

## NOTICE OF FILING AND HEARING

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

### Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	VID611/2021
File Title:	THE AUSTRALIAN SALARIED MEDICAL OFFICERS' FEDERATION & ANOR v EASTERN HEALTH & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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

Dated: 22/10/2021 11:13:36 AM AEDT

Registrar

### Important Information

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

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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



**Originating application starting a representative proceeding  
under Part IVA of the Federal Court of Australia Act 1976**

VID of 2021

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

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

**Eastern Health**

First Respondent

**The Royal Women's Hospital**

Second Respondent

To the Respondents

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Federal Court of Australia  
305 William Street  
Melbourne, Victoria, 300  
**Date:** October 2021

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Filed on behalf of: The Australian Salaried Medical Officers' Federation and another (**the Applicants**)  
Prepared by: Andrew Grech  
Law firm: Gordon Legal  
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Signed by an officer acting with the authority of  
the District Registrar



## Details of claim

On the grounds stated in the accompanying Statement of Claim, the First Applicant and Second Applicant claim the following relief on behalf of Group Members:

### *Against the First Respondent*

1. A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) that the First Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay Group Members overtime as required by clause 32.2 of the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013*.
2. A declaration pursuant s 21 of the *Federal Court of Australia Act 1976* (Cth) that the First Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay Group Members overtime as required by clause 36.2 of the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021*.
3. An order pursuant to s 545 of the *Fair Work Act 2009* (Cth) that the First Respondent pay compensation to Group Members for the loss suffered by each of them because of the contraventions described in paragraphs 1 and 2 above.
4. An order pursuant to s 547 of the *Fair Work Act 2009* (Cth) for interest on any amount ordered to be paid to Group Members under paragraph 3 above.
5. An order pursuant to s 546(1) of the *Fair Work Act 2009* (Cth) that the First Respondent pay pecuniary penalties for the contraventions of the *Fair Work Act 2009* (Cth) described above.
6. An order pursuant to s 546(3) of the *Fair Work Act 2009* (Cth) that any penalty ordered by the Court pursuant to s 546(1) be paid to the First Applicant.
7. Any other orders as the Court considers appropriate.

### *Against the Second Respondent*

8. A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) that the Second Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay Group Members overtime as required by clause 32.2 of the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013*.
9. A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) that the Second Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay



Group Members overtime as required by clause 36.2 of the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021*.

10. An order pursuant to s 545 of the *Fair Work Act 2009* (Cth) that the Second Respondent pay compensation to Group Members for the loss suffered by each of them because of the contraventions described in paragraphs 8 and 98 above.
11. An order pursuant to s 547 of the *Fair Work Act 2009* (Cth) for interest on any amount ordered to be paid to Group Members under paragraph 10 above.
12. An order pursuant to s 546(1) of the *Fair Work Act 2009* (Cth) that the Second Respondent pay pecuniary penalties for the contraventions of the *Fair Work Act 2009* (Cth) described above.
13. An order pursuant to s 546(3) of the *Fair Work Act 2009* (Cth) that any penalty ordered by the Court pursuant to s 546(1) be paid to the First Applicant.
14. Any other orders as the Court considers appropriate.

Further, on the grounds stated in the accompanying Statement of Claim, the Second Applicant claims the following relief:

*Against the First Respondent:*

15. A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) that the First Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay the Second Applicant overtime as required by clause 32.2 of the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013*.
16. An order pursuant to s 545 of the *Fair Work Act 2009* (Cth) that the First Respondent pay compensation to the Second Applicant for the loss suffered by her because of the contraventions described in paragraph 15 above.
17. An order pursuant to s 547 of the *Fair Work Act 2009* (Cth) for interest on any amount ordered to be paid to the Second Applicant under paragraph 16 above.
18. An order pursuant to s 546(1) of the *Fair Work Act 2009* (Cth) that the First Respondent pay pecuniary penalties for the contravention of the *Fair Work Act 2009* (Cth) described above.
19. An order pursuant to s 546(3) of the *Fair Work Act 2009* (Cth) that any penalty ordered by the Court pursuant to s 546(1) be paid to the First Applicant.



20. Any other orders as the Court considers appropriate.

*Against the Second Respondent:*

21. A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) that the Second Respondent contravened s 50 of the *Fair Work Act 2009* (Cth) by failing to pay the Second Applicant overtime as required by clause 36.2 of the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021*.
22. An order pursuant to s 545 of the *Fair Work Act 2009* (Cth) that the Second Respondent pay compensation to the Second Applicant for the loss suffered by her because of the contraventions described in paragraph 21 above.
23. An order pursuant to s 547 of the *Fair Work Act 2009* (Cth) for interest on any amount ordered to be paid to the Second Applicant under paragraph 22 above.
24. An order pursuant to s 546(1) of the *Fair Work Act 2009* (Cth) that the Second Respondent pay pecuniary penalties for each contravention of the *Fair Work Act 2009* (Cth) described above.
25. An order pursuant to s 546(3) of the *Fair Work Act 2009* (Cth) that any penalty ordered by the Court pursuant to s 546(1) be paid to the First Applicant.

