

NOTICE OF FILING

Details of Filing

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File Title: YING YING THAM v AUSTRALIAN CAPITAL TERRITORY & ANOR
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.



Amended Defence

(Filed pursuant to the Orders of the Honourable Justice Bromberg dated 19 May 2023)

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

No. VID 705 / 2022

Ying Ying Tham

Applicant

Australian Capital Territory

First Respondent

Calvary Health Care ACT Limited (ACN 105 304 989)

Second Respondent

By way of defence to the amended statement of claim dated 17 March 2023 (**Amended Statement of Claim**), the first respondent (the **Territory**) says as follows:

Notes:

- A. Unless otherwise defined, capitalised terms have the meaning ascribed to them in the Amended Statement of Claim.

A THE PARTIES

A1 The applicant and the Group Members

1. As to paragraph 1, the Territory:
 - (a) admits that the applicant (**Dr Tham**) purports to bring this claim pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth);
 - (b) admits that there were persons with the characteristics alleged in sub-paragraphs (a) to (c) (**Junior Medical Officers**); and
 - (c) otherwise does not know and therefore cannot admit the allegations in paragraph 1.
2. As to paragraph 2, the Territory:

Filed on behalf of: The Territory
Prepared by: Amy Sydney
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- (a) admits sub-paragraphs 2(a) to 2(d) and says further that:
- (i) between 13 June 2018 and 3 February 2019, Dr Tham was subject to and bound by a contract of employment dated 19 June 2018;
 - (ii) between 4 February 2019 and 16 July 2019, Dr Tham was subject to and bound by a contract of employment dated 28 November 2018;
 - (iii) between 17 July 2019 and 2 February 2020, Dr Tham was subject to and bound by a contract of employment dated 24 July 2019; and
 - (iv) between 3 February 2020 and 31 January 2021, Dr Tham was subject to and bound by a contract of employment dated 10 December 2019;
- (b) says further that the terms and conditions of Dr Tham's employment were set out in the then current ACT Public Service Medical Practitioners Enterprise Agreement, *Public Sector Management Act 1994* and Standards and were those relating to temporary employees;

PARTICULARS

Each of Dr Tham's contracts of employment expressly stated that "The terms and conditions of your employment are set out in the current ACT Public Service Medical Practitioners Enterprise Agreement, *Public Sector Management Act 1994* and Standards and are those relating to temporary employees".

- (c) says further that Dr Tham was under an obligation to carry out all lawful and reasonable directions of the head of service according to the requirements of the work and Dr Tham's skill, experience and competence, and without deskilling her;

PARTICULARS

2013 EA, clause 131.1

2017 EA, clause 131.1

2021 EA, clause 137.1

- (d) says further that Dr Tham was under an obligation to comply with any lawful and reasonable direction given by a person with the authority to give the direction; and

PARTICULARS

Section 9(1)(c)(ii) of the *Public Sector Management Act 1994 (ACT)* provided that Junior Medical Officers are required to comply with any lawful and reasonable direction given by a person with the authority to give the direction.

This condition is also implied by law.

(e) does not plead to sub-paragraph 2(e) as it contains no allegations against it.

3. As to paragraph 3, the Territory:

(a) denies that the Group Members have claims against it as pleaded in the Amended Statement of Claim for the reasons set out below; and

(b) otherwise does not know and cannot admit the allegations in paragraph 3.

A2 The Respondents

4. The Territory says that:

(a) it does not know and cannot admit the allegations in paragraph (d); and

(b) otherwise admits paragraph 4.

5. The Territory does not plead to paragraph 5 as it contains no allegations against it.

B The Enterprise Agreements

B1 Application and coverage

6. The Territory admits paragraph 6.

7. The Territory admits paragraph 7.

8. The Territory admits paragraph 8.

B2 Hours of work, rostering and overtime

9. The Territory admits paragraph 9.

10. The Territory admits paragraph 10 and says further that:

(a) each of the 2013 EA, the 2017 EA and the 2021 EA provided or provide that hours in excess of an average 38.00 hours per week and not remunerated or otherwise compensated would or will be credited towards an Accrued Day Off (**ADO**) with pay;

PARTICULARS

2013 EA, clause 18.3

2017 EA, clause 17.3

2021 EA, clause 17.3

(b) each of the 2013 EA, the 2017 EA and the 2021 EA provided or provide that where a Junior Medical Officer attends work of his / her own volition outside of hours rostered on duty, or

where a Junior Medical Officer remains in attendance at work when formally released from the obligation to perform professional duties, the employer shall not be liable to make any payment for such attendance;

PARTICULARS

2013 EA, clause 18.8

2017 EA, clause 17.8

2021 EA, clause 17.8

- (c) each of the 2013 EA, the 2017 EA and the 2021 EA provided or provide that every Junior Medical Officer will maintain an appropriate record of duty performed including recording the time of commencing and ceasing duty for each day and the reason for any absence from duty;

PARTICULARS

2013 EA, clause 25.2

2017 EA, clause 24.2

2021 EA, clause 24.2

- (d) the 2021 EA provides that where a Junior Medical Officer is requested by the head of service to work additional hours and those additional hours are not rostered then the employee and the head of service will ensure that the additional hours are recorded;

PARTICULARS

2021 EA, clause 26.1.1

- (e) each of the 2013 EA, the 2017 EA and the 2021 EA provided or provide that claims for payment under the provisions of each respective agreement, including overtime payments will be submitted for approval within 3 weeks;

PARTICULARS

2013 EA, clause 29.3

2017 EA, clause 28.3

2021 EA, clause 29.3

- (f) each of the 2013 EA, the 2017 EA and the 2021 EA provided or provide any overtime payments would be paid as soon as reasonably possible but no later than within two pay periods of the appropriate authorisation having been received by the relevant corporate area;

PARTICULARS

2013 EA, clause 29.2

2017 EA, clause 28.2

2021 EA, clause 29.2

- (g) each of the 2013 EA, the 2017 EA and the 2021 EA provided or provide that where agreed between the manager/supervisor and the Junior Medical Officer, the Junior Medical Officer will be granted time off in lieu of payment for overtime;

PARTICULARS

2013 EA, clause 37.1

2017 EA, clause 36.1

2021 EA, clause 37.1

- (h) each of the 2013 EA, the 2017 EA and the 2021 EA provided or provide that a Junior Medical Officer who works authorised overtime and was not notified on or prior to his/her previous shift of the requirement to work such overtime shall be either supplied with a meal by the employer or paid a meal allowance; and

PARTICULARS

2013 EA, clause 39.1

2017 EA, clause 38.1

2021 EA, clause 39.1

- (i) each of the 2013 EA, the 2017 EA and the 2021 EA provided or provide that where an overtime payment is not made within two pay periods of the appropriate authorisation having been received by the relevant corporate area, and the Junior Medical Officer requests, an offline payment for the amount owing will be made to the Junior Medical Officer within three business days of the head of service receiving the request.

PARTICULARS

2013 EA, clause 54.2

2017 EA, clause 53.2

2021 EA, clause 53.2

11. The Territory admits paragraph 11.

12. The Territory admits paragraph 12.

13. The Territory admits paragraph 13.

C DUTIES AND RESPONSIBILITIES OF DR THAM AND GROUP MEMBERS

14. The Territory admits paragraph 14.

D Dr Tham's claim against the Territory

15. The Territory:

- (a) admits paragraph 15; and
- (b) as to sub-paragraph (b), says further that:
 - (i) Dr Tham was directed to work in the general medicine department at Goulburn Hospital in accordance with a secondment arrangement between the Territory and Southern NSW Local Health District (**SNSWLHD**); and

PARTICULARS

At all relevant times, there was a secondment arrangement between the Territory and SNSWLHD pursuant to which Junior Medical Officers employed by the Territory were seconded to Goulburn Hospital for the purposes of completing a clinical rotation.

Pursuant to the secondment arrangement, SNSWLHD was responsible for the supervision and management of the Junior Medical Officer undertaking the secondment at Goulburn Hospital, including rostering and giving any directions to the Junior Medical Officer regarding the performance of his or her duties.

Up to and including 19 March 2020, Junior Medical Officers were paid pursuant to the secondment arrangement as follows:

- (1) the Territory was responsible for, and paid, the Junior Medical Officers' salary (including superannuation) and all forms of leave and leave loading; and
- (2) SNSWLHD was responsible for, and paid, the Junior Medical Officers' overtime, recall and on call payments and any applicable allowances in accordance with the enterprise agreement.

After 19 March 2020, Junior Medical Officers were paid pursuant to the secondment arrangement as follows:

- (1) the Territory was responsible paying, in the first instance, the Junior Medical Officers' salary (including superannuation) and all forms of leave and leave loading and overtime, recall and on call payments and any applicable allowances in accordance with the enterprise agreement;

- (2) in order for the Territory to calculate any amounts payable to the Junior Medical Officer referable to overtime, SNSWLDH provided the Territory with fortnightly timesheets with details of any overtime claimed by the Junior Medical Officer and approved by SNSWLDH; and
- (3) upon the rendering by the Territory of an invoice to SNSWLDH, SNSWLDH reimbursed the Territory for the amounts paid by the Territory to the Junior Medical Officer, including any overtime.

Up to and including 19 March 2020, the secondment arrangement was implied from the fact that Junior Medical Officers employed by the Territory were seconded to Goulburn Hospital and paid by the Territory and SNSWLDH in accordance with the payment arrangements referred to above.

From 20 March 2020 onwards, the secondment arrangement was in writing in an agreement titled Secondment Agreement – Secondment of Junior Medical Officers entered into by the Territory and SNSWLDH and dated 20 March 2020.

- (ii) SNSWLDH is a separate entity to the Territory.

16. Not used.

D1 2018 Orthopaedics Rotation – 13 June 2018 to 2019 July 2018 – 2013 EA

17. The Territory admits paragraph 17.

D.1.1 Rosters

18. As to paragraph 18, the Territory:

- (a) admits that during the 2018 Orthopaedics Rotation, Dr Tham was rostered to work as pleaded; and
- (b) says further that:
 - (i) on occasion, rosters were amended before being worked by Dr Tham; and / or
 - (ii) on occasion, Dr Tham, may have worked other days or roster patterns than those prescribed by the rosters.

D.1.2 Ward round preparation

19. As to paragraph 19, the Territory:

- (a) admits that Dr Tham's duties and responsibilities when providing medical services included undertaking ward round preparation during her rostered hours; and
 - (b) otherwise denies the allegations in paragraph 19.
20. As to paragraph 20, the Territory:
- (a) says that by providing Dr Tham with her roster, the Territory directed Dr Tham to work the hours set out in that roster;
 - (b) says further that there were occasions where Dr Tham was present at Canberra Hospital during the 2018 Orthopaedics Rotation outside of her rostered ordinary working hours;
 - (c) says further that the Territory had implemented a policy which dealt with:
 - (i) the manner and circumstances in which a request or requirement may be made of a Junior Medical Officer to work hours in excess of his or her rostered hours; and
 - (ii) the process pursuant to which a Junior Medical Officer may apply for payment for any hours worked in excess of his or her rostered hours (an **Overtime Claim**),(together, the **Overtime Policy**);

PARTICULARS

The Overtime Policy was partly in writing and partly oral.

To the extent it was in writing it was contained in cll 36.1, 25.2 and 29.3 of the 2013 EA (see also 35.1, 24.2 and 28.3 of the 2017 EA, and 36.1, 24.2 and 29.3 of the 2021 EA), the Medical Officer Support, Credentialing, Employment and Training Unit (**MOSCETU**) Welcome Guide, and a document entitled "Frequently asked Questions, Un-rostered Overtime – Junior Medical Officers (PGY1 and PGY2)", and provided, at times during the Relevant Period, that:

- 1) a Junior Medical Officer may be required or requested, by the Territory's Head of Service or his/her delegate, to work reasonable additional hours for duty (**unrostered overtime**);
- 2) any request or requirement of a Junior Medical Officer to work reasonable additional hours for duty must be express and not implied;

- 3) if a Junior Medical Officer is so required or requested, s/he must maintain a record of the duty performed, including the time of commencing and ceasing duty for each day;
- 4) a Junior Medical Officer must enter his/her work hours, including any unrostered overtime, in the Browse Operated Self Service (**BOSS**) electronic system and, within five business days of the end of each pay period, review his/her timesheet in the BOSS electronic system and either agree or disagree with the accuracy of the timesheet prior to it being processed;
- 5) a Junior Medical Officer needs to make an Overtime Claim through BOSS within five business days of working the unrostered overtime;
- 6) an Overtime Claim must include a detailed description of the additional hours worked, including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours. If no description is provided, the Overtime Claim will not be paid;
- 7) prior to December 2019, an Overtime Claim would not normally be approved for the completion of discharge summaries, administrative tasks not completed throughout the assigned shift, undertaking research of patient conditions, preparing for meetings, presentations or grand rounds, attending non-mandatory meetings, writing up letters for clinics, attendance earlier than usual ward round times, rounding with consultants when shift has ended, reviewing patient OT list with registrars/consultants, and undertaking non-mandatory learning opportunities;
- 8) after December 2019, all Overtime Claims made in accordance with the requirements set out above at paragraphs 4, 5 and 6 were approved and paid; and
- 9) the latest date that an Overtime Claim can be submitted by a Junior Medical Officer is 3 weeks from the date that the additional hours worked.

