discuss with consultants, at 8:30 am, the content of test results and clinical information that had come in overnight, which would

only have been possible had she reviewed that information prior to 8:00 am.

395. By reason of the matters alleged in paragraphs 16(a), 390, 392, and 394 above, the ward round preparation overtime worked by Dr Peel 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 Peel included ward round preparation before the commencement of ward rounds;
- (2) the ward round preparation direction;
- (3) the matters set out in the particulars to paragraph 393 above;
- (4) the knowledge of Western Health, as set out in paragraphs 394(a) and 394(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform the ward round preparation overtime, as set out in paragraph 394(c) above.

396. In the premises, Dr Peel was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 393 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

397. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the Oncology Sunshine Second Rotation.

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

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

Other medical services overtime

400. During the Oncology Sunshine Second Rotation, Western Health directed Dr Peel, at the end of her shift or before her next shift, to undertake specific tasks relating to patient care (**patient care direction**).

Particulars

The tasks included:

- (1) order pathology tests and / or inquire into the progress of a previous request;
- (2) arranging investigations;
- (3) arranging discharges and discharge scripts;
- (4) communicating with other teams if a specialised opinion was needed in relation to a particular patient;
- (5) returning to the ward to review unwell patients; and
- (6) awaiting urgent test results.

The patient care directions were sometimes oral and sometimes to be inferred.

Insofar as they were oral, they were constituted by directions by consultants, usually toward the end of a rostered shift (but sometimes before the start of a rostered shift), that Dr Peel undertake a specific task in relation to patient care before she finish work (or start work) that day. The specific tasks that Dr Peel was directed to do order pathology tests and / or inquire into the progress of a previous request.

Insofar as they are to be inferred, they are to be inferred from:

- (1) the matters in paragraph 16(i) above;
- (2) the clinical requirement for Dr Peel to attend to such tasks to ensure proper patient care and safety;
- (3) the inappropriateness of Dr Peel handing over such tasks to another doctor given Dr Peel's knowledge of the patient and tasks forming part of Dr Peel's standard daily workload (rather than an urgent task the handing-over of which would be appropriate and expected).
- (4) the fact that it was a clinical requirement for proper continuity of care and patient safety that Dr Peel perform a particular task before finishing work (or starting work, whereupon she would be diverted by higher-priority work).

401. During the Oncology Sunshine Second Rotation, in order to complete patient care directions, Dr Peel worked hours in excess of rostered hours (**patient care overtime**).

Particulars

Patient care directions, when made orally, were not made until the end or near to the end, or before the start, of Dr Peel's shift.

Patient care overtime was worked by Dr Peel after the end of a rostered shift, or occasionally before the start of her next rostered shift, two to three times per week for 15–30 minutes on average.

Further particulars will be provided after discovery and before trial.

402. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the patient care direction, which was an express, oral direction given by senior medical staff to Dr Peel, and which included a direction to complete the particular task before Dr Peel finished work on that day;
- (2) the timing of the patient care direction, which was given during close to the end of Dr Peel's rostered shift, or before the start of a rostered shift;
- (3) other medical staff (including senior medical staff) observing Dr Peel carrying out the patient care direction before or after her rostered shift;
- (4) the fact that Dr Peel attended to the patient care direction before she finished work on that day, or before the start of her rostered shift.

403. By reason of the matters alleged in paragraphs 16(i), 390, 400 and 402 above, the patient care overtime worked by Dr Peel 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 Peel included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Western Health, as set out in paragraphs 402(a) and 402(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform patient care overtime as set out in paragraph 402(c) above.

404. In the premises, Dr Peel was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 401 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

405. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the Oncology Sunshine Second Rotation.

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

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

Medical records overtime

408. During the Oncology Sunshine Second Rotation, Western Health directed Dr Peel:

- (a) to complete medical records for all patients in the Oncology department;
- (b) to complete medical records in a timely manner;
- (c) that the timely completion of medical records was necessary to ensure patient safety

(the **medical records direction**).

Particulars

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

- (1) Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Documentation of emergencies, records of communications with relatives, and test requests are all "medical records" for patients;
- (2) Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Oncology Sunshine Second Rotation.
- (3) Insofar as it is to be inferred, it is to be inferred from:
 - (a) particulars (1)–(2) above;
 - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
- (4) the matters in paragraph 16(f) above.

409. During the Oncology Sunshine Second Rotation, in order to complete medical records in accordance with the medical records direction, Dr Peel worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The medical records overtime was worked by Dr Peel after the conclusion of almost all of her rostered shifts, for around 5–10 minutes on average on each occasion.

Further particulars will be provided after discovery and before trial.

410. Western Health:

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

Particulars

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

- (1) the medical records direction;
- (2) directions from senior medical staff being given late in a rostered shift, being directions to complete medical records either that day or before the following day;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours completing medical records.

411. By reason of the matters alleged in paragraph 16(f), 390, 408, and 410 above, the medical records overtime worked by Dr Peel 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 Peel included the timely completion of medical records;
- (2) the medical records direction;
- (3) the knowledge of Western Health, as set out in paragraphs 410(a) and 410(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform medical records overtime as set out in paragraph 410(c) above.

412. In the premises, Dr Peel was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 409 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

413. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the Oncology Sunshine Second Rotation.

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

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

Medical communication overtime

416. During the Oncology Sunshine Second Rotation, Western Health directed Dr Peel to speak with patients and patients' families and visitors about patients' treatment (**medical communication direction**).

Particulars

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

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Oncology Sunshine Second Rotation.

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

- (1) the matters in paragraph 16(g) above;
- (2) the clinical requirement for Dr Peel to communicate with patients and their families and visitors in order to keep them informed and get information from them, these being an important aspect of providing adequate healthcare;

417. During the Oncology Sunshine Second Rotation, in order to perform medical communication, Dr Peel worked hours in excess of rostered hours (**medical communication overtime**).

Particulars

Visiting hours commenced at 5:00 pm, being Dr Peel's usual finishing time.

