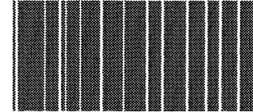


Filed: 16 December 2020 8:50 PM



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Form 3A/B UCPR 6.2

## STATEMENT OF CLAIM

### COURT DETAILS

|             |                      |
|-------------|----------------------|
| Court       | Supreme Court of NSW |
| Division    | Common Law           |
| List        | Common Law General   |
| Registry    | Supreme Court Sydney |
| Case number | 2020/00356588        |

### TITLE OF PROCEEDINGS

|                 |   |
|-----------------|---|
| First Plaintiff | Amireh Fakhouri   |
| First Defendant | The Secretary for the NSW Ministry of Health<br>ABN 92697899630 |

### FILING DETAILS

|                                |                  |
|--------------------------------|------------------|
| Filed for                      | Plaintiff[s]     |
| Legal representative           | REBECCA GILSENAN |
| Legal representative reference |                  |
| Telephone                      | 02 9261 1488     |
| Your reference                 | 3052894          |

### NOTICE OF LISTING

This matter has been listed for Directions (Common Law Registrar) at Supreme Court Sydney on 11 February 2021 at 09:00 AM.

### AFFIDAVIT

|                   |                    |
|-------------------|--------------------|
| Deponent Name     | Dr Amireh Fakhouri |
| Sworn/Affirmed on | 16 December 2020   |

### ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Statement of Claim (e-Services), along with any other documents listed below, were filed by the Court.

Statement of Claim (UCPR 3A/3B) (20.12.16 Statement of Claim (as filed).pdf)

[attach.]

Form 3A (version 7)  
UCPR 6.2

## STATEMENT OF CLAIM

### COURT DETAILS

|             |                                  |
|-------------|----------------------------------|
| Court       | Supreme Court of New South Wales |
| Division    | Common Law                       |
| List        | General (Class Actions)          |
| Registry    | Sydney                           |
| Case number |                                  |

### TITLE OF PROCEEDINGS

|           |   |
|-----------|---|
| Plaintiff | <b>Dr Amireh Fakhouri</b>                           |
| Defendant | <b>The Secretary for the NSW Ministry of Health</b> |

### FILING DETAILS

|                                |  |
|--------------------------------|--|
| Filed for                      | <b>Dr Amireh Fakhouri, Plaintiff</b>   |
| Legal representative           | Rebecca Gilsenan, Maurice Blackburn Lawyers  |
| Legal representative reference | RXG/3052894  |
| Contact name and telephone     | Rebecca Gilsenan, (02) 8267 0959   |
| Contact email                  | <a href="mailto:rgilsenan@mauriceblackburn.com.au">rgilsenan@mauriceblackburn.com.au</a> |

### TYPE OF CLAIM

Contractual dispute (Common Law)  
Breach of contract (employment related)

## RELIEF CLAIMED

- 1 An order for recovery of remuneration payable under the Awards (as defined in paragraph 3b below) pursuant to section 365 of the *Industrial Relations Act 1996* (NSW).
- 2 An order that the Defendant pay interest pursuant to section 100 of the *Civil Procedure Act 2005* (NSW) and/ or section 372 of the *Industrial Relations Act 1996* (NSW).
- 3 Costs.
- 4 Such further or other order as the Court thinks fit.

## COMMON QUESTIONS, PLEADINGS AND PARTICULARS

### A. PLEADINGS

#### PARTIES

- 1 The Plaintiff brings this proceeding as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW):
  - a. in her own right; and
  - b. on behalf of all persons who, at any time in the period from 16 December 2014 to 16 December 2020 (**Relevant Period**):
    - i. were employed by the Defendant in the positions of:
      1. Junior Medical Officer;
      2. Intern;
      3. Resident Medical Officer;
      4. Registrar; and
      5. Senior Registrar,
    - ii. were required to, from time to time, work in excess of their rostered ordinary hours (**Overtime**);
    - iii. were not paid all of their entitlements for the Overtime; and
    - iv. have not, as at the date of commencement of this proceeding, commenced proceedings against the Defendant in respect of the non-