To the extent it was oral, Junior Medical Officers were advised at the commencement of their employment with the Territory during orientation and induction that any Overtime Claim needed to be entered into BOSS

with details of the time commenced, time completed, the person who asked Dr Tham to remain after completion of the shift, the associated patient URN and any additional information which may be requested.

Further particulars will be provided prior to trial.

- (d) in order for a Junior Medical Officer to make an Overtime Claim with respect to additional hours for duty worked pursuant to a requirement or request to work unrostered overtime within the meaning of clause 36.1 of the 2013 EA, 35.1 of the 2017 EA and / or 36.1 of the 2021 EA, the Junior Medical Officer was required to comply with the Overtime Policy including the process for submitting of Overtime Claims;
- (e) the Overtime Policy and its contents applied to Dr Tham:
 - (i) as a term of her employment contracts referred to in paragraph 2 above, and/or;
 - (ii) as a lawful and reasonable direction given to Dr Tham by the Territory:
 - A. through the Overtime Policy which was communicated to Dr Tham orally and in writing;
 - B. through her required and actual recording of overtime on her timesheets,
- (f) Dr Tham was aware of the Overtime Policy and the Territory's approach to unrostered overtime;

PARTICULARS

The timesheets submitted by Dr Tham during her employment at Canberra Hospital included Overtime Claims made in accordance with the Overtime Policy.

Dr Tham was emailed a copy of the "Frequently asked Questions, Un-rostered Overtime – Junior Medical Officers (PGY1 and PGY2)" document on 22 September 2020 by Janelle Corey, Director, MOSCETU.

Further particulars will be provided after discovery and prior to trial.

- (g) Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for overtime by submitting Overtime Claims and was paid therefore; and

PARTICULARS

The timesheets submitted by Dr Tham during her employment at Canberra Hospital, which included the Overtime Claims, are in writing and record the time worked, claimed and paid to Dr Tham.

- (h) otherwise denies the allegations in paragraph 20.
21. As to paragraph 21, the Territory:
- (a) refers to and repeats paragraphs 19 and 20 above; and
 - (b) otherwise denies the allegations in paragraph 21.
22. As to paragraph 22, the Territory:
- (a) refers and repeats paragraphs 19, 20 and 21 above; and
 - (b) otherwise denies the allegations in paragraph 22.
23. As to paragraph 23, the Territory:
- (a) refers to and repeats paragraphs 20 to 22 above;
 - (b) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;
 - (c) says further that:
 - (i) whether Dr Tham was requested or required to work any alleged ward round preparation overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, Dr Tham was required to submit an Overtime Claim within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) Dr Tham has not provided particulars of the circumstances of each alleged occasion of ward round preparation overtime worked, nor provided particulars of the Overtime Claims made by her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars;
 - (d) otherwise denies the allegations in paragraph 23.
24. As to paragraph 24, the Territory:
- (a) refers to and repeats paragraphs 20 to 23 above;
 - (b) says that, in the premises, Dr Tham was not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA; and

(c) otherwise denies the allegations in paragraph 24.

25. As to paragraph 25, the Territory:

(a) refers to and repeats paragraphs 20 to 24 above;

(b) says further that:

(i) any entitlement to payment for unrostered overtime is subject to the condition that Dr Tham make an Overtime Claim in relation to the overtime purportedly worked;

(ii) Dr Tham has not provided particulars of any occasions on which she allegedly:

A. was requested or required to work unrostered overtime;

B. in fact worked ward round preparation overtime;

C. made an Overtime Claim for that ward round preparation overtime; and

D. was subsequently not paid;

(iii) if Dr Tham did not make an Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:

A. Dr Tham did not work such overtime;

B. Dr Tham was not requested or required to work such overtime; and/or

C. Dr Tham was in attendance at Canberra Hospital of her own volition or having been formally released from the obligation to perform professional duties;

(iv) further or alternatively, Dr Tham is estopped from asserting the contrary of the matters in subparagraph (iii) above for the reasons in paragraphs 338 to 349 below;

(c) otherwise denies the allegations in paragraph 25.

26. As to paragraph 26, the Territory:

(a) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore; and

(b) says that if:

(i) Dr Tham had made an Overtime Claim; and

(ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy;

(c) otherwise denies the allegations in paragraph 26.

27. As to paragraph 27, the Territory:

(a) refers to and repeats paragraphs 19 to 26 above; and

(b) otherwise denies the allegations in paragraph 27.

D.1.3 Medical records

28. As to paragraph 28, the Territory:

(a) admits that Dr Tham's duties and responsibilities when providing medical services included undertaking medical records preparation during her rostered hours; and

~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~

(b) otherwise denies the allegations in paragraph 28.

29. As to paragraph 29, the Territory:

(a) says that there were occasions where Dr Tham was present at Canberra Hospital during the 2018 Orthopaedics Rotation outside of her rostered ordinary working hours;

(b) refers to and repeats paragraph 20; and

(c) otherwise denies the allegations paragraph 29.

30. As to paragraph 30:

(a) refers to and repeats paragraphs 28 and 29 above;

(b) otherwise denies the allegations in paragraph 30.

31. As to paragraph 31, the Territory:

(a) refers and repeats paragraphs 28, 29 and 30 above;

(b) otherwise denies the allegations in paragraph 31.

32. As to paragraph 32, the Territory:

(a) refers to and repeats paragraph 29 to 31 above;

- (b) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;
 - (c) says further that:
 - (i) whether Dr Tham was requested or required to work any alleged medical records overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, Dr Tham was required to submit an Overtime Claim within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) Dr Tham has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked, nor provided particulars of the Overtime Claims made by her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars;
 - (d) otherwise denies the allegations in paragraph 32.
33. As to paragraph 33, the Territory:
- (a) refers to and repeats paragraphs 29 to 32 above;
 - (b) says that, in the premises, Dr Tham was not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA; and
 - (c) otherwise denies the allegations in paragraph 33.
34. As to paragraph 34, the Territory:
- (a) refers to and repeats paragraphs 29 to 33 above;
 - (b) says further that:
 - (i) any entitlement to payment for unrostered overtime is subject to the condition that Dr Tham make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) Dr Tham has not provided particulars of any occasions on which she allegedly:
 - A. was requested or required to work medical records overtime;
 - B. in fact worked medical records overtime;

- C. made an Overtime Claim for that medical records overtime; and
 - D. was subsequently not paid;
- (iii) if Dr Tham did not make an Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
- A. Dr Tham did not work such overtime;
 - B. Dr Tham was not requested or required to work such overtime; and/or
 - C. Dr Tham was in attendance at the Canberra Hospital of her own volition or having been formally released from the obligation to perform professional duties;
- (iv) further or alternatively, Dr Tham is estopped from asserting the contrary of the matters in subparagraph (iii) above for the reasons in paragraphs 338 to 349 below; and
- (c) otherwise denies the allegations in paragraph 34.
35. As to paragraph 35, the Territory:
- (a) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;
 - (b) says that if:
 - (i) Dr Tham had made an Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and
 - (c) otherwise denies the allegations in paragraph 35.
36. As to paragraph 36, the Territory:
- (a) refers to and repeats paragraphs 29 to 35 above; and
 - (b) otherwise denies the allegations in paragraph 36.

D.1.4 Medical emergencies

37. As to paragraph 37, the Territory:

(a) admits that Dr Tham's duties and responsibilities when providing medical services included dealing with medical emergencies during her rostered hours; and

~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~

(b) otherwise denies the allegations in paragraph 37.

38. As to paragraph 38, the Territory:

(a) says that there were occasions where Dr Tham was present at Canberra Hospital during the 2018 Orthopaedics Rotation outside of her rostered ordinary working hours;

(b) refers to and repeats paragraph 20; and

(c) otherwise denies the allegations in paragraph 38.

39. As to paragraph 39:

(a) refers to and repeats paragraphs 37 and 38 above; and

(b) otherwise denies the allegations in paragraph 39.

40. As to paragraph 40, the Territory:

(a) refers to and repeats paragraphs 37 to 39 above; and

(b) otherwise denies the allegations in paragraph 40.

41. As to paragraph 41, the Territory:

(a) refers to and repeats paragraph 37 to 40 above;

(b) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;

(c) says further that:

(i) whether Dr Tham was requested or required to work any alleged medical emergencies overtime depends on the circumstances of each alleged occasion;

- (ii) further or alternatively, pursuant to the Overtime Policy, Dr Tham was required to submit an Overtime Claim within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) Dr Tham has not provided particulars of the circumstances of each alleged occasion of medical emergencies overtime worked, nor provided particulars of the Overtime Claims made by her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars;
- (d) otherwise denies the allegations in paragraph 41.
42. As to paragraph 42, the Territory:
- (a) refers to and repeats paragraphs 38 to 41 above;
 - (b) says that, in the premises, Dr Tham was not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA; and
 - (c) otherwise denies the allegations in paragraph 42.
43. As to paragraph 43, the Territory:
- (a) refers to and repeats paragraphs 38 to 42 above;
 - (b) says further that:
 - (i) any entitlement to payment for unrostered overtime is subject to the condition that Dr Tham make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) Dr Tham has not provided particulars of any occasions on which she allegedly:
 - A. was requested or required to work unrostered medical records overtime;
 - B. in fact worked medical emergencies overtime;
 - C. made an Overtime Claim for that medical emergencies overtime; and
 - D. was subsequently not paid;
 - (iii) if Dr Tham did not make an Overtime Claim in respect of the alleged medical emergencies overtime, then it ought be concluded that either:
 - A. Dr Tham did not work such overtime;

B. Dr Tham was not requested or required to work such overtime; and/or

C. Dr Tham was in attendance at the Canberra Hospital of her own volition or having been formally released from the obligation to perform professional duties;

(iv) further or alternatively, Dr Tham is estopped from asserting the contrary of the matters in subparagraph (iii) above for the reasons in paragraphs 338 to 349 below; and

(c) otherwise denies the allegations in paragraph 43.

44. As to paragraph 44, the Territory:

(a) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;

(b) says that if:

(i) Dr Tham had made an Overtime Claim; and

(ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and

(c) otherwise denies the allegations in paragraph 44.

45. As to paragraph 45, the Territory:

(a) refers to and repeats paragraphs 38 to 44; and

(b) otherwise denies the allegations in paragraph 45.

D.2 2018 General Medicine Rotation – 30 July 2018 to 28 October 2018 – 2013 EA

46. As to paragraph 46, the Territory:

(a) refers to and repeats paragraph 15 above;

(b) admits that Dr Tham worked in the general medicine department at Goulburn Hospital from around 30 July 2018 to around 28 October 2018; and

(c) says further that while working in the general medicine department at Goulburn Hospital from around 30 July 2018 to around 28 October 2018, Dr Tham was directed as to the performance of her duties by SNSWLDH.

D.2.1 Rosters

47. As to paragraph 47, the Territory:

- (a) says that SNSWLDH was responsible for preparation of rosters during the 2018 General Medicine Rotation; and
- (b) otherwise does not know and cannot admit the allegations in paragraph 47.

D.2.2 Medical records

48. As to paragraph 48, the Territory:

- (a) refers to and repeats paragraph 46 above;
- (b) says that SNSWLHD was responsible for directing Dr Tham as to her duties and responsibilities during the 2018 General Medicine Rotation; and
- (c) otherwise does not know and cannot admit the allegations in paragraph 48.

49. As to paragraph 49, the Territory:

- (a) refers to and repeats paragraph 46 and 48 above; and
- (b) otherwise does not know and cannot admit the allegations in paragraph 46.

50. As to paragraph 50, the Territory:

- (a) refers to and repeats paragraphs 46, 48 to 49 above; and
- (b) otherwise denies the allegations in paragraph 50.

51. As to paragraph 51, the Territory:

- (a) refers to and repeats paragraphs 46, 48 to 50 above; and
- (b) otherwise denies the allegations in paragraph 51.

52. As to paragraph 52, the Territory:

- (a) refers to and repeats paragraphs 46, 48 to 51 above; and
- (b) otherwise denies the allegations in paragraph 52.

53. As to paragraph 53, the Territory:

- (a) refers to and repeats paragraphs 46, 48 to 52 above; and

(b) otherwise denies the allegations in paragraph 53.

54. As to paragraph 54, the Territory:

(a) refers to and repeats paragraphs 46, 48 to 53 above; and

(b) otherwise denies the allegations in paragraph 54.

55. As to paragraph 55, the Territory:

(a) refers to and repeats paragraphs 46, 48 to 54 above; and

(b) otherwise denies the allegations in paragraph 55.

56. As to paragraph 56, the Territory:

(a) refers to and repeats paragraphs 46, 48 to 55 above; and

(b) otherwise denies the allegations in paragraph 56.

