

NOTICE OF FILING

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Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: VID760/2021
File Title: THE AUSTRALIAN SALARIED MEDICAL OFFICERS' FEDERATION
& ANOR v NORTHERN HEALTH
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 9/05/2022 9:54:52 AM AEST

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

Registrar

Important Information

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

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Defence

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

No. VID760/2021

The Australian Salaried Medical Officers' Federation

First Applicant

Michael John Hand

Second Applicant

Northern Health

Respondent

By way of defence to the statement of claim dated 20 December 2021 (**Statement of Claim**), the respondent says as follows:

Notes:

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

A THE PARTIES

A1 The applicants and the Group Members

1. As to paragraph 1, the respondent:

- (a) admits that the first applicant and the second applicant purport to bring this claim pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth);
- (b) in relation to the second applicant (**Dr Hand**):
 - (i) admits the allegations in sub-paragraphs (c) to (f);
 - (ii) does not admit the allegations in sub-paragraph (g) and (h);
- (c) in relation to the alleged Group Members:

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(i) admits that there were persons with the characteristics alleged in sub-paragraphs (c) to (f) (**Doctors in Training**);

(ii) otherwise does not admit the allegations in paragraph 1.

2. The respondent admits paragraph 2.

3. The respondent admits paragraph 3.

4. As to paragraph 4, the respondent:

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

(b) otherwise does not know and therefore cannot admit the allegations in paragraph 4.

A2 The respondent

5. The respondent admits paragraph 5.

B THE AGREEMENTS

B1 The 2013 Agreement

Application and coverage

6. The respondent admits paragraph 6.

Doctor Responsibilities

7. The respondent admits paragraph 7.

Hours of Work, Rostering, and Overtime

8. The respondent admits paragraph 8.

9. The respondent admits paragraph 9.

10. As to paragraph 10, the respondent:

(a) admits that the 2013 Agreement contains clauses 32.1, 32.2.1 and 32.2.2 as pleaded in the Statement of Claim;

(b) says further that the 2013 Agreement also contains the following clauses:

32.2.3 *Overtime may be converted into carer's leave in accordance with sub clause 47.3.3.*

32.3 Protocols – Authorised Un-rostered Overtime

32.3.1 *A Protocol must exist in the Hospital whereby overtime that cannot be authorised in advance but has been worked will be paid if it meets appropriate, clearly defined criteria.*

32.3.2 *The protocols described in sub clause 32.3.1 will be structured on the following basis:*

- (a) *the Doctor has performed the overtime due to a demonstrable clinical need and that need could not have been met by some other means;*
- (b) *authorisation of the overtime could not reasonably have been made in advance of the Doctor performing the work;*
- (c) *the Doctor has claimed for retrospective authorisation of overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;*
- (d) *the Doctor has recorded the reason for working the overtime and the duties performed in a form capable of Hospital audit and review; and*
- (e) *the claim for overtime must be reviewed by a Senior Doctor authorised by the Hospital to do so within 14 days of the claim being submitted.*

B2 The 2018 AgreementApplication and coverage

11. The respondent admits paragraph 11.

Doctor Responsibilities

12. The respondent admits paragraph 12.

Hours of Work, Rostering, and Overtime

13. The respondent admits paragraph 13.

14. The respondent admits paragraph 14.

15. As to paragraph 15, the respondent:

- (a) admits that the 2018 Agreement contains clauses 36.1, 36.2(a) to (c) as pleaded in the Statement of Claim;
- (b) says further that the 2018 Agreement also contains the following clauses:

36.2(d) *Overtime may be converted into carer's leave in accordance with subclause 61.3(c).*

36.3 Protocols - Authorised Un-rostered Overtime

- (a) *A Protocol must exist in the Health Service whereby overtime that cannot be authorised in advance but has been worked will be paid if it meets appropriate, clearly defined criteria.*
- (b) *The protocols described in sub clause 36.3(a) will be structured on the following basis:*
 - (i) *the Doctor has performed the overtime due to a demonstrable clinical need and that need could not have been met by some other means;*
 - (ii) *authorisation of the overtime could not reasonably have been made in advance of the Doctor performing the work;*
 - (iii) *the Doctor has claimed for retrospective authorisation of overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;*
 - (iv) *the Doctor has recorded the reason for working the overtime and the duties performed in a form capable of Health Service audit and review; and*
 - (v) *the claim for overtime must be reviewed by a Senior Doctor authorised by the Health Service to do so within 14 days of the claim being submitted.*

C DUTIES AND RESPONSIBILITIES OF DR HAND AND GROUP MEMBERS

16. As to paragraph 16, the respondent:

- (a) admits that during the Relevant Period, Dr Hand's duties and responsibilities when providing medical services included, from time to time:
 - (i) ward round preparation;
 - (ii) medical emergencies;
 - (iii) medical records;
 - (iv) medical communication;
 - (v) patient admissions; and
 - (vi) other medical services;
- (b) otherwise does not admit the allegations in paragraph 16.

D THE SECOND APPLICANT'S CLAIM

17. The respondent admits paragraph 17.

D1 First General Medicine Rotation – 15 January 2018 to 25 March 2018

18. The respondent admits paragraph 18.

Rosters

19. As to paragraph 19, the respondent:

- (a) admits that during the First General Medicine Rotation, Dr Hand was rostered to work as pleaded;
- (b) says further that, in accordance with cl. 26.1.2 of the 2013 Agreement, as pleaded in paragraph 9 above, the First General Medicine Rotation rosters factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 16 of the Defence.

Ward round preparation

20. As to paragraph 20, the respondent:

- (a) admits that Dr Hand's duties and responsibilities when providing medical services included undertaking ward round preparation;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the First General Medicine Rotation roster factored in and allowed time for undertaking ward round preparation;
- (c) otherwise denies the allegations in paragraph 20.

21. As to paragraph 21, the respondent:

- (a) says that there were occasions where Dr Hand was present at Northern Hospital during the First General Medicine Rotation outside of his rostered ordinary working hours;
- (b) says further that:
 - (i) in accordance with cl. 32.3 of the 2013 Agreement and cl 36.3 of the 2018 Agreement, Northern Health implemented a protocol for the authorisation of and remuneration for unrostered overtime, being overtime in excess of rostered ordinary working hours that was required due to a demonstrable operational or clinical need that could not be provided in some other way (**Unrostered Overtime**) (the **Overtime Protocol**);

Particulars

The Overtime Protocol was in writing and contained in the Junior Doctor Handbook (as amended from time to time), the Medical Staff – Junior Workforce Procedure document (as amended from time to time) and the Extended Duty Approval Form (**EDAF**) (as amended from time to time).

- (ii) any Doctor in Training who worked Unrostered Overtime could submit a claim for authorisation and remuneration for that Unrostered Overtime using an EDAF (**Overtime Claim**);
- (iii) in accordance with the Overtime Protocol, any Unrostered Overtime must be authorised by:
 - A. until September 2019, a Doctor in Training's Unit Consultant;
 - B. from September 2019, a Doctor in Training's Head of Unit and/or Divisional Directors;
- (iv) in accordance with the Overtime Protocol, any claim for payment for Unrostered Overtime must be submitted to the Junior Medical Workforce Unit (**JMWU**):
 - A. until September 2019, by the end of the pay cycle in which the Unrostered Overtime was worked;
 - B. from September 2019, by 4pm on the last Friday of the pay fortnight in which the Unrostered Overtime was worked;
- (v) on the proper construction of the Overtime Protocol, authorisation must be express, and not implied;
- (vi) Dr Hand was aware of the Overtime Protocol and Northern Health's approach to Unrostered Overtime;

Particulars

From 2018 the Junior Doctor Handbook was included on the NorthernDoctors website.

Information about the Overtime Protocol was available from Dr Hand's roster coordinator.

A verbal explanation of the Overtime Protocol and how to claim Overtime was given during Dr Hand's orientation, in addition to being included in the Junior Doctor Handbook.

- (vii) if Dr Hand performed ward round preparation overtime as pleaded in the Statement of Claim, he was able to submit an Overtime Claim;
 - (viii) during the First General Medicine Rotation, Dr Hand submitted Overtime Claims for Unrostered Overtime, which were approved, and Dr Hand has not identified any such claims for which he was not paid;
- (c) otherwise denies the allegations in paragraph 21.
22. As to paragraph 22, the respondent:
- (a) refers to and repeats paragraphs 20 and 21 above;
 - (b) otherwise does not admit the allegations in paragraph 22.
23. As to paragraph 23, the respondent:
- (a) refers to and repeats paragraphs 20 to 22 above;
 - (b) says that:
 - (i) whether Dr Hand was authorised to work any alleged ward round preparation overtime (including whether Dr Hand worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any ward round preparation overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him for such overtime, and Northern Health cannot properly plead without those particulars;
 - (c) otherwise denies the allegations in paragraph 23.
24. As to paragraph 24, the respondent:
- (a) refers to and repeats paragraphs 20 to 23 above;
 - (b) says further that:
 - (i) any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Hand make an Overtime Claim in relation to the overtime purportedly worked;

- (ii) Dr Hand has not provided particulars of any occasions on which he allegedly:
 - A. worked ward round preparation overtime;
 - B. sought and received authorisation for such overtime;
 - C. made an Overtime Claim for that ward round preparation overtime; and
 - D. was subsequently not paid;
- (iii) if Dr Hand did not make an Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:
 - A. Dr Hand did not work such overtime;
 - B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. Dr Hand was in attendance at the Northern Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;
- (c) otherwise denies the allegations in paragraph 24.