payment or underpayment of his or her full entitlements for the Overtime,

**(Group Members).**

2 The Plaintiff:

- a. was employed by the Defendant from about January 2015 until about February 2017, and from about August 2017 until about February 2018 **(Fakhouri Employment Period)**;
- b. was employed in the positions of:
  - i. Intern from about January 2015 until about May 2016;
  - ii. Resident Medical Officer from about June 2016 until about February 2017; and
  - iii. Senior Resident Medical Officer from about August 2017 until about February 2018,
- c. as pleaded below at paragraphs 31, 33, 35 and 37, was required to work, from time to time:
  - i. in accordance with a roster which provided for more than 80 hours of work in a fortnight **(Rostered Overtime)**;
  - ii. in excess of her ordinary hours, other than as notified on the roster **(Unrostered Overtime)**; and
  - iii. shifts which commenced before 08:00 or finished after 18:00, Monday to Friday, and shifts on Saturday and Sunday **(Paid Meal Break Shifts)**,
- d. as pleaded below at paragraph 39, was not paid her entitlements for the Rostered Overtime, the Unrostered Overtime and all hours rostered on the Paid Meal Break Shifts; and
- e. has not, as at the date of commencement of this proceeding, commenced proceedings against the Defendant in respect of the non-payment or underpayment of her full entitlements for the Rostered Overtime, the Unrostered Overtime and the Paid Meal Break Shifts.

3 The Plaintiff and each Group Member were, at times during the Relevant Period:

- a. employed by the Defendant for the purposes of these proceedings;

### Particulars

Section 116H of the *Health Services Act 1997* (NSW).

- b. during the times that they were employed, they were covered by the:
  - i. *Public Hospital Medical Officers (State) Award 2014*, in the period from 1 July 2014 until 30 June 2015;
  - ii. *Public Hospital Medical Officers (State) Award 2015*, in the period from 1 July 2015 until 30 June 2016;
  - iii. *Public Hospital Medical Officers (State) Award 2016*, in the period from 1 July 2016 until 30 June 2017;
  - iv. *Public Hospital Medical Officers (State) Award 2017*, in the period from 1 July 2017 until 30 June 2018;
  - v. *Public Hospital Medical Officers (State) Award 2018*, in the period from 1 July 2018 until 30 June 2019; and
  - vi. *Public Hospital Medical Officers (State) Award 2019*, in the period from 1 July 2019,  
  
(collectively, the **Awards**),
- c. entitled to the benefits of the Awards, at the relevant times;
- d. entitled to be paid the salaries set out in the:
  - i. *Health Professional and Medical Salaries (State) Award 2014*, in the period from 1 July 2014 until 30 June 2015;
  - ii. *Health Professional and Medical Salaries (State) Award 2015*, in the period from 1 July 2015 until 30 June 2016;
  - iii. *Health Professional and Medical Salaries (State) Award 2016*, in the period from 1 July 2016 until 30 June 2017;
  - iv. *Health Professional and Medical Salaries (State) Award 2017*, in the period from 1 July 2017 until 30 June 2018;
  - v. *Health Professional and Medical Salaries (State) Award 2018*, in the period from 1 July 2018 until 30 June 2019; and
  - vi. *Health Professional and Medical Salaries (State) Award 2019*, in the period from 1 July 2019,
- e. entitled to the benefit of the Ministry of Health Circular No. 83/250 (**Circular**);

**Particulars**

Clause 10 of the Awards.

- f. required to:
- i. work in accordance with his or her rostered hours; and/ or
  - ii. perform work outside of the rostered hours.
- 4 The Defendant was, at all material times:
- a. responsible for the management and oversight of NSW Health; and
  - b. the employer of each of the Group Members for the purposes of these proceedings.

**Particulars**

Section 116H of the *Health Services Act 1997* (NSW).

**THE AWARDS**

- 5 Pursuant to each of the Awards, the ordinary hours of work for the Plaintiff and each of the Group Members were not permitted to exceed an average of 38 hours per week.

**Particulars**

Clause 6(i) of each of the Awards.

- 6 Pursuant to each of the Awards, the Plaintiff and each of the Group Members was to be rostered to work no more than 80 ordinary hours in a fortnight.