So, when patients' families or visitors asked to speak with the patients' treating doctor, that ordinarily occurred after Dr Peel's rostered finishing time.

Dr Peel performed medical communication overtime after the end of a rostered shift around 2–3 times per week, for around 5–15 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

418. Western Health:

- (a) knew that the medical communication direction could not be performed during rostered hours;

- (b) knew that Dr Peel performed medical communication overtime;
- (c) did not direct Dr Peel not to perform medical communication overtime.

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the medical communication direction; and
- (2) the matters in the particulars to paragraph 417 above;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours speaking with patients' families and/or visitors;
- (4) the fact that Dr Peel did not leave work until she had spoken finished the relevant medical communication.

419. By reason of the matters alleged in paragraphs 16(g), 390, 416, and 418 above, the medical communication overtime worked by Dr Peel 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 Peel included attending to medical communication;
- (2) the medical communication direction;
- (3) the knowledge of Western Health, as set out in paragraphs 418(a) and 418(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform medical communication overtime as set out in paragraph 418(c) above.

420. In the premises, Dr Peel was entitled to be paid overtime for the medical communication overtime that she worked, as set out in paragraph 417 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

421. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical communication overtime worked by her during the Oncology Sunshine Second Rotation.

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

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

D12 Respiratory Footscray—14 May 2018 and 10 June 2018

424. Between 14 May 2018 and 10 June 2018, pursuant to the direction of Western Health set out in paragraph 17(1), Dr Peel worked in Respiratory at Footscray Hospital (**Respiratory Footscray Rotation**).

Rosters

425. During the Respiratory Footscray Rotation, Dr Peel was rostered to work over the following shifts:

- (a) 8:00 am–5:00 pm, Monday to Friday, with one half shift from 8:00 am–12:30 pm, and on one occasion one long shift from 8:00 am–8:30 pm;
- (b) 8:00 am–12:00 pm, Saturday and Sunday, one weekend out of every four.

Ward round preparation overtime

426. During the Respiratory Footscray Rotation, Western Health directed Dr Peel to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

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

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

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation included reviewing patient results and new clinical information that had come in overnight.

427. During the Respiratory Footscray Rotation, in order to undertake ward round preparation in accordance with the ward round preparation direction, Dr Peel worked hours in excess of rostered hours (**ward round preparation overtime**).

Particulars

The scheduled time for the start of ward rounds was almost always 8:30 am. 8:00 am was the start time of Dr Peel's day shifts. The time between 8:00 am and 8:30 am was spent in handover meetings. In order, therefore, to be prepared for ward rounds at 8:30 am Dr Peel had to spend time doing ward round preparation before the start of her shift at 8:00 am.

On days when Dr Peel was rostered to start at 8:00 am, she attended work about 10–15 minutes before then to do her ward round preparation.

Further particulars will be provided after discovery and before trial.

428. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the ward round preparation direction;
- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 426 above;
- (3) Dr Peel's usual rostered start time of 8:00am;
- (4) the commencement of ward rounds at 8:00 am;
- (5) other medical staff (including senior medical staff) observing Dr Peel preparing for ward rounds prior to 8:00 am;
- (6) the fact that Dr Peel was able to discuss with consultants, at 8:30 am, the content of test results and clinical information that had come in overnight, which would only have been possible had she reviewed that information prior to 8:00 am.

429. By reason of the matters alleged in paragraphs 16(a), 424, 426, and 428 above, the ward round preparation overtime worked by Dr Peel 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 Peel included ward round preparation before the commencement of ward rounds;
- (2) the ward round preparation direction;
- (3) the matters set out in the particulars to paragraph 427 above
- (4) the knowledge of Western Health, as set out in paragraphs 428(a) and 428(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform the ward round preparation overtime, as set out in paragraph 428(c) above.

430. In the premises, Dr Peel was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 427 above at the rates set out in clause 32.2.2 of the 2013 Agreement.

431. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the ward round preparation overtime worked by her during the Respiratory Footscray Rotation.

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

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

Other medical services overtime

434. During the Respiratory Footscray Rotation, Western Health directed Dr Peel, at the end of her shift, to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

Particulars

The tasks included:

- (1) checking up on the results of medical imaging ordered earlier that day;
- (2) arranging investigations;
- (3) arranging discharges and discharge scripts;
- (4) communicating with other teams if specialised opinions were required for a particular patient;
- (5) returning to the ward to review unwell patients;
- (6) awaiting and reviewing urgent test results; and
- (7) performing particular procedures (eg. a chest drain)

The patient care direction is to be inferred from:

- (1) the matters in paragraph 16(i) above;
- (2) the clinical requirement for Dr Peel to attend to such tasks to ensure proper patient care and safety;
- (3) the inappropriateness of Dr Peel handing over such tasks to another doctor given Dr Peel's knowledge of the patient and tasks forming part of Dr Peel's standard daily workload (rather than an urgent task the handing-over of which would be appropriate and expected).

435. During the Respiratory Footscray Rotation, in order to discharge the patient care direction, Dr Peel worked hours in excess of rostered hours (**patient care overtime**).

Particulars

Dr Peel performed patient care overtime after the end of nearly every rostered day shift, for around 30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

436. Western Health:

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

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the patient care direction; and
- (2) other medical staff (including senior medical staff) observing Dr Peel carrying out the patient care direction before or after her rostered shift;
- (3) the fact that Dr Peel did not leave work until she had discharged the patient care direction.

437. By reason of the matters alleged in paragraphs 16(i), 424, 434, and 436 above, the patient care overtime worked by Dr Peel 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 Peel included attending to patient care;
- (2) the patient care direction;
- (3) the knowledge of Western Health, as set out in paragraphs 436(a) and 436(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform patient care overtime as set out in paragraph 436(c) above.