25. As to paragraph 25, the respondent:

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

Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;

- (b) otherwise denies the allegations in paragraph 25.

26. As to paragraph 26, the respondent

- (a) refers to and repeats paragraphs 20 to 25 above; and
- (b) otherwise denies the allegations in paragraph 26.

27. As to paragraph 27, the respondent
- (a) refers to and repeats paragraphs 20 to 25 above; and
 - (b) otherwise denies the allegations in paragraph 27.

Medical records

28. As to paragraph 28, the respondent:
- (a) admits that Dr Hand's duties and responsibilities when providing medical services included completing medical records;
 - (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the First General Medicine Rotation roster factored in and allowed time for the completion of medical records.
29. As to paragraph 29, the respondent:
- (a) refers to and repeats paragraph 21(b) above;
 - (b) says further that if Dr Hand performed medical records overtime as pleaded, he was entitled to submit an Overtime Claim;
 - (c) otherwise denies the allegations in paragraph 29.
30. As to paragraph 30, the respondent:
- (a) refers to and repeats paragraphs 28 and 29 above;
 - (b) otherwise denies the allegations in paragraph 30.
31. As to paragraph 31, the respondent:
- (a) refers to and repeats paragraphs 28 to 30 above;
 - (b) says that:
 - (i) whether Dr Hand was authorised to work any alleged medical records overtime (including whether Dr Hand worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any medical records overtime by the end of the pay cycle in which the Unrostered Overtime was worked;

(iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him for such overtime, and Northern Health cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 31.

32. As to paragraph 32, the respondent:

(a) refers to and repeats paragraphs 28 to 31 above;

(b) says further that:

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

(ii) Dr Hand has not provided particulars of any occasions on which he allegedly:

A. worked medical records overtime;

B. sought and received authorisation for such overtime;

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

D. was subsequently not paid;

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

A. Dr Hand did not work such overtime;

B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

C. Dr Hand was in attendance at the Northern Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;

(c) otherwise denies the allegations in paragraph 32.

33. As to paragraph 33, the respondent:

(a) says that if:

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

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

Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;

(b) otherwise denies the allegations in paragraph 33.

34. As to paragraph 34, the respondent:

(a) refers to and repeats paragraphs 28 to 33 above; and

(b) otherwise denies the allegations in paragraph 34.

35. As to paragraph 35, the respondent:

(a) refers to and repeats paragraphs 28 to 33 above; and

(b) otherwise denies the allegations in paragraph 35.

Medical Communications

36. As to paragraph 36, the respondent:

(a) admits that Dr Hand's duties and responsibilities when providing medical services included completing medical communications;

(b) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the First General Medicine Rotation roster factored in and allowed time for the completion of medical communication.

37. As to paragraph 37, the respondent:

(a) refers to and repeats paragraph 21(b) above;

(b) says further that if Dr Hand performed medical communication overtime as pleaded, he was entitled to submit an Overtime Claim;

(c) otherwise denies the allegations in paragraph 37.

38. As to paragraph 38, the respondent:

(a) refers to and repeats paragraphs 36 and 37 above;

(b) otherwise denies the allegations in paragraph 38.

39. As to paragraph 39, the respondent:

(a) refers to and repeats paragraphs 36 to 38 above;

(b) says that:

- (i) whether Dr Hand was authorised to work any alleged medical communication overtime (including whether Dr Hand worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any medical communication overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
- (iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of medical communication overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him for such overtime, and Northern Health cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 39.

40. As to paragraph 40, the respondent:

(a) refers to and repeats paragraphs 36 to 39 above;

(b) says further that:

- (i) any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Hand make an Overtime Claim in relation to the overtime purportedly worked;
- (ii) Dr Hand has not provided particulars of any occasions on which he allegedly:
 - A. worked medical communication overtime;
 - B. sought and received authorisation for such overtime;
 - C. made an Overtime Claim for that medical communications overtime; and
 - D. was subsequently not paid;
- (iii) if Dr Hand did not make an Overtime Claim in respect of the alleged medical communication overtime, then it ought be concluded that either:

- A. Dr Hand did not work such overtime;
- B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- C. Dr Hand was in attendance at the Northern Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;

(c) otherwise denies the allegations in paragraph 40.

41. As to paragraph 41, the respondent:

(a) says that if:

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

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

Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;

(b) otherwise denies the allegations in paragraph 41.

42. As to paragraph 42, the respondent:

(a) refers to and repeats paragraphs 36 to 41 above; and

(b) otherwise denies the allegations in paragraph 42.

43. As to paragraph 43, the respondent:

(a) refers to and repeats paragraphs 36 to 41 above; and

(b) otherwise denies the allegations in paragraph 43.

Other medical services

44. As to paragraph 44, the respondent:

(a) admits that Dr Hand's duties and responsibilities when providing medical services included completing patient care;

- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement, the First General Medicine Rotation roster factored in and allowed time for the completion of other medical services including patient care.

45. As to paragraph 45, the respondent:

- (a) refers to and repeats paragraph 21(b) above;
- (b) says further that if Dr Hand performed patient care overtime as pleaded, he was entitled to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 45.

46. As to paragraph 46, the respondent:

- (a) refers to and repeats paragraphs 44 and 45 above;
- (b) otherwise denies the allegations in paragraph 46.

47. As to paragraph 47, the respondent:

- (a) refers to and repeats paragraphs 44 to 46 above;
- (b) says that:
 - (i) whether Dr Hand was authorised to work any alleged patient care overtime (including whether Dr Hand worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any patient care overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of patient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him for such overtime, and Northern Health cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 47.

48. As to paragraph 48, the respondent:

- (a) refers to and repeats paragraphs 44 to 47 above;
- (b) says further that:

- (i) any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Hand make an Overtime Claim in relation to the overtime purportedly worked;
- (ii) Dr Hand has not provided particulars of any occasions on which he allegedly:
 - A. worked patient care overtime;
 - B. sought and received authorisation for such overtime;
 - C. made an Overtime Claim for that patient care overtime; and
 - D. was subsequently not paid;
- (iii) if Dr Hand did not make an Overtime Claim in respect of the alleged patient care overtime, then it ought be concluded that either:
 - A. Dr Hand did not work such overtime;
 - B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. Dr Hand was in attendance at the Northern Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;
- (c) otherwise denies the allegations in paragraph 48.

49. As to paragraph 49, the respondent:

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

Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;

- (b) otherwise denies the allegations in paragraph 49.

50. As to paragraph 50, the respondent:

- (a) refers to and repeats paragraphs 44 to 49 above; and
- (b) otherwise denies the allegations in paragraph 50.

51. As to paragraph 51, the respondent:

- (a) refers to and repeats paragraphs 44 to 49 above; and
- (b) otherwise denies the allegations in paragraph 51.

D2 Psychiatric rotation - 4 June 2018 to 12 August 2018

52. The respondent admits paragraph 52.

Rosters

53. As to paragraph 53, the respondent:

- (a) admits paragraph 53;
- (b) says further that, in accordance with cl. 26.1.2 of the 2013 Agreement, as pleaded in paragraph 9 above, the Psychiatric Rotation rosters factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 16 of the Defence.

Medical records

54. As to paragraph 54, the respondent:

- (a) admits that Dr Hand's duties and responsibilities when providing medical services included completing medical records;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, the Psychiatric Rotation roster factored in and allowed time for the completion of medical records.

55. As to paragraph 55, the respondent:

- (a) refers to and repeats paragraph 21(b) above;
- (b) says further that if Dr Hand performed medical records overtime as pleaded, he was entitled to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 55.

56. As to paragraph 56, the respondent:

- (a) refers to and repeats paragraphs 54 and 55 above;

(b) otherwise denies the allegations in paragraph 56.

57. As to paragraph 57, the respondent:

(a) refers to and repeats paragraphs 54 to 56 above;

(b) says that:

- (i) whether Dr Hand was authorised to work any alleged medical records overtime (including whether Dr Hand worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
- (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any medical records overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
- (iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him for such overtime, and Northern Health cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 57.

58. As to paragraph 58, the respondent:

(a) refers to and repeats paragraphs 54 to 57 above;

(b) says further that:

- (i) any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Hand make an Overtime Claim in relation to the overtime purportedly worked;
- (ii) Dr Hand has not provided particulars of any occasions on which he allegedly:
 - A. worked medical records overtime;
 - B. sought and received authorisation for such overtime;
 - C. made an Overtime Claim for that medical records overtime; and
 - D. was subsequently not paid;
- (iii) if Dr Hand did not make an Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:

- A. Dr Hand did not work such overtime;
- B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
- C. Dr Hand was in attendance at the Northern Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;

(c) otherwise denies the allegations in paragraph 58.

59. As to paragraph 59, the respondent:

(a) says that if:

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

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

Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;

(b) otherwise denies the allegations in paragraph 59.

60. As to paragraph 60, the respondent:

(a) refers to and repeats paragraphs 54 to 59 above; and

(b) otherwise denies the allegations in paragraph 60.

