

NOTICE OF FILING

Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
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 2:33:06 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



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.

No. of 2025

Gregory Hooper and another named in the Schedule
Applicants

OS MCAP Pty Ltd and another named in the Schedule
Respondents

1. The First Applicant:

- ## 2. The Second Applicant:

- a. is a natural person;
- b. was in the period from about 2019 to 2024 employed by the Second Respondent as a Service Person;
- c. at all material times was a national system employee within the meaning of s 13 of the FW Act;

Filed on behalf of (name & role of party) Gregory Hooper and James Sharkie, Applicants

Prepared by (name of person/lawyer) Aron Neilson

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- d. at all material times during the period of his employment, was:
 - i. covered by the *Black Coal Mining Industry Award 2010* and *Black Coal Mining Industry Award 2020* (as applicable); and
 - ii. covered by the National Employment Standards.
3. The First and Second Applicants commence this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on their own behalf and on behalf of other persons (**Group Members**) who:
- a. were employed by the First Respondent and/or Second Respondent at any time between 23 December 2019 and 31 March 2023 (**Employment Period**);
 - b. during the Employment Period:
 - i. worked for the First Respondent and/or Second Respondent on a Public Holiday;
 - ii. were required by the First Respondent and/or Second Respondent to work on each Public Holiday they worked;
 - iii. worked a continuous shift roster or as a fly-in-fly-out (**FIFO**) employee;
 - c. were at all material times working in or connection with:
 - i. the mining industry, as defined in clause 4.2 of the *Mining Industry Award 2020*; or
 - ii. the black coal mining industry, as defined in clause 4.2 of the *Black Coal Mining Industry Award 2020*.
4. At the commencement of this proceeding, seven or more Group Members have claims against the Respondents as pleaded in this statement of claim.
5. The First Respondent is and was at all material times:
- a. a body corporate incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - b. a wholly owned subsidiary of BHP Group Operations Pty Ltd (**Group Operations**), which in turn is a wholly owned subsidiary of BHP Group Limited (**BHP Group**);
 - c. able to be sued in its corporate name;
 - d. a constitutional corporation within the meaning of s 12 of the FW Act;
 - e. a national system employer for the purposes of s 14 of the FW Act; and

- f. a provider of production services to BHP Group and Group Operations mining operations in Australia.
- 6. During the Employment Period, the First Respondent engaged as employees the First Applicant and some of the Group Members (**Production Group Members**).
- 7. The Second Respondent is and was at all material times:
 - a. a body corporate incorporated under the Corporations Act, which in turn is a wholly owned subsidiary of BHP Group;
 - b. a wholly owned subsidiary of Group Operations;
 - c. able to be sued in its corporate name;
 - d. a constitutional corporation within the meaning of s 12 of the FW Act;
 - e. a national system employer for the purposes of s 14 of the FW Act; and
 - f. a provider of maintenance services to BHP Group and Group Operations mining operations in Australia.
- 8. During the Employment Period, the Second Respondent engaged as employees the Second Applicant and some of the Group Members (**Maintenance Group Members**).

B. GROUP OPERATIONS POLICIES AND PROCEDURES

- 9. At all material times, the BHP Group (which included as subsidiaries the First Respondent and Second Respondent) published an "Operations Services Employee Handbook" (**OSE Handbook**) (as amended from time to time) which contained workplace policies and standards.
- 10. The Applicants and Group Members were required to comply with the workplace policies and standards contained in the OSE Handbook.

Particulars

Each of the Production Contract and Maintenance Contract (as defined at paragraphs 12 and 14 below) contained a term that the Applicants and each Group Member was required to comply with the policies, standards, procedures and applicable Employee Handbook (being the OSE Handbook) as amended from time to time.

- 11. At all material times, the OSE Handbook provided that employees of the First Respondent or Second Respondent (including the Applicants and Group Members) who worked a continuous shift roster and/or were FIFO employees were required to work on a Public Holiday if it fell on an ordinary rostered day.

12. At all material times, the First Respondent engaged the First Applicant and the Production Group Members under a standard form employment contract (**Production Contract**).
13. The Production Contract provided that the First Applicant and Production Group Members may be required to work on Public Holidays and payment for this expectation has been incorporated into their existing remuneration.
14. At all material times, the Second Respondent engaged the Second Applicant and the Maintenance Group Members under a standard form employment contract (**Maintenance Contract**).
15. The Maintenance Contract provided that the Second Applicant and Maintenance Group Members may be required to work on Public Holidays and payment for this expectation has been incorporated into their existing remuneration.

