

NOTICE OF FILING

Details of Filing

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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



A handwritten signature in blue ink that reads "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.



Form 33
Rule 16.32

Defence

No. 2409 of 2025

Federal Court of Australia

District Registry: New South Wales

Division: Fair Work

Gregory Hooper and another

Applicants

OS MCAP Pty Ltd (ACN 626 224 655) and another

Respondents

Introduction

In this pleading, save as expressly and specifically dealt with below, the Respondents adopt the defined terms used in the Statement of Claim filed by the Applicants on 23 December 2025 (**Claim**) for convenience only and without conveying any admission of their content.

A. PARTIES

1 In response to paragraph 1, the Respondents:

- (a) say that the First Applicant's title was "Production Technician" during the period of employment; and
- (b) otherwise admit paragraph 1.

2 In response to paragraph 2, the Respondents:

- (a) say that the Second Applicant was employed by the Second Respondent between 8 November 2020 and 3 April 2024; and
- (b) otherwise admit paragraph 2.

Filed on behalf of OS MCAP Pty Ltd and OS ACPM Pty Ltd (Respondents)

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3 In response to paragraph 3, the Respondents:

- (a) repeat paragraphs 10, 11, 13, 15, 22 and 24 below; and
- (b) otherwise admit paragraph 3.

4 In answer to the allegations in paragraph 4, the Respondents:

- (a) repeat their defence to the Group Members' claims as set out below; and
- (b) otherwise admit paragraph 4.

5 The Respondents admit paragraph 5.

6 The Respondents admit paragraph 6.

7 The Respondents admit paragraph 7.

8 The Respondents admit paragraph 8.

B. GROUP OPERATIONS POLICIES AND PROCEDURES

9 In response to paragraph 9, the Respondents:

- (a) say that they caused the OSE Handbook (as amended from time to time) which contained workplace policies and standards to be made available to their employees during the Employment Period; and
- (b) otherwise deny paragraph 9.

10 In response to paragraph 10, the Respondents:

- (a) say that the terms of employment for each of the Applicants and Group Members as set out in their respective offer letters included, in "Section 1: Employment Agreement Summary", "Policies and Procedures" the following term:

The Company has in place policies, standards, procedures and the Operations Services Employee Handbook as amended from time to time. You must familiarise yourself with and comply with the Company's policies, standards, procedures and the Operations Services Employee Handbook as amended from time to time. The policies, standards, procedures and the Operations Services Employee Handbook are not incorporated into this Employment Agreement and do not create any obligations upon the Company or any enforceable rights for you. Copies of the policies, standards, procedures and the Operations Services Employee Handbook are available on the Company intranet or from your Supervisor.

Particulars

1. Offer Letter – Gregory Hooper – Production Technician – 03 January 2021
 2. Offer Letter – James Sharkie – Service Person Maintenance – 08 November 2021
- (b) say that neither the terms of employment nor the OSE Handbook could or did displace any of the NES;
- (c) further say that none of the Applicants or Group Members were required to work on a Public Holiday in circumstances where they were entitled to be absent pursuant to s 114 of the FW Act; and
- (d) otherwise deny paragraph 10.
- 11 In response to paragraph 11, the Respondents:
- (a) admit the paragraph;
- (b) repeat sub-paragraphs 10(b) and 10(c) above; and
- (c) say further that the OSE Handbook also provided, and it was the fact, that the employees of the First Respondent and the Second Respondent were compensated in their salary for working Public Holidays.
- 12 The Respondents admit paragraph 12.
- 13 In response to paragraph 13, the Respondents:
- (a) say that section 1 of the Production Contract provided “Please note that in accordance with your roster type, you may be required to work on public holidays and payment for this expectation has been incorporated into your existing remuneration”;
- (b) repeat sub-paragraphs 10(b) and 10(c) above; and
- (c) otherwise deny paragraph 13.
- 14 The Respondents admit paragraph 14.
- 15 In response to paragraph 15, the Respondents:
- (a) say that section 1 of the Maintenance Contract provided “Please note that in accordance with your roster type, you may be required to work on public holidays and payment for this expectation has been incorporated into your existing remuneration”;

- (b) repeat sub-paragraphs 10(b) and 10(c) above; and
- (c) otherwise deny paragraph 15.

C. PUBLIC HOLIDAYS WORKED

16 The Respondents:

- (a) admit sub-paragraphs 16(a), (b), (c), (d), (e), (g), (h) and (i); and
- (b) in response to sub-paragraph 16(f):
 - (i) say that during the Employment Period, the “Queen’s birthday holiday” was a Public Holiday pursuant to s 115(1)(a)(vi) of the FW Act; and
 - (ii) otherwise deny sub-paragraph 16(f).