D.3 2019 OMFS Rotation – 4 February 2019 to 28 April 2019 – 2013 EA

57. The Territory admits paragraph 57.

D.3.1 Rosters

58. As to paragraph 58, the Territory:

(a) as to paragraph 58(a), says that Dr Tham was rostered to work:

(i) day shifts, Monday to Friday, from 0700 to 1530; and

(ii) rostered overtime, Monday to Friday, from 1530 to 1630;

(b) otherwise admits that during the 2019 OMFS Rotation, Dr Tham was rostered to work as pleaded; and

(c) says further that:

(i) on occasion, rosters were amended before being worked by Dr Tham; and / or

(ii) on occasion, Dr Tham, may have worked other days or roster patterns than those prescribed by the rosters.

D.3.2 Ward round preparation

59. As to paragraph 59, the Territory:

- (a) admits that Dr Tham's duties and responsibilities when providing medical services included undertaking ward round preparation during her rostered hours; and
 - ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~
 - (b) otherwise denies the allegations in paragraph 59.
60. As to paragraph 60, the Territory:
- (a) says that there were occasions where Dr Tham was present at Canberra Hospital during the 2019 OMFS Rotation outside of her rostered ordinary working hours;
 - (b) refers to and repeats paragraph 20; and
 - (c) otherwise denies the allegations paragraph 60.
61. As to paragraph 61, the Territory:
- (a) refers to and repeats paragraphs 59 and 60 above; and
 - (b) otherwise denies the allegations in paragraph 61.
62. As to paragraph 62, the Territory:
- (a) refers to and repeats paragraphs 59 to 61 above; and
 - (b) otherwise denies the allegations in paragraph 62.
63. As to paragraph 63, the Territory:
- (a) refers to and repeats paragraph 20;
 - (b) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore:
 - (c) says further that:
 - (i) whether Dr Tham was requested or required to work any alleged ward round preparation overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, Dr Tham was required to submit an Overtime Claim within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) Dr Tham has not provided particulars of the circumstances of each alleged occasion of ward round preparation overtime worked, nor provided particulars of the Overtime

Claims made by her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars;

(d) otherwise denies the allegations in paragraph 63.

64. As to paragraph 64, the Territory:

(a) refers to and repeats paragraphs 60 to 63 above;

(b) says that, in the premises, Dr Tham was not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA; and

(c) otherwise denies the allegations in paragraph 64.

65. As to paragraph 65, the Territory:

(a) refers to and repeats paragraphs 60 to 64 above;

(b) says further that:

(i) any entitlement to payment for unrostered overtime is subject to the condition that Dr Tham make an Overtime Claim in relation to the overtime purportedly worked;

(ii) Dr Tham has not provided particulars of any occasions on which she allegedly:

A. was requested or required to work ward round preparation overtime;

B. in fact worked ward round preparation overtime;

C. made an Overtime Claim for that ward round preparation overtime; and

D. was subsequently not paid;

(iii) if Dr Tham did not make an Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:

A. Dr Tham did not work such overtime;

B. Dr Tham was not requested or required to work such overtime; and/or

C. Dr Tham was in attendance at the Canberra Hospital of her own volition or having been formally released from the obligation to perform professional duties;

- (iv) further or alternatively, Dr Tham is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and
 - (c) otherwise denies the allegations in paragraph 65.
66. As to paragraph 66, the Territory:
- (a) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;
 - (b) says that if:
 - (i) Dr Tham had made an Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and
 - (c) otherwise denies the allegations in paragraph 66.
67. As to paragraph 67, the Territory:
- (a) refers to and repeats paragraphs 60 to 66 above; and
 - (b) otherwise denies the allegations in paragraph 67.

D.3.3 Paper rounds

68. As to paragraph 68, the Territory:
- (a) admits that Dr Tham's duties and responsibilities when providing medical services included undertaking paper rounds during her rostered hours; and
 - ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~
 - (b) otherwise denies the allegations in paragraph 68.
69. As to paragraph 69, the Territory:
- (a) says that there were occasions where Dr Tham was present at Canberra Hospital during the 2019 OMFS Rotation outside of her rostered ordinary working hours;
 - (b) refers to and repeats paragraph 20; and
 - (c) otherwise denies the allegations paragraph 69.

70. As to paragraph 70:

- (a) refers to and repeats paragraphs 68 and 69 above; and
- (b) otherwise denies the allegations in paragraph 70.

71. As to paragraph 71, the Territory:

- (a) refers to and repeats paragraphs 68 to 70 above; and
- (b) otherwise denies the allegations in paragraph 71.

72. As to paragraph 72, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;
- (c) says further that:
 - (i) whether Dr Tham was requested or required to work any alleged paper rounds overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, Dr Tham was required to submit an Overtime Claim within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime;
 - (iii) Dr Tham has not provided particulars of the circumstances of each alleged occasion of paper rounds overtime worked, nor provided particulars of the Overtime Claims made by her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars; and
- (d) otherwise denies the allegations in paragraph 72.

73. As to paragraph 73, the Territory:

- (a) refers to and repeats paragraphs 69 to 72 above;
- (b) says that, in the premises, Dr Tham was not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA; and
- (c) otherwise denies the allegations in paragraph 73.

74. As to paragraph 74, the Territory:

- (a) refers to and repeats paragraphs 69 to 73 above;
- (b) says further that:
 - (i) any entitlement to payment for unrostered overtime is subject to the condition that Dr Tham make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) Dr Tham has not provided particulars of any occasions on which she allegedly:
 - A. was requested or required to work paper rounds overtime;
 - B. in fact worked paper rounds overtime;
 - C. made an Overtime Claim for that paper rounds overtime; and
 - D. was subsequently not paid;
 - (iii) if Dr Tham did not make an Overtime Claim in respect of the alleged paper rounds overtime, then it ought be concluded that either:
 - A. Dr Tham did not work such overtime;
 - B. Dr Tham was not requested or required to work such overtime; and/or
 - C. Dr Tham was in attendance at the Canberra Hospital of her own volition or having been formally released from the obligation to perform professional duties;
 - (iv) further or alternatively, Dr Tham is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and
- (c) otherwise denies the allegations in paragraph 74.

75. As to paragraph 75, the Territory:

- (a) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;
- (b) says that if:
 - (i) Dr Tham had made an Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and

- (c) otherwise denies the allegations in paragraph 75.

76. As to paragraph 76, the Territory:

- (a) refers to and repeats paragraphs 69 to 75 above; and
- (b) otherwise denies the allegations in paragraph 76.

D.4 2019 Obstetrics Intern Rotation / 2019 Obstetrics RMO Rotation – 29 April 2019 to 28 July 2019 – 2013 EA

77. The Territory admits paragraph 77.

D.4.1 Rosters

78. As to paragraph 78, the Territory:

- (a) admits that during the 2019 Obstetrics Intern Rotation and the 2019 Obstetrics RMO Rotation, Dr Tham was rostered to work as pleaded; and
- (b) says further that:
 - (i) on occasion, rosters were amended before being worked by Dr Tham; and / or
 - (ii) on occasion, Dr Tham, may have worked other days or roster patterns than those prescribed by the rosters.

D.4.2 Medical records

79. As to paragraph 79, the Territory:

- (a) admits that Dr Tham's duties and responsibilities when providing medical services included undertaking medical records preparation during her rostered hours; and
- ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~
- (b) otherwise denies the allegations in paragraph 79.

80. As to paragraph 80, the Territory:

- (a) says that there were occasions where Dr Tham was present at Canberra Hospital during the 2019 Obstetrics Intern Rotation and the 2019 Obstetrics RMO Rotation outside of her rostered ordinary working hours;

- (b) refers to and repeats paragraph 20; and
- (c) otherwise denies the allegations paragraph 80.

81. As to paragraph 81:

- (a) refers to and repeats paragraphs 79 and 80 above; and
- (b) otherwise denies the allegations in paragraph 81.

82. As to paragraph 82, the Territory:

- (a) refers to and repeats paragraphs 79 to 81 above; and
- (b) otherwise denies the allegations in paragraph 82.

83. As to paragraph 83, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;
- (c) says further that:
 - (i) whether Dr Tham was requested or required to work any alleged medical records overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, Dr Tham was required to submit an Overtime Claim within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) Dr Tham has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked, nor provided particulars of the Overtime Claims made by her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars;
- (d) otherwise denies the allegations in paragraph 83.

84. As to paragraph 84, the Territory:

- (a) refers to and repeats paragraphs 80 to 83 above;

(b) says that, in the premises, Dr Tham was not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA; and

(c) otherwise denies the allegations in paragraph 84.

85. As to paragraph 85, the Territory:

(a) refers to and repeats paragraphs 80 to 84 above;

(b) says further that:

(i) any entitlement to payment for unrostered overtime is subject to the condition that Dr Tham make an Overtime Claim in relation to the overtime purportedly worked;

(ii) Dr Tham has not provided particulars of any occasions on which she allegedly:

A. was requested or required to work medical records overtime;

B. in fact worked medical records overtime;

C. made an Overtime Claim for that medical records overtime; and

D. was subsequently not paid;

(iii) if Dr Tham did not make an Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:

A. Dr Tham did not work such overtime;

B. Dr Tham was not requested or required to work such overtime; and/or

C. Dr Tham was in attendance at the Canberra Hospital for other reasons, of her own volition, or having been formally released from the obligation to perform professional duties;

(iv) further or alternatively, Dr Tham is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and

(c) otherwise denies the allegations in paragraph 85.

86. As to paragraph 86, the Territory:

(a) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;

(b) says that if:

- (i) Dr Tham had made an Overtime Claim; and
- (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and

- (c) otherwise denies the allegations in paragraph 86.

87. As to paragraph 87, the Territory:

- (a) refers to and repeats paragraphs 80 to 86 above; and
- (b) otherwise denies the allegations in paragraph 87.

D.4.3 Other medical services – weekend and public holiday overtime

88. As to paragraph 88, the Territory:

- (a) admits that Dr Tham's duties and responsibilities when providing medical services on weekend and public holiday shifts included undertaking specific tasks relating to patient care during her rostered hours; and
- ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~
- (b) otherwise denies the allegations in paragraph 88.

89. As to paragraph 89, the Territory:

- (a) says that there were occasions where Dr Tham was present at Canberra Hospital during the 2019 Obstetrics Intern Rotation and the 2019 Obstetrics RMO Rotation outside of her rostered ordinary working hours;
- (b) refers to and repeats paragraph 20; and
- (c) otherwise denies the allegations paragraph 89.

90. As to paragraph 90, the Territory:

- (a) refers to and repeats paragraphs 88 and 89 above; and
- (b) otherwise denies the allegations in paragraph 90.

91. As to paragraph 91, the Territory:

- (a) refers to and repeats paragraphs 88 to 90 above; and

(b) otherwise denies the allegations in paragraph 91.

92. As to paragraph 92, the Territory:

(a) refers to and repeats paragraph 20; and

(b) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;

(c) says further that:

(i) whether Dr Tham was requested or required to work any alleged other medical services overtime depends on the circumstances of each alleged occasion;

(ii) further or alternatively, pursuant to the Overtime Policy, Dr Tham was required to submit an Overtime Claim within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and

(iii) Dr Tham has not provided particulars of the circumstances of each alleged occasion of the other medical services overtime worked, nor provided particulars of the Overtime Claims made by her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars;

(d) otherwise denies the allegations in paragraph 92.

93. As to paragraph 93, the Territory:

(a) refers to and repeats paragraphs 89 to 92 above;

(b) says that, in the premises, Dr Tham was not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA; and

(c) otherwise denies the allegations in paragraph 93.

94. As to paragraph 94, the Territory:

(a) refers to and repeats paragraphs 89 to 93 above;

(b) says further that:

(i) any entitlement to payment for unrostered overtime is subject to the condition that Dr Tham make an Overtime Claim in relation to the overtime purportedly worked;

- (ii) Dr Tham has not provided particulars of any occasions on which she allegedly:
 - A. was requested or required to worked other medical services overtime;
 - B. in fact worked other medical services overtime;
 - C. made an Overtime Claim for that other medical services overtime; and
 - D. was subsequently not paid;
- (iii) if Dr Tham did not make an Overtime Claim in respect of the alleged other medical services overtime, then it ought be concluded that either:
 - A. Dr Tham did not work such overtime;
 - B. Dr Tham was not requested or required to work such overtime; and/or
 - C. Dr Tham was in attendance at the Canberra Hospital of her own volition or having been formally released from the obligation to perform professional duties;
- (iv) further or alternatively, Dr Tham is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and
- (c) otherwise denies the allegations in paragraph 94.

95. As to paragraph 95, the Territory:

- (a) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;
- (b) says that if:
 - (i) Dr Tham had made an Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and
- (c) otherwise denies the allegations in paragraph 95.

96. As to paragraph 96, the Territory:

- (a) refers to and repeats paragraphs 89 to 95 above; and

- (b) otherwise denies the allegations in paragraph 96.