61. As to paragraph 61, the respondent:

(a) refers to and repeats paragraphs 54 to 59 above; and

(b) otherwise denies the allegations in paragraph 61.

Other medical services

62. As to paragraph 62, the respondent:

(a) admits that Dr Hand's duties and responsibilities when providing medical services included completing patient care;

- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, the Psychiatric Rotation roster factored in and allowed time for the completion of other medical services including patient care.

63. As to paragraph 63, the respondent:

- (a) refers to and repeats paragraph 21(b) above;
- (b) says further that if Dr Hand performed patient care overtime as pleaded, he was entitled to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 63.

64. As to paragraph 64, the respondent:

- (a) refers to and repeats paragraphs 62 and 63 above;
- (b) otherwise denies the allegations in paragraph 64.

65. As to paragraph 65, the respondent:

- (a) refers to and repeats paragraphs 62 to 64 above;
- (b) says that:
 - (i) whether Dr Hand was authorised to work any alleged patient care overtime (including whether Dr Hand worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any patient care overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of patient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him for such overtime, and Northern Health cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 65.

66. As to paragraph 66, the respondent:

- (a) refers to and repeats paragraphs 62 to 65 above;
- (b) says further that:

- (i) any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Hand make an Overtime Claim in relation to the overtime purportedly worked;
- (ii) Dr Hand has not provided particulars of any occasions on which he allegedly:
 - A. worked patient care overtime;
 - B. sought and received authorisation for such overtime;
 - C. made an Overtime Claim for that patient care overtime; and
 - D. was subsequently not paid;
- (iii) if Dr Hand did not make an Overtime Claim in respect of the alleged patient care overtime, then it ought be concluded that either:
 - A. Dr Hand did not work such overtime;
 - B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. Dr Hand was in attendance at the Northern Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;
- (c) otherwise denies the allegations in paragraph 66.

67. As to paragraph 67, the respondent:

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

Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;

- (b) otherwise denies the allegations in paragraph 67.

68. As to paragraph 68, the respondent:

- (a) refers to and repeats paragraphs 62 to 67 above; and
- (b) otherwise denies the allegations in paragraph 68.

69. As to paragraph 69, the respondent:

- (a) refers to and repeats paragraphs 62 to 67 above; and
- (b) otherwise denies the allegations in paragraph 69.

D3 Second General Medicine Rotation – 22 October 2018 to 3 February 2019

70. The respondent admits paragraph 70.

Rosters

71. As to paragraph 71, the respondent:

- (a) admits that during the Second General Medicine Rotation, Dr Hand was rostered to work as pleaded;
- (b) says further that, in accordance with cl. 35.1(b) of the 2018 Agreement, as pleaded in paragraph 13 above, the Second General Medicine Rotation rosters factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 16 of the Defence.

Ward round preparation

72. As to paragraph 72, the respondent:

- (a) admits that Dr Hand's duties and responsibilities when providing medical services included undertaking ward round preparation;
- (b) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second General Medicine Rotation roster factored in and allowed time for undertaking ward round preparation;
- (c) otherwise denies the allegations in paragraph 72.

73. As to paragraph 73, the respondent:

- (a) says that there were occasions where Dr Hand was present at Northern Hospital during the Second General Medicine Rotation outside of his rostered ordinary working hours;
- (b) refers to and repeats paragraph 21(b) above;

- (c) says further that during the Second General Medicine Rotation, Dr Hand submitted Overtime Claims for Unrostered Overtime which were approved and paid;

Particulars

The Overtime Claims made by Dr Hand and approved during the Second General Medicine Rotation included those set out in the table below:

Date overtime worked	Period for which unrostered overtime paid	Total hours of overtime claimed	Date paid
25.10.2018	20.30-21.30	1.00	12.12.2018
26.10.2018	17.00-19.00	2.00	12.12.2018
2.11.2018	17.00-18.00	1.00	12.12.2018

- (d) otherwise denies the allegations in paragraph 73.

74. As to paragraph 74, the respondent:

- (a) refers to and repeats paragraphs 72 and 73 above;
- (b) otherwise does not admit the allegations in paragraph 74.

75. As to paragraph 75, the respondent:

- (a) refers to and repeats paragraphs 72 to 74 above;
- (b) says that:
- (i) whether Dr Hand was authorised to work any alleged ward round preparation overtime (including whether Dr Hand worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any ward round preparation overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation

given to him for such overtime, and Northern Health cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 75.

76. As to paragraph 76, the respondent:

(a) refers to and repeats paragraphs 72 to 75 above;

(b) says further that:

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

(ii) save for the Overtime Claims which were paid during the Second General Medicine Rotation, Dr Hand has not provided particulars of any occasions on which he allegedly:

A. worked ward round preparation overtime;

B. sought and received authorisation for such overtime;

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

D. was subsequently not paid;

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

A. Dr Hand did not work such overtime;

B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

C. Dr Hand was in attendance at the Northern Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;

(c) otherwise denies the allegations in paragraph 76.

77. As to paragraph 77, the respondent:

- (a) says that if:
 - (i) Dr Hand had made a further Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,

Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;
- (b) otherwise denies the allegations in paragraph 77.

78. As to paragraph 78, the respondent:

- (a) refers to and repeats paragraphs 72 to 77 above; and
- (b) otherwise denies the allegations in paragraph 78.

79. As to paragraph 79, the respondent:

- (a) refers to and repeats paragraphs 72 to 77 above; and
- (b) otherwise denies the allegations in paragraph 79.

Medical records

80. As to paragraph 80, the respondent:

- (a) admits that Dr Hand's duties and responsibilities when providing medical services included completing medical records;
- (b) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second General Medicine Rotation roster factored in and allowed time for the completion of medical records.

81. As to paragraph 81, the respondent:

- (a) refers to and repeats paragraph 21(b) and 73(c) above;
- (b) says further that if Dr Hand performed medical records overtime as pleaded, he was entitled to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 81.

82. As to paragraph 82, the respondent:

- (a) refers to and repeats paragraphs 80 and 81 above;
- (b) otherwise denies the allegations in paragraph 82.

83. As to paragraph 83, the respondent:

- (a) refers to and repeats paragraphs 80 to 82 above;
- (b) says that:
 - (i) whether Dr Hand was authorised to work any alleged medical records overtime (including whether Dr Hand worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any medical records overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him for such overtime, and Northern Health cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 83.

84. As to paragraph 84, the respondent:

- (a) refers to and repeats paragraphs 80 to 83 above;
- (b) says further that:
 - (i) any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Hand make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) Dr Hand has not provided particulars of any occasions on which he allegedly:
 - A. worked medical records overtime;
 - B. sought and received authorisation for such overtime;
 - C. made an Overtime Claim for that medical records overtime; and
 - D. was subsequently not paid;
 - (iii) if Dr Hand did not make an Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
 - A. Dr Hand did not work such overtime;

- B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. Dr Hand was in attendance at the Northern Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;
- (c) otherwise denies the allegations in paragraph 84.
85. As to paragraph 85, the respondent:
- (a) says that if:
 - (i) Dr Hand had made a further Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol, Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;
 - (b) otherwise denies the allegations in paragraph 85.
86. As to paragraph 86, the respondent:
- (a) refers to and repeats paragraphs 80 to 85 above; and
 - (b) otherwise denies the allegations in paragraph 86.
87. As to paragraph 87, the respondent:
- (a) refers to and repeats paragraphs 80 to 85 above; and
 - (b) otherwise denies the allegations in paragraph 87.

Medical Communications

88. As to paragraph 88, the respondent:
- (a) admits that Dr Hand's duties and responsibilities when providing medical services included completing medical communications;

- (b) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second General Medicine Rotation roster factored in and allowed time for the completion of medical communication.

89. As to paragraph 89, the respondent:

- (a) refers to and repeats paragraph 21(b) and 73(c) above;
- (b) says further that if Dr Hand performed medical communication overtime as pleaded, he was entitled to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 89.

90. As to paragraph 90, the respondent:

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

91. As to paragraph 91, the respondent:

- (a) refers to and repeats paragraphs 88 to 90 above;
- (b) says that:
 - (i) whether Dr Hand was authorised to work any alleged medical communication overtime (including whether Dr Hand worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any medical communication overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of medical communication overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him for such overtime, and Northern Health cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 91.

92. As to paragraph 92, the respondent:

- (a) refers to and repeats paragraphs 88 to 91 above;

- (b) says further that:
- (i) any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Hand make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) Dr Hand has not provided particulars of any occasions on which he allegedly:
 - A. worked medical communication overtime;
 - B. sought and received authorisation for such overtime;
 - C. made an Overtime Claim for that medical communications overtime; and
 - D. was subsequently not paid;
 - (iii) if Dr Hand did not make an Overtime Claim in respect of the alleged medical communication overtime, then it ought be concluded that either:
 - A. Dr Hand did not work such overtime;
 - B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. Dr Hand was in attendance at the Northern Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
 - (iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;
- (c) otherwise denies the allegations in paragraph 92.

93. As to paragraph 93, the respondent:

- (a) says that if:
- (i) Dr Hand had made a further Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,
- Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;
- (b) otherwise denies the allegations in paragraph 93.

