



Federal Court of Australia

District Registry: New South Wales Registry

Division: Fair Work

No: NSD2409/2025

GREGORY HOOPER and another named in the schedule
Applicant

OS MCAP PTY LTD (ACN 626 224 655) and another named in the schedule
Respondent

ORDER

JUDGE: Justice Kennett

DATE OF ORDER: 5 June 2026

WHERE MADE: Sydney

BY CONSENT, THE COURT ORDERS THAT:

Interlocutory application

1. Pursuant to r 30.01 of the Federal Court Rules 2011 (Cth) the following question be heard and determined separately and in advance of all other issues in the proceeding:

Do the facts alleged at paragraphs 1-24 of the Statement of Claim filed on 23 December 2025 fail to disclose a contravention by either Respondent of s 114, and if so of s 44, of the Fair Work Act 2009 (Cth) because s 114 does not impose an obligation or prohibition and is not capable of being contravened?

2. The separate question identified in order 1 above be reserved for determination by a Full Court.
3. The costs of the Respondents' interlocutory application dated 22 May 2026 are reserved.

Other

4. Order 4 of the orders made by Justice Kennett on 13 March 2026 is varied so that the proceeding is listed for case management (only) on **9 July 2026** at 9.30am.
5. The costs of the case management hearing on 4 June 2026 are reserved.

Date orders authenticated: 5 June 2026


Registrar



Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



Schedule

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Second Applicant JAMES SHARKIE

Second Respondent OS ACPM PTY LTD (ACN 623 848 895)