D.5 2019 Psychiatric Medicine Rotation – 29 July 2019 to 27 October 2019 – 2013 EA

97. The Territory admits paragraph 97.

D.5.1 Rosters

98. As to paragraph 98, the Territory:

- (a) as to paragraph 98(c), says that Dr Tham was rostered to work on-call shifts, from 0800 to 0800 of the following day on weekends and public holidays; and
- (b) otherwise admits that during the 2019 Psychiatric Medicine Rotation, Dr Tham was rostered to work as pleaded; and
- (c) says further that:
 - (i) on occasion, rosters were amended before being worked by Dr Tham; and / or
 - (ii) on occasion, Dr Tham, may have worked other days or roster patterns than those prescribed by the rosters.

D.5.2 Medical records

99. As to paragraph 99, the Territory:

- (a) admits that Dr Tham's duties and responsibilities when providing medical services included undertaking medical records preparation during her rostered hours; and
- ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~
- (b) otherwise denies the allegations in paragraph 99.

100. As to paragraph 100, the Territory:

- (a) says that there were occasions where Dr Tham was present at Canberra Hospital during the 2019 Psychiatric Medicine Rotation outside of her rostered ordinary working hours;
- (b) refers to and repeats paragraph 20; and
- (c) otherwise denies the allegations paragraph 100.

101. As to paragraph 101, the Territory:

- (a) refers to and repeats paragraphs 99 and 100 above; and

(b) otherwise denies the allegations in paragraph 101.

102. As to paragraph 102, the Territory:

(a) refers to and repeats paragraphs 99 to 101 above; and

(b) otherwise denies the allegations in paragraph 102.

103. As to paragraph 103, the Territory:

(a) refers to and repeats paragraph 20;

(b) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;

(c) says further that:

(i) whether Dr Tham was requested or required to work any alleged medical records overtime depends on the circumstances of each alleged occasion;

(ii) further or alternatively, pursuant to the Overtime Policy, Dr Tham was required to submit an Overtime Claim within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and

(iii) Dr Tham has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked, nor provided particulars of the Overtime Claims made by her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars;

(d) otherwise denies the allegations in paragraph 103.

104. As to paragraph 104, the Territory:

(a) refers to and repeats paragraphs 100 to 103 above;

(b) says that, in the premises, Dr Tham was not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA; and

(c) otherwise denies the allegations in paragraph 104.

105. As to paragraph 105, the Territory:

(a) refers to and repeats paragraphs 100 to 104 above;

- (b) says further that:
- (i) any entitlement to payment for unrostered overtime is subject to the condition that Dr Tham make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) Dr Tham has not provided particulars of any occasions on which she allegedly:
 - A. was requested or required to work medical records overtime;
 - B. in fact worked medical records overtime;
 - C. made an Overtime Claim for that medical records overtime; and
 - D. was subsequently not paid;
 - (iii) if Dr Tham did not make an Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
 - A. Dr Tham did not work such overtime;
 - B. Dr Tham was not requested or required to work such overtime; and/or
 - C. Dr Tham was in attendance at the Canberra Hospital of her own volition or having been formally released from the obligation to perform professional duties;
 - (iv) further or alternatively, Dr Tham is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and
- (c) otherwise denies the allegations in paragraph 105.

106. As to paragraph 106, the Territory:

- (a) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;
- (b) says that if:
 - (i) Dr Tham had made an Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and
- (c) otherwise denies the allegations in paragraph 106.

107. As to paragraph 107, the Territory:

- (a) refers to and repeats paragraphs 100 to 106 above; and
- (b) otherwise denies the allegations in paragraph 107.

D.6 2020 Vascular Rotation – 27 July 2020 to 25 October 2020 – 2013 EA

108. The Territory admits paragraph 108.

D.6.1 Rosters

109. As to paragraph 109, the Territory:

- (a) as to sub-paragraph 109(c) says that Dr Tham was rostered to work a cover shift on a Sunday, from 0700 to 2100, on two occasions during the 13 week term;
- (b) otherwise admits that during the 2020 Vascular Rotation, Dr Tham was rostered to work as pleaded; and
- (c) says further that:
 - (i) on occasion, rosters were amended before being worked by Dr Tham; and / or
 - (ii) on occasion, Dr Tham, may have worked other days or roster patterns than those prescribed by the rosters.

D.6.2 Ward round preparation

110. As to paragraph 110, the Territory:

- (a) admits that Dr Tham's duties and responsibilities when providing medical services included undertaking ward round preparation during her rostered hours; and
- ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~
- (b) otherwise denies the allegations in paragraph 110.

111. As to paragraph 111, the Territory:

- (a) says that there were occasions where Dr Tham was present at Canberra Hospital during the 2020 Vascular Rotation outside of her rostered ordinary working hours;
- (b) refers to and repeats paragraph 20; and
- (c) otherwise denies the allegations paragraph 111.

112. As to paragraph 112, the Territory:

- (a) refers to and repeats paragraphs 110 and 111 above;
- (b) otherwise denies the allegations in paragraph 112.

113. As to paragraph 113, the Territory:

- (a) refers to and repeats paragraphs 110 to 112 above;
- (b) otherwise denies the allegations in paragraph 113.

114. As to paragraph 114, the Territory:

- (a) refers to and repeats paragraph 20; and
- (b) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;
- (c) says further that:
 - (i) whether Dr Tham was requested or required to work any alleged ward round preparation overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, Dr Tham was required to submit an Overtime Claim within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) Dr Tham has not provided particulars of the circumstances of each alleged occasion of ward round preparation overtime worked, nor provided particulars of the Overtime Claims made by her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars;
- (d) otherwise denies the allegations in paragraph 114.

115. As to paragraph 115, the Territory:

- (a) refers to and repeats paragraphs 111 to 114 above;
- (b) says that, in the premises, Dr Tham was not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA; and
- (c) otherwise denies the allegations in paragraph 115.

116. As to paragraph 116, the Territory:

- (a) refers to and repeats paragraphs 111 to 115 above;
- (b) says further that:
 - (i) any entitlement to payment for unrostered overtime is subject to the condition that Dr Tham make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) Dr Tham has not provided particulars of any occasions on which she allegedly:
 - A. was requested or required to work ward round preparation overtime;
 - B. in fact worked ward round preparation overtime;
 - C. made an Overtime Claim for that ward round preparation overtime; and
 - D. was subsequently not paid;
 - (iii) if Dr Tham did not make an Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:
 - A. Dr Tham did not work such overtime;
 - B. Dr Tham was not requested or required to work such overtime; and/or
 - C. Dr Tham was in attendance at the Canberra Hospital of her own volition or having been formally released from the obligation to perform professional duties; and
 - (iv) further or alternatively, Dr Tham is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and
- (c) otherwise denies the allegations in paragraph 116.

117. As to paragraph 117, the Territory:

- (a) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;
- (b) says that if:
 - (i) Dr Tham had made an Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and

- (c) otherwise denies the allegations in paragraph 117.

118. As to paragraph 118, the Territory:

- (a) refers to and repeats paragraphs 111 to 117 above; and
- (b) otherwise denies the allegations in paragraph 118.

D.6.3 Paper rounds

119. As to paragraph 119, the Territory:

- (a) admits that Dr Tham's duties and responsibilities when providing medical services included undertaking paper rounds during her rostered hours; and
- ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~
- (b) otherwise denies the allegations in paragraph 119.

120. As to paragraph 120, the Territory:

- (a) says that there were occasions where Dr Tham was present at Canberra Hospital during the 2020 Vascular Rotation outside of her rostered ordinary working hours;
- (b) refers to and repeats paragraph 20; and
- (c) otherwise denies the allegations paragraph 120.

121. As to paragraph 121, the Territory:

- (a) refers to and repeats paragraphs 119 and 120 above; and
- (b) otherwise denies the allegations in paragraph 120.

122. As to paragraph 122, the Territory:

- (a) refers to and repeats paragraphs 119 to 121 above; and
- (b) otherwise denies the allegations in paragraph 122.

123. As to paragraph 123, the Territory:

- (a) refers to and repeats paragraph 20;

- (b) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;
- (c) says further that:
 - (i) whether Dr Tham was requested or required to work any alleged paper rounds overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, Dr Tham was required to submit an Overtime Claim within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) Dr Tham has not provided particulars of the circumstances of each alleged occasion of paper rounds overtime worked, nor provided particulars of the Overtime Claims made by her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars;
- (d) otherwise denies the allegations in paragraph 123.

124. As to paragraph 124, the Territory:

- (a) refers to and repeats paragraphs 120 to 123 above;
- (b) says that, in the premises, Dr Tham was not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA; and
- (c) otherwise denies the allegations in paragraph 124.

125. As to paragraph 125, the Territory:

- (a) refers to and repeats paragraphs 120 to 124 above;
- (b) says further that:
 - (i) any entitlement to payment for unrostered overtime is subject to the condition that Dr Tham make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) Dr Tham has not provided particulars of any occasions on which she allegedly:
 - A. was requested or required to work paper rounds overtime;
 - B. in fact worked paper rounds overtime;

- C. made an Overtime Claim for that paper rounds overtime; and
 - D. was subsequently not paid;
- (iii) if Dr Tham did not make an Overtime Claim in respect of the alleged paper rounds overtime, then it ought be concluded that either:
- A. Dr Tham did not work such overtime;
 - B. Dr Tham was not requested or required to work such overtime; and/or
 - C. Dr Tham was in attendance at the Canberra Hospital of her own volition or having been formally released from the obligation to perform professional duties;
- (iv) further or alternatively, Dr Tham is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and
- (c) otherwise denies the allegations in paragraph 125.

126. As to paragraph 126, the Territory:

- (a) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;
- (b) says that if:
 - (i) Dr Tham had made an Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and
- (c) otherwise denies the allegations in paragraph 126.

127. As to paragraph 127, the Territory:

- (a) refers to and repeats paragraphs 120 to 126 above; and
- (b) otherwise denies the allegations in paragraph 127.

D.6.4 Medical records

128. As to paragraph 128, the Territory:

- (a) admits that Dr Tham's duties and responsibilities when providing medical services included undertaking medical records preparation during her rostered hours; and
- ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~
- (b) otherwise denies the allegations in paragraph 128.

129. As to paragraph 129, the Territory:

- (a) says that there were occasions where Dr Tham was present at Canberra Hospital during the 2020 Vascular Rotation outside of her rostered ordinary working hours;
- (b) refers to and repeats paragraph 20; and
- (c) otherwise denies the allegations paragraph 129.

130. As to paragraph 130, the Territory:

- (a) refers to and repeats paragraphs 128 and 129 above; and
- (b) otherwise denies the allegations in paragraph 130.

131. As to paragraph 131, the Territory:

- (a) refers to and repeats paragraphs 128 to 130 above; and
- (b) otherwise denies the allegations in paragraph 131.

132. As to paragraph 132, the Territory:

- (a) refers to and repeats paragraph 20; and
- (b) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;
- (c) says further that:
 - (i) whether Dr Tham was requested or required to work any alleged medical records overtime depends on the circumstances of each alleged occasion;

- (ii) further or alternatively, pursuant to the Overtime Policy, Dr Tham was required to submit an Overtime Claim within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) Dr Tham has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked, nor provided particulars of the Overtime Claims made by her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars; and
- (d) otherwise denies the allegations in paragraph 132.

133. As to paragraph 133, the Territory:

- (a) refers to and repeats paragraphs 129 to 132 above;
- (b) says that, in the premises, Dr Tham was not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA; and
- (c) otherwise denies the allegations in paragraph 133.

134. As to paragraph 134, the Territory:

- (a) refers to and repeats paragraphs 129 to 133 above;
- (b) says further that:
 - (i) any entitlement to payment for unrostered overtime is subject to the condition that Dr Tham make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) Dr Tham has not provided particulars of any occasions on which she allegedly:
 - A. was requested or required to work medical records overtime;
 - B. in fact worked medical records overtime;
 - C. made an Overtime Claim for that medical records overtime; and
 - D. was subsequently not paid;
 - (iii) if Dr Tham did not make an Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
 - A. Dr Tham did not work such overtime;

- B. Dr Tham was not requested or required to work such overtime; and/or
- C. Dr Tham was in attendance at the Canberra Hospital of her own volition, or having been formally released from the obligation to perform professional duties; and

(iv) further or alternatively, Dr Tham is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and

(c) otherwise denies the allegations in paragraph 134.

135. As to paragraph 135, the Territory:

(a) says that Dr Tham consistently complied with the Overtime Policy throughout her employment in order to claim payment for unrostered overtime by submitting Overtime Claims and was paid therefore;

(b) says that if:

(i) Dr Tham had made an Overtime Claim; and

(ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and

(c) otherwise denies the allegations in paragraph 135.

136. As to paragraph 136, the Territory:

(a) refers to and repeats paragraphs 129 to 135 above; and

(b) otherwise denies the allegations in paragraph 136.