**Questions Common to Claims of Group Members**

The questions of law or fact common to the claims of Group Members are:

*Duties of Group Members*

1. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, the preparation for ward rounds before the commencement of ward rounds.
2. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, the performance of ward rounds.
3. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, receiving or handing over information about patients between medical staff at the start or end of a shift.
4. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, the preparation of patients for medical procedures.



5. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, attending to medical emergencies or critical patient care.
6. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, the completion of patient medical records, including discharge summaries, in a timely manner.
7. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, speaking with patients and patients' families and visitors about patients' treatment.
8. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, undertaking patient admissions.
9. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, undertaking surgical procedures.
10. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, providing medical care to patients in a clinic.
11. Whether the duties and responsibilities of Group Members when providing medical services included, from time to time, carrying out such other duties necessary for the provision of medical services by the Doctor.

#### *Authorisation*

12. Whether authorisation to work overtime in excess of rostered hours, within the meaning of clause 32.2.1(b) of the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013*, is capable of being implied by the conduct of the First Respondent and the Second Respondent.
13. Whether authorisation to work overtime in excess of rostered hours, within the meaning of clause 36.2(a)(ii) of the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021*, is capable of being implied by the conduct of the First Respondent and the Second Respondent.



*Ward round preparation*

14. If the answer to common questions (1), (12) and (13) above is yes, whether authorisation to work overtime in excess of rostered hours by preparing for ward rounds before the commencement of ward rounds can be implied from some or all of:
- (a) the work performed by Group Members included ward round preparation before the commencement of ward rounds;
  - (b) a direction given by either or both of the First Respondent and the Second Respondent to Group Members to prepare for ward rounds before the commencement of ward rounds;
  - (c) the knowledge of either or both of the First Respondent and the Second Respondent that there was insufficient time during rostered hours to prepare for ward rounds, in accordance with the direction in (b) above;
  - (d) the knowledge of either or both of the First Respondent and the Second Respondent that Group Members worked overtime to prepare for ward rounds;
  - (e) the failure by either or both of the First Respondent and the Second Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

*Ward rounds*

15. If the answer to common questions (2), (12) and (13) above is yes, whether authorisation to work overtime in excess of rostered hours by undertaking ward rounds in excess of rostered hours can be implied from some or all of:
- (a) the work performed by Group Members included undertaking ward rounds;
  - (b) a direction given by either or both of the First Respondent and the Second Respondent to Group Members to undertake ward rounds outside of rostered hours;
  - (c) the knowledge of either or both of the First Respondent and the Second Respondent that there was insufficient time during rostered hours to undertake ward rounds in accordance with the direction in (b) above;





- (d) the knowledge of either or both of the First Respondent and the Second Respondent that Group Members worked overtime to undertake ward rounds;
- (e) the failure by either or both of the First Respondent and the Second Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

### *Handover*

16. If the answer to common questions (3), (12) and (13) above is yes, whether authorisation to work overtime in excess of rostered hours by conducting handover outside of rostered hours can be implied from some or all of:
- (a) the work performed by Group Members included conducting handover;
  - (b) a direction given by either or both of the First Respondent and the Second Respondent to Group Members to conduct handover outside of rostered hours;
  - (c) the knowledge of either or both of the First Respondent and the Second Respondent that there was insufficient time during rostered hours to conduct handover in accordance with the direction in (b) above;
  - (d) the knowledge of either or both of the First Respondent and the Second Respondent that Group Members worked overtime to undertake ward rounds;
  - (e) the failure by either or both of the First Respondent and the Second Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

### *Medical procedures preparation*

17. If the answer to common questions (4), (12) and (13) above is yes, whether authorisation to work overtime in excess of rostered hours by preparing for medical procedures outside of rostered hours can be implied from some or all of:
- (a) the work performed by Group Members included preparing for medical procedures;
  - (b) a direction given by either or both of the First Respondent and the Second Respondent to Group Members to prepare for medical procedures outside of rostered hours;



- (c) the knowledge of either or both of the First Respondent and the Second Respondent that there was insufficient time during rostered hours to prepare for medical procedures in accordance with the direction in (b) above;
- (d) the knowledge of either or both of the First Respondent and the Second Respondent that Group Members worked overtime to prepare for medical procedures;
- (e) the failure by either or both of the First Respondent and the Second Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