17 The Respondents:

- (a) admit sub-paragraphs 17(b), (c), (d), (f) and (g); and
- (b) otherwise deny paragraph 17.

18 The Respondents repeat paragraph 17 and otherwise:

- (a) in response to sub-paragraph 18(a):
 - (i) admit that the First Respondent did not advise the First Applicant in writing on each and every occasion he worked a Public Holiday that he 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; and
 - (ii) otherwise do not presently know and therefore cannot admit whether the First Applicant was otherwise advised on each such occasion;
- (b) in response to sub-paragraph 18(b):
 - (i) deny the sub-paragraph;
 - (ii) say further that each of the following, individually or collectively, constituted a request by the First Respondent to the First Applicant to work on a Public Holiday:
 - i. the making of an offer of employment on terms including the term pleaded at paragraphs 10(a) and 13 above and paragraph 13 of the Claim;
 - ii. the communication to the First Applicant of the OSE Handbook;

- iii. the payment of remuneration which included compensation for the expectation that employees would work on Public Holidays when rostered to do so;
 - iv. the communication to the First Applicant of each roster which rostered the First Applicant to work upon a Public Holiday, such rosters being communicated in advance of that Public Holiday; and
- (iii) each such request was reasonable.

Particulars

- i. Employees were given notice before they accepted employment that they were expected to work on Public Holidays falling within their ordinary rosters.
- ii. Employees were informed and reminded of the matters set out in (i) above after they commenced employment.
- iii. Employees were given notice that payment for the expectation set out in (i) above had been incorporated into their remuneration.
- iv. Employees received a level of remuneration that reflected an expectation that they would work on Public Holidays which fell within their rosters.
- v. Employees could therefore reasonably expect, both before and at all times after they commenced employment, that they might be rostered to work on a Public Holiday which they would then work.
- vi. Employees were given their rosters a reasonable period in advance of the Public Holiday that fell within their rosters.
- vii. The Respondents were required to provide a 24 hour/365 day service to the operator of the relevant mine.
- viii. The Respondents' operational requirements were therefore such that it was necessary for employees to work on a Public Holiday that fell within their rosters.

- (c) in response to sub-paragraph 18(c):
 - (i) repeat paragraphs 9-13 and sub-paragraphs 18(a) and 18(b) above;
 - (ii) admit that the First Respondent rostered the First Applicant to work on each of the Public Holidays on which the First Applicant worked;
 - (iii) say that the First Applicant did not refuse the First Respondent's requests that he work on each of those Public Holidays such that the First Applicant was not entitled to be absent from his employment;
 - (iv) in the alternative, say that, if the First Respondent did not request the First Applicant to work on one or more of the Public Holidays, or the request was not reasonable, then:
 - i. the First Applicant was entitled under s 114(1) of the FW Act to be absent from his employment on any such Public Holiday;
 - ii. by operation of ss 43 and 61 of the FW Act, the entitlement under s 114(1) of the FW Act was a term and condition of the First Applicant's employment and could not be displaced; and
 - iii. the First Applicant was not legally required to work on any such Public Holiday; and
- (d) otherwise deny paragraph 18.

19 The Respondents:

- (a) admit sub-paragraphs 19(d), (e), (f), (g), (h), (l) and (m);
- (b) say further the Second Applicant was paid \$700 for the night shift the Second Applicant worked on 25 December 2022 in addition to the Second Applicant's annual salary and any applicable allowances, which payment would not have been made if the Second Applicant did not work that shift; and
- (c) otherwise deny paragraph 19.

20 The Respondents repeat paragraph 19 and otherwise:

- (a) in response to sub-paragraph 20(a):
 - (i) admit that the Second Respondent did not advise the Second Applicant in writing on each and every occasion he worked a Public Holiday that he 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; and
 - (ii) otherwise do not presently know and therefore cannot admit whether the Second Applicant was otherwise advised on each such occasion;
- (b) in response to sub-paragraph 20(b):
 - (i) deny the sub-paragraph;
 - (ii) say further that each of the following, individually or collectively, constituted a request by the Second Respondent to the Second Applicant to work on a Public Holiday:
 - i. the making of an offer of employment on terms including the terms pleaded at sub-paragraph 10(a) and paragraph 15 above and paragraph 15 of the Claim;
 - ii. the communication to the Second Applicant of the OSE Handbook;
 - iii. the payment of remuneration which included compensation for the expectation that employees would work on Public Holidays when rostered to do so;
 - iv. the communication to the Second Applicant of each roster which rostered the Second Applicant to work upon a Public Holiday, such rosters being communicated in advance of that Public Holiday; and
 - (iii) each such request was reasonable;

Particulars

The particulars to sub-paragraph 18(b)(iii) above are repeated.