D.7 Loss

137. The Territory denies paragraph 137.

D.8 Section 557C

137A As to paragraph 137A, the Territory:

(a) says that, on their proper construction, each of the 2013 EA, 2017 EA and 2021 EA only required the payment of a penalty rate for overtime in the circumstances pleaded in paragraph 20 above; and

(b) otherwise denies the allegations in paragraph 137A.

137B As to paragraph 137B, the Territory:

- (a) says that:
 - (i) at all relevant times the Territory did make and keep records of the kind prescribed by s 535 of the FW Act and reg 3.34 of the Fair Work Regulations 2009 (Cth), including timesheets submitted by Dr Tham;
 - (ii) says that those records record the number of overtime hours worked by Dr Tham and when Dr Tham started and ceased working overtime hours for the purposes of s 535 of the FW Act and reg 3.34 of the *Fair Work Regulations 2009* (Cth);
 - (iii) says that s 535 of the FW Act and reg 3.34 of the Fair Work Regulations 2009 (Cth) did not require the Territory to make or keep records in respect of overtime for which penalty rates were not payable to Dr Tham;
 - (iv) further or alternatively, Dr Tham is estopped from alleging that the Territory failed to keep a record of unrostered overtime that she worked during the Relevant Period by reason of the matters pleaded at 338 to 349 below; and
 - (v) further or alternatively, if there be any error or inaccuracy in the records made and kept by the Territory (which is denied), the failure of Dr Tham to comply with the Overtime Policy and submit an Overtime Claim provides a reasonable excuse for any error or inaccuracy in the records resulting in any failure to comply with the requirements of s 535 of the FW Act;
- (b) otherwise denies the allegations in paragraph 137B.

137C The Territory denies paragraph 137C and refers to and repeats paragraph 137B.

Part E Dr Tham's claim against Calvary

138. The Territory does not plead to paragraph 138 as it contains no allegations against it.

139. Not used.

140. The Territory does not plead to paragraph 140 as it contains no allegations against it.

141. The Territory does not plead to paragraph 141 as it contains no allegations against it.

142. The Territory does not plead to paragraph 142 as it contains no allegations against it.

143. The Territory does not plead to paragraph 143 as it contains no allegations against it.

144. The Territory does not plead to paragraph 144 as it contains no allegations against it.

145. The Territory does not plead to paragraph 145 as it contains no allegations against it.
146. The Territory does not plead to paragraph 146 as it contains no allegations against it.
147. The Territory does not plead to paragraph 147 as it contains no allegations against it.
148. The Territory does not plead to paragraph 148 as it contains no allegations against it.
149. The Territory does not plead to paragraph 149 as it contains no allegations against it.
150. The Territory does not plead to paragraph 150 as it contains no allegations against it.
151. The Territory does not plead to paragraph 151 as it contains no allegations against it.
152. The Territory does not plead to paragraph 152 as it contains no allegations against it.
153. The Territory does not plead to paragraph 153 as it contains no allegations against it.
154. The Territory does not plead to paragraph 154 as it contains no allegations against it.
155. The Territory does not plead to paragraph 155 as it contains no allegations against it.
156. The Territory does not plead to paragraph 156 as it contains no allegations against it.
157. The Territory does not plead to paragraph 157 as it contains no allegations against it.
158. The Territory does not plead to paragraph 158 as it contains no allegations against it.
159. The Territory does not plead to paragraph 159 as it contains no allegations against it.
160. The Territory does not plead to paragraph 160 as it contains no allegations against it.
161. The Territory does not plead to paragraph 161 as it contains no allegations against it.
162. The Territory does not plead to paragraph 162 as it contains no allegations against it.
- 162A. The Territory does not plead to paragraph 162A as it contains no allegations against it.
- 162B. The Territory does not plead to paragraph 162B as it contains no allegations against it.
- 162C. The Territory does not plead to paragraph 162C as it contains no allegations against it.

Part F Group Members' claims against the Territory

163. As to paragraph 163, the Territory:

- (a) admits that, in the course of their employment during the Relevant Period, Group Members:

- (i) worked in one or more of the services operated by the Territory as set out in paragraph 1(a)(i) of the Amended Statement of Claim; and
 - (ii) were rostered to work 38 ordinary hours per week on the basis of 76 hours within a period not exceeding 14 consecutive days, or an average of 38 hours per week over an agreed period of 12 months or less;
- (b) otherwise denies the allegations in paragraph 163.

F.1 Admissions

164. As to paragraph 164, the Territory:

- (a) admits that the duties and responsibilities of Group Members when providing medical services included admissions during their rostered hours; and
- ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~
- (b) otherwise denies the allegations in paragraph 164.

165. As to paragraph 165, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says further that:
 - (i) Group Members were, or ought to have been, aware of the Overtime Policy and the Territory's approach to unrostered overtime; and
 - (ii) if some or all Group Members performed unrostered overtime, they were able to and should have submitted an Overtime Claim;
- (c) otherwise denies the allegations paragraph 165.

166. As to paragraph 166, the Territory:

- (a) refers to and repeats paragraphs 164 and 165 above; and
- (b) otherwise denies the allegations in paragraph 166.

167. As to paragraph 167, the Territory:

- (a) refers to and repeats paragraphs 164 to 166 above;
- (b) otherwise denies the allegations in paragraph 167.

168. As to paragraph 168, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says that:
 - (i) whether a Group Member was requested or required to work any alleged admissions overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, each Group Member was required to submit an Overtime Claim for any admissions overtime within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) no Group Member has provided particulars of the circumstances of any alleged occasion of admissions overtime worked, nor provided particulars of the Overtime Claims made by him or her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars; and
- (c) otherwise denies the allegations in paragraph 168.

169. As to paragraph 169, the Territory:

- (a) refers to and repeats paragraphs 165 to 168 above;
- (b) says that, in the premises, Group Members were not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA, clause 35.2 of the 2017 EA and clause 36.2 of the 2021 EA; and
- (c) otherwise denies the allegations in paragraph 169.

170. As to paragraph 170, the Territory:

- (a) refers to and repeats paragraphs 165 to 169 above;
- (b) says further that:
 - (i) any entitlement to payment for unrostered overtime is subject to the condition the Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) the Group Member has not provided particulars of any occasions on which they allegedly:
 - A. were requested or required to work admissions overtime;

- B. in fact worked admissions overtime;
 - C. made an Overtime Claim for that admissions overtime; and
 - D. was subsequently not paid;
- (iii) if the Group Member did not make an Overtime Claim in respect of the alleged admissions overtime, then it ought be concluded that either:
- A. the Group Member did not work such overtime;
 - B. the Group Member was not requested or required to work such overtime; and/or
 - C. the Group Member was in attendance at the Canberra Hospital of their own volition or having been formally released from the obligation to perform professional duties; and
- (iv) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and
- (c) otherwise denies the allegations in paragraph 170.

171. As to paragraph 171, the Territory:

- (a) says that if:
 - (i) the Group Member had made an Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and
- (b) otherwise denies the allegations in paragraph 171.

172. As to paragraph 172, the Territory:

- (a) refers to and repeats paragraphs 165 to 171 above; and
- (b) otherwise denies the allegations in paragraph 172.

F.2 Consults

173. As to paragraph 173, the Territory:

- (a) admits that the duties and responsibilities of Group Members when providing medical services included attending another department for a patient consult during their rostered hours; and
- ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~
- (b) otherwise denies the allegations in paragraph 173.

174. As to paragraph 174, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says further that:
 - (i) Group Members were, or ought to have been, aware of the Overtime Policy and the Territory's approach to unrostered overtime; and
 - (ii) if some or all Group Members performed unrostered overtime, they were able to and should have submitted an Overtime Claim;
- (c) otherwise denies the allegations paragraph 174.

175. As to paragraph 175, the Territory:

- (a) refers to and repeats paragraphs 173 and 174 above; and
- (b) otherwise denies the allegations in paragraph 175.

176. As to paragraph 176, the Territory:

- (a) refers to and repeats paragraphs 173 to 175 above; and
- (b) otherwise denies the allegations in paragraph 176.

177. As to paragraph 177, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says that:
 - (i) whether a Group Member was requested or required to work any alleged consult overtime depends on the circumstances of each alleged occasion;

- (ii) further or alternatively, pursuant to the Overtime Policy, each Group Member was required to seek approval and to submit an Overtime Claim for any consult overtime within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) no Group Member has provided particulars of the circumstances of any alleged occasion of consult overtime worked, nor provided particulars of the Overtime Claims made by him or her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars; and
- (c) otherwise denies the allegations in paragraph 177.

178. As to paragraph 178, the Territory:

- (a) refers to and repeats paragraphs 174 to 177 above;
- (b) says that, in the premises, Group Member were not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA, clause 35.2 of the 2017 EA and clause 36.2 of the 2021 EA; and
- (c) otherwise denies the allegations in paragraph 178.

179. As to paragraph 179, the Territory:

- (a) refers to and repeats paragraphs 174 to 178 above;
- (b) says further that:
 - (i) any entitlement to payment for unrostered overtime is subject to the condition the Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) the Group Member has not provided particulars of any occasions on which they allegedly:
 - A. were requested or required to work consult overtime;
 - B. in fact worked consult overtime;
 - C. made an Overtime Claim for that consult overtime; and
 - D. was subsequently not paid;
 - (iii) if the Group Member did not make an Overtime Claim in respect of the alleged consult overtime, then it ought be concluded that either:

- A. the Group Member did not work such overtime;
- B. the Group Member was not requested or required to work such overtime; and/or
- C. the Group Member was in attendance at the Canberra Hospital of their own volition or having been formally released from the obligation to perform professional duties; and

(iv) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and

(c) otherwise denies the allegations in paragraph 179.

180. As to paragraph 180, the Territory:

(a) says that if:

(i) the Group Member had made an Overtime Claim; and

(ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and

(b) otherwise denies the allegations in paragraph 180.

181. As to paragraph 181, the Territory:

(a) refers to and repeats paragraphs 174 to 180 above; and

(b) otherwise denies the allegations in paragraph 181.

F.3 Medical emergencies

182. As to paragraph 182, the Territory:

(a) admits that the duties and responsibilities of Group Members when providing medical services included dealing with medical emergencies during their rostered hours; and

~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~

(b) otherwise denies the allegations in paragraph 182.

183. As to paragraph 183, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says further that:
 - (i) Group Members were, or ought to have been, aware of the Overtime Policy and the Territory's approach to unrostered overtime; and
 - (ii) if some or all Group Members performed unrostered overtime, they were able to and should have submitted an Overtime Claim;
- (c) otherwise denies the allegations paragraph 183.

184. As to paragraph 184, the Territory:

- (a) refers to and repeats paragraphs 182 and 183 above; and
- (b) otherwise denies the allegations in paragraph 184.

185. As to paragraph 185, the Territory:

- (a) refers to and repeats paragraphs 182 to 184 above; and
- (b) otherwise denies the allegations in paragraph 185.

186. As to paragraph 186, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says that:
 - (i) whether a Group Member was requested or required to work any alleged medical emergencies overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, each Group Member was required to submit an Overtime Claim for any medical emergencies overtime within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) no Group Member has provided particulars of the circumstances of any alleged occasion of medical emergencies overtime worked, nor provided particulars of the Overtime Claims made by him or her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars; and

- (c) otherwise denies the allegations in paragraph 186.

187. As to paragraph 187, the Territory:

- (a) refers to and repeats paragraphs 183 to 186 above;
- (b) says that, in the premises, Group Members were not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA, clause 35.2 of the 2017 EA and clause 36.2 of the 2021 EA; and
- (c) otherwise denies the allegations in paragraph 187.

188. As to paragraph 188, the Territory:

- (a) refers to and repeats paragraphs 183 to 187 above;
- (b) says further that:
 - (i) any entitlement to payment for unrostered overtime is subject to the condition the Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) the Group Member has not provided particulars of any occasions on which they allegedly:
 - A. were requested or required to work medical emergencies overtime;
 - B. in fact worked medical emergencies overtime;
 - C. made an Overtime Claim for that medical emergencies overtime; and
 - D. was subsequently not paid;
 - (iii) if the Group Member did not make an Overtime Claim in respect of the alleged medical emergencies overtime, then it ought be concluded that either:
 - A. the Group Member did not work such overtime;
 - B. the Group Member was not requested or required to work such overtime; and/or
 - C. the Group Member was in attendance at the Canberra Hospital of their own volition or having been formally released from the obligation to perform professional duties; and

(iv) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and

(c) otherwise denies the allegations in paragraph 188.

189. As to paragraph 189, the Territory:

(a) says that if:

(i) the Group Member had made an Overtime Claim; and

(ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and

(b) otherwise denies the allegations in paragraph 189.

190. As to paragraph 190, the Territory:

(a) refers to and repeats paragraphs 183 to 189 above; and

(b) otherwise denies the allegations in paragraph 190.

F.4 Surgical procedures

191. As to paragraph 191, the Territory:

(a) admits that the duties and responsibilities of Group Members when providing medical services included assisting in theatre in the performance of surgical procedures during their rostered hours; and

~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~

(b) otherwise denies the allegations in paragraph 191.