94. As to paragraph 94, the respondent:
- (a) refers to and repeats paragraphs 88 to 93 above; and
 - (b) otherwise denies the allegations in paragraph 94.

95. As to paragraph 95, the respondent:
- (a) refers to and repeats paragraphs 88 to 93 above; and
 - (b) otherwise denies the allegations in paragraph 95.

Other medical services

96. As to paragraph 96, the respondent:
- (a) admits that Dr Hand's duties and responsibilities when providing medical services included completing patient care;
 - (b) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Second General Medicine Rotation roster factored in and allowed time for the completion of other medical services including patient care.

97. As to paragraph 97, the respondent:
- (a) refers to and repeats paragraph 21(b) and 73(c) above;
 - (b) says further that if Dr Hand performed patient care overtime as pleaded, he was entitled to submit an Overtime Claim;
 - (c) otherwise denies the allegations in paragraph 97.

98. As to paragraph 98, the respondent:
- (a) refers to and repeats paragraphs 96 and 97 above;
 - (b) otherwise denies the allegations in paragraph 98.

99. As to paragraph 99, the respondent:
- (a) refers to and repeats paragraphs 96 to 98 above;
 - (b) says that:
 - (i) whether Dr Hand was authorised to work any alleged patient care overtime (including whether Dr Hand worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any patient care overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of patient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him for such overtime, and Northern Health cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 99.

100. As to paragraph 100, the respondent:

- (a) refers to and repeats paragraphs 96 to 99 above;
- (b) says further that:
 - (i) any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Hand make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) Dr Hand has not provided particulars of any occasions on which he allegedly:
 - A. worked patient care overtime;
 - B. sought and received authorisation for such overtime;
 - C. made an Overtime Claim for that patient care overtime; and
 - D. was subsequently not paid;
 - (iii) if Dr Hand did not make an Overtime Claim in respect of the alleged patient care overtime, then it ought be concluded that either:
 - A. Dr Hand did not work such overtime;
 - B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. Dr Hand was in attendance at the Northern Hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;

(c) otherwise denies the allegations in paragraph 100.

101. As to paragraph 101, the respondent:

(a) says that if:

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

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

Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;

(b) otherwise denies the allegations in paragraph 101.

102. As to paragraph 102, the respondent:

(a) refers to and repeats paragraphs 96 to 101 above; and

(b) otherwise denies the allegations in paragraph 102.

103. As to paragraph 103, the respondent:

(a) refers to and repeats paragraphs 96 to 101 above; and

(b) otherwise denies the allegations in paragraph 103.

D4 Geriatrics Rotation - 4 February 2019 to 5 May 2019

104. The respondent admits paragraph 104.

Rosters

105. As to paragraph 105, the respondent:

- (a) admits that during the Geriatrics Rotation, Dr Hand was rostered to work as pleaded;
- (b) says further that during the Geriatrics Rotation, Dr Hand was on call for one weekend every month;
- (c) says further that, in accordance with cl. 35.1(b) of the 2018 Agreement, as pleaded in paragraph 13 above, the Geriatrics Rotation rosters factored in and allowed time for the performance of the duties and responsibilities admitted at paragraph 16 of the Defence.

Ward round preparation

106. As to paragraph 106, the respondent:

- (a) admits that Dr Hand's duties and responsibilities when providing medical services included undertaking ward round preparation;
- (b) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Geriatrics Rotation roster factored in and allowed time for undertaking ward round preparation;
- (c) otherwise denies the allegations in paragraph 106.

107. As to paragraph 107, the respondent:

- (a) says that there were occasions where Dr Hand was present at Bundoora Subacute Care Centre during the Geriatrics Rotation outside of his rostered ordinary working hours;
- (b) refers to and repeats paragraph 21(b) and 73(c) above;
- (c) says further that during the Geriatrics Rotation, Dr Hand submitted Overtime Claims for Unrostered Overtime, which were approved and paid;

Particulars

The Overtime Claims made by Dr Hand and approved during the Geriatrics Rotation included those set out in the table below:

Date overtime worked	Period for which unrostered overtime paid	Total hours of overtime claimed	Date paid
8.2.2019	20.00-22.30	2.5	06.03.2019
19.2.2019	20.00-22.00	2	03.04.2019
20.2.2019	02.30-05.30	3	01.05.2019

21.2.2019	17.00-18.00	1	03.04.2019
8.3.2019	20.00-23.00	3.00	03.04.2019
19.3.2019	20.00-23.00	3.00	03.04.2019
21.3.2019	17.00-20.00	3.00	03.04.2019

(d) otherwise denies the allegations in paragraph 107.

108. As to paragraph 108, the respondent:

- (a) refers to and repeats paragraphs 106 and 107 above;
- (b) otherwise does not admit the allegations in paragraph 108.

109. As to paragraph 109, the respondent:

- (a) refers to and repeats paragraphs 106 to 108 above;
- (b) says that:
 - (i) whether Dr Hand was authorised to work any alleged ward round preparation overtime (including whether Dr Hand worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any ward round preparation overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him for such overtime, and Northern Health cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 109.

110. As to paragraph 110, the respondent:

- (a) refers to and repeats paragraphs 106 to 109 above;
- (b) says further that:

- (i) any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Hand make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) save for the Overtime Claims which were paid during the Geriatrics Rotation, Dr Hand has not provided particulars of any occasions on which he allegedly:
 - A. worked ward round preparation overtime;
 - B. sought and received authorisation for such overtime;
 - C. made an Overtime Claim for that ward round preparation overtime; and
 - D. was subsequently not paid;
 - (iii) if Dr Hand did not make an Overtime Claim in respect of the alleged ward round preparation overtime, then it ought be concluded that either:
 - A. Dr Hand did not work such overtime;
 - B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. Dr Hand was in attendance at Bundoora Subacute Care Centre for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
 - (iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;
- (c) otherwise denies the allegations in paragraph 110.

111. As to paragraph 111, the respondent:

- (a) says that if:
 - (i) Dr Hand had made a further Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,

Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;
- (b) otherwise denies the allegations in paragraph 111.

112. As to paragraph 112, the respondent

- (a) refers to and repeats paragraphs 106 to 111 above; and
- (b) otherwise denies the allegations in paragraph 112.

113. As to paragraph 113, the respondent

- (a) refers to and repeats paragraphs 106 to 111 above; and
- (b) otherwise denies the allegations in paragraph 113.

Medical records

114. As to paragraph 114, the respondent:

- (a) admits that Dr Hand's duties and responsibilities when providing medical services included completing medical records;
- (b) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Geriatrics Rotation roster factored in and allowed time for the completion of medical records.

115. As to paragraph 115, the respondent:

- (a) refers to and repeats paragraph 21(b), 73(c) and 107(c) above;
- (b) says further that if Dr Hand performed medical records overtime as pleaded, he was entitled to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 115.

116. As to paragraph 116, the respondent:

- (a) refers to and repeats paragraphs 114 and 115 above;
- (b) otherwise denies the allegations in paragraph 116.

117. As to paragraph 117, the respondent:

- (a) refers to and repeats paragraphs 114 to 116 above;
- (b) says that:
 - (i) whether Dr Hand was authorised to work any alleged medical records overtime (including whether Dr Hand worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any medical records overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him for such overtime, and Northern Health cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 117.

118. As to paragraph 118, the respondent:

- (a) refers to and repeats paragraphs 114 to 117 above;
- (b) says further that:
 - (i) any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Hand make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) Dr Hand has not provided particulars of any occasions on which he allegedly:
 - A. worked medical records overtime;
 - B. sought and received authorisation for such overtime;
 - C. made an Overtime Claim for that medical records overtime; and
 - D. was subsequently not paid;
 - (iii) if Dr Hand did not make an Overtime Claim in respect of the alleged medical records overtime, then it ought be concluded that either:
 - A. Dr Hand did not work such overtime;
 - B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. Dr Hand was in attendance at the Bundoora Subacute Care Centre for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;

(c) otherwise denies the allegations in paragraph 118.

119. As to paragraph 119, the respondent:

(a) says that if:

(i) Dr Hand had made a further Overtime Claim; and

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

Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;

(b) otherwise denies the allegations in paragraph 119.

120. As to paragraph 120, the respondent:

(a) refers to and repeats paragraphs 114 to 119 above; and

(b) otherwise denies the allegations in paragraph 120.

121. As to paragraph 121, the respondent:

(a) refers to and repeats paragraphs 114 to 119 above; and

(b) otherwise denies the allegations in paragraph 121.

Medical Communications

122. As to paragraph 122, the respondent:

(a) admits that Dr Hand's duties and responsibilities when providing medical services included completing medical communications;

(b) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Geriatrics Rotation roster factored in and allowed time for the completion of medical communication.

123. As to paragraph 123, the respondent:

(a) refers to and repeats paragraph 21(b), 73(c) and 107(c) above;

(b) says further that if Dr Hand performed medical communication overtime as pleaded, he was entitled to submit an Overtime Claim;

(c) otherwise denies the allegations in paragraph 123.

124. As to paragraph 124, the respondent:

(a) refers to and repeats paragraphs 122 and 123 above;

(b) otherwise denies the allegations in paragraph 124.

