

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	23/12/2025 1:15:09 PM AEDT
Date Accepted for Filing:	23/12/2025 2:33:02 PM AEDT
File Number:	NSD2409/2025
File Title:	GREGORY HOOPER & ANOR v OS MCAP PTY LTD (ACN 626 224 655) & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Registrar

Important Information

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.

The date of the filing of the document is determined pursuant to the Court's Rules.



**Originating application starting a representative proceeding under
Part IVA of the Federal Court of Australia Act 1976**

No. of 2025

Federal Court of Australia

District Registry: New South Wales

Division: Fair Work

Gregory Hooper and another named in the Schedule

Applicants

OS MCAP Pty Ltd and another named in the Schedule

Respondents

To the Respondents

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing: [Registry will insert time and date]

Place: [address of Court]

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable]

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Gregory Hooper and James Sharkie, Applicants
Prepared by (name of person/lawyer) Aron Neilson
Law firm (if applicable) AEN Legal
Tel _____ Fax _____
Email aron.neilson@aenlegal.com.au
Address for service Level 17, 9 Castlereagh Street, Sydney NSW 2000
(include state and postcode)



Details of claim

On the grounds stated in the accompanying statement of claim, the Applicants claim:

1. A declaration that the First Respondent contravened s 114 of the *Fair Work Act 2009* (Cth) (**FW Act**) each time it required the First Applicant and each Group Member that it employed (**Production Group Members**) to work on a public holiday within the meaning of s 115 of the FW Act (**Public Holiday**) during the period of their employment.
2. A declaration that the Second Respondent contravened s 114 of the FW Act each time it required the Second Applicant and each Group Member that it employed (**Maintenance Group Members**) to work on a Public Holiday during the period of their employment.
3. A declaration that the First Respondent contravened s 44 of the FW Act in respect of the First Applicant and each Production Group Member whom it required to work on a Public Holiday by its contraventions of s 114 of the FW Act as declared in paragraph 1 above.
4. A declaration that the Second Respondent contravened s 44 of the FW Act in respect of the Second Applicant and each Maintenance Group Member whom it required to work on a Public Holiday by its contraventions of s 114 of the FW Act as declared in paragraph 2 above.
5. An order that the First Respondent pay compensation to the First Applicant and each Production Group Member by reason of its contraventions of s 44 of the FW Act as declared in paragraph 3 above.
6. An order that the Second Respondent pay compensation to the Second Applicant and each Maintenance Group Member by reason of its contraventions of s 44 of the FW Act as declared in paragraph 4 above.
7. An order that the First Respondent pay a pecuniary penalty to the Applicants, Group Members and/or the Mining and Energy Union for each of its contraventions of s 44 of the FW Act as declared in paragraph 3 above in the proportions that the Court considers appropriate.
8. An order that the Second Respondent pay a pecuniary penalty to the Applicants, Group Members and/or the Mining and Energy Union for each of its contraventions of s 44 of the FW Act as declared in paragraph 4 above in the proportions that the Court considers appropriate.
9. An order that the First Respondent pay interest pursuant to s 547 of the FW Act on the award of compensation in paragraph 5 above.
10. An order that the Second Respondent pay interest pursuant to s 547 of the FW Act on the award of compensation in paragraph 6 above.



11. Such further orders as the Court considers appropriate.

Questions common to claims of Group Members

The questions of law or fact common to the claims of the group members are:

1. Whether the Applicants and Group Members were required to comply with the workplace policies and standards contained in the OSE Handbook (as defined in the statement of claim);
2. Whether the OSE Handbook (as defined in the statement of claim) imposed on the Applicants and Group Members an obligation that they work a Public Holiday if it fell on an ordinary rostered day;
3. Whether the First Respondent engaged the First Applicant and Production Group Members under a standard form employment contract, being the Production Contract (as defined in the statement of claim);
4. Whether the Second Respondent engaged the Second Applicant and Maintenance Group Members under a standard form employment contract, being the Maintenance Contract (as defined in the statement of claim);
5. Whether the First Respondent did not advise the First Applicant and Production Group Members on any occasion during the Employment Period (as defined below) that they had a right under s 114 of the FW Act or otherwise to refuse (if the refusal was reasonable) to work on a Public Holiday;
6. Whether the First Respondent on any occasion made a request to the First Applicant and Production Group Members within the meaning of s 114(2) of the FW Act that they work on a Public Holiday;
7. Whether the First Respondent on each Public Holiday required the First Applicant and Production Group Members to work the holiday;
8. Whether the Second Respondent did not advise the Second Applicant and Maintenance Group Members on any occasion during the Employment Period (as defined below) that they had a right under s 114 of the FW Act or otherwise to refuse (if the refusal was reasonable) to work on a Public Holiday;
9. Whether the Second Respondent on any occasion made a request to the Second Applicant and Maintenance Group Members within the meaning of s 114(2) of the FW Act that they work on a Public Holiday;
10. Whether the Second Respondent on each Public Holiday required the Second Applicant and Maintenance Group Members to work the holiday;



11. Whether the Applicants and Group Members are entitled to an order that the Respondents pay a pecuniary penalty for each of its contraventions of ss 44 and 114 of the FW Act, and if so, the method of calculating those penalties;
12. Whether any pecuniary penalties ordered should be paid by the Respondents to the Applicants, Group Members and/or the Mining and Energy Union, and if so, the proportions that the Court considers appropriate; and
13. Whether compensation for the loss of the opportunity to refuse to work on each Public Holiday is available to the Applicants and Group Members and, if so, the method of calculating that compensation.

Representative action

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976* (Cth).

The Group Members to whom this proceeding relates are persons who:

1. were employed by the First Respondent and/or Second Respondent at any time between 23 December 2019 and 31 March 2023 (**Employment Period**);
2. during the Employment Period:
 - a. worked for the First Respondent and/or Second Respondent on a Public Holiday;
 - b. were required by the First Respondent and/or Second Respondent to work on each Public Holiday they worked; and
 - c. worked a continuous shift roster or as a fly-in-fly-out employee;
3. were at all material times working in or connection with:
 - a. the mining industry, as defined in clause 4.2 of the *Mining Industry Award 2020*;
or
 - b. the black coal mining industry, as defined in clause 4.2 of the *Black Coal Mining Industry Award 2020*.

Applicant's address

The Applicant's address for service is:

Place: Level 17, 9 Castlereagh Street, Sydney NSW 2000

Email: aron.neilson@aenlegal.com.au

The Applicant's address is C/- AEN Legal, Level 17, 9 Castlereagh Street, Sydney NSW 2000.

**Service on the Respondent**

It is intended to serve this application on all Respondents.

Date: 23 December 2025

A handwritten signature in blue ink, appearing to read "A. Neilson", is written above a horizontal dotted line.

Signed by Aron Neilson
Lawyer for the Applicant

**Schedule**

No. of 2025

Federal Court of Australia
District Registry: New South Wales
Division: Employment & Industrial Relations

Applicants

First Applicant: Gregory Hooper
Second Applicant: James Sharkie

Respondents

First Respondent: OS MCAP Pty Ltd (ACN 626 224 655)
Second Respondent: OS ACPM Pty Ltd (ACN 623 848 895)

Date: 23 December 2025