192. As to paragraph 192, the Territory:

(a) refers to and repeats paragraph 20;

(b) says further that:

(i) Group Members were, or ought to have been, aware of the Overtime Policy and the Territory's approach to unrostered overtime;

(ii) if some or all Group Members performed unrostered overtime, they were able to and should have submitted an Overtime Claim;

(c) otherwise denies the allegations paragraph 192.

193. As to paragraph 193, the Territory:

(a) refers to and repeats paragraphs 191 and 192 above;

(b) otherwise denies the allegations in paragraph 193.

194. As to paragraph 194, the Territory:

(a) refers to and repeats paragraphs 191 to 193 above;

(b) otherwise denies the allegations in paragraph 194.

195. As to paragraph 195, the Territory:

(a) refers to and repeats paragraph 20;

(b) says that:

(i) whether a Group Member was requested or required to work any alleged surgical procedures overtime depends on the circumstances of each alleged occasion;

(ii) further or alternatively, pursuant to the Overtime Policy, each Group Member was required to submit an Overtime Claim for any consult overtime within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and

(iii) no Group Member has provided particulars of the circumstances of any alleged occasion of the surgical procedures overtime worked, nor provided particulars of the Overtime Claims made by him or her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars; and

(c) otherwise denies the allegations in paragraph 195.

196. As to paragraph 196, the Territory:

(a) refers to and repeats paragraphs 192 to 195 above;

- (b) says that, in the premises, Group Members were not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA, clause 35.2 of the 2017 EA and clause 36.2 of the 2021 EA; and
- (c) otherwise denies the allegations in paragraph 196.

197. As to paragraph 197, the Territory:

- (a) refers to and repeats paragraphs 192 to 196 above;
- (b) says further that:
 - (i) any entitlement to payment for unrostered overtime is subject to the condition the Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) the Group Member has not provided particulars of any occasions on which they allegedly:
 - A. were requested or required to work surgical procedures overtime;
 - B. in fact worked surgical procedures overtime;
 - C. made an Overtime Claim for that surgical procedures overtime; and
 - D. was subsequently not paid;
 - (iii) if the Group Member did not make an Overtime Claim in respect of the alleged surgical procedures overtime, then it ought be concluded that either:
 - A. the Group Member did not work such overtime;
 - B. the Group Member was not requested or required to work such overtime; and/or
 - C. the Group Member was in attendance at the Canberra Hospital of their own volition or having been formally released from the obligation to perform, professional duties; and
 - (iv) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and
- (c) otherwise denies the allegations in paragraph 197.

198. As to paragraph 198, the Territory:

- (a) says that if:
 - (i) the Group Member had made an Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and
- (b) otherwise denies the allegations in paragraph 198.

199. As to paragraph 199, the Territory:

- (a) refers to and repeats paragraphs 192 to 198 above; and
- (b) otherwise denies the allegations in paragraph 199.

F.5 Transfers

200. As to paragraph 200, the Territory:

- (a) admits that the duties and responsibilities of Group Members when providing medical services included procuring the transfer or discharge of patients into medical facilities during their rostered hours; and
- ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~
- (b) otherwise denies the allegations in paragraph 200.

201. As to paragraph 201, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says further that:
 - (i) Group Members were, or ought to have been, aware of the Overtime Policy and the Territory's approach to unrostered overtime;
 - (ii) if some or all Group Members performed unrostered overtime, they were able to and should have submitted an Overtime Claim;
- (c) otherwise denies the allegations paragraph 201.

202. As to paragraph 202:

- (a) refers to and repeats paragraphs 200 and 201 above;

- (b) otherwise denies the allegations in paragraph 202.

203. As to paragraph 203, the Territory:

- (a) refers to and repeats paragraphs 200 to 202 above;
- (b) otherwise denies the allegations in paragraph 203.

204. As to paragraph 204, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says that:
 - (i) whether a Group Member was requested or required to work any alleged transfers overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, the Group Members were required to submit an Overtime Claim for any transfers overtime within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) no Group Member has provided particulars of the circumstances of any alleged occasion of transfers overtime worked, nor provided particulars of the Overtime Claims made by him or her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars; and
- (c) otherwise denies the allegations in paragraph 204.

205. As to paragraph 205, the Territory:

- (a) refers to and repeats paragraphs 201 to 203(a) above;
- (b) says that, in the premises, Group Members were not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA, clause 35.2 of the 2017 EA and clause 36.2 of the 2021 EA; and
- (c) otherwise denies the allegations in paragraph 205.

206. As to paragraph 206, the Territory:

- (a) refers to and repeats paragraphs 201 to 205 above;
- (b) says further that:

- (i) any entitlement to payment for unrostered overtime is subject to the condition the Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) the Group Member has not provided particulars of any occasions on which they allegedly:
 - A. were requested or required to work transfers overtime;
 - B. in fact worked transfers overtime;
 - C. made an Overtime Claim for that transfers overtime; and
 - D. was subsequently not paid;
 - (iii) if the Group Member did not make an Overtime Claim in respect of the alleged transfers overtime, then it ought be concluded that either:
 - A. the Group Member did not work such overtime;
 - B. the Group Member was not requested or required to work such overtime; and/or
 - C. the Group Member was in attendance at the Canberra Hospital of their own volition or having been formally released from the obligation to perform professional duties; and
 - (iv) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and
- (c) otherwise denies the allegations in paragraph 206.

207. As to paragraph 207, the Territory:

- (a) says that if:
 - (i) the Group Member had made an Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and
- (b) otherwise denies the allegations in paragraph 207.

208. As to paragraph 208, the Territory:

- (a) refers to and repeats paragraphs 201 to 207 above; and
- (b) otherwise denies the allegations in paragraph 208.

F.6 Medical records

209. As to paragraph 209, the Territory:

- (a) admits that the duties and responsibilities of Group Members when providing medical services included undertaking medical records preparation during their rostered hours; and
- ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~
- (b) otherwise denies the allegations in paragraph 209.

210. As to paragraph 210, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says further that:
 - (i) Group Members were, or ought to have been, aware of the Overtime Policy and the Territory's approach to unrostered overtime;
 - (ii) if some or all Group Members performed unrostered overtime, they were able to and should have submitted an Overtime Claim;
- (c) otherwise denies the allegations paragraph 210.

211. As to paragraph 211:

- (a) refers to and repeats paragraphs 209 and 210 above;
- (b) otherwise denies the allegations in paragraph 211.

212. As to paragraph 212, the Territory:

- (a) refers to and repeats paragraphs 209 to 211 above;
- (b) otherwise denies the allegations in paragraph 212.

213. As to paragraph 213, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says that:

- (i) whether a Group Member was requested or required to work any alleged medical records overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, the Group Members were required to submit an Overtime Claim for any medical records overtime within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) no Group Member has provided particulars of the circumstances of any alleged occasion of medical records overtime worked, nor provided particulars of the Overtime Claims made by him or her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars; and
- (c) otherwise denies the allegations in paragraph 213.

214. As to paragraph 214, the Territory:

- (a) refers to and repeats paragraphs 210 to 212(a) above;
- (b) says that, in the premises, Group Members were not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA, clause 35.2 of the 2017 EA and clause 36.2 of the 2021 EA; and
- (c) otherwise denies the allegations in paragraph 214.

215. As to paragraph 215, the Territory:

- (a) refers to and repeats paragraphs 210 to 214 above;
- (b) says further that:
 - (i) any entitlement to payment for unrostered overtime is subject to the condition the Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) the Group Member has not provided particulars of any occasions on which they allegedly:
 - A. were requested or required to work medical records overtime;
 - B. in fact worked medical records overtime;
 - C. made an Overtime Claim for that medical records overtime; and

- D. was subsequently not paid;
- (iii) if the Group Member did not make an Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
 - A. the Group Member did not work such overtime;
 - B. the Group Member was not required or requested to work such overtime; and/or
 - C. the Group Member was in attendance at the Canberra Hospital of their own volition or having been formally released from the obligation to perform professional duties; and
- (iv) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and
- (c) otherwise denies the allegations in paragraph 215.

216. As to paragraph 216, the Territory:

- (a) says that if:
 - (i) the Group Member had made an Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and
- (b) otherwise denies the allegations in paragraph 216.

217. As to paragraph 217, the Territory:

- (a) refers to and repeats paragraphs 210 to 216 above; and
- (b) otherwise denies the allegations in paragraph 217.

F.7 Ward round preparation

218. As to paragraph 218, the Territory:

- (a) admits that the duties and responsibilities of Group Members when providing medical services included undertaking ward round preparation during their rostered hours; and
- ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~

(b) otherwise denies the allegations in paragraph 218.

219. As to paragraph 219, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says further that:
 - (i) Group Members were, or ought to have been, aware of the Overtime Policy and the Territory's approach to unrostered overtime;
 - (ii) if some or all Group Members performed unrostered overtime, they were able to and should have submitted an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 219.

220. As to paragraph 220:

- (a) refers to and repeats paragraphs 218 to 219 above;
- (b) otherwise denies the allegations in paragraph 220.

221. As to paragraph 221, the Territory:

- (a) refers to and repeats paragraphs 218 to 220 above;
- (b) otherwise denies the allegations in paragraph 221.

222. As to paragraph 222, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says that:
 - (i) whether a Group Member was requested or required to work any alleged ward round preparation overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, the Group Members were required to submit an Overtime Claim for any ward round preparation overtime within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) no Group Member has provided particulars of the circumstances of any alleged occasion of ward round preparation overtime worked, nor provided particulars of the Overtime Claims made by him or her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be

worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars; and

(c) otherwise denies the allegations in paragraph 222.

223. As to paragraph 223, the Territory:

(a) refers to and repeats paragraphs 219 to 221(a) above;

(b) says that, in the premises, Group Members were not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA, clause 35.2 of the 2017 EA and clause 36.2 of the 2021 EA; and

(c) otherwise denies the allegations in paragraph 223.

224. As to paragraph 224, the Territory:

(a) refers to and repeats paragraphs 219 to 223 above;

(b) says further that:

(i) any entitlement to payment for unrostered overtime is subject to the condition the Group Member make an Overtime Claim in relation to the overtime purportedly worked;

(ii) the Group Member has not provided particulars of any occasions on which they allegedly:

A. were requested or required to work ward round preparation overtime;

B. in fact worked ward round preparation overtime;

C. made an Overtime Claim for that ward round preparation overtime; and

D. was subsequently not paid;

(iii) if the Group Member did not make an Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:

A. the Group Member did not work such overtime;

B. the Group Member was not required or requested to work such overtime; and/or

C. the Group Member was in attendance at the Canberra Hospital of their own volition or having been formally released from the obligation to perform professional duties;

(iv) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and

(c) otherwise denies the allegations in paragraph 224.

225. As to paragraph 225, the Territory:

(a) says that if:

(i) the Group Member had made an Overtime Claim; and

(ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and

(b) otherwise denies the allegations in paragraph 225.

226. As to paragraph 226, the Territory:

(a) refers to and repeats paragraphs 219 to 225 above; and

(b) otherwise denies the allegations in paragraph 226.

F.8 Ward rounds

227. As to paragraph 227, the Territory:

(a) admits that the duties and responsibilities of Group Members when providing medical services included undertaking ward rounds during their rostered hours; and

~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~

(b) otherwise denies the allegations in paragraph 227.

228. As to paragraph 228, the Territory:

(a) refers to and repeats paragraph 20;

(b) says further that:

- (i) Group Members were, or ought to have been, aware of the Overtime Policy and the Territory's approach to unrostered overtime;
 - (ii) if some or all Group Members performed unrostered overtime, they were able to and should have submitted an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 228.

229. As to paragraph 229:

- (a) refers to and repeats paragraphs 227 to 228 above;
- (b) otherwise denies the allegations in paragraph 229.

230. As to paragraph 230, the Territory:

- (a) refers to and repeats paragraphs 227 to 229 above;
- (b) otherwise denies the allegations in paragraph 230.

231. As to paragraph 231, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says that:
 - (i) whether a Group Member was requested or required to work any alleged ward rounds overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, the Group Member was required to submit an Overtime Claim for any ward rounds overtime within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) no Group Member has provided particulars of the circumstances of any alleged occasion of ward rounds overtime worked, nor provided particulars of the Overtime Claims made by him or her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars; and
- (c) otherwise denies the allegations in paragraph 231.

232. As to paragraph 232, the Territory:

- (a) refers to and repeats paragraphs 228 to 230(a) above;

(b) says that, in the premises, Group Members were not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA, clause 35.2 of the 2017 EA and clause 36.2 of the 2021 EA; and

(c) otherwise denies the allegations in paragraph 232.