125. As to paragraph 125, the respondent:

(a) refers to and repeats paragraphs 122 to 124 above;

(b) says that:

(i) whether Dr Hand was authorised to work any alleged medical communication overtime (including whether Dr Hand worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

(ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any medical communication overtime by the end of the pay cycle in which the Unrostered Overtime was worked;

(iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of medical communication overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him for such overtime, and Northern Health cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 125.

126. As to paragraph 126, the respondent:

(a) refers to and repeats paragraphs 122 to 125 above;

(b) says further that:

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

(ii) Dr Hand has not provided particulars of any occasions on which he allegedly:

A. worked medical communication overtime;

B. sought and received authorisation for such overtime;

- C. made an Overtime Claim for that medical communication overtime; and
 - D. was subsequently not paid;
- (iii) if Dr Hand did not make an Overtime Claim in respect of the alleged medical communication overtime, then it ought be concluded that either:
- A. Dr Hand did not work such overtime;
 - B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. Dr Hand was in attendance at Bundoora Subacute Care Centre for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;
- (c) otherwise denies the allegations in paragraph 126.

127. As to paragraph 127, the respondent:

- (a) says that if:
 - (i) Dr Hand had made a further Overtime Claim; and
 - (ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,

Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;
- (b) otherwise denies the allegations in paragraph 127.

128. As to paragraph 128, the respondent:

- (a) refers to and repeats paragraphs 122 to 127 above; and
- (b) otherwise denies the allegations in paragraph 128.

129. As to paragraph 129, the respondent:

- (a) refers to and repeats paragraphs 122 to 127 above; and
- (b) otherwise denies the allegations in paragraph 129.

Admissions

130. As to paragraph 130, the respondent:

- (a) admits that Dr Hand's duties and responsibilities when providing medical services included completing admissions;
- (b) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Geriatrics Rotation roster factored in and allowed time for the completion of admissions.

131. As to paragraph 131, the respondent:

- (a) refers to and repeats paragraph 21(b), 73(c) and 107(c) above;
- (b) says further that if Dr Hand performed admissions overtime as pleaded, he was entitled to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 131.

132. As to paragraph 132, the respondent:

- (a) refers to and repeats paragraphs 130 and 131 above;
- (b) says that pursuant to the Overtime Protocol, Overtime Claims must be made in writing and cannot be implied from oral requests;
- (c) otherwise denies the allegations in paragraph 132.

133. As to paragraph 133, the respondent:

- (a) refers to and repeats paragraphs 130 to 132 above;
- (b) says that:
 - (i) whether Dr Hand was authorised to work any alleged admissions overtime (including whether Dr Hand worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any admissions overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of admissions overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him

for such overtime, and Northern Health cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 133.

134. As to paragraph 134, the respondent:

(a) refers to and repeats paragraphs 130 to 133 above;

(b) says further that:

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

(ii) Dr Hand has not provided particulars of any occasions on which he allegedly:

A. worked admissions overtime;

B. sought and received authorisation for such overtime;

C. made an Overtime Claim for that admissions overtime; and

D. was subsequently not paid;

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

A. Dr Hand did not work such overtime;

B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

C. Dr Hand was in attendance at Bundoora Subacute Care Centre for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;

(c) otherwise denies the allegations in paragraph 134.

135. As to paragraph 135, the respondent:

(a) says that if:

- (i) Dr Hand had made a further Overtime Claim; and
- (ii) the Overtime Claim satisfied the criteria set out in the Overtime Protocol,

Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;

- (b) otherwise denies the allegations in paragraph 135.

136. As to paragraph 136, the respondent:

- (a) refers to and repeats paragraphs 130 to 135 above; and
- (b) otherwise denies the allegations in paragraph 136.

137. As to paragraph 137, the respondent:

- (a) refers to and repeats paragraphs 130 to 135 above; and
- (b) otherwise denies the allegations in paragraph 137.

Medical Emergencies

138. As to paragraph 138, the respondent:

- (a) admits that Dr Hand's duties and responsibilities when providing medical services included attending to medical emergencies;
- (b) says that in accordance with cl. 35.1(b) of the 2018 Agreement, the Geriatrics Rotation roster factored in and allowed time for attendance at medical emergencies.

139. As to paragraph 139, the respondent:

- (a) refers to and repeats paragraph 21(b), 73(c) and 107(c) above;
- (b) says further that if Dr Hand performed medical emergencies overtime as pleaded, he was entitled to submit an Overtime Claim;
- (c) otherwise denies the allegations in paragraph 139.

140. As to paragraph 140, the respondent:

- (a) refers to and repeats paragraphs 138 and 139 above;
- (b) otherwise denies the allegations in paragraph 140.

141. As to paragraph 141, the respondent:

- (a) refers to and repeats paragraphs 138 to 140 above;
- (b) says that:
 - (i) whether Dr Hand was authorised to work any alleged medical emergencies overtime (including whether Dr Hand worked the overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, Dr Hand was required to seek authorisation and to submit an Overtime Claim for any medical emergencies overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) Dr Hand has not provided particulars of the circumstances of each alleged occasion of medical emergencies overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him for such overtime, and Northern Health cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 141.

142. As to paragraph 142, the respondent:

- (a) refers to and repeats paragraphs 138 to 141 above;
- (b) says further that:
 - (i) any entitlement to payment for Unrostered Overtime is subject to the condition that Dr Hand make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) Dr Hand has not provided particulars of any occasions on which he allegedly:
 - A. worked medical emergencies overtime;
 - B. sought and received authorisation for such overtime;
 - C. made an Overtime Claim for that medical emergencies overtime; and
 - D. was subsequently not paid;
 - (iii) if Dr Hand did not make an Overtime Claim in respect of the alleged medical emergencies overtime, then it ought be concluded that either:
 - A. Dr Hand did not work such overtime;

B. Dr Hand was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

C. Dr Hand was in attendance at Bundoora Subacute Care Centre for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iv) further or alternatively, Dr Hand is estopped from asserting the contrary of the matters in subparagraphs (iii)(A) and (iii)(B) above for the reasons in paragraphs 229 to 240 below;

(c) otherwise denies the allegations in paragraph 142.

143. As to paragraph 143, the respondent:

(a) says that if:

(i) Dr Hand had made a further Overtime Claim; and

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

Northern Health would have considered and processed the Overtime Claim in accordance with the Overtime Protocol;

(b) otherwise denies the allegations in paragraph 143.

144. As to paragraph 144, the respondent:

(a) refers to and repeats paragraphs 138 to 143 above; and

(b) otherwise denies the allegations in paragraph 144.

145. As to paragraph 145, the respondent:

(a) refers to and repeats paragraphs 138 to 143 above; and

(b) otherwise denies the allegations in paragraph 145.

D7 Loss

146. As to paragraph 146, the respondent denies the allegations for the reasons pleaded above.

E GROUP MEMBERS' CLAIMS

147. As to paragraph 147, the respondent:

- (a) admits that, in the course of their employment during the Relevant Period, Doctors in Training:
 - (i) worked at the Northern Hospital, Bundoora Subacute Care Centre or Broadmeadows Hospital; and
 - (ii) were rostered to work 38 ordinary hours per week, or an average of 38 hours per week for up to 4 weeks;
- (b) otherwise denies the allegations in paragraph 147.

E1 Ward round preparation overtime

148. As to paragraph 148, the respondent:

- (a) admits that the duties and responsibilities of a Doctor in Training when providing medical services included ward round preparation;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the performance of ward round preparation; and
- (c) otherwise denies the allegations in paragraph 148.

149. As to paragraph 149, the respondent:

- (a) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Northern Health implemented the Overtime Protocol;
- (b) refers to and repeats sub-paragraph 21(b) above;
- (c) says further that:
 - (i) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and Northern Health's approach to Unrostered Overtime;
 - (ii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;
- (d) otherwise denies the allegations in paragraph 149.

150. As to paragraph 150, the respondent:

- (a) refers to and repeats paragraphs 148 and 149 above;
- (b) otherwise denies the allegations in paragraph 150.

151. As to paragraph 151, the respondent:

- (a) refers to and repeats paragraph 149 above; and
- (b) otherwise denies the allegations in paragraph 151.

152. As to paragraph 152, the respondent:

- (a) refers to and repeats paragraphs 148 and 149 above;
- (b) says that:
 - (i) whether a Doctor in Training was authorised to work any alleged ward round preparation overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, a Doctor in Training was required to seek authorisation and to submit an Overtime Claim for any ward round preparation overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of ward round preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him/her for such overtime, and Northern Health cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 152.

153. As to paragraph 153, the respondent:

- (a) refers to and repeats paragraphs 148 to 152 above; and
- (b) says further that:
 - (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) if a 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 authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

C. the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iii) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (ii)(A) and ii(B) above for the reasons in paragraphs 229 to 240 below;

(c) otherwise denies the allegations in paragraph 153.

154. As to paragraph 154, the respondent:

(a) refers to and repeats paragraphs 148 to 153 above; and

(b) otherwise denies the allegations in paragraph 154.

155. As to paragraph 155, the respondent:

(a) refers to and repeats paragraphs 148 to 153 above; and

(b) otherwise denies the allegations in paragraph 155.

E2 Ward round overtime

156. As to paragraph 156, the respondent:

(a) admits that the duties and responsibilities of Doctors in Training when providing medical services included undertaking ward rounds;

(b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the undertaking of ward rounds; and

(c) otherwise denies the allegations in paragraph 156.