(c) in response to sub-paragraph 20(c):

- (i) repeat paragraphs 9-10, 14-15 and sub-paragraphs 20(a) and 20(b) above;
- (ii) admit that the Second Respondent rostered the Second Applicant to work on each of the Public Holidays on which the Second Applicant worked;
- (iii) say that the Second Applicant did not refuse the Second Respondent's requests that he work on each of those Public Holidays such that the Second Applicant was not entitled to be absent from his employment;
- (iv) in the alternative, say that, if the Second Respondent did not request the Second Applicant to work on one or more of the Public Holidays, or the request was not reasonable, then:
 - i. the Second Applicant was entitled under s 114(1) of the FW Act to be absent from his employment on any such Public Holiday;
 - ii. by operation of ss 43 and 61 of the FW Act, the entitlement under s 114(1) of the FW Act was a term and condition of the Second Applicant's employment and could not be displaced; and
 - iii. the Second Applicant was not legally required to work on any such Public Holiday; and

(d) otherwise deny paragraph 20.

21 The Respondents admit paragraph 21.

22 The Respondents:

(a) in response to sub-paragraph 22(a):

- (i) admit that the First Respondent did not advise every Production Group Member in writing, on each and every occasion that a Production Group Member worked a Public Holiday, that the Production Group Member 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; and
- (ii) otherwise do not presently know and therefore cannot admit whether each Production Group Member was otherwise advised on each such occasion;

(b) in response to sub-paragraph 22(b):

- (i) deny the sub-paragraph;
- (ii) say further that each of the following, individually or collectively, constituted a request by the First Respondent to the Production Group Members to work on a Public Holiday:
 - i. the making of an offer of employment on terms including the term pleaded at paragraphs 10(a) and 13 above and paragraph 13 of the Claim;
 - ii. the communication to the Production Group Members of the OSE Handbook;
 - iii. the payment of remuneration which included compensation for the expectation that employees would work on Public Holidays when rostered to do so;
 - iv. the communication to the Production Group Members of each roster which rostered that Production Group Member to work upon a Public Holiday, such rosters being communicated in advance of that Public Holiday; and
- (iii) each such request was reasonable;

Particulars

The particulars to sub-paragraph 18(b)(iii) above are repeated.

(c) in response to sub-paragraph 22(c):

- (i) repeat paragraphs 9-13 and sub-paragraphs 22(a) and 22(b) above;
- (ii) do not know and do not admit that the First Respondent rostered the Production Group Members to work on each of the Public Holidays on which each of the Production Group Members worked;
- (iii) say that the Production Group Members did not refuse the First Respondent's requests that they work on each of the Public Holidays they did work or alternatively any such refusals were not reasonable;

- (iv) in the alternative, say that, if the First Respondent did not request any Production Group Member to work on one or more of the Public Holidays, or the request was not reasonable, then:
 - i. the Production Group Member was entitled under s 114(1) of the FW Act to be absent from his or her employment on any such Public Holiday;
 - ii. by operation of ss 43 and 61 of the FW Act, the entitlement under s 114(1) of the FW Act was a term and condition of the Production Group Member's employment and could not be displaced; and
 - iii. the Production Group Member was not legally required to work on any such Public Holiday; and
- (d) otherwise deny paragraph 22; and
- (e) otherwise reserve the right to rely upon any facts, matters or circumstances particular to individual group members, or cohorts of group members, in defence of their individual claims.

23 The Respondents admit paragraph 23.

24 The Respondents:

- (a) in response to sub-paragraph 24(a):
 - (i) admit that the Second Respondent did not advise every Maintenance Group Member in writing, on each and every occasion that a Maintenance Group Member worked a Public Holiday, that the Maintenance Group Member 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; and
 - (ii) otherwise do not presently know and therefore cannot admit whether each Maintenance Group Member was otherwise advised on each such occasion;

(b) in response to sub-paragraph 24(b):

- (i) deny the sub-paragraph;
- (ii) say further that each of the following, individually or collectively, constituted a request by the Second Respondent to the Maintenance Group Members to work on a Public Holiday:
 - i. the making of an offer of employment on terms including the term pleaded at sub-paragraph 10(a) and paragraph 15 above and paragraph 15 of the Claim;
 - ii. the communication to the Maintenance Group Members of the OSE Handbook;
 - iii. the payment of remuneration which included compensation for the expectation that employees would work on Public Holidays when rostered to do so;
 - iv. the communication to the Maintenance Group Members of each roster which rostered that Maintenance Group Member to work upon a Public Holiday, such rosters being communicated in advance of that Public Holiday; and
- (iii) each such request was reasonable;

Particulars

The particulars to sub-paragraph 18(b)(iii) above are repeated.