#### *Medical emergencies*

18. If the answer to common questions (5), (12) and (13) above is yes, whether authorisation to work overtime in excess of rostered hours by attending to medical emergencies outside of rostered hours can be implied from some or all of:
- (a) the work performed by Group Members included attending to medical emergencies;
  - (b) a direction given by either or both of the First Respondent and the Second Respondent to Group Members to attend to medical emergencies outside of rostered hours;
  - (c) the knowledge of either or both of the First Respondent and the Second Respondent that there was insufficient time during rostered hours to attend to medical emergencies in accordance with the direction in (b) above;
  - (d) the knowledge of either or both of the First Respondent and the Second Respondent that Group Members worked overtime to attend to medical emergencies;
  - (e) the failure by either or both of the First Respondent and the Second Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

#### *Medical records*

19. If the answer to common questions (6), (12) and (13) above is yes, whether authorisation to work overtime in excess of rostered hours by completing medical records in a timely manner can be implied from some or all of:



- (a) the work performed by Group Members included completing medical records in a timely manner;
- (b) a direction given by either or both of the First Respondent and the Second Respondent to Group Members to complete medical records in a timely manner;
- (c) the knowledge of either or both of the First Respondent and the Second Respondent that there was insufficient time during rostered hours to complete medical records in a timely manner in accordance with the direction in (b) above;
- (d) the knowledge of either or both of the First Respondent and the Second Respondent that Group Members worked overtime to complete medical record;
- (e) the failure by either or both of the First Respondent and the Second Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

*Medical communication*

20. If the answers to common questions (7), (12) and (13) above is yes, whether authorisation to work overtime in excess of rostered hours by speaking with patients and their families and visitors about patients' treatment can be implied from some or all of:
- (a) the work performed by Group Members included speaking with patients and their families and visitors about patients' treatment;
  - (b) a direction given by either or both of the First Respondent and the Second Respondent to Group Members to speak with patients and their families and visitors about patients' treatment;
  - (c) the knowledge of either or both of the First Respondent and the Second Respondent that there was insufficient time during rostered hours to speak with patients and their families and visitors about patients' treatment in accordance with the direction in (b) above;
  - (d) the knowledge of either or both of the First Respondent and the Second Respondent that Group Members worked overtime to speak with patients and their families and visitors about patients' treatment;



- (e) the failure by either or both of the First Respondent and the Second Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

*Patient admissions*

21. If the answer to common questions (8), (12) and (13) above is yes, whether authorisation to work overtime in excess of rostered hours by undertaking patient admissions can be implied from some or all of:
- (a) the work performed by Group Members included admitting patients;
  - (b) a direction given by the either or both of the First Respondent and the Second Respondent to Group Members to undertake patient admissions;
  - (c) the knowledge of either or both of the First Respondent and the Second Respondent that there was insufficient time during rostered hours to undertake patient admissions in accordance with the direction in (b) above;
  - (d) the knowledge of either or both of the First Respondent and the Second Respondent that Group Members worked overtime admitting patients;
  - (e) the failure by either or both of the First Respondent and the Second Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

*Surgical procedures*

22. If the answer to common questions (9) and (12) and (13) above is yes, whether authorisation to work overtime in excess of rostered hours by undertaking surgical procedures can be implied from some or all of:
- (a) the work performed by Group Members included undertaking surgical procedures;
  - (b) a direction given by either or both of the First Respondent and the Second Respondent to Group Members to undertake surgical procedures outside of rostered hours;
  - (c) the knowledge of either or both of the First Respondent and the Second Respondent that there was insufficient time during rostered hours to undertake surgical procedures in accordance with the direction in (b) above;



- (d) the knowledge of either or both of the First Respondent and the Second Respondent that Group Members worked overtime to undertake surgical procedures;
- (e) the failure by either or both of the First Respondent and the Second Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

*Outpatient care*

23. If the answer to common questions (10), (12) and (13) above is yes, whether authorisation to work overtime in excess of rostered hours by providing medical care to patients in a clinic can be implied from some or all of:
- (a) the work performed by Group Members included providing medical care to patients in a clinic;
  - (b) a direction given by either or both of the First Respondent and the Second Respondent to Group Members to provide medical care to patients in a clinic;
  - (c) the knowledge of either or both of the First Respondent and the Second Respondent that there was insufficient time during rostered hours to provide medical care to patients in a clinic, in accordance with the direction in (b) above;
  - (d) the knowledge of either or both of the First Respondent and the Second Respondent that Group Members worked overtime to provide medical care to patients in a clinic;
  - (e) the failure by either or both of the First Respondent and the Second Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