157. As to paragraph 157, the respondent:

(a) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Northern Health implemented the Overtime Protocol;

(b) refers to and repeats sub-paragraphs 21(b) above;

(c) says further that:

- (i) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and Northern Health approach to Unrostered Overtime;
- (ii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;

(d) otherwise denies the allegations in paragraph 157.

158. As to paragraph 158, the respondent:

- (a) refers to and repeats paragraphs 156 and 157 above;
- (b) otherwise denies the allegations in paragraph 158.

159. As to paragraph 159:

- (a) refers to and repeats paragraph 156 above; and
- (b) otherwise denies the allegations in paragraph 159.

160. As to paragraph 160:

- (a) refers to and repeats paragraphs 156 and 157 above;
- (b) says that:
 - (i) whether a Doctor in Training was authorised to work any alleged ward round overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, a Doctor in Training was required to seek authorisation and to submit an Overtime Claim for any ward round preparation overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of ward round overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the authorisation given to him/her for such overtime, and Northern Health cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 160.

161. As to paragraph 161:

- (a) refers to and repeats paragraphs 156 to 160 above; and
- (b) says further that:
 - (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) if a Group Member did not make an Overtime Claim in respect of the alleged ward round overtime, then it ought be concluded that either:
 - A. the Group Member did not work such overtime;
 - B. the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (c) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (ii)(A) and (ii)(B) above for the reasons in paragraphs 229 to 240 below;
- (d) otherwise denies the allegations in paragraph 161.

162. As to paragraph 162, the respondent:

- (a) refers to and repeats paragraphs 156 to 161 above; and
- (b) otherwise denies the allegations in paragraph 162.

163. As to paragraph 163, the respondent:

- (a) refers to and repeats paragraphs 156 to 161 above; and
- (b) otherwise denies the allegations in paragraph 163.

E3 Handover overtime

164. As to paragraph 164, the respondent:

- (a) admits that a Doctors in Training's duties and responsibilities when providing medical services included conducting handover;

- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the conducting of handover; and
- (c) otherwise denies the allegations in paragraph 164.

165. As to paragraph 165, the respondent:

- (a) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Northern Health implemented the Overtime Protocol;
- (b) refers to and repeats sub-paragraph 21(b) above;
- (c) says further that:
 - (i) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and Northern Health's approach to Unrostered Overtime;
 - (ii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;
- (d) otherwise denies the allegations in paragraph 165.

166. As to paragraph 166, the respondent:

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

167. As to paragraph 167, the respondent:

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

168. As to paragraph 168, the respondent:

- (a) refers to and repeats paragraphs 164 and 165 above;
- (b) says that:
 - (i) whether a Doctor in Training was authorised to work any alleged handover overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- (ii) further or alternatively, pursuant to the Overtime Protocol, a Doctor in Training was required to seek authorisation and to submit an Overtime Claim for any handover overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
- (iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of handover overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the authorisation given to him/her for such overtime, and Northern Health cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 168.

169. As to paragraph 169, the respondent:

(a) refers to and repeats paragraphs 164 to 168 above; and

(b) says further that:

- (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;
- (ii) if a 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 authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (iii) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (ii)A and (ii)B above for the reasons in paragraphs 229 to 240 below;

(c) otherwise denies the allegations in paragraph 169.

170. As to paragraph 170, the respondent:

(a) refers to and repeats paragraphs 164 to 169 above; and

(b) otherwise denies the allegations in paragraph 170.

171. As to paragraph 171, the respondent:

- (a) refers to and repeats paragraphs 164 to 169 above; and
- (b) otherwise denies the allegations in paragraph 171.

E4 Medical procedures preparation overtime

172. As to paragraph 172, the respondent:

- (a) admits that the duties and responsibilities of Doctors in Training when providing medical services included medical procedures preparation;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the performance of medical procedures preparation; and
- (c) otherwise denies the allegations in paragraph 172.

173. As to paragraph 173:

- (a) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Northern Health implemented the Overtime Protocol;
- (b) refers to and repeats sub-paragraph 21(b) above;
- (c) says further that:
 - (i) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and Northern Health's approach to Unrostered Overtime;
 - (ii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;
- (d) otherwise denies the allegations in paragraph 173.

174. As to paragraph 174:

- (a) refers to and repeats paragraphs 172 and 173 above;
- (b) otherwise denies the allegations in paragraph 174.

175. As to paragraph 175:

- (a) refers to and repeats paragraph 172 above; and
- (b) otherwise denies the allegations in paragraph 175.

176. As to paragraph 176:

- (a) refers to and repeats paragraphs 172 and 173 above;
- (b) says that:
 - (i) whether a Doctor in Training was authorised to work any alleged medical procedures preparation overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, a Doctor in Training was required to seek authorisation and to submit an Overtime Claim for any medical procedures overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical procedures preparation overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him/her for such overtime, and Northern Health cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 176.

177. As to paragraph 177, the respondent:

- (a) refers to and repeats paragraphs 172 to 176 above; and
- (b) says further that:
 - (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) if a Group Member did not make an Overtime Claim in respect of the alleged medical procedures preparation overtime, then it ought be concluded that either:
 - A. the Group Member did not work such overtime;
 - B. the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iii) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (ii)A and (ii)B above for the reasons in paragraphs 229 to 240 below;

(c) otherwise denies the allegations in paragraph 177.

178. As to paragraph 178, the respondent:

(a) refers to and repeats paragraphs 172 to 177 above; and

(b) otherwise denies the allegations in paragraph 178.

179. As to paragraph 179, the respondent:

(a) refers to and repeats paragraphs 172 to 177 above; and

(b) otherwise denies the allegations in paragraph 179.

E5 Medical emergency overtime

180. As to paragraph 180, the respondent:

(a) admits that Doctors in Training duties and responsibilities when providing medical services included attending medical emergencies;

(b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for attending medical emergencies;

(c) otherwise denies the allegations in paragraph 180.

181. As to paragraph 181, the respondent:

(a) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Northern Health implemented the Overtime Protocol;

(b) refers to and repeats sub-paragraph 21(b) above;

(c) says further that:

(i) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and Northern Health's approach to Unrostered Overtime;

(ii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;

(d) otherwise denies the allegations in paragraph 181.

182. As to paragraph 182, the respondent:

- (a) refers to and repeats paragraphs 180 and 181 above;
- (b) otherwise denies the allegations in paragraph 182.

183. As to paragraph 183, the respondent:

- (a) refers to and repeats paragraph 181 above; and
- (b) otherwise denies the allegations in paragraph 183.

184. As to paragraph 184:

- (a) refers to and repeats paragraphs 180 and 181 above;
- (b) says that:
 - (i) whether a Doctor in Training was authorised to work any alleged medical emergency overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, a Doctor in Training was required to seek authorisation and to submit an Overtime Claim for any medical emergency overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical emergency overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him/her for such overtime, and Northern Health cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 184.

185. As to paragraph 185, the respondent:

- (a) refers to and repeats paragraphs 180 to 184 above; and
- (b) says further that:
 - (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;

- (ii) if a Group Member did not make an Overtime Claim in respect of the alleged medical emergency overtime, then it ought be concluded that either:
 - A. the Group Member did not work such overtime;
 - B. the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
- (iii) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (ii)A and (ii)B above for the reasons in paragraphs 229 to 240 below.

(c) otherwise denies the allegations in paragraph 185.

186. As to paragraph 186, the respondent:

- (a) refers to and repeats paragraphs 180 to 185 above; and
- (b) otherwise denies the allegations in paragraph 186.

187. As to paragraph 187, the respondent:

- (a) refers to and repeats paragraphs 180 to 185 above; and
- (b) otherwise denies the allegations in paragraph 187.

E6 Medical records overtime

188. As to paragraph 188, the respondent:

- (a) admits that the duties and responsibilities of Doctors in Training when providing medical services included completing medical records;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the completion of medical records; and
- (c) otherwise denies the allegations in paragraph 188.

189. As to paragraph 189, the respondent:

- (a) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Northern Health implemented the Overtime Protocol;
- (b) refers to and repeats sub-paragraph 21(b) above;
- (c) says further that:
 - (i) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and Northern Health's approach to Unrostered Overtime;
 - (ii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;
- (d) otherwise denies the allegations in paragraph 189.

190. As to paragraph 190, the respondent:

- (a) refers to and repeats paragraphs 188 and 189 above;
- (b) otherwise denies the allegations in paragraph 190.

191. As to paragraph 191, the respondent:

- (a) refers to and repeats paragraph 189 above; and
- (b) otherwise denies the allegations in paragraph 191.

192. As to paragraph 192, the respondent:

- (a) refers to and repeats paragraphs 188 and 189 above;
- (b) says that:
 - (i) whether a Doctor in Training was authorised to work any alleged medical records overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, a Doctor in Training was required to seek authorisation and to submit an Overtime Claim for any medical records overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical records overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the

authorisation given to him/her for such overtime, and Northern Health cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 192.

193. As to paragraph 193, the respondent:

(a) refers to and repeats paragraphs 188 to 192 above; and

(b) says further that:

(i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;

(ii) if a 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 authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

C. the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iii) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs(ii)A and (ii)B above for the reasons in paragraphs 229 to 240 below;

(c) otherwise denies the allegations in paragraph 193.

