

CONSENT ORDER

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

Plaintiff	Amireh Fakhouri
First Defendant	The Secretary for the NSW Ministry of Health ABN 92697899630
Second Defendant	The State of New South Wales

PREPARATION DETAILS

Prepared for	Plaintiff
Legal representative	Rebecca Gilsenan, Maurice Blackburn Lawyers
Legal representative reference	3052894
Contact name and telephone	02 9261 1488
Contact email	rgilsenan@mauriceblackburn.com.au

TERMS OF ORDER MADE BY THE COURT BY CONSENT

Opt-out

- 1 Pursuant to section 162(1) of the *Civil Procedure Act 2005 (NSW)* (**the Act**), **4pm, Friday 10 September 2021** is fixed as the date and time by which a Group Member (as defined in the Amended Statement of Claim) may opt out of this Proceeding in accordance with these orders (**Opt Out Date**).
- 2 The form and content of the notice set out in **Schedule A** to this Order (**Notice to Group Members**), and the abridged notice (**Abridged Notice**) in **Schedule C** be approved for the purposes of sections 175 and 176 of the Act.
- 3 Pursuant to section 183 of the Act, the notice set out in **Schedule B** to this Order that is a modification of Form 115 (**Opt Out Notice**) be approved for this proceeding for the purpose of rule 58.2(1) of the *Uniform Civil Procedure Rules 2005 (NSW)* (**Rules**).

4 Pursuant to section 176(2) of the Act, notice is to be given to Group Members according to the following procedure:

(a) By **4pm, Friday 9 July 2021**, the Plaintiff is to cause the Notice to Group Members and Opt Out Notice to be:

i. displayed on the Plaintiff's solicitor's website, www.mauriceblackburn.com.au, and

ii. be available for inspection at each of the Plaintiff's solicitors' offices throughout Australia,

continuously until the Opt Out Date;

(b) by **4pm, Friday 16 July 2021**, the Plaintiff is to cause an advertisement in terms of the Abridged Notice (**Schedule C**) to be published in the legal notices or equivalent section in one week day edition of The Sydney Morning Herald;

(c) by **4pm on Friday 30 July 2021**, the Defendants are to cause a copy of the Notice to Group Members and Opt Out Notice to be sent by: (i) email to their last known email address; or (ii) by ordinary post to their last known postal address (in the absence of a last known email address) to all persons who, at any time in the period from 16 December 2014 to 22 April 2021, were employed by the First Defendant or the Second Defendant in the positions of:

i. Junior Medical Officer;

ii. Intern;

iii. Resident Medical Officer;

iv. Registrar; and/or

v. Senior Registrar.

(d) For the purpose of the email distribution in accordance with order 4(c) above, the Defendants will cause a copy the Notice to Group Members and Opt Out Notice to be attached to an email with the subject line: "NSW Junior Doctors Class Action Notice to Group Members" and the covering email as follows:

Dear [FIRST NAME] [LAST NAME],

*Please see **attached** an important notice from the NSW Supreme Court.*

The NSW Supreme Court has ordered that this notice be sent to all persons who, at any time in the period from 16 December 2014 to 22 April 2021, were employed by NSW Health in the positions of:

Junior Medical Officer;

Intern;

Resident Medical Officer;

Registrar; and/or

Senior Registrar.

Please do not reply to this email. If you have any questions about the notice, please direct them to Maurice Blackburn Lawyers, whose contact details are in the notice, or seek your own legal advice.

- (e) For the purpose of any postal distribution in accordance with order 4(c) above, the Defendants will cause a copy of the Notice to Group Members and Opt Out Notice to be sent in a plain envelope addressed to the person, with no other content enclosed in the envelope other than what is approved as Schedule A and Schedule B to these Orders.
- (f) by **4pm on Friday 13 August 2021**, the Defendants file and serve an affidavit stating:
- i. the steps taken to complete the distribution in accordance with orders 4(c) – (e) above, including steps taken to identify all persons on the distribution list;
 - ii. the total number of persons sent a copy of the Notice to Group Members and Opt out Notice; and
 - iii. the number of persons in relation to whom the Defendants received notification (in any form) that the communication was not received.
- 5 By **4pm on Friday 9 July 2021**, the Registry of the NSW Supreme Court will cause a copy of the Notice to Group Members and the Opt Out Notice to be published on the website: www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Junior-Doctors-Underpayment-Class-Action.aspx.
- 6 For the purposes of rule 58.2(1) of the Rules, any Group Member who wishes to opt out of the proceeding must do so by filing in the Court and serving on the Plaintiff's solicitors the Opt Out Notice by the Opt Out Date.
- 7 If the solicitors for any party receive a notice purporting to be an Opt Out Notice referable to this proceeding, they shall file a copy of the Notice in the Registry of the New South Wales Supreme Court within seven days after receiving it, and the Notice

shall be treated as an Opt Out Notice received by the Court at the time it was received by the solicitors.