C. PUBLIC HOLIDAYS WORKED

16. At all material times, the following were Public Holidays under s 115 of the FW Act:
 - a. 1 January (New Year's Day);
 - b. 26 January (Australia Day);
 - c. Good Friday;
 - d. Easter Monday;
 - e. 25 April (Anzac Day);
 - f. the holiday for the birthday of the Sovereign (on the day on which it is celebrated in a State or Territory or a region of a state or Territory);
 - g. 25 December (Christmas Day);
 - h. 26 December (Boxing Day); and
 - i. any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday.
17. During the period the First Applicant worked for the First Respondent, he worked Public Holidays including, but not limited to:
 - a. Tuesday 26 January 2021 (Australia Day);
 - b. Monday 26 April 2021 (Anzac Day);
 - c. Saturday 1 January and Monday 3 January 2022 (New Year's Day);
 - d. Monday 25 April 2022 (Anzac Day);

- e. Thursday 22 September 2022 (National Day of Mourning for Her Majesty The Queen);
- f. Sunday 1 January and Monday 2 January 2023 (New Year's Day); and
- g. Thursday 26 January 2023 (Australia Day).

Particulars

The First Applicant does not retain a record of each Public Holiday he worked during the Employment Period. The First Respondent retains this information.

Further and better particulars will be provided following compulsory process.

18. On each occasion that the First Applicant worked the Public Holidays pleaded in paragraph 17, the First Respondent:
 - a. did not advise the First Applicant 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;
 - b. did not make a request to the First Applicant within the meaning of s 114(2) of the FW Act that he work on the Public Holiday; and
 - c. required the First Applicant to work on the Public Holiday by reason of:
 - i. the obligation imposed on the First Applicant by the OSE Handbook that he work a Public Holiday if it fell on an ordinary rostered day (in the circumstances pleaded in paragraphs 9 to 11 above);
 - ii. the obligation imposed on the First Applicant by the Production Contract that he may be required to work on a Public Holiday and payment for that expectation was incorporated into his existing remuneration (in the circumstances pleaded in paragraphs 12 to 13 above);
 - iii. the fact the First Respondent rostered the First Applicant to work shifts per his roster, irrespective of whether it was a Public Holiday, and hence directed the First Applicant to work on each such shift; and
 - iv. the matters pleaded at (a) and (b) above.
19. During the period the Second Applicant worked for the Second Respondent, he worked Public Holidays including, but not limited to:
 - a. Wednesday 25 December 2019 (Christmas Day);
 - b. Thursday 26 December 2019 (Boxing Day);
 - c. Tuesday 26 January 2021 (Australia Day);
 - d. Friday 2 April 2021 (Good Friday);

- e. Saturday 3 April 2021 (the day after Good Friday);
- f. Sunday 4 April 2021 (Easter Sunday);
- g. Monday 5 April 2021 (Easter Monday);
- h. Monday 3 May 2021 (Labour Day);
- i. Monday 4 October 2021 (Queen's Birthday);
- j. Saturday 25 December and Monday 27 December 2021 (Christmas Day);
- k. Sunday 26 December and Tuesday 28 December 2021 (Boxing Day);
- l. Sunday 25 December and Tuesday 27 December 2022 (Christmas Day); and
- m. Monday 26 December 2022 (Boxing Day).

Particulars

The Second Applicant does not have a record of each Public Holiday he worked during the Employment Period. The Second Respondent retains this information. Further and better particulars will be provided following compulsory process.

20. On each occasion that the Second Applicant worked the Public Holidays pleaded in paragraph 19, the Second Respondent:
- a. did not advise the Second Applicant 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;
 - b. did not make a request to the Second Applicant within the meaning of s 114(2) of the FW Act that he work on the Public Holiday; and
 - c. required the Second Applicant to work on the Public Holiday by reason of:
 - i. the obligation imposed on Second Applicant by the OSE Handbook that he work a Public Holiday if it fell on an ordinary rostered day (in the circumstances pleaded in paragraphs 9 to 11 above);
 - ii. the obligation imposed on the Second Applicant by the Maintenance Contract that he may be required to work on a Public Holiday and payment for that expectation was incorporated into his existing remuneration (in the circumstances pleaded in paragraphs 14 to 15 above);
 - iii. the fact the Second Respondent rostered the Second Applicant to work shifts per his roster, irrespective of whether it was a Public Holiday, and hence directed the Second Applicant to work on each such shift; and

iv. the matters pleaded at (a) and (b) above.

21. During the Employment Period, Production Group Members worked Public Holidays from time to time.

Particulars

Further and better particulars will be provided following compulsory processes and after the trial of common issues.