194. As to paragraph 194, the respondent:

(a) refers to and repeats paragraphs 188 to 193 above; and

(b) otherwise denies the allegations in paragraph 194.

195. As to paragraph 195, the respondent:

(a) refers to and repeats paragraphs 188 to 193 above; and

(b) otherwise denies the allegations in paragraph 195.

E7 Medical communication overtime

196. As to paragraph 196, the respondent:

- (a) admits that Doctors in Training duties and responsibilities when providing medical services included attending to medical communication;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for attending to medical communication;
- (c) otherwise denies the allegations in paragraph 196.

197. As to paragraph 197:

- (a) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Northern Health implemented the Overtime Protocol;
- (b) refers to and repeats sub-paragraph 21(b) above;
- (c) says further that:
 - (i) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and Northern Health's approach to Unrostered Overtime;
 - (ii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;
- (d) otherwise denies the allegations in paragraph 197.

198. As to paragraph 198, the respondent:

- (a) refers to and repeats paragraphs 196 and 197 above;
- (b) otherwise denies the allegations in paragraph 198.

199. As to paragraph 199, the respondent:

- (a) refers to and repeats paragraph 197 above; and
- (b) otherwise denies the allegations in paragraph 199.

200. As to paragraph 200, the respondent:

- (a) refers to and repeats paragraphs 196 and 197 above;
- (b) says that:
 - (i) whether a Doctor in Training was authorised to work any alleged medical communication overtime (including whether the Doctor in Training worked the alleged

overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

- (ii) further or alternatively, pursuant to the Overtime Protocol, a Doctor in Training was required to seek authorisation and to submit an Overtime Claim for any medical communication overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
- (iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of medical communication overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the advance authorisation given to him/her for such overtime, nor provided particulars of the authorisation given to him/her for such overtime, and Northern Health cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 200.

201. As to paragraph 201, the respondent:

- (a) refers to and repeats paragraphs 196 to 200 above; and
- (b) says further that:
 - (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) if a Group Member did not make an Overtime Claim in respect of the alleged medical communication overtime, then it ought be concluded that either:
 - A. the Group Member did not work such overtime;
 - B. the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
 - (iii) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (ii)A and (ii)B above for the reasons in paragraphs 229 to 240 below;
- (c) otherwise denies the allegations in paragraph 201.

202. As to paragraph 202, the respondent:

- (a) refers to and repeats paragraphs 196 to 201 above; and
- (b) otherwise denies the allegations in paragraph 202.

203. As to paragraph 203, the respondent:

- (a) refers to and repeats paragraphs 196 to 201 above; and
- (b) otherwise denies the allegations in paragraph 203.

E8 Admissions overtime

204. As to paragraph 204, the respondent:

- (a) admits that the duties and responsibilities of a Doctor in Training when providing medical services included admitting patients into a particular ward or department;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time for the admission of patients into a particular ward or department; and
- (c) otherwise denies the allegations in paragraph 204.

205. As to paragraph 205, the respondent:

- (a) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Northern Health implemented the Overtime Protocol;
- (b) refers to and repeats sub-paragraph 21(b) above;
- (c) says further that:
 - (i) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and Northern Health's approach to Unrostered Overtime;
 - (ii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;
- (d) otherwise denies the allegations in paragraph 205.

206. As to paragraph 206, the respondent:

- (a) refers to and repeats paragraphs 204 and 205 above;
- (b) otherwise denies the allegations in paragraph 206.

207. As to paragraph 207, the respondent:

- (a) refers to and repeats paragraph 205 above;
- (b) otherwise denies the allegations in paragraph 207.

208. As to paragraph 208, the respondent:

- (a) refers to and repeats paragraphs 205 and 206 above;
- (b) says that:
 - (i) whether a Doctor in Training was authorised to work any alleged admissions overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, a Doctor in Training was required to seek authorisation and to submit an Overtime Claim for any admissions overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of admissions overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him/her for such overtime, and Northern Health cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 208.

209. As to paragraph 209, the respondent:

- (a) refers to and repeats paragraphs 204 to 208 above; and
- (b) says further that:
 - (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) if a 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 authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or

C. the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;

(iii) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (ii)A and (ii)B above for the reasons in paragraphs 229 to 240 below;

(c) otherwise denies the allegations in paragraph 209.

210. As to paragraph 210, the respondent:

(a) refers to and repeats paragraphs 204 to 209 above; and

(b) otherwise denies the allegations in paragraph 210.

211. As to paragraph 211, the respondent:

(a) refers to and repeats paragraphs 204 to 209 above; and

(b) otherwise denies the allegations in paragraph 211.

E9 Outpatient care overtime

212. As to paragraph 212, the respondent:

(a) admits that the duties and responsibilities of Doctors in Training when providing medical services included providing medical care to patients in a clinic;

(b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time to provide medical care to patients in a clinic; and

(c) otherwise denies the allegations in paragraph 212.

213. As to paragraph 213, the respondent:

(a) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Northern Health implemented the Overtime Protocol;

(b) refers to and repeats sub-paragraph 21(b) above;

(c) says further that:

(i) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and Northern Health's approach to Unrostered Overtime;

(ii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;

(d) otherwise denies the allegations in paragraph 213.

214. As to paragraph 214, the respondent:

(a) refers to and repeats paragraphs 212 and 213 above;

(b) otherwise denies the allegations in paragraph 214.

215. As to paragraph 215, the respondent:

(a) refers to and repeats paragraph 213 above; and

(b) otherwise denies the allegations in paragraph 215.

216. As to paragraph 216, the respondent:

(a) refers to and repeats paragraphs 212 and 213 above;

(b) says that:

(i) whether a Doctor in Training was authorised to work any alleged outpatient care overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;

(ii) further or alternatively, pursuant to the Overtime Protocol, a Doctor in Training was required to seek authorisation and to submit an Overtime Claim for any outpatient care overtime by the end of the pay cycle in which the Unrostered Overtime was worked;

(iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of outpatient care overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him/her for such overtime, and Northern Health cannot properly plead without those particulars;

(c) otherwise denies the allegations in paragraph 216.

217. As to paragraph 217:

(a) refers to and repeats paragraphs 212 to 216 above;

(b) says further that:

- (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) if a Group Member did not make an Overtime Claim in respect of the alleged outpatient care overtime, then it ought be concluded that either:
 - A. the Group Member did not work such overtime;
 - B. the Group Member was not authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
 - (iii) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (ii)A and (ii)B above for the reasons in paragraphs 229 to 240 below;
- (c) otherwise denies the allegations in paragraph 217.

218. As to paragraph 218, the respondent:

- (a) refers to and repeats paragraphs 212 to 217 above; and
- (b) otherwise denies the allegations in paragraph 218.

219. As to paragraph 219, the respondent:

- (a) refers to and repeats paragraphs 212 to 217 above; and
- (b) otherwise denies the allegations in paragraph 219.

E10 Other medical services overtime

220. As to paragraph 220, the respondent:

- (a) admits that the duties and responsibilities of Doctors in Training when providing medical services included carrying out such other duties necessary for the provision of medical services by the Doctor in Training;
- (b) says that in accordance with cl. 26.1.2 of the 2013 Agreement and cl. 35.1(b) of the 2018 Agreement, rosters factored in and allowed time to carry out such other duties necessary for the provision of medical services by the Doctor in Training; and
- (c) otherwise denies the allegations in paragraph 220.

221. As to paragraph 221, the respondent:

- (a) says that in accordance with cl. 32.3 of the 2013 Agreement and cl. 36.3 of the 2018 Agreement, Northern Health implemented the Overtime Protocol;
- (b) refers to and repeats sub-paragraph 21(b) above;
- (c) says further that:
 - (i) Doctors in Training were, or ought to have been, aware of the Overtime Protocol and Northern Health's approach to Unrostered Overtime;
 - (ii) if Doctors in Training performed Unrostered Overtime, they were able to submit an Overtime Claim;
- (d) otherwise denies the allegations in paragraph 221.

222. As to paragraph 222, the respondent:

- (a) refers to and repeats paragraphs 220 and 221 above;
- (b) otherwise denies the allegations in paragraph 222.

223. As to paragraph 223, the respondent:

- (a) refers to and repeats paragraph 221 above; and
- (b) otherwise denies the allegations in paragraph 223.

224. As to paragraph 224, the respondent:

- (a) refers to and repeats paragraphs 220 and 221 above;

- (b) says that:
- (i) whether a Doctor in Training was authorised to work any alleged other medical services overtime (including whether the Doctor in Training worked the alleged overtime due to a demonstrable clinical need that could not be met by other means) depends on the circumstances of each alleged occasion;
 - (ii) further or alternatively, pursuant to the Overtime Protocol, a Doctor in Training was required to seek authorisation and to submit an Overtime Claim for any other medical services overtime by the end of the pay cycle in which the Unrostered Overtime was worked;
 - (iii) no Doctor in Training has provided particulars of the circumstances of any alleged occasion of other medical services overtime worked (including of the demonstrable clinical need that could not be met by other means), nor provided particulars of the authorisation given to him/her for such overtime, and Northern Health cannot properly plead without those particulars;
- (c) otherwise denies the allegations in paragraph 224.