**Particulars**

Clause 6(i) of each of the Awards.

Overtime

- 7 Pursuant to each of the Awards, all time worked by the Plaintiff and each of the Group Members in excess of 80 hours in a fortnight was to be paid as overtime (**Fortnightly Overtime**) at the following rates:
- a. at the rate of time and one-half (150%) for the first two hours worked in excess of 80 hours in a fortnight;
  - b. at the rate of double time (200%) for all hours after the first two hours worked in excess of 80 hours in a fortnight; and
  - c. at the rate of double time (200%) for all overtime performed on a Sunday.

**Particulars**

Clause 11(i) of each of the Awards.

- 8 Pursuant to each of the Awards, the Plaintiff and each of the Group Members was entitled to be paid at overtime rates for all time worked in excess of 10 hours in any one shift, irrespective of the total hours worked in the respective fortnight (**Daily Overtime**).

**Particulars**

Clause 6(v) of each of the Awards.

- 9 Pursuant to each of the Awards, all Daily Overtime worked by the Plaintiff and each of the Group Members was to be paid as overtime at the following rates:
- a. at the rate of time and one-half (150%) for the first two hours worked in excess of 10 hours in any one shift;
  - b. at the rate of double time (200%) for all hours after the first two hours worked in excess of 10 hours in any one shift; and
  - c. at the rate of double time (200%) for all hours worked in excess of 10 hours in any one shift on a Sunday.

**Particulars**

Clause 11(i) of each of the Awards.

Payment for meal breaks

- 10 Pursuant to each of the Awards, the Defendant was required to comply with the Circular in relation to meal breaks.

**Particulars**

Clause 10 of each of the Awards.

- 11 Pursuant to the Circular, the Plaintiff and each of the Group Members, whose shift commenced before 08:00 or finished after 18:00, Monday to Friday, was entitled to receive payment for all time he or she was required to be in attendance, from the start time of his or her shift until the finish time of his or her shift.

**Particulars**

Clause 2.2(ii) of the Circular.

- 12 In the premises pleaded above at paragraph 11, the Plaintiff and each of the Group Members, whose shift commenced before 08:00 or finished after 18:00, Monday to Friday, was entitled to receive payment for any meal breaks taken during that shift.

- 13 Pursuant to the Circular, the Plaintiff and each of the Group Members, who worked on Saturday or Sunday, was entitled to receive payment for all time he or she was required to be in attendance, from the start time of his or her shift until the finish time of his or her shift.

**Particulars**

Clause 2.2(ii) of the Circular.

- 14 In the premises pleaded above at paragraph 13, the Plaintiff and each of the Group Members, who worked on Saturday or Sunday, was entitled to receive payment for any meal breaks taken during that shift.

**UNROSTERED OVERTIME**

- 15 Pursuant to each of the Awards, the time during which the Plaintiff and each of the Group Members were, and are, required by the Defendant to be in attendance at a hospital for the purpose of carrying out such functions as the Defendant may call on them to perform is to be treated as time worked.

**Particulars**

Clause 9 of each of the Awards.

- 16 On each and every occasion where a Group Member, including the Plaintiff, was "treating a critically ill patient or a patient's condition ha[d] changed dramatically" at the completion of a Group Member's shift, the Group Member was required to work Unrostered Overtime until other adequate medical attention could be arranged.

**Particulars**

- i. The requirement of a Group Member to work the Unrostered Overtime was a necessary or essential function of each Group Member's duty as a doctor to provide care to patients in these circumstances.
- ii. Further, the fact that each Group Member was required to provide such care in those circumstances is recognised by the Defendant as a circumstance in which each Group Member was required to work Unrostered Overtime in the Defendant's policy directives:

1. PD2010\_074, titled "Employment Arrangements for Medical Officers in the New South Wales Public Health System" (2010 Policy Directive), at clause 8.2.1;
2. PD2015\_034, titled "Medical Officers – Employment Arrangements in the NSW Health Service" (2015 Policy Directive), at clause 9.2.1;
3. PD2016\_059, titled "Medical Officers – Employment Arrangements in the NSW Public Health Service" (2016 Policy Directive), at clause 9.2.1;
4. PD2017\_042, titled "Employment Arrangements for Medical Officers in the NSW Public Health Service" (2017 Policy Directive), at clause 9.2.1; and
5. PD2019\_027, titled "Employment Arrangements for Medical Officers in the NSW Public Health Service" (2019 Policy Directive), at clause 9.1.1.