438. In the premises, Dr Peel was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 435 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
439. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the patient care overtime worked by her during the Respiratory Footscray Rotation.
440. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
441. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Medical records overtime

442. During the Respiratory Footscray Rotation, Western Health directed Dr Peel:
- (a) to complete medical records for all patients in the Respiratory department;
 - (b) to complete medical records in a timely manner;
 - (c) that the timely completion of medical records was necessary to ensure patient safety

(the **medical records direction**).

Particulars

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

- (1) Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Documentation of emergencies, records of communications with relatives, and test requests are all "medical records" for patients;
- (2) Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the Respiratory Footscray Rotation.
- (3) Insofar as it is to be inferred, it is to be inferred from:
 - (a) particulars (1)–(2) above;
 - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;
- (4) the matters in paragraph 16(f) above.

443. During the Respiratory Footscray Rotation, in order to complete medical records in accordance with the medical records direction, Dr Peel worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The medical records overtime was worked by Dr Peel after the conclusion of almost all of her rostered shifts, for around 5–10 minutes on average on each occasion.

Further particulars will be provided after discovery and before trial.

444. Western Health:

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

Particulars

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

- (1) the medical records direction;
- (2) directions from senior medical staff being given late in a rostered shift, being directions to complete medical records either that day or before the following day;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours completing medical records.

445. By reason of the matters alleged in paragraphs 16(f), 424, 442, and 444 above, the medical records overtime worked by Dr Peel 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 Peel included the timely completion of medical records;
- (2) the medical records direction;
- (3) the knowledge of Western Health, as set out in paragraphs 444(a) and 444(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform medical records overtime as set out in paragraph 444(c) above.

446. In the premises, Dr Peel was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 443 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
447. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the medical records overtime worked by her during the Respiratory Footscray Rotation.
448. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
449. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Admissions overtime

450. During the Respiratory Footscray Rotation, Western Health directed Dr Peel to perform patient admissions into the Respiratory department (**admissions direction**).

Particulars

Admissions directions were made orally from time to time, for example in the form of the emergency registrar telephoning Dr Peel and informing her that a patient in emergency needed to be admitted to the Respiratory department. Further, such directions were given to Dr Peel by more senior medical staff (such as consultants) in the Respiratory department.

Work associated with patient admissions included:

- (1) going to see the patient in emergency;
- (2) completing a full assessment of the patient;
- (3) looking at emergency department notes;
- (4) formulating a care plan for the patient;
- (5) ordering any tests required;
- (6) recording any necessary notes for the patient;
- (7) starting initial management of the patient;
- (8) speaking with the consultant about his or her advice;
- (9) informing the overnight registrar what was required for the patient.

451. During the Respiratory Footscray Rotation, in order to perform patient admissions in accordance with the admissions direction, Dr Peel worked hours in excess of rostered hours (**admissions overtime**).

Particulars

- (1) A patient admission typically took one hour per patient.
- (2) If Dr Peel received an admissions direction after 4:00 pm but before 5:00 pm, the typical end of her rostered shift, then she performed the admission, which involved her working overtime.
- (3) Dr Peel performed admissions overtime around once per week, typically for 30–60 minutes on each occasion.
- (4) Further particulars will be provided after discovery and before trial.

452. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the admissions direction;
- (2) the tasks necessary to complete patient admissions, including those matters in the particulars to paragraph 450 above;
- (3) the particulars to paragraph 451 above;
- (4) other medical staff (including senior medical staff) observing Dr Peel undertaking patient admissions after 5:00 pm.

453. By reason of the matters alleged in paragraphs 16(h), 424, 450, and 452 above, the admissions overtime worked by Dr Peel 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 Peel included patient admissions;
- (2) the admissions direction;
- (3) the particulars to paragraph 451 above;
- (4) the knowledge of Western Health, as set out in paragraphs 452(a) and 452(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform the admissions overtime, as set out in paragraph 452(c) above.

454. In the premises, Dr Peel was entitled to be paid overtime for the admissions overtime that she worked as set out in paragraph 451 above at the rates set out in clause 32.2.2 of the 2013 Agreement.
455. Western Health did not pay Dr Peel overtime, in accordance with clause 32.2 of the 2013 Agreement, for the admissions overtime worked by her during the Respiratory Footscray Rotation.
456. By reason of the matters alleged above, Western Health has contravened clause 32.2 of the 2013 Agreement.
457. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

D13 General Medicine Footscray—1 July 2018 and 4 November 2018

458. Between 1 July 2018 and 4 November, pursuant to the direction of Western Health set out in paragraph 17(m) above, Dr Peel worked in General Medicine at Footscray Hospital (**General Medicine Footscray Rotation**).

Rosters

459. From 5 August 2018 until the end of the General Medicine Footscray Rotation, Dr Peel was rostered to work over the following shifts, over a four-week rotating cycle:
- (a) in week one, 8:00 am–8:30 pm on Monday, 8:00 am–5:00 pm on Tuesday and Thursday, and 8:00 am–1:00 pm Wednesday and Friday;

- (b) in week two, 8:00 am–8:30 pm on Monday, 8:00 am–5:00 pm on Tuesday, Thursday, and Friday, and 8:00 am–1:00 pm on Wednesday;
- (c) in week three, 8:00 am–8:30 pm on Monday and Friday, 8:00 am–5:00 pm on Tuesday and Thursday, 8:00 am–1:00 pm on Wednesday, and 8:00 am–12:00 pm on Saturday;
- (d) in week four, 8:00 am–8:30 pm on Monday and Sunday, 8:00 am–5:00 pm on Tuesday, Thursday, and Friday, and 8:00 am–1:00 pm on Wednesday.

Ward round preparation overtime

460. During the General Medicine Footscray Rotation, Western Health directed Dr Peel to undertake ward round preparation before the commencement of ward rounds (**ward round preparation direction**).

Particulars

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

Insofar as it was in writing, it was contained in clause 23.1 of the 2018 Agreement, which provides that a Doctor’s duties include “the keeping and maintaining of adequate medical records” for patients. Ward round preparation involved the creation of medical records for patients.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(a) above, and from the fact that the tasks necessary to complete ward round preparation included the following:

- (1) getting and reviewing the list of patients from the intern;
- (2) discussing urgent tasks with the intern;
- (3) identifying and flagging patients who were due to be discharged that day;
- (4) reviewing investigation results that had come in overnight.