- 8 The solicitors for any party have leave to inspect the Court file and copy any Opt Out Notice filed in the Registry of the Supreme Court of New South Wales.
- 9 Pursuant to rule 58.2(2) of the Rules, no later than 14 days after the Opt Out Date the Plaintiff is to provide to the Defendant a list of persons who have filed and served Opt Out Notices in the proceeding.
- 10 Pursuant to section 176(3) of the Act, the disbursement costs of and incidental to distributing the Notice to Group Members and Opt Out Notice to Group Members, as set out in order 4(c) above, are initially to be borne by the Plaintiff, on the basis that those costs will subsequently fall to be dealt with by the Court as part of the costs of the proceeding.

Reply to the Defence to the Amended Statement of Claim

- 11 The Plaintiff is to file and serve any reply to the Defence to the Amended Statement of Claim on or before 2 July 2021.

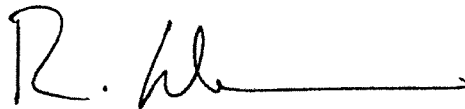
Case management

- 12 The matter be listed for a case management conference at 2pm on 24 September 2021.

SIGNATURES

Dr Amireh Fakhouri, Plaintiff, consents

Signature of legal representative



Name	Rebecca Gilsenan
Capacity	Solicitor
Date of signature	21 June 2021

Secretary for the NSW Ministry of Health, First Defendant, consents

Signature of legal representative



Name

Kate Plowman

Capacity

Partner

Date of signature

21 June 2021

State of NSW, Second Defendant, consents

Signature of legal representative



Name

Kate Plowman

Capacity

Partner

Date of signature

21 June 2021

SEAL AND SIGNATURE

Court seal

Signature

Capacity

Date made or given

Date entered

NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

SCHEDULE A**IMPORTANT NOTICE TO GROUP MEMBERS****SUPREME COURT OF NEW SOUTH WALES****NSW Junior Doctors Class Action**

**Dr Amireh Fakhouri v Secretary of the NSW Ministry of Health & State of NSW
(2020/00356588)**

1. Why is this notice important?

A class action has been commenced in the Supreme Court of New South Wales (the **Court**) by Dr Amireh Fakhouri (**Plaintiff**) against the Secretary for the NSW Ministry of Health (**First Defendant**) and the State of New South Wales (**Second Defendant**).

The class action arises out of a claim by the Plaintiff that the Defendants have not paid Junior Medical Officers all of their entitlements, pursuant to the relevant awards, for rostered overtime, unrostered overtime and meal breaks.

The Defendants dispute these allegations and are defending the class action.

The Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the class action has been brought and who may be affected by the class action.

You are receiving this notice because you have been identified as a potential Group Member. **You should read this notice carefully as it may affect your rights. Any questions you have concerning the matters contained in this notice should not be directed to the Court.**

If there is anything in this notice that you do not understand, you can contact Maurice Blackburn on 1800 318 062 or NSWJuniorDoctors@mauriceblackburn.com.au or seek your own legal advice.

2. What is a class action?

A class action is an action that is brought by one or more persons (here, the Plaintiff) on their own behalf and on behalf of a group of people (Group Members) against another person or persons (here, the Defendants) where the Plaintiff and the Group Members have similar claims against the Defendants.

Group Members are not individually responsible for the legal costs associated with bringing the class action. In a class action, only the plaintiff is responsible for the

costs. Payment of costs is explained in more detail in section 6 below. However, there are some circumstances where Group Members may become liable to pay legal costs in connection with the class action (explained at paragraph 6 below).

Group Members are “bound” by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways being either a judgment following a trial, or a settlement at any time. If there is a judgment or a settlement of a class action Group Members *will not* be able pursue the same claims and *may not* be able to pursue similar or related claims against the Defendants in other legal proceedings.

If you consider that you have other claims against the Defendants which are based on your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see below).

3. What is this Class Action about?

This class action, the NSW Junior Doctors Class Action, is brought by the Plaintiff, Dr Fakhouri, on her own behalf, and on behalf of all persons who are “Group Members” as defined in the proceeding.