17 On each and every occasion where a Group Member, including the Plaintiff, was "treating a patient who require[d] transfer", the Group Member was required to work Unrostered Overtime until the transfer process was complete.

#### Particulars

- i. The requirement of a Group Member to work the Unrostered Overtime was a necessary or essential function of each Group Member's duty as a doctor to provide care to patients in these circumstances.
- ii. Further, the fact that each Group Member was required to provide such care in those circumstances is recognised by the Defendant as a circumstance in which each Group Member was required to work Unrostered Overtime in clause:
  1. 8.2.2 of the 2010 Policy Directive;
  2. 9.2.2 of the 2015 Policy Directive;
  3. 9.2.2 of the 2016 Policy Directive;
  4. 9.2.2 of the 2017 Policy Directive; and
  5. 9.1.2 of the 2019 Policy Directive.

- 18 On each and every occasion where a Group Member, including the Plaintiff, was “already working in theatre and the procedure continue[d] past the scheduled end of [the Group Member's] shift”, the Group Member was required to work Unrostered Overtime until their responsibilities concluded.

**Particulars**

- i. The requirement of a Group Member to work the Unrostered Overtime was a necessary or essential function of each Group Member's duty as a doctor to provide care to patients in these circumstances.
- ii. Further, the fact that each Group Member was required to provide such care in those circumstances is recognised by the Defendant as a circumstance in which each Group Member was required to work Unrostered Overtime in clause:
  1. 8.2.3 of the 2010 Policy Directive;
  2. 9.2.3 of the 2015 Policy Directive;
  3. 9.2.3 of the 2016 Policy Directive; and
  4. 9.2.3 of the 2017 Policy Directive; and
  5. 9.1.3 of the 2019 Policy Directive.

- 19 On each and every occasion where a Group Member, including the Plaintiff, was “responsible for the admission and/ or discharge of a patient at the completion of a shift”, the Group Member was required to work Unrostered Overtime until their responsibilities concluded.

**Particulars**

- i. The requirement of a Group Member to work the Unrostered Overtime was a necessary or essential function of each Group Member's duty as a doctor to provide care to patients in these circumstances.
- ii. Further, the fact that each Group Member was required to provide such care in those circumstances is recognised by the Defendant as a circumstance in which each Group Member was required to work Unrostered Overtime in clause:
  1. 8.2.3 of the 2010 Policy Directive;
  2. 9.2.4 of the 2015 Policy Directive;

3. 9.2.4 of the 2015 Policy Directive;
4. 9.2.4 of the 2017 Policy Directive; and
5. 9.1.4 of the 2019 Policy Directive.

20 On each and every occasion where a Group Member, including the Plaintiff, was unable to complete patient transfer/discharge summaries during their normal rostered hours and performed work outside of their rostered hours for this purpose, the Group Member was required to work Unrostered Overtime until the summaries were completed.

**Particulars**

- i. The requirement of a Group Member to work the Unrostered Overtime was a necessary or essential function of each Group Member's duty as a doctor to provide care to patients in these circumstances.

21 On each and every occasion where a Group Member, including the Plaintiff, was requested by a superior to attend a late ward round outside of their rostered shift, the Group Member was required to work Unrostered Overtime until the ward round was completed.

**Particulars**

- i. The requirement of a Group Member to work the Unrostered Overtime was a necessary or essential function of each Group Member's duty as a doctor to provide care to patients in these circumstances.

22 On each and every occasion when a Group Member, including the Plaintiff, worked Unrostered Overtime in one or more of the circumstances pleaded in paragraphs 16 to 21, or was otherwise required by the Defendant to be in attendance at a hospital for the purpose of carrying out such functions as the Defendant called on him or her to perform, the Group Member was required by the Defendant to be in attendance at a hospital.