22. On each occasion that the Production Group Members worked a Public Holiday pleaded in paragraph 21, the First Respondent:

- a. did not advise the Production Group Members that each 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;
- b. did not make a request to the Production Group Members within the meaning of s 114(2) of the FW Act that each work on the Public Holiday; and
- c. required the Production Group Members to work on the Public Holiday by reason of:
 - i. the obligation imposed on the Production Group Members by the OSE Handbook that they work a Public Holiday if it fell on an ordinary rostered day (in the circumstances pleaded in paragraphs 9 to 11 above);
 - ii. the obligation imposed on the Production Group Members by the Production Contract that they may be required to work on a Public Holiday and payment for that expectation was incorporated into their existing remuneration (in the circumstances pleaded in paragraphs 12 to 13 above);
 - iii. the fact the First Respondent rostered the Production Group Members to work shifts per their roster, irrespective of whether it was a Public Holiday, and hence directed the Production Group Members to work on each such shift; and
 - iv. the matters pleaded at (a) and (b) above.

23. During the Employment Period, Maintenance Group Members worked Public Holidays from time to time.

Particulars

Further and better particulars will be provided following compulsory processes and after the trial of common issues.

24. On each occasion that the Maintenance Group Members worked a Public Holiday pleaded in paragraph 23, the Second Respondent:

- a. did not advise the Maintenance Group Members that each 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;
- b. did not make a request to the Maintenance Group Members within the meaning of s 114(2) of the FW Act that each work on the Public Holiday; and
- c. required the Maintenance Group Members to work on the Public Holiday by reason of:
 - i. the obligation imposed on the Maintenance Group Members by the OSE Handbook that they work a Public Holiday if it fell on an ordinary rostered day (in the circumstances pleaded in paragraphs 9 to 11 above);
 - ii. the obligation imposed on the Maintenance Group Members by the Maintenance Contract that they may be required to work on a Public Holiday and payment for that expectation was incorporated into their existing remuneration (in the circumstances pleaded in paragraphs 14 to 15 above);
 - iii. the fact the Second Respondent rostered the Maintenance Group Members to work shifts per their roster, irrespective of whether it was a Public Holiday, and hence directed the Maintenance Group Members to work on each such shift; and
 - iv. the matters pleaded at (a) and (b) above.

D. CONTRAVENTION OF THE NATIONAL EMPLOYMENT STANDARDS

25. At all material times:

- a. section 114(1) of the FW Act provided that an employee was entitled to be absent from his or her employment on a day or part day that is a Public Holiday in the place where the employee is based for work purposes; and
- b. section 114(2) of the FW Act provided that an employer may request an employee to work on a Public Holiday if the request is reasonable.

26. The First Respondent contravened s 114 of the FW Act each time it:

- a. did not make a request to the First Applicant and the Production Group Members within the meaning of s 114(2) of the FW Act that each work on the Public Holiday; and

- b. required the First Applicant and the Production Group Members to work on each Public Holiday that they worked during the Employment Period; and
 - c. hence, denied the First Applicant and the Production Group Members their entitlement to be absent from employment in respect of each Public Holiday that person worked.
- 27. By reason of its contraventions of s 114 of the FW Act pleaded at paragraph 26, the First Respondent contravened s 44 of the FW Act.
- 28. The Second Respondent contravened s 114 of the FW Act each time it:
 - a. did not make a request to the Second Applicant and the Maintenance Group Members within the meaning of s 114(2) of the FW Act that each work on the Public Holiday;
 - b. required the Second Applicant and the Maintenance Group Members to work on each Public Holiday that they worked during the Employment Period; and
 - c. hence, denied the Second Applicant and the Maintenance Group Members their entitlement to be absent from employment in respect of each Public Holiday that person worked.
- 29. By reason of its contraventions of s 114 of the FW Act pleaded at paragraph 28, the Second Respondent contravened s 44 of the FW Act.

E. LOSS AND DAMAGE

- 30. By reason of the contraventions pleaded at paragraphs 26 to 29 the Applicants and each Group Member have suffered loss and damage.

Particulars

The Applicants' and Group Members' loss and damage includes:

- (a) the loss of an entitlement to not work on each Public Holiday;
- (b) further or in the alternative, the loss of the opportunity to refuse to work on each Public Holiday by raising reasonable grounds for refusal; and
- (c) expenses borne by the Applicants and Group Members by reason the requirement to work on a Public Holiday including childcare costs.

The Applicants do not claim compensation in respect of the public Holidays on 25 and 26 December 2019 on behalf of Production Group Members who were ordered to be paid compensation in *Mining and Energy Union v OS MCAP Pty Ltd (No 3)* [2025] FCA 1372 in respect of those Public Holidays.

F. RELIEF

31. The Applicant claims on his own behalf and on behalf of Group Members the relief set out in the Originating Application.

Date: 23 December 2025



Signed by Aron Neilson
Lawyer for the Applicant

This pleading was prepared by L N Hamilton of counsel and settled by C J Tran of counsel.

Certificate of lawyer

I Aron Neilson certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 23 December 2025



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