233. As to paragraph 233, the Territory:

(a) refers to and repeats paragraphs 228 to 232 above;

(b) says further that:

(i) any entitlement to payment for unrostered overtime is subject to the condition the Group Member make an Overtime Claim in relation to the overtime purportedly worked;

(ii) the Group Member has not provided particulars of any occasions on which they allegedly:

A. were requested or requested to work ward rounds overtime;

B. in fact worked ward rounds overtime;

C. made an Overtime Claim for that ward rounds overtime; and

D. was subsequently not paid;

(iii) if the Group Member did not make an Overtime Claim in respect of the alleged ward rounds overtime, then it ought be concluded that either:

A. the Group Member did not work such overtime;

B. the Group Member was not required or requested to work such overtime; and/or

C. the Group Member was in attendance at the Canberra Hospital of their own volition or having been formally released from the obligation to perform professional duties; and

(iv) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii); and

(c) otherwise denies the allegations in paragraph 233.

234. As to paragraph 234, the Territory:

- (a) says that if:
 - (i) the Group Member had made an Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and
- (b) otherwise denies the allegations in paragraph 234.

235. As to paragraph 235, the Territory:

- (a) refers to and repeats paragraphs 228 to 234 above; and
- (b) otherwise denies the allegations in paragraph 235.

F.9 Paper rounds

236. As to paragraph 236, the Territory:

- (a) admits that the duties and responsibilities of Group Members when providing medical services included undertaking paper rounds during their rostered hours; and
- ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~
- (b) otherwise denies the allegations in paragraph 236.

237. As to paragraph 237, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says further that:
 - (i) Group Members were, or ought to have been, aware of the Overtime Policy and the Territory's approach to unrostered overtime;
 - (ii) If some or all Group Members performed unrostered overtime, they were able to and should have submitted an Overtime Claim;
- (c) otherwise denies the allegations paragraph 237.

238. As to paragraph 238:

- (a) refers to and repeats paragraphs 236 to 237 above;
- (b) otherwise denies the allegations in paragraph 238.

239. As to paragraph 239, the Territory:

- (a) refers to and repeats paragraphs 236 to 238 above;
- (b) otherwise denies the allegations in paragraph 239.

240. As to paragraph 240, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says that:
 - (i) whether a Group Member was requested or required to work any alleged paper rounds overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, the Group Members were required to seek approval and to submit an Overtime Claim for any paper rounds overtime within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) no Group Member has provided particulars of the circumstances of any alleged occasion of paper rounds overtime worked, nor provided particulars of the Overtime Claims made by him or her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars; and
- (c) otherwise denies the allegations in paragraph 240.

241. As to paragraph 241, the Territory:

- (a) refers to and repeats paragraphs 237 to 239(a) above;
- (b) says that, in the premises, Group Members were not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA, clause 35.2 of the 2017 EA and clause 36.2 of the 2021 EA; and
- (c) otherwise denies the allegations in paragraph 241.

242. As to paragraph 242, the Territory:

- (a) refers to and repeats paragraphs 237 to 241 above;
- (b) says further that:

- (i) any entitlement to payment for unrostered overtime is subject to the condition the Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) the Group Member has not provided particulars of any occasions on which they allegedly:
 - A. were required or requested to work paper rounds overtime;
 - B. in fact worked paper rounds overtime;
 - C. made an Overtime Claim for that paper rounds overtime;
 - D. was subsequently not paid;
 - (iii) if the Group Member did not make an Overtime Claim in respect of the alleged paper rounds overtime, then it ought be concluded that either:
 - A. the Group Member did not work such overtime;
 - B. the Group Member was not required or requested to work such overtime; and/or
 - C. the Group Member was in attendance at the Canberra Hospital of their own volition or having been formally released from the obligation to perform professional duties; and
 - (iv) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and
- (c) otherwise denies the allegations in paragraph 242.

243. As to paragraph 243, the Territory:

- (a) says that if:
 - (i) the Group Member had made an Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and
- (b) otherwise denies the allegations in paragraph 243.

244. As to paragraph 244, the Territory:

- (a) refers to and repeats paragraphs 237 to 243 above; and
- (b) otherwise denies the allegations in paragraph 244.

F.10 Handover

245. As to paragraph 245, the Territory:

- (a) admits that the duties and responsibilities of Group Members when providing medical services included undertaking handovers during their rostered hours; and
- ~~(b) refers to and repeats paragraph **Error! Reference source not found.** above; and~~
- (b) otherwise denies the allegations in paragraph 245.

246. As to paragraph 246, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says further that:
 - (i) Group Members were, or ought to have been, aware of the Overtime Policy and the Territory's approach to unrostered overtime;
 - (ii) if some or all Group Members performed unrostered overtime, they were able to and should have submitted an Overtime Claim;
- (c) otherwise denies the allegations paragraph 246.

247. As to paragraph 247:

- (a) refers to and repeats paragraphs 245 to 246 above;
- (b) otherwise denies the allegations in paragraph 247.

248. As to paragraph 248, the Territory:

- (a) refers to and repeats paragraphs 245 to 247 above;
- (b) otherwise denies the allegations in paragraph 248.

249. As to paragraph 249, the Territory:

- (a) refers to and repeats paragraph 20;
- (b) says that:

- (i) whether a Group Member was requested or required to work any alleged handover overtime depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Policy, the Group Members were required to seek approval and to submit an Overtime Claim for any handover overtime within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and
 - (iii) no Group Member has provided particulars of the circumstances of any alleged occasion of handover overtime worked, nor provided particulars of the Overtime Claims made by him or her for payment for such unrostered overtime (including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars; and
- (c) otherwise denies the allegations in paragraph 249.

250. As to paragraph 250, the Territory:

- (a) refers to and repeats paragraphs 246 to 248(a) above;
- (b) says that, in the premises, Group Members were not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA, clause 35.2 of the 2017 EA and clause 36.2 of the 2021 EA; and
- (c) otherwise denies the allegations in paragraph 250.

251. As to paragraph 251, the Territory:

- (a) refers to and repeats paragraphs 246 to 250 above;
- (b) says further that:
 - (i) any entitlement to payment for unrostered overtime is subject to the condition the Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) the Group Member has not provided particulars of any occasions on which they allegedly:
 - A. were required or requested to work handover overtime;
 - B. in fact worked handover overtime;
 - C. made an Overtime Claim for that handover overtime; and

- D. was subsequently not paid;
- (iii) if the Group Member did not make an Overtime Claim in respect of the alleged handover overtime, then it ought be concluded that either:
 - A. the Group Member did not work such overtime;
 - B. the Group Member was not requested or required to work such overtime; and/or
 - C. the Group Member was in attendance at the Canberra Hospital of their own volition or having been formally released from the obligation to perform professional duties; and
- (iv) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and
- (c) otherwise denies the allegations in paragraph 251.

252. As to paragraph 252, the Territory:

- (a) says that if:
 - (i) the Group Member had made an Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and
- (b) otherwise denies the allegations in paragraph 252.

253. As to paragraph 253, the Territory:

- (a) refers to and repeats paragraphs 246 to 252 above; and
- (b) otherwise denies the allegations in paragraph 253.

F.11 Other medical services overtime

254. As to paragraph 254, the Territory:

- (a) admits that the duties and responsibilities of Group Members when providing medical services included undertaking specific tasks relating to patient care during their rostered hours; and

~~(b) — refers to and repeats paragraph **Error! Reference source not found.** above; and~~

(b) otherwise denies the allegations in paragraph 254.

255. As to paragraph 255, the Territory:

(a) refers to and repeats paragraph 20;

(b) says further that:

(i) Group Members were, or ought to have been, aware of the Overtime Policy and the Territory's approach to unrostered overtime;

(ii) if some or all Group Members performed unrostered overtime, they were able to and should have submitted an Overtime Claim;

(c) otherwise denies the allegations paragraph 255.

256. As to paragraph 256:

(a) refers to and repeats paragraphs 254 to 255 above;

(b) otherwise denies the allegations in paragraph 256.

257. As to paragraph 257, the Territory:

(a) refers to and repeats paragraphs 254 to 256 above;

(b) otherwise denies the allegations in paragraph 257.

258. As to paragraph 258, the Territory:

(a) refers to and repeats paragraph 20;

(b) says that:

(i) whether a Group Member was requested or required to work any alleged other medical services overtime depends on the circumstances of each alleged occasion;

(ii) further or alternatively, pursuant to the Overtime Policy, the Group Members were required to seek approval and to submit an Overtime Claim for any other medical services overtime within five business days of working the unrostered overtime, alternatively within three weeks of working the unrostered overtime; and

(iii) no Group Member has provided particulars of the circumstances of any alleged occasion of other medical services overtime worked, nor provided particulars of the Overtime Claims made by him or her for payment for such unrostered overtime

(including the name of the consultant who requested that the additional hours be worked, the patient URN to which the work related and a brief explanation of the reason for the additional hours), and the Territory cannot properly plead without those particulars; and

(c) otherwise denies the allegations in paragraph 258.

259. As to paragraph 259, the Territory:

(a) refers to and repeats paragraphs 255 to 257(a) above;

(b) says that, in the premises, Group Members were not entitled to an ADO within the meaning of clause 36.2 of the 2013 EA, clause 35.2 of the 2017 EA and clause 36.2 of the 2021 EA; and

(c) otherwise denies the allegations in paragraph 259.

260. As to paragraph 260, the Territory:

(a) refers to and repeats paragraphs 255 to 259 above;

(b) says further that:

(i) any entitlement to payment for unrostered overtime is subject to the condition the Group Member make an Overtime Claim in relation to the overtime purportedly worked;

(ii) the Group Member has not provided particulars of any occasions on which they allegedly:

A. were required to requested to work other medical services overtime;

B. in fact worked other medical services overtime;

C. made an Overtime Claim for that other medical services overtime;

D. was subsequently not paid;

(iii) if the Group Member did not make an Overtime Claim in respect of the alleged other medical services overtime, then it ought be concluded that either:

A. the Group Member did not work such overtime;

B. the Group Member was not requested or required to work such overtime;
and/or

C. the Group Member was in attendance at the Canberra Hospital of their own volition or having been formally released from the obligation to perform professional duties; and

(iv) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (iii) above for the reasons in paragraphs 338 to 349 below; and

(c) otherwise denies the allegations in paragraph 260.

261. As to paragraph 261, the Territory:

(a) says that if:

(i) the Group Member had made an Overtime Claim; and

(ii) the Overtime Claim satisfied the criteria set out in the Overtime Policy,

the Territory would have considered and processed the Overtime Claim in accordance with the Overtime Policy; and

(b) otherwise denies the allegations in paragraph 261.

262. As to paragraph 262, the Territory:

(a) refers to and repeats paragraphs 255 to 261 above; and

(b) otherwise denies the allegations in paragraph 262.

F.12 Loss

263. The Territory denies paragraph 263.

F.13 Section 557C

263A As to paragraph 263A, the Territory:

(a) says that, on their proper construction, each of the 2013 EA, 2017 EA and 2021 EA only required the payment of a penalty rate for overtime in the circumstances pleaded in paragraph 20 above; and

(b) otherwise denies the allegations in paragraph 263A.

263B As to paragraph 263B, the Territory:

(a) says that:

- (i) at all relevant times the Territory did make and keep records of the kind prescribed by s 535 of the FW Act and reg 3.34 of the Fair Work Regulations 2009 (Cth), including timesheets submitted by Junior Medical Officers;
 - (ii) says that those records record the number of overtime hours worked by Junior Medical Officers and when Junior Medical Officers started and ceased working overtime hours for the purposes of s 535 of the FW Act and reg 3.34 of the Fair Work Regulations 2009 (Cth);
 - (iii) says that s 535 of the FW Act and reg 3.34 of the Fair Work Regulations 2009 (Cth) did not require the Territory to make or keep records in respect of overtime for which penalty rates were not payable to the Junior Medical Officers;
 - (iv) further or alternatively, Junior Medical Officers are estopped from alleging that the Territory failed to keep a record of unrostered overtime that he or she worked during the Relevant Period by reason of the matters pleaded at 338 to 349 below; and
 - (v) further or alternatively, if there be any error or inaccuracy in the records made and kept by the Territory (which is denied), the failure of the Junior Medical Officers to comply with the Overtime Policy and submit an Overtime Claim for any alleged overtime provides a reasonable excuse for any error or inaccuracy in the records resulting in any failure to comply with the requirements of s 535 of the FW Act; and
- (b) otherwise denies the allegations in paragraph 263B.

263C The Territory denies paragraph 263C and refers to and repeats paragraph 263B.