The Plaintiff alleges in the Amended Statement of Claim in NSW Supreme Court proceeding 2020/00356588 that since 16 December 2014 the Defendants did not pay Group Members all of their entitlements pursuant to the relevant awards for rostered overtime, unrostered overtime and meal breaks.

The Plaintiff is represented by Maurice Blackburn Lawyers and Hayden Stephens & Associates.

The First Defendant to the class action is the Secretary for the NSW Ministry of Health, and the Second Defendant is the State of New South Wales. The Defendants dispute these allegations and are defending the class action.

4. What is Opt Out?

The Plaintiff in a class action does not need to seek the consent of Group Members to commence a class action on their behalf. However, a Group Member can cease to be a Group Member by opting out of the class action. An explanation of how to opt out is below in the section headed “How can you opt out of the Class Action?”

5. Are you a Group Member?

You are a Group Member if you:

- i. were employed by NSW Health at any time from 16 December 2014 to 22 April 2021 in the position of:
 - (a) Junior Medical Officer;
 - (b) Intern;
 - (c) Resident Medical Officer;
 - (d) Registrar; and/or
 - (e) Senior Registrar;
- ii. were required to, from time to time, work in excess of your rostered ordinary hours; and
- iii. were not paid all of your entitlements pursuant to the statutory award for overtime.

If you are not sure whether you are a Group Member, you can contact Maurice Blackburn on 1800 318 062 or NSWJuniorDoctors@mauriceblackburn.com.au, or by seeking your own legal advice.

6. **Will you be liable for legal costs?**

You will **not become liable for any legal costs in the class action** simply by remaining as a Group Member up to the point where the Court determines those questions that are common to the claims of the Plaintiff and the Group Members. However:

- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Maurice Blackburn or other lawyers to do that work for you and you may have to pay for that work. A copy of the 'no win no fee' terms on which Maurice Blackburn is acting in the class action may be obtained from them at the contact details noted below;
- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Plaintiff in running the class action but which are not able to be recovered from the Defendants; and
- (c) class actions are often settled out of court. If this occurs in the class action, you may be able to claim from the settlement amount without retaining a lawyer.

7. **What will happen if you choose to remain a Group Member?**

Unless you opt out, you will be bound by any settlement or judgment of the class action. If you do not opt out and the class action is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Plaintiff and Group Members, although you may have to satisfy certain conditions before your entitlement arises. If you do not opt out and the action is unsuccessful or is not as successful as you might have wished, you *will not* be able pursue the same claims

and *may not* be able to pursue related claims against the Defendants in other legal proceedings.

8. What do you need to do?

(a) How you can remain a Group Member?

If you wish to remain a Group Member there is nothing you need to do at the present time. The Plaintiff will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of the Plaintiff and the Group Members. However, you are invited to contact the Plaintiff's lawyers, Maurice Blackburn Lawyers, on the details below and register as a Group Member so that future notices about the class action can be sent to your preferred contact details.

(b) How you can opt out of the class action?

If you do not wish to remain a Group Member you must opt out of the class action. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you will be able to bring your own claim against the Defendants, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the Defendants, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.

If you wish to opt out of the class action you **must** do so by completing an "**Opt Out Notice**" in the form shown below (Form 115 of the *Uniform Civil Procedure Rules* approved forms), then:

- (i) return it to the Registry of the NSW Supreme Court at the address below.
IMPORTANT: the Notice must reach the Registry by no later than 4pm on Friday 10 September 2021, otherwise it will not be effective; and
- (ii) **send** a copy of the completed form to the Plaintiff's solicitors by sending it to Rebecca Gilsenan, Maurice Blackburn Lawyers, at the address below.

NSWSC REGISTRY CONTACT DETAILS	
Street address	Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001

DX	Supreme Court of NSW DX 829 Sydney
Telephone	1300 679 272

MAURICE BLACKBURN CONTACT DETAILS	
Email	NSWJuniorDoctors@mauriceblackburn.com.au
Website	https://www.mauriceblackburn.com.au/class-actions/current-class-actions/nsw-junior-doctors-class-action/
Street address	Level 32 201 Elizabeth Street Sydney NSW 2000
Telephone	1800 318 062

You should submit the Opt Out Notice if:

- (i) you consider that you may be a Group Member and you wish to opt out of the class action; or
- (ii) you believe that you have been incorrectly identified as a Group Member, because you do not meet the criteria set out in the section headed "Are you a Group Member?" above.

Each Group Member seeking to opt out should fill out a separate form.

9. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the Plaintiff's Amended Statement of Claim, NSW Health's Defence to the Amended Statement of Claim and the Plaintiff's Reply; and the Opt Out Notice may be obtained by:

- (a) downloading them from www.mauriceblackburn.com.au; or
- (b) inspecting them between 9.00 am and 5.00 pm at one of the offices of Maurice Blackburn, contact details for which are available at www.mauriceblackburn.com.au; or by calling (02) 9261 1488; and/or
- (c) inspecting them on the New South Wales Supreme Court website www.supremecourt.justice.nsw.gov.au or by visiting the New South Wales Supreme Court at the Law Courts Building, 184 Phillip Street, Sydney, NSW.

Please consider the above matters carefully. If you are unsure about anything you should contact Maurice Blackburn on 1800 318 062, or email

NSWJuniorDoctors@mauriceblackburn.com.au, or seek your own independent legal advice.

This Notice is published pursuant to Orders made by the Court on **21 June 2021**.

SCHEDULE B

Form 115 (version 2)
UCPR 58.2

OPT OUT NOTICE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	Common Law General
Registry	Sydney Registry
Case number	2020/00356588

TITLE OF PROCEEDINGS

Plaintiff	Amireh Fakhouri
First Defendant	The Secretary for the NSW Ministry of Health ABN 92697899630
Second Defendant	The State of New South Wales

FILING DETAILS

Filed for:

.....

(Name of person opting out of representative proceedings)

Legal representative:

.....

(If applicable)

Legal representative reference:

.....

(If applicable)

Contact name and telephone:

Contact email:

OPT OUT NOTICE

Name of person opting out:

Address of person opting out:

I,, a Group Member in these representative proceedings, opt out of the proceedings.

I understand that in opting out:

- 1 I forego the right to share in any relief obtained by the representative party in the representative proceedings;
- 2 I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and
- 3 To the extent that I have a claim against the defendants, any limitation period suspended by the commencement of the representative proceedings has recommenced to run.

SIGNATURE

Signature of legal representative:

Signature of or on behalf of person opting out if not legally represented:

Capacity:

[eg solicitor, authorised officer of person opting out, person opting out]

Date of signature:

NOTICE TO PERSON OPTING OUT

You must, within the time specified in the notice to Group Members:

- 1 file this form in the registry of the court at the address below, or in the manner provided in the notice to Group Members; and
- 2 serve a copy of this form on the representative party at the address, or in the manner provided, in the notice to Group Members.

REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

SCHEDULE C
ABRIDGED NOTICE
SUPREME COURT OF NEW SOUTH WALES
NSW Junior Doctors Class Action

The Supreme Court of NSW has ordered that this notice be published for the information of persons who might be Group Members in the NSW Junior Doctors class action (NSW Supreme Court proceeding 2020/00356588). Any person who might be a Group Member (see section 2) should read this notice carefully.

1. What is the NSW Junior Doctors Class Action?

A class action has been commenced by Dr Amireh Fakhouri (**Plaintiff**) against the Secretary for the NSW Ministry of Health and the State of New South Wales (**Defendants**).

The class action arises out of a claim by the Plaintiff that the Defendants have not paid Junior Medical Officers all of their entitlements, pursuant to the relevant awards, for rostered overtime, unrostered overtime and meal breaks.

The Defendants dispute these allegations and are defending the class action.

The Plaintiff is represented by Maurice Blackburn Lawyers and Hayden Stephens & Associates.

2. Are you a Group Member?

You are a Group Member if you:

- i. were employed by NSW Health at any time from 16 December 2014 to 22 April 2021 in the position of:
 - (f) Junior Medical Officer;
 - (g) Intern;
 - (h) Resident Medical Officer;
 - (i) Registrar; and/or
 - (j) Senior Registrar, and
- ii. were required to, from time to time, work in excess of your rostered ordinary hours; and
- iii. were not paid all of your entitlements pursuant to the statutory award for overtime.

If you believe you may be a Group Member it is very important that you read the further information in the 'Notice to Group Members' available at Maurice Blackburn's

website as soon as possible: <https://www.mauriceblackburn.com.au/class-actions/current-class-actions/nsw-junior-doctors-class-action/>

3. Opt out deadline

The Court has made orders that any person who wishes to have no part in the class action must **opt-out** of the proceeding by 4pm on **Friday 10 September 2021**.

If you are not sure whether you are a Group Member, you can contact Maurice Blackburn on 1800 318 062 or NSWJuniorDoctors@mauriceblackburn.com.au, or seek your own legal advice.