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

Particulars

The scheduled time for the start of ward rounds was almost always 8:30 am. 8:00 am was the start time of most of Dr Peel's day shifts. The time between 8:00 am and 8:30 am was spent in handover meetings. In order, therefore, to be prepared for ward rounds at 8:30 am Dr Peel had to spend time doing ward round preparation before the start of her shift at 8:00 am.

On days when Dr Peel was rostered to start at 8:00 am, she attended work about 10–15 minutes before then to do her ward round preparation.

Further particulars will be provided after discovery and before trial.

462. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the ward round preparation direction;
- (2) the tasks necessary to complete ward round preparation, including those matters in the particulars to paragraph 460 above;
- (3) Dr Peel's usual rostered start time of 8:00am;
- (4) the commencement of ward rounds at 8:00 am;
- (5) other medical staff (including senior medical staff) observing Dr Peel preparing for ward rounds prior to 8:00 am;
- (6) the fact that Dr Peel was able to discuss with consultants, at 8:30 am, the content of test results and clinical information that had come in overnight, which would only have been possible had she reviewed that information prior to 8:00 am.

463. By reason of the matters alleged in paragraphs 16(a), 458, 460, and 462 above, the ward round preparation overtime worked by Dr Peel 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 Peel included ward round preparation before the commencement of ward rounds;
- (2) the ward round preparation direction;
- (3) the matters set out in the particulars to paragraph 461 above;
- (4) the knowledge of Western Health, as set out in paragraphs 462(a) and 462(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform the ward round preparation overtime, as set out in paragraph 462(c) above.

464. In the premises, Dr Peel was entitled to be paid overtime for the ward round preparation overtime that she worked as set out in paragraph 461 above at the rates set out in clause 36.2(c) of the 2018 Agreement.

465. Western Health did not pay Dr Peel overtime, in accordance with clause 36.2 of the 2018 Agreement, for the ward round preparation overtime worked by her during the General Medicine Footscray Rotation.

466. By reason of the matters alleged above, Western Health has contravened clause 36.2 of the 2018 Agreement.

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

Admissions overtime

468. During the General Medicine Footscray Rotation, Western Health directed Dr Peel to perform patient admissions (**admissions direction**).

Particulars

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

Insofar as it was oral, it was in the form of express instructions to Dr Peel from time to time to admit a patient into the department.

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

There were three General Medicine teams, A, B, and C, one of which was always “on take.” The team that was “on take” was required to admit patients from the emergency department into the unit.

Each team was “on take” around twice per week.

Work associated with patient admissions, on the day that a team was “on take,” included:

- (1) going to see the patient in emergency;
- (2) completing a full assessment of the patient;
- (3) looking at emergency department notes;
- (4) formulating a care plan for the patient;
- (5) ordering any tests required;
- (6) recording any necessary notes for the patient;
- (7) starting initial management of the patient;
- (8) speaking with the consultant about his or her advice;
- (9) informing the overnight registrar what was required for the patient.

Work associated with patient admissions, the day after a team was “on take,” included completing a round of all new patients with a consultant.

469. During the General Medicine Footscray Rotation, in order to perform patient admissions in accordance with the admissions direction, Dr Peel worked hours in excess of rostered hours (**admissions overtime**).

Particulars

On days that Dr Peel’s team was “on take” (being around twice per week), Dr Peel performed admissions overtime at the end of her shift for around one hour on each occasion.

On days that Dr Peel’s team was “post-take” (being once or twice per week), Dr Peel performed admissions overtime for around one hour on each occasion.

Further particulars will be provided after discovery and before trial.

470. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the admissions direction;
- (2) the tasks necessary to complete patient admissions, including those matters in the particulars to paragraph 468 above;
- (3) the particulars to paragraph 469 above;
- (4) other medical staff (including senior medical staff) observing Dr Peel undertaking patient admissions after 5:00 pm.

471. By reason of the matters alleged in paragraphs 16(h), 458, 468, and 470 above the admissions overtime worked by Dr Peel 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 Peel included patient admissions;
- (2) the admissions direction;
- (3) the particulars to paragraph 469 above;
- (4) the knowledge of Western Health, as set out in paragraphs 470(a) and 470(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform the admissions overtime, as set out in paragraph 470(c) above.

472. In the premises, Dr Peel was entitled to be paid overtime for the admissions overtime that she worked as set out in paragraph 469 above at the rates set out in clause 36.2(c) of the 2018 Agreement.

473. Western Health did not pay Dr Peel overtime, in accordance with clause 36.2 of the 2018 Agreement, for the admissions worked by her during the General Medicine Footscray Rotation.
474. By reason of the matters alleged above, Western Health has contravened clause 36.2 of the 2018 Agreement.
475. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Handover overtime

476. During the General Medicine Footscray Rotation, Western Health directed Dr Peel 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:

- (1) the matters in paragraph 16(c) above;
 - (2) the clinical requirement for a handover in order to ensure proper continuity of care and patient safety.
477. During the General Medicine Footscray Rotation, in order to conduct handover, Dr Peel worked hours in excess of rostered hours (**handover overtime**).

Particulars

It was typical or frequent for the doctor to whom handover was to be given to be unavailable for handover before 5:00 pm, being the rostered end of most of Dr Peel's shifts.

There was no Registrar rostered to work in the General Medicine Unit after 5:00 pm. So, Dr Peel had to hand over to the General Medical Registrar. It was difficult to get hold of the General Medical Registrar, and sometimes Dr Peel was unable to do so until after the end of her rostered shift.

Dr Peel performed handover overtime at the end of her shifts around one or two days per week, typically for around 20 minutes.

Further particulars will be provided after discovery and before trial.

478. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the handover direction; and
- (2) the matters in the particulars to paragraph 477 above;
- (3) the fact that Dr Peel did not leave work until she had completed handover of her patients.

479. By reason of the matters alleged in paragraphs 16(c), 458, 476, and 478 above, the handover overtime worked by Dr Peel 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 Peel included the conducting of handover;
- (2) the giving of the handover direction;
- (3) the matters in the particulars to paragraph 477 above;
- (4) the knowledge of Western Health, as set out in paragraphs 478(a) and 478(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform handover overtime as set out in paragraph 478(c) above.

480. In the premises, Dr Peel was entitled to be paid overtime for the handover overtime that she worked, as set out in paragraph 477 above at the rates set out in clause 36.2(c) of the 2018 Agreement.

481. Western Health did not pay Dr Peel overtime, in accordance with clause 36.2 of the 2018 Agreement, for the handover overtime worked by her during the General Medicine Footscray Rotation.

482. By reason of the matters alleged above, Western Health has contravened clause 36.2 of the 2018 Agreement.

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

Other medical services

484. During the General Medicine Footscray Rotation, Western Health directed Dr Peel, at the end of her shift, to undertake specific tasks relating to patient care before she finished work on that day (**patient care direction**).

Particulars

The tasks included:

- (1) arranging investigations;
- (2) arranging discharges and discharge scripts for patients set for discharge the following day;
- (3) communicating with other teams if specialised opinions were needed for particular patients;
- (4) returning to the ward to review unwell patients; and
- (5) awaiting urgent test results.

The patient care direction is to be inferred from:

- (1) the matters in paragraph 16(i) above;
- (2) the clinical requirement for Dr Peel to attend to such tasks to ensure proper patient care and safety;
- (3) the inappropriateness of Dr Peel handing over such tasks to another doctor given Dr Peel's knowledge of the patient and tasks forming part of Dr Peel's standard daily workload (rather than an urgent task the handing-over of which would be appropriate and expected).

485. During the General Medicine Footscray Rotation, in order to discharge the ward direction, Dr Peel worked hours in excess of rostered hours (**patient care overtime**).

Particulars

Dr Peel performed patient care overtime after the end of nearly every rostered day shift, for around 15–30 minutes on each occasion.

Further particulars will be provided after discovery and before trial.

486. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the patient care direction; and
- (2) other medical staff (including senior medical staff) observing Dr Peel carrying out the patient care direction before or after her rostered shift;
- (3) the fact that Dr Peel did not leave work until she had discharged the patient care direction.

487. By reason of the matters alleged in paragraphs 16(i), 458, 484, and 486 above, the patient care overtime worked by Dr Peel 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 Peel included attending to ward rounds tasks;
- (2) the giving of the patient care direction;
- (3) the knowledge of Western Health, as set out in paragraphs 486(a) and 486(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform patient care overtime as set out in paragraph 486(c) above

488. In the premises, Dr Peel was entitled to be paid overtime for the patient care overtime that she worked, as set out in paragraph 485 above at the rates set out in clause 36.2(c) of the 2018 Agreement.

489. Western Health did not pay Dr Peel overtime, in accordance with clause 36.2 of the 2018 Agreement, for the patient care overtime worked by her during the General Medicine Footscray Rotation.
490. By reason of the matters alleged above, Western Health has contravened clause 36.2 of the 2018 Agreement.
491. By reason of the matters alleged in the above paragraph, Western Health has contravened s 50 of the FW Act.

Medical records overtime

492. During the General Medicine Footscray Rotation, Western Health directed Dr Peel:
- (a) to complete medical records for all patients in the General Medicine department;
 - (b) to complete medical records in a timely manner;
 - (c) that the timely completion of medical records was necessary to ensure patient safety
- (the **medical records direction**).

Particulars

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

- (1) Insofar as it was in writing, it was contained in clause 23.1 of the 2018 Agreement, which provides that a Doctor's duties include "the keeping and maintaining of adequate medical records" for patients. Documentation of emergencies, records of communications with relatives, and test requests are all "medical records" for patients;
- (2) Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time during the General Medicine Footscray Rotation.
- (3) Insofar as it is to be inferred, it is to be inferred from:
 - (a) particulars (1)–(2) above;
 - (b) the clinical requirement to complete medical records for proper patient care, especially if time-sensitive;

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

493. During the General Medicine Footscray Rotation, in order to complete medical records in accordance with the medical records direction, Dr Peel worked hours in excess of rostered hours (**medical records overtime**).

Particulars

The medical records overtime was worked by Dr Peel after the conclusion of almost all of her rostered shifts, for around 5–10 minutes on average on each occasion.

Further particulars will be provided after discovery and before trial.

494. Western Health:

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

Particulars

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

- (1) the medical records direction;
- (2) directions from senior medical staff being given late in a rostered shift, being directions to complete medical records either that day or before the following day;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours completing medical records.

495. By reason of the matters alleged in paragraphs 16(f), 458, 492, and 494 above, the medical records overtime worked by Dr Peel 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 Peel included the timely completion of medical records;

- (2) the giving of the medical records direction;
- (3) the knowledge of Western Health, as set out in paragraphs 494(a) and 494(b) above; and
- (4) the failure by Western Health to direct Dr Peel not to perform medical records overtime as set out in paragraph 494(c) above.

496. In the premises, Dr Peel was entitled to be paid overtime for the medical records overtime that she worked, as set out in paragraph 493 above at the rates set out in clause 36.2(c) of the 2018 Agreement.

497. Western Health did not pay Dr Peel overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical records overtime worked by her during the General Medicine Footscray Rotation.

498. By reason of the matters alleged above, Western Health has contravened clause 36.2 of the 2018 Agreement.

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

Medical emergency overtime

500. During the General Medicine Sunshine / Footscray Rotation Western Health directed Dr Peel 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 conveyed by more senior medical staff (eg. consultants) from time to time during the General Medicine Sunshine / Footscray Rotation.

