

## AMENDED NOTICE OF MOTION

### 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	<b>Amireh Fakhouri</b>
First defendant	The Secretary for the NSW Ministry of Health ABN 92697899630
Second defendant	The State of NSW

### FILING DETAILS

Prepared for	Plaintiff
Legal representative	Rebecca Gilsenan, Maurice Blackburn Lawyers
Legal representative reference	RXG/3052894
Contact name and telephone	02 9261 1488
Contact email	<a href="mailto:rgilsenan@mauriceblackburn.com.au">rgilsenan@mauriceblackburn.com.au</a>
Prepared for	Plaintiff

### PERSON AFFECTED BY ORDERS SOUGHT

**Amireh Fakhouri** (Plaintiff )

**The Secretary for the NSW Ministry of Health** and **State of NSW** (Defendants)

### HEARING DETAILS

This motion is listed at [time, date and place to be inserted by the registry unless otherwise known (Court registry will leave blank if being dealt with in chambers.)].

## ORDERS SOUGHT

### Corrective notice

- 1 Pursuant to section 176(2) of the *Civil Procedure Act 2005 (NSW)* (**the Act**), notice is to be given to Group Members that have opted out of the proceedings by filing an Opt Out Notice after 16 August 2021, or where no date was listed on the Opt Out Notice, (the **Affected Opted Out Group Members**) of the matters in the “Corrective Notice” appearing at Annexure A (**Corrective Notice**) to these orders.
- 2 The form and content of the notice set out in the Corrective Notice at Annexure A to these orders is approved for the purposes of sections 175 and 176 of the Act.

### Withdrawal of Opt Out Notice

- 3 Pursuant to s 183 of the Act, an Affected Opted Out Group Member is given leave to withdraw a previously filed Opt Out Notice if a “Withdrawal of Opt Out Notice” in the form of Annexure B to these orders (**Withdrawal of Opt Out Notice**) is signed and filed by the Affected Opted Out Group Member before **4.00pm on 15 October 2021 (the Withdrawal of Opt Out Date)**.
- 4 Pursuant to section 183 of the Act, the Withdrawal of Opt Out Notice set out at Annexure B to these orders be approved.
- 5 Pursuant to s 183 of the Act, the Group Members identified in Annexure C of these orders (**Schedule of Group Members Immediately Withdrawing Opt Out Notices**) are given leave to withdraw their Opt Out Notices, effective from the date of these orders.

### Distribution of Corrective Notices and Withdrawal of Opt Out Notices

- 6 Pursuant to s 183 of the Act, the Corrective Notice and Withdrawal of Opt Out Notice is to be distributed to Affected Opted Out Group Members in accordance with orders 7 to 11 of these orders.
- 7 By **27 September 2021**, the Plaintiff is to identify a list of all Affected Opted Out Group Members by inspecting all Opt Out Notices filed with the Registry of the New South Wales Supreme Court and identifying those Opt Out Notices dated after 16 August 2021, or where no date was listed on the Opt Out Notice.
- 8 By **27 September 2021**, the Plaintiff is to provide the list of all Affected Opted Out Group Members to the Defendants.

- 9 By **1 October 2021**, the Defendants are to cause a copy of the Corrective Notice and Withdrawal of Opt Out Notice to all Affected Opted Out Group Members 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)].
- 10 If the solicitors for any party receive a notice purporting to be a Withdrawal of 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 Withdrawal of Opt Out Notice shall be treated as Withdrawal of Opt Out Notice received by the Court at the time it was received by the solicitors.
- 11 The solicitors for any party have leave to inspect the Court file and copy any Withdrawal of Opt Out Notices filed in the Registry of the Supreme Court of New South Wales.
- 12 Order 9 made on 18 June 2021 be amended such that, pursuant to rule 58.2(2) of the Rules, no later than 14 days after the Withdrawal of 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 (and have not filed a Withdrawal of Opt Out Notice).
- 13 Pursuant to section 176(3) of the Act, the disbursement costs of and incidental to distributing the Corrective Notice to Affected Opted Out Group Members and Withdrawal of Opt Out Notice to Group Members, as set out in orders 7 to 9 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.
- 14 The costs of and incidental to this motion are reserved.

**SIGNATURE**

Signature of legal representative



Capacity

Solicitor for the Plaintiff

Date of signature

22 September 2020

**NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT**

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

**ANNEXURE A**  
**CORRECTIVE NOTICE**

Please read this notice carefully. It contains important information about your rights and **may require you to take prompt action** as described on the second page on this notice.