(c) in response to sub-paragraph 24(c):

- (i) repeat paragraphs 9-13 and sub-paragraphs 24(a) and 24(b) above;
- (ii) do not know and do not admit that the Second Respondent rostered the Maintenance Group Members to work on each of the Public Holidays on which each of the Maintenance Group Members worked;
- (iii) the Maintenance Group Members did not refuse the Second Respondent's requests that they work on each of the Public Holidays they did work or alternatively any such refusals were not reasonable;
- (iv) in the alternative, say that, if the Second Respondent did not request any Maintenance Group Members to work on one or more of the Public Holidays, or the request was not reasonable, then:

- i. the Maintenance Group Member was entitled under s 114(1) of the FW Act to be absent from his or her employment on any such Public Holiday;
 - ii. by operation of ss 43 and 61 of the FW Act, the entitlement under s 114(1) of the FW Act was a term and condition of the Maintenance Group Member's employment and could not be displaced; and
 - iii. the Maintenance Group Member was not legally required to work on any such Public Holiday; and
- (d) otherwise deny paragraph 24; and
- (e) otherwise reserve the right to rely upon any facts, matters or circumstances particular to individual group members, or cohorts of group members, in defence of their individual claims.

D. NO CONTRAVENTION OF NATIONAL EMPLOYMENT STANDARDS

25 The Respondents admit paragraph 25.

26 The Respondents deny paragraph 26 and:

- (a) repeat paragraphs 10, 17, 18 and 22 above;
- (b) say further that s 114 of the FW Act does not impose an obligation or prohibition and is not capable of being contravened.

27 The Respondents deny paragraph 27 and repeat paragraph 26 above.

28 The Respondents deny paragraph 28 and:

- (a) repeat paragraphs 10, 19, 20 and 24 above;
- (b) say further that s 114 of the FW Act does not impose an obligation or prohibition and is not capable of being contravened.

29 The Respondents deny paragraph 29 and repeat paragraph 28 above.

E. NO LOSS OR DAMAGE

30 The Respondents deny paragraph 30 and:

- (a) repeat sub-paragraphs 22(e) and 24(e) and paragraphs 26-29 above;
- (b) say further that, from February 2021, Group Members who were rostered to work and did work one of the following shifts (in full):
 - (i) night shift commencing 24 December;
 - (ii) day shift commencing 25 December;
 - (iii) night shift commencing 25 December; or
 - (iv) day shift commencing 26 December,

were paid \$700 per shift in addition to the employee's annual salary and any applicable allowances, which payment would not have been made if those Group Members did not work those shifts.

Particulars

- i. BHP Working on 24 – 26 December Ex-Gratia Payment – Policy (version 1), which the Respondents rely on for its full force and effect.

F. NO ENTITLEMENT TO RELIEF

31 In response to paragraph 31, the Respondents:

- (a) deny that the Applicant or any Group Member is entitled to any of the relief sought by the Originating Application;
- (b) say that the Claim does not disclose a reasonable cause of action and repeat paragraphs 10, 26 and 28 and sub-paragraphs 18(c), 20(c), 22(c) and 24(c) above;
- (c) in the alternative:
 - (i) say that an order for compensation or penalty is not appropriate including because the remuneration paid to the Applicants and Group Members already compensated them for the prospect that they would be rostered to work on Public Holidays and each of them voluntarily accepted that remuneration with knowledge of that prospect; and

Particulars

The Respondents rely on s 545 of the FW Act and repeat the matters in paragraph 30 above.

- (ii) rely on ss 556 and 557 of the FW Act.

Date: 22 May 2026



.....
James Russell
Lawyer for the Respondents

This pleading was prepared by Vanja Bulut, Hugh Atkin and Frances Leitch of counsel and was settled by Garry Rich SC of counsel.

Certificate of lawyer

I James Douglas Livingstone Russell certify to the Court that, in relation to the defence filed on behalf of the Respondents, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 22 May 2026



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Signed by James Russell
Lawyer for the Respondents