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

- (1) the matters in paragraph 16(e) above;
- (2) the clinical requirement for Dr Peel to attend to medical emergencies in order to ensure proper patient care and safety;
- (3) the inefficiency (in an urgent situation) of briefing on-coming staff, or the unavailability of such staff (because they were in handover or not on ward);

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

501. During the General Medicine Sunshine / Footscray Rotation, in order to attend to medical emergencies, Dr Peel worked hours in excess of rostered hours (**medical emergency overtime**).

Particulars

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

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

Further particulars will be provided after discovery and before trial.

502. Western Health:

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

Particulars

The knowledge of Western Health is to be inferred from:

- (1) the medical emergency direction;
- (2) the matters in paragraph 501 above;
- (3) other medical staff (including senior medical staff) observing Dr Peel working after hours dealing with medical emergencies;
- (4) the fact that Dr Peel did not leave work until she had treated and stabilised the patient suffering a medical emergency.

503. By reason of the matters alleged in paragraphs 16(e), 458, 500, and 502 above, the medical emergency overtime worked by Dr Peel 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 Peel included attending to medical emergencies;
- (2) the medical emergency direction;
- (3) the circumstances in which medical emergencies occurred from time to time, in the circumstances described in the particulars to paragraph 501 above;
- (4) the knowledge of Western Health, as set out in paragraphs 502(a) and 502(b) above; and
- (5) the failure by Western Health to direct Dr Peel not to perform medical emergency overtime as set out in paragraph 502(c) above.

504. In the premises, Dr Peel was entitled to be paid overtime for the medical emergency overtime that she worked, as set out in paragraph 501 above at the rates set out in clause 36.2(c) of the 2018 Agreement.

505. Western Health did not pay Dr Peel overtime, in accordance with clause 36.2 of the 2018 Agreement, for the medical emergency overtime worked by her during the General Medicine Sunshine / Footscray Rotation.

506. By reason of the matters alleged above, Western Health has contravened clause 36.2 of the 2018 Agreement.

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

D14 Loss

508. Dr Peel has suffered loss by reason of the contraventions of Western Health of s 50 of the FW Act.

Particulars

Particulars will be provided after discovery and before trial.

E GROUP MEMBERS' CLAIMS AGAINST WESTERN HEALTH

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

- (a) worked in one or more of the services operated by Western Health as set out in paragraph 1(d) above; and
- (b) was rostered to work 38 ordinary hours per week, or an average of 38 hours per week for up to 4 weeks.

E1 Ward round preparation overtime

510. Some or all Group Members, in the course of their employment by Western Health during the Relevant Period, were subject to a direction to prepare for ward rounds before the commencement of ward rounds.

Particulars

The direction was partly written and partly implied.

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

Insofar as it was implied, it was implied by the matters in paragraph 16(a) above, where ward rounds were conducted in a particular ward or department of a service operated by Western Health as set out in paragraph 1(d) above.

511. Each Group Member subject to the direction in paragraph 510 above worked overtime in excess of rostered hours to prepare for ward rounds, in accordance with that direction.

512. In respect of each Group Member in paragraph 511 above, Western Health:

- (a) knew that there was insufficient time during rostered hours to prepare for ward rounds, in accordance with the direction in paragraph 510 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 Western Health is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 510 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.

513. Western Health did not pay Group Members overtime:

- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
- (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,

for the ward round preparation overtime in paragraph 511 above worked by them.

514. 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 Western Health in giving the direction set out in paragraph 510 above;
- (3) the knowledge of Western Health, as set out in paragraphs 512(a) and (b) above; and
- (4) the failure by Western Health to direct Group Members not to perform the overtime set out in paragraph 511 above, as set out in paragraph 512(c) above.

515. In the premises, Group Members were entitled to be paid overtime for the ward round preparation overtime they worked as set out in paragraph 511 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

516. By reason of the matters alleged in paragraphs 513 and 515 above, Western Health has contravened:

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

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

E2 Ward round overtime

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

Particulars

The direction was partly oral and partly implied.

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

Insofar as it was implied, it was implied by the matters in paragraph 16(b) above, where ward rounds were undertaken in a

particular ward or department of a service operated by Western Health as set out in paragraph 1(d) above.

519. Each Group Member subject to the direction in paragraph 518 above worked overtime in excess of rostered hours to undertake ward rounds, in accordance with that direction.

520. In respect of each Group Member in paragraph 519 above, Western Health:

- (a) knew that there was insufficient time during rostered hours to undertake ward rounds, in accordance with the direction in paragraph 518 above;
- (b) knew that Group Members worked overtime to undertake ward rounds;
- (c) did not direct Group Members not to undertake ward rounds overtime.

Particulars

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

- (1) the direction pleaded in paragraph 518 above;
- (2) the tasks necessary to undertake ward rounds; and
- (3) the rostered hours for each ward where ward rounds were undertaken.

521. Western Health did not pay Group Members overtime:

- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
 - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the ward rounds overtime in paragraph 519 above worked by them.

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

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

Particulars

Authorisation is implied from the following matters:

- (1) the work performed by the Group Member was the provision of medical services which included undertaking ward rounds;
- (2) the conduct of Western Health in giving the direction set out in paragraph 518 above;
- (3) the knowledge of Western Health, as set out in paragraphs 520(a) and (b) above; and
- (4) the failure by Western Health to direct Group Members not to perform the overtime set out in paragraph 519 above, as set out in paragraph 520(c) above.

523. In the premises, Group Members were entitled to be paid overtime for the ward rounds overtime they worked as set out in paragraph 519 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

524. By reason of the matters alleged in paragraphs 521 and 523 above, Western Health has contravened:

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

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

E3 Handover overtime

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

Particulars

The direction was partly oral and partly implied.

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

Insofar as it was implied, it was implied by the matters in paragraph 16(c) above, where handover was conducted in a particular ward or department of a service operated by Western Health as set out in paragraph 1(d) above.

527. Each Group Member subject to the direction in paragraph 526 above worked overtime in excess of rostered hours to conduct handover, in accordance with that direction.

