

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**.