225. As to paragraph 225, the respondent:

- (a) refers to and repeats paragraphs 220 to 224 above;
- (b) says further that:
 - (i) payment for Unrostered Overtime is subject to the condition that a Group Member make an Overtime Claim in relation to the overtime purportedly worked;
 - (ii) if a 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 authorised to work such overtime (including because there was no demonstrable clinical need that could not have been met by other means); and/or
 - C. the Group Member was in attendance at the hospital for reasons other than due to a demonstrable clinical need that could not have been met by other means, including voluntarily;
 - (iii) further or alternatively, the Group Member is estopped from asserting the contrary of the matters in subparagraphs (ii)A and (ii)B above for the reasons in paragraphs 229 to 240 below;

(c) otherwise denies the allegations in paragraph 225.

226. As to paragraph 226, the respondent:

(a) refers to and repeats paragraphs 220 to 225 above; and

(b) otherwise denies the allegations in paragraph 226.

227. As to paragraph 227, the respondent:

(a) refers to and repeats paragraphs 220 to 225 above; and

(b) otherwise denies the allegations in paragraph 227.

E8 Loss and damage

228. As to paragraph 228, the respondent denies the allegations for the reasons pleaded herein.

F ESTOPPEL BY CONDUCT

Background to the estoppel

229. Pursuant to the terms of their employment contracts, Dr Hand and the Group Members:

(a) were informed that their conditions of employment were governed by:

(i) the 2013 Agreement or the 2018 Agreement;

(ii) their individual contracts of employment;

(b) agreed to observe policies and practices in place across Northern Health.

Particulars

Dr Hand's 2018 Intern Contract signed by Dr Hand on 22 October 2017 and Employment Contract for his position in General Medicine as a Hospital Medical Officer signed by Dr Hand on 5 November 2018 required Dr Hand to familiarise himself with policies and procedures relating to his employment and directed Dr Hand to find those policies and procedures on PROMPT.

From 2018, the Junior Doctors Handbook was contained on the NorthernDoctors Website.

230. Pursuant to the Overtime Protocol, Dr Hand and Group Members were required to:

(a) complete an Overtime Claim and state:

- (i) the reasons necessitating the Unrostered Overtime;
 - (ii) the date the Unrostered Overtime was worked;
 - (iii) the rostered finish time;
 - (iv) the time the Unrostered Overtime ceased; and
 - (v) the additional Unrostered Overtime Worked;
- (b) have the claim for Unrostered Overtime authorised by the Unit Consultant (during 2018) or the Head of Unit (from 1 January 2019 onwards)
- (c) submit the Overtime Claim to the JMWU by the end of the pay cycle in which the Unrostered Overtime was worked (during 2018) or by 4pm on the last Friday of the pay fortnight in which the Unrostered Overtime was worked (from 1 January 2019 onwards).
231. Dr Hand and Group Members who commenced employment with the respondent at the beginning of their first clinical year as a medical officer, in the position of intern, participated in orientation during which they were informed of:
- (a) the existence of, and obligation to comply with, the Overtime Protocol;
 - (b) from 2018, the location of the Overtime Protocol on the NorthernDoctors website;
 - (c) the requirement to seek either advance, or retrospective, authorisation for any Unrostered Overtime;
 - (d) the requirement to make a claim for Unrostered Overtime using an EDAF;
 - (e) the requirements of any claim for Unrostered Overtime.

Particulars

In relation to Dr Hand:

- A. Junior Doctors Handbook, in effect from January 2018 and available on the NorthernDoctors website and Orientation presentation.

Particulars in relation to Group Members will be provided after the Group Members are known.

232. From time to time throughout the Relevant Period, Dr Hand and Group Members submitted claims for Unrostered Overtime which were approved and for which they were paid (**Claimed Unrostered Overtime**).

Particulars

Further particulars to those set out at [73] and [107] above will be provided after discovery and prior to trial.

233. By reason of paragraphs 229 to 232 above, Dr Hand and Group Members were aware or ought to have been aware of:
- (a) their ordinary hours of work;
 - (b) the requirement to seek authorisation for Unrostered Overtime;
 - (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) were capable of complying with those requirements.

Operation of the estoppel

234. In the circumstances set out in paragraphs 229 to 233 above, to the extent that Dr Hand and the Group Members attended or remained at work outside their ordinary hours of work other than for rostered overtime or authorised Unrostered Overtime, and did not submit an Overtime Claim in accordance with the Overtime Protocol, then, by that conduct, Dr Hand and the Group Members induced Northern Health to assume, and Northern Health 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 Northern Health during any such time;
 - (b) further or alternatively, that any attendance at the Northern Hospital during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntarily.
235. Dr Hand and the Group Members did not correct any mistake in the assumptions set out in paragraph 234 (**unapproved or unclaimed time assumptions**), despite being under a duty to do so:
- (a) by reason of their contractual obligations set out in paragraph 229 above;
 - (b) further or alternatively, because, by reason of the matters in paragraphs 229 to 234 above:
 - (i) Dr Hand and Group Members knew, or should reasonably have known, that Northern Health would be induced by the acts or omissions referred to in paragraphs 234 above to make the unapproved or unclaimed overtime assumptions; and

- (ii) a reasonable person would have expected Dr Hand and Group Members to correct any mistake in those assumptions by submitting an Overtime Claim in accordance with the Overtime Protocol.

236. In the circumstances set out in paragraph 235 above, to the extent that Dr Hand or Group Members engaged in the conduct in paragraphs 234 above, it amounted to a representation by Dr Hand and Group Members as to the matters in paragraph 234 (**unapproved or unclaimed overtime representations**).

237. Northern Health acted in reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions, in that Northern Health, by reason of the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions:

- (a) was not aware of, and did not investigate contemporaneously, any assertion that Dr Hand 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 Hand or Group Members in relation to any purported attendance at work outside their ordinary hours of work other during periods of rostered overtime and claimed Unrostered Overtime; and
- (c) did not take steps that were available to Northern Health to reduce any such time being worked by Dr Hand and Group Members.

Particulars

The steps that would have been available to Northern Health included:

- 1) changing roster arrangements to reduce the possibility of Unrostered Overtime arising;
- 2) 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 Hand and Group Members;
- 3) employing or rostering more doctors;
- 4) reallocating responsibility for some activities or functions to more senior doctors or other personnel;
- 5) issuing directions in relation to working or not working Unrostered Overtime or performing or not performing particular activities;

- 6) identifying cultural barriers to claiming overtime and educating staff at all levels (administrative and medical) about the expectation of claiming overtime;
- 7) planning, forecasting or budgeting for the Unrostered Overtime to ensure that Northern Health could meet any liability for Unrostered Overtime.

238. To the extent that Dr Hand or Group Members engaged in the conduct in paragraphs 234 above, it was reasonable for Northern Health to regard that conduct as amounting to the unapproved and unclaimed overtime representations, to make the unapproved or unclaimed overtime assumptions, and to rely on those assumptions as set out in paragraph 234 above, in circumstances in which Dr Hand and Group Members:

- (a) were obliged to comply with the Overtime Protocol in relation to obtaining authorisation for Unrostered Overtime and submitting claims for Unrostered Overtime, as set out in paragraphs 230 to 232 above;
- (b) were informed of those obligations by Northern Health as set out in paragraph 229 above;
- (c) were capable of complying with those obligations as set out in paragraphs 231 and 232 above; and
- (d) were on notice of Northern Health's reliance on the unapproved or unclaimed overtime representations and the unapproved or unclaimed overtime assumptions.

Particulars

Dr Hand 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;
- 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 Northern Health to have known they were working outside their ordinary hours unless they submitted a claim or otherwise brought that work to Northern Health's attention.

239. Northern Health would suffer detriment if Dr Hand 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) Northern Health would be required to make further payments to Dr Hand and Group Members in relation to Unrostered Overtime;

(b) further or alternatively, Northern Health has lost the opportunity to avoid all or some of the Unrostered Overtime by taking the steps referred to in sub-paragraph 237(c) above,

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

240. By reason of paragraphs 234 to 239 above, Dr Hand and Group Members are estopped from asserting:

- (a) that they were, or were required to be, in attendance at the Northern Hospital to carry out functions that they had been called upon to perform on behalf of Northern Health during any such time;
- (b) further or alternatively, that any attendance at the Northern Hospital during any such time was for reasons other than a demonstrable clinical need that could not have been met by other means, including voluntarily.

Date: 9 May 2022



.....
Signed by Andrew Morrison
Lawyer for the respondent

This pleading was prepared by Andrew Morrison and Grace Ness for the respondent and settled by Frank Parry QC and Helen Tiplady, Counsel for the respondent.

Certificate of lawyer

I Andrew Morrison certify to the Court that, in relation to the defence filed on behalf of the respondent, the factual and legal material available to me at present provides a proper basis for:

1. each allegation in the pleading; and
2. each denial in the pleading; and
3. each non admission in the pleading.

Date: 9 May 2022



.....
Signed by Andrew Morrison
Lawyer for the respondent

Schedule of Parties

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

No. VID760/2021

Applicants

First Applicant: The Australian Salaried Medical Officers' Federation
Second Applicant: Michael John Hand

Respondent

Respondent: Northern Health