528. In respect of each Group Member in paragraph 527 above, Western Health:

- (a) knew that there was insufficient time during rostered hours to conduct handover, in accordance with the direction in paragraph 526 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 Western Health is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 526 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.

529. Western Health did not pay Group Members overtime:

- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
- (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,

for the handover overtime in paragraph 527 above worked by them.

530. 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 Western Health in giving the direction set out in paragraph 526 above;
- (3) the knowledge of Western Health, as set out in paragraphs 528(a) and (b) above; and
- (4) the failure by Western Health to direct Group Members not to perform the overtime set out in paragraph 527 above, as set out in paragraph 528(c) above.

531. In the premises, Group Members were entitled to be paid overtime for the handover overtime they worked as set out in paragraph 527 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

532. By reason of the matters alleged in paragraphs 529 and 531 above, Western Health has contravened:

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

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

E4 Medical procedures preparation overtime

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

Particulars

The direction was partly oral and partly implied.

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

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

535. Each Group Member subject to the direction in paragraph 534 above worked overtime in excess of rostered hours to prepare for medical procedures, in accordance with that direction.
536. In respect of each Group Member in paragraph 535 above, Western Health:
- (a) knew that there was insufficient time during rostered hours to prepare for medical procedures in accordance with the direction in paragraph 534 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 Western Health is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 534 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.

537. Western Health did not pay Group Members overtime:
- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
 - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the medical procedures preparation overtime in paragraph 535 above worked by them.
538. 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 Western Health in giving the direction set out in paragraph 534 above;
- (3) the knowledge of Western Health, as set out in paragraphs 536(a) and (b) above; and
- (4) the failure by Western Health to direct Group Members not to perform the overtime set out in paragraph 535 above, as set out in paragraph 536(c) above.

539. In the premises, Group Members were entitled to be paid overtime for the medical procedures preparation overtime they worked as set out in paragraph 535 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

540. By reason of the matters alleged in paragraphs 537 and 539 above, Western Health has contravened:

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

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

E5 Medical emergency overtime

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

Particulars

The direction was partly oral and partly implied.

Insofar as it was oral, it was 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 16(e) above, where patients were treated in a particular ward or department of a service operated by Western Health as set out in paragraph 1(d) above.

543. Each Group Member subject to the direction in paragraph 542 above worked overtime in excess of rostered hours to attend to medical emergencies, in accordance with that direction.
544. In respect of each Group Member in paragraph 543 above, Western Health:
- (a) knew that there was insufficient time during rostered hours to attend to medical emergencies, in accordance with the direction in paragraph 542 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 Western Health is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 542 above;
- (2) the tasks necessary to attend to medical emergencies;
- (3) the rostered hours for each ward or department where medical emergencies occurred.

545. Western Health did not pay Group Members overtime:
- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
 - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the medical emergency overtime in paragraph 543 above worked by them.
546. 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 Western Health in giving the direction set out in paragraph 542 above;
- (3) the knowledge of Western Health, as set out in paragraphs 544(a) and (b) above; and
- (4) the failure by Western Health to direct Group Members not to perform the overtime set out in paragraph 543 above, as set out in paragraph 544(c) above.

547. In the premises, Group Members were entitled to be paid overtime for the medical emergency overtime they worked as set out in paragraph 543 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

548. By reason of the matters alleged in paragraphs 545 and 547 above, Western Health has contravened:

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

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

E6 Medical records overtime

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

Particulars

The direction was partly written and partly implied.

Insofar as it was in writing, it was contained in clause 14.1 of the 2013 Agreement and clause 23.1 of the 2018 Agreement, which provided that a Doctor's duties included the

keeping and maintaining of adequate medical records for patients.

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

551. Each Group Member subject to the direction in paragraph 550 above worked overtime in excess of rostered hours to complete medical records, in accordance with that direction.
552. In respect of each Group Member in paragraph 551 above, Western Health:
- (a) knew that there was insufficient time during rostered hours to complete medical records in accordance with the direction in paragraph 550 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 Western Health is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 550 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.
553. Western Health did not pay Group Members overtime:
- (b) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
 - (c) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the medical records overtime in paragraph 551 worked by them.

554. 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 Western Health in giving the direction in paragraph 550 above;
- (3) the knowledge of Western Health, as set out in paragraphs 552(a) and (b) above; and
- (4) the failure by Western Health to direct Group Members not to perform the overtime set out in paragraph 551 above, as set out in paragraph 552(c) above.

555. In the premises, Group Members were entitled to be paid overtime for the medical records overtime they worked, as set out in paragraph 551 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

556. By reason of the matters alleged in paragraphs 553 and 555 above, Western Health has contravened:

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

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

E7 Admissions overtime

558. Further, some or all Group Members, in the course of their employment by Western Health during the Relevant Period, were subject to a direction to undertake the admission of a patient into the ward or department where the doctor was working.

Particulars

The direction was in some cases oral, in some cases to be inferred, and in some cases partly oral and partly to be inferred.

Insofar as it was oral, it was conveyed by other medical staff from time to time.

Insofar as it is to be inferred, it is inferred from the matters in paragraph 16(h) above, and as a result of the expectation that doctors would do the work that was required in order to admit patients, as part of the medical services performed by those doctors in that department.

Work associated with patient admissions included:

- (1) going to see the patient in emergency;
- (2) completing a full assessment of the patient;
- (3) looking at emergency notes;
- (4) formulating a plan for the patient;
- (5) ordering any tests required;
- (6) writing on charts;
- (7) starting initial management;
- (8) speaking with the consultant about his or her advice;
- (9) informing the overnight registrar what was required for the patient.

559. Each Group Member subject to the direction in paragraph 558 above worked overtime in excess of rostered hours to admit patients, in accordance with that direction.

560. In respect of each Group Member in paragraph 559 above, Western Health:

- (a) knew that there was insufficient time during rostered hours to admit patients in accordance with the direction in paragraph 558 above; and
- (b) knew that Group Members worked overtime to admit patients; and
- (c) did not direct Group Members not to work overtime admitting patients.