23 In the premises, on each and every occasion when a Group Member, including the Plaintiff, worked Unrostered Overtime in one or more of the circumstances pleaded in paragraphs 16 to 21, or otherwise worked Unrostered Overtime as he or she was required by the Defendant to be in attendance at a hospital for the purpose of carrying out such functions as the Defendant called on him or her to perform, the

Defendant was required to treat the Unrostered Overtime worked by the Group Member as time worked for the purposes of the Awards.

### Particulars

Clause 9 of each of the Awards.

- 24 In the premises, on each occasion when a Group Member, including the Plaintiff, worked Unrostered Overtime in one or more of the circumstances pleaded in paragraphs 16 to 21, or otherwise worked Unrostered Overtime because he or she was required by the Defendant to be in attendance at a hospital for the purpose of carrying out such functions as the Defendant called on him or her to perform, the Defendant was required to pay the Group Member for all Unrostered Overtime hours worked.

### UNDERPAYMENT

- 25 The Defendant was required to pay the Plaintiff and each of the Group Members for all time worked by him or her in the period after 15 December 2014.
- 26 In the premises pleaded above, the Defendant was required to make payment to the Plaintiff and each of the Group Members for all Fortnightly Overtime:
- a. at the rate of time and one-half (150%) for the first two hours worked in excess of 80 hours in a fortnight;
  - b. at the rate of double time (200%) for all hours after the first two hours worked in excess of 80 hours in a fortnight; and
  - c. at the rate of double time (200%) for all overtime performed on a Sunday.
- 27 In the premises pleaded above, the Defendant was required to make payment to the Plaintiff and each of the Group Members for all Daily Overtime:
- a. at the rate of time and one-half (150%) for the first two hours worked in excess of 10 hours in any one shift;
  - b. at the rate of double time (200%) for all hours after the first two hours worked in excess of 10 hours in any one shift; and
  - c. at the rate of double time (200%) for all hours worked in excess of 10 hours in any one shift on a Sunday.
- 28 In the premises pleaded above, the Defendant was required to make payment to the Plaintiff and each of the Group Members, whose shift commenced before 08:00 or finished after 18:00, Monday to Friday, for all hours worked, including any meal breaks taken during that shift.

29 In the premises pleaded above, the Defendant was required to make payment to the Plaintiff and each of the Group Members, who worked on Saturday or Sunday, for all hours worked, including any meal breaks taken during that shift.

30 During the Relevant Period, the Plaintiff and some Group Members did, at the requirement of the Defendant, work Unrostered Overtime so as to:

- a. treat a critically ill patient or treat a patient whose condition had changed dramatically at the completion of a shift, until other adequate medical attention could be arranged;
- b. treat a patient who required transfer, until the transfer process was complete;
- c. complete a procedure in theatre where such a procedure continued past the scheduled end of a shift;
- d. conclude responsibilities for the admission and/ or discharge of a patient at the completion of a shift;
- e. complete patient transfer/discharge summaries which they were unable to complete during their normal rostered hours;
- f. attend a late ward round outside of their rostered shift at the request of a superior; and/ or
- g. be in attendance at a hospital for the purpose of carrying out such functions as the Defendant called on them to perform.

**Particulars**

- i. Particulars will be provided after discovery.
- ii. Particulars of Group Members' claims will be provided following the initial trial of the Plaintiff's claim.

31 During the Relevant Period, the Plaintiff and some Group Members did, at the requirement of the Defendant, work in excess of 80 hours in a fortnight.

**Particulars**

- i. Particulars will be provided after discovery.
- ii. Particulars of Group Members' claims will be provided following the initial trial of the Plaintiff's claim.

32 In the premises pleaded above, on each occasion that the Plaintiff and each of the Group Members worked as set out in paragraphs 30 and 31 above, the Defendant

was required to make payment to the Plaintiff and each of the Group Members for all Fortnightly Overtime:

- a. at the rate of time and one-half (150%) for the first two hours worked in excess of 80 hours in a fortnight;
- b. at the rate of double time (200%) for all hours after the first two hours worked in excess of 80 hours in a fortnight; and
- c. at the rate of double time (200%) for all overtime performed on a Sunday.