*Other medical services*

24. If the answer to common questions (11), (12) and (13) above is yes, whether authorisation to work overtime in excess of rostered hours by providing medical services (other than the medical services identified in common questions (1) to (10) above) (**other medical services**) outside of rostered hours can be implied from some or all of:
- (a) the work performed by Group Members included providing other medical services;



- (b) a direction given by either or both of the First Respondent and the Second Respondent to Group Members to provide other medical services outside of rostered hours;
- (c) the knowledge of either or both of the First Respondent and the Second Respondent that there was insufficient time during rostered hours to provide other medical services in accordance with the direction in (b) above;
- (d) the knowledge of either or both of the First Respondent and the Second Respondent that Group Members worked overtime to provide other medical services;
- (e) the failure by either or both of the First Respondent and the Second Respondent to direct Group Members not to perform overtime in complying with the direction in (b) above.

### **Representative action**

1. The Applicants bring this application as representative parties under Part IVA of the *Federal Court of Australia Act 1976* (Cth).
2. The group members to whom this proceeding relates are persons who, during the period 23 October 2015 and 22 October 2021:
  - (a) were employed by the First Respondent (**Eastern Health**); and
  - (b) worked at one or more of the following services operated by Eastern Health:
    - (i) Box Hill Hospital, 8 Arnold Street, Box Hill, Victoria, 3128;
    - (ii) Angliss Hospital, Albert Street, Upper Ferntree Gully, Victoria, 3156;
    - (iii) Healesville Hospital and Yarra Valley Health, 377 Maroondah Highway, Healesville, Victoria, 3777;
    - (iv) Maroondah Hospital, Davey Drive, Ringwood East, Victoria, 3135;
    - (v) Peter James Centre, corner Mahoneys Road and Burwood Highway, Burwood East, Victoria, 3151;
    - (vi) Turning Point Eastern Treatment Services, 110 Church Street, Richmond, Victoria, 3121;



- (vii) Wantirna Health, 251 Mountain Highway, Wantirna, Victoria, 3152; and★
  - (viii) Yarra Ranges Health, 25 Market Street, Lilydale, Victoria, 3140,
  - (c) and/or were employed by the Second Respondent (**Royal Women's**); and
  - (d) worked at one of more of the following services operated by Royal Women's:
    - (i) Royal Women's Hospital, 20 Flemington Road, Parkville, Victoria, 3052; and
    - (ii) Sandringham Hospital, 193 Bluff Road, Sandringham, Victoria, 3191,
  - (e) were, when employed by either or both of Eastern Health and Royal Women's covered by the *Victorian Public Health Sector (AMA Victoria) – Doctors in Training (Single Interest Employers) Enterprise Agreement 2013 (2013 Agreement)* until 6 August 2018, and from 7 August 2018, the *AMA Victoria – Victorian Public Health Sector – Doctors in Training Enterprise Agreement 2018–2021 (2018 Agreement)* within the meaning of the *Fair Work Act 2009 (Cth)*; and
  - (f) were, when employed by either or both of Eastern Health and Royal Women's, classified as a:
    - (i) Hospital Medical Officer;
    - (ii) Medical Officer (but not a Medical Officer classified as Solely Administrative under the 2013 Agreement or the 2018 Agreement);
    - (iii) Registrar,under the 2013 Agreement and/or the 2018 Agreement; and
  - (g) in the course of their employment by either or both of Eastern Health or Royal Women's, worked hours in excess of their ordinary hours, or rostered hours (unrostered overtime); and
  - (h) were not paid for the unrostered overtime hours worked.
3. As at the date of commencement of this proceeding, there are seven or more persons who have claims against the First Respondent, and claims against the Second Respondent, in respect of the matters set out in the statement of claim.

**Applicants' address**

The Applicants' address for service is: Gordon Legal  
Level 22, 181 William Street  
Melbourne VIC 3000

Email: [agrech@gordonlegal.com.au](mailto:agrech@gordonlegal.com.au)

The Applicants' address is: c/- Gordon Legal  
Level 22, 181 William Street  
Melbourne VIC 3000

**Service on the Respondents**

It is intended to serve this application on the Respondents.

Date: 22 October 2021

A handwritten signature in blue ink, appearing to read 'Andrew Grech', with a long horizontal stroke extending to the right.

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Signed by Andrew Grech  
Lawyer for the Applicants





**Schedule**

VID of 2021

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

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

Second Applicant: **Wendy Hodge**

First Respondent: **Eastern Health**

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

Date: 22 October 2021