The NSW Supreme Court is sending corrective information to the recipients of recent communications from ASMOF (NSW) regarding the Junior Doctors Class Action who have submitted an opt out form on or after 16 August 2021, or who submitted an opt out form that is undated. The contents of this notice have been approved by the NSW Supreme Court.

1. In August 2021, you should have received a Court-approved notice to group members, which explained the background to the Junior Doctors Class Action, and an “opt out” form.
2. More recently, you are likely to have received emails or telephone calls, or attended briefing sessions, where ASMOF (NSW) encouraged group members to opt out of the class action.
3. Any communication you received from ASMOF (NSW) was not approved by the Court.
4. ASMOF (NSW)’s communications did not include the following important information:
  - a) ASMOF (NSW) has not commenced any proceeding yet, and has said it is only intending to cover unpaid overtime claims after 1 January 2016;
  - b) If you opt out of the Junior Doctors Class Action, even if ASMOF (NSW) brings a claim you will not be able to recover compensation for any unpaid overtime that you worked as a junior medical officer more than six years before ASMOF (NSW) brings its claim due to a limitation period specified in the *Industrial Relations Act 1996* (NSW), that is any claim you have for unpaid overtime in the period from 16 December 2014 to 31 December 2015 will be lost.
  - c) If you remain a group member in the Junior Doctors Class Action, you will be able to claim compensation for any unpaid overtime that you worked as a junior medical officer in the period from 16 December 2014 to 31 December 2015 *as well as* times after that period.
5. ASMOF (NSW)’s communications also made certain statements about the progress of the class action, but did not include the following important information:
  - a) The Junior Doctors Class Action was commenced in December 2020 and has advanced beyond preliminary arguments, pleadings and initial discovery (and there have been no issues raised as to whether the class action is properly brought on behalf of all interns, resident medical officers, registrars and senior registrars with unpaid overtime claims). The Court has indicated that the proceeding will be set down for hearing in mid-2022 or at the earliest available dates thereafter.
  - b) ASMOF’s foreshadowed proceeding has not been commenced yet, and there is no reason to think that it will progress more quickly or straightforwardly than the Junior Doctors Class Action.

6. ASMOF (NSW)'s communications also made certain statements about the relationship between legal proceedings and award negotiations. The Junior Doctors Class Action will not impede ASMOF (NSW), or the other relevant organisations being the HSU and the AMA, from engaging in award negotiations. Neither the Junior Doctors Class Action nor any proceeding commenced by ASMOF (NSW) in the NSW Supreme Court will be about whether the award should be changed, going forward.

If you filled in an opt out form to leave the Junior Doctors Class Action because of information you received from ASMOF (NSW) or Hall Payne Lawyers, you may withdraw your opt out notice and be reinstated as a group member in the class action if you would like to do so after reading the information in this notice. If you now want to stay in the Junior Doctors Class Action, you should:

- a) complete the 'Withdrawal Opt Out Form' **enclosed**; and
- b) send it to the NSW Supreme Court at [sc.emailfiling@justice.nsw.gov.au](mailto:sc.emailfiling@justice.nsw.gov.au) and to Maurice Blackburn Lawyers at [NSWJuniorDoctors@MauriceBlackburn.com.au](mailto:NSWJuniorDoctors@MauriceBlackburn.com.au) by **4pm on 15 October 2021**.

If you worked unpaid overtime between 24 September and 15 October 2015, and intend to withdraw your opt out form, you should do so as quickly as possible and not wait for the deadline. This is because for each day that passes before you withdraw your opt out form, there is a risk that the period for which you can claim unpaid overtime gets shorter by a corresponding day due to the limitation period described above.

If there is anything in this corrective notice that you do not understand, you should speak to Maurice Blackburn Lawyers on 1800 318 062 or seek your own independent legal advice. Enquiries should not be directed to the Court.

You should be careful about any future information you get about the Junior Doctors Class Action from ASMOF (NSW), as that information has not been approved by the Court.

**ANNEXURE B**

**WITHDRAWAL OF 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): .....

Telephone: .....

Email: .....

Address: .....

**WITHDRAWAL OF OPT OUT NOTICE**

I, ..... wish to withdraw my opt out notice and be reinstated as a Group Member in these proceedings.

**SIGNATURE**

Signature of or on behalf of person withdrawing opt out notice: .....

Capacity: .....  
[eg solicitor, authorised officer of person withdrawing their opt out notice, person withdrawing their opt out notice]

Date of signature: .....

**ANNEXURE C****Schedule of Group Members Immediately Withdrawing Opt Out Notices**

1.	Hillary Hu
2.	Hannah Hu