33 During the Relevant Period, the Plaintiff and some Group Members did, at the requirement of the Defendant, work in excess of 10 hours in a shift.

**Particulars**

- i. Particulars will be provided after discovery.
- ii. Particulars of Group Members' claims will be provided following the initial trial of the Plaintiff's claim.

34 In the premises pleaded above, on each occasion that the Plaintiff and each of the Group Members worked as set out in paragraphs 30 and 33 above, the Defendant was required to make payment to the Plaintiff and each of the Group Members for all Daily Overtime:

- a. at the rate of time and one-half (150%) for the first two hours worked in excess of ten hours in any one shift;
- b. at the rate of double time (200%) for all hours after the first two hours worked in excess of ten hours in any one shift; and
- c. at the rate of double time (200%) for all hours worked in excess of ten hours in any one shift on a Sunday.

35 During the Relevant Period, the Plaintiff and some Group Members did, at the requirement of the Defendant, work shifts which commenced before 08:00 or finished after 18:00, Monday to Friday.

**Particulars**

- i. Particulars will be provided after discovery.
- ii. Particulars of Group Members' claims will be provided following the initial trial of the Plaintiff's claim.

36 In the premises pleaded above, the Defendant was required to make payment to the Plaintiff and each of the Group Members, on each and every occasion when his or

her shift commenced before 08:00 or finished after 18:00, Monday to Friday, for all hours worked, including any meal breaks taken during that shift.

37 During the Relevant Period, the Plaintiff and some Group Members did, at the requirement of the Defendant, work shifts on Saturdays and Sundays.

**Particulars**

- i. Particulars will be provided after discovery.
- ii. Particulars of Group Members' claims will be provided following the initial trial of the Plaintiff's claim.

38 In the premises pleaded above, the Defendant was required to make payment to the Plaintiff and each of the Group Members, on each and every occasion when he or she worked on a Saturday or Sunday, for all hours worked, including any meal breaks taken during that shift.

39 In the period after 15 December 2014, the Defendant did not pay the Plaintiff and each of the Group Members their full entitlements, for all time worked, pursuant to:

- a. clause 6 of each of the Awards;
- b. clause 10 of each of the Awards; and/or
- c. clause 11 of each of the Awards.

40 By reason of the matters pleaded in paragraph 39 above, the Defendant has contravened:

- a. clause 6 of each of the Awards;
- b. clause 10 of each of the Awards; and/or
- c. clause 11 of each of the Awards.

41 In the premises, the Plaintiff and each Group Member were not paid their full entitlements pursuant to the Awards, and were thereby underpaid, in the period after 15 December 2014.

**Particulars**

The difference between the amount that the Plaintiff and each Group Member was entitled to receive for all time worked in the period after 15 December 2014, and the amount paid to the Plaintiff and each Group Member by the Defendant in the period after 15 December 2014.

- 42 In the premises, the Plaintiff and each of the Group Members are entitled to an order pursuant to section 365 of the *Industrial Relations Act 1996* (NSW) that the Defendant is obliged to compensate them for the underpayment of entitlements owed to them pursuant to the Awards.

**B. COMMON QUESTIONS**

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

- 43 Whether, on the proper interpretation of the Awards, the Defendant was required to pay each Group Member for:
- a. all time worked by each of the Group Members in excess of 80 hours in a fortnight at the following rates:
    - i. at the rate of time and one-half (150%) for the first two hours worked in excess of 80 hours in a fortnight;
    - ii. at the rate of double time (200%) for all hours after the first two hours worked in excess of 80 hours in a fortnight; and
    - iii. at the rate of double time (200%) for all overtime performed on a Sunday.
  - b. all time worked in excess of 10 hours in any one shift, at overtime rates, irrespective of the total hours worked in the respective fortnight at the following rates:
    - i. at the rate of time and one-half (150%) for the first two hours worked in excess of 10 hours in any one shift;
    - ii. at the rate of double time (200%) for all hours after the first two hours worked in excess of 10 hours in any one shift; and
    - iii. at the rate of double time (200%) for all hours worked in excess of 10 hours in any one shift on a Sunday.
  - c. all time he or she was required to be in attendance, from the start time of his or her shift until the finish time of his or her shift, if his or her shift commenced before 08:00 or finished after 18:00, Monday to Friday; and
  - d. all time he or she was required to be in attendance, from the start time of his or her shift until the finish time of his or her shift, on Saturday or Sunday.
- 44 Whether in each of the following circumstances, the Defendant required Group Members to be in attendance at a hospital for the purpose of carrying out and performing functions as called on by the Defendant:

- a. treating a critically ill patient or patient whose condition had or has changed dramatically at the completion of the Group Member's shift;
- b. treating a patient who required or requires transfer, until the transfer process was or is complete;
- c. continuing to work in theatre where the procedure continued or continues past the scheduled end of the Group Member's shift;
- d. completing the admission and/ or discharge of a patient at the completion of a shift, where the Group Member was or is responsible for that admission and/ or discharge;
- e. completing patient transfer/ discharge summaries which were unable to be completed during their normal rostered hours;
- f. attending a late ward round outside of their rostered shift at the request of a superior; and/or
- g. being in attendance at a hospital, on request, for the purpose of carrying out such functions as the Defendant called on him or her to perform.

45 Whether, on the proper interpretation of the Awards, in each of the circumstances identified in paragraph 44, the Defendant required Group Members to be in attendance at a hospital for the purpose of carrying out such functions as the Defendant called on them to perform and should be treated as time worked within the meaning of clause 9 of each of the Awards.

46 Whether, on the proper interpretation of the Awards, the Defendant was required to pay each Group Member for all hours that he or she worked outside of his or her rostered hours.

#### SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor on record

Date of signature

16 December 2020

### NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- You will be in default in these proceedings.
- The court may enter judgment against you without any further notice to you.

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

### HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim, by filing a defence and/or making a cross-claim.
- 2 If money is claimed, and you believe you owe the money claimed, by:
  - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
  - Filing an acknowledgement of the claim.
  - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed, by:
  - Paying the plaintiff that part of the money that is claimed.
  - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at [www.ucprforms.justice.nsw.gov.au](http://www.ucprforms.justice.nsw.gov.au) or at any NSW court registry.

**REGISTRY ADDRESS**

|                |  |
|----------------|--|
| Street address | Law Courts Building, 184 Phillip Street, Sydney, NSW 2000. |
| Postal address | Supreme Court of NSW, GPO Box 3, Sydney, NSW 2001.         |
| Telephone      | 1300 679 272   |

**AFFIDAVIT VERIFYING**

Name Amireh Fakhouri  
 Address [REDACTED]  
 Occupation Doctor  
 Date 16 December 2020

I say on oath:

- 1 I am the plaintiff.
- 2 I believe that the allegations of fact in the statement of claim are true.

SWORN at [REDACTED]

Signature of deponent

Name of witness

Address of witness

Capacity of witness

*Amireh Fakhouri*  
 Hayden Stephens  
 3a. Corder Ave Coogee, NSW, 2034  
 Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 ~~#I saw the face of the deponent. [OR, delete whichever option is inapplicable]~~  
~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.\*~~
- 2 ~~#I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]~~  
 #I have confirmed the deponent's identity using the following identification document:

[REDACTED]  
 Identification document relied on (may be original or certified copy)†

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[\* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

**FURTHER DETAILS ABOUT PLAINTIFF****Plaintiff**

Name Dr Amireh Fakhouri

Address

[REDACTED]

[REDACTED]

**Legal representative for plaintiff**

Name Rebecca Gilsenan

Practising certificate number 32587

Firm Maurice Blackburn Lawyers

Address Level 32

201 Elizabeth Street

Sydney NSW 2000

DX address 13002 Sydney Market Street

Telephone (02) 8267 0959

Fax (02) 9261 3318

Email rgilsenan@mauriceblackburn.com.au

**DETAILS ABOUT DEFENDANT****Defendant**

Name Ms Elizabeth Koff

The Secretary for the NSW Ministry of Health

Address

1 Reserve Road

St Leonards NSW 2065

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