Particulars

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

- (1) the direction pleaded in paragraph 558 above;

- (2) the requirement to admit patients arising from time to time during shifts combined with the insufficiency of time to perform the tasks necessary for an admission if the admission was required within a particular time of the end of the rostered shift.

561. Western Health did not pay Group Members overtime:

- (d) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and

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

for the overtime in paragraph 559 above worked by them.

562. The 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 admission of patients;
- (2) the conduct of Western Health in giving the direction in paragraph 558 above;
- (3) the knowledge of Western Health, as set out in paragraphs 560(a) and 560(b) above; and
- (4) the failure by Western Health to direct Group Members not to perform the overtime set out in paragraph 559 above, as set out in paragraph 560(c) above.

563. In the premises, Group Members were entitled to be paid overtime for the overtime they worked, as set out in paragraph 559 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

564. By reason of the matters alleged in paragraphs 561 and 563 above, Western Health has contravened:

(a) clause 32.2 of the 2013 Agreement; and

(b) clause 36.2 of the 2018 Agreement.

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

E8 Medical communication overtime

566. Further, some or all Group Members, in the course of their employment by Western Health during the Relevant Period, were subject to a direction to speak with patients and patients' families and visitors about patients' treatment.

Particulars

The direction was in some cases oral, in some cases to be inferred, and in some cases partly oral and partly to be inferred.

Insofar as it was oral, it was conveyed by more senior medical staff (eg. consultants) from time to time.

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

- (1) the matters in paragraph 16(g) above;
- (2) the clinical requirement for doctors to communicate with patients and their families in order to keep them informed and get information from them, these being an important aspect of providing adequate healthcare;
- (3) the inappropriateness of one doctor handing over to another doctor the task of communicating with a patient or the patient's family in relation to treatment provided by the first doctor;
- (4) the expectation of patients and patients' families that they would be kept informed in relation to the patient's treatment in a reasonably contemporaneous manner.

567. Each Group Member subject to the direction in paragraph 566 above worked overtime in excess of rostered hours to communicate with patients' families and visitors, in accordance with that direction.

568. In respect of each Group Member in paragraph 567 above, Western Health:

- (a) knew that there was insufficient time during rostered hours to communicate with patients' families and visitors in accordance with the direction in paragraph 566 above; and
- (b) knew that Group Members worked overtime to communicate with patients' families and visitors; and
- (c) did not direct Group Members not to work overtime communicating with patients' families and visitors.

Particulars

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

- (1) the direction pleaded in paragraph 566 above;
- (2) the contemporaneity of the end of rostered shifts with the start of visiting hours, so that the direction pleaded in paragraph 566 above could generally only be discharged by a doctor working after the end of his or her rostered shift.

569. Western Health did not pay Group Members overtime:

- (f) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
 - (g) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the overtime in paragraph 567 above worked by them.

570. The overtime worked by Group Members constituted "authorised hours" within the meaning of:

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

Particulars

Authorisation is implied from the following matters:

- (1) that the work performed by Group Members was the provision of medical services which included communication with patients' families and other visitors;
- (2) the conduct of Western Health in giving the direction in paragraph 566 above;
- (3) the knowledge of Western Health, as set out in paragraphs 568(a) and 568(b) above; and
- (4) the failure by Western Health to direct Group Members not to perform the overtime set out in paragraph 567 above, as set out in paragraph 568(c) above.

571. In the premises, Group Members were entitled to be paid overtime for the overtime they worked, as set out in paragraph 567 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

572. By reason of the matters alleged in paragraphs 569 and 571 above, Western Health has contravened:

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

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

E9 Other medical services overtime

574. Some or all Group Members, in the course of their employment by Western Health during the Relevant Period, were subject to a direction to provide medical services (other than the medical services set out in paragraph 16(a)–16(h) 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 16(i) above, at a particular ward or department of a

service operated by Western Health as set out in paragraph 1(d) above.

575. Each Group Member subject to the direction in paragraph 574 above worked overtime in excess of rostered hours to provide other medical services, in accordance with that direction.
576. In respect of each Group Member in paragraph 575 above, Western Health:
- (a) knew that there was insufficient time during rostered hours to provide other medical services in accordance with the direction in paragraph 574 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 Western Health is to be inferred from at least the following matters:

- (1) the direction pleaded in paragraph 574 above; and
- (2) the rostered hours for each ward or department where medical services were provided.

577. Western Health did not pay Group Members overtime:
- (a) from the start of the Relevant Period until 6 August 2018, in accordance with clause 32.2 of the 2013 Agreement; and
 - (b) from 7 August 2018, in accordance with clause 36.2 of the 2018 Agreement,
- for the other medical services overtime in paragraph 575 above worked by them.
578. 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 Western Health in giving the direction set out in paragraph 574 above;
- (3) the knowledge of Western Health, as set out in paragraphs 576(a) and 576(b) above; and
- (4) the failure by Western Health to direct Group Members not to perform the overtime set out in paragraph 575 above, as set out in paragraph 576(c) above.

579. In the premises, Group Members were entitled to be paid overtime for providing other medical services as set out in paragraph 575 above, at the rates set out in clause 32.2.2 of the 2013 Agreement and clause 36.2(c) of the 2018 Agreement.

580. By reason of the matters alleged in paragraphs 577 and 579 above, Western Health has contravened:

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

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

E10 Loss and damage

582. Some or all Group Members suffered loss by reason of Western Health's contraventions of s 50 of the FW Act.

AND THE APPLICANTS CLAIM

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

Date: 29 July 2021



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Signed by Andrew Grech
Lawyer for the Applicants

This pleading was prepared by C W Dowling SC, K Burke, and J E Hartley of counsel

Certificate of lawyer

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

Date: 29 July 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: **Joanne Peel**

Respondent: **Western Health**

Date: 29 July 2021