Part G Group Members' claims against Calvary

264. The Territory does not plead to paragraph 264 as it contains no allegations against it.

265. The Territory does not plead to paragraph 265 as it contains no allegations against it.

266. The Territory does not plead to paragraph 266 as it contains no allegations against it.

267. The Territory does not plead to paragraph 267 as it contains no allegations against it.

268. The Territory does not plead to paragraph 268 as it contains no allegations against it.

269. The Territory does not plead to paragraph 269 as it contains no allegations against it.

270. The Territory does not plead to paragraph 270 as it contains no allegations against it.

271. The Territory does not plead to paragraph 271 as it contains no allegations against it.

272. The Territory does not plead to paragraph 272 as it contains no allegations against it.

273. The Territory does not plead to paragraph 273 as it contains no allegations against it.
274. The Territory does not plead to paragraph 274 as it contains no allegations against it.
275. The Territory does not plead to paragraph 275 as it contains no allegations against it.
276. The Territory does not plead to paragraph 276 as it contains no allegations against it.
277. The Territory does not plead to paragraph 277 as it contains no allegations against it.
278. The Territory does not plead to paragraph 278 as it contains no allegations against it.
279. The Territory does not plead to paragraph 279 as it contains no allegations against it.
280. The Territory does not plead to paragraph 280 as it contains no allegations against it.
281. The Territory does not plead to paragraph 281 as it contains no allegations against it.
282. The Territory does not plead to paragraph 282 as it contains no allegations against it.
283. The Territory does not plead to paragraph 283 as it contains no allegations against it.
284. The Territory does not plead to paragraph 284 as it contains no allegations against it.
285. The Territory does not plead to paragraph 285 as it contains no allegations against it.
286. The Territory does not plead to paragraph 286 as it contains no allegations against it.
287. The Territory does not plead to paragraph 287 as it contains no allegations against it.
288. The Territory does not plead to paragraph 288 as it contains no allegations against it.
289. The Territory does not plead to paragraph 289 as it contains no allegations against it.
290. The Territory does not plead to paragraph 290 as it contains no allegations against it.
291. The Territory does not plead to paragraph 291 as it contains no allegations against it.
292. The Territory does not plead to paragraph 292 as it contains no allegations against it.
293. The Territory does not plead to paragraph 293 as it contains no allegations against it.
294. The Territory does not plead to paragraph 294 as it contains no allegations against it.
295. The Territory does not plead to paragraph 295 as it contains no allegations against it.
296. The Territory does not plead to paragraph 296 as it contains no allegations against it.

297. The Territory does not plead to paragraph 297 as it contains no allegations against it.
298. The Territory does not plead to paragraph 298 as it contains no allegations against it.
299. The Territory does not plead to paragraph 299 as it contains no allegations against it.
300. The Territory does not plead to paragraph 300 as it contains no allegations against it.
301. The Territory does not plead to paragraph 301 as it contains no allegations against it.
302. The Territory does not plead to paragraph 302 as it contains no allegations against it.
303. The Territory does not plead to paragraph 303 as it contains no allegations against it.
304. The Territory does not plead to paragraph 304 as it contains no allegations against it.
305. The Territory does not plead to paragraph 305 as it contains no allegations against it.
306. The Territory does not plead to paragraph 306 as it contains no allegations against it.
307. The Territory does not plead to paragraph 307 as it contains no allegations against it.
308. The Territory does not plead to paragraph 308 as it contains no allegations against it.
309. The Territory does not plead to paragraph 309 as it contains no allegations against it.
310. The Territory does not plead to paragraph 310 as it contains no allegations against it.
311. The Territory does not plead to paragraph 311 as it contains no allegations against it.
312. The Territory does not plead to paragraph 312 as it contains no allegations against it.
313. The Territory does not plead to paragraph 313 as it contains no allegations against it.
314. The Territory does not plead to paragraph 314 as it contains no allegations against it.
315. The Territory does not plead to paragraph 315 as it contains no allegations against it.
316. The Territory does not plead to paragraph 316 as it contains no allegations against it.
317. The Territory does not plead to paragraph 317 as it contains no allegations against it.
318. The Territory does not plead to paragraph 318 as it contains no allegations against it.
319. The Territory does not plead to paragraph 319 as it contains no allegations against it.
320. The Territory does not plead to paragraph 320 as it contains no allegations against it.

321. The Territory does not plead to paragraph 321 as it contains no allegations against it.
322. The Territory does not plead to paragraph 322 as it contains no allegations against it.
323. The Territory does not plead to paragraph 323 as it contains no allegations against it.
324. The Territory does not plead to paragraph 324 as it contains no allegations against it.
325. The Territory does not plead to paragraph 325 as it contains no allegations against it.
326. The Territory does not plead to paragraph 326 as it contains no allegations against it.
327. The Territory does not plead to paragraph 327 as it contains no allegations against it.
328. The Territory does not plead to paragraph 328 as it contains no allegations against it.
329. The Territory does not plead to paragraph 329 as it contains no allegations against it.
330. The Territory does not plead to paragraph 330 as it contains no allegations against it.
331. Not used.
332. The Territory does not plead to paragraph 332 as it contains no allegations against it.
333. The Territory does not plead to paragraph 333 as it contains no allegations against it.
334. The Territory does not plead to paragraph 334 as it contains no allegations against it.
335. The Territory does not plead to paragraph 335 as it contains no allegations against it.
336. The Territory does not plead to paragraph 336 as it contains no allegations against it.
337. The Territory does not plead to paragraph 337 as it contains no allegations against it.

G.10 Section 557C

- 337A. The Territory does not plead to paragraph 337 as it contains no allegations against it.
- 337B. The Territory does not plead to paragraph 337 as it contains no allegations against it.
- 337C. The Territory does not plead to paragraph 337 as it contains no allegations against it.

F ESTOPPEL

Background to the estoppel

338. Pursuant to the terms of their employment contracts, Dr Tham and the Group Members:

- (a) were informed that their conditions of employment were governed by:
 - (i) the 2013 EA, the 2017 EA or the 2021 EA; and
 - (ii) their individual contracts of employment.
339. Pursuant to the Overtime Policy, Dr Tham and Group Members were required to:
- (a) complete an Overtime Claim and state:
 - (i) the time of commencement of overtime;
 - (ii) the time of completion of overtime;
 - (iii) the reason for the overtime;
 - (iv) the name of the consultant who requested that the additional hours be worked;
 - (v) the patient URN to which the work related;
 - (b) submit the Overtime Claim through BOSS within five business days of undertaking the unrostered overtime or, alternatively, within 3 weeks.
340. Dr Tham and Group Members were aware of the procedure employed by the Territory to claim payment for unrostered overtime.

Particulars

Information about the Overtime Policy was discussed during orientation and the Welcome Guide and document entitled "Frequently asked Questions, Un-rostered Overtime – Junior Medical Officers (PGY1 and PGY2)", were emailed to Junior Medical Officers.

The timesheets submitted by Dr Tham during her employment at Canberra Hospital included Overtime Claims made in accordance with the Overtime Policy.

Further particulars will be provided after discovery and prior to trial.

341. From time to time throughout the Relevant Period, Dr Tham and Group Members submitted Overtime Claims which were approved and for which they were paid (**Claimed unrostered overtime**).

Particulars

Further particulars will be provided after discovery and prior to trial.

342. By reason of paragraphs 338 to 341 above, Dr Tham and Group Members were aware or ought to have been aware of:
- (a) their ordinary hours of work;
 - (b) that overtime should only be worked where a Junior Medical Officer is requested or required to do so;
 - (c) the requirement to submit an Overtime Claim and the process for doing so (including the time by which it must be submitted); and
 - (d) capable of complying and should have complied with those requirements.

Operation of the estoppel

343. In the circumstances set out in paragraphs 338 to 342 above, to the extent that Dr Tham and the Group Members attended or remained at work outside their ordinary hours of work other than for rostered overtime or unrostered overtime worked pursuant to a request or requirement in respect of which an Overtime Claim was submitted in accordance with the Overtime Policy, then, by that conduct, Dr Tham and the Group Members induced the Territory to assume, and the Territory did assume:
- (a) that they were not, or were not required to be, in attendance at a hospital to carry out functions that they had been called upon to perform on behalf of the Territory during any such time; and
 - (b) further or alternatively, that any attendance at Canberra Hospital during any such time was of their own volition.
344. Dr Tham and the Group Members did not correct any mistake in the assumptions set out in paragraph 343 (**unclaimed overtime assumptions**), despite being under a duty to do so:
- (a) by reason of their contractual obligations set out in paragraph 338 above; and
 - (b) further or alternatively, because, by reason of the matters in paragraphs 338 to 343 above:
 - (i) Dr Tham and Group Members knew, or should reasonably have known, that the Territory would be induced by the acts or omissions referred to in paragraph 343 above to make the unclaimed overtime assumptions; and
 - (ii) a reasonable person would have expected Dr Tham and Group Members to correct any mistake in those assumptions by submitting an Overtime Claim in accordance with the Overtime Policy.

345. In the circumstances set out in paragraph 344 above, to the extent that Dr Tham or Group Members engaged in the conduct in paragraphs 343 above, it amounted to a representation by Dr Tham and Group Members as to the matters in paragraph 343 (**unclaimed overtime representations**).
346. The Territory acted in reliance on the unclaimed overtime representations and the unclaimed overtime assumptions, in that the Territory, by reason of the unclaimed overtime representations and the unclaimed overtime assumptions:
- (a) was not aware of, and did not investigate contemporaneously, any assertion that Dr Tham or Group Members had purportedly attended at work outside their ordinary hours of work other than during periods of rostered overtime and claimed unrostered overtime;
 - (b) did not make any payment to Dr Tham or Group Members in relation to any purported attendance at work outside their ordinary hours of work other than during periods of rostered overtime and claimed unrostered overtime;
 - (c) recorded periods of rostered overtime and claimed unrostered overtime hours worked by Dr Tham or Group Members (including, without limitation, for the purposes of s 535 of the FW Act and reg 3.34 of the *Fair Work Regulations*); and
 - (d) did not take steps that were available to the Territory to reduce any such time being worked by Dr Tham and Group Members.

Particulars

The steps that would have been available to the Territory included:

- 1) assessing team workloads;
- 2) changing roster arrangements to reduce the possibility of unrostered overtime arising;
- 3) changing models of care and making operational changes in the delivery of health services, such as changing theatre scheduling arrangements, to address the causes of unrostered overtime, based on the information provided by Dr Tham and Group Members;
- 4) employing or rostering more doctors;
- 5) reallocating responsibility for some activities or functions to more senior doctors or other personnel;
- 6) issuing directions in relation to working or not working unrostered overtime or performing or not performing particular activities;

- 7) identifying cultural barriers to claiming overtime and educating staff at all levels (administrative and medical) about the expectation of claiming overtime;
- 8) planning, forecasting or budgeting for the unrostered overtime to ensure that the Territory could meet any liability for unrostered overtime;
- 9) providing support where the need is identified; and
- 10) assessing performance and support needs of any Junior Medical Officers who may be regularly unable to complete their work within rostered hours.

347. To the extent that Dr Tham or Group Members engaged in the conduct in paragraphs 343 above, it was reasonable for the Territory to regard that conduct as amounting to the unclaimed overtime representations, to make the unclaimed overtime assumptions, and to rely on those assumptions as set out in paragraph 343 above, in circumstances in which Dr Tham and Group Members:

- (a) were obliged to comply with the Overtime Policy in relation to claiming payment for unrostered overtime, as set out in paragraphs 339 to 341 above;
- (b) were informed of those obligations by the Territory as set out in paragraph 340 above;
- (c) were capable of complying and should have complied with those obligations as set out in paragraph 341 above; and
- (d) were on notice that the Territory relied on the unclaimed overtime representations and the unclaimed overtime assumptions.

Particulars

Dr Tham and the Group Members were on notice including because:

- 1) they were not paid in relation to any purported attendance at work outside their ordinary hours of work other than during periods of rostered overtime and claimed unrostered overtime; and
- 2) their day-to-day work was autonomous, such that they could not reasonably expect the senior staff with authority to approve or require unrostered overtime on behalf of the Territory to have known they were working outside their ordinary hours unless they submitted a claim or otherwise brought that work to the Territory's attention.

348. The Territory would suffer detriment if Dr Tham and Group Members were permitted to assert to the contrary of any of the unapproved or unclaimed overtime assumptions, to the extent that any of those assumptions is incorrect (which is not admitted), being that:

- (a) the Territory would be required to make further payments to Dr Tham and Group Members in relation to unrostered overtime;
- (b) the Territory has lost the opportunity to investigate contemporaneously, any assertion that Dr Tham or Group Members had purportedly attended at work outside their ordinary hours of work other than during periods of rostered overtime and claimed unrostered overtime; and
- (c) further or alternatively, the Territory has lost the opportunity to avoid all or some of the unrostered overtime by taking the steps referred to in sub-paragraph 346(d) above,

which they did not take in reliance on the unclaimed overtime representations and the unclaimed overtime assumptions.

349. By reason of paragraphs 343 to 348 above, Dr Tham and Group Members are estopped from asserting that:

- (a) the unclaimed overtime assumptions were incorrect;
- (b) they were, or were requested or required to be, in attendance at Canberra Hospital to carry out functions that they had been called upon to perform on behalf of the Territory during any hours beyond those specified in their roster or otherwise the subject of claimed unrostered overtime; and
- (c) further, or alternatively, that the Territory has failed to keep adequate records of overtime worked (including, without limitation, for the purposes of s 535 of the *FW Act* and reg 3.34 of the *Fair Work Regulations*).

Date: 25 May 2023



Signed by Amy Sydney
Lawyer for the Territory

This pleading was prepared by Helen Tiplady and Franceska Leoncio, Counsel for the Territory.